

HOUSE BILL NO. 567
INTRODUCED BY FOSTER

IN THE HOUSE

FEBRUARY 10, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 19, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 22, 1993	ENGROSSING REPORT.
FEBRUARY 23, 1993	THIRD READING, PASSED. AYES, 94; NOES, 5.
FEBRUARY 24, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 1, 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, 44; NOES, 4.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 7, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 13, 1993	THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

APRIL 16, 1993 REPORTED CORRECTLY ENROLLED.

APRIL 17, 1993 SIGNED BY SPEAKER.

IN THE SENATE

APRIL 20, 1993 SIGNED BY PRESIDENT.

IN THE HOUSE

APRIL 20, 1993 DELIVERED TO GOVERNOR.

APRIL 21, 1993 RETURNED FROM GOVERNOR WITH
RECOMMENDED AMENDMENTS.

APRIL 22, 1993 SECOND READING, GOVERNOR'S RECOM-
MENDED AMENDMENTS CONCURRED IN.

THIRD READING, GOVERNOR'S RECOM-
MENDED AMENDMENTS CONCURRED IN.

IN THE SENATE

APRIL 24, 1993 GOVERNOR'S RECOMMENDED AMENDMENTS
CONCURRED IN.

IN THE HOUSE

APRIL 24, 1993 SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 567
2 INTRODUCED BY Foster
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING ADDITIONAL
5 REQUIREMENTS FOR AN AIR QUALITY PERMIT FOR COMMERCIAL
6 MEDICAL WASTE INCINERATORS; REQUIRING THE DEPARTMENT OF
7 HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT RULES;
8 COORDINATING THE PERMITTING PROCESS FOR AIR QUALITY AND
9 SOLID WASTE PERMITS; REQUIRING A DISCLOSURE STATEMENT;
10 ESTABLISHING CRITERIA FOR THE DENIAL OR MODIFICATION OF A
11 PERMIT; AMENDING SECTIONS 75-2-103, 75-2-211, AND 75-2-215,
12 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
13 RETROACTIVE APPLICABILITY DATE."

14
15 STATEMENT OF INTENT

16 A statement of intent is required for this bill because
17 [section 4] directs the department of health and
18 environmental sciences to adopt rules establishing
19 additional permit requirements for commercial medical waste
20 incinerators. The rules adopted must ensure that the public
21 is protected from potential exposure to chlorinated dioxins
22 and furans as a result of the incineration of medical waste.

23 It is the intent of the legislature that the department
24 coordinate the application review process and issuance of
25 permits between the air quality bureau and the solid and

1 hazardous waste bureau for incinerators that must receive
2 both an air quality permit and a solid waste management
3 license. In coordinating the permitting process of these two
4 bureaus, the department shall also coordinate the
5 environmental review process conducted pursuant to Title 75,
6 chapter 1, part 1. At the discretion of the department, this
7 coordination may be accomplished by preparing a joint
8 environmental review document.
9

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

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

12 "75-2-103. Definitions. Unless the context requires
13 otherwise, in this chapter the following definitions apply:

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

16 (2) "Air contaminant" means dust, fumes, mist, smoke,
17 other particulate matter, vapor, gas, odorous substances, or
18 any combination thereof.

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

25 (4) "Board" means the board of health and environmental

1 sciences provided for in 2-15-2104.

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

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

7 (7) "Environmental protection law" means a law
8 contained in or an administrative rule adopted pursuant to
9 Title 75, chapter 2, 5, 10, or 11.

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

16 (b) Incinerator does not include:

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

21 (ii) space heaters that burn used oil;

22 (iii) wood-fired boilers; or

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

25 (9) (a) "Lowest achievable emission rate" means, except

1 as provided in subsection (9)(b), a rate of emissions that
2 reflects the more stringent of:

3 (i) the most stringent emission limitation that is
4 contained in the state implementation plan for a source
5 class or category, unless the owner or operator of the
6 proposed source demonstrates that those limitations are not
7 achievable; or

8 (ii) the most stringent emission limitation that is
9 achieved in practice by a source class or category.

10 (b) The application of lowest achievable emission rate
11 does not allow a new or modified source to emit any
12 pollutant in excess of the amount allowed under applicable
13 new source standards of performance or under national
14 emission standards for hazardous air pollutants, as provided
15 by rule.

16 (10) "Medical waste" means any waste that is generated
17 in the diagnosis, treatment, or immunization of human beings
18 or animals, in medical research on humans or animals, or in
19 the production or testing of biologicals. The term includes:

20 (a) cultures and stocks of infectious agents;

21 (b) human pathological wastes;

22 (c) waste human blood or products of human blood;

23 (d) sharps;

24 (e) contaminated animal carcasses, body parts, and
25 bedding that were known to have been exposed to infectious

agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

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

(12) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation."

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

"75-2-211. Permits for construction, installation, alteration, or use. (1) The department shall provide for the issuance, suspension, revocation, and renewal of a permit issued under this 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 air contaminants that are subject to the provisions of Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended, and that do not hold an air quality permit from the department as of November 2, 1992.

(3) Not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility which that the board 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

1 pollutants, the owner or operator shall file with the
2 department the appropriate permit application on forms
3 available from the department.

4 (4) Concurrent with the submittal of a permit
5 application required by subsection (3) and annually for the
6 duration of the permit, the applicant shall submit to the
7 department a fee sufficient to cover the reasonable costs,
8 both direct and indirect, of developing and administering
9 the permitting requirements in this chapter, including the
10 reasonable costs of:

11 (a) reviewing and acting upon the application;

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

18 (c) emissions and ambient monitoring;

19 (d) preparing generally applicable regulations or
20 guidance;

21 (e) modeling, analysis, and demonstrations; and

22 (f) preparing inventories and tracking emissions.

23 (5) In addition to the fee required under subsection
24 (4), the board may order the assessment of additional fees
25 required to fund specific activities of the department that

1 are directed at a particular geographic area if the
2 legislature authorizes the activities and appropriates the
3 funds for the activities, including emissions or ambient
4 monitoring, modeling analysis or demonstrations, or
5 emissions inventories or tracking. Additional assessments
6 may be levied only on those sources that are within or are
7 believed by the department to be impacting the geographic
8 area. Before the board may require the assessments, it shall
9 first determine, after opportunity for hearing, that the
10 activities to be funded are necessary for the administration
11 or implementation of this chapter, that the assessments
12 apportion the required funding in an equitable manner, and
13 that the department has obtained legislative authorization
14 for the expenditure and the necessary appropriation.

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

20 (7) For any existing source of air contaminants that is
21 subject to Title V of the federal Clean Air Act, 42 U.S.C.
22 7401, et seq., as amended, and that is not required to hold
23 an air quality permit from the department as of October 1,
24 1991, the board may, as a condition of continued operation,
25 require by rule that the owner or operator of the source pay

1 the annual fee provided for in subsection (4). ~~Nothing-in~~
 2 this This subsection may not be construed as allowing the
 3 department to charge any source of air contaminants more
 4 than one annual fee that is designed to cover the costs
 5 identified in subsection (4).

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

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

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

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

24 (d) The contested case provisions of the Montana
 25 Administrative Procedure Act provided for in Title 2,

1 chapter 4, apply to any hearing before the board under this
 2 subsection (9).

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

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

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

21 (14) (a) ~~Where~~ When an application for a permit requires
 22 the compilation of an environmental impact statement under
 23 the Montana Environmental Policy Act, the department shall
 24 notify the applicant in writing of the approval or denial of
 25 the application within:

(i) 180 days of the receipt of a filed application, as defined in subsection (13), 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 when an application does not require the compilation preparation of an environmental impact statement or if an application is not subject to the provisions of 75-2-215, the department shall notify the applicant in writing within 60 days of the receipt of a filed application, as defined provided in subsection (13), of the 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.

(15) 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, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, a hearing before the board. A hearing ~~shall~~ must be held under the provisions of the Montana

Administrative Procedure Act.

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

Section 3. Section 75-2-215, MCA, is amended to read:

"75-2-215. Solid or hazardous waste incineration -- additional permit requirements. (1) A person may not construct, modify, or operate a solid or hazardous waste incinerator 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 that is designed to burn more than 200 pounds an hour of solid or hazardous waste and that incinerates or would incinerate solid or hazardous waste in an amount, form, kind, or content different from its designed or permitted operation or that incinerates or would incinerate any solid or hazardous waste that changes the nature, character, or composition of its emissions.

(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 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 as proposed in the permit application or modification;

(b) the department has conducted a public hearing on an environmental review prepared pursuant to Title 75, chapter 1, and, as appropriate, provided additional opportunities for 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; and

(d) the department has issued a license pursuant to 75-10-221, if a license is required.

(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.

(4) This section does not relieve an owner or operator of a solid or hazardous waste incinerator 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 4. Medical waste incineration --
additional permit requirements. (1) Because of the potential formation of chlorinated dioxins and furans as a result of the incineration of medical waste and the potential health risk these chemicals pose, the department shall adopt rules establishing additional permit requirements for commercial medical waste incinerators. For the purposes of this section, the term "commercial medical waste incinerator" does not include hospital or medical facility incinerators that primarily incinerate medical waste generated onsite. The department shall adopt rules that:

(a) regulate the type and amount of plastic and other materials in the medical waste stream that may be a source of chlorine, in order to minimize the potential creation of chlorinated dioxins and furans;

(b) require commercial medical waste incinerators to

1 achieve the lowest achievable emission rate;

2 (c) implement the requirements of subsection (2),
3 including establishing procedures and standards for the
4 collection of high quality scientific information and for
5 the submission of the information by the applicant; and

6 (d) establish procedures for the monitoring, testing,
7 and inspection of:

8 (i) the medical waste stream, including possible
9 precursors to the formation of chlorinated dioxins and
10 furans;

11 (ii) combustion, including destruction and removal
12 efficiencies; and

13 (iii) emissions, including continuous emission
14 monitoring and air pollution control devices.

15 (2) A person who applies for an air quality permit
16 pursuant to 75-2-211 for a commercial medical waste
17 incinerator shall provide, to the satisfaction of the
18 department, the following information:

19 (a) a dispersion model of emissions, using approved
20 methods, that relates to potential worker and community
21 exposure;

22 (b) an analysis of the potential pathways for human
23 exposure to air contaminants, particularly chlorinated
24 dioxins and furans, including the potential for inhalation,
25 ingestion, and physical contact by workers and the affected

1 communities; and

2 (c) a quantitative analysis of the estimated total
3 possible human exposure to chlorinated dioxins and furans
4 for both workers and the affected communities.

5 (3) The department may not issue an air quality permit
6 pursuant to this chapter until the department has
7 determined, based upon an analysis of the information
8 provided by the applicant pursuant to subsection (2), that
9 the public health risk from chlorinated dioxins and furans
10 will not exceed appropriate standards for allowable daily
11 intake, as determined by the department after an evaluation
12 of relevant federal standards and guidelines.

13 NEW SECTION. **Section 5. Disclosure statement required.**

14 (1) An air quality permit for a commercial medical waste
15 incinerator may not be issued, renewed, transferred, or
16 modified pursuant to 75-2-211 without an application under
17 this section. Before an application for the issuance,
18 renewal, transfer, or modification of a permit under
19 75-2-211 for a commercial medical waste incinerator may be
20 approved, the applicant and each principal with respect to
21 the applicant shall submit to the department a disclosure
22 statement containing the following information:

23 (a) the name, business address, and social security
24 number of the applicant and each principal;

25 (b) a description of any civil and administrative

1 complaint filed within 5 years before the date of the
2 application against the applicant or a principal for the
3 violation of an environmental protection law and whether the
4 complaint resulted in a civil or administrative penalty; and

5 (c) a description of all judgments of criminal
6 conviction entered against the applicant or a principal for
7 the violation of an environmental protection law within 5
8 years before the date of the application.

9 (2) A disclosure statement, as required in subsection
10 (1), must be executed under oath or affirmation and is
11 subject to the penalty for perjury. The department may
12 verify and investigate the information contained in a
13 statement required under this section.

14 (3) A person required to file a disclosure statement
15 under this section shall provide assistance or information
16 requested by the department that is related to the statement
17 and shall cooperate in an inquiry or investigation conducted
18 by the department under subsection (2).

19 NEW SECTION. **Section 6. Denial or modification of**
20 **permit -- mitigating factors.** (1) The department may deny an
21 application for the issuance, renewal, transfer, or
22 modification of a permit under 75-2-211 for a commercial
23 medical waste incinerator or impose additional conditions on
24 a permit pursuant to subsection (2) if within 5 years before
25 the date of the application:

1 (a) a judgment of criminal conviction of an
2 environmental protection law has been entered against the
3 applicant or a principal;

4 (b) a civil or administrative complaint for a violation
5 of an environmental protection law has resulted in the
6 assessment of a penalty against the applicant or a
7 principal; or

8 (c) the applicant or a principal has a history of
9 repeated violations of environmental protection laws.

10 (2) As provided under subsection (1), the department
11 may impose additional conditions on a permit related to
12 permit length, inspections, monitoring, recordkeeping, and
13 reporting.

14 (3) In making the decision to deny an application or to
15 impose conditions on a permit pursuant to subsection (1),
16 the department shall consider the following mitigating
17 factors:

18 (a) the nature and gravity of the violation of
19 environmental protection laws;

20 (b) the degree of culpability of the applicant or a
21 principal;

22 (c) the applicant's or principal's cooperation with the
23 state or federal agencies involved in the complaints and
24 convictions referred to in [section 5];

25 (d) the applicant's or principal's dissociation from

1 other persons or entities convicted of acts referred to in
2 [section 5]; and

3 (e) a demonstration of good citizenship by the
4 applicant or a principal.

5 NEW SECTION. **Section 7. Codification** instruction.
6 [Sections 4 through 6] are intended to be codified as an
7 integral part of Title 75, chapter 2, part 2, and the
8 provisions of Title 75, chapter 2, part 2, apply to
9 [sections 4 through 6].

10 NEW SECTION. **Section 8. Severability.** If a part of
11 [this act] is invalid, all valid parts that are severable
12 from the invalid part remain in effect. If a part of [this
13 act] is invalid in one or more of its applications, the part
14 remains in effect in all valid applications that are
15 severable from the invalid applications.

16 NEW SECTION. **Section 9. Retroactive** applicability.
17 [This act] applies retroactively, within the meaning of
18 1-2-109, to all commercial medical waste incinerators that
19 have applied for but have not received by [the effective
20 date of this act] a permit under Title 75, chapter 2, and a
21 license under 75-10-221.

22 NEW SECTION. **Section 10. Effective date.** [This act] is
23 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 HB0567, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing additional requirements for an air quality permit for commercial medical waste incinerators; requiring the Department of Health and Environmental Sciences to adopt rules; coordinating the permitting process for air quality and solid waste permits; requiring a disclosure statement; establishing criteria for the denial or modification of a permit.

ASSUMPTIONS:

1. Development of the rules required under this act will require substantial research in areas that are not currently regulated by the Air Quality Bureau and areas where the AQB has only limited expertise such as waste segregation, the minimization of chlorinated plastics in the waste stream, and how to factor a source's compliance history into the permitting process.
2. There will be increased burden on the permit reviewer in determining adequate permit conditions to ensure compliance with the additional requirements of the new rules. There will be increased review and analysis of ambient impact, potential health risk and the need for increased monitoring, testing and reporting.
3. There will be increased burden on the enforcement section in determining compliance with the additional permit condition requirements of the new rules. There will be increased inspections, review of ambient monitoring and source test report requirements.
4. There will be increased costs associated with the mandatory public meetings, staff overtime, transportation, meals, and lodging.
5. These regulations will require the addition of 1.0 FTE (0.5 FTE rulemaking and permitting, and 0.5 FTE enforcement). The high level of expertise required to write and enforce the rules and permits, and conduct inspections and public hearings requires a Grade 15 Environmental Specialist or Engineer.

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
FTE	0	1.0	1.0	0	1.0	1.0
Personal Services	0	39,754	39,754	0	39,754	39,754
Operating Expenses	0	20,266	20,266	0	17,416	17,416
Capital Outlay	0	1,600	1,600	0	0	0
Total	0	61,620	61,620	0	57,170	57,170

<u>Revenues:</u>						
State Special Revenue (Fees)		61,620	61,620		57,170	57,170

(Continued)

David Lewis 2-16-93
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Mike Foster 2/16/93
 MIKE FOSTER, PRIMARY SPONSOR DATE

Fiscal Note for HB0567, as introduced**HB 567**

Fiscal Note Request, HB0567, as introduced
Form BD-15 page 2
(continued)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: Counties that currently permit incinerators would need to adopt these requirements to maintain primacy in the permitting of medical waste incinerators. This would increase their cost proportionally.

TECHNICAL NOTES: Would the state special revenue (fees) be collected through a charge against emissions of air pollutants from all regulated sources, or just sources defined in HB0567?

HB 567

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 567
INTRODUCED BY FOSTER

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING ADDITIONAL REQUIREMENTS FOR AN AIR QUALITY PERMIT FOR COMMERCIAL MEDICAL WASTE INCINERATORS; REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT RULES; COORDINATING THE PERMITTING PROCESS FOR AIR QUALITY AND SOLID WASTE PERMITS; REQUIRING A DISCLOSURE STATEMENT; ESTABLISHING CRITERIA FOR THE DENIAL OR MODIFICATION OF A PERMIT; AMENDING SECTIONS 75-2-103, 75-2-211, AND 75-2-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] directs the department BOARD of health and environmental sciences to adopt rules establishing additional permit requirements for commercial medical waste incinerators. The rules adopted must ensure that the public is protected from potential exposure to chlorinated dioxins and furans as a result of the incineration of medical waste.

It is the intent of the legislature that the department coordinate the application review process and issuance of permits between the air quality bureau and the solid and

hazardous waste bureau for incinerators that must receive both an air quality permit and a solid waste management license. In coordinating the permitting process of these two bureaus, the department shall also coordinate the environmental review process conducted pursuant to Title 75, chapter 1, part 1. At the discretion of the department, this coordination may be accomplished by preparing a joint environmental review document.

FINALLY, THE LEGISLATURE UNDERSTANDS THAT THE RETROACTIVE APPLICABILITY OF THIS BILL WILL SUBJECT PERMIT APPLICANTS, WHO HAVE BEGUN BUT NOT COMPLETED THE PERMITTING PROCESS, TO THE PROVISIONS OF THIS BILL. WHILE THE LEGISLATURE UNDERSTANDS THAT COMPLIANCE WITH THE PROVISIONS OF THIS BILL WILL REQUIRE ADDITIONAL TIME AND RESOURCES FROM THE APPLICANT, IT IS NOT THE INTENT OF THE LEGISLATURE THAT THIS LEGISLATION UNNECESSARILY DELAY THE PERMITTING PROCESS OR UNNECESSARILY INCREASE THE PERMITTING COSTS.

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) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(8) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, 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 that burn used oil;

(iii) wood-fired boilers; or

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

(9) (a) "Lowest achievable emission rate" means, except as provided in subsection (9)(b), a rate of emissions that reflects the more stringent of:

(i) the most stringent emission limitation that is contained in the state implementation plan for a source class or category, unless the owner or operator of the proposed source demonstrates that those limitations are not achievable; or

(ii) the most stringent emission limitation that is achieved in practice by a source class or category.

(b) The application of lowest achievable emission rate does not allow a new or modified source to emit any pollutant in excess of the amount allowed under applicable new source standards of performance or under national emission standards for hazardous air pollutants, as provided by rule.

(10) "Medical waste" means any waste that is generated

in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

~~†7~~(11) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity and includes persons resident in Canada.

(12) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation."

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

"75-2-211. Permits for construction, installation, alteration, or use. (1) The department shall provide for the

issuance, suspension, revocation, and renewal of a permit issued under this 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 air contaminants that are subject to the provisions of Title

V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended, and that do not hold an air quality permit from the department as of November 2, 1992.

(3) Not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility which that the board 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, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

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

- (a) reviewing and acting upon the application;
- (b) implementing and enforcing the terms and conditions of the permit if the permit is issued. However, this amount does not include any court costs or other costs associated with any 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; and

(f) preparing inventories and tracking emissions.

(5) In addition to the fee required under subsection (4), the board may order the assessment of additional fees required to fund specific activities of the department that are directed at a particular geographic area if the legislature authorizes the activities and appropriates the funds for the activities, including emissions or ambient monitoring, modeling analysis or demonstrations, or emissions inventories or tracking. Additional assessments may be levied only on those sources that are within or are believed by the department to be impacting the 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 1, 1991, the department may require the permitholder 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 1, 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 not 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).

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

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

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

(13) An application is not considered filed until the applicant has submitted all fees and information and completed all application forms required by subsections (3) through (7) and (12). However, if the department fails to notify the applicant in writing within 30 days after the

1 purported filing of an application that the application is
2 incomplete and fails to list the reasons why the application
3 is considered incomplete, the application is considered
4 filed as of the date of the purported filing.

5 (14) (a) ~~Where~~ When an application for a permit requires
6 the compilation of an environmental impact statement under
7 the Montana Environmental Policy Act, the department shall
8 notify the applicant in writing of the approval or denial of
9 the application within:

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

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

18 (b) However, ~~where~~ when an application does not require
19 the compilation preparation of an environmental impact
20 statement or if an application is not subject to the
21 provisions of 75-2-215, the department shall notify the
22 applicant in writing within 60 days of the receipt of a
23 filed application, as defined provided in subsection (13),
24 of the approval or denial of the application. Notification
25 of approval or denial may be served personally or by

1 ~~registered-or~~ certified mail on the applicant or ~~his~~ the
2 applicant's agent.

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

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

17 **Section 3.** Section 75-2-215, MCA, is amended to read:

18 **"75-2-215. Solid or hazardous waste incineration --**
19 **additional permit requirements.** (1) A person may not
20 construct, modify, or operate a solid or hazardous waste
21 incinerator of any of the following categories until the
22 department has issued an air quality permit pursuant to this
23 chapter, including the conditions provided in this section:

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

1 hazardous waste; or

2 (b) an existing or permitted solid or hazardous waste
3 incinerator that is designed to burn more than 200 pounds an
4 hour of solid or hazardous waste and that incinerates or
5 would incinerate solid or hazardous waste in an amount,
6 form, kind, or content different from its designed or
7 permitted operation or that incinerates or would incinerate
8 any solid or hazardous waste that changes the nature,
9 character, or composition of its emissions.

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

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

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

18 (ii) an estimate of emissions and ambient concentrations
19 of air pollutants, including hazardous air pollutants, from
20 the incineration of solid or hazardous waste as proposed in
21 the permit application or modification;

22 (B) IF A LICENSE IS REQUIRED PURSUANT TO 75-10-221, THE
23 APPLICANT HAS PUBLISHED, IN THE COUNTY WHERE THE PROJECT IS
24 PROPOSED, AT LEAST THREE NOTICES, IN ACCORDANCE WITH THE
25 PROCEDURES IDENTIFIED IN 7-1-4127(2) AND 7-1-4128,

1 DESCRIBING THE PROPOSED PROJECT;

2 (b)(C) the department has conducted a public hearing on
3 an environmental review prepared pursuant to Title 75,
4 chapter 1, and, as appropriate, provided additional
5 opportunities for the public has--had--an-opportunity to
6 review and comment on the permit application or
7 modification; and

8 (c)(D) the department has reached a determination that
9 the projected emissions and ambient concentrations will
10 constitute a negligible risk to the public health, safety,
11 and welfare and to the environment; and

12 (d)(E) the department has issued a license pursuant to
13 75-10-221, if a license is required.

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

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

25 NEW SECTION. Section 4. Medical waste incineration --

1 additional permit requirements. (1) Because of the potential
2 formation of chlorinated dioxins and furans as a result of
3 the incineration of medical waste and the potential health
4 risk these chemicals pose, the department shall adopt rules
5 establishing additional permit requirements for commercial
6 medical waste incinerators. For the purposes of this
7 section, the term "commercial medical waste incinerator"
8 does not include hospital or medical facility incinerators
9 that primarily incinerate medical waste generated onsite.
10 The department BOARD shall adopt rules that:

11 (a) regulate the type and amount of plastic and other
12 materials in the medical waste stream that may be a source
13 of chlorine, in order to minimize the potential creation of
14 chlorinated dioxins and furans;

15 (b) require commercial medical waste incinerators to
16 achieve the lowest achievable emission rate;

17 (c) implement the requirements of subsection (2),
18 including establishing procedures and standards for the
19 collection of high quality scientific information and for
20 the submission of the information by the applicant; and

21 (d) establish procedures for the monitoring, testing,
22 and inspection of:

23 (i) the medical waste stream, including possible
24 precursors to the formation of chlorinated dioxins and
25 furans;

1 (ii) combustion, including destruction and removal
2 efficiencies; and

3 (iii) emissions, including continuous emission
4 monitoring and air pollution control devices.

5 (2) A person who applies for an air quality permit
6 pursuant to 75-2-211 for a commercial medical waste
7 incinerator shall provide, to the satisfaction of the
8 department, the following information:

9 (a) a dispersion model of emissions, using approved
10 methods, that relates to potential worker and community
11 exposure;

12 (b) an analysis of the potential pathways for human
13 exposure to air contaminants, particularly chlorinated
14 dioxins and, furans, AND HEAVY METALS, including the
15 potential for inhalation, ingestion, and physical contact by
16 workers and the affected communities; and

17 (c) a quantitative analysis of the estimated total
18 possible human exposure to chlorinated dioxins and furans
19 for both workers and the affected communities.

20 (3) The department may not issue an air quality permit
21 pursuant to this chapter until the department has
22 determined, based upon an analysis of the information
23 provided by the applicant pursuant to subsection (2), that
24 the public health risk from chlorinated dioxins and, furans,
25 AND HEAVY METALS will not exceed appropriate standards for

1 allowable daily intake, as determined by the department
2 after an evaluation of relevant federal standards and
3 guidelines.

4 NEW SECTION. **Section 5. Disclosure statement required.**

5 (1) An air quality permit for a commercial medical waste
6 incinerator may not be issued, renewed, transferred, or
7 modified pursuant to 75-2-211 without an application under
8 this section. Before an application for the issuance,
9 renewal, transfer, or modification of a permit under
10 75-2-211 for a commercial medical waste incinerator may be
11 approved, the applicant and each principal with respect to
12 the applicant shall submit to the department a disclosure
13 statement containing the following information:

14 (a) the name, business address, and social security
15 number of the applicant and each principal;

16 (b) a description of any civil and administrative
17 complaint filed within 5 years before the date of the
18 application against the applicant or a principal for the
19 violation of an environmental protection law and whether the
20 complaint resulted in a civil or administrative penalty; and

21 (c) a description of all judgments of criminal
22 conviction entered against the applicant or a principal for
23 the violation of an environmental protection law within 5
24 years before the date of the application.

25 (2) A disclosure statement, as required in subsection

1 (1), must be executed under oath or affirmation and is
2 subject to the penalty for perjury. The department may
3 verify and investigate the information contained in a
4 statement required under this section.

5 (3) A person required to file a disclosure statement
6 under this section shall provide assistance or information
7 requested by the department that is related to the statement
8 and shall cooperate in an inquiry or investigation conducted
9 by the department under subsection (2).

10 NEW SECTION. **Section 6. Denial or modification of**
11 **permit -- mitigating factors.** (1) The department may deny an
12 application for the issuance, renewal, transfer, or
13 modification of a permit under 75-2-211 for a commercial
14 medical waste incinerator or impose additional conditions on
15 a permit pursuant to subsection (2) if within 5 years before
16 the date of the application:

17 (a) a judgment of criminal conviction of an
18 environmental protection law has been entered against the
19 applicant or a principal;

20 (b) a civil or administrative complaint for a violation
21 of an environmental protection law has resulted in the
22 assessment of a penalty against the applicant or a
23 principal; or

24 (c) the applicant or a principal has a history of
25 repeated violations of environmental protection laws.

(2) As provided under subsection (1), the department may impose additional conditions on a permit related to permit length, inspections, monitoring, recordkeeping, and reporting.

(3) In making the decision to deny an application or to impose conditions on a permit pursuant to subsection (1), the department shall consider the following mitigating factors:

(a) the nature and gravity of the violation of environmental protection laws;

(b) the degree of culpability of the applicant or a principal;

(c) the applicant's or principal's cooperation with the state or federal agencies involved in the complaints and convictions referred to in [section 5]; AND

(d) the applicant's or principal's dissociation from other persons or entities convicted of acts referred to in [section 5];--and

~~(e)--a---demonstration---of---good--citizenship--by--the applicant--or--a--principal.~~

NEW SECTION. Section 7. Codification instruction.
[Sections 4 through 6] 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 4 through 6].

NEW SECTION. Section 8. 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 9. Retroactive applicability.
[This act] applies retroactively, within the meaning of 1-2-109, to all commercial medical waste incinerators that have applied for but have not received by [the effective date of this act] a permit under Title 75, chapter 2, and a license under 75-10-221.

NEW SECTION. Section 10. Effective date. [This act] is effective on passage and approval.

-End-

1 HOUSE BILL NO. 567

2 INTRODUCED BY POSTER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING ADDITIONAL
5 REQUIREMENTS FOR AN AIR QUALITY PERMIT FOR COMMERCIAL
6 MEDICAL WASTE INCINERATORS; REQUIRING THE DEPARTMENT OF
7 HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT RULES;
8 COORDINATING THE PERMITTING PROCESS FOR AIR QUALITY AND
9 SOLID WASTE PERMITS; REQUIRING A DISCLOSURE STATEMENT;
10 ESTABLISHING CRITERIA FOR THE DENIAL OR MODIFICATION OF A
11 PERMIT; AMENDING SECTIONS 75-2-103, 75-2-211, AND 75-2-215,
12 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
13 RETROACTIVE APPLICABILITY DATE."
14

15 STATEMENT OF INTENT

16 A statement of intent is required for this bill because
17 [section 4] directs the department BOARD of health and
18 environmental sciences to adopt rules establishing
19 additional permit requirements for commercial medical waste
20 incinerators. The rules adopted must ensure that the public
21 is protected from potential exposure to chlorinated dioxins
22 and furans as a result of the incineration of medical waste.

23 It is the intent of the legislature that the department
24 coordinate the application review process and issuance of
25 permits between the air quality bureau and the solid and

1 hazardous waste bureau for incinerators that must receive
2 both an air quality permit and a solid waste management
3 license. In coordinating the permitting process of these two
4 bureaus, the department shall also coordinate the
5 environmental review process conducted pursuant to Title 75,
6 chapter 1, part 1. At the discretion of the department, this
7 coordination may be accomplished by preparing a joint
8 environmental review document.

9 FINALLY, THE LEGISLATURE UNDERSTANDS THAT THE
10 RETROACTIVE APPLICABILITY OF THIS BILL WILL SUBJECT PERMIT
11 APPLICANTS, WHO HAVE BEGUN BUT NOT COMPLETED THE PERMITTING
12 PROCESS, TO THE PROVISIONS OF THIS BILL. WHILE THE
13 LEGISLATURE UNDERSTANDS THAT COMPLIANCE WITH THE PROVISIONS
14 OF THIS BILL WILL REQUIRE ADDITIONAL TIME AND RESOURCES FROM
15 THE APPLICANT, IT IS NOT THE INTENT OF THE LEGISLATURE THAT
16 THIS LEGISLATION UNNECESSARILY DELAY THE PERMITTING PROCESS
17 OR UNNECESSARILY INCREASE THE PERMITTING COSTS.
18

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 3
March 30, 1993

Page 2 of 3
March 30, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 567 (third reading copy -- blue), respectfully report that House Bill No. 567 be amended as follows and as so amended be concurred in.

Signed: Don Bianchi
Senator Don Bianchi, Chair

That such amendments read:

1. Title, line 6.
Following: "WASTE"
Insert: "AND COMMERCIAL HAZARDOUS WASTE"

2. Page 1, line 19.
Page 15, line 6.
Page 15, line 15.
Following: "waste"
Insert: "and commercial hazardous waste"

3. Page 1, line 22.
Page 15, line 3.
Following: "waste"
Insert: "and hazardous waste"

4. Page 2, line 3.
Following: "license"
Insert: "or a hazardous waste permit"

5. Page 3.
Following: line 10
Insert:

"(5) (a) "Commercial hazardous waste incinerator" means an incinerator that burns hazardous waste or a boiler or industrial furnace subject to the provisions of 75-10-406.

(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies."
Renumber: subsequent subsections

6. Page 3.

Following: line 18

Insert:

"(9) "Hazardous waste" means a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4."

Renumber: subsequent subsections

7. Page 3, line 23.

Following: "destruction,"

Insert: "disposal,"

8. Page 4, line 10.

Strike: "(9)(b)"

Insert: "(11)(b)"

9. Page 11, line 5.

Strike: "When"

Insert: "If"

10. Page 13, line 22.

Following: "75-10-221"

Insert: "or a permit is required pursuant to 75-10-406"

11. Page 13, line 25.

Following: "7-1-4128"

Insert: "(2)"

12. Page 14, line 13.

Following: "75-10-221"

Insert: "or a permit pursuant to 75-10-406"

Following: "license"

Insert: "or permit"

Following: "."

Insert: "The decision to issue, deny, alter, or revise a permit pursuant to 75-2-211 must be made within 30 days from when the department issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-406."

13. Page 14, line 25.

Following: "waste"

Insert: "and hazardous waste"

14. Page 15, line 12.

Page 15, line 23.

Following: "stream"

Insert: "and hazardous waste stream"

M. Amd. Coord.
To Sec. of Senate

Wednesday
Senator Carry Bill

711505SC.Sma

HB 567
SENATE

Page 3 of 3
March 30, 1993

15. Page 16, line 6.
Page 17, line 5.
Page 17, line 10.
Page 18, line 14.
Following: "waste"
Insert: "or commercial hazardous waste"

-END-

Corrected

SENATE STANDING COMMITTEE REPORT

Page 1 of 3
March 30, 1993

Page 2 of 3
March 30, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 567 (third reading copy -- blue), respectfully report that House Bill No. 567 be amended as follows and as so amended be concurred in.

Signed: *Don Bianchi*
Senator Don Bianchi, Chair

That such amendments read:

1. Title, line 6.

Following: "WASTE"

Insert: "AND COMMERCIAL HAZARDOUS WASTE"

2. Page 1, line 19.

Page 15, line 6.

Page 15, line 15.

Following: "waste"

Insert: "and commercial hazardous waste"

3. Page 1, line 22.

Page 15, line 3.

Following: "waste"

Insert: "and hazardous waste"

4. Page 2, line 3.

Following: "license"

Insert: "or a hazardous waste permit"

5. Page 3.

Following: line 8

Insert:

"(4) 'Best available control technology' has the meaning defined in 40 CFR, part 51, 166(b)(12)."

Renumber: subsequent subsections

6. Page 3.

Following: line 10

Insert:

"(6) (a) 'Commercial hazardous waste incinerator' means an incinerator that burns hazardous waste or a boiler or industrial furnace subject to the provisions of 75-10-406.

(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or

state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies."

Renumber: subsequent subsections

7. Page 3.

Following: line 18

Insert:

"(10) 'Hazardous waste' means a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4."

Renumber: subsequent subsections

8. Page 3, line 23.

Following: "destruction,"

Insert: "disposal,"

9. Page 4, line 10.

Strike: "(9)(b)"

Insert: "(12)(b)"

10. Page 11, line 5.

Strike: "When"

Insert: "If"

11. Page 13, line 22.

Following: "75-10-221"

Insert: "or a permit is required pursuant to 75-10-406"

12. Page 13, line 25.

Following: "7-1-4128"

Insert: "(2)"

13. Page 14, line 13.

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Insert: "or a permit pursuant to 75-10-406"

Following: "license"

Insert: "or permit"

Following: "."

Insert: "The decision to issue, deny, alter, or revise a permit pursuant to 75-2-211 must be made within 30 days from when the department issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-406."

14. Page 14, line 25.

Following: "waste"

Insert: "and hazardous waste"

M Amd. Coord.
SM Sec. of Senate

Sen. Weeding
Senator Carrying Bill

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Corrected

SENATE

H.B. 567

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Page 3 of 3
March 30, 1993

15. Page 15, line 12.

Page 15, line 23.

Following: "stream"

Insert: "and hazardous waste stream"

16. Page 15, line 16.

Following: "rate"

Insert: ", except when best available control technology is

- adequate to prevent exceeding the allowable daily intake standards, as determined pursuant to subsection (3), for dioxins, furans, and heavy metals"

17. Page 16, line 6.

Page 17, line 5.

Page 17, line 10.

Page 18, line 14.

Following: "waste"

Insert: "or commercial hazardous waste"

-END-

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 31, 1993 11:37 am

Mr. Chairman: I move to amend House Bill No. 567 (third reading copy -- blue).

ADOPT

REJECT

Signed: Cecil Weeding
Senator Cecil Weeding

That such amendments read:

Amend Senate Committee on Natural Resources Committee Report dated March 30, 1993, as follows:

Amendment No. 6

Following: "means" on line 1 of inserted subsection (6)(a)

Insert: ": (i)"

Following: "waste" on line 2 of inserted subsection (6)(a)

Insert: ";

Following: the first "or" on line 2 on inserted subsection (6)(a)

Insert: "(ii)"

Amendment No. 7

Following: "means" on line 1 of inserted subsection (10)

Insert: ": (a)"

Following: "part 4" on line 4 of inserted subsection (10)

Insert: "; or (b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB)"

-END-

1 HOUSE BILL NO. 567

2 INTRODUCED BY FOSTER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING ADDITIONAL
5 REQUIREMENTS FOR AN AIR QUALITY PERMIT FOR COMMERCIAL
6 MEDICAL WASTE AND COMMERCIAL HAZARDOUS WASTE INCINERATORS;
7 REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
8 SCIENCES TO ADOPT RULES; COORDINATING THE PERMITTING PROCESS
9 FOR AIR QUALITY AND SOLID WASTE PERMITS; REQUIRING A
10 DISCLOSURE STATEMENT; ESTABLISHING CRITERIA FOR THE DENIAL
11 OR MODIFICATION OF A PERMIT; AMENDING SECTIONS 75-2-103,
12 75-2-211, AND 75-2-215, MCA; AND PROVIDING AN IMMEDIATE
13 EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

14
15 STATEMENT OF INTENT

16 A statement of intent is required for this bill because
17 [section 4] directs the department BOARD of health and
18 environmental sciences to adopt rules establishing
19 additional permit requirements for commercial medical waste
20 AND COMMERCIAL HAZARDOUS WASTE incinerators. The rules
21 adopted must ensure that the public is protected from
22 potential exposure to chlorinated dioxins and furans as a
23 result of the incineration of medical waste AND HAZARDOUS
24 WASTE.

25 It is the intent of the legislature that the department

1 coordinate the application review process and issuance of
2 permits between the air quality bureau and the solid and
3 hazardous waste bureau for incinerators that must receive
4 both an air quality permit and a solid waste management
5 license OR A HAZARDOUS WASTE PERMIT. In coordinating the
6 permitting process of these two bureaus, the department
7 shall also coordinate the environmental review process
8 conducted pursuant to Title 75, chapter 1, part 1. At the
9 discretion of the department, this coordination may be
10 accomplished by preparing a joint environmental review
11 document.

12 FINALLY, THE LEGISLATURE UNDERSTANDS THAT THE
13 RETROACTIVE APPLICABILITY OF THIS BILL WILL SUBJECT PERMIT
14 APPLICANTS, WHO HAVE BEGUN BUT NOT COMPLETED THE PERMITTING
15 PROCESS, TO THE PROVISIONS OF THIS BILL. WHILE THE
16 LEGISLATURE UNDERSTANDS THAT COMPLIANCE WITH THE PROVISIONS
17 OF THIS BILL WILL REQUIRE ADDITIONAL TIME AND RESOURCES FROM
18 THE APPLICANT, IT IS NOT THE INTENT OF THE LEGISLATURE THAT
19 THIS LEGISLATION UNNECESSARILY DELAY THE PERMITTING PROCESS
20 OR UNNECESSARILY INCREASE THE PERMITTING COSTS.

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

24 **"75-2-103. Definitions.** Unless the context requires
25 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) "BEST AVAILABLE CONTROL TECHNOLOGY" HAS THE MEANING DEFINED IN 40 CFR, PART 51, 166(B)(12).

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

(6) (A) "COMMERCIAL HAZARDOUS WASTE INCINERATOR" MEANS:

(I) AN INCINERATOR THAT BURNS HAZARDOUS WASTE; OR

(II) A BOILER OR INDUSTRIAL FURNACE SUBJECT TO THE PROVISIONS OF 75-10-406.

(B) COMMERCIAL HAZARDOUS WASTE INCINERATOR DOES NOT INCLUDE A RESEARCH AND DEVELOPMENT FACILITY THAT RECEIVES FEDERAL OR STATE RESEARCH FUNDS AND THAT BURNS HAZARDOUS WASTE PRIMARILY TO TEST AND EVALUATE WASTE TREATMENT REMEDIATION TECHNOLOGIES.

(7) "Department" means the department of health and

environmental sciences provided for in Title 2, chapter 15, part 21.

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

(9) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(10) "HAZARDOUS WASTE" MEANS:

(A) A SUBSTANCE DEFINED AS HAZARDOUS UNDER 75-10-403 OR DEFINED AS HAZARDOUS IN DEPARTMENT ADMINISTRATIVE RULES ADOPTED PURSUANT TO TITLE 75, CHAPTER 10, PART 4; OR

(B) A WASTE CONTAINING 2 PARTS OR MORE PER MILLION OF POLYCHLORINATED BIPHENYL (PCB).

(11) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with 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 that burn used oil;

(iii) wood-fired boilers; or

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

{9}(12) (a) "Lowest achievable emission rate" means, except as provided in subsection {9}{b} (12)(B), a rate of emissions that reflects the more stringent of:

(i) the most stringent emission limitation that is contained in the state implementation plan for a source class or category, unless the owner or operator of the proposed source demonstrates that those limitations are not achievable; or

(ii) the most stringent emission limitation that is achieved in practice by a source class or category.

(b) The application of lowest achievable emission rate does not allow a new or modified source to emit any pollutant in excess of the amount allowed under applicable new source standards of performance or under national emission standards for hazardous air pollutants, as provided by rule.

{10}(13) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

{7}{11}(14) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity and includes persons resident in Canada.

{12}(15) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation."

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

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

(2) For all sources of air contaminants that are

1 subject to the provisions of Title V of the federal Clean
2 Air Act, 42 U.S.C. 7401, et seq., as amended, the provisions
3 of this section apply in addition to the other applicable
4 provisions of this chapter.

5 (a) The board shall by rule require that permits issued
6 to sources described in subsection (2) be of limited
7 duration, but it may not limit the duration of the permits
8 beyond that required by the federal Clean Air Act, 42 U.S.C.
9 7401, et seq., as amended.

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

12 (c) The board shall by rule establish a transition
13 schedule for air quality permits held by sources of air
14 contaminants subject to the provisions of subsection (2).
15 The transition schedule must specify dates for the
16 expiration of the permits, absent an application for renewal
17 by the source. The transition schedule may not specify
18 expiration dates that are earlier in time than those
19 required by Title V of the federal Clean Air Act, 42 U.S.C.
20 7401, et seq., as amended. The transition schedule
21 established by the board also applies to existing sources of
22 air contaminants that are subject to the provisions of Title
23 V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as
24 amended, and that do not hold an air quality permit from the
25 department as of November 2, 1992.

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

10 (4) Concurrent with the submittal of a permit
11 application required by subsection (3) and annually for the
12 duration of the permit, the applicant shall submit to the
13 department a fee sufficient to cover the reasonable costs,
14 both direct and indirect, of developing and administering
15 the permitting requirements in this chapter, including the
16 reasonable costs of:

17 (a) reviewing and acting upon the application;

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

24 (c) emissions and ambient monitoring;

25 (d) preparing generally applicable regulations or

1 guidance;

2 (e) modeling, analysis, and demonstrations; and

3 (f) preparing inventories and tracking emissions.

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

21 (6) As a condition of the continuing validity of
22 permits issued by the department under this part prior to
23 October 1, 1991, the department may require the permitholder
24 to pay an annual fee sufficient to cover the costs
25 identified in subsection (4).

1 (7) For any existing source of air contaminants that is
2 subject to Title V of the federal Clean Air Act, 42 U.S.C.
3 7401, et seq., as amended, and that is not required to hold
4 an air quality permit from the department as of October 1,
5 1991, the board may, as a condition of continued operation,
6 require by rule that the owner or operator of the source pay
7 the annual fee provided for in subsection (4). ~~Nothing in~~
8 ~~this~~ This subsection may not be construed as allowing the
9 department to charge any source of air contaminants more
10 than one annual fee that is designed to cover the costs
11 identified in subsection (4).

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

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

23 (b) An appeal must be based upon the allegation that
24 the fee assessment is erroneous or excessive. An appeal may
25 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).

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

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

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

(13) An application is not considered filed until the applicant has submitted all fees and information and completed all application forms required by subsections (3) through (7) and (12). However, 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) (a) ~~Where~~ When ~~IF~~ an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days of the receipt of a filed application, as defined in subsection (13), 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~~ when an application does not require the compilation preparation of an environmental impact statement or if an application is not subject to the provisions of 75-2-215, the department shall notify the applicant in writing within 60 days of the receipt of a filed application, as defined provided in subsection (13), of the 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.

(15) 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, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, a hearing before the board. A hearing ~~shall~~ must be held under the provisions of the Montana Administrative Procedure Act.

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

Section 3. Section 75-2-215, MCA, is amended to read:

"75-2-215. Solid or hazardous waste incineration -- additional permit requirements. (1) A person may not construct, modify, or operate a solid or hazardous waste incinerator 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 that is designed to burn more than 200 pounds an

hour of solid or hazardous waste and that incinerates or would incinerate solid or hazardous waste in an amount, form, kind, or content different from its designed or permitted operation or that incinerates or would incinerate any solid or hazardous waste that changes the nature, character, or composition of its emissions.

(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 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 as proposed in the permit application or modification;

(B) IF A LICENSE IS REQUIRED PURSUANT TO 75-10-221 OR A PERMIT IS REQUIRED PURSUANT TO 75-10-406, THE APPLICANT HAS PUBLISHED, IN THE COUNTY WHERE THE PROJECT IS PROPOSED, AT LEAST THREE NOTICES, IN ACCORDANCE WITH THE PROCEDURES IDENTIFIED IN 7-1-4127(2) AND 7-1-4128(2), DESCRIBING THE PROPOSED PROJECT;

~~(b)~~ (C) the department has conducted a public hearing on

an environmental review prepared pursuant to Title 75, chapter 1, and, as appropriate, provided additional opportunities for the public ~~has--had--an--opportunity~~ to review and comment on the permit application or modification; and

~~(c)~~(D) 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; and

~~(d)~~(E) the department has issued a license pursuant to 75-10-221 OR A PERMIT PURSUANT TO 75-10-406, if a license OR PERMIT is required. THE DECISION TO ISSUE, DENY, ALTER, OR REVISE A PERMIT PURSUANT TO 75-2-211 MUST BE MADE WITHIN 30 DAYS FROM WHEN THE DEPARTMENT ISSUES A LICENSE PURSUANT TO 75-10-221 OR A PERMIT PURSUANT TO 75-10-406.

(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.

(4) This section does not relieve an owner or operator of a solid or hazardous waste incinerator 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 4. Medical waste AND HAZARDOUS WASTE incineration -- additional permit requirements. (1) Because of the potential formation of chlorinated dioxins and furans as a result of the incineration of medical waste AND HAZARDOUS WASTE and the potential health risk these chemicals pose, the department shall adopt rules establishing additional permit requirements for commercial medical waste AND COMMERCIAL HAZARDOUS WASTE incinerators. For the purposes of this section, the term "commercial medical waste incinerator" does not include hospital or medical facility incinerators that primarily incinerate medical waste generated onsite. The department BOARD shall adopt rules that:

(a) regulate the type and amount of plastic and other materials in the medical waste stream AND HAZARDOUS WASTE STREAM that may be a source of chlorine, in order to minimize the potential creation of chlorinated dioxins and furans;

(b) require commercial medical waste AND COMMERCIAL HAZARDOUS WASTE incinerators to achieve the lowest achievable emission rate, EXCEPT WHEN BEST AVAILABLE CONTROL TECHNOLOGY IS ADEQUATE TO PREVENT EXCEEDING THE ALLOWABLE DAILY INTAKE STANDARDS, AS DETERMINED PURSUANT TO SUBSECTION (3), FOR DIOXINS, FURANS, AND HEAVY METALS;

1 (c) implement the requirements of subsection (2),
 2 including establishing procedures and standards for the
 3 collection of high quality scientific information and for
 4 the submission of the information by the applicant; and

5 (d) establish procedures for the monitoring, testing,
 6 and inspection of:

7 (i) the medical waste stream AND HAZARDOUS WASTE
 8 STREAM, including possible precursors to the formation of
 9 chlorinated dioxins and furans;

10 (ii) combustion, including destruction and removal
 11 efficiencies; and

12 (iii) emissions, including continuous emission
 13 monitoring and air pollution control devices.

14 (2) A person who applies for an air quality permit
 15 pursuant to 75-2-211 for a commercial medical waste OR
 16 COMMERCIAL HAZARDOUS WASTE incinerator shall provide, to the
 17 satisfaction of the department, the following information:

18 (a) a dispersion model of emissions, using approved
 19 methods, that relates to potential worker and community
 20 exposure;

21 (b) an analysis of the potential pathways for human
 22 exposure to air contaminants, particularly chlorinated
 23 dioxins and, furans, AND HEAVY METALS, including the
 24 potential for inhalation, ingestion, and physical contact by
 25 workers and the affected communities; and

1 (c) a quantitative analysis of the estimated total
 2 possible human exposure to chlorinated dioxins and furans
 3 for both workers and the affected communities.

4 (3) The department may not issue an air quality permit
 5 pursuant to this chapter until the department has
 6 determined, based upon an analysis of the information
 7 provided by the applicant pursuant to subsection (2), that
 8 the public health risk from chlorinated dioxins and, furans,
 9 AND HEAVY METALS will not exceed appropriate standards for
 10 allowable daily intake, as determined by the department
 11 after an evaluation of relevant federal standards and
 12 guidelines.

13 **NEW SECTION. Section 5. Disclosure statement required.**

14 (1) An air quality permit for a commercial medical waste OR
 15 COMMERCIAL HAZARDOUS WASTE incinerator may not be issued,
 16 renewed, transferred, or modified pursuant to 75-2-211
 17 without an application under this section. Before an
 18 application for the issuance, renewal, transfer, or
 19 modification of a permit under 75-2-211 for a commercial
 20 medical waste OR COMMERCIAL HAZARDOUS WASTE incinerator may
 21 be approved, the applicant and each principal with respect
 22 to the applicant shall submit to the department a disclosure
 23 statement containing the following information:

24 (a) the name, business address, and social security
 25 number of the applicant and each principal;

(b) a description of any civil and administrative complaint filed within 5 years before the date of the application against the applicant or a principal for the violation of an environmental protection law and whether the complaint resulted in a civil or administrative penalty; and

(c) a description of all judgments of criminal conviction entered against the applicant or a principal for the violation of an environmental protection law within 5 years before the date of the application.

(2) A disclosure statement, as required in subsection (1), must be executed under oath or affirmation and is subject to the penalty for perjury. The department may verify and investigate the information contained in a statement required under this section.

(3) A person required to file a disclosure statement under this section shall provide assistance or information requested by the department that is related to the statement and shall cooperate in an inquiry or investigation conducted by the department under subsection (2).

NEW SECTION. Section 6. Denial or modification of permit -- mitigating factors. (1) The department may deny an application for the issuance, renewal, transfer, or modification of a permit under 75-2-211 for a commercial medical waste OR COMMERCIAL HAZARDOUS WASTE incinerator or impose additional conditions on a permit pursuant to

subsection (2) if within 5 years before the date of the application:

(a) a judgment of criminal conviction of an environmental protection law has been entered against the applicant or a principal;

(b) a civil or administrative complaint for a violation of an environmental protection law has resulted in the assessment of a penalty against the applicant or a principal; or

(c) the applicant or a principal has a history of repeated violations of environmental protection laws.

(2) As provided under subsection (1), the department may impose additional conditions on a permit related to permit length, inspections, monitoring, recordkeeping, and reporting.

(3) In making the decision to deny an application or to impose conditions on a permit pursuant to subsection (1), the department shall consider the following mitigating factors:

(a) the nature and gravity of the violation of environmental protection laws;

(b) the degree of culpability of the applicant or a principal;

(c) the applicant's or principal's cooperation with the state or federal agencies involved in the complaints and

convictions referred to in [section 5]; AND

(d) the applicant's or principal's dissociation from other persons or entities convicted of acts referred to in [section 5]; ~~and~~

~~(e) a demonstration of good citizenship by the applicant or a principal.~~

NEW SECTION. Section 7. Codification instruction.

[Sections 4 through 6] 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 4 through 6].

NEW SECTION. Section 8. 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 9. Retroactive applicability.

[This act] applies retroactively, within the meaning of 1-2-109, to all commercial medical waste incinerators that have applied for but have not received by [the effective date of this act] a permit under Title 75, chapter 2, and a license under 75-10-221.

NEW SECTION. Section 10. Effective date. [This act] is

effective on passage and approval.

-End-

OFFICE OF THE GOVERNOR

STATE OF MONTANA



MARC RACICOT
GOVERNOR

STATE CAPITOL
HELENA, MONTANA 59620-0801

April 21, 1993

The Honorable John Mercer
Speaker of the House
State Capitol
Helena MT 59620

The Honorable Fred Van Valkenburg
President of the Senate
State Capitol
Helena MT 59620

Dear Speaker Mercer and President Van Valkenburg:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby return House Bill No. 567, "AN ACT ESTABLISHING ADDITIONAL REQUIREMENTS FOR AN AIR QUALITY PERMIT FOR COMMERCIAL MEDICAL WASTE AND COMMERCIAL HAZARDOUS WASTE INCINERATORS; REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT RULES; COORDINATING THE PERMITTING PROCESS FOR AIR QUALITY AND SOLID WASTE PERMITS; REQUIRING A DISCLOSURE STATEMENT; ESTABLISHING CRITERIA FOR THE DENIAL OR MODIFICATION OF A PERMIT; AMENDING SECTIONS 75-2-103, 75-2-211, and 75-2-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE," with the attached amendments for the following reasons.

House Bill 567 originally established additional air quality permit requirements for commercial medical waste incinerators. The bill was amended late in the legislative session to apply as well to commercial hazardous waste incinerators (including boilers and industrial furnaces). As a result, there are a series of "technical" amendments which the Montana Department of Health has drafted that are necessary to integrate the requirements of House Bill 567 into the permitting authority that presently exists under the Clean Air Act. The bill's sponsor, Representative Foster, is

in agreement with these amendments, and I urge your acceptance of them.

Sincerely,

Marc Racicot

MARC RACICOT
Governor

GOVERNOR'S AMENDMENTS
TO HOUSE BILL NO. 567
(REFERENCE COPY)
April 21, 1993

1. Title, line 7.
Strike: "DEPARTMENT"
Insert: "BOARD"

2. Title, line 9.
Following: "SOLID"
Insert: "AND HAZARDOUS"

3. Title, line 11.
Strike: "MODIFICATION"
Insert: "ALTERATION"

4. Page 1, line 22.
Page 17, line 9.
Page 18, line 2.
Following: "dioxins"
Strike: "and"
Insert: ", "
Following: "furans"
Insert: ", heavy metals and carcinogens"

5. Page 1, line 24.
Following: "WASTE"
Insert: ", and must provide for the implementation of the additional permit requirements contained in sections [2, 3, 4, 5 and 6], as well as the coordination of such requirements with the permitting requirements contained in 75-2-211 and 75-2-215."

6. Page 2, line 12.
Following: line 11
Insert: " The legislature has not provided for definitions of lowest achievable emission rate and best available control technology in this legislation. It is the intent of the legislature that these terms be construed and applied in a manner that is consistent with the definitions contained in the federal Clean Air Act, 42 U.S.C. Sections 7401, et. seq. In adopting rules to implement this legislation, the Board shall include rules defining these terms."

7. Page 3, lines 12 and 13.
Strike: "(4)" through "(12)."
Re-number: subsequent sections

8. Page 5, lines 4 through 19.
Strike: "(12) through rule."
Re-number: subsequent sections

9. Page 12, lines 17 and 18.
Strike: "or" through "75-2-215"

10. Page 12, line 25.

Following: line 24

Insert: "(c) If an application for a permit is for the construction, installation, alteration or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall act on the permit application within the time period provided for in 75-2-215(2)(E)."

11. Page 14, line 25.

Following: "(C)"

Insert: "if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406,"

12. Page 15, lines 12 and 13.

Following: "DENY."

Insert: "or"

Following: "ALTER"

Strike: "OR REVISE"

Following: "75-2-211"

Insert: "and 75-2-215"

13. Page 15, line 15.

Following: "75-10-406"

Insert: ", or 90 days after the receipt of a complete application for a permit or a permit alteration under 75-2-211, 75-2-215 and this section, whichever is later."

14. Page 16, line 4.

Following: "dioxins"

Insert: ", "

15. Page 16, line 5.

Strike: "and"

Following: "furans"

Insert: ", heavy metals and carcinogens"

16. Page 16, line 7.

Strike: "department"

Insert: "board"

17. Page 16, line 18.

Following: "dioxins"

Insert: ", "

Strike: "and"

18. Page 16, line 19.

Following: "furans"

Insert: ", heavy metals and carcinogens"

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19. Page 16, line 25.
Page 17, line 23.
Page 18, line 9.
Strike: "AND"
Following: "METALS"
Insert: ", and other carcinogens"

20. Page 17, line 14.
Following: line 13
Insert: "(e) are necessary to implement the provisions of this section, and to coordinate the requirements under this section with the requirements contained in 75-2-211 and 75-2-215."

21. Page 17, line 14.
Following: "permit"
Insert: "or alteration"
Following: "75-2-211"
Insert: "and 75-2-215"

22. Page 17, line 19.
Following: ", "
Strike: "that relates to"
Insert: and those studies that are necessary to identify the"
Following: "potential"
Strike: "worker and"

23. Page 17, line 25.
Strike: "workers and"

24. Page 18, line 3.
Strike: "both workers and"

25. Page 18, line 4.
Following: "issue"
Insert: "or alter"

26. Page 18, line 7.
Following: "(2)"
Insert: "and other necessary and relevant data"

27. Page 18, line 9.
Following: "appropriate"
Insert: "federal"

28. Page 18, line 11.
Following: "after"
Strike: "an evaluation"
Insert: "a review"
Following: "of"
Insert: "established and"

29. Page 18, line 13.
Following: line 12
Insert: "(4) This section shall not be construed in any way to:
(a) require the board to promulgate standards for the allowable daily intake of any substances for which the federal government has not established such standards;
(b) allow the board to promulgate standards for the allowable daily intake of any substances for which the federal government has established such standards, that are more stringent than the federal standards; or
(c) limit or otherwise impair the duty of the department under 75-2-215 to determine that emissions and ambient concentrations will constitute a negligible risk as required by 75-2-215(2)(D), including emissions and ambient concentrations of dioxins, furans, heavy metals and carcinogens, before issuing an air quality permit pursuant to 75-2-211 and 75-2-215."

30. Page 18, line 16.
Strike: "renewed,"
Strike: "modified"
Insert: "altered"
Following: "75-2-211"
Insert: "and 75-2-215"

31. Page 18, line 18.
Strike: "renewal,"

32. Page 18, line 19.
Strike: "modification"
Insert: "alteration"
Following: "75-2-211"
Insert: "and 75-2-215"

33. Page 19, line 5.
Strike: "and"

34. Page 19, line 9.
Following: "application"
Insert: "; and (d) a description of all judgments of criminal conviction entered against the applicant or a principal for the violation of an environmental protection law within 5 years before the date of the application in another state that resulted from the operation of a medical waste incinerator or a commercial hazardous waste incinerator. For the purposes of this subsection (1)(d), an environmental protection law of another state means a law or administrative rule adopted pursuant to a law regulating solid or hazardous waste or underground storage tanks or protecting the air or water resource"

35. Page 19, line 22.
Strike: "renewal,"

36. Page 19, line 23.
Strike: "modification"
Insert: "alteration"
Following: "75-2-211"
Insert: "and 75-2-215"

37. Page 20, line 9.
Strike: "or"

38. Page 20, line 11.
Following: "laws"
Insert: "; or (d) a judgment or criminal conviction for a violation described in [section 5(1)(d)] has been entered against the applicant or a principal"

39. Page 20, line 21.
Following: "laws"
Insert: "or violations described in [section 5(1)(d)]"

40. Page 21, line 18.
Following: "applicability"
Insert: "(1)"

41. Page 21, line 24
Following: line 23
Insert: "(2) [This act] applies retroactively, within the meaning of 1-2-109, to all commercial hazardous waste incinerators that have applied for but not received by [the effective date of this act] a permit under Title 75, chapter 2, and a permit under 75-10-406."

HOUSE BILL NO. 567
INTRODUCED BY POSTER

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING ADDITIONAL REQUIREMENTS FOR AN AIR QUALITY PERMIT FOR COMMERCIAL MEDICAL WASTE AND COMMERCIAL HAZARDOUS WASTE INCINERATORS; REQUIRING THE DEPARTMENT BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT RULES; COORDINATING THE PERMITTING PROCESS FOR AIR QUALITY AND SOLID AND HAZARDOUS WASTE PERMITS; REQUIRING A DISCLOSURE STATEMENT; ESTABLISHING CRITERIA FOR THE DENIAL OR ~~MODIFICATION~~ ALTERATION OF A PERMIT; AMENDING SECTIONS 75-2-103, 75-2-211, AND 75-2-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] directs the department BOARD of health and environmental sciences to adopt rules establishing additional permit requirements for commercial medical waste AND COMMERCIAL HAZARDOUS WASTE incinerators. The rules adopted must ensure that the public is protected from potential exposure to chlorinated dioxins and, furans, HEAVY METALS, AND CARCINOGENS as a result of the incineration of medical waste AND HAZARDOUS WASTE AND MUST PROVIDE FOR THE

IMPLEMENTATION OF THE ADDITIONAL PERMIT REQUIREMENTS CONTAINED IN 75-2-211, 75-2-215, AND [SECTIONS 4 THROUGH 6], AS WELL AS THE COORDINATION OF THOSE REQUIREMENTS WITH THE PERMITTING REQUIREMENTS CONTAINED IN 75-2-211 AND 75-2-215.

It is the intent of the legislature that the department coordinate the application review process and issuance of permits between the air quality bureau and the solid and hazardous waste bureau for incinerators that must receive both an air quality permit and a solid waste management license OR A HAZARDOUS WASTE PERMIT. In coordinating the permitting process of these two bureaus, the department shall also coordinate the environmental review process conducted pursuant to Title 75, chapter 1, part 1. At the discretion of the department, this coordination may be accomplished by preparing a joint environmental review document.

THE LEGISLATURE HAS NOT PROVIDED FOR DEFINITIONS OF LOWEST ACHIEVABLE EMISSION RATE AND BEST AVAILABLE CONTROL TECHNOLOGY IN THIS LEGISLATION. IT IS THE INTENT OF THE LEGISLATURE THAT THESE TERMS BE CONSTRUED AND APPLIED IN A MANNER THAT IS CONSISTENT WITH THE DEFINITIONS CONTAINED IN THE FEDERAL CLEAN AIR ACT, 42 U.S.C. 7401, ET SEQ. IN ADOPTING RULES TO IMPLEMENT THIS LEGISLATION, THE BOARD SHALL INCLUDE RULES DEFINING THESE TERMS.

FINALLY, THE LEGISLATURE UNDERSTANDS THAT THE

RETROACTIVE APPLICABILITY OF THIS BILL WILL SUBJECT PERMIT APPLICANTS, WHO HAVE BEGUN BUT NOT COMPLETED THE PERMITTING PROCESS, TO THE PROVISIONS OF THIS BILL. WHILE THE LEGISLATURE UNDERSTANDS THAT COMPLIANCE WITH THE PROVISIONS OF THIS BILL WILL REQUIRE ADDITIONAL TIME AND RESOURCES FROM THE APPLICANT, IT IS NOT THE INTENT OF THE LEGISLATURE THAT THIS LEGISLATION UNNECESSARILY DELAY THE PERMITTING PROCESS OR UNNECESSARILY INCREASE THE PERMITTING COSTS.

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) -- "BEST-AVAILABLE-CONTROL-TECHNOLOGY" HAS THE MEANING

DEFINED IN 40-CFR 7-PART 517-166(B)(12);

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

(6)(5) (A) "COMMERCIAL HAZARDOUS WASTE INCINERATOR" MEANS:

(I) AN INCINERATOR THAT BURNS HAZARDOUS WASTE; OR

(II) A BOILER OR INDUSTRIAL FURNACE SUBJECT TO THE PROVISIONS OF 75-10-406.

(B) COMMERCIAL HAZARDOUS WASTE INCINERATOR DOES NOT INCLUDE A RESEARCH AND DEVELOPMENT FACILITY THAT RECEIVES FEDERAL OR STATE RESEARCH FUNDS AND THAT BURNS HAZARDOUS WASTE PRIMARILY TO TEST AND EVALUATE WASTE TREATMENT REMEDIATION TECHNOLOGIES.

(5)(7)(6) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6)(8)(7) "Emission" means a release into the outdoor atmosphere of air contaminants.

(7)(9)(8) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(10)(9) "HAZARDOUS WASTE" MEANS:

(A) A SUBSTANCE DEFINED AS HAZARDOUS UNDER 75-10-403 OR DEFINED AS HAZARDOUS IN DEPARTMENT ADMINISTRATIVE RULES ADOPTED PURSUANT TO TITLE 75, CHAPTER 10, PART 4; OR

(B) A WASTE CONTAINING 2 PARTS OR MORE PER MILLION OF POLYCHLORINATED BIPHENYL (PCB).

~~{8}{11}{10}~~ (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with 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 that burn used oil;

(iii) wood-fired boilers; or

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

~~{9}{12}{a} "lowest-achievable-emission-rate" means, except as provided in subsection {9}{b}-{12}{B}, a rate of emissions that reflects the more stringent of:~~

~~{i}--the--most--stringent--emission--limitation--that--is--contained--in--the--state--implementation--plan--for--a--source--class--or--category,--unless--the--owner--or--operator--of--the--proposed--source--demonstrates--that--those--limitations--are--not--achievable;--or~~

~~{ii}--the--most--stringent--emission--limitation--that--is--achieved--in--practice--by--a--source--class--or--category;~~

~~{b}--The--application--of--lowest--achievable--emission--rate--does--not--allow--a--new--or--modified--source--to--emit--any--pollutant--in--excess--of--the--amount--allowed--under--applicable--new--source--standards--of--performance--or--under--national--emission--standards--for--hazardous--air--pollutants,--as--provided--by--rule;~~

~~{10}{13}{11}~~ "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

~~(7)(11)(14)~~(12) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity and includes persons resident in Canada.

~~(12)(15)~~(13) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation."

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

"75-2-211. Permits for construction, installation, alteration, or use. (1) The department shall provide for the issuance, suspension, revocation, and renewal of a permit issued under this 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 air contaminants that are subject to the provisions of Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended, and that do not hold an air quality permit from the department as of November 2, 1992.

(3) Not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility which that the board 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, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(4) Concurrent with the submittal of a permit

1 application required by subsection (3) and annually for the
 2 duration of the permit, the applicant shall submit to the
 3 department a fee sufficient to cover the reasonable costs,
 4 both direct and indirect, of developing and administering
 5 the permitting requirements in this chapter, including the
 6 reasonable costs of:

7 (a) reviewing and acting upon the application;

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

14 (c) emissions and ambient monitoring;

15 (d) preparing generally applicable regulations or
 16 guidance;

17 (e) modeling, analysis, and demonstrations; and

18 (f) preparing inventories and tracking emissions.

19 (5) In addition to the fee required under subsection
 20 (4), the board may order the assessment of additional fees
 21 required to fund specific activities of the department that
 22 are directed at a particular geographic area if the
 23 legislature authorizes the activities and appropriates the
 24 funds for the activities, including emissions or ambient
 25 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 assessments, it shall
 5 first 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 assessments
 8 apportion the required funding in an equitable manner, and
 9 that the department has obtained legislative authorization
 10 for the expenditure and the necessary appropriation.

11 (6) As a condition of the continuing validity of
 12 permits issued by the department under this part prior to
 13 October 1, 1991, the department may require the permitholder
 14 to pay an annual fee sufficient to cover the costs
 15 identified in subsection (4).

16 (7) For any existing source of air contaminants that is
 17 subject to Title V of the federal Clean Air Act, 42 U.S.C.
 18 7401, et seq., as amended, and that is not required to hold
 19 an air quality permit from the department as of October 1,
 20 1991, the board may, as a condition of continued operation,
 21 require by rule that the owner or operator of the source pay
 22 the annual fee provided for in subsection (4). ~~Nothing in~~
 23 ~~this~~ This subsection may not be construed as allowing the
 24 department to charge any source of air contaminants more
 25 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).

(10) ~~Nothing--in--this~~ This section shall does not restrict the board's authority to adopt regulations

providing for a single air quality permit system.

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

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

(13) An application is not considered filed until the applicant has submitted all fees and information and completed all application forms required by subsections (3) through (7) and (12). However, 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) (a) Where When IF an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the department shall notify the applicant in writing of the approval or denial of the application within:

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

(ii) within 30 days after issuance of the final

1 environmental impact statement by the lead agency if a state
2 agency other than the department has been designated by the
3 governor as lead agency for preparation of the environmental
4 impact statement.

5 (b) However, where when an application does not require
6 the compilation preparation of an environmental impact
7 statement ~~or--if--an--application--is--not--subject--to--the~~
8 ~~provisions of 75-2-215~~, the department shall notify the
9 applicant in writing within 60 days of the receipt of a
10 filed application, as defined provided in subsection (13),
11 of the approval or denial of the application. Notification
12 of approval or denial may be served personally or by
13 registered--or certified mail on the applicant or his the
14 applicant's agent.

15 (C) IF AN APPLICATION FOR A PERMIT IS FOR THE
16 CONSTRUCTION, INSTALLATION, ALTERATION, OR USE OF A SOURCE
17 THAT IS ALSO REQUIRED TO OBTAIN A LICENSE PURSUANT TO
18 75-10-221 OR A PERMIT PURSUANT TO 75-10-406, THE DEPARTMENT
19 SHALL ACT ON THE PERMIT APPLICATION WITHIN THE TIME PERIOD
20 PROVIDED FOR IN 75-2-215(2)(E).

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

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

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

10 **Section 3.** Section 75-2-215, MCA, is amended to read:

11 "75-2-215. Solid or hazardous waste incineration --
12 additional permit requirements. (1) A person may not
13 construct, modify, or operate a solid or hazardous waste
14 incinerator of any of the following categories until the
15 department has issued an air quality permit pursuant to this
16 chapter, including the conditions provided in this section:

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

20 (b) an existing or permitted solid or hazardous waste
21 incinerator that is designed to burn more than 200 pounds an
22 hour of solid or hazardous waste and that incinerates or
23 would incinerate solid or hazardous waste in an amount,
24 form, kind, or content different from its designed or
25 permitted operation or that incinerates or would incinerate

any solid or hazardous waste that changes the nature, character, or composition of its emissions.

(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 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 as proposed in the permit application or modification;

(B) IF A LICENSE IS REQUIRED PURSUANT TO 75-10-221 OR A PERMIT IS REQUIRED PURSUANT TO 75-10-406, THE APPLICANT HAS PUBLISHED, IN THE COUNTY WHERE THE PROJECT IS PROPOSED, AT LEAST THREE NOTICES, IN ACCORDANCE WITH THE PROCEDURES IDENTIFIED IN 7-1-4127(2) AND 7-1-4128(2), DESCRIBING THE PROPOSED PROJECT;

(b)(C) IF A LICENSE IS REQUIRED PURSUANT TO 75-10-221 OR A PERMIT IS REQUIRED PURSUANT TO 75-10-406, the department has conducted a public hearing on an environmental review prepared pursuant to Title 75, chapter 1, and, as appropriate, provided additional opportunities

for the public has-had-an-opportunity to review and comment on the permit application or modification; and

(d)(D) 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; and

(d)(E) the department has issued a license pursuant to 75-10-221 OR A PERMIT PURSUANT TO 75-10-406, if a license OR PERMIT is required. THE DECISION TO ISSUE, DENY, OR ALTER, OR REVISE A PERMIT PURSUANT TO 75-2-211 AND 75-2-215 MUST BE MADE WITHIN 30 DAYS FROM WHEN THE DEPARTMENT ISSUES A LICENSE PURSUANT TO 75-10-221 OR A PERMIT PURSUANT TO 75-10-406 OR WITHIN 90 DAYS AFTER THE RECEIPT OF A COMPLETE APPLICATION FOR A PERMIT OR A PERMIT ALTERATION UNDER 75-2-211, 75-2-215, AND THIS SECTION, WHICHEVER IS LATER.

(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.

(4) This section does not relieve an owner or operator of a solid or hazardous waste incinerator 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 4. Medical waste AND HAZARDOUS WASTE incineration -- additional permit requirements. (1) Because of the potential formation of chlorinated dioxins, and furans, HEAVY METALS, AND CARCINOGENS as a result of the incineration of medical waste AND HAZARDOUS WASTE and the potential health risk these chemicals pose, the department BOARD shall adopt rules establishing additional permit requirements for commercial medical waste AND COMMERCIAL HAZARDOUS WASTE incinerators. For the purposes of this section, the term "commercial medical waste incinerator" does not include hospital or medical facility incinerators that primarily incinerate medical waste generated onsite. The department BOARD shall adopt rules that:

(a) regulate the type and amount of plastic and other materials in the medical waste stream AND HAZARDOUS WASTE STREAM that may be a source of chlorine, in order to minimize the potential creation of chlorinated dioxins, and furans, HEAVY METALS, AND CARCINOGENS;

(b) require commercial medical waste AND COMMERCIAL HAZARDOUS WASTE incinerators to achieve the lowest achievable emission rate, EXCEPT WHEN BEST AVAILABLE CONTROL TECHNOLOGY IS ADEQUATE TO PREVENT EXCEEDING THE ALLOWABLE DAILY INTAKE STANDARDS, AS DETERMINED PURSUANT TO SUBSECTION (3), FOR DIOXINS, FURANS, AND HEAVY METALS, AND OTHER

CARCINOGENS;

(c) implement the requirements of subsection (2), including establishing procedures and standards for the collection of high quality scientific information and for the submission of the information by the applicant; and

(d) establish procedures for the monitoring, testing, and inspection of:

(i) the medical waste stream AND HAZARDOUS WASTE STREAM, including possible precursors to the formation of chlorinated dioxins and, furans, HEAVY METALS, AND CARCINOGENS;

(ii) combustion, including destruction and removal efficiencies; and

(iii) emissions, including continuous emission monitoring and air pollution control devices; AND

(E) ARE NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION AND TO COORDINATE THE REQUIREMENTS UNDER THIS SECTION WITH THE REQUIREMENTS CONTAINED IN 75-2-211 AND 75-2-215.

(2) A person who applies for an air quality permit OR ALTERATION pursuant to 75-2-211 AND 75-2-215 for a commercial medical waste OR COMMERCIAL HAZARDOUS WASTE incinerator shall provide, to the satisfaction of the department, the following information:

(a) a dispersion model of emissions, using approved

methods, that--relates--to AND THOSE STUDIES THAT ARE NECESSARY TO IDENTIFY THE potential worker-and community exposure;

(b) an analysis of the potential pathways for human exposure to air contaminants, particularly chlorinated dioxins and, furans, AND HEAVY METALS, AND OTHER CARCINOGENS, including the potential for inhalation, ingestion, and physical contact by workers-and the affected communities; and

(c) a quantitative analysis of the estimated total possible human exposure to chlorinated dioxins and, furans, HEAVY METALS, AND CARCINOGENS for both--workers-and the affected communities.

(3) The department may not issue OR ALTER an air quality permit pursuant to this chapter until the department has determined, based upon an analysis of the information provided by the applicant pursuant to subsection (2) AND OTHER NECESSARY AND RELEVANT DATA, that the public health risk from chlorinated dioxins and, furans, AND HEAVY METALS, AND OTHER CARCINOGENS will not exceed appropriate FEDERAL standards for allowable daily intake, as determined by the department after an-evaluation A REVIEW of ESTABLISHED AND relevant federal standards and guidelines.

(4) THIS SECTION MAY NOT BE CONSTRUED IN ANY WAY TO:

(A) REQUIRE THE BOARD TO PROMULGATE STANDARDS FOR THE

ALLOWABLE DAILY INTAKE OF ANY SUBSTANCES FOR WHICH THE FEDERAL GOVERNMENT HAS NOT ESTABLISHED STANDARDS;

(B) ALLOW THE BOARD TO PROMULGATE STANDARDS FOR THE ALLOWABLE DAILY INTAKE OF ANY SUBSTANCES FOR WHICH THE FEDERAL GOVERNMENT HAS ESTABLISHED STANDARDS THAT ARE MORE STRINGENT THAN THE FEDERAL STANDARDS; OR

(C) LIMIT OR OTHERWISE IMPAIR THE DUTY OF THE DEPARTMENT UNDER 75-2-215 TO DETERMINE THAT EMISSIONS AND AMBIENT CONCENTRATIONS WILL CONSTITUTE A NEGLIGIBLE RISK AS REQUIRED BY 75-2-215(2)(D), INCLUDING EMISSIONS AND AMBIENT CONCENTRATIONS OF DIOXINS, FURANS, HEAVY METALS, AND CARCINOGENS, BEFORE ISSUING AN AIR QUALITY PERMIT PURSUANT TO 75-2-211 AND 75-2-215.

NEW SECTION. Section 5. Disclosure statement required.

(1) An air quality permit for a commercial medical waste OR COMMERCIAL HAZARDOUS WASTE incinerator may not be issued, renewed, transferred, or modified ALTERED pursuant to 75-2-211 AND 75-2-215 without an application under this section. Before an application for the issuance, renewal, transfer, or modification ALTERATION of a permit under 75-2-211 AND 75-2-215 for a commercial medical waste OR COMMERCIAL HAZARDOUS WASTE incinerator may be approved, the applicant and each principal with respect to the applicant shall submit to the department a disclosure statement containing the following information:

1 (a) the name, business address, and social security
2 number of the applicant and each principal;

3 (b) a description of any civil and administrative
4 complaint filed within 5 years before the date of the
5 application against the applicant or a principal for the
6 violation of an environmental protection law and whether the
7 complaint resulted in a civil or administrative penalty; and

8 (c) a description of all judgments of criminal
9 conviction entered against the applicant or a principal for
10 the violation of an environmental protection law within 5
11 years before the date of the application; AND

12 (D) A DESCRIPTION OF ALL JUDGMENTS OF CRIMINAL
13 CONVICTION ENTERED AGAINST THE APPLICANT OR A PRINCIPAL FOR
14 THE VIOLATION OF AN ENVIRONMENTAL PROTECTION LAW WITHIN 5
15 YEARS BEFORE THE DATE OF THE APPLICATION IN ANOTHER STATE
16 THAT RESULTED FROM THE OPERATION OF A MEDICAL WASTE
17 INCINERATOR OR A COMMERCIAL HAZARDOUS WASTE INCINERATOR. FOR
18 THE PURPOSES OF THIS SUBSECTION (D), AN ENVIRONMENTAL
19 PROTECTION LAW OF ANOTHER STATE MEANS A LAW OR
20 ADMINISTRATIVE RULE ADOPTED PURSUANT TO A LAW REGULATING
21 SOLID OR HAZARDOUS WASTE OR UNDERGROUND STORAGE TANKS OR
22 PROTECTING THE AIR OR WATER RESOURCE.

23 (2) A disclosure statement, as required in subsection
24 (1), must be executed under oath or affirmation and is
25 subject to the penalty for perjury. The department may

1 verify and investigate the information contained in a
2 statement required under this section.

3 (3) A person required to file a disclosure statement
4 under this section shall provide assistance or information
5 requested by the department that is related to the statement
6 and shall cooperate in an inquiry or investigation conducted
7 by the department under subsection (2).

8 NEW SECTION. Section 6. Denial or modification of
9 permit -- mitigating factors. (1) The department may deny an
10 application for the issuance, renewal, transfer, or
11 modification ALTERATION of a permit under 75-2-211 AND
12 75-2-215 for a commercial medical waste OR COMMERCIAL
13 HAZARDOUS WASTE incinerator or impose additional conditions
14 on a permit pursuant to subsection (2) if within 5 years
15 before the date of the application;

16 (a) a judgment of criminal conviction of an
17 environmental protection law has been entered against the
18 applicant or a principal;

19 (b) a civil or administrative complaint for a violation
20 of an environmental protection law has resulted in the
21 assessment of a penalty against the applicant or a
22 principal; or

23 (c) the applicant or a principal has a history of
24 repeated violations of environmental protection laws; OR

25 (D) A JUDGMENT OR CRIMINAL CONVICTION FOR A VIOLATION

DESCRIBED IN [SECTION 5(1)(D)] HAS BEEN ENTERED AGAINST THE
APPLICANT OR A PRINCIPAL.

(2) As provided under subsection (1), the department may impose additional conditions on a permit related to permit length, inspections, monitoring, recordkeeping, and reporting.

(3) In making the decision to deny an application or to impose conditions on a permit pursuant to subsection (1), the department shall consider the following mitigating factors:

(a) the nature and gravity of the violation of environmental protection laws OR VIOLATIONS DESCRIBED IN [SECTION 5(1)(D)];

(b) the degree of culpability of the applicant or a principal;

(c) the applicant's or principal's cooperation with the state or federal agencies involved in the complaints and convictions referred to in [section 5]; ~~AND~~

(d) the applicant's or principal's dissociation from other persons or entities convicted of acts referred to in [section 5]; ~~and~~

~~(e) a demonstration of good citizenship by the applicant or a principal.~~

NEW SECTION. Section 7. Codification instruction.
[Sections 4 through 6] 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 4 through 6].

NEW SECTION. Section 8. 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 9. Retroactive applicability. (1)
[This act] applies retroactively, within the meaning of 1-2-109, to all commercial medical waste incinerators that have applied for but have not received by [the effective date of this act] a permit under Title 75, chapter 2, and a license under 75-10-221.

(2) [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO ALL COMMERCIAL HAZARDOUS WASTE INCINERATORS THAT HAVE APPLIED FOR BUT NOT RECEIVED BY [THE EFFECTIVE DATE OF THIS ACT] A PERMIT UNDER TITLE 75, CHAPTER 2, AND A PERMIT UNDER 75-10-406.

NEW SECTION. Section 10. Effective date. [This act] is effective on passage and approval.

-End-