

SENATE BILL 338

Introduced by Yellowtail, et al.

2/08	Introduced
2/08	Referred to Natural Resources
2/08	First Reading
2/09	Fiscal Note Requested
2/13	Fiscal Note Received
2/13	Fiscal Note Printed
2/15	Hearing
2/18	Minority Committee Report Adopted that Bill be Passed as Amended
2/19	2nd Reading Passed as Amended
2/20	3rd Reading Failed
2/23	Reconsidered Previous Action and Placed on 3rd Reading on 45th Leg. Day
2/24	3rd Reading Passed
	Transmitted to House
3/03	Referred to Natural Resources
3/03	Hearing
3/17	First Reading
3/30	Motion Failed to Take from Committee and Place on 2nd Reading
4/01	Motion Failed to Take from Committee and Place on 2nd Reading
4/22	Motion Failed to Take from Committee and Place on 2nd Reading
	Died in Committee

**Senate** BILL NO. **338**

INTRODUCED BY

BILL FOR AN ACT ENTITLED: "AN ACT DEFINING AND

ESTABLISHING SETTING CRITERIA FOR COMMERCIAL DANGEROUS WASTE

INCINERATION FACILITIES; AND PROVIDING AN IMMEDIATE

EFFECTIVE DATE AND AN APPLICABILITY DATE."

#### STATEMENT OF INTENT

It is the intent of the legislature that this bill apply only to large-scale, offsite, commercial dangerous waste incineration facilities. It is not the intent of the legislature that this bill apply to the noncommercial incineration of dangerous waste at the site where the waste was produced.

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

**NEW SECTION. Section 1. Definitions.** Unless the context requires otherwise, in [sections 1 and 2], the following definitions apply:

(1) "Aquifer" means a water-bearing, subsurface formation capable of yielding sufficient quantities of water to a well for a beneficial use.

(2) (a) "Commercial dangerous waste incineration facility" means a facility that accepts, for the purpose of

incineration, dangerous waste generated by a different person.

(b) Commercial dangerous waste incineration facility does not mean:

(i) a hospital or other medical facility that accepts dangerous waste for the purposes of incineration from other medical facilities within Montana or states contiguous to Montana; or

(ii) oil refineries that accept dangerous waste for the purpose of incineration from other oil companies.

(3) (a) "Dangerous waste" means a substance:

(i) defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4;

(ii) regulated under the federal Toxic Substances Control Act, 15 U.S.C. 2607 to 2671;

(iii) defined as infectious under 75-10-1003; or

(iv) that contains two parts or more per million of polychlorinated biphenyl (PCB).

(b) Dangerous waste does not mean:

(i) domestic sewage;

(ii) waste otherwise defined as dangerous when the waste is to be used for testing purposes only; or

(iii) household refuse that contains minor amounts of hazardous waste.

(4) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(5) "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for disposal of dangerous wastes.

(6) "Incineration" means the burning of a dangerous waste, whether for fuel value, energy recovery, energy production, destruction, processing, or material recovery.

(7) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or other legal entity.

**NEW SECTION. Section 2. Commercial dangerous waste facility -- siting criteria.** (1) The department may not issue a permit or a license under Title 75, chapter 2, part 2, or Title 75, chapter 10, part 2 or 4, for a commercial dangerous waste incineration facility within:

(a) national, state, and county parks, monument areas, and recreation areas;

(b) designated wilderness and wilderness study areas;

(c) a 100-year floodplain;

(d) 200 feet of known Holocene fault lines;

(e) dam failure flood areas;

(f) an area likely to be impacted by landslides, mudflows, or other earth movement;

(g) farmlands classified or evaluated as "prime", "unique", or of "statewide importance" by the U.S. department of agriculture soil conservation service under the Farmland Protection Policy Act;

(h) areas directly above unconfined aquifers containing ground water that has a total dissolved solids (TDS) content of less than 500 milligrams per liter;

(i) 5 miles of existing permanent dwellings, residential areas, and other incompatible structures, including but not limited to schools, churches, and historic structures;

(j) 4 miles of surface waters, including perennial streams, intermittent streams, rivers, lakes, reservoirs, estuaries, and wetlands;

(k) an area where local weather conditions create a quantifiable risk to public health if the permit is approved; or

(l) an area where the facility does not comply with local zoning regulations.

(2) The provisions of subsection (1) do not apply to permit renewals, modifications, or transfers.

**NEW SECTION. Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 75, chapter 10, and the provisions of Title 75, chapter 10, apply to [sections 1 and 2].

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1        NEW SECTION. **Section 4. Severability.** If a part of  
2 [this act] is invalid, all valid parts that are severable  
3 from the invalid part remain in effect. If a part of [this  
4 act] is invalid in one or more of its applications, the part  
5 remains in effect in all valid applications that are  
6 severable from the invalid applications.

7        NEW SECTION. **Section 5. Applicability.** [This act]  
8 applies to all permit applications under Title 75, chapter  
9 2, part 2, and Title 75, chapter 10, part 2 or 4, for  
10 commercial dangerous waste incineration facilities that have  
11 not been approved by the department of health and  
12 environmental sciences as of [the effective date of this  
13 act].

14        NEW SECTION. **Section 6. Effective date.** [This act] is  
15 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 SB0338, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act defining and establishing siting criteria for commercial dangerous waste incineration facilities; and providing an immediate effective date and an applicability date.

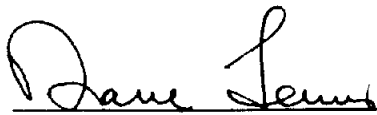
ASSUMPTIONS:


1. The assessment of applicability of siting criteria for facilities affected by SB0338 will be coordinated with the completeness and technical review of applications for permits or licenses issued by the Solid & Hazardous Waste Bureau.
2. The applicant for a permit or license to operate a facility which is affected by the provisions of SB0338 will provide DHES the information necessary to determine if the facility meets the required siting criteria.
3. DHES will utilize existing resources to determine if proposed facilities affected by the requirements of SB0338 meet the prescribed siting criteria.

FISCAL IMPACT:

There will be no fiscal impact on the DHES if this bill passes.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: Passage of SB0338 will have the effect of significantly limiting sites in the state suitable for the location of facilities defined as commercial dangerous waste incineration facilities.

 2-12-93  
DAVID LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 2/13/93  
WILLIAM P. YELLOWTAIL, PRIMARY SPONSOR      DATE  
Fiscal Note for SB0338, as introduced  
5B338

APPROVED BY COMM. ON  
NATURAL RESOURCES

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RANEY, SWANSON, BARNHART, STRIZICH, ECK, REA, FRITZ,

ELLIOTT, KADAS, RYE, WELDON, BLAYLOCK, DOHERTY, HALLIGAN,

WILSON, FRANKLIN, TOOLE, HARRINGTON, WEEDING, GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING AND  
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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** Unless the  
context requires otherwise, in [sections 1 and 2], the  
following definitions apply:

(1) "Aquifer" means a water-bearing, subsurface  
formation capable of yielding sufficient quantities of water

to a well for a beneficial use.

(2) (a) "Commercial dangerous waste incineration  
facility" means a facility that accepts, for the purpose of  
incineration, dangerous waste generated by a different  
person.

(b) Commercial dangerous waste incineration facility  
does not mean:

(i) a hospital or other medical facility that accepts  
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medical facilities within Montana or states contiguous to  
Montana; or

(ii) oil refineries that accept dangerous waste for the  
purpose of incineration from other oil companies.

(3) (a) "Dangerous waste" means A WASTE CONTAINING a  
substance:

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hazardous in department administrative rules adopted  
pursuant to Title 75, chapter 10, part 4;

(ii) regulated under the federal Toxic Substances  
Control Act, 15 U.S.C. 2607 to 2671;

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(iv) that contains two parts or more per million of  
polychlorinated biphenyl (PCB).

(b) Dangerous waste does not mean:

(i) domestic sewage;

1 (ii) waste otherwise defined as dangerous when the waste  
2 is to be used for testing purposes only; or  
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4 hazardous waste.

5 (4) "Department" means the department of health and  
6 environmental sciences provided for in 2-15-2101.

7 (5) "Facility" means all contiguous land and  
8 structures, other appurtenances, and improvements on the  
9 land used for disposal of dangerous wastes.

10 (6) "Incineration" means the burning of a dangerous  
11 waste, whether for fuel value, energy recovery, energy  
12 production, destruction, processing, or material recovery.

13 (7) "Person" means an individual, partnership, firm,  
14 association, municipality, public or private corporation,  
15 subdivision or agency of the state, trust, estate, or other  
16 legal entity.

17 (8) "WASTE" MEANS EITHER A:

18 (A) SOLID WASTE AS DEFINED IN 75-10-203; OR

19 (B) HAZARDOUS WASTE AS DEFINED IN 75-10-403.

20 NEW SECTION. Section 2. Commercial dangerous waste  
21 facility -- siting criteria. (1) The department may not  
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23 2, or Title 75, chapter 10, part 2 or 4, for a commercial  
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1 and recreation areas;

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4 (d) 200 feet of known Holocene fault lines;

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7 mudflows, or other earth movement;

8 (g) farmlands classified or evaluated as "prime",  
9 "unique", or of "statewide importance" by the U.S.  
10 department of agriculture soil conservation service under  
11 the Farmland Protection Policy Act;

12 (h) areas directly above unconfined aquifers containing  
13 ground water that has a total dissolved solids (TDS) content  
14 of less than 500 milligrams per liter;

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16 residential areas, and other incompatible structures,  
17 including but not limited to schools, churches, and historic  
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20 streams, intermittent streams, rivers, lakes, reservoirs,  
21 estuaries, and wetlands;

22 (k) an area where local weather conditions create a  
23 quantifiable risk to public health if the permit is  
24 approved; or

25 (l) an area where the facility does not comply with



1 local zoning regulations.

2 (2) The provisions of subsection (1) do not apply to  
3 permit renewals, modifications, or transfers.

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