

SENATE BILL NO. 339

INTRODUCED BY WEEDING, RYE, FORRESTER, ELLIOTT,
YELLOWTAIL, BARDANOUE, MENAHAN, BROOKE, TOOLE,
BIANCHI, BARNHART, J. JOHNSON, WELDON

IN THE SENATE

FEBRUARY 9, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 17, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 18, 1993	PRINTING REPORT.
	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
FEBRUARY 19, 1993	ON MOTION, CONSIDERATION PASSED UNTIL THE 43RD LEGISLATIVE DAY.
FEBRUARY 22, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
FEBRUARY 23, 1993	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 24, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 31; NOES, 18.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 29, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 30, 1993	SECOND READING, CONCURRED IN.
APRIL 1, 1993	THIRD READING, CONCURRED IN. AYES, 71; NOES, 28.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 5, 1993

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 6, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

Senate BILL NO. 339

INTRODUCED BY Yellowtail, Baughman, Menighan, Burke, Toole, Branch, B. Baubert, Weldon
 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A LOCAL
 REFERENDUM ON THE LICENSING OF A MEGALANDFILL OR DANGEROUS
 WASTE FACILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1.** Definitions. As used in
 [section 2], the following definitions apply:

(1) (a) "Dangerous waste" means a waste:

(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 Toxic Substances Control Act,
 15 U.S.C. 2601 through 2671;

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

(iv) containing two parts per million or more of PCB.

(b) A waste generated from the recycling, treatment,
 storage, or disposal of a dangerous waste is a dangerous
 waste unless the department certifies that the waste does
 not exhibit a characteristic of a dangerous waste.

(c) Dangerous waste does not mean:

(i) domestic sewage; or

(ii) waste otherwise defined as dangerous when the

department certifies that the waste is to be used for
 testing purposes only.

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

(3) "Megalandfill" has the meaning as defined in
 75-10-903.

NEW SECTION. **Section 2.** Local approval by referendum
 of licensing of megalandfill or dangerous waste facility.

(1) Upon petition by 15% of the registered voters in any
 county located within 25 miles of the site of a proposed
 megalandfill or dangerous waste facility, a referendum must
 be held to determine whether the megalandfill or dangerous
 waste facility may be licensed. A referendum may not be held
 after the department has issued an operating license for the
 megalandfill or dangerous waste facility.

(2) The referendum must be held in each county within
 25 miles of the proposed location of the megalandfill or
 dangerous waste facility and must be conducted pursuant to
 7-5-132 through 7-5-137.

(3) If a majority of the votes cast in any county in
 the referendum are against the licensing of the megalandfill
 or dangerous waste facility, then the department may not
 proceed any further with the application process for an
 operating license granted pursuant to Title 75.

1 (4) If a majority of the votes cast in each county in
2 the referendum favor the licensing of the megalandfill or
3 dangerous waste facility, then the application process for
4 an operating license granted pursuant to Title 75 may
5 proceed, but the vote does not require the department to
6 approve an application to license the megalandfill or
7 dangerous waste facility.

8 (5) Only one referendum may be held on the licensing of
9 a particular facility.

10 NEW SECTION. **Section 3.** Codification instruction. (1)
11 [Sections 1 and 2] are intended to be codified as an
12 integral part of Title 75, chapter 10, part 4, and the
13 provisions of Title 75, chapter 10, part 4, apply to
14 [sections 1 and 2].

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

19 NEW SECTION. **Section 4.** effective date. [This act] is
20 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 SB0339, second reading.

DESCRIPTION OF PROPOSED LEGISLATION:


An act providing for a local referendum on the licensing of a megalandfill or commercial dangerous waste incineration facility.

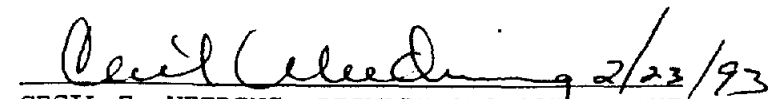
ASSUMPTIONS:

1. All activities and costs required to certify petitions for referendum, verifying signatures contained in the petitions, as well as organizing and conducting the referendum voting will be the responsibility of the involved county and/or their election administrator.
2. The DHES consideration of the referendum results and the issuance of an explanation of how the results of the referendum affected the licensing decision will be incorporated into the concurrent DHES duties involving the licensing and certification of the proposed facility.

FISCAL IMPACT: None

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: Counties involved in the referendum process may incur additional costs and demands on local government manpower and resources to certify petitions for referendums, verify signatures contained in the petitions, and in organizing and conducting the referendum voting.


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


CECIL F. WEEDING, PRIMARY SPONSOR DATE

Fiscal Note for SB0339, second reading.

SB339

APPROVED BY COMM. ON
NATURAL RESOURCES

SENATE BILL NO. 339

INTRODUCED BY WEEDING, RYE, FORRESTER, ELLIOTT,
YELLOWTAIL, BARDANOUVE, MENAHAN, BROOKE, TOOLE,
BIANCHI, BARNHART, J. JOHNSON, WELDON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A LOCAL
REFERENDUM ON THE LICENSING OF A MEGALANDFILL OR COMMERCIAL
DANGEROUS WASTE INCINERATION FACILITY; AMENDING SECTIONS
75-10-929 AND 75-10-935, MCA; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE."

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

NEW SECTION. Section 1. Definitions. As used in
[section 2], the following definitions apply:

(1) (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 PURPOSE OF INCINERATION FROM ANOTHER
HOSPITAL OR MEDICAL FACILITY IN MONTANA OR A STATE
CONTIGUOUS TO MONTANA; OR

(II) AN OIL REFINERY THAT ACCEPTS DANGEROUS WASTE FROM

AN OIL COMPANY FOR THE PURPOSE OF INCINERATION.

~~(1)~~(2) (a) "Dangerous waste" means a waste:

(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 Toxic Substances Control Act,
15 U.S.C. 2601 through 2671;

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

(iv) containing two parts per million or more of PCB.

(b) A waste generated from the recycling, treatment,
storage, or disposal of a dangerous waste is a dangerous
waste unless the department certifies that the waste does
not exhibit a characteristic of a dangerous waste.

(c) Dangerous waste does not mean:

(i) domestic sewage; or

(ii) waste otherwise defined as dangerous when the
department certifies that the waste is to be used for
testing purposes only.

~~(2)~~(3) "Facility" means all contiguous land and
structures, other appurtenances, and improvements on the
land used for disposal of dangerous waste.

~~(3)~~(4) "Megalandfill" has the meaning as defined in
75-10-903.

NEW SECTION. Section 2. Local approval by referendum
of licensing of megalandfill or dangerous waste facility.

(1) Upon petition by 15% of the registered voters in any county located within 25 15 miles of the site of a proposed megalandfill or COMMERCIAL dangerous waste INCINERATION facility, a referendum must be held to determine whether THE PUBLIC SUPPORTS THE LICENSING OF the megalandfill or COMMERCIAL dangerous waste INCINERATION facility may be licensed. A referendum may not be held after the department has issued an operating license for the megalandfill or COMMERCIAL dangerous waste INCINERATION facility.

(2) A PETITION FOR A REFERENDUM MAY BE SUBMITTED AT ANY TIME PRIOR TO A DETERMINATION BY THE DEPARTMENT THAT AN APPLICATION FOR A LICENSE REQUIRED PURSUANT TO 75-2-211 OR FOR A CERTIFICATE REQUIRED PURSUANT TO 75-10-916 IS COMPLETE.

(3) THE REFERENDUM MUST BE HELD SUBSEQUENT TO:

(A) THE COMPLETION OF ANY ENVIRONMENTAL REVIEW DOCUMENT REQUIRED PURSUANT TO TITLE 75, CHAPTER 1, PART 2; AND

(B) A HEARING CONDUCTED PURSUANT TO 75-10-924, IF REQUIRED.

(2)(4) The referendum must be held in each county within 25 15 miles of the proposed location of the megalandfill or COMMERCIAL dangerous waste INCINERATION facility and must be conducted pursuant to 7-5-132 through 7-5-137.

(3)--if--a--majority--of--the--votes--cast--in--any--county--in

the--referendum--are--against--the--licensing--of--the--megalandfill or--dangerous--waste--facility,--then--the--department--may--not proceed--any--further--with--the--application--process--for--an operating--license--granted--pursuant--to--Title--75.

(4)--if--a--majority--of--the--votes--cast--in--each--county--in the--referendum--favor--the--licensing--of--the--megalandfill--or dangerous--waste--facility,--then--the--application--process--for an--operating--license--granted--pursuant--to--Title--75--may proceed,--but--the--vote--does--not--require--the--department--to approve--an--application--to--license--the--megalandfill--or dangerous--waste--facility.

(5)--Only--one--referendum--may--be--held--on--the--licensing--of a--particular--facility.

(5) A NEW REFERENDUM MUST BE HELD EACH TIME AN APPLICANT AMENDS AN APPLICATION. THE PETITION REQUIRED UNDER SUBSECTION (1) IS NOT REQUIRED IN ORDER TO CONDUCT A REFERENDUM UNDER THIS SUBSECTION.

SECTION 3. SECTION 75-10-929, MCA, IS AMENDED TO READ:

"75-10-929. Decision of board -- findings necessary for certification. (1) Within 90 days after submission of the recommended decision by the department, the board shall make complete findings, issue an opinion, and render a final decision upon the record, either granting or denying the application for a certificate as filed or granting it upon terms, conditions, or modifications of the siting of the

1 facility as the board considers appropriate.

2 (2) The board may not grant a certificate either as
3 proposed by the applicant or as modified by the board unless
4 it finds and determines:

5 (a) the nature of the probable environmental impact;

6 (b) that the facility minimizes adverse environmental
7 impact, considering the state of available technology and
8 the nature and economics of the various alternatives;

9 (c) that the location of the facility as proposed
10 conforms to applicable state and local laws and regulations,
11 except that the board may refuse to apply any local law or
12 regulation if it finds that, as applied to the proposed
13 facility, the law or regulation is unreasonably restrictive
14 in view of the existing technology, of factors of cost or
15 economics, or of the needs of consumers, whether located
16 inside or outside of the directly affected government
17 subdivisions;

18 (d) that the facility will serve the public interest;

19 (e) any impacts of the facility according to each of
20 the criteria listed in 75-10-920;

21 (f) the solid waste disposal needs listed in
22 75-10-920(4); and

23 (g) that the applicant has fully mitigated the loss of
24 wildlife habitat, through either onsite or offsite habitat
25 improvements.

1 (3) In determining that the facility will serve the
2 public interest, the board shall consider:

3 (a) the items listed in subsections (2)(a) and (2)(b);

4 (b) the benefits to the applicant and the state
5 resulting from the proposed facility;

6 (c) the effects of the economic activity resulting from
7 the proposed facility;

8 (d) the effects of the proposed facility on the public
9 health, welfare, and safety; and

10 (e) the results of the referendum conducted pursuant to
11 [section 2]; and

12 ~~te)(f)~~ any other factors that it considers relevant."

13 **SECTION 4. SECTION 75-10-935, MCA, IS AMENDED TO READ:**

14 "75-10-935. Opinion issued with decision -- contents.

15 (1) In rendering a decision on an application for a license
16 for a megalandfill, the department shall issue an opinion
17 stating its reasons for the action taken.

18 (2) In addition to the requirements of 75-10-221, any
19 license issued by the department shall include the
20 following:

21 (a) an environmental evaluation statement related to
22 the megalandfill being certified. The statement must include
23 but not be limited to analysis of the following information:

24 (i) the environmental impact of the proposed facility;

25 (ii) any adverse environmental effects that cannot be

avoided by issuance of the license;

(iii) problems and objections raised by other federal and state agencies and interested groups; and

(iv) alternatives to the proposed facility.

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified megalandfill site between the time of certification and completion of construction; and

(d) a statement signed by the applicant showing agreement to comply with the requirements of 75-10-901 through 75-10-945 and the conditions of the certificate; and

(e) an explanation of how the results of the referendum conducted pursuant to [section 2] affected the licensing decision."

NEW SECTION. SECTION 5. COMMERCIAL DANGEROUS WASTE INCINERATION -- REFERENDUM. (1) AS USED IN THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

(A) "COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY" HAS THE MEANING AS DEFINED IN [SECTION 1].

(B) "DANGEROUS WASTE" HAS THE MEANING DEFINED IN [SECTION 1].

(2) WHEN ISSUING A PERMIT PURSUANT TO 75-2-211 FOR A COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY, THE DEPARTMENT SHALL:

(A) REQUIRE THE APPLICANT TO PROVIDE PUBLIC NOTICE OF INTENT TO CONSTRUCT A COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY AT LEAST 6 MONTHS PRIOR TO THE SUBMISSION OF AN APPLICATION; AND

(B) CONSIDER THE RESULTS OF THE REFERENDUM CONDUCTED PURSUANT TO [SECTION 2] IN MAKING THE DECISION TO GRANT, DENY, OR MODIFY A PERMIT.

NEW SECTION. Section 6. Codification instruction. (1)
[Sections 1 and 2] are intended to be codified as an integral part of Title 75, chapter 10, part 4, and the provisions of Title 75, chapter 10, part 4, apply to [sections 1 and 2].

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

(3) [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 75, CHAPTER 2, PART 2, AND THE PROVISIONS OF TITLE 75, CHAPTER 2, PART 2, APPLY TO [SECTION 5].

NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

-End-

SENATE BILL NO. 339

INTRODUCED BY WEEDING, RYE, FORRESTER, ELLIOTT,
YELLOWTAIL, BARDANOUVE, MENAHAN, BROOKE, TOOLE,
BIANCHI, BARNHART, J. JOHNSON, WELDON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A LOCAL
REFERENDUM ON THE LICENSING OF A MEGALANDFILL OR COMMERCIAL
DANGEROUS WASTE INCINERATION FACILITY; AMENDING SECTIONS
75-2-211, 75-2-215, 75-10-922, 75-10-929, AND 75-10-935,
MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Definitions. As used in
[section 2], the following definitions apply:

(1) (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 PURPOSE OF INCINERATION FROM ANOTHER
HOSPITAL OR MEDICAL FACILITY IN MONTANA OR A STATE
CONTIGUOUS TO MONTANA; OR

(II) AN OIL REFINERY THAT ACCEPTS DANGEROUS WASTE FROM

AN OIL COMPANY FOR THE PURPOSE OF INCINERATION.

(2) (a) "Dangerous waste" means a waste:

(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 Toxic Substances Control Act,
15 U.S.C. 2601 through 2671;

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

(iv) containing two parts per million or more of PCB.

(b) A waste generated from the recycling, treatment,
storage, or disposal of a dangerous waste is a dangerous
waste unless the department certifies that the waste does
not exhibit a characteristic of a dangerous waste.

(c) Dangerous waste does not mean:

(i) domestic sewage; or

(ii) waste otherwise defined as dangerous when the
department certifies that the waste is to be used for
testing purposes only.

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

(4) "Megalandfill" has the meaning as defined in
75-10-903.

NEW SECTION. Section 2. Local approval by referendum
of licensing of megalandfill or dangerous waste facility.

(1) Upon petition by 15% of the registered voters in any county located within 25 15 miles of the site of a proposed megalandfill or COMMERCIAL dangerous waste INCINERATION facility, a referendum must be held to determine whether THE PUBLIC SUPPORTS THE LICENSING OF the megalandfill or COMMERCIAL dangerous waste INCINERATION facility may be licensed. A referendum may not be held after the department has issued an operating license for the megalandfill or COMMERCIAL dangerous waste INCINERATION facility.

(2) A PETITION FOR A REFERENDUM MAY BE SUBMITTED AT ANY TIME PRIOR TO A DETERMINATION BY THE DEPARTMENT THAT AN APPLICATION FOR A LICENSE REQUIRED PURSUANT TO 75-2-211 OR FOR A CERTIFICATE REQUIRED PURSUANT TO 75-10-916 IS COMPLETE.

(3) THE EXCEPT AS PROVIDED IN SUBSECTION (3)(C), THE REFERENDUM MUST BE HELD SUBSEQUENT TO:

(A) THE COMPLETION OF ANY ENVIRONMENTAL REVIEW DOCUMENT REQUIRED PURSUANT TO TITLE 75, CHAPTER 1, PART 2; AND

(B) A HEARING CONDUCTED PURSUANT TO 75-10-924, IF REQUIRED; AND

(C) IF THE COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY IS A BOILER OR INDUSTRIAL FURNACE, ANY MODIFICATION TO AN APPLICATION THAT IS MADE AS A RESULT OF A TEST BURN.

{2}{4} The referendum must be held in each county within 25 15 miles of the proposed location of the

megalandfill or COMMERCIAL dangerous waste INCINERATION facility and must be conducted pursuant to 7-5-132 through 7-5-137.

{3}--If a majority of the votes cast in any county in the referendum are against the licensing of the megalandfill or dangerous waste facility, then the department may not proceed any further with the application process for an operating license granted pursuant to Title 75.

{4}--If a majority of the votes cast in each county in the referendum favor the licensing of the megalandfill or dangerous waste facility, then the application process for an operating license granted pursuant to Title 75 may proceed, but the vote does not require the department to approve an application to license the megalandfill or dangerous waste facility.

{5}--Only one referendum may be held on the licensing of a particular facility.

(5) A NEW REFERENDUM MUST BE HELD EACH TIME AN APPLICANT AMENDS AN APPLICATION. THE PETITION REQUIRED UNDER SUBSECTION (1) IS NOT REQUIRED IN ORDER TO CONDUCT A REFERENDUM UNDER THIS SUBSECTION.

SECTION 3. SECTION 75-10-929, MCA, IS AMENDED TO READ:

"75-10-929. Decision of board -- findings necessary for certification. (1) Within 90 days after submission of the recommended decision by the department, the board shall make

complete findings, issue an opinion, and render a final decision upon the record, either granting or denying the application for a certificate as filed or granting it upon terms, conditions, or modifications of the siting of the facility as the board considers appropriate.

(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it finds and determines:

- (a) the nature of the probable environmental impact;
- (b) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;
- (c) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions;
- (d) that the facility will serve the public interest;
- (e) any impacts of the facility according to each of the criteria listed in 75-10-920;
- (f) the solid waste disposal needs listed in

75-10-920(4); and

(g) that the applicant has fully mitigated the loss of wildlife habitat, through either onsite or offsite habitat improvements.

(3) In determining that the facility will serve the public interest, the board shall consider:

- (a) the items listed in subsections (2)(a) and (2)(b);
- (b) the benefits to the applicant and the state resulting from the proposed facility;
- (c) the effects of the economic activity resulting from the proposed facility;
- (d) the effects of the proposed facility on the public health, welfare, and safety; and
- (e) the results of the referendum conducted pursuant to [section 2]; and
- (e)(f) any other factors that it considers relevant."

SECTION 4. SECTION 75-10-935, MCA, IS AMENDED TO READ:

"75-10-935. Opinion issued with decision -- contents.

(1) In rendering a decision on an application for a license for a megalandfill, the department shall issue an opinion stating its reasons for the action taken.

(2) In addition to the requirements of 75-10-221, any license issued by the department shall include the following:

- (a) an environmental evaluation statement related to

the megalandfill being certified. The statement must include but not be limited to analysis of the following information:

- (i) the environmental impact of the proposed facility;
- (ii) any adverse environmental effects that cannot be avoided by issuance of the license;
- (iii) problems and objections raised by other federal and state agencies and interested groups; and
- (iv) alternatives to the proposed facility.

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified megalandfill site between the time of certification and completion of construction; and

(d) a statement signed by the applicant showing agreement to comply with the requirements of 75-10-901 through 75-10-945 and the conditions of the certificate; and

(e) an explanation of how the results of the referendum conducted pursuant to [section 2] affected the licensing decision."

NEW SECTION. SECTION 5. COMMERCIAL DANGEROUS WASTE INCINERATION -- REFERENDUM. (1) AS USED IN THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

(A) "COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY" HAS THE MEANING AS DEFINED IN [SECTION 1].

(B) "DANGEROUS WASTE" HAS THE MEANING DEFINED IN

[SECTION 1].

(2) WHEN ISSUING A PERMIT PURSUANT TO 75-2-211 FOR A COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY, THE DEPARTMENT SHALL:

(A) REQUIRE THE APPLICANT TO PROVIDE PUBLIC NOTICE OF INTENT TO CONSTRUCT A COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY AT LEAST 6 MONTHS PRIOR TO THE SUBMISSION OF AN APPLICATION; AND

(B) NOTIFY EACH COUNTY WITHIN 15 MILES OF THE PROPOSED COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY OF THE EXPECTED COMPLETION DATE OF AN ENVIRONMENTAL REVIEW DOCUMENT OR MODIFICATIONS TO AN APPLICATION THAT RESULT FROM A TEST BURN, PROVIDED THAT A REFERENDUM MUST BE HELD PURSUANT TO [SECTION 2]. THE NOTIFICATION MUST BE MADE AT LEAST 60 DAYS PRIOR TO THE COMPLETION OF THE ENVIRONMENTAL REVIEW DOCUMENT OR MODIFICATIONS TO AN APPLICATION THAT RESULT FROM A TEST BURN IN ORDER TO ALLOW EACH COUNTY ADEQUATE TIME TO PROVIDE NOTICE AND PREPARE FOR AN ELECTION. UPON RECEIVING NOTIFICATION FROM THE DEPARTMENT, EACH COUNTY ELECTION OFFICIAL SHALL SCHEDULE AN ELECTION TO BE HELD WITHIN 90 DAYS. IF A SECOND REFERENDUM IS REQUIRED PURSUANT TO [SECTION 2(5)], THE DEPARTMENT SHALL PROVIDE EACH COUNTY WITHIN 15 MILES OF THE PROPOSED COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY WITH ADEQUATE NOTICE TO ALLOW TIME TO PROVIDE NOTICE AND PREPARE FOR A SECOND ELECTION.

1 (B)(C) CONSIDER THE RESULTS OF THE REFERENDUM CONDUCTED
 2 PURSUANT TO [SECTION 2] IN MAKING THE DECISION TO GRANT,
 3 DENY, OR MODIFY A PERMIT.

4 **SECTION 6. SECTION 75-2-211, MCA, IS AMENDED TO READ:**

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

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

14 (a) The board shall by rule require that permits issued
 15 to sources described in subsection (2) be of limited
 16 duration, but it may not limit the duration of the permits
 17 beyond that required by the federal Clean Air Act, 42 U.S.C.
 18 7401, et seq., as amended.

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

21 (c) The board shall by rule establish a transition
 22 schedule for air quality permits held by sources of air
 23 contaminants subject to the provisions of subsection (2).
 24 The transition schedule must specify dates for the
 25 expiration of the permits, absent an application for renewal

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

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

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

1 (a) reviewing and acting upon the application;

2 (b) implementing and enforcing the terms and conditions

3 of the permit if the permit is issued. However, this amount

4 does not include any court costs or other costs associated

5 with any enforcement action. If the permit is not issued,

6 the department shall return this portion of the fee to the

7 applicant.

8 (c) emissions and ambient monitoring;

9 (d) preparing generally applicable regulations or

10 guidance;

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

12 (f) preparing inventories and tracking emissions.

13 (5) In addition to the fee required under subsection

14 (4), the board may order the assessment of additional fees

15 required to fund specific activities of the department that

16 are directed at a particular geographic area if the

17 legislature authorizes the activities and appropriates the

18 funds for the activities, including emissions or ambient

19 monitoring, modeling analysis or demonstrations, or

20 emissions inventories or tracking. Additional assessments

21 may be levied only on those sources that are within or are

22 believed by the department to be impacting the geographic

23 area. Before the board may require the assessments, it shall

24 first determine, after opportunity for hearing, that the

25 activities to be funded are necessary for the administration

1 or implementation of this chapter, that the assessments

2 apportion the required funding in an equitable manner, and

3 that the department has obtained legislative authorization

4 for the expenditure and the necessary appropriation.

5 (6) As a condition of the continuing validity of

6 permits issued by the department under this part prior to

7 October 1, 1991, the department may require the permitholder

8 to pay an annual fee sufficient to cover the costs

9 identified in subsection (4).

10 (7) For any existing source of air contaminants that is

11 subject to Title V of the federal Clean Air Act, 42 U.S.C.

12 7401, et seq., as amended, and that is not required to hold

13 an air quality permit from the department as of October 1,

14 1991, the board may, as a condition of continued operation,

15 require by rule that the owner or operator of the source pay

16 the annual fee provided for in subsection (4). ~~Nothing-in~~

17 this ~~This~~ subsection may not be construed as allowing the

18 department to charge any source of air contaminants more

19 than one annual fee that is designed to cover the costs

20 identified in subsection (4).

21 (8) The fees collected by the department pursuant to

22 this section must be deposited in the state special revenue

23 fund to be appropriated by the legislature to the department

24 for the development and administration of the permitting

25 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 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 7. 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 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 or a permit pursuant to 75-10-406, whichever 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."

SECTION 8. SECTION 75-10-922, MCA, IS AMENDED TO READ:

"75-10-922. Study, evaluation, and report on proposed facility. (1) After receipt of an application, the

department shall within 90 days notify the applicant in writing that:

(a) the application is accepted as complete; or

(b) the application is not complete and list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-10-913, 75-10-914, and 75-10-916 through 75-10-922, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-10-929. The department shall use, to the extent it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Within 1 year following acceptance of a complete application for a facility, the department shall make a report to the board that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, Title 75, chapter 1, if applicable.

(4) The department shall notify each county within 15

1 miles of the proposed megalandfill at least 60 days prior to
 2 making the report to the board required pursuant to
 3 subsection (3), provided that a referendum must be held
 4 pursuant to [section 2]. Upon receiving notification from
 5 the department, each county election official shall schedule
 6 an election to be held within 90 days. If a second
 7 referendum is required pursuant to [section 2(5)], the
 8 department shall provide each county within 15 miles of the
 9 proposed facility with adequate notice to allow time to
 10 provide notice and prepare for a second election."

11 NEW SECTION. Section 9. Codification instruction. (1)
 12 [Sections 1 and 2] are intended to be codified as an
 13 integral part of Title 75, chapter 10, part 4, and the
 14 provisions of Title 75, chapter 10, part 4, apply to
 15 [sections 1 and 2].

16 (2) [Sections 1 and 2] are intended to be codified as
 17 an integral part of Title 75, chapter 10, part 9, and the
 18 provisions of Title 75, chapter 10, part 9, apply to
 19 [sections 1 and 2].

20 (3) [SECTION 5] IS INTENDED TO BE CODIFIED AS AN
 21 INTEGRAL PART OF TITLE 75, CHAPTER 2, PART 2, AND THE
 22 PROVISIONS OF TITLE 75, CHAPTER 2, PART 2, APPLY TO [SECTION
 23 5].

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


HOUSE STANDING COMMITTEE REPORT

March 29, 1993
Page 2 of 2

March 29, 1993

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 339 (third reading copy -- blue) be concurred in as amended.

Signed:  Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Harper

Insert: "or"

6. Page 9, line 3.

Strike: "OR MODIFY"

Following: "PERMIT"

Insert: "and apply the results equally to the other identified factors in the permitting process"

7. Page 19, lines 6 through 10.

Strike: "If" on line 6 through "election." on line 10

1. Page 1.

Following: line 11

Insert: "STATEMENT OF INTENT

It is the intent of the legislature that the department of health and environmental sciences give equal weight or value to a referendum held pursuant to this bill to that given to the other identified factors considered during the permitting process. It is also the intent of the legislature that there may not be more than one referendum per application."

2. Page 2.

Following: line 23

Insert: "(5) "Testing" includes but is not limited to the following activities if performed by a research and development facility whose primary purpose is to test and evaluate waste treatment remediation technologies and that receives federal or state research funds to support its operations:
(a) research and development testing; or
(b) evaluation and demonstration of waste treatment remediation technologies."

3. Page 4, lines 18 through 21.

Strike: subsection (5) in its entirety

4. Page 8, lines 21 through 25.

Strike: "If" on line 21 through "ELECTION." on line 25

5. Page 9, line 2.

Following: "GRANT"

Strike: "I"

Committee Vote:
Yes 9, No 1.

701123SC.Hss

HOUSE
SB 339

SENATE BILL NO. 339

INTRODUCED BY WEEDING, RYE, FORRESTER, ELLIOTT,

YELLOWTAIL, BARDANOUVE, MENAHAN, BROOKE, TOOLE,

BIANCHI, BARNHART, J. JOHNSON, WELDON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A LOCAL REFERENDUM ON THE LICENSING OF A MEGALANDFILL OR COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY; AMENDING SECTIONS 75-2-211, 75-2-215, 75-10-922, 75-10-929, AND 75-10-935, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

IT IS THE INTENT OF THE LEGISLATURE THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES GIVE EQUAL WEIGHT OR VALUE TO A REFERENDUM HELD PURSUANT TO THIS BILL TO THAT GIVEN TO THE OTHER IDENTIFIED FACTORS CONSIDERED DURING THE PERMITTING PROCESS. IT IS ALSO THE INTENT OF THE LEGISLATURE THAT THERE MAY NOT BE MORE THAN ONE REFERENDUM PER APPLICATION.

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

NEW SECTION. Section 1. Definitions. As used in

[section 2], the following definitions apply:

(1) (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 PURPOSE OF INCINERATION FROM ANOTHER HOSPITAL OR MEDICAL FACILITY IN MONTANA OR A STATE CONTIGUOUS TO MONTANA; OR

(II) AN OIL REFINERY THAT ACCEPTS DANGEROUS WASTE FROM AN OIL COMPANY FOR THE PURPOSE OF INCINERATION.

~~(1)~~(2) (a) "Dangerous waste" means a waste:

(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 Toxic Substances Control Act, 15 U.S.C. 2601 through 2671;

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

(iv) containing two parts per million or more of PCB.

(b) A waste generated from the recycling, treatment, storage, or disposal of a dangerous waste is a dangerous waste unless the department certifies that the waste does not exhibit a characteristic of a dangerous waste.

(c) Dangerous waste does not mean:

(i) domestic sewage; or

(ii) waste otherwise defined as dangerous when the



department certifies that the waste is to be used for testing purposes only.

{2}{3} "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for disposal of dangerous waste.

{3}{4} "Megalandfill" has the meaning as defined in 75-10-903.

(5) "TESTING" INCLUDES BUT IS NOT LIMITED TO THE FOLLOWING ACTIVITIES IF PERFORMED BY A RESEARCH AND DEVELOPMENT FACILITY WHOSE PRIMARY PURPOSE IS TO TEST AND EVALUATE WASTE TREATMENT REMEDIATION TECHNOLOGIES AND THAT RECEIVES FEDERAL OR STATE RESEARCH FUNDS TO SUPPORT ITS OPERATIONS:

(A) RESEARCH AND DEVELOPMENT TESTING; OR

(B) EVALUATION AND DEMONSTRATION OF WASTE TREATMENT REMEDIATION TECHNOLOGIES.

NEW SECTION. Section 2. Local approval by referendum of licensing of megalandfill or dangerous waste facility.

(1) Upon petition by 15% of the registered voters in any county located within 25 15 miles of the site of a proposed megalandfill or COMMERCIAL dangerous waste INCINERATION facility, a referendum must be held to determine whether THE PUBLIC SUPPORTS THE LICENSING OF the megalandfill or COMMERCIAL dangerous waste INCINERATION facility may--be licensed. A referendum may not be held after the department

has issued an operating license for the megalandfill or COMMERCIAL dangerous waste INCINERATION facility.

(2) A PETITION FOR A REFERENDUM MAY BE SUBMITTED AT ANY TIME PRIOR TO A DETERMINATION BY THE DEPARTMENT THAT AN APPLICATION FOR A LICENSE REQUIRED PURSUANT TO 75-2-211 OR FOR A CERTIFICATE REQUIRED PURSUANT TO 75-10-916 IS COMPLETE.

(3) THE EXCEPT AS PROVIDED IN SUBSECTION (3)(C), THE REFERENDUM MUST BE HELD SUBSEQUENT TO:

(A) THE COMPLETION OF ANY ENVIRONMENTAL REVIEW DOCUMENT REQUIRED PURSUANT TO TITLE 75, CHAPTER 1, PART 2; AND

(B) A HEARING CONDUCTED PURSUANT TO 75-10-924, IF REQUIRED-; AND

(C) IF THE COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY IS A BOILER OR INDUSTRIAL FURNACE, ANY MODIFICATION TO AN APPLICATION THAT IS MADE AS A RESULT OF A TEST BURN.

{2}{4} The referendum must be held in each county within 25 15 miles of the proposed location of the megalandfill or COMMERCIAL dangerous waste INCINERATION facility and must be conducted pursuant to 7-5-132 through 7-5-137.

~~{3}--if-a-majority-of-the-votes-cast-in-any-county--in-the-referendum-are-against-the-licensing-of-the-megalandfill-or-dangerous-waste-facility,--then-the-department-may-not-proceed-any-further-with--the--application--process--for--an~~

operating license granted pursuant to Title 75.

~~(4) If a majority of the votes cast in each county in the referendum favor the licensing of the megalandfill or dangerous waste facility, then the application process for an operating license granted pursuant to Title 75 may proceed, but the vote does not require the department to approve an application to license the megalandfill or dangerous waste facility.~~

~~(5) Only one referendum may be held on the licensing of a particular facility.~~

~~(5) A NEW REFERENDUM MUST BE HELD EACH TIME AN APPLICANT AMENDS AN APPLICATION. THE PETITION REQUIRED UNDER SUBSECTION (1) IS NOT REQUIRED IN ORDER TO CONDUCT A REFERENDUM UNDER THIS SUBSECTION.~~

SECTION 3. SECTION 75-10-929, MCA, IS AMENDED TO READ:

"75-10-929. Decision of board -- findings necessary for certification. (1) Within 90 days after submission of the recommended decision by the department, the board shall make complete findings, issue an opinion, and render a final decision upon the record, either granting or denying the application for a certificate as filed or granting it upon terms, conditions, or modifications of the siting of the facility as the board considers appropriate.

(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board unless

it finds and determines:

(a) the nature of the probable environmental impact;

(b) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(c) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions;

(d) that the facility will serve the public interest;

(e) any impacts of the facility according to each of the criteria listed in 75-10-920;

(f) the solid waste disposal needs listed in 75-10-920(4); and

(g) that the applicant has fully mitigated the loss of wildlife habitat, through either onsite or offsite habitat improvements.

(3) In determining that the facility will serve the public interest, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b);

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety; and

(e) the results of the referendum conducted pursuant to [section 2]; and

~~(e)~~(f) any other factors that it considers relevant."

SECTION 4. SECTION 75-10-935, MCA, IS AMENDED TO READ:

"75-10-935. Opinion issued with decision -- contents.

(1) In rendering a decision on an application for a license for a megalandfill, the department shall issue an opinion stating its reasons for the action taken.

(2) In addition to the requirements of 75-10-221, any license issued by the department shall include the following:

(a) an environmental evaluation statement related to the megalandfill being certified. The statement must include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects that cannot be avoided by issuance of the license;

(iii) problems and objections raised by other federal and state agencies and interested groups; and

(iv) alternatives to the proposed facility.

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified megalandfill site between the time of certification and completion of construction; and

(d) a statement signed by the applicant showing agreement to comply with the requirements of 75-10-901 through 75-10-945 and the conditions of the certificate; and

(e) an explanation of how the results of the referendum conducted pursuant to [section 2] affected the licensing decision."

NEW SECTION. SECTION 5. COMMERCIAL DANGEROUS WASTE INCINERATION -- REFERENDUM. (1) AS USED IN THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

(A) "COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY" HAS THE MEANING AS DEFINED IN [SECTION 1].

(B) "DANGEROUS WASTE" HAS THE MEANING DEFINED IN [SECTION 1].

(2) WHEN ISSUING A PERMIT PURSUANT TO 75-2-211 FOR A COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY, THE DEPARTMENT SHALL:

(A) REQUIRE THE APPLICANT TO PROVIDE PUBLIC NOTICE OF INTENT TO CONSTRUCT A COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY AT LEAST 6 MONTHS PRIOR TO THE

SUBMISSION OF AN APPLICATION; AND

(B) NOTIFY EACH COUNTY WITHIN 15 MILES OF THE PROPOSED COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY OF THE EXPECTED COMPLETION DATE OF AN ENVIRONMENTAL REVIEW DOCUMENT OR MODIFICATIONS TO AN APPLICATION THAT RESULT FROM A TEST BURN, PROVIDED THAT A REFERENDUM MUST BE HELD PURSUANT TO [SECTION 2]. THE NOTIFICATION MUST BE MADE AT LEAST 60 DAYS PRIOR TO THE COMPLETION OF THE ENVIRONMENTAL REVIEW DOCUMENT OR MODIFICATIONS TO AN APPLICATION THAT RESULT FROM A TEST BURN IN ORDER TO ALLOW EACH COUNTY ADEQUATE TIME TO PROVIDE NOTICE AND PREPARE FOR AN ELECTION. UPON RECEIVING NOTIFICATION FROM THE DEPARTMENT, EACH COUNTY ELECTION OFFICIAL SHALL SCHEDULE AN ELECTION TO BE HELD WITHIN 90 DAYS. IF--A--SECOND--REFERENDUM--IS--REQUIRED--PURSUANT--TO {SECTION--2(5)}--THE--DEPARTMENT--SHALL--PROVIDE--EACH--COUNTY WITHIN--15--MILES--OF--THE--PROPOSED--COMMERCIAL--DANGEROUS--WASTE INCINERATION--FACILITY--WITH--ADEQUATE--NOTICE--TO--ALLOW--TIME--TO PROVIDE--NOTICE--AND--PREPARE--FOR--A--SECOND--ELECTION.

{B}{C) CONSIDER THE RESULTS OF THE REFERENDUM CONDUCTED PURSUANT TO [SECTION 2] IN MAKING THE DECISION TO GRANT, OR DENY, OR MODIFY A PERMIT AND APPLY THE RESULTS EQUALLY TO THE OTHER IDENTIFIED FACTORS IN THE PERMITTING PROCESS.

SECTION 6. 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~~ 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

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 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 7. 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 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 or a permit pursuant to 75-10-406, whichever 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."

SECTION 8. SECTION 75-10-922, MCA, IS AMENDED TO READ:

"75-10-922. Study, evaluation, and report on proposed facility. (1) After receipt of an application, the department shall within 90 days notify the applicant in writing that:

(a) the application is accepted as complete; or

(b) the application is not complete and list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within

30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-10-913, 75-10-914, and 75-10-916 through 75-10-922, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-10-929. The department shall use, to the extent it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Within 1 year following acceptance of a complete application for a facility, the department shall make a report to the board that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, Title 75, chapter 1, if applicable.

(4) The department shall notify each county within 15 miles of the proposed megalandfill at least 60 days prior to making the report to the board required pursuant to subsection (3), provided that a referendum must be held pursuant to [section 2]. Upon receiving notification from the department, each county election official shall schedule an election to be held within 90 days. ~~if--a--second~~

~~referendum is required pursuant to [section 2(5)] the department shall provide each county within 15 miles of the proposed facility with adequate notice to allow time to provide notice and prepare for a second election."~~

NEW SECTION. Section 9. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 75, chapter 10, part 4, and the provisions of Title 75, chapter 10, part 4, apply to [sections 1 and 2].

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

(3) [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 75, CHAPTER 2, PART 2, AND THE PROVISIONS OF TITLE 75, CHAPTER 2, PART 2, APPLY TO [SECTION 5].

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 20, 1993

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

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

Dear President Van Valkenburg and Speaker Mercer:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby veto Senate Bill 339, "AN ACT PROVIDING FOR A LOCAL REFERENDUM ON THE LICENSING OF A MEGALANDFILL OR COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY; AMENDING SECTIONS 75-2-211, 75-2-215, 75-10-922, 75-10-929, AND 75-10-935, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Senate Bill 339 amends the Megalandfill Siting Act passed by the 1991 Legislature and provides an opportunity for public involvement through a local referendum on the licensing of a megalandfill or commercial dangerous waste incineration facility. Its purpose is laudatory and commendable. Its practical effect, however, will be to create additional administrative expense and time delays associated with special elections and potential litigation surrounding those elections and siting decisions.

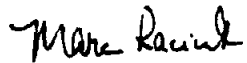
The right to public participation in siting decisions is already clearly and specifically guaranteed by the Mengalandfill Siting Act pursuant to section 75-10-926, MCA. Siting decisions are required to be made only after an extensive scientific analysis, public hearing and specific findings that comply with the Siting Act. SB 339 would add the results of a public referendum to the list of criteria to be considered by the Department of Health and Environmental Sciences in its siting decisions. That same

Gov's Veto
SB 339

Page 2
April 20, 1993

measurement can be made by the Department through the public hearing process presently provided by law.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marc Racicot".

MARC RACICOT
Governor