SENATE BILL NO. 339

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

IN THE SENATE

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.

7

23

24

25

25

1	Sowet BILL NO. 339
2	INTRODUCED BY algeding of for Torrete (It
3	Willowtal Bandanas Menghon Bushe to
4	A BILL FOR AN ACT ENTITUED: "AN ACT PROVIDING FOR A LOCAL
5	REFERENDUM ON THE LICENSING OF A MEGALANDFILL OR DANGEROUS
6	WASTE FACILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
7	
8	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
9	NEW SECTION. Section 1. Definitions. As used in
10	[section 2], the following definitions apply:
11	(1) (a) "Dangerous waste" means a waste:
12	(i) defined as hazardous under 75-10-403 or defined as
13	hazardous in department adminimstrative rules adopted
13	hazardous in department adminimstrative rules adopted pursuant to Title 75, chapter 10, part 4;
	•
14	pursuant to Title 75, chapter 10, part 4;
14 15	pursuant to Title 75, chapter 10, part 4; (ii) regulated under the Toxic Substances Control Act,
14 15 16	pursuant to Title 75, chapter 10, part 4; (ii) regulated under the Toxic Substances Control Act, 15 U.S.C. 2601 through 2671;
14 15 16 17	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
14 15 16 17	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.
14 15 16 17 18	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,
14 15 16 17 18 19	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
14 15 16 17 18 19 20	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

(ii) waste otherwise defined as dangerous when the

testing purposes only. 3 (2) "Pacility" all contiquous means land and structures, other appurtenances, and improvements on the land used for disposal of dangerous waste. (3) "Megalandfill" has the meaning as defined 75-10-903. 8 NEW SECTION. Section 2. Local approval by referendum 9 of licensing of megalandfill or dangerous waste facility. 10 (1) Upon petition by 15% of the registered voters in any 11 county located within 25 miles of the site of a proposed 12 megalandfill or dangerous waste facility, a referendum must 13 be held to determine whether the megalandfill or dangerous 14 waste facility may be licensed. A referendum may not be held 15 after the department has issued an operating license for the 16 megalandfill or dangerous waste facility. 17 (2) The referendum must be held in each county within 18 25 miles of the proposed location of the megalandfill or 19 dangerous waste facility and must be conducted pursuant to 20 7-5-132 through 7-5-137. 21 (3) If a majority of the votes cast in any county in 22 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.

department certifies that the waste is to be used for

- 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 of9 a particular facility.
- NEW SECTION. Section 3. 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].
- 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).
- NEW SECTION. Section 4. Effective date. [This act] is 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

<u>EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:</u> 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

Fiscal Note for SB0339, second reading.

APPROVED BY COMM. ON NATURAL RESOURCES

_	
2	INTRODUCED BY WEEDING, RYE, FORRESTER, ELLIOTT,
3	YELLOWTAIL, BARDANOUVE, MENAHAN, BROOKE, TOOLE,
4	BIANCHI, BARNHART, J. JOHNSON, WELDON
5	
6	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A LOCAL
7	REFERENDUM ON THE LICENSING OF A MEGALANDFILL OR COMMERCIAL
8	DANGEROUS WASTE INCINERATION FACILITY; AMENDING SECTIONS
9	75-10-929 AND 75-10-935, MCA; AND PROVIDING AN IMMEDIATE
10	EFFECTIVE DATE."
11	
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13	NEW SECTION. Section 1. Definitions. As used in
14	[section 2], the following definitions apply:
15	(1) (A) "COMMERCIAL DANGEROUS WASTE INCINERATION
16	PACILITY" MEANS A FACILITY THAT ACCEPTS, FOR THE PURPOSE OF
17	INCINERATION, DANGEROUS WASTE GENERATED BY A DIFFERENT
18	PERSON.
19	(B) COMMERCIAL DANGEROUS WASTE INCINERATION PACILITY
20	DOES NOT MEAN:
21	(I) A HOSPITAL OR OTHER MEDICAL PACILITY THAT ACCEPTS
22	DANGEROUS WASTE FOR THE PURPOSE OF INCINERATION FROM ANOTHER
23	HOSPITAL OR MEDICAL PACILITY IN MONTANA OR A STATE
24	CONTIGUOUS TO MONTANA; OR
25	(II) AN OIL REFINERY THAT ACCEPTS DANGEROUS MASTE FROM

SENATE BILL NO. 339

1	AN OIL	COMPANY	POR	THE	PURPOSE	OF	INCINERATION.
---	--------	---------	-----	-----	---------	----	---------------

- 2 (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
- .
- 5 pursuant to Title 75, chapter 10, part 4;
- 6 (ii) regulated under the Toxic Substances Control Act,
- 7 15 U.S.C. 2601 through 2671;
- (iii) defined as infectious under 75-10-1003; or
- 9 (iv) containing two parts per million or more of PCB.
- (b) A waste generated from the recycling, treatment,
- ll storage, or disposal of a dangerous waste is a dangerous
- 12 waste unless the department certifies that the waste does
- 13 not exhibit a characteristic of a dangerous waste.
 - (c) Dangerous waste does not mean:
- 15 (i) domestic sewage; or
- 16 (ii) waste otherwise defined as dangerous when the
- 17 department certifies that the waste is to be used for
- 18 testing purposes only.
- 19 (2)(3) "Facility" means all contiguous land and
- 20 structures, other appurtenances, and improvements on the
- 21 land used for disposal of dangerous waste.
- 22 (3)(4) "Megalandfill" has the meaning as defined in
- 23 75-10-903.

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



SB 0339/02

5

7

10

11

18

19

20

21

22

23

24

25

SB 0339/02

- (1) Upon petition by 15% of the registered voters in any 1 county located within 25 15 miles of the site of a proposed 2 megalandfill or COMMERCIAL dangerous waste INCINERATION 3 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 ticensed. A referendum may not be held after the department 7 has issued an operating license for the megalandfill or COMMERCIAL dangerous waste INCINERATION facility.
- 10 (2) A PETITION FOR A REFERENDUM MAY BE SUBMITTED AT ANY 11 TIME PRIOR TO A DETERMINATION BY THE DEPARTMENT THAT AN 12 APPLICATION FOR A LICENSE REQUIRED PURSUANT TO 75-2-211 OR FOR A CERTIFICATE REQUIRED PURSUANT TO 75-10-916 IS 13 14 COMPLETE.
- 15 (3) THE REFERENDUM MUST BE HELD SUBSEQUENT TO:

9

20

21

22

23

24

- (A) THE COMPLETION OF ANY ENVIRONMENTAL REVIEW DOCUMENT 16 17 REQUIRED PURSUANT TO TITLE 75, CHAPTER 1, PART 2; AND
- (B) A HEARING CONDUCTED PURSUANT TO 75-10-924, IF 18 19 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--g--majority--of-the-votes-cast-in-any-county-in 25

- 1 the-referendum-are-against-the-licensing-of-the-megalandfill 2 or-dangerous-waste-facilityy-then--the--department--may--not proceed--any--further--with--the--application-process-for-an operating-license-granted-pursuant-to-Title-75:
 - +41--If-a-majority-of-the-votes-cast-in-each--county--in the--referendum--favor--the-licensing-of-the-megalandfill-or dangerous-waste-facilityy-then-the-application--process--for an--operating--license--granted--pursuant--to--Title--75-may proceedy-but-the-vote-does-not--require--the--department--to approve--an--application--to--license--the--megalandfill--or dangerous-waste-facility:
- 12 t5)--Only-one-referendum-may-be-held-on-the-licensing-of 13 a-particular-facility;
- 14 (5) A NEW REPERENDUM MUST BE HELD EACH TIME AN 15 APPLICANT AMENDS AN APPLICATION, THE PETITION REQUIRED UNDER SUBSECTION (1) IS NOT REQUIRED IN ORDER TO CONDUCT A 16 REFERENDUM UNDER THIS SUBSECTION. 17

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

SB 339

SB 0339/02 SB 0339/02

facility as the board considers appropriate.

1

5

6 7

8

9

10 11

12

13

14

15

16

17

18

- (2) The board may not grant a certificate either as 2 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 19 20
 - the criteria listed in 75-10-920;
- (f) the solid waste disposal needs listed 21 22 75-10-920(4); and
- (g) that the applicant has fully mitigated the loss of 23 wildlife habitat, through either onsite or offsite habitat 24 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);
- (b) the benefits to the applicant and the state 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 tet(f) any other factors that it considers relevant."
- 13 SECTION 4. SECTION 75-10-935, MCA, IS AMENDED TO READ:
 - "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:

14

24

- 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:
 - (i) the environmental impact of the proposed facility;
- 25 (ii) any adverse environmental effects that cannot be

SB 339 -5-

SB 339

1 avoided by	y issuance of	the lic	ense;
--------------	---------------	---------	-------

- 2 (iii) problems and objections raised by other federal
- 3 and state agencies and interested groups; and
- (iv) alternatives to the proposed facility.
- 5 (b) a plan for monitoring environmental effects of the proposed facility:
- 7 (c) a plan for monitoring the certified megalandfill
 - site between the time of certification and completion of
- 9 construction; and
- 10 (d) a statement signed by the applicant showing
- 11 agreement to comply with the requirements of 75-10-901
- 12 through 75-10-945 and the conditions of the certificate; and
- 13 (e) an explanation of how the results of the referendum
- 14 conducted pursuant to [section 2] affected the licensing
- 15 decision."
- 16 NEW SECTION. SECTION 5. COMMERCIAL DANGEROUS WASTE
- 17 INCINERATION -- REFERENDUM. (1) AS USED IN THIS SECTION, THE
- 18 POLLOWING DEFINITIONS APPLY:
- 19 (A) "COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY"
- 20 HAS THE MEANING AS DEPINED IN [SECTION 1].
- 21 (B) "DANGEROUS WASTE" HAS THE MEANING DEFINED IN
- 22 [SECTION 1].
- 23 (2) WHEN ISSUING A PERMIT PURSUANT TO 75-2-211 FOR A
- 24 COMMERCIAL DANGEROUS WASTE INCINERATION PACILITY, THE

-7-

25 DEPARTMENT SHALL:

- 1 (A) REQUIRE THE APPLICANT TO PROVIDE PUBLIC NOTICE OF
- 2 INTENT TO CONSTRUCT A CONMERCIAL DANGEROUS WASTE
- 3 INCINERATION FACILITY AT LEAST 6 MONTHS PRIOR TO THE
- 4 SUBMISSION OF AN APPLICATION: AND
- 5 (B) CONSIDER THE RESULTS OF THE REFERENDUM CONDUCTED
- 6 PURSUANT TO [SECTION 2] IN MAKING THE DECISION TO GRANT,
- 7 DENY, OR MODIFY A PERMIT.
- 8 NEW SECTION. Section 6. Codification instruction. (1)
- 9 [Sections 1 and 2] are intended to be codified as an
- 10 integral part of Title 75, chapter 10, part 4, and the
- 11 provisions of Title 75, chapter 10, part 4, apply to
- 12 [sections 1 and 2].
- 13 (2) [Sections 1 and 2] are intended to be codified as
- 14 an integral part of Title 75, chapter 10, part 9, and the
- 15 provisions of Title 75, chapter 10, part 9, apply to
- 16 [sections 1 and 2].
- 17 (3) [SECTION 5] IS INTENDED TO BE CODIFIED AS AN
- 18 INTEGRAL PART OF TITLE 75, CHAPTER 2, PART 2, AND THE
- 19 PROVISIONS OF TITLE 75, CHAPTER 2, PART 2, APPLY TO {SECTION
- 20 <u>5].</u>
- 21 NEW SECTION. Section 7. Effective date. [This act] is
- 22 effective on passage and approval.

-End-

1	SENATE BILL NO. 339
2	INTRODUCED BY WEEDING, RYE, FORRESTER, ELLIOTT,
3	YELLOWTAIL, BARDANOUVE, MENAHAN, BROOKE, TOOLE,
4	BIANCHI, BARNHART, J. JOHNSON, WELDON
5	
6	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A LOCAL
7	REFERENDUM ON THE LICENSING OF A MEGALANDFILL OR COMMERCIAL
8	DANGEROUS WASTE INCINERATION FACILITY; AMENDING SECTIONS
9	75-2-211, 75-2-215, 75-10-922, 75-10-929, AND 75-10-935,
10	MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
11	
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13	NEW SECTION. Section 1. Definitions. As used in
14	[section 2], the following definitions apply:
15	(1) (A) "COMMERCIAL DANGEROUS WASTE INCINERATION
16	FACILITY" MEANS A FACILITY THAT ACCEPTS, FOR THE PURPOSE OF
17	INCINERATION, DANGEROUS WASTE GENERATED BY A DIFFERENT
18	PERSON.
19	(B) COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY
20	DOES NOT MEAN:
21	(I) A HOSPITAL OR OTHER MEDICAL PACILITY THAT ACCEPTS
22	DANGEROUS WASTE FOR THE PURPOSE OF INCINERATION FROM ANOTHER
23	HOSPITAL OR MEDICAL FACILITY IN MONTANA OR A STATE
24	CONTIGUOUS TO MONTANA; OR
25	(II) AN OIL REFINERY THAT ACCEPTS DANGEROUS WASTE FROM

1	AN OIL COMPANY FOR THE PURPOSE OF INCINERATION.
2	$(\pm \frac{1}{2})$ (a) "Dangerous waste" means a waste:
3	(i) defined as hazardous under 75-10-403 or defined as
4	hazardous in department administrative rules adopted
5	pursuant to Title 75, chapter 10, part 4;
6	(ii) regulated under the Toxic Substances Control Act,
7	15 U.S.C. 2601 through 2671;
8	(iii) defined as infectious under 75-10-1003; or
9	(iv) containing two parts per million or more of PCB.
10	(b) A waste generated from the recycling, treatment,
11	storage, or disposal of a dangerous waste is a dangerous
12	waste unless the department certifies that the waste does
13	not exhibit a characteristic of a dangerous waste.
14	(c) Dangerous waste does not mean:
15	(i) domestic sewage; or
16	(ii) waste otherwise defined as dangerous when the
17	department certifies that the waste is to be used for
18	testing purposes only.
19	(2)(3) "Facility" means all contiguous land and
20	structures, other appurtenances, and improvements on the
21	land used for disposal of dangerous waste.
22	$+3\frac{1}{2}$ "Megalandfill" has the meaning as defined in
23	75-10-903.

25

NEW SECTION. Section 2. Local approval by referendum

of licensing of megalandfill or dangerous waste facility.

-2-

10

11

12

13

14

15

16

21

- 1 (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.
- 10 (2) A PETITION FOR A REFERENDUM MAY BE SUBMITTED AT ANY

 11 TIME PRIOR TO A DETERMINATION BY THE DEPARTMENT THAT AN

 12 APPLICATION FOR A LICENSE REQUIRED PURSUANT TO 75-2-211 OR

 13 POR A CERTIFICATE REQUIRED PURSUANT TO 75-10-916 IS

 14 COMPLETE.
- 15 (3) THE EXCEPT AS PROVIDED IN SUBSECTION (3)(C), THE
 16 REFERENDUM MUST BE HELD SUBSEQUENT TO:

17

REQUIRED PURSUANT TO TITLE 75, CHAPTER 1, PART 2; AND

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

(A) THE COMPLETION OF ANY ENVIRONMENTAL REVIEW DOCUMENT

- 20 REQUIREDT; AND
 21 (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.
- 24 (2)(4) The referendum must be held in each county
 25 within 25 15 miles of the proposed location of the

-3-

- megalandfill or <u>COMMERCIAL</u> dangerous waste <u>INCINERATION</u>
 facility and must be conducted pursuant to 7-5-132 through
 7-5-137.
- 4 (3)--If-a-majority-of-the-votes-cast-in--any--county--in
 5 the-referendum-are-against-the-licensing-of-the-megalandfill
 6 or--dangerous--waste--facility--then-the-department-may-not
 7 proceed-any-further-with--the--application--process--for--an
 8 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--facility7-then-the-application-process-for
 an-operating--license--granted--pursuant--to--Title--75--may
 proced7--but--the--vote--does-not-require-the-department-to
 approve--an--application--to--license--the--megalandfill--or
 dangerous-waste-facility7

t5}--Only-one-referendum-may-be-held-on-the-licensing-of

- 17 a-particular-facility:

 18 (5) A NEW REFERENDUM MUST BE HELD EACH TIME AN

 19 APPLICANT AMENDS AN APPLICATION. THE PETITION REQUIRED UNDER

 20 SUBSECTION (1) IS NOT REQUIRED IN ORDER TO CONDUCT A
- 22 SECTION 3. SECTION 75-10-929, MCA, IS AMENDED TO READ:

REFERENDUM UNDER THIS SUBSECTION.

23 "75-10-929. Decision of board -- findings necessary for 24 certification. (1) Within 90 days after submission of the 25 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:

6

7

9

13 '

14

15

16

17

18

19

20

21

22

- (a) the nature of the probable environmental impact;
- 10 (b) that the facility minimizes adverse environmental
 11 impact, considering the state of available technology and
 12 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;
- 23 (e) any impacts of the facility according to each of 24 the criteria listed in 75-10-920;
- 25 (f) the solid waste disposal needs listed in

- 1 75-10-920(4); and
- 2 (g) that the applicant has fully mitigated the loss of 3 wildlife habitat, through either onsite or offsite habitat 4 improvements.
- 5 (3) In determining that the facility will serve the public interest, the board shall consider:
- 7 (a) the items listed in subsections (2)(a) and (2)(b);
- 8 (b) the benefits to the applicant and the state
 9 resulting from the proposed facility;
- 10 (c) the effects of the economic activity resulting from
 11 the proposed facility;
- (d) the effects of the proposed facility on the public health, welfare, and safety; and
- 14 (e) the results of the referendum conducted pursuant to
 15 [section 2]; and
- SECTION 4. SECTION 75-10-935, MCA, IS AMENDED TO READ:
- 18 "75-10-935. Opinion issued with decision -- contents.
- 19 (1) In rendering a decision on an application for a license
- 20 for a megalandfill, the department shall issue an opinion
- 21 stating its reasons for the action taken.
- 22 (2) In addition to the requirements of 75-10-221, any
- 23 license issued by the department shall include the
- 24 following:
- 25 (a) an environmental evaluation statement related to

SB 0339/03

1 [SECTION 1].

	the megalandrill being certified. The statement must include
2	but not be limited to analysis of the following information
3	(i) the environmental impact of the proposed facility;
ı	(ii) any adverse environmental effects that cannot be
5	avoided by issuance of the license;
5	(iii) problems and objections raised by other federal
7	and state agencies and interested groups; and
3	(iv) alternatives to the proposed facility.
•	(b) a plan for monitoring environmental effects of the
)	· proposed facility;
L	(c) a plan for monitoring the certified megalandfil
2	site between the time of certification and completion of
3	construction; and
1	(d) a statement signed by the applicant showing
5	agreement to comply with the requirements of 75-10-90
5	through 75-10-945 and the conditions of the certificate; and
7	(e) an explanation of how the results of the referendum
3	conducted pursuant to [section 2] affected the licensing
9	decision."
0	NEW SECTION. SECTION 5. COMMERCIAL DANGEROUS WAS
1	INCINERATION REPERENDUM. (1) AS USED IN THIS SECTION, TH
2	FOLLOWING DEFINITIONS APPLY:
3	(A) "COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY
4	HAS THE MEANING AS DEPINED IN [SECTION 1].

_	
2	(2) WHEN ISSUING A PERMIT PURSUANT TO 75-2-211 FOR A
3	COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY, TH
4	DEPARTMENT SHALL:
5	(A) REQUIRE THE APPLICANT TO PROVIDE PUBLIC NOTICE OF
6	INTENT TO CONSTRUCT A COMMERCIAL DANGEROUS WAST
7	INCINERATION FACILITY AT LEAST 6 MONTHS PRIOR TO TH
8	SUBMISSION OF AN APPLICATION; AND
9	(B) NOTIFY EACH COUNTY WITHIN 15 MILES OF THE PROPOSE
10	COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY OF TH
11	EXPECTED COMPLETION DATE OF AN ENVIRONMENTAL REVIEW DOCUMENT
12	OR MODIFICATIONS TO AN APPLICATION THAT RESULT FROM A TEST
13	BURN, PROVIDED THAT A REFERENDUM MUST BE HELD PURSUANT TO
14	[SECTION 2]. THE NOTIFICATION MUST BE MADE AT LEAST 60 DAY
15	PRIOR TO THE COMPLETION OF THE ENVIRONMENTAL REVIEW DOCUMEN
16	OR MODIFICATIONS TO AN APPLICATION THAT RESULT FROM A TES
17	BURN IN ORDER TO ALLOW EACH COUNTY ADEQUATE TIME TO PROVID
18	MOTICE AND PREPARE FOR AN ELECTION. UPON RECEIVIN
19	NOTIFICATION FROM THE DEPARTMENT, EACH COUNTY ELECTIO
20	OFFICIAL SHALL SCHEDULE AN ELECTION TO BE HELD WITHIN 9
21	DAYS. IF A SECOND REFERENDUM IS REQUIRED PURSUANT T
22	[SECTION 2(5)], THE DEPARTMENT SHALL PROVIDE EACH COUNT
23	WITHIN 15 MILES OF THE PROPOSED COMMERCIAL DANGEROUS WAST
24	INCINERATION FACILITY WITH ADEQUATE NOTICE TO ALLOW TIME T
25	PROVIDE NOTICE AND PREPARE FOR A SECOND ELECTION.
	PROVIDE NOTICE AND PREPARE FOR A SECOND ELECTION.

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

L	(B) (C)	CONSIDER	THE I	RESULTS C	F THE	REFERENDUM	CONDUCTED
2	PURSUANT TO	[SECTION	2] II	N MAKING	THE	DECISION	TO GRANT,
3	DENY. OR MO	DIFY A PEI	RMIT.				

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

21

22

23

24

25

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.
- 19 (b) The board shall by rule provide for the renewal of 20 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
- 10 (3) Not later than 180 days before construction, 11 installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility which that 12 13 the board finds may directly or indirectly cause or 14 contribute to air pollution or which that is intended primarily to prevent or control the emission of air 15 pollutants, the owner or operator shall file with the 16 17 department the appropriate permit application on forms 18 available from the department.

department as of November 2, 1992.

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:

SB 0339/03 SB 0339/03

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

(a) reviewing and acting upon the application;

1

3

6 7

8

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

- (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;
- 9 (d) preparing generally applicable regulations or 10 guidance;
 - (e) modeling, analysis, and demonstrations; and
 - (f) preparing inventories and tracking emissions.
 - (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.
- 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).
 - (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.

-11- SB 339

SB 0339/03

(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.

1

2

3

4

5

14

15

16

17

- 7 . (b) An appeal must be based upon the allegation that
 8 the fee assessment is erroneous or excessive. An appeal may
 9 not be based only on the amount of the fee schedule adopted
 10 by the board.
- 12 (c) If any part of the fee assessment is not appealed,
 12 it must be paid to the department upon receipt of the notice
 13 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).
- 18 (10) Nothing-in-this <u>This</u> section shall <u>does not</u>

 19 restrict the board's authority to adopt regulations

 20 providing for a single air quality permit system.
- 21 (11) The department may, for good cause shown, waive or 22 shorten the time required for filing the appropriate 23 applications.
- 24 (12) The department shall require that applications for 25 permits be accompanied by any plans, specifications, and

l other information it considers necessary.

- 2 (13) An application is not considered filed until the
 3 applicant has submitted all fees and information and
 4 completed all application forms required by subsections (3)
 5 through (7) and (12). However, if the department fails to
 6 notify the applicant in writing within 30 days after the
 7 purported filing of an application that the application is
 8 incomplete and fails to list the reasons why the application
 9 is considered incomplete, the application is considered
 10 filed as of the date of the purported filing.
- (14) (a) Where <u>When</u> 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

-14- SB 339

16

17

18

24

25

SB 0339/03

SB 0339/03 SB 0339/03

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.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

- (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:

-15-

24 *75-2-215. Solid or hazardous waste incineration -25 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:
- 5 (a) a new solid or hazardous waste incinerator that is 6 designed to burn more than 200 pounds an hour of solid or 7 hazardous waste; or
- 8 (b) an existing or permitted solid or hazardous waste
 9 incinerator that is designed to burn more than 200 pounds an
 10 hour of solid or hazardous waste and that incinerates or
 11 would incinerate solid or hazardous waste in an amount,
 12 form, kind, or content different from its designed or
 13 permitted operation or that incinerates or would incinerate
 14 any solid or hazardous waste that changes the nature,
 15 character, or composition of its emissions.
- 16 (2) The department may not issue a permit to a facility
 17 described in subsection (1) until:
- 18 (a) the owner or operator has provided to the 19 department's satisfaction:
- 20 (i) a characterization of emissions and ambient 21 concentrations of air pollutants, including hazardous air 22 pollutants, from any existing incineration at the facility; 23 and
- (ii) an estimate of emissions and ambient concentrationsof air pollutants, including hazardous air pollutants, from

2

5

6

7

- the incineration of solid or hazardous waste as proposed in the permit application or modification;
- 3 (b) the public has had an opportunity to review and 4 comment on the permit application or modification; and

5

б

7

8

12

13

14

15

16

17

18

19

20

21

22

- (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
- 9 (d) the department has issued a license pursuant to
 10 75-10-221 or a permit pursuant to 75-10-406, whichever is
 11 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."
- 23 SECTION 8. SECTION 75-10-922, MCA, IS AMENDED TO READ: 24 "75-10-922. Study, evaluation, and report on proposed 25 facility. (1) After receipt of an application, the

-17-

- department shall within 90 days notify the applicant in writing that:
- 3 (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.
- 9 (2) Upon receipt of an application complying with 10 75-10-913, 75-10-914, and 75-10-916 through 75-10-922, the 11 department shall commence an intensive study and evaluation 12 of the proposed facility and its effects, considering all applicable criteria listed in 75-10-929. The department 13 shall use, to the extent it considers applicable, valid and 14 15 useful existing studies and reports submitted by the applicant or compiled by a state or federal agency. 16
- 17 (3) Within 1 year following acceptance of a complete 18 application for a facility, the department shall make a report to the board that must contain the department's 19 studies, evaluations, recommendations, 20 other pertinent 21 documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant 22 23 to the Montana Environmental Policy Act, Title 75, chapter 24 1, if applicable.
- 25 (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
- 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
 - 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 <u>5].</u>

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

HOUSE STANDING COMMITTEE REPORT

March 29, 1993 Page 1 of 2

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

Signed: Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Harper

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: ","

Committee Vote:

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

SB 0339/04

53rd Legislature

SB 0339/04

1	SENATE BILL NO. 339
2	INTRODUCED BY WEEDING, RYE, FORRESTER, ELLIOTT,
3	YELLOWTAIL, BARDANOUVE, MENAHAN, BROOKE, TOOLE,
4	BIANCHI, BARNHART, J. JOHNSON, WELDON
5	
6	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A LOCAL
7	REFERENDUM ON THE LICENSING OF A MEGALANDFILL OR COMMERCIAL
8	DANGEROUS WASTE INCINERATION FACILITY; AMENDING SECTIONS
9	75-2-211, 75-2-215, 75-10-922, 75-10-929, AND 75-10-935,
10	MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
11	
12	STATEMENT OF INTENT
13	IT IS THE INTENT OF THE LEGISLATURE THAT THE DEPARTMENT
14	OF HEALTH AND ENVIRONMENTAL SCIENCES GIVE EQUAL WEIGHT OR
15	VALUE TO A REFERENDUM HELD PURSUANT TO THIS BILL TO THAT
16	GIVEN TO THE OTHER IDENTIFIED FACTORS CONSIDERED DURING THE
17	PERMITTING PROCESS. IT IS ALSO THE INTENT OF THE LEGISLATURE
18	THAT THERE MAY NOT BE MORE THAN ONE REFERENDUM PER
19	APPLICATION.
20	
21	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
22	NEW SECTION. Section 1. Definitions. As used in
23	[section 2], the following definitions apply:
24	(1) (A) "COMMERCIAL DANGEROUS WASTE INCINERATION
25	PACTITITY" MEANS & PACTITITY THAT ACCEPTS, POR THE PURPOSE OF

DANGEROUS	WASTE	GENE	RATED	BY	A	DIFFE	RENT
ERCIAL DANGE	ROUS W	ASTE	INCIN	ERAT	ION	FACI	LITY
<u>.</u>							
SPITAL OR	OTHER M	EDICAL	FAC1	LITY	THA	T ACC	CEPTS
TE FOR THE P	URPOSE	OF INC	INERA	TION	FRO	M ANO	THER
MEDICAL FA	CILITY	IN I	ONTAN	A OI	R	A S	STATE
MONTANA; OR	<u>t</u>						
DIL REFINER	Y THAT	ACCEP!	rs dan	GERO	US V	ASTE	FROM
FOR THE PU	JRPOSE O	F INC	NERAT	ION.			
a) "Dangerou	ıs waste	" mear	ns a w	aste	:		
ned as hazar	dous un	der 79	5-10-4	03 o	r de	fined	as as
ı departme	ent ađ	minist	rativ	e r	ules	ado	pted
itle 75, cha	pter 10	, part	t 4 ;				
lated under	the Tox	ic Sul	stanc	es i	Cont	rol	Act,
L through 26	571;						
ined as infe	ctious	under	75-10	-100	3; (or	
aining two p	arts pe	r mil	lion o	r 110	re d	of PCI	3.
						-	
				0			
	SPITAL OR SPITAL OR E FOR THE P MEDICAL FA MONTANA; OR OIL REFINER (FOR THE PU a) "Dangerou ded as hazar department tile 75, cha lated under through 26 ined as infer aining two pu aste general isposal of a the depart characteris	ERCIAL DANGEROUS WEDSPITAL OR OTHER MEDICAL FACILITY MONTANA; OR DIL REFINERY THAT OF FOR THE PURPOSE OF THE PU	ERCIAL DANGEROUS WASTE OSPITAL OR OTHER MEDICAL THE FOR THE PURPOSE OF INC. MEDICAL FACILITY IN MONTANA; OR OIL REFINERY THAT ACCEPT TO THE PURPOSE OF INC. TO	ERCIAL DANGEROUS WASTE INCIN DESPITAL OR OTHER MEDICAL FACI THE FOR THE PURPOSE OF INCINERAL MEDICAL FACILITY IN MONTAN MONTANA; OR DIL REFINERY THAT ACCEPTS DAN MONTANA; FOR THE PURPOSE OF INCINERAT A) "Dangerous waste" means a wated as hazardous under 75-10-4 Med as hazardous under 75-10-4 Med as infectious under 75-10 Mining two parts per million of a stee generated from the recy Misposal of a dangerous waste The department certifies the characteristic of a dangerous MEDICAL FACILITY IN MONTAN MONTANA; OR DIL REFINERY THAT ACCEPTS DAN MINING THE PURPOSE OF INCINERAL MEDICAL FACILITY IN MONTAN MONTANA; OR DIL REFINERY THAT ACCEPTS DAN MEDICAL FACILITY IN MONTAN MEDICAL FACILITY MEDICAL FACILITY MEDICAL FACILITY MEDICAL FACILITY MEDICAL FACILITY MONTAN MONTAN MONTAN MONTAN MEDICAL FACILITY MONTAN MONTAN MONTAN MEDICAL FACILITY MONTAN MONTAN MEDICAL FACILITY MONTAN MEDICAL FACILITY MONTAN MONTAN MONTAN MONTAN MONTAN MONTAN MONTAN MONTAN MONTAN MONTA	ERCIAL DANGEROUS WASTE INCINERATION DESPITAL OR OTHER MEDICAL FACILITY MEDICAL FACILITY IN MONTANA OR DIL REFINERY THAT ACCEPTS DANGEROR OF FOR THE PURPOSE OF INCINERATION. A) "Dangerous waste" means a waste and as hazardous under 75-10-403 or and department administrative related to the state of the department of the recycling of the department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic of a dangerous waste department certifies that the characteristic department certifies that the characteristic department certifi	ERCIAL DANGEROUS WASTE INCINERATION DESPITAL OR OTHER MEDICAL FACILITY THAT MEDICAL FACILITY IN MONTANA OR MEDICAL FACILITY IN MONTANA OR DIL REFINERY THAT ACCEPTS DANGEROUS W MEDICAL FACILITY IN MONTANA OR DIL REFINERY THAT ACCEPTS DANGEROUS W MEDICAL FACILITY IN MONTANA OR DIL REFINERY THAT ACCEPTS DANGEROUS W MEDICAL FACILITY IN MONTANA OR MEDICAL FACILITY IN MONTANA OR DIL REFINERY THAT ACCEPTS DANGEROUS W MEDICAL FACILITY IN MONTANA OR DIL REFINERY THAT ACCEPTS DANGEROUS W MEDICAL FACILITY IN MONTANA OR MEDICAL FACILITY I	ERCIAL DANGEROUS WASTE INCINERATION FACE SPITAL OR OTHER MEDICAL FACILITY THAT ACC SE FOR THE PURPOSE OF INCINERATION FROM AND MEDICAL FACILITY IN MONTANA OR A SE MONTANA; OR OIL REFINERY THAT ACCEPTS DANGEROUS WASTE (FOR THE PURPOSE OF INCINERATION. (a) "Dangerous waste" means a waste: ned as hazardous under 75-10-403 or defined the department administrative rules add the 75, chapter 10, part 4; ated under the Toxic Substances Control through 2671; aned as infectious under 75-10-1003; or aning two parts per million or more of PCI aste generated from the recycling, treatm isposal of a dangerous waste is a danger the department certifies that the waste characteristic of a dangerous waste.



SB 0339/04

SB 0339/04

- department certifies that the waste is to be used for
 testing purposes only.
- 3 (2)(3) "Facility" means all contiguous land and
 4 structures, other appurtenances, and improvements on the
 5 land used for disposal of dangerous waste.
- 6 (3)(4) "Megalandfill" has the meaning as defined in 75-10-903.
- 8 (5) "TESTING" INCLUDES BUT IS NOT LIMITED TO THE
- 9 FOLLOWING ACTIVITIES IF PERFORMED BY A RESEARCH AND
- 10 DEVELOPMENT FACILITY WHOSE PRIMARY PURPOSE IS TO TEST AND
- 11 EVALUATE WASTE TREATMENT REMEDIATION TECHNOLOGIES AND THAT
- 12 RECEIVES FEDERAL OR STATE RESEARCH FUNDS TO SUPPORT ITS
 - OPERATIONS:

13

19

- 14 (A) RESEARCH AND DEVELOPMENT TESTING; OR
- 15 (B) EVALUATION AND DEMONSTRATION OF WASTE TREATMENT
- 16 REMEDIATION TECHNOLOGIES.
- 17 NEW SECTION. Section 2. Local approval by referendum
- 18 of licensing of megalandfill or dangerous waste facility.
 - (1) Upon petition by 15% of the registered voters in any
- 20 county located within 25 15 miles of the site of a proposed
- 21 megalandfill or COMMERCIAL dangerous waste INCINERATION
- 22 facility, a referendum must be held to determine whether THE
- 23 PUBLIC SUPPORTS THE LICENSING OF the megalandfill or
- 24 COMMERCIAL dangerous waste INCINERATION facility may--be
- 25 licensed. A referendum may not be held after the department

-3-

- has issued an operating license for the megalandfill or COMMERCIAL dangerous waste INCINERATION facility.
- 3 (2) A PETITION FOR A REFERENDUM MAY BE SUBMITTED AT ANY
- 4 TIME PRIOR TO A DETERMINATION BY THE DEPARTMENT THAT AN
- 5 APPLICATION FOR A LICENSE REQUIRED PURSUANT TO 75-2-211 OR
- 6 FOR A CERTIFICATE REQUIRED PURSUANT TO 75-10-916 IS
- 7 COMPLETE.
- 8 (3) THE EXCEPT AS PROVIDED IN SUBSECTION (3)(C), THE
- 9 REFERENDUM MUST BE HELD SUBSEQUENT TO:
- 10 (A) THE COMPLETION OF ANY ENVIRONMENTAL REVIEW DOCUMENT
- 11 REQUIRED PURSUANT TO TITLE 75, CHAPTER 1, PART 2; AND
- 12 (B) A HEARING CONDUCTED PURSUANT TO 75-10-924, IF
- 13 REQUIRED+; AND
- 14 (C) IF THE COMMERCIAL DANGEROUS WASTE INCINERATION
- 15 FACILITY IS A BOILER OR INDUSTRIAL FURNACE, ANY MODIFICATION
- 16 TO AN APPLICATION THAT IS MADE AS A RESULT OF A TEST BURN.
- 17 (2)(4) The referendum must be held in each county
 - within 25 15 miles of the proposed location of the
- 19 megalandfill or COMMERCIAL dangerous waste INCINERATION
- 20 facility and must be conducted pursuant to 7-5-132 through
- 21 7-5-137.

- 22 †3)--If-a-majority-of-the-votes-cast-in--any--county--in
- 23 the-referendum-are-against-the-licensing-of-the-megalandfill
- 24 or--dangerous--waste--facility;--then-the-department-may-not
- 25 proceed-any-further-with--the--application--process--for--an

SB 0339/04 SB 0339/04

operating-license-granted-pursuant-to-Title-75:

1

2

3

7

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

(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;

- 9 (5)--Only-one-referendum-may-be-held-on-the-licensing-of
 10 a-particular-facility:
 - <u>(5)--A--NEW--REPERENDUM--MUST--BE--HELD--EACH--TIME---AN APPLICANT-AMENDS-AN-APPLICATION:-THE-PETITION-REQUIRED-UNDER BUBSBEGTION--(1)--IS--NOT--REQUIRED--IN--ORDER--TO--CONDUCT-A REPERENDUM-UNDER-THIS-SUBSECTION:</u>

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

- l it finds and determines:
- ! (a) the nature of the probable environmental impact;
- 3 (b) that the facility minimizes adverse environmental
 4 impact, considering the state of available technology and
- 5 the nature and economics of the various alternatives;
- 6 (c) that the location of the facility as proposed 7 conforms to applicable state and local laws and regulations,
- 8 except that the board may refuse to apply any local law or
- 9 regulation if it finds that, as applied to the proposed
- 10 facility, the law or regulation is unreasonably restrictive
- in view of the existing technology, of factors of cost or
- 12 economics, or of the needs of consumers, whether located
- 13 inside or outside of the directly affected government
- 14 subdivisions:

- (d) that the facility will serve the public interest;
- 16 (e) any impacts of the facility according to each of 17 the criteria listed in 75-10-920:
- 18 (f) the solid waste disposal needs listed in 19 75-10-920(4); and
- 20 (g) that the applicant has fully mitigated the loss of 21 wildlife habitat, through either onsite or offsite habitat 22 improvements.
- 23 (3) In determining that the facility will serve the 24 public interest, the board shall consider:
- 25 (a) the items listed in subsections (2)(a) and (2)(b);

1	(b)	the	benefits	to	the	applicant	and	the	state
2	resulting from the proposed				facil	ity;			

- 3 (c) the effects of the economic activity resulting from 4 the proposed facility;
- 5 (d) the effects of the proposed facility on the public
 6 health, welfare, and safety; and
- 7 (e) the results of the referendum conducted pursuant to 8 [section 2]; and
- 9 te>(f) any other factors that it considers relevant."

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

- 11 "75-10-935. Opinion issued with decision -- contents.
- 12 (1) In rendering a decision on an application for a license
- 13 for a megalandfill, the department shall issue an opinion
- 14 stating its reasons for the action taken.
- 15 (2) In addition to the requirements of 75-10-221, any
- 16 license issued by the department shall include the
- 17 following:

20

21

- 18 (a) an environmental evaluation statement related to
- 19 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;
- 22 (ii) any adverse environmental effects that cannot be
- 23 avoided by issuance of the license;
- 24 (iii) problems and objections raised by other federal
- 25 and state agencies and interested groups; and

- 1 (iv) alternatives to the proposed facility.
- 2 (b) a plan for monitoring environmental effects of the
- 3 proposed facility;
- 4 (c) a plan for monitoring the certified megalandfill
- 5 site between the time of certification and completion of
- 6 construction; and
- 7 (d) a statement signed by the applicant showing
- 8 agreement to comply with the requirements of 75-10-901
- 9 through 75-10-945 and the conditions of the certificate; and
- 10 (e) an explanation of how the results of the referendum
- 11 conducted pursuant to [section 2] affected the licensing
- 12 decision."
- 13 NEW SECTION. SECTION 5. COMMERCIAL DANGEROUS WASTE
- 14 INCINERATION -- REFERENDUM. (1) AS USED IN THIS SECTION, THE
- 15 FOLLOWING DEFINITIONS APPLY:
- 16 (A) "COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY"
- 17 HAS THE MEANING AS DEFINED IN [SECTION 1].
- 18 (B) "DANGEROUS WASTE" HAS THE MEANING DEFINED IN
- 19 [SECTION 1].
- 20 (2) WHEN ISSUING A PERMIT PURSUANT TO 75-2-211 FOR A
- 21 COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY, TH
- 22 DEPARTMENT SHALL:
- 23 (A) REQUIRE THE APPLICANT TO PROVIDE PUBLIC NOTICE OF
- 24 INTENT TO CONSTRUCT A COMMERCIAL DANGEROUS WASTE
- 25 INCINERATION FACILITY AT LEAST 6 MONTHS PRIOR TO THE

-8- SB 339

SB 0339/04 SB 0339/04

SUBMISSION OF AN APPLICATION; AND

1

19

20

21

- 2 (B) NOTIFY EACH COUNTY WITHIN 15 MILES OF THE PROPOSED 3 COMMERCIAL DANGEROUS WASTE INCINERATION FACILITY OF THE 4 EXPECTED COMPLETION DATE OF AN ENVIRONMENTAL REVIEW DOCUMENT 5 OR MODIFICATIONS TO AN APPLICATION THAT RESULT FROM A TEST 6 BURN, PROVIDED THAT A REFERENDUM MUST BE HELD PURSUANT TO 7 [SECTION 2]. THE NOTIFICATION MUST BE MADE AT LEAST 60 DAYS 8 PRIOR TO THE COMPLETION OF THE ENVIRONMENTAL REVIEW DOCUMENT 9 OR MODIFICATIONS TO AN APPLICATION THAT RESULT FROM A TEST 10 BURN IN ORDER TO ALLOW EACH COUNTY ADEQUATE TIME TO PROVIDE 11 NOTICE AND PREPARE FOR AN ELECTION. UPON RECEIVING NOTIFICATION FROM THE DEPARTMENT, EACH COUNTY ELECTION 12 13 OFFICIAL SHALL SCHEDULE AN ELECTION TO BE HELD WITHIN 90 DAYS. IF--A--SECOND--REFERENDUM--IS--REQUIRED--PURSUANT--TO 14 15 {SECTION--2+5+}--THE--DEPARTMENT--SHALL-PROVIDE-EACH-COUNTY 16 WITHIN-15-MILES-OP-THE-PROPOSED-COMMERCIAL--DANGEROUS--WASTE 17 INCINERATION--PACILITY-WITH-ADEQUATE-NOTICE-TO-ALLOW-TIME-TO 18 PROVIDE-NOTICE-AND-PREPARE-POR-A-SECOND-ELECTION-
- (B)(C) CONSIDER THE RESULTS OF THE REFERENDUM CONDUCTED PURSUANT TO [SECTION 2] IN MAKING THE DECISION TO GRANT, OR DENYT--OR--MODIFY A PERMIT AND APPLY THE RESULTS EQUALLY TO 22 THE OTHER IDENTIFIED FACTORS IN THE PERMITTING PROCESS.
- 23 SECTION 6. SECTION 75-2-211, MCA, IS AMENDED TO READ: 24 *75-2-211. Permits for construction, installation, 25 alteration, or use. (1) The department shall provide for the

-9-

- issuance, suspension, revocation, and renewal of a permit issued under this part.
- 3 (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 seg., as amended, the provisions of this section apply in addition to the other applicable provisions of this chapter.
- 8 (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 10 beyond that required by the federal Clean Air Act, 42 U.S.C. 11 7401, et seq., as amended. 12
- 13 (b) The board shall by rule provide for the renewal of permits issued to the sources. 14
- (c) The board shall by rule establish a transition 15 schedule for air quality permits held by sources of air 16 17 contaminants subject to the provisions of subsection (2). The transition schedule must specify dates for the 18 expiration of the permits, absent an application for renewal 19 by the source. The transition schedule may not specify 20 21 expiration dates that are earlier in time than those 22 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

23

24

SB 0339/04 SB 0339/04

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

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

- (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

- 2 (c) emissions and ambient monitoring;
- 3 (d) preparing generally applicable regulations or
- 4 guidance;

applicant.

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

SB 339

-11- SB 339 -12-

21

by the board.

October 1, 1991, the department may require the permitholder to pay an annual fee sufficient to cover the costs identified in subsection (4).

5

7

8

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

- (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.

-13-

- 1 (b) An appeal must be based upon the allegation that
 2 the fee assessment is erroneous or excessive. An appeal may
 3 not be based only on the amount of the fee schedule adopted
- 5 (c) If any part of the fee assessment is not appealed, 6 it must be paid to the department upon receipt of the notice 7 in subsection (9)(a).
- 8 (d) The contested case provisions of the Montana
 9 Administrative Procedure Act provided for in Title 2,
 10 chapter 4, apply to any hearing before the board under this
 11 subsection (9).
- 12 (10) Nothing---in--this <u>This</u> section shall <u>does not</u>

 13 restrict the board's authority to adopt regulations

 14 providing for a single air quality permit system.
- 15 (11) The department may, for good cause shown, waive or 16 shorten the time required for filing the appropriate 17 applications.
- 18 (12) The department shall require that applications for 19 permits be accompanied by any plans, specifications, and 20 other information it considers necessary.
- 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

(13) An application is not considered filed until the

-14- SB 339

SB 339

SB 0339/04

SB 0339/04

1.3

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

-16-

-15- SB 339

SB 339

SB 0339/04 SB 0339/04

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
- hour of solid or hazardous waste and that incinerates or
- 5 would incinerate solid or hazardous waste in an amount.
- form, kind, or content different from its designed or 6
- 7 permitted operation or that incinerates or would incinerate
- 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
 - concentrations of air pollutants, including hazardous air
- pollutants, from any existing incineration at the facility; 16
- 17 and

15

19

1

- 18 (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 20
- 21 the permit application or modification:
- 22 (b) the public has had an opportunity to review and
- 23 comment on the permit application or modification; and
- (c) the department has reached a determination that the 24
- 25 projected emissions and ambient concentrations will

- constitute a negligible risk to the public health, safety,
- and welfare and to the environment; and
- 3 (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
- 7 pollution control equipment, engineering, or other operating
- 8 procedures as necessary to provide reductions of air
- 9 pollutants, including hazardous air pollutants, equivalent
- to or more stringent than those achieved through the best 10
- 11 available control technology.
- (4) This section does not relieve an owner or operator 12
- of a solid or hazardous waste incinerator that is not 13
- included under subsection (1) from the obligation to obtain 14
- 15 any permit otherwise required under this chapter or rules
- 16 implementing this chapter."
- 17 SECTION 8. SECTION 75-10-922, MCA, IS AMENDED TO READ:
- *75-10-922. Study, evaluation, and report on proposed 18
- 19 facility. (1) After receipt of an application,
- 20 department shall within 90 days notify the applicant in
- 21 writing that:

22

- (a) the application is accepted as complete; or
- 23 (b) the application is not complete and list the deficiencies. Upon correction of these deficiencies and
- 25
 - resubmission by the applicant, the department shall within

SB 0339/04

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

3

5

7

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

- (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.
 - 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. #f--a--second

- 1 referendum-is-required-pursuant--to--{section--2(5)}7--the
- 2 department--shall-provide-each-county-within-15-miles-of-the
- 3 proposed-facility-with-adequate--notice--to--allow--time--to
- 4 provide-notice-and-prepare-for-a-second-election-"
- 5 <u>NEW SECTION.</u> Section 9. Codification instruction. (1)
- 6 [Sections 1 and 2] are intended to be codified as an
- 7 integral part of Title 75, chapter 10, part 4, and the
- 8 provisions of Title 75, chapter 10, part 4, apply to
 - sections 1 and 2).
- 10 (2) [Sections 1 and 2] are intended to be codified as
- 11 an integral part of Title 75, chapter 10, part 9, and the
- 12 provisions of Title 75, chapter 10, part 9, apply to
- 13 [sections 1 and 2],
- 14 (3) [SECTION 5] IS INTENDED TO BE CODIFIED AS AN
- 15 INTEGRAL PART OF TITLE 75, CHAPTER 2, PART 2, AND THE
- PROVISIONS OF TITLE 75, CHAPTER 2, PART 2, APPLY TO [SECTION
- 17 5].
- NEW SECTION. Section 10. Effective date. [This act] is
- 19 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,

MARC RACICOT

Governor