

SENATE BILL 356

Introduced by Doherty, et al.

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1 *Senate* BILL NO. *356*
 2 INTRODUCED BY *Donnelly, Kerk, Perry, Wilson, B. Baulch, Rice, Weldon, Wendling, Doherty, Schaefer, Wokosch, J. J. Ham, W. J. West, Yellowtail, McArthur, [unclear], [unclear]*
 3 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN APPLICANT
 4 TO PREPARE AN ENVIRONMENTAL AND WORKER SAFETY LAW VIOLATION
 5 DISCLOSURE STATEMENT BEFORE BEING ISSUED CERTAIN STATE
 6 PERMITS; PROHIBITING STATE AND LOCAL GOVERNMENTS FROM
 7 CONTRACTING WITH CERTAIN PERSONS WHO HAVE RECENTLY VIOLATED
 8 ENVIRONMENTAL OR WORKER SAFETY LAWS; DEFINING ENVIRONMENTAL
 9 LAWS; REQUIRING A COMPLIANCE AUDIT FOR ENVIRONMENTAL OR
 10 WORKER SAFETY LAW VIOLATORS; IMPOSING ADDITIONAL
 11 REQUIREMENTS ON THE ISSUANCE, TRANSFER, MODIFICATION, AND
 12 RENEWAL OF CERTAIN PERMITS; INCREASING THE PENALTIES FOR
 13 REPEATED VIOLATIONS OF CERTAIN LAWS; AMENDING SECTIONS
 14 7-5-4302, 18-4-301, 18-4-313, 75-2-211, 75-3-202, 75-5-303,
 15 75-5-401, 75-6-112, 75-7-207, 75-10-221, 75-10-406,
 16 75-10-933, 75-10-1006, 75-20-201, 82-4-121, 82-4-221,
 17 82-4-226, 82-4-331, 82-4-335, 82-4-422, AND 82-11-134, MCA."

STATEMENT OF INTENT

18 A statement of intent is required for this bill because
 19 the bill gives the board and department of natural resources
 20 and conservation, the board and department of health and
 21 environmental sciences, the state lands commission, and the
 22 department of state lands the authority to adopt

1 administrative rules. It is the intent of the legislature
 2 that only persons with the integrity and competence to act
 3 in good faith to protect the public health, Montana workers,
 4 and Montana's environment should be permitted to do business
 5 in the state. Towards that goal, it is the intent of the
 6 legislature that persons recently convicted of criminal
 7 offenses that threaten or injure the public health or the
 8 environment should not be allowed to operate in this state,
 9 that state and local governments should not do business with
 10 those persons, and that in order to protect the public
 11 health, worker safety, and the environment, decisionmakers
 12 in state and local governments should consider an
 13 applicant's past performance when reviewing permit
 14 applications.

15 This legislation is intended to foster a business
 16 climate in Montana that favors responsible business
 17 operators over those who chronically violate laws and rules
 18 protecting public health, worker safety, and the
 19 environment. It is intended to both complement and enhance
 20 the effectiveness of existing law while creating minimal
 21 added regulatory responsibility for state agencies.

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

23 NEW SECTION. Section 1. Definitions. Unless the
 24 context requires otherwise, in [sections 1 through 7 and 33]
 25

the following definitions apply:

(1) "Decisionmaker" means the department or board that has the authority to issue a permit.

(2) "Environmental protection law" means:

(a) a law contained in or administrative rule adopted pursuant to:

(i) Title 75, chapter 2, 3, 5, 6, 7, 10, 11, 15, or 20;

(ii) Title 82, chapter 4 or 11;

(b) a law contained in or administrative rule adopted pursuant to the:

(i) federal Solid Disposal Waste Act as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 to 6992k;

(ii) federal Water Pollution Control Act, 33 U.S.C. 1151, et seq.;

(iii) federal Clean Air Act, 42 U.S.C. 7401 to 7671q;

(iv) federal Public Health Service Act, 42 U.S.C. 300f to 300j-26;

(v) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 to 9675;

(vi) Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1988, 7 U.S.C. 136 to 136y;

(vii) Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 to 394;

(viii) federal Lacey Act, 16 U.S.C. 667 to 669, 18

U.S.C. 42;

(ix) federal Toxic Substances Control Act, 15 U.S.C. 2601 to 2671;

(x) federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 to 1211 and 1231 to 1328; or

(xi) General Mining Law of 1872, 30 U.S.C. 22 to 47; or

(c) laws or administrative rules in other states that implement a federal law identified in subsection (2)(b).

(3) "OSHA" means the federal Occupational Health and Safety Administration established pursuant to the federal Occupational Health and Safety Act of 1970, 29 U.S.C. 651.

(4) "Permit" means a permit or license granted under an environmental protection law.

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

(6) "Principal" means the principal of a corporation with respect to the applicant and includes a partner, associate, officer, parent corporation, subsidiary corporation, contractor, subcontractor, or agent of an applicant.

NEW SECTION. Section 2. Disclosure statement required.

(1) A permit may not be issued, renewed, transferred, or modified without an application under this section. Before

1 an application for the issuance, renewal, transfer, or
2 modification of a permit may be granted, the applicant and
3 each principal shall submit to the decisionmaker a
4 disclosure statement containing the following information:

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

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

12 (c) a description of all pending criminal complaints
13 filed within the 5 years before the date of the application
14 that allege the violation of an environmental protection law
15 against the applicant or principal;

16 (d) a description of all judgments of criminal
17 conviction entered against the applicant or principal for
18 the violation of an environmental protection law within 5
19 years before the date of the application;

20 (e) a description of all OSHA complaints filed within 5
21 years before the date of the application that allege the
22 violation of OSHA laws or regulations against the applicant
23 or principal and whether any complaint resulted in a civil
24 or administrative penalty or a criminal conviction; and

25 (f) the location of all facilities at which the

1 applicant or principal carries out the type of activities
2 that would be allowed under the permit to which the
3 application refers.

4 (2) A disclosure statement provided for in subsection
5 (1) must be executed under oath or affirmation and is
6 subject to the penalty for perjury. The decisionmaker may
7 investigate the information contained in a statement
8 required under this section.

9 (3) A person required to file a disclosure statement
10 under this section shall provide assistance or information
11 requested by the decisionmaker to effectuate the purpose of
12 this section and shall cooperate in an inquiry or
13 investigation conducted by the department under this
14 section.

15 (4) If after receiving a request to answer an inquiry
16 or produce information, evidence, or testimony, a person
17 refuses to comply, the decisionmaker shall deny the
18 application.

19 NEW SECTION. Section 3. Permit issuance and transfer
20 criteria. (1) The decisionmaker shall deny an application
21 for the issuance or transfer of a permit if the
22 decisionmaker finds that:

23 (a) the applicant or a principal has intentionally
24 misrepresented or concealed a material fact in the statement
25 required under [section 2];

(b) a judgment of criminal conviction as described in [section 2] has been entered against the applicant or principal within 5 years before the date of the application;

(c) the applicant or principal is not in compliance with an environmental cleanup order or has failed to pay a civil or administrative penalty required by a civil or administrative complaint described in [section 2]; or

(d) the applicant or principal has forfeited a bond required under an environmental protection law.

(2) The decisionmaker may, in accordance with [section 6], deny an application for the issuance or transfer of a permit if the decisionmaker finds that the applicant or principal has violated an environmental protection law or OSHA law.

NEW SECTION. Section 4. Permit renewal and modification criteria. The decisionmaker may deny an application for the renewal or modification of a permit if the decisionmaker finds that the applicant or principal has violated an environmental protection law or OSHA law. In the case of a criminal conviction described in [section 2] or of repeated environmental protection law or OSHA law violations described in [section 2], the decisionmaker shall hold a public hearing regarding permit renewal if:

(1) the decisionmaker determines that a public hearing is in the public interest; or

(2) the decisionmaker receives a petition that requests a public hearing and that is signed by at least 25 Montana citizens or a party that commented on the permit application.

NEW SECTION. Section 5. Self-monitoring privileges. If the decisionmaker finds that the applicant or principal has violated an environmental protection law or OSHA law as described in [section 2], a decisionmaker may prohibit a permit holder from performing self-monitoring to determine permit compliance. After a self-monitoring prohibition has been imposed, the decisionmaker shall require the permit holder to pay for the full costs of permit compliance monitoring.

NEW SECTION. Section 6. Mitigation factors. Before making a decision to deny an application for the issuance, renewal, transfer, or modification of a permit under [section 3(2)] or [section 4], a decisionmaker shall consider the following mitigating factors:

(1) the nature and the details of the acts attributed to the applicant or principal;

(2) with respect to an administrative or civil complaint described in [section 2], whether the matter has been resolved;

(3) with respect to a civil or administrative complaint, a criminal complaint, or a judgment of conviction

1 described in [section 2], whether an appeal is pending;
 2 (4) the degree of culpability of the applicant or
 3 principal;
 4 (5) the applicant's or principal's cooperation with the
 5 state or federal agencies involved in the complaints and
 6 convictions described in [section 2];
 7 (6) the applicant's or principal's dissociation from
 8 any other person or entity convicted of acts described in
 9 [section 2];
 10 (7) whether the best interests of the public will be
 11 served by denial of the application; and
 12 (8) a demonstration of good citizenship by the
 13 applicant or principal.

14 NEW SECTION. Section 7. Compliance audit. (1) The
 15 decisionmaker shall require a permitholder who has been
 16 criminally convicted of violating an environmental
 17 protection law to undergo an environmental audit, as
 18 provided in this section, at the permitholder's expense.

19 (2) The department shall appoint an auditor to complete
 20 the environmental audit. The auditor must have:
 21 (a) no prior involvement in the management of the
 22 permitholder's organization; and
 23 (b) demonstrated abilities to carry out the audit.

24 (3) The scope of the audit is limited to the
 25 investigation of:

1 (a) all possible causes of the offense for which the
 2 permitholder was convicted; and
 3 (b) possible measures that could be undertaken to
 4 prevent a reoccurrence.

5 (4) The audit is also limited to the permitholder's
 6 facility where the offense occurred and all other facilities
 7 under the control of the permitholder in which, in the
 8 opinion of the auditor:
 9 (a) processes, practices, or policies are employed that
 10 are similar to those employed at the facility where the
 11 offense occurred; and
 12 (b) similar violations could reasonably be expected to
 13 occur.

14 (5) The auditor shall prepare and submit an audit
 15 report to the decisionmaker within the time specified by the
 16 decisionmaker. The audit report must identify the causes of
 17 the violation and recommend specific measures that could be
 18 taken to prevent a reoccurrence. The auditor may not
 19 recommend a measure that would require the violation of an
 20 environmental protection law.

21 (6) Based on the criteria in subsection (7), the
 22 decisionmaker may modify existing permits at any of the
 23 permitholder's facilities identified under subsection (4) to
 24 incorporate recommendations contained in the audit report.
 25 The decisionmaker may modify the permits immediately or upon

1 application for permit renewal or transfer.

2 (7) In determining whether to modify a permit under
3 subsection (6), the decisionmaker shall consider whether:

4 (a) the recommendation is likely to achieve the results
5 intended;

6 (b) the technology exists to implement the
7 recommendation;

8 (c) remedial or mitigating action previously taken has
9 accomplished the intent of the recommendation; and

10 (d) the cost of implementation outweighs the benefits.

11 (8) The decisionmaker may require a permit holder to pay
12 for an environmental audit under this section after two or
13 more civil penalty assessments for the violation of an
14 environmental protection law.

15 **Section 8.** Section 7-5-4302, MCA, is amended to read:

16 "7-5-4302. Competitive, advertised bidding required for
17 certain purchase and construction contracts. (1) Except as
18 provided in 7-5-4303 or 7-5-4310, all contracts for the
19 purchase of any an automobile, truck, other vehicle, road
20 machinery, other machinery, apparatus, appliances, or
21 equipment, for any materials or supplies of any kind, or for
22 construction, repair, or maintenance for which must be paid
23 a sum exceeding \$10,000 must be let to the lowest
24 responsible bidder, as defined in 18-4-301, after
25 advertisement for bids.

1 (2) Such The advertisement ~~shall~~ must be made in the
2 official newspaper of the city or town if there be--such is
3 an official newspaper, and if not, it ~~shall~~ must be made in
4 a daily newspaper of general circulation published in the
5 city or town if there be--such is one and, otherwise, by
6 posting in three of the most public places in the city or
7 town. Such The advertisement, if by publication in a
8 newspaper, ~~shall~~ must be made once each week for 2
9 consecutive weeks, and the second publication ~~shall~~ must be
10 made not less than 5 days or more than 12 days before the
11 consideration of bids. If such the advertisement is made by
12 posting, 15 days must elapse, including the day of posting,
13 between the time of the posting of such the advertisement
14 and the day set for considering bids.

15 (3) The council may postpone action as to any such
16 contract until the next regular meeting after bids are
17 received in response to such the advertisement and may
18 reject any and all bids and readvertise as provided herein
19 in this section."

20 **Section 9.** Section 18-4-301, MCA, is amended to read:

21 "18-4-301. Definitions. As used in this part, the
22 following definitions apply:

23 (1) "Cost-reimbursement contract" means a contract
24 under which a contractor is reimbursed for costs which are
25 allowable and allocable in accordance with the contract

terms and the provisions of this chapter, and a fee, if any.

(2) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee. The term does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

(3) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(4) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(5) "Office supply" means an item included under the office supply commodity class codes maintained by the department.

(6) "Purchase description" means the words used in a solicitation to describe the supplies or services to be

purchased and includes specifications attached to or made a part of the solicitation.

(7) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(8) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance. To qualify as a responsible bidder, prospective bidders shall certify that:

(a) they have not engaged in an activity that would preclude the issuance of a permit under [section 3(1)]; and

(b) in the past 5 years, they have not had an application for a permit issuance, renewal, transfer, or modification denied under [section 3 or 4].

(9) "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

(10) "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time."

Section 10. Section 18-4-313, MCA, is amended to read:

"18-4-313. Contracts — terms, extensions, and time limits. (1) Unless otherwise provided by law, no a contract, lease, or rental agreement for supplies or services may not

be made for a longer period than 3 years; however, the department may contract for the lease or purchase of telecommunications equipment and systems, data processing equipment, and the department of social and rehabilitation services medicaid management information system (MMIS) for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed, notwithstanding the time limits stated in this section, if the terms of the extension or renewal, if any, are included in the solicitation and funds are available for the first fiscal period at the time of the agreement. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds therefor for the obligations.

(2) Prior to the extension or renewal of a contract, it must be determined in writing that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement; and

(c) the contractor is a responsible bidder as defined in 18-4-301.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a

subsequent fiscal period, the contract must be canceled."

Section 11. 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. Permits issued, renewed, transferred, or modified under this part must comply with the provisions of [sections 1 through 6].

(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

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 the
 13 board finds may directly or indirectly cause or contribute
 14 to air pollution or which is intended primarily to prevent
 15 or control the emission of air pollutants, the owner or
 16 operator shall file with the department the appropriate
 17 permit application on forms available from the department.

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

25 (a) reviewing and acting upon the application;

1 (b) implementing and enforcing the terms and conditions
 2 of the permit if the permit is issued. However, this amount
 3 does not include any court costs or other costs associated
 4 with any enforcement action. If the permit is not issued,
 5 the department shall return this portion of the fee to the
 6 applicant.

7 (c) emissions and ambient monitoring;

8 (d) preparing generally applicable regulations or
 9 guidance;

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

11 (f) preparing inventories and tracking emissions.

12 (5) In addition to the fee required under subsection
 13 (4), the board may order the assessment of additional fees
 14 required to fund specific activities of the department that
 15 are directed at a particular geographic area if the
 16 legislature authorizes the activities and appropriates the
 17 funds for the activities, including emissions or ambient
 18 monitoring, modeling analysis or demonstrations, or
 19 emissions inventories or tracking. Additional assessments
 20 may be levied only on those sources that are within or are
 21 believed by the department to be impacting the geographic
 22 area. Before the board may require the assessments, it shall
 23 first determine, after opportunity for hearing, that the
 24 activities to be funded are necessary for the administration
 25 or implementation of this chapter, that the assessments

1 apportion the required funding in an equitable manner, and
2 that the department has obtained legislative authorization
3 for the expenditure and the necessary appropriation.

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

9 (7) For any existing source of air contaminants that is
10 subject to Title V of the federal Clean Air Act, 42 U.S.C.
11 7401, et seq., as amended, and that is not required to hold
12 an air quality permit from the department as of October 1,
13 1991, the board may, as a condition of continued operation,
14 require by rule that the owner or operator of the source pay
15 the annual fee provided for in subsection (4). ~~Nothing-in~~
16 ~~this~~ This subsection may not be construed as allowing the
17 department to charge any source of air contaminants more
18 than one annual fee that is designed to cover the costs
19 identified in subsection (4).

20 (8) The fees collected by the department pursuant to
21 this section must be deposited in the state special revenue
22 fund to be appropriated by the legislature to the department
23 for the development and administration of the permitting
24 requirements in this chapter.

25 (9) (a) The department shall give written notice of the

1 amount of the fee to be assessed and the basis for the
2 department's fee assessment under this section to the owner
3 or operator of the air contaminant source. The owner or
4 operator may appeal the department's fee assessment to the
5 board within 20 days after receipt of the written notice.

6 (b) An appeal must be based upon the allegation that
7 the fee assessment is erroneous or excessive. An appeal may
8 not be based only on the amount of the fee schedule adopted
9 by the board.

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

13 (d) The contested case provisions of the Montana
14 Administrative Procedure Act provided for in Title 2,
15 chapter 4, apply to any hearing before the board under this
16 subsection (9).

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

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

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

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

10 (14) (a) Where an application for a permit requires the
 11 compilation of an environmental impact statement under the
 12 Montana Environmental Policy Act, the department shall
 13 notify the applicant in writing of the approval or denial of
 14 the application within:

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

18 (ii) within 30 days after issuance of the final
 19 environmental impact statement by the lead agency if a state
 20 agency other than the department has been designated by the
 21 governor as lead agency for preparation of the environmental
 22 impact statement.

23 (b) However, where an application does not require the
 24 compilation of an environmental impact statement, the
 25 department shall notify the applicant in writing within 60

1 days of the receipt of a filed application, as defined in
 2 subsection (13), of the approval or denial of the
 3 application. Notification of approval or denial may be
 4 served personally or by registered-or certified mail on the
 5 applicant or his the applicant's agent.

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

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

20 **Section 12.** Section 75-3-202, MCA, is amended to read:

21 "75-3-202. Licensing and registration. (1) The
 22 department may provide by rule for general or specific
 23 licensing of persons to receive, possess, or transfer
 24 radioactive materials and devices or equipment utilizing
 25 such the materials. The rules shall must provide for

1 amendment, suspension, or revocation of licenses pursuant to
 2 75-3-401 and 75-3-403. Licenses issued, renewed,
 3 transferred, or modified under this part must comply with
 4 the provisions of [sections 1 through 6].

5 (2) Each application for a specific license shall must
 6 be in writing and shall must state such the information as
 7 the department by rule may determine to be necessary to
 8 decide the technical, insurance, and financial
 9 qualifications or any other qualification of the applicant
 10 as the department considers reasonable and necessary to
 11 protect the occupational and public health and safety. The
 12 department may, at any time after the filing of the
 13 application and before the expiration of the license,
 14 require further written statements and may make such
 15 inspections as the department considers necessary in order
 16 to determine whether the license should be granted, denied,
 17 modified, suspended, or revoked. All applications and
 18 statements shall must be signed by the applicant or
 19 licensee. The department may require an application or
 20 statement to be made under oath or affirmation.

21 (3) Each license shall must be in such a form and
 22 contain such terms and conditions as the department may by
 23 rule prescribe.

24 (4) No A license issued pursuant to the provisions of
 25 this chapter and no a right to possess or utilize sources of

1 ionizing radiation granted by any license may not be
 2 assigned or in any manner disposed of.

3 (5) The terms and conditions of all licenses shall-be
 4 are subject to amendment, revision, or modification by rules
 5 or orders issued in accordance with the provisions of this
 6 chapter.

7 (6) The department may require registration and
 8 inspection of persons dealing with sources of ionising
 9 radiation which do not require a specific license and may
 10 require compliance with specific safety standards to be
 11 promulgated by the department.

12 (7) The department is authorized to exempt certain
 13 users from the licensing or registration requirements set
 14 forth in this section when the department makes a finding
 15 that the exemption of the users will not constitute a
 16 significant risk to the health and safety of the public.

17 (8) Rules promulgated pursuant to this chapter may
 18 provide for recognition of such other state or federal
 19 licenses as the department considers desirable, subject to
 20 such registration requirements as the department
 21 prescribes."

22 **Section 13.** Section 75-5-303, MCA, is amended to read:

23 "75-5-303. Nondegradation policy. The board shall
 24 require:

25 (1) that any state waters whose existing quality is

higher than the established water quality standards be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of these waters; and

(2) any industrial, public, or private project or development which would constitute a new source of pollution or an increased source of pollution to high-quality waters, referred to in subsection (1), to provide the degree of waste treatment necessary to maintain that existing high water quality.

(3) Board action allowing a change in water quality under subsection (1) must comply with the provisions of [sections 1 through 6]."

Section 14. Section 75-5-401, MCA, is amended to read:

"75-5-401. Board rules for permits. (1) The board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. Permits issued, renewed, transferred,

or modified under this part must comply with the provisions of [sections 1 through 6].

(2) The rules shall must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department insures that such the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules shall provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of disposal systems for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety."

Section 15. Section 75-6-112, MCA, is amended to read:

"75-6-112. Prohibited acts. A person may not:

(1) discharge sewage, drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;

(2) discharge sewage, drainage, industrial waste, or other waste into any state waters or on the banks of any state waters or into any abandoned or operating water well unless the sewage, drainage, industrial waste, or other waste is treated as prescribed by the board;

(3) build or operate any railroad, logging road, logging camp, or electric or manufacturing plant of any kind on any watershed of a public water supply system unless:

(a) the water supply is protected from pollution by sanitary precautions prescribed by the board; and

(b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;

(4) commence construction, alteration, or extension of any system of water supply, water distribution, sewer, drainage, wastewater, or sewage disposal before he the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications. Approvals issued,

renewed, or modified under this part must comply with the provisions of [sections 1 through 6].

(5) operate or maintain any public water supply system which exceeds a maximum contaminant level established by the board unless he the person has been granted or has an application pending for a variance or exemption pursuant to this part;

(6) violate any provision of this part or rule adopted under this part; or

(7) violate any condition or requirement of an approval issued pursuant to this part."

Section 16. Section 75-7-207, MCA, is amended to read:

"75-7-207. Regulations for issuance of permits. (1) ~~Before--January--17--1976,--every~~ Each governing body having jurisdiction over an area containing a lake shall adopt regulations in the form of criteria for the issuance or denial of permits for work in lakes.

(2) Where a planning board has been created under 76-1-104 for an area containing a lake, the governing body shall seek the recommendations of the planning board as to the regulations to be adopted under this part.

(3) The local governing body may provide a summary procedure to permit work which it finds has a minimal or insignificant impact on a lakeshore.

(4) A governing body whose area contains more than one

lake may adopt regulations in differing form for the various lakes, recognizing the physical and social differences between lakes.

(5) The requirements of 75-7-208 are minimum requirements and do not restrict a local governing body from adopting such stricter or additional regulations as may be authorized by other statutes.

(6) Permits issued, renewed, transferred, or modified under this part must comply with the provisions of [sections 1 through 6]."

Section 17. Section 75-10-221, MCA, is amended to read:

"75-10-221. License required -- application. (1) Except as provided in 75-10-214, no a person may not dispose of solid waste or operate a solid waste management system without a license from the department. Licenses issued, renewed, transferred, or modified under this part must comply with the provisions of [sections 1 through 6].

(2) The department shall provide application forms for a license as provided in this part.

(3) The application ~~shall~~ must contain the name and business address of the applicant, the location of the proposed solid waste management system, a plan of operation and maintenance, and such other information as the department may by rule require.

(4) The license provided for in this section is for a

period not to exceed 12 months unless renewed by the department. The department may provide exceptions to the 12-month requirement for a 2-year period following July 1, 1991.

(5) The department may require submission of a new application if the department determines that the plan of operation, the management of the solid waste system, or the geological or ground water conditions have changed since the license was initially approved.

(6) In establishing fees for licenses and the review of applications, the department shall consider the volume of waste to be managed and the size of the proposed solid waste management system. The fees must encourage reduction in the volume of waste to be managed and cover the costs to the department of initially reviewing and annually licensing the solid waste management system."

Section 18. Section 75-10-406, MCA, is amended to read:

"75-10-406. Permits. (1) A person may not construct or operate a hazardous waste management facility without first obtaining a permit from the department for the facility, except that the department may, by rule, prescribe conditions under which specified hazardous wastes or specified quantities of hazardous waste may be disposed of at solid waste disposal sites licensed by the department pursuant to Title 75, chapter 10, part 2. Permits issued,

1 renewed, transferred, or modified under this part must
2 comply with the provisions of [sections 1 through 6].

3 (2) Any person who wishes to construct or operate a
4 hazardous waste management facility shall apply to the
5 department for a permit on forms provided by the department.
6 An application must contain, at a minimum, the name and
7 business address of the applicant, the location of the
8 proposed facility, a plan of operation and maintenance, and
9 a description of pertinent site characteristics.

10 (3) A permit may be issued for a period specified by
11 the department and is subject to renewal by the department
12 upon a showing that the facility has been operated in
13 accordance with the terms of the permit and the rules
14 applicable to the facility and in compliance with the
15 provisions of this part and any applicable order of the
16 board or department.

17 (4) Any permit issued is subject to revocation by the
18 department for failure of the permittee to comply with the
19 terms and conditions of the permit, the department rules, an
20 order of the board or the department, or the provisions of
21 this part. Any person who is denied a permit by the
22 department or who has a permit revoked or modified shall be
23 afforded an opportunity for a hearing before the board upon
24 written application made within 30 days after service of
25 notice of denial, revocation, or modification by mail.

1 Service by mail is complete upon mailing.

2 (5) Notwithstanding any other provisions of this part,
3 the department may, in the event of an imminent and
4 substantial danger to public health or the environment,
5 issue a temporary emergency permit to any person for
6 treatment, storage, or disposal of hazardous waste or to any
7 facility to handle hazardous waste not covered by the
8 existing facility permit. Emergency permits may be oral or
9 written, may not exceed 90 days in duration, and may be
10 terminated by the department at any time prior to 90 days.

11 (6) The department may, as it considers appropriate,
12 grant permits by rule to classes or categories of hazardous
13 waste management facilities where the facility owner or
14 operator is already licensed or permitted by the department
15 pursuant to other state environmental statutes or where an
16 interim period exists until final administrative disposition
17 of a permit application is made.

18 (7) In permits issued under this section, the
19 department shall require corrective action for all releases
20 of hazardous waste or constituents at a treatment, storage,
21 or disposal facility, including corrective action for
22 releases that extend beyond the facility boundaries if
23 necessary to protect public health or the environment. A
24 permit must contain a schedule of compliance for corrective
25 action and requirements for assurance of financial

1 responsibility for completion of the corrective action.

2 (8) Each permit issued by the department to a person
3 owning or operating a facility must contain the terms and
4 conditions the department considers necessary to protect
5 human health and the environment."

6 **Section 19.** Section 75-10-933, MCA, is amended to read:

7 "75-10-933. License required. (1) A person may not
8 commence to construct a megalandfill in the state without
9 first applying for and obtaining a license pursuant to
10 75-10-221. The licensing process must be concurrent with the
11 certification process required in 75-10-916 through
12 75-10-930. Licenses issued, renewed, transferred, or
13 modified under this part must comply with the provisions of
14 [sections 1 through 6].

15 (2) The department shall make the decision to grant or
16 deny the license within 30 days of the certification
17 decision, as provided in 75-10-929.

18 (3) Once a license has been issued, a megalandfill may
19 not be constructed, operated, or maintained except in
20 conformity with the license and any terms, conditions, and
21 modifications contained in the license."

22 **Section 20.** Section 75-10-1006, MCA, is amended to
23 read:

24 "75-10-1006. Licensing and regulation -- rulemaking
25 authority. (1) A board or department of the state that

1 licenses a profession, occupation, or health care facility
2 that generates infectious waste shall require each licensee
3 to comply with this part as a condition of licensure. The
4 board or department shall adopt rules to implement this part
5 and may impose and adjust annual fees commensurate with the
6 costs of regulation. Licenses issued, renewed, transferred,
7 or modified under this part must comply with the provisions
8 of [sections 1 through 6].

9 (2) A profession, occupation, or health care facility
10 that generates or transports infectious waste or that
11 operates treatment, storage, or disposal facilities
12 regulated by this part that is not already licensed by a
13 board or department under subsection (1) must obtain a
14 permit annually from the department. The department shall
15 adopt rules to implement this part and may establish an
16 annual fee commensurate with the costs of regulation. Fees
17 collected under the provisions of this part must be
18 deposited in the solid waste management account established
19 in 75-10-117."

20 **Section 21.** Section 75-20-201, MCA, is amended to read:

21 "75-20-201. Certificate required -- operation in
22 conformance -- certificate for nuclear facility --
23 applicability to federal facilities. (1) A person may not
24 commence to construct a facility in the state without first
25 applying for and obtaining a certificate of environmental

1 compatibility and public need issued with respect to the
 2 facility by the board. Certificates issued, renewed,
 3 transferred, or modified under Title 75, chapter 20, part 3,
 4 and this part must comply with the provisions of [sections 1
 5 through 6].

6 (2) A facility with respect to which a certificate is
 7 issued may not thereafter be constructed, operated, or
 8 maintained except in conformity with the certificate and any
 9 terms, conditions, and modifications contained therein in
 10 the certificate.

11 (3) A certificate may only be issued pursuant to this
 12 chapter.

13 (4) If the board decides to issue a certificate for a
 14 nuclear facility, it shall report such the recommendation to
 15 the applicant and may not issue the certificate until such
 16 the recommendation is approved by a majority of the voters
 17 in a statewide election called by initiative or referendum
 18 according to the laws of this state.

19 (5) This chapter applies, to the fullest extent allowed
 20 by federal law, to all federal facilities and to all
 21 facilities over which an agency of the federal government
 22 has jurisdiction."

23 **Section 22.** Section 82-4-121, MCA, is amended to read:

24 "82-4-121. Permit required. No A person may not
 25 commence preparatory work until the operator ~~shall~~--have

1 first has obtained from the department a mine-site location
 2 permit for a new strip mine or a new underground mine or a
 3 permit under part 2 of this chapter, if the application for
 4 such the permit includes an appropriate long-range mining
 5 plan acceptable to the department. Permits issued, renewed,
 6 transferred, or modified under this part must comply with
 7 the provisions of [sections 1 through 6]."

8 **Section 23.** Section 82-4-221, MCA, is amended to read:

9 "82-4-221. Mining permit required. (1) An operator may
 10 not engage in strip or underground mining without having
 11 first obtained from the department a permit designating the
 12 area of land affected by the operation⁷, which The
 13 designation ~~shall~~ must include all lands reasonably
 14 anticipated to be mined or otherwise affected during the
 15 applicable 5-year period. Permits issued, renewed,
 16 transferred, or modified under this part must comply with
 17 the provisions of [sections 1 through 6]. The permit ~~shall~~
 18 must authorize the operator to engage in strip or
 19 underground mining upon the area of land described in his
 20 the application and designated in the permit for a period of
 21 5 years from the date of its issuance. Such The permit ~~shall~~
 22 be is renewable upon each 5-year anniversary thereafter upon
 23 application to the department at least 120 but not more than
 24 150 days prior to the renewal date so long as the operator
 25 is in compliance with the requirements of this part, the

1 rules hereunder adopted under this part, and the reclamation
 2 plan provided for in 82-4-231 and agrees to comply with all
 3 applicable laws and rules in effect at the time of renewal.
 4 Such ~~The~~ renewal ~~shall-further-be~~ is subject to the denial
 5 provisions of 82-4-227, 82-4-234, and 82-4-251. On
 6 application for renewal, the burden ~~shall--be~~ is on the
 7 opponents of renewal to demonstrate that the permit should
 8 not be renewed. A permit ~~shall-terminate~~ terminates if the
 9 permittee has not commenced strip- or underground-mining
 10 operations pursuant to the permit within 3 years of the
 11 issuance of the permit. However, the department may grant
 12 reasonable extensions of time upon a showing that such the
 13 extensions are necessary by reason of litigation precluding
 14 the commencement or threatening substantial economic loss to
 15 the permittee or by reason of conditions beyond the control
 16 and without the fault or negligence of the permittee. With
 17 respect to coal to be mined for use in a synthetic fuel
 18 facility or specific major electric generating facility, the
 19 permittee is considered to have commenced strip- or
 20 underground-mining operations at such the time as that the
 21 construction of the synthetic or generating facility is
 22 initiated.

23 (2) As a condition to the issuance of every permit
 24 issued under this part, an authorized representative of the
 25 department shall, without advance notice, have the right of

1 entry to, upon, or through a strip- or underground-mining
 2 operation or any premises in which any records required to
 3 be maintained under this part are located and may, at
 4 reasonable times and without delay, have access to copy any
 5 records and inspect any monitoring equipment or method of
 6 operation required under this part. When an inspection
 7 results from information provided to the department by any
 8 person, the department shall notify that person when the
 9 inspection is proposed to be made and that person shall be
 10 allowed to accompany the inspector during the inspection.

11 (3) During the term of the permit, the permittee may
 12 submit an application for a revision of the permit, together
 13 with a revised reclamation plan, to the department. The
 14 department may not approve the application unless it finds
 15 that reclamation in accordance with this part would be
 16 accomplished. Application for minor revision shall be
 17 approved or disapproved within a reasonable time, depending
 18 on the scope and complexity, but in no case longer than 120
 19 days. Applications for major revisions are subject to all
 20 the permit application requirements and procedures."

21 **Section 24.** Section 82-4-226, MCA, is amended to read:

22 "82-4-226. Prospecting permit. (1) ~~On-and-after-March~~
 23 ~~167-19737-prospecting~~ Prospecting by any person on land not
 24 included in a valid strip-mining or underground-mining
 25 permit ~~shall--be~~ is unlawful without possessing a valid

1 prospecting permit issued by the department as provided in
2 this section. No A prospecting permit shall may not be
3 issued until the person submits an application, the
4 application is examined, amended if necessary, and approved
5 by the department, and adequate reclamation performance bond
6 is posted, all of which prerequisites must be done in
7 conformity with the requirements of this part. Permits
8 issued, renewed, transferred, or modified under this part
9 must comply with the provisions of [sections 1 through 6].

10 (2) An application for a prospecting permit shall must
11 be made in writing, notarized, and submitted to the
12 department in duplicate upon forms prepared and furnished by
13 it. The application shall must include among other things a
14 prospecting map and a prospecting reclamation plan of
15 substantially the same character as required for a
16 surface-mining or underground-mining map and reclamation
17 plan under this part. The department shall determine by
18 rules the precise nature of such the required prospecting
19 map and reclamation plan. Any applicant who intends to
20 prospect by means of core drilling shall specify the
21 location and number of holes to be drilled, methods to be
22 used in sealing aquifers, and such other information as may
23 be required by the department. The applicant must state what
24 types of prospecting and excavating techniques will be
25 employed on the affected land. The application shall must

1 also include any other or further information the department
2 may require.

3 (3) The application shall must be accompanied by a fee
4 of \$100. This fee shall must be used as a credit toward the
5 strip-mining or underground-mining permit fee provided by
6 this part if the area covered by the prospecting permit
7 becomes covered by a valid surface-mining or
8 underground-mining permit obtained before or at the time the
9 prospecting permit expires.

10 (4) Before the department gives final approval to the
11 prospecting permit application, the applicant shall file
12 with the department a reclamation and revegetation bond in a
13 form and in an amount as determined in the same manner for
14 strip-mining or underground-mining reclamation and
15 revegetation bonds under this part.

16 (5) In the event that the holder of a prospecting
17 permit desires to strip mine or underground mine the area
18 covered by the prospecting permit and has fulfilled all the
19 requirements for a strip-mining or underground-mining
20 permit, the department may permit the postponement of the
21 reclamation of the acreage prospected if that acreage is
22 incorporated into the complete reclamation plan submitted
23 with the application for a strip-mining or
24 underground-mining permit. Any land actually affected by
25 prospecting or excavating under a prospecting permit and not

covered by the strip-mining or underground-mining reclamation plan ~~shall~~ must be promptly reclaimed.

(6) The prospecting permit ~~shall-be~~ is valid for 1 year and ~~shall--be~~ is subject to renewal, suspension, and revocation in the same manner as strip-mining or underground-mining permits under this part.

(7) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under this part."

Section 25. Section 82-4-331, MCA, is amended to read:

"82-4-331. Exploration license required -- employees included -- limitation. (1) A person may not engage in exploration in the state without first obtaining an exploration license from the board. A license must be issued for a period of 1 year from date of issue and is renewable from year to year on application. An application for renewal must be filed within 30 days preceding the expiration of the current license and be accompanied by payment of a fee as required for a new license. A license may not be renewed if the applicant for renewal is in violation of any provision of this part. A license is subject to suspension and revocation as provided by this part. Notwithstanding the provisions of 82-4-332, exploration licenses issued,

renewed, transferred, or modified under this part must comply with the provisions of [sections 1 through 6].

(2) Employees of persons holding a valid license under this part are included in and covered by the license.

(3) A person may not be issued an exploration license if that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond unless that person meets the conditions described in 82-4-360."

Section 26. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit -- limitation -- fees. (1)

A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the board. A separate operating permit is required for each complex. Permits issued, renewed, transferred, or modified under this part must comply with the provisions of [sections 1 through 6].

(2) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating permit for that part of his the operation where when the cyanide ore-processing reagent will be used or disposed of.

1 (3) Prior to receiving an operating permit from the
 2 board, a person shall pay the basic permit fee of \$25. The
 3 department may require a person who is applying for a permit
 4 pursuant to subsection (1) to pay an additional fee not to
 5 exceed the actual amount of contractor and employee expenses
 6 beyond the normal operating expenses of the department
 7 whenever those expenses are reasonably necessary to provide
 8 for timely and adequate review of the application, including
 9 any environmental review conducted under Title 75, chapter
 10 1, parts 1 and 2. The department may further define these
 11 expenses by rule. Whenever the department determines that an
 12 additional fee is necessary and the additional fee will
 13 exceed \$5,000, the department shall notify the applicant
 14 that a fee must be paid and submit to the applicant an
 15 itemized estimate of the proposed expenses. The department
 16 shall provide the applicant an opportunity to review the
 17 department's estimated expenses. The applicant may indicate
 18 which proposed expenses the applicant considers duplicative
 19 or excessive, if any.

20 (4) The person shall submit an application on a form
 21 provided by the board, which must contain the following
 22 information and any other pertinent data required by rule:

23 (a) name and address of the operator and, if a
 24 corporation or other business entity, the name and address
 25 of its officers, directors, owners of 10% or more of any

1 class of voting stock, partners, and the like and its
 2 resident agent for service of process, if required by law;

3 (b) minerals expected to be mined;

4 (c) a proposed reclamation plan;

5 (d) expected starting date of operations;

6 (e) a map showing the specific area to be mined and the
 7 boundaries of the land which will be disturbed, topographic
 8 detail, the location and names of all streams, roads,
 9 railroads, and utility lines on or immediately adjacent to
 10 the area, and the location of proposed access roads to be
 11 built;

12 (f) the names and addresses of the owners of record and
 13 any purchasers under contracts for deed of the surface of
 14 the land within the permit area and the owners of record and
 15 any purchasers under contracts for deed of all surface area
 16 within one-half mile of any part of the permit area,
 17 provided that the department is not required to verify this
 18 information;

19 (g) the names and addresses of the present owners of
 20 record and any purchasers under contracts for deed of all
 21 minerals in the land within the permit area, provided that
 22 the department is not required to verify this information;

23 (h) the source of the applicant's legal right to mine
 24 the mineral on the land affected by the permit, provided
 25 that the department is not required to verify this

1 information;

2 (i) types of access roads to be built and manner of
3 reclamation of road sites on abandonment;

4 (j) a plan which will provide, within limits of normal
5 operating procedures of the industry, for completion of the
6 operation;

7 (k) ground water and surface water hydrologic data
8 gathered from a sufficient number of sources and length of
9 time to characterize the hydrologic regime;

10 (l) a plan detailing the design, operation, and
11 monitoring of impounding structures, including but not
12 limited to tailings impoundments and water reservoirs,
13 sufficient to ensure that the structures are safe and
14 stable;

15 (m) a plan identifying methods to be used to monitor
16 for the accidental discharge of objectionable materials and
17 remedial action plans to be used to control and mitigate
18 discharges to surface or ground water; and

19 (n) an evaluation of the expected life of any tailings
20 impoundment or waste area and the potential for expansion of
21 the tailings impoundment or waste site.

22 (5) Except as provided in subsection (7), the permit
23 provided for in subsection (1) for a large-scale mineral
24 development as defined in 90-6-302 must be conditioned to
25 provide that activities under the permit may not commence

1 until the impact plan is approved under 90-6-307 and until
2 the permittee has provided a written guarantee to the
3 department and to the hard-rock mining impact board of
4 compliance within the time schedule with the commitment made
5 in the approved impact plan, as provided in 90-6-307. If the
6 permittee does not comply with that commitment within the
7 time scheduled, the board, upon receipt of written notice
8 from the hard-rock mining impact board, shall suspend the
9 permit until it receives written notice from the hard-rock
10 mining impact board that the permittee is in compliance.

11 (6) When the department determines that a permittee has
12 become or will become a large-scale mineral developer
13 pursuant to 82-4-339 and 90-6-302 and provides notice as
14 required under 82-4-339, within 6 months of receiving the
15 notice, the permittee shall provide the board with proof
16 that he the permittee has obtained a waiver of the impact
17 plan requirement from the hard-rock mining impact board or
18 that he the permittee has filed an impact plan with the
19 hard-rock mining impact board and the appropriate county or
20 counties. If the permittee does not file the required proof
21 or if the hard-rock mining impact board certifies to the
22 board that the permittee has failed to comply with the
23 hard-rock mining impact review and implementation
24 requirements in Title 90, chapter 6, parts 3 and 4, the
25 board shall suspend the permit until the permittee files the

1 required proof or until the hard-rock mining impact board
2 certifies that the permittee has complied with the hard-rock
3 mining impact review and implementation requirements.

4 (7) Compliance with 90-6-307 is not required for
5 exploration and bulk sampling for metallurgical testing when
6 the aggregate samples are less than 10,000 tons.

7 (8) A person may not be issued an operating permit if
8 that person's failure to comply with the provisions of this
9 part, the rules adopted under this part, or a permit or
10 license issued under this part has resulted in the
11 forfeiture of a bond unless that person meets the conditions
12 described in 82-4-360.

13 (9) A person may not be issued a permit under this part
14 unless, at the time of submission of a bond, the person
15 provides the current information required in subsection
16 (4)(a) and:

17 (a) (i) certifies that the person is not currently in
18 violation in this state of any law, rule, or regulation of
19 this state or of the United States pertaining to air
20 quality, water quality, or mined land reclamation; or

21 (ii) presents a certification by the administering
22 agency that the violation is in the process of being
23 corrected to the agency's satisfaction or is the subject of
24 a bona fide administrative or judicial appeal; and

25 (b) if the person is a partnership, corporation, or

1 other business association, provides the certification
2 required by subsection (9)(a)(i) or (9)(a)(ii), as
3 applicable, for any partners, officers, directors, owners of
4 10% or more of any class of voting stock, and business
5 association members."

6 **Section 27.** Section 82-4-422, MCA, is amended to read:

7 "82-4-422. Powers, duties, and functions of board. The
8 board, after ensuring compliance with the provisions of
9 [sections 1 through 6], has the following powers, duties,
10 and functions to:

11 (1) enter into contracts where it is found on the basis
12 of the information set forth in the application and an
13 evaluation of the operation by the board that the
14 requirements of the part or rules will be observed and that
15 the operation and the reclamation of the affected area can
16 be carried out consistently with the purpose of the part;

17 (2) prepare and adopt rules pertaining to opencut
18 mining to accomplish the purposes of this part;

19 (3) conduct hearings and, for the purposes of
20 conducting such the hearings, administer oaths and
21 affirmations, subpoena witnesses, compel attendance of
22 witnesses, hear evidence, and require the production of any
23 books, papers, correspondence, memoranda, agreements,
24 documents, or other records relevant or material to the
25 inquiry;

(4) adopt uniform procedures for the filing of necessary records, the issuance of contracts, and for any other matters of administration not specifically enumerated in this part;

(5) reclaim any affected land with respect to which a bond has been forfeited; and

(6) make investigations or inspections which are considered necessary to insure compliance with any provision of this part."

Section 28. Section 82-11-134, MCA, is amended to read:

"82-11-134. Permit criteria and fees. (1) In addition to the privilege and license tax, before commencing the drilling of an oil or gas well or stratigraphic test well or core hole, a person shall secure from the board a drilling permit and shall pay to the board therefor the following amounts:

(1)(a) for each well whose estimated depth is 3,500 feet or less, \$25;

(2)(b) from 3,501 feet to 7,000 feet, \$75;

(3)(c) 7,000 feet and deeper, \$150.

(2) Permits issued, renewed, transferred, or modified under this part must comply with the provisions of [sections 1 through 6]."

NEW SECTION. Section 29. Maximum criminal and civil penalty increase. (1) A criminal conviction for a violation

of this part or an administrative rule adopted pursuant to this part doubles the maximum criminal or civil penalties established under this part for future criminal or civil violations within 5 years of the last criminal conviction.

(2) The court may double the maximum criminal or civil penalties established under this part if the party to be assessed the penalty has had a previous civil penalty assessed for a violation of this part or an administrative rule adopted pursuant to this part.

NEW SECTION. Section 30. Maximum civil penalty increase. The court may double the maximum civil penalties established under this part if the party to be assessed the penalty has had a previous civil penalty assessed for a violation of this part or an administrative rule adopted pursuant to this part.

NEW SECTION. Section 31. Maximum criminal penalty increase. A criminal conviction for a violation of this part or an administrative rule adopted pursuant to this part doubles the maximum criminal penalties established under this part for future criminal violations within 5 years of the last criminal conviction.

NEW SECTION. Section 32. Maximum penalty increase. (1) A criminal conviction for a violation of this part or an administrative rule adopted pursuant to this part doubles the maximum criminal, civil, or administrative penalties

established under this part for future criminal, civil, or administrative violations within 5 years of the last criminal conviction.

(2) The court may double the maximum criminal or civil penalties established under this part if the party to be assessed the penalty has had a previous civil or administrative penalty assessed for a violation of this part or an administrative rule adopted pursuant to this part.

(3) The department may double the maximum administrative penalty established under this part if the party to be assessed the penalty has had a previous criminal, civil, or administrative penalty assessed for a violation of this part or an administrative rule adopted pursuant to this part.

NEW SECTION. Section 33. Rulemaking authority. The board and department of natural resources and conservation, the board and department of health and environmental sciences, the state lands commission, and the department of state lands may adopt rules to implement [sections 1 through 7].

NEW SECTION. Section 34. Codification instruction. (1) [Sections 1 through 7 and 33] are intended to be codified as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 through 7 and 33].

(2) [Section 29] is intended to be codified as an

integral part of:

(a) Title 75, chapter 2, parts 4 and 5, and the provisions of Title 75, chapter 2, parts 4 and 5, apply to [section 29];

(b) Title 75, chapter 3, part 3, and the provisions of Title 75, chapter 3, part 3, apply to [section 29];

(c) Title 75, chapter 5, part 6, and the provisions of Title 75, chapter 5, part 6, apply to [section 29];

(d) Title 75, chapter 10, parts 2, 4, 5, and 9, and the provisions of Title 75, chapter 10, parts 2, 4, 5, and 9, apply to [section 29];

(e) Title 75, chapter 11, part 2, and the provisions of Title 75, chapter 11, part 2, apply to [section 29];

(f) Title 82, chapter 4, parts 1 and 4, and the provisions of Title 82, chapter 4, parts 1 and 4, apply to [section 29];

(g) Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to [section 29].

(3) [Section 30] is intended to be codified as an integral part of:

(a) Title 75, chapter 3, part 4, and the provisions of Title 75, chapter 3, part 4, apply to [section 30];

(b) Title 75, chapter 10, part 7, and the provisions of Title 75, chapter 10, part 7, apply to [section 30];

(c) Title 82, chapter 4, parts 3 and 4, and the

1 provisions of Title 82, chapter 4, parts 3 and 4, apply to
2 [section 30].

3 (4) [Section 31] is intended to be codified as an
4 integral part of:

5 (a) Title 75, chapter 7, parts 1, 2, and 4, and the
6 provisions of Title 75, chapter 7, parts 1, 2, and 4, apply
7 to [section 31];

8 (b) Title 75, chapter 10, parts 1 and 3, and the
9 provisions of Title 75, chapter 10, parts 1 and 3, apply to
10 [section 31];

11 (c) Title 75, chapter 11, part 3, and the provisions of
12 Title 75, chapter 11, part 3, apply to [section 31];

13 (d) Title 82, chapter 1, parts 1 and 2, and the
14 provisions of Title 82, chapter 1, parts 1 and 2, apply to
15 [section 31];

16 (e) Title 82, chapter 2, part 3, and the provisions of
17 Title 82, chapter 2, part 3, apply to [section 31];

18 (f) Title 82, chapter 3, part 2, and the provisions of
19 Title 82, chapter 3, part 2, apply to [section 31].

20 (5) [Section 32] is intended to be codified as an
21 integral part of Title 75, chapter 6, part 1, and the
22 provisions of Title 75, chapter 6, part 1, apply to [section
23 32].

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0356, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act requiring an applicant to prepare an environmental and worker safety law violation disclosure statement before being issued certain state permits; prohibiting state and local governments from contracting with certain persons who have recently violated environmental or worker safety laws; defining environmental laws; requiring a compliance audit for environmental or worker safety law violators; imposing additional requirements on the issuance, transfer, modification, and renewal of certain permits; increasing the penalties for repeated violations of certain laws.

ASSUMPTIONS:

Department of Natural Resources and Conservation:

1. The costs to develop a certification form and request certification from bidders, as required to identify responsible bidders under sections 8 and 9, would be absorbed.

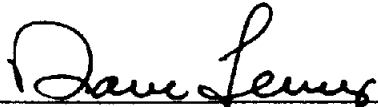
Department of Health and Environmental Sciences:

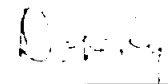
1. If the proposed law is adopted as written, it appears rulemaking can be accomplished with minimal time and cost to the Department of Health and Environmental Sciences (DHES).
2. The DHES often holds public hearings as part of the process for issuing permits and licenses, and for renewing or modifying existing permits and licenses. Unless this proposed law results in a significant increase in the number of requests for public hearings or requires considerably more time for investigating disclosures submitted by applicants, the work can be accomplished with existing personnel and resources.

Department of State Lands:

1. The Department of State Lands (DSL) does not have existing staff able to perform the required duties.
2. The information contained in the "disclosure statement" is true and correct, therefore no investigations will be required to check the validity of the disclosure statement.
3. Public hearings that may be required will be held in conjunction with other public hearings associated with the applicable mined land reclamation act or MEPA compliance.
4. Since DSL already complies with the Montana Procurement Act (Title 18, Chapter 4, MCA), if no substantive changes are made to this act, there will be no additional fiscal impact.
5. Limited rulemaking will be required that is above and beyond normal rulemaking efforts.

(continued on next page)

 2-15-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2/16/93
STEVE DOHERTY, PRIMARY SPONSOR DATE
Fiscal Note for SB0356, as introduced
5B356

FISCAL IMPACT:

Department of Natural Resources and Conservation:

There will be a slight, but unquantifiable one-time general fund impact to the Department of Natural Resources and Conservation associated with developing and adopting rules to implement this statute under the Major Facility Siting Act.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: County or local revenues and expenditures may be adversely impacted if a county or local government entity is required to finance a compliance audit pursuant to Section 7.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: The long-range effects are minimal and covered by Major Facility Siting Act filing fees.

TECHNICAL NOTES: Section 2 (2) provides that the disclosure statement is subject to penalty for perjury. Because this is not a official proceeding, the appropriate penalty is the one for false swearing (45-7-202), not perjury (45-7-201).

SB 356