

Brad Mohr

House BILL NO. 440

INTRODUCED BY

Hayne FELAND Barnett CRINSE
Brainard Holland Det Jenkins

A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING CERTAIN ENVIRONMENTAL LAWS; ELIMINATING AIR QUALITY, WATER QUALITY, AND SOLID WASTE MANAGEMENT RULES THAT ALLOW THE

ADOPTION OF STANDARDS MORE STRINGENT THAN FEDERAL STANDARDS; ESTABLISHING A SOLID

WASTE SPECIAL REVENUE ACCOUNT; PROVIDING AN APPROPRIATION; AMENDING SECTIONS

7-5-4304, 7-5-4321, 7-13-202, 7-13-215, 7-13-231, 7-13-301, 7-13-305, 15-32-601, 17-7-502,

50-2-116, 50-52-101, 61-8-370, 69-7-111, 75-10-807, 75-10-902, 75-10-910, 75-10-933, 75-10-935,

75-10-950, 75-10-951, 75-10-1005, 75-10-1006, 76-4-131, 80-15-102, 80-15-104, 80-15-105,

80-15-107, 80-15-108, 80-15-201, 80-15-203, 80-15-213, 80-15-301, 80-15-302, 80-15-403,

80-15-411, 80-15-412, 82-4-351, 85-2-311, 85-2-317, 85-2-319, 85-2-402, 87-1-504, AND 87-1-505,

MCA; AND REPEALING SECTIONS 7-13-4501, 7-13-4502, 7-13-4504, 7-13-4505, 7-13-4506, 7-13-4507,

7-13-4509, 7-13-4510, 7-13-4511, 7-13-4512, 7-13-4513, 7-13-4516, 7-13-4517, 7-13-4518,

7-13-4519, 7-13-4521, 7-13-4522, 7-13-4523, 7-13-4524, 7-13-4525, 7-13-4527, 7-13-4528,

7-13-4529, 75-2-101, 75-2-102, 75-2-103, 75-2-104, 75-2-105, 75-2-106, 75-2-107, 75-2-108,

75-2-109, 75-2-111, 75-2-112, 75-2-121, 75-2-122, 75-2-123, 75-2-201, 75-2-202, 75-2-203, 75-2-204,

75-2-205, 75-2-206, 75-2-211, 75-2-212, 75-2-215, 75-2-216, 75-2-217, 75-2-218, 75-2-219, 75-2-220,

75-2-221, 75-2-231, 75-2-232, 75-2-233, 75-2-301, 75-2-302, 75-2-401, 75-2-402, 75-2-403, 75-2-411,

75-2-412, 75-2-413, 75-2-421, 75-2-422, 75-2-423, 75-2-424, 75-2-425, 75-2-426, 75-2-427, 75-2-428,

75-2-429, 75-5-101, 75-5-102, 75-5-103, 75-5-104, 75-5-105, 75-5-106, 75-5-201, 75-5-202, 75-5-211,

75-5-212, 75-5-213, 75-5-221, 75-5-301, 75-5-302, 75-5-303, 75-5-304, 75-5-305, 75-5-306, 75-5-307,

75-5-308, 75-5-311, 75-5-401, 75-5-402, 75-5-403, 75-5-404, 75-5-405, 75-5-501, 75-5-502, 75-5-503,

75-5-507, 75-5-511, 75-5-512, 75-5-513, 75-5-514, 75-5-515, 75-5-516, 75-5-517, 75-5-601, 75-5-602,

75-5-603, 75-5-604, 75-5-605, 75-5-611, 75-5-612, 75-5-613, 75-5-614, 75-5-615, 75-5-616, 75-5-621,

75-5-622, 75-5-631, 75-5-632, 75-5-633, 75-5-634, 75-5-635, 75-5-636, 75-5-641, 75-5-1101,

75-5-1102, 75-5-1103, 75-5-1104, 75-5-1105, 75-5-1106, 75-5-1107, 75-5-1108, 75-5-1111,

75-5-1112, 75-5-1113, 75-5-1121, 75-5-1122, 75-6-101, 75-6-102, 75-6-103, 75-6-104, 75-6-105,

75-6-106, 75-6-107, 75-6-108, 75-6-109, 75-6-111, 75-6-112, 75-6-113, 75-6-114, 75-6-115, 75-6-121,

75-10-101, 75-10-102, 75-10-103, 75-10-104, 75-10-105, 75-10-106, 75-10-110, 75-10-111,

1 75-10-112, 75-10-113, 75-10-115, 75-10-116, 75-10-117, 75-10-118, 75-10-121, 75-10-122,
 2 75-10-123, 75-10-124, 75-10-125, 75-10-201, 75-10-202, 75-10-203, 75-10-204, 75-10-205,
 3 75-10-206, 75-10-207, 75-10-209, 75-10-210, 75-10-212, 75-10-213, 75-10-214, 75-10-215,
 4 75-10-221, 75-10-222, 75-10-223, 75-10-224, 75-10-227, 75-10-228, 75-10-231, 75-10-232,
 5 75-10-233, AND 80-15-219, MCA."

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7

STATEMENT OF INTENT

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It is the intent of the legislature in repealing the Clean Air Act of Montana, The Montana Solid
 Waste Management Act, and water quality and public water supply statutes that the state of Montana
 return primacy over these federally mandated programs to the U.S. environmental protection agency.

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12

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

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14

Section 1. Section 7-5-4304, MCA, is amended to read:

15

"7-5-4304. Certain contracts to be submitted to voters. ~~No~~ A contract may not be let pursuant
 to 7-5-4302 that extends over a period of 5 years or more, except contracts for solid waste management
 systems as defined in ~~75-10-103~~ 7-13-202, which may not exceed 10 years, without first submitting the
 question to a vote of the electors of the city or town."

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Section 2. Section 7-5-4321, MCA, is amended to read:

21

"7-5-4321. Grant of exclusive franchise -- election required. (1) The council may not grant an
 exclusive franchise or special privilege to any person, except in the manner specified in subsection (2). The
 powers of the council are only those expressly prescribed by law and those necessarily incident ~~thereto~~ to
law.

25

(2) ~~No~~ An exclusive franchise for any purpose, except contracts for solid waste management
 systems as defined in ~~75-10-103~~ 7-13-202, which may not exceed 10 years, may not be granted by any
 city or town or by the mayor or city council ~~thereof~~ to any a person, association, or corporation without
 first submitting the application ~~therefor~~ to the electors of the city."

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Section 3. Section 7-13-202, MCA, is amended to read:

1 **7-13-202. Definitions.** As used in this part, unless the context indicates otherwise, the following
2 definitions apply:

3 (1) "Board" means the board of directors as provided for in 7-13-213.

4 (2) "Commissioners" means the board of county commissioners.

5 (3) "Family residential unit" means the residence of a single family.

6 (4) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to
7 garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or
8 air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded
9 home and industrial appliances; and wood products or wood byproducts and inert materials.

10 (b) "Solid waste" does not mean municipal sewage, industrial wastewater effluents, or mining
11 wastes regulated under the mining and reclamation laws administered by the department of state lands,
12 slash and forest debris regulated under laws administered by the department of state lands, or marketable
13 byproducts.

14 (5) "Solid waste management district" means an area established within a county for the purpose
15 of planning and operating a solid waste management system ~~as defined in 75-10-103.~~

16 (6) "Solid waste management system" means any system that controls the storage, treatment,
17 recycling, recovery, or disposal of solid waste."

18

19 **Section 4.** Section 7-13-215, MCA, is amended to read:

20 **7-13-215. Powers and duties of board.** Except for powers specifically reserved by the counties
21 in the resolution creating the district, the board has the following powers and duties; provided in 75-10-112

22 (1) plan, develop, and implement a solid waste management system consistent with the state's
23 solid waste plan and propose modifications to the state's solid waste plan;

24 (2) upon adoption of the state plan by the board, pass an ordinance or resolution to exempt the
25 local jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The
26 ordinance or resolution must include a means to provide solid waste disposal to the citizens of the
27 jurisdiction as required in this part.

28 (3) employ appropriate personnel to carry out the provisions of this part;

29 (4) purchase, rent, or execute leasing agreements for equipment and material necessary for the
30 implementation of a solid waste management system;

1 (5) cooperate with and enter into agreements with any persons in order to implement an effective
2 solid waste management system;

3 (6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the
4 implementation of any provision of this part;

5 (7) enforce the rules of a local board of health pertaining to solid waste management through the
6 appropriate county attorney;

7 (8) apply for and use state, federal, or other available money for developing or operating a solid
8 waste management system;

9 (9) borrow from any lending agency funds available for assistance in planning a solid waste
10 management system;

11 (10) finance a solid waste management system through the assessment of a tax as authorized by
12 state law;

13 (11) sell on an instalment sales contract or lease to a person all or a portion of a solid waste
14 management system that the local government plans, designs, or constructs, for the consideration and
15 upon the terms established by the local governments and consistent with the loan requirements set forth
16 in this part and rules adopted to implement this part;

17 (12) procure insurance against any loss in connection with property, assets, or activities;

18 (13) mortgage or otherwise encumber all or a portion of a solid waste management system when
19 the local government finds that the action is necessary to implement the purposes of this part, as long as
20 the action is consistent with the loan requirements set forth in this part and rules adopted to implement this
21 part;

22 (14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop
23 or alter the property by making improvements for the purpose of enhancing the value and usefulness of the
24 property;

25 (15) finance, design, construct, own, and operate a solid waste management system or contract
26 for any of the powers authorized under this part;

27 (16) control the disposition of solid waste generated within the jurisdiction of a local government;

28 (17) enter into long-term contracts with local governments and private entities for:

29 (a) financing, designing, constructing, and operating a solid waste management system;

30 (b) marketing all raw or processed material recovered from solid waste;

- 1 (c) marketing energy products or byproducts resulting from the processing or use of solid waste;
 2 (18) finance an areawide solid waste management system through the use of any of the sources
 3 of revenue available to the implementation entity for public works projects, by the use of revenue bonds
 4 issued by the city or county, or by fees levied by a solid waste management district, whichever is
 5 appropriate;
 6 (19) enter into interlocal agreements in order to achieve and implement the powers enumerated in
 7 this part;
 8 (20) regulate the siting and operation of container sites."

9
 10 **Section 5.** Section 7-13-231, MCA, is amended to read:

11 **"7-13-231. Authorization for charges for services.** (1) To defray the cost of maintenance and
 12 operation of ~~said~~ a solid waste management district, the board shall establish a fee for service, with
 13 approval of the county commissioners, provided that a public hearing has been held if written protest has
 14 been made as provided in 7-13-211. An increase in fees may not be approved and implemented unless
 15 notice of ~~such~~ the increase is given as provided in 7-13-208(1) and (2) and opportunity for protest is
 16 allowed as provided in 7-13-209 and 7-13-211.

17 (2) This fee ~~shall~~ must be assessed to all units in the district that are receiving a service, for the
 18 purpose of maintenance and operation of ~~said~~ the district.

19 ~~(3) An opportunity for protest or hearing is not required to increase fees for the purpose of paying~~
 20 ~~fees imposed by the department of health and environmental sciences under 75-10-115. Notice must be~~
 21 ~~provided to all units of the rate or portion of any rate that is directly attributable to the fee imposed."~~

22
 23 **Section 6.** Section 7-13-301, MCA, is amended to read:

24 **"7-13-301. Purpose.** To provide safe, efficient, and effective management of solid waste, two or
 25 more counties are authorized to cooperate in the creation of a joint solid waste district. A joint solid waste
 26 district is a political subdivision of the state for the purposes of the Municipal Finance Consolidation Act
 27 of 1983, as provided in 17-5-1602, and for solid waste management services, as provided in ~~75-10-112~~
 28 7-13-215."

29
 30 **Section 7.** Section 7-13-305, MCA, is amended to read:

1 **"7-13-305. Board of directors.** (1) The board of a joint district must be appointed by the counties.

2 (2) The county commissioners shall appoint to the board one commissioner from each county, a
3 representative of each incorporated city or town, a representative of each county or city board of health,
4 and any other representatives agreed to by the commissioners of all the counties creating the joint district.

5 (3) A municipality that contracts for solid waste services with a joint district but that is not located
6 in the counties creating the joint district may be represented on the board as provided in the agreement with
7 the joint district.

8 (4) The board may provide for an executive committee that has the authority to exercise all powers
9 of the joint district, except that the entire board shall meet at least once a year to elect officers and select
10 the executive committee. An executive committee must include at least one representative from each of
11 the counties.

12 (5) The board has all powers and duties provided in ~~75-10-112~~ 7-13-215."

13

14 **Section 8.** Section 15-32-601, MCA, is amended to read:

15 **"15-32-601. (Temporary) Definitions.** For the purposes of this part, unless otherwise required by
16 the context, the following definitions apply:

17 (1) "Collect" means the collection and delivery of reclaimable materials to a recycling or reclaimable
18 materials processing facility.

19 (2) "Postconsumer material" means a product or packaging material that has served its final
20 intended use, that has been discarded by an individual, commercial enterprise, or other entity after having
21 fulfilled its intended application or use, and that is usually thrown away and hauled to landfills. This term
22 does not include wastes generated during production of an end product.

23 (3) "Reclaimable material" means material that has useful physical or chemical properties after
24 serving a specific purpose and that would normally be disposed of as solid waste, as defined in ~~75-10-203~~
25 7-13-202, by a consumer, processor, or manufacturer. Except for claiming a tax credit as provided in
26 15-32-603(1)(d), material may not be considered reclaimed by the consumer, processor, or manufacturer
27 that generated the material.

28 (4) "Recycled material" means a substance that is produced from reclaimed material as provided
29 in 15-32-609. (Terminates December 31, 1995--sec. 9, Ch. 712, L. 1991.)"

30

1 **Section 9.** Section 17-7-502, MCA, is amended to read:

2 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
3 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
4 without the need for a biennial legislative appropriation or budget amendment.

5 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
6 with both of the following provisions:

7 (a) The law containing the statutory authority must be listed in subsection (3).

8 (b) The law or portion of the law making a statutory appropriation must specifically state that a
9 statutory appropriation is made as provided in this section.

10 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
11 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
12 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410;
13 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409;
14 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513;
15 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503;
16 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402;
17 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504;
18 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205;
19 75-1-1101; ~~75-5-507; 75-5-1108~~; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416;
20 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331;
21 90-7-220; 90-9-306; and 90-14-107.

22 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
23 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
24 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
25 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
26 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
27 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to
28 sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
29 supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates
30 July 1, 1995.)"

- 1 **Section 10.** Section 50-2-116, MCA, is amended to read:
- 2 **"50-2-116. Powers and duties of local boards.** (1) Local boards shall:
- 3 (a) appoint a local health officer who is a physician or a person with a master's degree in public
4 health or the equivalent and with appropriate experience, as determined by the department, and shall fix
5 ~~his~~ the officer's salary;
- 6 (b) elect a ~~chairman~~ presiding officer and other necessary officers;
- 7 (c) employ necessary qualified staff;
- 8 (d) adopt bylaws to govern meetings;
- 9 (e) hold regular meetings quarterly and hold special meetings as necessary;
- 10 (f) supervise destruction and removal of all sources of filth that cause disease;
- 11 (g) guard against the introduction of communicable disease;
- 12 (h) supervise inspections of public establishments for sanitary conditions;
- 13 (i) adopt necessary regulations that are no less stringent than federal and state standards for the
14 control and disposal of sewage from private and public buildings that is not regulated by ~~Title 75, chapter~~
15 ~~6, the Federal Water Pollution Control Act~~ or Title 76, chapter 4. The regulations must describe standards
16 for granting variances from the minimum requirements that are identical to standards promulgated by the
17 ~~board of health and environmental sciences and must provide for appeal of variance decisions to the~~
18 ~~department as required by 75-5-306~~ U.S. environmental protection agency.
- 19 (2) Local boards may:
- 20 (a) quarantine persons who have communicable diseases;
- 21 (b) require isolation of persons or things that are infected with communicable diseases;
- 22 (c) furnish treatment for persons who have communicable diseases;
- 23 (d) prohibit the use of places that are infected with communicable diseases;
- 24 (e) require and provide means for disinfecting places that are infected with communicable diseases;
- 25 (f) accept and spend funds received from a federal agency, the state, a school district, or other
26 persons;
- 27 (g) contract with another local board for all or a part of local health services;
- 28 (h) reimburse local health officers for necessary expenses incurred in official duties;
- 29 (i) abate nuisances affecting public health and safety or bring action necessary to restrain the
30 violation of public health laws or rules;

1 (j) adopt necessary fees to administer regulations for the control and disposal of sewage from
2 private and public buildings (fees must be deposited with the county treasurer);

3 (k) adopt rules that do not conflict with rules adopted by the department:

4 (i) for the control of communicable diseases;

5 (ii) for the removal of filth that might cause disease or adversely affect public health;

6 (iii) on sanitation in public buildings that affects public health;

7 (iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might
8 endanger human lives; and

9 (v) for the maintenance of sewage treatment systems that do not discharge an effluent directly into
10 state waters and that are not required to have an operating permit as required by ~~rules adopted under~~
11 ~~75-5-401~~ the Federal Water Pollution Control Act."

12
13 **Section 11.** Section 50-52-101, MCA, is amended to read:

14 **"50-52-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise,
15 the following definitions apply:

16 (1) "Campground" means a parcel of land available to and principally used by the public for
17 camping, where persons can camp, secure tents or cabins, or park trailers for camping and sleeping
18 purposes.

19 (2) "Department" means the department of health and environmental sciences.

20 (3) "Establishment" means a campground, trailer court, work camp, or youth camp.

21 (4) "Parcel of land" means a unit of land all parts of which are contiguous, including contiguous
22 lots, in the possession of, owned by, or managed by the same person.

23 (5) "Person" includes an individual, partnership, corporation, association, or other entity engaged
24 in the business of operating, owning, or offering the services of a campground, trailer court, work camp,
25 or youth camp.

26 (6) "Political subdivision" means any county, city, town, or other legally constituted unit of local
27 government in this state.

28 (7) "Trailer court" means a parcel of land upon which two or more spaces are available to the
29 public and designated for occupancy by trailers or mobile homes for use as residences, ~~except that the~~
30 The term does not include a parcel composed of platted lots, each lot of which is filed with the county clerk

1 and recorder, contains only one trailer space, and is served by a public water supply system and public
2 sewage system ~~which~~ that meet the requirements of ~~rules for such systems adopted pursuant to Title 75,~~
3 ~~chapter 6, part 1, the Federal Water Pollution Control Act~~ and ~~which is~~ that are located within the
4 boundaries of an incorporated city or town.

5 (8) "Work camp" means a parcel of land on which housing is provided by a person for two or more
6 families or individuals living separately, for the exclusive use of the employees of ~~such~~ the person and the
7 families, if any, of the employees. For purposes of this subsection, "housing" includes but is not limited
8 to camping spaces; trailer parking spaces; mobile, modular, or permanent barracks or structures; and any
9 appurtenant water supply and distribution system, sewage collection and disposal system, solid waste
10 collection and disposal system, or food service and dining facilities. "Housing" does not include shelter
11 provided by an employer for persons who are employed to perform agricultural duties on a ranch or farm.

12 (9) "Youth camp" means a parcel of land on which permanent buildings, tents, or other structures
13 are maintained as living quarters for 10 or more people and that is used primarily for educational or
14 recreational use by minors. The term includes any appurtenant water supply and distribution system,
15 sewage collection and disposal system, solid waste collection and disposal system, or food service and
16 dining facilities. The term does not include any site used solely by the members and their families of a
17 private organization that owns the site."

18
19 **Section 12.** Section 61-8-370, MCA, is amended to read:

20 **"61-8-370. Securing of load -- requirement.** A person operating a loaded vehicle on a public
21 highway for the purpose of transporting solid waste as defined in ~~75-10-203~~ 7-13-202, except a
22 commercial motor vehicle or a vehicle transporting unprocessed agricultural products, shall attach, cover,
23 or otherwise secure the load sufficiently to prevent littering or creating an obstruction dangerous to the
24 public traveling on the highway."

25
26 **Section 13.** Section 69-7-111, MCA, is amended to read:

27 **"69-7-111. Municipal rate hearing required -- notice.** (1) ~~Except as provided in 75-5-516 and~~
28 ~~75-6-108, if~~ If the governing body of a municipality considers it advisable to regulate, establish, or change
29 rates, charges, or classifications imposed on its customers, it shall order a hearing to be held before it at
30 a time and place specified.

1 (2) Notice of the hearing ~~shall~~ must be published in a newspaper as provided in 7-1-4127.

2 (3) (a) The notice ~~shall~~ must be published three times with at least 6 days separating each
3 publication. The first publication may be no more than 28 days prior to the hearing, and the last publication
4 may be no less than 3 days prior to the hearing.

5 (b) The notice must also be mailed at least 7 days and not more than 30 days prior to the hearing
6 to persons served by the utility. The notice must be mailed within the prescribed time period. This notice
7 must contain an estimate of the amount that the customer's average bill will increase.

8 (4) The published notice must contain:

9 (a) the date, time, and place of the hearing;

10 (b) a brief statement of the proposed action; and

11 (c) the address and telephone number of a person who may be contacted for further information
12 regarding the hearing.

13 (5) Notice of all hearings ~~shall~~ must be mailed first class, postage prepaid, to the Montana
14 consumer counsel."

15

16 **Section 14.** Section 75-10-807, MCA, is amended to read:

17 **"75-10-807. Requirement to prepare and implement state solid waste management plan.** (1) As
18 a basis for developing an integrated waste management program and ensuring adequate disposal capacity,
19 the department shall prepare and implement a state solid waste management plan in accordance with this
20 part.

21 (2) The plan must be comprehensive and integrated and must include at least the following
22 elements:

23 (a) a capacity assurance element that identifies existing disposal capacity, estimates waste
24 generation rates, and determines the disposal capacity needed for the future and that assesses the potential
25 effect of interstate disposal on capacity;

26 (b) an element that incorporates federal regulations in 40 CFR, parts 257 and 258;

27 (c) an element that identifies the role of each of the components of the integrated waste
28 management priorities contained in 75-10-804 in meeting the solid waste reduction target in 75-10-803;

29 (d) a technology assessment element that assesses the availability and practicality of alternative
30 technologies for solid waste management;

1 (e) an education and public information element that identifies existing education and information
2 programs and describes how the state will increase the awareness and cooperation of the public in
3 environmentally safe solid waste management;

4 (f) a special waste and household hazardous waste element that identifies types and quantities of
5 wastes that create special disposal problems and recommends methods for reducing, handling, collecting,
6 transporting, and disposing of those wastes and that identifies existing and future strategies for managing
7 those wastes;

8 (g) an element that identifies the needs of rural communities and management strategies to address
9 those needs;

10 (h) an element that identifies mechanisms to ensure proper training of landfill operators; and

11 (i) a timeline and implementation strategy for each of the plan elements.

12 (3) The plan must be developed with the involvement of local officials, citizens, solid waste and
13 recycling industries, environmental organizations, and others involved in the management of solid waste.

14 (4) The department shall conduct hearings ~~as provided in 75-10-111~~ pursuant to the rulemaking
15 provisions outlined in the Montana Administrative Procedure Act.

16 (5) The plan must be evaluated every 5 years and updated as necessary."
17

18 **Section 15.** Section 75-10-902, MCA, is amended to read:

19 **"75-10-902. Purpose.** (1) It is the constitutionally declared policy of this state to maintain and
20 improve a clean and healthful environment for present and future generations, to protect the environment
21 from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide
22 for administration and enforcement to attain these objectives.

23 (2) The construction of solid waste facilities that dispose of over 200,000 tons of waste a year
24 (megalandfills) may be necessary to meet increasing state and national needs for solid waste disposal
25 capacity. However, due to the volume of waste processed, megalandfills may adversely affect the
26 environment, surrounding communities, and the welfare of the citizens of this state. Therefore, it is
27 necessary to ensure that the location, construction, and operation of megalandfills will produce minimal
28 adverse effects on the environment and upon the citizens of this state by providing that a megalandfill may
29 not be constructed or operated within this state without a certificate of site acceptability pursuant to
30 75-10-916, ~~and~~ a license to operate acquired pursuant to ~~75-10-221 and~~ 75-10-933, ~~and~~ a license from

1 the U.S. environmental protection agency to operate a solid waste management system."

2
3 **Section 16.** Section 75-10-910, MCA, is amended to read:

4 "**75-10-910. ~~Money to solid waste management~~ Solid waste special revenue account.** All fees,
5 taxes, fines, and penalties collected under 75-10-901 through 75-10-945, except those collected by a
6 justice's court, must be deposited in the solid waste ~~management~~ special revenue account as provided for
7 in ~~75-10-117~~ [section 20] for use by the department in carrying out its functions and responsibilities related
8 to ~~solid waste management~~ 75-10-901 through 75-10-945."

9
10 **NEW SECTION. Section 17. Solid waste special revenue account.** (1) There is a solid waste
11 special revenue account within the state special revenue fund established in 17-2-102.

12 (2) There must be paid into the solid waste special revenue account all money collected by the
13 department pursuant to 75-10-910.

14 (3) Money in the account may be used by the department only to carry out its functions and
15 responsibilities under 75-10-901 through 75-10-945.

16
17 **Section 18.** Section 75-10-933, MCA, is amended to read:

18 "**75-10-933. License required.** (1) A person may not commence to construct a megalandfill in the
19 state without first applying for and obtaining a license ~~pursuant to 75-10-221~~ from the U.S. environmental
20 protection agency to operate a solid waste management system.

21 (2) The licensing process must be concurrent with the certification process required in 75-10-916
22 through 75-10-930.

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

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

28
29 **Section 19.** Section 75-10-935, MCA, is amended to read:

30 "**75-10-935. Opinion issued with decision -- contents.** (1) In rendering a decision on an application

1 for a license for a megalandfill, the department shall issue an opinion stating its reasons for the action
2 taken.

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

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

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

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

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

10 (iv) alternatives to the proposed facility.

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

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

14 (d) a statement signed by the applicant showing agreement to comply with the requirements of
15 75-10-901 through 75-10-945 and the conditions of the certificate."
16

17 **Section 20.** Section 75-10-950, MCA, is amended to read:

18 **"75-10-950. Definitions.** As used in 75-10-950 through 75-10-954, the following definitions
19 apply:

20 (1) "Applicant" means an individual, firm, partnership, company, association, corporation, city,
21 town, local governmental entity, or any other governmental or private entity that applies for a license to
22 operate a megalandfill pursuant to 75-10-221.

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

24 (3) "Department" means the department of health and environmental sciences provided for in Title
25 2, chapter 15, part 21.

26 (4) (a) "Megalandfill" means, except as provided in subsection (4)(b), any new or existing solid
27 waste management system licensed ~~under 75-10-221 by the U.S. environmental protection agency~~ that
28 accepts more than 200,000 tons of solid waste a year or an ash monofill that accepts more than 35,000
29 tons of ash a year.

30 (b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of

1 December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons
2 a year of solid waste.

3 (5) "Natural resource" means ground water, surface water, soil, wildlife, and other physical and
4 biological resources as determined by the department by rule."
5

6 **Section 21.** Section 75-10-951, MCA, is amended to read:

7 **"75-10-951. Megalandfill financial assurance -- release.** (1) As a condition of a license to operate
8 a megalandfill under ~~75-10-224~~ 75-10-933, an applicant shall provide financial assurance sufficient to
9 ensure the restoration or replacement of any natural resource damaged or impaired as a result of the
10 construction, operation, or closure of the megalandfill. The department shall determine the amount of
11 financial assurance that must be provided based on an assessment of the license application provided to
12 the U.S. environmental protection agency and on the applicant's estimated cost of reclaiming, restoring,
13 or replacing natural resources that may be damaged or impaired by the applicant's proposed operations.

14 (2) The department shall adopt rules to specify the terms and conditions of financial assurance.

15 (3) To satisfy the financial assurance requirement, the applicant shall file with the department a
16 bond that is payable to the state of Montana with a surety satisfactory to the department, conditioned upon
17 the faithful performance of the requirements of this section and the rules of the department.

18 (4) The bond approved by the department may not be less than the estimated cost to the state to
19 reclaim, restore, or replace damaged or impaired natural resources.

20 (5) Every 2 years the department shall evaluate the amount of the bond provided for a licensed
21 megalandfill. If the department determines that the amount of the bond does not represent the present cost
22 of reclaiming, restoring, or replacing natural resources that may be damaged or impaired by the operation,
23 the department may modify the terms and conditions of the bond.

24 (6) The department may not release an operator from the financial assurance requirement and may
25 not release the bond:

26 (a) for a minimum of 30 years after the megalandfill has closed;

27 (b) until the department determines that the natural resources associated with the megalandfill have
28 been permanently reclaimed, restored, or replaced to the quantity and quality that prevailed prior to the
29 commencement of the licensed operations and that the megalandfill presents no significant future threat
30 to those natural resources; and

1 (c) until a public hearing has been held. The department shall make all information that is relevant
2 to the decision on whether to release an operator from the financial assurance requirement readily available
3 to interested persons, and no less than 45 days prior to the public hearing the department shall:

4 (i) publish notice of the hearing in newspapers of general statewide circulation and circulation in
5 the county where the megalandfill is located; and

6 (ii) take other appropriate measures to ensure broad distribution of the hearing notice.

7 (7) A person may submit to the department information relevant to the department's decision to
8 release an operator from all or any part of the financial assurance requirement for a period of 30 days after
9 the date of the public hearing required under subsection (6).

10 (8) A person may request the department to reconsider its decision to release an operator from all
11 or any part of the financial assurance requirement based upon information the person submits to show that
12 the licensee has not reclaimed, restored, or replaced the quantity or quality of natural resources that
13 prevailed prior to the commencement of the licensed operations. The department's response to a request
14 to reconsider its decision to release an operator from all or any part of the financial assurance requirement
15 is the final agency decision."

16
17 **Section 22.** Section 75-10-1005, MCA, is amended to read:

18 **"75-10-1005. Management standards -- procedures for storage, transportation, treatment, and**
19 **disposal.** (1) Infectious waste must be separated from ordinary waste at the point of origin and stored until
20 the waste is rendered noninfectious in separate, distinct containers with biohazard warning labels in
21 compliance with the following procedures:

22 (a) Sharps must be contained for storage, transportation, treatment, and subsequent disposal in
23 leakproof, rigid, puncture-resistant containers that must be taped closed or capped securely to prevent loss
24 of contents.

25 (b) Infectious waste other than sharps must be contained in moisture-proof disposable containers
26 or bags of a strength sufficient to prevent ripping, tearing, or bursting under normal conditions of use. The
27 bags must be securely tied to prevent leakage or expulsion of solid or liquid wastes during storage,
28 handling, and transportation.

29 (2) To inhibit the spread of infectious agents, infectious waste must be stored prior to treatment
30 in a secured area that prevents access by unauthorized personnel and must be clearly marked or labeled

1 as infectious.

2 (3) Handling of infectious waste must be done in a manner to prevent compaction or other
3 mechanical manipulation that might cause the release of infectious agents.

4 (4) (a) Treatment and disposal of infectious waste must be accomplished through the following
5 methods:

6 (i) incineration with complete combustion that reduces infectious waste to carbonized or
7 mineralized ash;

8 (ii) steam sterilization that renders infectious waste noninfectious; or

9 (iii) sterilization by standard chemical techniques or by any scientifically proven techniques approved
10 by state and federal authorities.

11 (b) Liquid or semisolid infectious waste may be discharged into a sewer system that provides
12 secondary treatment or into a primary treatment sewage system if waste is first sterilized by chemical
13 treatment. A subsurface disposal system installed and operated in accordance with state or local sanitary
14 regulations is, for the purpose of this subsection (b), a sewer system providing secondary treatment.

15 (c) Fetal remains or recognizable body parts other than teeth must be disposed of by incineration
16 or interment.

17 (5) If infectious waste has been rendered noninfectious by one of the methods listed in subsection
18 (4) and is no longer biologically hazardous, it may be mixed with and disposed of with ordinary waste in
19 the following manner:

20 (a) Steam-sterilized waste must be labeled identifying it as such with heat sensitive tape or bagged
21 in marked autoclavable bags.

22 (b) Chemically treated waste or waste otherwise treated under subsection (4)(a)(iii) must be
23 appropriately labeled.

24 (6) Infectious waste may be transported by the generator, a municipal solid waste service, or a
25 regulated commercial hauler to an offsite treatment facility if the waste is confined in a leakproof,
26 noncompacting, fully enclosed vehicle compartment.

27 (7) ~~(a)~~ Infectious waste that has been treated by one of the methods in subsection (4) may be
28 disposed of in a properly operated landfill licensed under 75-10-221 by the U.S. environmental protection
29 agency.

30 ~~(b) Untreated infectious waste may be disposed of at a licensed, properly operated landfill until~~

1 ~~April 1, 1993, if it is buried in a separate area without compaction and with minimum disturbance.~~

2 (8) An employee who handles or manages infectious waste must receive training provided by the
3 employer that is adequate to ensure safe performance of duties.

4 (9) Generators and transporters of infectious waste shall develop a contingency plan to handle
5 spills and equipment failure."
6

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

8 **"75-10-1006. Licensing and regulation -- rulemaking authority.** (1) A board or department of the
9 state that licenses a profession, occupation, or health care facility that generates infectious waste shall
10 require each licensee to comply with this part as a condition of licensure. The board or department shall
11 adopt rules to implement this part and may impose and adjust annual fees commensurate with the costs
12 of regulation.

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

20 **Section 24.** Section 76-4-131, MCA, is amended to read:

21 **"76-4-131. Applicability of public water supply laws.** The exclusions provided for in 76-4-121
22 through 76-4-130 ~~shall do~~ not relieve any person of the duty to comply with the requirements of ~~Title 75,~~
23 ~~chapter 6~~ the Federal Water Pollution Control Act."
24

25 **Section 25.** Section 80-15-102, MCA, is amended to read:

26 **"80-15-102. Definitions.** Unless the context requires otherwise, in this chapter, the following
27 definitions apply:

28 (1) "Agricultural chemical" means any of the following:

29 (a) a pesticide as defined in 80-8-102;

30 (b) an isomer, degradation, or metabolic product of a pesticide; or

1 (c) a commercial fertilizer as defined in 80-10-101.

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

4 (3) "Best management plans" and "best management practices" mean activities, procedures, and
5 practices established by the department of agriculture, in consultation with the Montana state university
6 extension service, to prevent or remedy the introduction of agricultural chemicals into ground water to the
7 extent technically and economically practical.

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

9 (5) "Confirmatory procedure" means a process for verifying the detection of agricultural chemicals
10 in water, soil, and other related media.

11 (6) "EPA" means the United States environmental protection agency.

12 (7) "Ground water" means any water of the state occupying the voids within a geologic formation
13 and within the zone of saturation.

14 (8) "Interim numerical standard" means a health-based number that expresses the concentration
15 of an agricultural chemical allowed in ground water and that is adopted by a rule of the board pursuant to
16 80-15-201(3) or (4).

17 (9) "Margin of safety" means numerical margins that are applied to the no observable effect level
18 in an agricultural chemical toxicology study and that are used by the EPA to extrapolate data obtained from
19 studies of animals to humans, including sensitive individuals.

20 (10) "No observable effect level" means the highest dose level of an agricultural chemical to which
21 a laboratory animal is exposed, per unit of body weight, at which no effect is observed, as established by
22 EPA's pesticide registration process.

23 (11) "Nonpoint source" means a diffuse source of agricultural chemicals resulting from activities
24 of man over a relatively large area, the effects of which must normally be addressed or controlled by a
25 management or conservation practice.

26 (12) "Nonpromulgated federal standard" means a health advisory or a suggested no adverse
27 response level that is published but not promulgated by regulation by EPA and that is a suggested measure
28 of the health risk represented by the concentration of an agricultural chemical in water.

29 (13) "Numerical risk assessment" means a scientific procedure used to measure the statistical
30 probability of human health risk associated with exposure to an agricultural chemical.

1 (14) "Oncogenic potential" means the potential of an agricultural chemical to cause tumors in
2 laboratory animals and the extrapolation of that potential to humans through use of statistical models and
3 other evidence.

4 (15) "Person" means any individual, group, firm, cooperative, corporation, association, partnership,
5 political subdivision, state or federal government agency, or other organization or entity.

6 (16) "Point of standards application" means the specific location in an aquifer where ground water
7 quality and quantity are sampled, measured, evaluated, or otherwise used by either the department or the
8 department of health and environmental sciences to implement the provisions of this chapter.

9 (17) "Point source" means:

10 (a) a point source as defined in 75-5-103, discernible, confined, and discrete conveyance, including
11 but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock,
12 or vessel or other floating craft, from which pollutants are or may be discharged; or

13 (b) ~~including but not limited to~~ chemical mixing, loading, and storage sites and sites of agricultural
14 chemical spills.

15 (18) "Promulgated federal standard" means an agricultural chemical maximum contaminant level
16 as established under the federal Safe Drinking Water Act, a national primary drinking water standard, or
17 an interim drinking water regulation or other EPA regulation based on federal law.

18 (19) "Registrant" means a person as defined in 80-8-102 and 80-10-101.

19 (20) "Standard" means the numerical value expressing the concentration of an agricultural chemical
20 in ground water that, when exceeded, presents a potential human health risk over a lifetime of consumption
21 and that is adopted by a rule of the board as required by 80-15-201.

22 (21) "Use" means any act of handling or release of an agricultural chemical or exposure of man or
23 the environment to an agricultural chemical, including but not limited to application, mixing, loading,
24 storage, disposal, or transportation."
25

26 **Section 26.** Section 80-15-104, MCA, is amended to read:

27 **"80-15-104. Administration.** (1) The department ~~and the department of health and environmental~~
28 ~~sciences~~ shall administer this chapter.

29 (2) The department ~~of health and environmental sciences~~ is responsible for the establishment and
30 enforcement of agricultural chemical ground water standards and interim numerical standards as authorized

1 by 80-15-201, ground water monitoring as authorized by 80-15-202 and 80-15-203, ~~providing comments~~
 2 ~~to the department during the development of agricultural chemical ground water management plans, and~~
 3 promoting research as set forth in 80-15-107, ~~and related responsibilities set forth in Title 75, chapter 5.~~

4 (3) The department is responsible for the preparation, implementation, and enforcement of
 5 agricultural chemical ground water management plans as authorized by 80-15-211 through 80-15-218,
 6 80-15-401 through 80-15-405, and 80-15-411 through 80-15-414, public education as authorized by
 7 80-15-106, ground water monitoring as authorized by 80-15-202 and 80-15-203, other duties related to
 8 promoting research as set forth in 80-15-107, and related responsibilities set forth in Title 80, chapters 8
 9 and 10.

10 (4) This chapter does not limit the department's responsibility to enforce agricultural chemical label
 11 directions and prohibitions.

12 (5) The administration of this chapter, including rulemaking and hearing functions authorized by
 13 this chapter, must be conducted in accordance with the Montana Administrative Procedure Act, Title 2,
 14 chapter 4."

15

16 **Section 27.** Section 80-15-105, MCA, is amended to read:

17 "**80-15-105. Rulemaking.** ~~(1)~~ The board shall adopt rules for the administration of this chapter
 18 ~~for which the board and the department of health and environmental sciences have responsibility. These~~
 19 The rules must include but are not limited to:

20 ~~(a)~~(1) standards and interim numerical standards for agricultural chemicals in ground water as
 21 authorized by 80-15-201;

22 ~~(b)~~(2) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

23 ~~(c)~~(3) field and laboratory operational quality assurance, quality control, and confirmatory
 24 procedures as authorized by 80-15-107, 80-15-202, and 80-15-203, which may include, through adoption
 25 by reference, procedures that have been established or approved by EPA for quality assurance and quality
 26 control;

27 ~~(d)~~(4) standards for maintaining the confidentiality of data and information declared confidential
 28 by EPA and the confidentiality of chemical registrant data and information protected from disclosure by
 29 federal or state law as required by 80-15-108; ~~and~~

30 ~~(e)~~(5) administrative civil penalties as authorized by 80-15-412.

1 ~~(2) The department shall adopt rules necessary to carry out its responsibilities under this chapter.~~
 2 These rules must include but are not limited to:

3 ~~(a) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;~~

4 ~~(b)(6) the content and procedures for development of agricultural chemical ground water~~
 5 management plans, including the content of best management practices and best management plans,
 6 procedures for obtaining comments from the department of health and environmental sciences on the plans,
 7 and the adoption of completed plans and plan modifications as authorized by 80-15-211 through
 8 80-15-218;

9 ~~(c) standards for maintaining the confidentiality of data and information declared confidential by~~
 10 EPA and of chemical registrant data and information protected from disclosure by federal or state law as
 11 required by 80-15-108;

12 ~~(d) field and laboratory operational quality assurance, quality control, and confirmatory procedures~~
 13 as authorized by 80-15-107, 80-15-202, and 80-15-203, which may include, through adoption by
 14 reference, procedures that have been established or approved by EPA for quality assurance and quality
 15 control;

16 ~~(e)(7) emergency procedures as authorized by 80-15-405; and~~

17 ~~(f)(8) procedures for issuance of compliance orders as authorized by 80-15-403; and~~

18 ~~(g) procedures for the assessment of administrative civil penalties as authorized by 80-15-412."~~
 19

20 **Section 28.** Section 80-15-107, MCA, is amended to read:

21 "**80-15-107. Research.** The department ~~or the department of health and environmental sciences~~
 22 shall promote, for the purposes described in 80-15-103, cooperative ground water research programs with
 23 units of the university system and associated agricultural experiment stations, the bureau of mines and
 24 geology, and other appropriate agencies, organizations, and individuals."
 25

26 **Section 29.** Section 80-15-108, MCA, is amended to read:

27 "**80-15-108. Confidentiality.** ~~(1) The department and the department of health and environmental~~
 28 ~~sciences~~ shall maintain the confidentiality of data declared confidential by EPA and chemical registrant data
 29 and information protected from disclosure by federal or state law.
 30

~~(2) The department of health and environmental sciences shall comply with the requirements of~~

1 ~~75-5-105 and the department shall comply with the requirements of 80-8-107 and 80-10-210, except as~~
2 ~~otherwise provided by this section."~~

3

4 **Section 30.** Section 80-15-201, MCA, is amended to read:

5 **"80-15-201. Ground water standards.** (1) The board shall adopt standards and, as applicable,
6 interim numerical standards for agricultural chemicals in ground water. The standards must be the same
7 as any promulgated or nonpromulgated federal standard established by EPA, although the board may
8 determine, pursuant to the requirements of subsection (4), that an interim numerical standard different from
9 either a promulgated or nonpromulgated federal standard is justified. Promulgated federal standards must
10 receive preference. Except as provided in subsections (3) and (4), if more than one nonpromulgated federal
11 standard exists for an agricultural chemical, the board must adopt the most recently established
12 nonpromulgated federal standard.

13 (2) The board is not required to adopt a standard or interim numerical standard for every
14 agricultural chemical registered in the state. The only standards and interim numerical standards required
15 are for those agricultural chemicals:

16 (a) that are addressed by promulgated and nonpromulgated federal standards;

17 (b) the presence of which has been verified in ground water as provided in 80-15-202; or

18 (c) that the department ~~and the department of health and environmental sciences predict~~ predicts
19 may appear in ground water, in accordance with the procedures and determinations specified in 80-15-202
20 and 80-15-203.

21 (3) If no promulgated federal standard has been adopted or no nonpromulgated federal standard
22 has been published for an agricultural chemical for which the board is required to establish a standard or
23 interim numerical standard as specified in subsections (2)(b) and (2)(c), the department ~~of health and~~
24 ~~environmental sciences~~ shall request EPA to establish a promulgated or nonpromulgated federal standard.
25 If the department ~~of health and environmental sciences~~ determines that EPA cannot comply with the
26 request within 15 days, the board shall adopt an interim numerical standard, provided that the board shall
27 review the interim numerical standard whenever EPA adopts a promulgated federal standard or publishes
28 a nonpromulgated federal standard for the agricultural chemical in question.

29 (4) The board may adopt an interim numerical standard that is different from either a promulgated
30 or nonpromulgated federal standard if there is significant new and relevant technical information available

1 that is scientifically valid. The board shall review the interim numerical standard when EPA establishes or
2 revises the promulgated or nonpromulgated federal standard for the agricultural chemical in question.

3 (5) The board shall consider the following in adopting any interim numerical standard under either
4 subsection (3) or (4):

5 (a) effects on a person weighing 70 kilograms and drinking 2 liters of water per day over a lifetime;
6 and

7 (b) EPA's conclusions regarding the no observable effect level, including the margin of safety
8 identified by EPA, when scientific data indicates oncogenic potential for the agricultural chemical and EPA
9 has determined that a numerical risk assessment is not justified, is inappropriate, or does not serve as the
10 primary toxicological basis for regulation.

11 (6) Nothing in this section may interfere with the board's responsibility to adopt rules and standards
12 under Title 75, chapter 6."

13
14 **Section 31.** Section 80-15-203, MCA, is amended to read:

15 **"80-15-203. Evaluation and use of monitoring results.** (1) When providing preliminary monitoring
16 results or confirmed monitoring results to ground water users or the public, the ~~departments~~ department
17 shall also provide any applicable standard or interim numerical standard.

18 (2) When monitoring results reveal the presence of an agricultural chemical in ground water,

19 ~~(a) the department of health and environmental sciences is the lead department for determining~~
20 ~~health risks; and~~

21 ~~(b) the department is the lead department for determining~~ health risks and determining compliance
22 with agricultural chemical ground water management plans authorized by 80-15-211 through 80-15-218
23 and with agricultural chemical registration, use, and labeling requirements and conditions pursuant to Title
24 80, chapters 8 and 10.

25 ~~(3) The department and the department of health and environmental sciences shall cooperatively~~
26 ~~evaluate the results of monitoring programs authorized by 80-15-202.~~

27 ~~(4)(3)~~ Based on the results of monitoring, the department ~~and the department of health and~~
28 ~~environmental sciences~~ shall implement appropriate actions specified in this chapter to mitigate any existing
29 impacts of an agricultural chemical found in ground water and to prevent future impacts of an agricultural
30 chemical that may be found in ground water, in relation to human health, agriculture, and the environment.

1 ~~(5)(4)~~ (4) The department may not undertake compliance and enforcement actions authorized by this
 2 chapter and ~~the department of health and environmental sciences may not undertake compliance and~~
 3 ~~enforcement actions authorized by Title 75, chapter 5,~~ unless there is sufficient evidence collected through:

4 (a) monitoring at a point of standards application that reveals that a person using an agricultural
 5 chemical or introducing or discharging the chemical into ground water has violated a provision of 80-15-402
 6 or ~~Title 75, chapter 5~~ the Federal Water Pollution Control Act;

7 (b) other investigations that reveal that a person using an agricultural chemical or introducing or
 8 discharging the chemical into ground water has violated a provision of 80-15-402 or ~~Title 75, chapter 5~~
 9 the Federal Water Pollution Control Act; or

10 (c) monitoring that reveals a significant probability for an agricultural chemical to enter ground
 11 water."

12
 13 **Section 32.** Section 80-15-213, MCA, is amended to read:

14 **"80-15-213. Beneficial use to be considered in developing management plans -- water**
 15 **classification.** (1) In developing general and specific agricultural chemical ground water management plans,
 16 the department shall consider the current and potential beneficial use of the ground water included in or
 17 affected by the plans. If the ground water has not been classified, the department shall consider it to be
 18 included in the classification representing the highest quality of ground water until such time as the ground
 19 water is classified by ~~the department of health and environmental sciences~~ EPA, and the department may
 20 proceed to develop an agricultural chemical ground water management plan as required by 80-15-212(1).

21 (2) The department may request ~~the department of health and environmental sciences~~ EPA to
 22 classify certain ground water and may collect the data and information required by ~~the department of health~~
 23 ~~and environmental sciences~~ EPA to classify the ground water. ~~If adequate technical data and financial~~
 24 ~~resources are available as determined by the department of health and environmental sciences, the~~
 25 ~~department of health and environmental sciences shall classify ground water at locations as requested by~~
 26 ~~the department.~~"

27
 28 **Section 33.** Section 80-15-301, MCA, is amended to read:

29 **"80-15-301. Agricultural chemical ground water protection accounts -- acceptance and expenditure**
 30 **of gifts, grants, and funds.** (1) There is a department of agriculture agricultural chemical ground water

1 protection special revenue account ~~and a department of health and environmental sciences agricultural~~
2 ~~chemical ground water protection special revenue account~~ within the state special revenue fund established
3 by 17-2-102.

4 (2) ~~Both accounts named~~ The account in subsection (1) may receive funds from any source as
5 gifts, grants, cost-share funds, or other funds designated for agricultural chemical ground water protection
6 purposes.

7 (3) The department ~~and the department of health and environmental sciences may individually or~~
8 ~~jointly may~~ spend funds received ~~by their respective accounts~~ in the account for the purposes authorized
9 by this chapter."

10

11 **Section 34.** Section 80-15-302, MCA, is amended to read:

12 **"80-15-302. Special funding.** (1) A fee of \$80 is assessed for the registration of pesticides in
13 addition to the fee imposed by 80-8-201(4).

14 (2) The money collected from the registration fee established by subsection (1) must be deposited
15 in the state special revenue fund as follows:

16 (a) ~~Each of the following state agencies~~ The Montana state university extension service must be
17 credited \$15,000 for purposes of administering or assisting the department in administering this chapter:

18 ~~(i) department of health and environmental sciences; and~~

19 ~~(iii) Montana state university extension service.~~

20 (b) The department must be credited with the remainder of the registration fee money to use in
21 administering this chapter.

22 (3) A fee of \$10 is assessed for the registration of fertilizers in addition to the fee imposed by
23 80-10-201(1). The additional fee must be used for the ground water protection responsibilities of the
24 department relating to fertilizers. Revenues collected from this fee must be credited to the commercial
25 fertilizer agricultural chemical ground water account within the state special revenue fund for the
26 administration of this chapter.

27 (4) The department may direct the board of investments to invest the portion of the money
28 collected under this section that is credited to the department pursuant to the provisions of 17-6-201. The
29 income from the investments must be deposited in the state special revenue fund and credited to the
30 department."

1 **Section 35.** Section 80-15-403, MCA, is amended to read:

2 **"80-15-403. Compliance orders.** (1) In furtherance of 80-15-402, the department may issue a
3 compliance order to any person violating a standard, an interim numerical standard, or any other
4 requirement established pursuant to this chapter. The department shall coordinate its proposed actions
5 pursuant to this section with proposed actions, if any, of the ~~department of health and environmental~~
6 ~~sciences pursuant to 75-5-613~~ U.S. environmental protection agency pursuant to the Federal Water
7 Pollution Control Act, if any. Issuance of a compliance order under this chapter precludes the department
8 from taking other enforcement actions for the same violation under Title 80, chapter 8 or 10.

9 (2) The department may issue a compliance order to any person, including the person's employees,
10 agents, and subcontractors, whether or not the person is subject to a specific management plan, to require
11 the cleanup of any agricultural chemical that the person has accidentally or purposely dumped, spilled, or
12 misused or unlawfully used that has a significant probability of entering ground water.

13 (3) When issuing a compliance order, the department may require a person who has violated a
14 provision of 80-15-402 to conduct monitoring to assist in determining the presence or level of concentration
15 of an agricultural chemical in ground water and the effectiveness of cleanup efforts. The department shall
16 specify criteria in the compliance order for determining the duration of monitoring.

17 (4) A compliance order must specify the requirement violated and must set a time for compliance.
18 In establishing a time for compliance, the department shall take into account the seriousness of the violation
19 and any good faith efforts that the person has made to comply with the requirement that has been violated.
20 A compliance order issued under this section must be served either personally by a person qualified to
21 perform service under the Montana Rules of Civil Procedure or by certified mail."
22

23 **Section 36.** Section 80-15-411, MCA, is amended to read:

24 **"80-15-411. Violators subject to penalties.** (1) A person found to be in violation of this chapter
25 or a rule established pursuant to this chapter is subject to the penalty provisions of 80-15-412 through
26 80-15-414.

27 (2) For the purpose of this section, the term "person" means, in addition to the definition in
28 80-15-102, any responsible corporate officer.

29 (3) Nothing in this chapter may be construed as requiring the department or an authorized agent
30 of the department to report minor violations of this chapter for prosecution when the department or a duly

1 authorized agent believes that the public interest will be best served by other remedial action, by a suitable
2 notice of warning in writing, or by a lawful written order.

3 (4) Action under 80-15-412 through 80-15-414 does not bar the department from enforcement
4 of this chapter or of rules or orders issued under this chapter by injunction or other appropriate remedy.

5 (5) The department ~~and the department of health and environmental sciences~~ shall coordinate
6 actions with the EPA when a violator is subject to the penalties authorized by 80-15-412 through
7 80-15-414 and penalties authorized by ~~Title 75, chapter 5,~~ the Federal Water Pollution Control Act for the
8 same violation."
9

10 **Section 37.** Section 80-15-412, MCA, is amended to read:

11 **"80-15-412. Administrative civil penalty.** (1) A person who commits a violation of this chapter
12 may be assessed an administrative civil penalty by ~~either the department or the department of health and~~
13 ~~environmental sciences, consistent with their respective responsibilities,~~ of not more than \$1,000 for each
14 offense. Farm applicators possessing a pesticide permit or using a fertilizer may not be assessed an
15 administrative civil penalty of more than \$500 for the first offense. Assessment of a civil penalty may be
16 made in conjunction with any other warning, order, or administrative action authorized by this chapter ~~or~~
17 ~~Title 75, chapter 5,~~ that is issued or undertaken by ~~either the department or the department of health and~~
18 ~~environmental sciences.~~

19 (2) ~~No~~ An administrative civil penalty may not be assessed unless the person charged is given
20 notice and opportunity for a hearing pursuant to Title 2, chapter 4, part 6, of the Montana Administrative
21 Procedure Act.

22 (3) In determining an appropriate administrative civil penalty, the ~~responsible~~ department shall
23 consider the effect on the person's ability to continue in business, the gravity of the violation that occurred,
24 the degree of care exercised by the offender, and whether significant harm resulted to public health,
25 agricultural crops, livestock, or the environment.

26 (4) If the ~~responsible~~ department is unable to collect the administrative civil penalty or if a person
27 fails to pay all or a set portion of the administrative civil penalty as determined by the ~~responsible~~
28 department, ~~the department~~ it may seek to recover the amount in the appropriate district court.

29 (5) A person against whom the department ~~or the department of health and environmental sciences~~
30 has assessed an administrative civil penalty may, within 30 days of the final agency action making the

1 assessment, appeal the assessment to the district court of the county in which the violation is alleged to
2 have occurred. A jury trial must be granted when demanded under Rule 38 of the Montana Rules of Civil
3 Procedure."

4
5 **Section 38.** Section 82-4-351, MCA, is amended to read:

6 **"82-4-351. Reasons for denial of permit.** (1) An application for a permit or an application for an
7 amendment to a permit may be denied for the following reasons:

8 (a) the plan of operation or reclamation conflicts with ~~Title 75, chapter 2, as amended, Title 75,~~
9 ~~chapter 5, as amended, Title 75, chapter 6~~ the Clean Air Act, the Federal Water Pollution Control Act, or
10 the Public Health Service Act, as amended, or rules adopted pursuant to these laws;

11 (b) the reclamation plan does not provide an acceptable method for accomplishment of reclamation
12 as required by this part.

13 (2) A denial of a permit must be in writing, state the reasons for denial, and be based on a
14 preponderance of the evidence."

15
16 **Section 39.** Section 85-2-311, MCA, is amended to read:

17 **"85-2-311. Criteria for issuance of permit.** (1) Except as provided in subsections (3) and (4), the
18 department shall issue a permit if the applicant proves by a preponderance of evidence that the following
19 criteria are met:

20 (a) there are unappropriated waters in the source of supply at the proposed point of diversion:

21 (i) at times when the water can be put to the use proposed by the applicant;

22 (ii) in the amount that the applicant seeks to appropriate; and

23 (iii) during the period in which the applicant seeks to appropriate, the amount requested is
24 reasonably available;

25 (b) the water rights of a prior appropriator will not be adversely affected;

26 (c) the proposed means of diversion, construction, and operation of the appropriation works are
27 adequate;

28 (d) the proposed use of water is a beneficial use;

29 (e) the proposed use will not interfere unreasonably with other planned uses or developments for
30 which a permit has been issued or for which water has been reserved;

1 (f) the applicant has a possessory interest, or the written consent of the person with the
2 possessory interest, in the property where the water is to be put to beneficial use;

3 (g) the water quality of a prior appropriator will not be adversely affected;

4 (h) the proposed use will be substantially in accordance with the classification of water set for the
5 source of supply pursuant to ~~75-5-301(1)~~ the Federal Water Pollution Control Act; and

6 (i) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued ~~in~~
7 ~~accordance with Title 75, chapter 5, part 4, by the U.S. environmental protection agency~~ will not be
8 adversely affected.

9 (2) The applicant is required to prove that the criteria in subsections (1)(g) through (1)(i) have been
10 met only if a valid objection is filed. A valid objection must contain substantial credible information
11 establishing to the satisfaction of the department that the criteria in subsection (1)(g), (1)(h), or (1)(i), as
12 applicable, may not be met. For the criteria set forth in subsection (1)(h), only the ~~department of health~~
13 ~~and environmental sciences or a local water quality district established under Title 7, chapter 13, part 45,~~
14 U.S. environmental protection agency may file a valid objection.

15 (3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water
16 a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing
17 evidence that:

18 (a) the criteria in subsection (1) are met;

19 (b) the rights of a prior appropriator will not be adversely affected;

20 (c) the proposed appropriation is a reasonable use. A finding must be based on a consideration of
21 the following:

22 (i) the existing demands on the state water supply, as well as projected demands such as
23 reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems,
24 and minimum streamflows for the protection of existing water rights and aquatic life;

25 (ii) the benefits to the applicant and the state;

26 (iii) the effects on the quantity and quality of water for existing beneficial uses in the source of
27 supply;

28 (iv) the availability and feasibility of using low-quality water for the purpose for which application
29 has been made;

30 (v) the effects on private property rights by any creation of or contribution to saline seep; and

1 (vi) the probable significant adverse environmental impacts of the proposed use of water as
2 determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

3 (4) (a) The state of Montana has long recognized the importance of conserving its public waters
4 and the necessity to maintain adequate water supplies for the state's water requirements, including
5 requirements for reserved water rights held by the United States for federal reserved lands and in trust for
6 the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that,
7 under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict
8 with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (4)
9 must be met before out-of-state use may occur.

10 (b) The department may not issue a permit for the appropriation of water for withdrawal and
11 transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

12 (i) depending on the volume of water diverted or consumed, the applicable criteria and procedures
13 of subsection (1) or (3) are met;

14 (ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

15 (iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the
16 citizens of Montana.

17 (c) In determining whether the applicant has proved by clear and convincing evidence that the
18 requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following
19 factors:

20 (i) whether there are present or projected water shortages within the state of Montana;

21 (ii) whether the water that is the subject of the application could feasibly be transported to alleviate
22 water shortages within the state of Montana;

23 (iii) the supply and sources of water available to the applicant in the state where the applicant
24 intends to use the water; and

25 (iv) the demands placed on the applicant's supply in the state where the applicant intends to use
26 the water.

27 (d) When applying for a permit or a lease to withdraw and transport water for use outside the
28 state, the applicant shall submit to and comply with the laws of the state of Montana governing the
29 appropriation, lease, and use of water.

30 (5) To meet the preponderance of evidence standard in this section, the applicant, in addition to

1 other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or
 2 other evidence, including but not limited to water supply data, field reports, and other information
 3 developed by the applicant, the department, the U.S. geological survey, or the U.S. ~~so#~~ natural resources
 4 conservation service and other specific field studies.

5 (6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion,
 6 impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent,
 7 agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized
 8 appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly
 9 or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound,
 10 use, or otherwise restrain or control waters within the boundaries of this state, except in accordance with
 11 this section.

12 (7) The department may adopt rules to implement the provisions of this section."
 13

14 **Section 40.** Section 85-2-317, MCA, is amended to read:

15 **"85-2-317. Limitation on appropriation of ground water.** (1) ~~After July 1, 1991, the~~ The
 16 department may not approve a permit to appropriate ground water in excess of 3,000 acre-feet per year
 17 unless:

18 (a) the applicant proves and the department finds that the applicable criteria in 85-2-311 are met;
 19 and

20 (b) the department then petitions the legislature and the legislature affirms the decision of the
 21 department after one or more public hearings.

22 (2) Subsection (1) applies to any permit to appropriate ground water for which application has been
 23 made but which has not been granted as of May 7, 1979.

24 (3) This section does not apply to appropriations by municipalities for municipal use or to
 25 appropriations for public water supplies as defined in ~~75-6-102~~ by the federal Safe Drinking Water Act or
 26 to appropriations for the irrigation of cropland owned and operated by the applicant.

27 (4) ~~Any~~ A person, association, corporation, or other entity that applies for a permit to appropriate
 28 ground water, singularly or collectively, for the purpose of circumventing this section is punishable by a
 29 fine not exceeding \$5,000."
 30

1 **Section 41.** Section 85-2-319, MCA, is amended to read:

2 **"85-2-319. Permit action in highly appropriated basins or subbasins.** (1) The legislature may by
3 law preclude permit applications, or the department may by rule reject permit applications or modify or
4 condition permits issued in a highly appropriated basin or subbasin.

5 (2) A rule may be adopted under this section only upon a petition signed by at least 25% or 10,
6 whichever is less, of the users of water in the source of supply within a basin or subbasin or upon petition
7 of the department of health and environmental sciences alleging facts under subsection (2)(d). The petition
8 must be in a form as prescribed by the department and must allege facts showing that throughout or at
9 certain times of the year or for certain beneficial uses:

10 (a) there are no unappropriated waters in the source of supply;

11 (b) the rights of prior appropriators will be adversely affected;

12 (c) further uses will interfere unreasonably with other planned uses or developments for which a
13 permit has been issued or for which water has been reserved; or

14 (d) in the case of a petition filed by the department of health and environmental sciences:

15 (i) the water quality of an appropriator will be adversely affected by the issuance of permits;

16 (ii) further use will not be substantially in accordance with the classification of water set for the
17 source of supply pursuant to ~~75-5-301(1)~~ the Federal Water Pollution Control Act; or

18 (iii) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in
19 accordance with ~~Title 75, chapter 5, part 4,~~ the Federal Water Pollution Control Act will be adversely
20 affected by the issuance of permits.

21 (3) Within 60 days after submission of a petition, the department shall:

22 (a) deny the petition in writing, stating its reasons for denial;

23 (b) inform the petitioners that the department must study the allegations further before denying
24 or proceeding further with the petition; or

25 (c) initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

26 (4) Title 2, chapter 4, parts 1 through 4, govern rulemaking proceedings conducted under this
27 section, except that in addition to the notice requirements of those parts, the department notice of the
28 rulemaking hearing must be published at least once in each week for 3 successive weeks, not less than 30
29 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which
30 the source is located. The department shall serve by mail a copy of the notice, not less than 30 days

1 before the hearing, upon each person or public agency known from the examination of the records of the
2 department to be a claimant, appropriator, or permitholder of water in the source.

3 (5) The department may adopt rules to implement the provisions of this section."
4

5 **Section 42.** Section 85-2-402, MCA, is amended to read:

6 **"85-2-402. (Temporary) Changes in appropriation rights.** (1) An appropriator may not make a
7 change in an appropriation right except, as permitted under this section, by applying for and receiving the
8 approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and
9 complete application.

10 (2) Except as provided in subsections (4) through (6), the department shall approve a change in
11 appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are
12 met:

13 (a) The proposed use will not adversely affect the water rights of other persons or other planned
14 uses or developments for which a permit has been issued or for which water has been reserved.

15 (b) Except for a lease authorization pursuant to 85-2-436 that does not require appropriation works,
16 the proposed means of diversion, construction, and operation of the appropriation works are adequate.

17 (c) The proposed use of water is a beneficial use.

18 (d) The applicant has a possessory interest, or the written consent of the person with the
19 possessory interest, in the property where the water is to be put to beneficial use.

20 (e) If the change in appropriation right involves salvaged water, the proposed water-saving methods
21 will salvage at least the amount of water asserted by the applicant.

22 (f) The water quality of an appropriator will not be adversely affected.

23 (g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in
24 accordance with ~~Title 75, chapter 5, part 4, the Federal Water Pollution Control Act~~ will not be adversely
25 affected.

26 (3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met
27 only if a valid objection is filed. A valid objection must contain substantial credible information establishing
28 to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not
29 be met.

30 (4) The department may not approve a change in purpose of use or place of use of an appropriation

1 of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the
2 appropriator proves by a preponderance of evidence that:

3 (a) the criteria in subsection (2) are met;

4 (b) the proposed change is a reasonable use. A finding of reasonable use must be based on a
5 consideration of:

6 (i) the existing demands on the state water supply, as well as projected demands for water for
7 future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows
8 for the protection of existing water rights and aquatic life;

9 (ii) the benefits to the applicant and the state;

10 (iii) the effects on the quantity and quality of water for existing uses in the source of supply;

11 (iv) the availability and feasibility of using low-quality water for the purpose for which application
12 has been made;

13 (v) the effects on private property rights by any creation of or contribution to saline seep; and

14 (vi) the probable significant adverse environmental impacts of the proposed use of water as
15 determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

16 (5) The department may not approve a change in purpose of use or place of use for a diversion that
17 results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being
18 consumed unless:

19 (a) the applicant proves by clear and convincing evidence and the department finds that the criteria
20 in subsections (2) and (4) are met; and

21 (b) the department then petitions the legislature and the legislature affirms the decision of the
22 department after one or more public hearings.

23 (6) (a) The state of Montana has long recognized the importance of conserving its public waters
24 and the necessity to maintain adequate water supplies for the state's water requirements, including
25 requirements for reserved water rights held by the United States for federal reserved lands and in trust for
26 the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that,
27 under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict
28 with the public welfare of its citizens or the conservation of its waters, the following criteria must be met
29 before out-of-state use may occur:

30 (b) The department and, if applicable, the legislature may not approve a change in appropriation

1 right for the withdrawal and transportation of appropriated water for use outside the state unless the
2 appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one
3 or more public hearings that:

4 (i) depending on the volume of water diverted or consumed, the applicable criteria and procedures
5 of subsection (2) or (4) are met;

6 (ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

7 (iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the
8 citizens of Montana.

9 (c) In determining whether the appropriator has proved by clear and convincing evidence that the
10 requirements of subsections (6)(b)(ii) and (6)(b)(iii) will be met, the department and, if applicable, the
11 legislature shall consider the following factors:

12 (i) whether there are present or projected water shortages within the state of Montana;

13 (ii) whether the water that is the subject of the proposed change in appropriation might feasibly be
14 transported to alleviate water shortages within the state of Montana;

15 (iii) the supply and sources of water available to the applicant in the state where the applicant
16 intends to use the water; and

17 (iv) the demands placed on the applicant's supply in the state where the applicant intends to use
18 the water.

19 (d) When applying for a change in appropriation right to withdraw and transport water for use
20 outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing
21 the appropriation and use of water.

22 (7) For any application for a change in appropriation right involving 4,000 or more acre-feet of
23 water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the
24 proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with
25 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and
26 may hold one or more hearings upon any other proposed change if it determines that a change might
27 adversely affect the rights of other persons.

28 (8) The department or the legislature, if applicable, may approve a change subject to terms,
29 conditions, restrictions, and limitations ~~as that~~ it considers necessary to satisfy the criteria of this section,
30 including limitations on the time for completion of the change. The department may extend time limits

1 specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

2 (9) Upon actual application of water to the proposed beneficial use within the time allowed, the
3 appropriator shall notify the department that the appropriation has been completed. The notification must
4 contain a certified statement by a person with experience in the design, construction, or operation of
5 appropriation works describing how the appropriation was completed.

6 (10) If a change is not completed as approved by the department or legislature or if the terms,
7 conditions, restrictions, and limitations of the change approval are not complied with, the department may,
8 after notice and opportunity for hearing, require the appropriator to show cause why the change approval
9 should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may
10 modify or revoke the change approval.

11 (11) The original of a change approval issued by the department must be sent to the applicant, and
12 a duplicate must be kept in the office of the department in Helena.

13 (12) A person holding an issued permit or change approval that has not been perfected may change
14 the place of diversion, place of use, purpose of use, or place of storage by filing an application for change
15 pursuant to this section.

16 (13) A change in appropriation right contrary to the provisions of this section is invalid. An officer,
17 agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an
18 unauthorized change in appropriation right. A person or corporation may not, directly or indirectly,
19 personally or through an agent, officer, or employee, attempt to change an appropriation right, except in
20 accordance with this section.

21 (14) The department may adopt rules to implement the provisions of this section. (Terminates June
22 30, 1999--sec. 4, Ch. 740, L. 1991.)

23 **85-2-402. (Effective July 1, 1999) Changes in appropriation rights.** (1) An appropriator may not
24 make a change in an appropriation right except, as permitted under this section, by applying for and
25 receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a
26 correct and complete application.

27 (2) Except as provided in subsections (4) through (6), the department shall approve a change in
28 appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are
29 met:

30 (a) The proposed use will not adversely affect the water rights of other persons or other planned

1 uses or developments for which a permit has been issued or for which water has been reserved.

2 (b) The proposed means of diversion, construction, and operation of the appropriation works are
3 adequate.

4 (c) The proposed use of water is a beneficial use.

5 (d) The applicant has a possessory interest, or the written consent of the person with the
6 possessory interest, in the property where the water is to be put to beneficial use.

7 (e) If the change in appropriation right involves salvaged water, the proposed water-saving methods
8 will salvage at least the amount of water asserted by the applicant.

9 (f) The water quality of an appropriator will not be adversely affected.

10 (g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in
11 accordance with ~~Title 75, chapter 5, part 4, the Federal Water Pollution Control Act~~ will not be adversely
12 affected.

13 (3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met
14 only if a valid objection is filed. A valid objection must contain substantial credible information establishing
15 to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not
16 be met.

17 (4) The department may not approve a change in purpose of use or place of use of an appropriation
18 of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the
19 appropriator proves by a preponderance of evidence that:

20 (a) the criteria in subsection (2) are met;

21 (b) the proposed change is a reasonable use. A finding of reasonable use must be based on a
22 consideration of:

23 (i) the existing demands on the state water supply, as well as projected demands for water for
24 future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows
25 for the protection of existing water rights and aquatic life;

26 (ii) the benefits to the applicant and the state;

27 (iii) the effects on the quantity and quality of water for existing uses in the source of supply;

28 (iv) the availability and feasibility of using low-quality water for the purpose for which application
29 has been made;

30 (v) the effects on private property rights by any creation of or contribution to saline seep; and

1 (vi) the probable significant adverse environmental impacts of the proposed use of water as
2 determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

3 (5) The department may not approve a change in purpose of use or place of use for a diversion that
4 results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being
5 consumed unless:

6 (a) the applicant proves by clear and convincing evidence and the department finds that the criteria
7 in subsections (2) and (4) are met; and

8 (b) the department then petitions the legislature and the legislature affirms the decision of the
9 department after one or more public hearings.

10 (6) (a) The state of Montana has long recognized the importance of conserving its public waters
11 and the necessity to maintain adequate water supplies for the state's water requirements, including
12 requirements for reserved water rights held by the United States for federal reserved lands and in trust for
13 the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that,
14 under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict
15 with the public welfare of its citizens or the conservation of its waters, the following criteria must be met
16 before out-of-state use may occur:

17 (b) The department and, if applicable, the legislature may not approve a change in appropriation
18 right for the withdrawal and transportation of appropriated water for use outside the state unless the
19 appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one
20 or more public hearings that:

21 (i) depending on the volume of water diverted or consumed, the applicable criteria and procedures
22 of subsection (2) or (4) are met;

23 (ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

24 (iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the
25 citizens of Montana.

26 (c) In determining whether the appropriator has proved by clear and convincing evidence that the
27 requirements of subsections (6)(b)(ii) and (6)(b)(iii) will be met, the department and, if applicable, the
28 legislature shall consider the following factors:

29 (i) whether there are present or projected water shortages within the state of Montana;

30 (ii) whether the water that is the subject of the proposed change in appropriation might feasibly be

1 transported to alleviate water shortages within the state of Montana;

2 (iii) the supply and sources of water available to the applicant in the state where the applicant
3 intends to use the water; and

4 (iv) the demands placed on the applicant's supply in the state where the applicant intends to use
5 the water.

6 (d) When applying for a change in appropriation right to withdraw and transport water for use
7 outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing
8 the appropriation and use of water.

9 (7) For any application for a change in appropriation right involving 4,000 or more acre-feet of
10 water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the
11 proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with
12 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and
13 may hold one or more hearings upon any other proposed change if it determines that such a change might
14 adversely affect the rights of other persons.

15 (8) The department or the legislature, if applicable, may approve a change subject to ~~such~~ the
16 terms, conditions, restrictions, and limitations ~~as~~ that it considers necessary to satisfy the criteria of this
17 section, including limitations on the time for completion of the change. The department may extend time
18 limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

19 (9) Upon actual application of water to the proposed beneficial use within the time allowed, the
20 appropriator shall notify the department that the appropriation has been completed. The notification must
21 contain a certified statement by a person with experience in the design, construction, or operation of
22 appropriation works describing how the appropriation was completed.

23 (10) If a change is not completed as approved by the department or legislature or if the terms,
24 conditions, restrictions, and limitations of the change approval are not complied with, the department may,
25 after notice and opportunity for hearing, require the appropriator to show cause why the change approval
26 should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may
27 modify or revoke the change approval.

28 (11) The original of a change approval issued by the department must be sent to the applicant, and
29 a duplicate must be kept in the office of the department in Helena.

30 (12) A person holding an issued permit or change approval that has not been perfected may change

1 the place of diversion, place of use, purpose of use, or place of storage by filing an application for change
2 pursuant to this section.

3 (13) A change in appropriation right contrary to the provisions of this section is invalid. An officer,
4 agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an
5 unauthorized change in appropriation right. A person or corporation may not, directly or indirectly,
6 personally or through an agent, officer, or employee, attempt to change an appropriation right, except in
7 accordance with this section.

8 (14) The department may adopt rules to implement the provisions of this section."
9

10 **Section 43.** Section 87-1-504, MCA, is amended to read:

11 **"87-1-504. Protection of private property -- duty of wardens.** It is the duty of wardens (state
12 conservation officers) to enforce the provisions of 45-6-101, 45-6-203, ~~75-10-212(2)~~, 77-1-801, 77-1-806,
13 and rules adopted under 77-1-804 on private and state lands being used for hunting and fishing and to act
14 as ex officio firewardens as provided by 77-5-104."
15

16 **Section 44.** Section 87-1-505, MCA, is amended to read:

17 **"87-1-505. Warden's power in protection of private property.** Wardens (state conservation
18 officers) ~~shall~~ have the power of peace officers in the enforcement of 45-6-101, and 45-6-203, ~~and~~
19 ~~75-10-212(2).~~"
20

21 **NEW SECTION. Section 45. Appropriation.** There is appropriated to the department of health and
22 environmental sciences \$5,000 for the fiscal year ending June 30, 1996, for the purpose of transferring
23 primacy of the state programs in [this act] to the federal government.
24

25 **NEW SECTION. Section 46. Repealer.** Sections 7-13-4501, 7-13-4502, 7-13-4504, 7-13-4505,
26 7-13-4506, 7-13-4507, 7-13-4509, 7-13-4510, 7-13-4511, 7-13-4512, 7-13-4513, 7-13-4516,
27 7-13-4517, 7-13-4518, 7-13-4519, 7-13-4521, 7-13-4522, 7-13-4523, 7-13-4524, 7-13-4525,
28 7-13-4527, 7-13-4528, 7-13-4529, 75-2-101, 75-2-102, 75-2-103, 75-2-104, 75-2-105, 75-2-106,
29 75-2-107, 75-2-108, 75-2-109, 75-2-111, 75-2-112, 75-2-121, 75-2-122, 75-2-123, 75-2-201, 75-2-202,
30 75-2-203, 75-2-204, 75-2-205, 75-2-206, 75-2-211, 75-2-212, 75-2-215, 75-2-216, 75-2-217, 75-2-218,

1 75-2-219, 75-2-220, 75-2-221, 75-2-231, 75-2-232, 75-2-233, 75-2-301, 75-2-302, 75-2-401, 75-2-402,
2 75-2-403, 75-2-411, 75-2-412, 75-2-413, 75-2-421, 75-2-422, 75-2-423, 75-2-424, 75-2-425, 75-2-426,
3 75-2-427, 75-2-428, 75-2-429, 75-5-101, 75-5-102, 75-5-103, 75-5-104, 75-5-105, 75-5-106, 75-5-201,
4 75-5-202, 75-5-211, 75-5-212, 75-5-213, 75-5-221, 75-5-301, 75-5-302, 75-5-303, 75-5-304, 75-5-305,
5 75-5-306, 75-5-307, 75-5-308, 75-5-311, 75-5-401, 75-5-402, 75-5-403, 75-5-404, 75-5-405, 75-5-501,
6 75-5-502, 75-5-503, 75-5-507, 75-5-511, 75-5-512, 75-5-513, 75-5-514, 75-5-515, 75-5-516, 75-5-517,
7 75-5-601, 75-5-602, 75-5-603, 75-5-604, 75-5-605, 75-5-611, 75-5-612, 75-5-613, 75-5-614, 75-5-615,
8 75-5-616, 75-5-621, 75-5-622, 75-5-631, 75-5-632, 75-5-633, 75-5-634, 75-5-635, 75-5-636, 75-5-641,
9 75-5-1101, 75-5-1102, 75-5-1103, 75-5-1104, 75-5-1105, 75-5-1106, 75-5-1107, 75-5-1108,
10 75-5-1111, 75-5-1112, 75-5-1113, 75-5-1121, 75-5-1122, 75-6-101, 75-6-102, 75-6-103, 75-6-104,
11 75-6-105, 75-6-106, 75-6-107, 75-6-108, 75-6-109, 75-6-111, 75-6-112, 75-6-113, 75-6-114, 75-6-115,
12 75-6-121, 75-10-101, 75-10-102, 75-10-103, 75-10-104, 75-10-105, 75-10-106, 75-10-110, 75-10-111,
13 75-10-112, 75-10-113, 75-10-115, 75-10-116, 75-10-117, 75-10-118, 75-10-121, 75-10-122,
14 75-10-123, 75-10-124, 75-10-125, 75-10-201, 75-10-202, 75-10-203, 75-10-204, 75-10-205,
15 75-10-206, 75-10-207, 75-10-209, 75-10-210, 75-10-212, 75-10-213, 75-10-214, 75-10-215,
16 75-10-221, 75-10-222, 75-10-223, 75-10-224, 75-10-227, 75-10-228, 75-10-231, 75-10-232,
17 75-10-233, and 80-15-219, MCA, are repealed.

18

19 **NEW SECTION. Section 47. Codification instruction.** [Section 17] is intended to be codified as
20 an integral part of Title 75, chapter 10, part 9, and the provisions of Title 75, chapter 10, part 9, apply to
21 [section 17].

22

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0440, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act repealing certain environmental laws; eliminating air quality, water quality, and solid waste management rules that allow the adoption of standards more stringent than federal standards; and establishing a solid waste special revenue account.

ASSUMPTIONS:

1. The Executive Budget serves as the starting point from which to calculate any fiscal impact due to this proposed legislation.
2. As this act contains an appropriation, it will be effective on July 1, 1995.
3. The state will operate the impacted programs at a level to maintain primacy up through June 30, 1995.
4. The department estimates there will be approximately \$1,120,000 in pay outs for terminated employees. This includes accrued annual leave, sick leave, compensation time, termination payout, and any benefits. The department will fund these payouts from FY95 funds, including using up any state special revenue fee balances for programs which will be eliminated. No additional general fund will be needed to pay these costs.
5. The State Revolving Fund (SRF) loan program would be transferred to the Department of Commerce (DOC). The Environmental Protection Agency (EPA) believes the program would continue to operate as it currently does, including receiving federal funds. In the event there is a need for additional state capital, funds from the Treasure State Endowment could be made available for continuing support of the program.
6. This bill would eliminate the licensing and regulation of solid waste landfills by the state. Fees would no longer be paid to the state by operators.

FISCAL IMPACT:

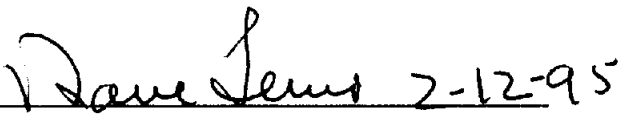
Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
FTE	(158.58)	(171.08)
Personal Services	(5,731,762)	(5,965,945)
Operating Expenses	(5,898,149)	(6,410,207)
Equipment	(257,038)	(146,538)
Grants	<u>(494,208)</u>	<u>(555,043)</u>
Total	(12,381,157)	(13,077,733)

Funding:

General Fund	(271,588)	(260,955)
State Special Funds	(5,409,932)	(5,906,843)
Federal Funds	(6,237,790)	(6,461,636)
Proprietary	<u>(461,847)</u>	<u>(448,299)</u>
Total	(12,381,157)	(13,077,733)

(continued)


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


 HARRIET HAYNE, PRIMARY SPONSOR DATE

Fiscal Note Request, HB0440, as introduced

Page 2

(continued)

Revenues:

State Special Funds (02)	(5,409,932)	(5,906,843)
Federal Funds (03)	(6,237,790)	(6,461,636)
Proprietary (06)	<u>(461,847)</u>	<u>(448,299)</u>
Total	(12,109,569)	(12,816,778)

Net Impact:

General Fund Savings (01)	271,588	260,955
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Counties or municipalities which are building or expanding landfills will have to comply with federal designs and operational practices. There may be some cost to counties and municipalities to attain compliance, as there is with the state. In addition, some landfills currently approved in western Montana may need to be closed or relocated to comply with seismic impact zone requirements. No new landfills or lateral expansion of existing landfills would be approved within seismic impact zones.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

There may be increased costs to public water supply systems to pay for additional monitoring which will be required due to discontinuation of waivers which were granted to the state program.