

Shirley Smith

House BILL NO. 521

INTRODUCED BY

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A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING CERTAIN STATE ADMINISTRATIVE AGENCY RULES FROM BEING MORE STRINGENT THAN CORRESPONDING FEDERAL REGULATIONS; REQUIRING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES AND THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO REVIEW AND REVISE CERTAIN RULES TO ENSURE COMPLIANCE WITH THIS ACT; CREATING AN AFFIRMATIVE DEFENSE FOR VIOLATIONS OF CERTAIN RULES MORE STRINGENT THAN CORRESPONDING FEDERAL RULES; AMENDING SECTIONS 75-2-111, 75-2-301, 75-2-503, 75-3-201, 75-5-201, 75-5-311, 75-6-103, 75-10-204, 75-10-405, AND 75-10-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the federal government frequently regulates areas that are also subject to state regulation; and

WHEREAS, differing state and federal policy goals and unique state prerogatives frequently result in different levels of regulation, different standards, and different requirements being imposed by state and federal programs covering the same subject matter; and

WHEREAS, Montana must simultaneously move toward reducing redundant and unnecessary regulation that dulls the state's competitive advantage while being ever vigilant in the protection of the public's health, safety, and welfare; and

WHEREAS, Montana's administrative agencies should consider applicable federal standards when adopting, readopting, or amending rules with analogous federal counterparts; and

WHEREAS, Montana's administrative agencies should analyze whether analogous federal standards sufficiently protect the health, safety, and welfare of Montana's citizens; and

WHEREAS, as part of the formal rulemaking process, the public should be advised of the agencies' conclusions about whether analogous federal standards sufficiently protect the health, safety, and welfare of Montana citizens.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the board of health and

1 environmental sciences and to the department of health and environmental sciences in complying with [this
2 act].

3 The legislature intends that in addition to all requirements imposed by existing law and rules, the
4 board or the department include as part of the initial publication and all subsequent publications of a rule
5 a statement as to whether the rule in question contains any standards or requirements that exceed the
6 standards or requirements imposed by federal law.

7 If the rules are more stringent than federal law, the statement must include but is not limited to a
8 discussion of the policy reasons and a risk-cost analysis that supports the board's or department's decision
9 to impose the standards or requirements and also supports the fact that the state standards or requirements
10 to be imposed are achievable under current technology, notwithstanding the federal government's
11 determination that lesser standards or requirements are appropriate.

12 The risk-cost analysis must address the probability of harm to public health or the environment
13 under the conditions imposed by the federal standards, the reduction in that probability of harm because
14 of imposition of stricter state standards, and the costs required of the regulated community to mitigate the
15 harm to public health or the environment via the stricter state standards.

16 [This act] is intended to apply to any rule that is adopted, readopted, or amended under the
17 authority of or in order to implement, comply with, or participate in any program established under federal
18 law or under a state statute that incorporates or refers to federal law, federal standards, or federal
19 requirements under Title 75, chapter 2; Title 75, chapter 5; Title 75, chapter 6; or Title 75, chapter 10.

20

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

22

23 **NEW SECTION. Section 1. State standards no more stringent than federal standards.** (1) Except
24 as provided in subsections (2) through (6), unless required by state law, the board may not adopt a rule
25 to implement this chapter that is more stringent than the corresponding federal regulations that address the
26 same circumstances. The board may incorporate by reference corresponding federal regulations.

27 (2) The board may adopt a rule to implement this chapter that is more stringent than corresponding
28 federal regulations or adopt rules when there are no corresponding federal regulations only if the board
29 makes a written finding after a public hearing and public comment and based on evidence in the record that
30 the corresponding federal regulations are not adequate to protect public health or the environment of the

1 state. This finding must be accompanied by a summarizing conclusion statement referring to and evaluating
2 the probability of harm to public health or the environment at the level of the federal rule or regulation and
3 the specific improvement in the public health or environment from the stricter state rule. The statement
4 must reference information and studies contained in the record that form the basis for the board's
5 conclusion.

6 (3) The summarizing conclusion statement must include but is not limited to a discussion of the
7 policy reasons and a risk-cost analysis that supports the board's decision to impose the standards or
8 requirements and also supports the fact that the state standard or requirement to be imposed can mitigate
9 the increased probability of harm to the public health or environment and is achievable under current
10 technology, notwithstanding the federal government's determination that lesser standards or requirements
11 are appropriate and protective of public health or the environment.

12 (4) If the board, upon petition by any person affected by a rule of the board, identifies rules more
13 stringent than federal regulations or identifies rules for which there are no corresponding federal regulations,
14 the board shall review and revise those rules to comply with this section within 9 months of the filing of
15 the petition.

16 (5) a person who is issued a notice of violation or a denial of a permit or other approval based on
17 a rule that is more stringent than a corresponding federal regulation or for which there is no corresponding
18 regulation may assert a partial defense to that notice or a partial challenge to that denial on the basis and
19 to the extent that the rule violates this section because it imposes requirements more stringent than the
20 federal regulations, unless the more stringent rule was adopted in compliance with this section.

21 (6) (a) The board shall review and propose revisions to its rules to ensure compliance with this
22 section by October 1, 1995. The board shall revise its rules to comply with this section by October 1,
23 1996.

24 (b) The board may propose and adopt revisions to its rules prior to the dates specified in subsection
25 (6)(a) upon petition for rulemaking by a person as provided under 2-4-315 and subsection (4) of this
26 section.

27
28 **NEW SECTION. Section 2. State standards no more stringent than federal standards.** (1) Except
29 as provided in subsections (2) through (6), unless required by state law, the board or department may not
30 adopt a rule to implement this chapter that is more stringent than the corresponding federal regulations that

1 address the same circumstances. The board or department may incorporate by reference corresponding
2 federal regulations.

3 (2) The board or department may adopt a rule to implement this chapter that is more stringent than
4 corresponding federal regulations or adopt rules when there are no corresponding federal regulations only
5 if the board or department makes a written finding after a public hearing and public comment and based
6 on evidence in the record that the corresponding federal regulations are not adequate to protect public
7 health or the environment of the state. This finding must be accompanied by a summarizing conclusion
8 statement referring to and evaluating the probability of harm to public health or the environment at the level
9 of the federal rule or regulation and the specific improvement in the public health or environment from the
10 stricter state rule. The statement must reference information and studies contained in the record that form
11 the basis for the board's or department's conclusion.

12 (3) The summarizing conclusion statement must include but is not limited to a discussion of the
13 policy reasons and a risk-cost analysis that supports the board's or department's decision to impose the
14 standards or requirements and also supports the fact that the state standard or requirement to be imposed
15 can mitigate the increased probability of harm to the public health or environment and is achievable under
16 current technology, notwithstanding the federal government's determination that lesser standards or
17 requirements are appropriate and protective of public health or the environment.

18 (4) If the board or department, upon petition by any person affected by a rule of the board or
19 department, identifies rules more stringent than federal regulations or identifies rules for which there are
20 no corresponding federal regulations, the board or department shall review and revise those rules to comply
21 with this section within 9 months of the filing of the petition.

22 (5) A person who is issued a notice of violation or a denial of a permit or other approval based on
23 a rule that is more stringent than a corresponding federal regulation or for which there is no corresponding
24 regulation may assert a partial defense to that notice or a partial challenge to that denial on the basis and
25 to the extent that the rule violates this section because it imposes requirements more stringent than the
26 federal regulations, unless the more stringent rule was adopted in compliance with this section.

27 (6) (a) The board or department shall review and propose revisions to its rules to ensure compliance
28 with this section by October 1, 1995. The board or department shall revise its rules to comply with this
29 section by October 1, 1996.

30 (b) The board or department may propose and adopt revisions to its rules prior to the dates

1 specified in subsection (6)(a) upon petition for rulemaking by a person as provided under 2-4-315 and
2 subsection (4) of this section.

3
4 **NEW SECTION. Section 3. State standards no more stringent than federal standards.** (1) Except
5 as provided in subsections (2) through (6), unless required by state law, the department may not adopt a
6 rule to implement this chapter that is more stringent than the corresponding federal regulations that address
7 the same circumstances. The department may incorporate by reference corresponding federal regulations.

8 (2) The department may adopt a rule to implement this chapter that is more stringent than
9 corresponding federal regulations or adopt rules where there are no corresponding federal regulations only
10 if the department makes a written finding after a public hearing and public comment and based on evidence
11 in the record that the corresponding federal regulations are not adequate to protect public health or the
12 environment of the state. This finding must be accompanied by a summarizing conclusion statement
13 referring to and evaluating the probability of harm to public health or the environment at the level of the
14 federal rule or regulation and the specific improvement in the public health or environment from the stricter
15 state rule. The statement must reference information and studies contained in the record that form the basis
16 for the department's conclusion.

17 (3) The summarizing conclusion statement must include but is not limited to a discussion of the
18 policy reasons and a risk-cost analysis that supports the department's decision to impose the standards or
19 requirements and also supports the fact that the state standard or requirement to be imposed can mitigate
20 the increased probability of harm to the public health or environment and is achievable under current
21 technology, notwithstanding the federal government's determination that lesser standards or requirements
22 are appropriate and protective of public health or the environment.

23 (4) If the department, upon petition by any person affected by a rule of the department, identifies
24 rules more stringent than federal regulations or identifies rules for which there are no corresponding federal
25 regulations, the department shall review and revise those rules to comply with this section within 9 months
26 of the filing of the petition.

27 (5) A person who is issued a notice of violation or a denial of a permit or other approval based on
28 a rule that is more stringent than a corresponding federal regulation or for which there is no corresponding
29 regulation may assert a partial defense to that notice or a partial challenge to that denial on the basis and
30 to the extent that the rule violates this section because it imposes requirements more stringent than the

1 federal regulations, unless the more stringent rule was adopted in compliance with this section.

2 (6) (a) The department shall review and propose revisions to its rules to ensure compliance with
3 this section by October 1, 1995. The department shall revise its rules to comply with this section by
4 October 1, 1996.

5 (b) The department may propose and adopt revisions to its rules prior to the dates specified in
6 subsection (6)(a) upon petition for rulemaking by a person as provided under 2-4-315 and subsection (4)
7 of this section.

8

9 **Section 4.** Section 75-2-111, MCA, is amended to read:

10 "**75-2-111. Powers of board.** The board shall, subject to the provisions of [section 2]:

11 (1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this
12 chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements
13 of 42 U.S.C. 7420 and regulations adopted pursuant thereto;

14 (2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place
15 designated by the board. The board may compel the attendance of witnesses and the production of
16 evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall
17 appoint a reporter who ~~shall~~ must be present at all hearings and take full stenographic notes of all
18 proceedings ~~thereat~~, transcripts of which will be available to the public at cost.

19 (3) issue orders necessary to effectuate the purposes of this chapter;

20 (4) by rule require access to records relating to emissions;

21 (5) by rule adopt a schedule of fees required for permits and permit applications, consistent with
22 this chapter;

23 (6) have the power to issue orders under and in accordance with 42 U.S.C. 7419."

24

25 **Section 5.** Section 75-2-301, MCA, is amended to read:

26 "**75-2-301. Local air pollution control programs.** (1) After public hearing, a municipality or county
27 may establish and administer a local air pollution control program if the program is consistent with this
28 chapter and is approved by the board.

29 (2) If a local air pollution control program established by a county encompasses all or part of a
30 municipality, the county and each municipality shall approve the program in accordance with subsection

1 (1).

2 (3) (a) Except as provided in subsection (4), the board by order may approve a local air pollution
3 control program that:

4 ~~(a)(i)~~ provides by ordinance or local law for requirements compatible with, more stringent than, or
5 more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217
6 through 75-2-219, and 75-2-402, and rules adopted under these sections;

7 ~~(b)(ii)~~ provides for the enforcement of requirements established under subsection (3)(a)(i) by
8 appropriate administrative and judicial processes; and

9 ~~(c)(iii)~~ provides for administrative organization, staff, financial resources, and other resources
10 necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a
11 local air pollution control program may administer the permit fee provisions of 75-2-220. The permit fees
12 collected by a local air pollution control program must be deposited in a county special revenue fund to be
13 used by the local air pollution control program for administration of permitting activities.

14 (b) Board approval of an ordinance or local law that is more stringent than the corresponding state
15 law or for which no state law exists is not subject to the provisions of [section 2].

16 (4) Except for those emergency powers provided for in 75-2-402, the board may not delegate to
17 a local air pollution control program the authority to control any air pollutant source that:

18 (a) requires the preparation of an environmental impact statement in accordance with Title 75,
19 chapter 1, part 2;

20 (b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75,
21 chapter 20; or

22 (c) has the potential to emit 250 tons ~~per~~ a year or more of any pollutant subject to regulation
23 under this chapter, including fugitive emissions, unless the authority to control the source was delegated
24 to a local air pollution control program prior to January 1, 1991.

25 (5) If the board finds that the location, character, or extent of particular concentrations of
26 population, air pollutant sources, or geographic, topographic, or meteorological considerations or any
27 combination of these ~~are such as to~~ make impracticable the maintenance of appropriate levels of air quality
28 without an areawide air pollution control program, the board may determine the boundaries within which
29 the program is necessary and require it as the only acceptable alternative to direct state administration.

30 (6) If the board has reason to believe that any part of an air pollution control program in force under

1 this section is either inadequate to prevent and control air pollution in the jurisdiction to which the program
2 relates or is being administered in a manner inconsistent with this chapter, the board shall, on notice,
3 conduct a hearing on the matter.

4 (7) If, after the hearing, the board determines that any part of the program is inadequate to prevent
5 and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes
6 of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not
7 to exceed 60 days.

8 (8) If the jurisdiction fails to take these measures within the time required, the department shall
9 administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any
10 applicable board order, that are necessary to correct the deficiencies found by the board. The department's
11 control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements
12 in the affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

13 (9) If the board finds that the control of a particular air pollutant source because of its complexity
14 or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and
15 economically performed at the state level, it may direct the department to assume and retain control over
16 that air pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this
17 subsection may be either on the basis of the nature of the sources involved or on the basis of their
18 relationship to the size of the communities in which they are located.

19 (10) A jurisdiction in which the department administers all or part of its air pollution control
20 program under subsection (8) may, with the approval of the board, establish or resume an air pollution
21 control program that meets the requirements of subsection (3).

22 (11) A municipality or county may administer all or part of its air pollution control program in
23 cooperation with one or more municipalities or counties of this state or of other states."
24

25 **Section 6.** Section 75-2-503, MCA, is amended to read:

26 "**75-2-503. Rulemaking authority -- issuance of permits.** (1) The department shall, subject to the
27 provisions of [section 2], adopt rules establishing standards and procedures for accreditation of
28 asbestos-related occupations and control of the work performed by persons in asbestos-related
29 occupations. The rules must be consistent with federal law and include but are not limited to:

30 (a) standards for training course review and approval;

1 (b) standards for accreditation of applicants for asbestos-related occupations;

2 (c) examination requirements for accreditation of applicants for asbestos-related occupations;

3 (d) requirements for renewal of accreditation, including periodic refresher courses;

4 (e) revocation of accreditation;

5 (f) inspection requirements for asbestos projects and asbestos-related occupations credentials;

6 (g) criteria to determine whether and what type of control measures are necessary for an asbestos
7 project and whether a project is completed in a manner sufficient to protect public health, including criteria
8 setting allowable limits on indoor airborne asbestos. A determination of whether asbestos abatement of a
9 structure is necessary may not be based solely upon the results of airborne asbestos testing.

10 (h) requirements for issuance of asbestos project permits and conditions that permit holders shall
11 meet;

12 (i) standards for seeking injunctions, criminal and civil penalties, or emergency actions;

13 (j) advance notification procedures and issuance of permits for asbestos projects; and

14 (k) fees, which must be commensurate with costs, for:

15 (i) review and approval of training courses;

16 (ii) application for and renewal of accreditation by a person seeking to pursue an asbestos-related
17 occupation;

18 (iii) issuance of asbestos project permits; and

19 (iv) requested inspections of asbestos projects.

20 (2) For asbestos projects having a cost of \$3,000 or less, the department shall issue asbestos
21 project permits within 7 calendar days following the receipt of a properly completed permit application and
22 the appropriate fee."

23
24 **Section 7.** Section 75-3-201, MCA, is amended to read:

25 "**75-3-201. State radiation control agency.** (1) The department is the state radiation control agency.

26 (2) Under the laws of this state, the department may employ, compensate, and prescribe the
27 powers and duties of the individuals ~~which~~ that are necessary to carry out this chapter.

28 (3) The department may, subject to the provisions of [section 3], for the protection of the
29 occupational and public health and safety:

30 (a) develop and conduct programs for evaluation and control of hazards associated with the use

1 of sources of ionizing radiation;

2 (b) develop programs and adopt rules with due regard for compatibility with federal programs for
3 licensing and regulation of byproduct, source, radioactive waste, and special nuclear materials and other
4 radioactive materials. These rules ~~shall~~ must cover equipment and facilities, methods for transporting,
5 handling, and storage of radioactive materials, permissible levels of exposure, technical qualifications of
6 personnel, required notification of accidents and other incidents involving radioactive materials, survey
7 methods and results, methods of disposal of radioactive materials, posting and labeling of areas and
8 sources, and methods and effectiveness of controlling individuals in posted and restricted areas.

9 (c) adopt rules relating to control of other sources of ionizing radiation. These rules ~~shall~~ must cover
10 equipment and facilities, permissible levels of exposure to personnel, posting of areas, surveys, and records.

11 (d) advise, consult, and cooperate with other agencies of the state, the federal government, other
12 states, interstate agencies, political subdivisions, and groups concerned with control of sources of ionizing
13 radiation;

14 (e) accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in
15 furtherance of its functions, from the federal government and from other sources, public or private;

16 (f) encourage, participate in, or conduct studies, investigations, training, research, and
17 demonstrations relating to control of sources of ionizing radiation;

18 (g) collect and disseminate information relating to control of sources of ionizing radiation, including:

19 (i) maintenance of a file of all license applications, issuances, denials, amendments, transfers,
20 renewals, modifications, suspensions, and revocations;

21 (ii) maintenance of a file of registrants possessing sources of ionizing radiation requiring registration
22 under this chapter and any administrative or judicial action pertaining ~~thereto~~ to this chapter;

23 (iii) maintenance of a file of all rules relating to regulation of sources of ionizing radiation, pending
24 or adopted, and proceedings ~~thereon~~."

25

26 **Section 8.** Section 75-5-201, MCA, is amended to read:

27 "**75-5-201. Board rules authorized.** (1) The board shall, subject to the provisions of [section 1],
28 adopt rules for the administration of this chapter.

29 (2) The board's rules may include a fee schedule or system for assessment of administrative
30 penalties as provided under 75-5-611."

1 **Section 9.** Section 75-5-311, MCA, is amended to read:

2 **"75-5-311. Local water quality districts -- board approval -- local water quality programs.** (1) A
3 county that establishes a local water quality district according to the procedures specified in Title 7, chapter
4 13, part 45, shall, in consultation with the department, undertake planning and information-gathering
5 activities necessary to develop a proposed local water quality program.

6 (2) A county may implement a local water quality program in a local water quality district if the
7 program is approved by the board after a hearing conducted under 75-5-202.

8 (3) In approving a local water quality program, the board shall determine that the program is
9 consistent with the purposes and requirements of Title 75, chapter 5, and that the program will be effective
10 in protecting, preserving, and improving the quality of surface water and ground water, considering the
11 administrative organization, staff, and financial and other resources available to implement the program.

12 (4) Subject to the board's approval, the commissioners and the governing bodies of cities and
13 towns that participate in a local water quality district may adopt local ordinances to regulate the following
14 specific facilities and sources of pollution:

15 (a) onsite waste water disposal facilities;

16 (b) storm water runoff from paved surfaces;

17 (c) service connections between buildings and publicly owned sewer mains;

18 (d) facilities that use or store halogenated and nonhalogenated solvents, including hazardous
19 substances that are referenced in 40 CFR 261.31, United States environmental protection agency
20 hazardous waste numbers F001 through F005, as amended; and

21 (e) internal combustion engine lubricants.

22 (5) (a) For the facilities and sources of pollution included in subsection (4) and consistent with the
23 provisions of subsection (6), the local ordinances may:

24 ~~(a)~~ (i) be compatible with or more stringent or more extensive than the requirements imposed by
25 75-5-304, 75-5-305, and 75-5-401 through 75-5-404 and rules adopted under those sections to protect
26 water quality, establish waste discharge permit requirements, and establish best management practices for
27 substances that have the potential to pollute state waters;

28 ~~(b)~~ (ii) provide for administrative procedures, administrative orders and actions, and civil
29 enforcement actions that are consistent with 75-5-601 through 75-5-604, 75-5-611 through 75-5-616,
30 75-5-621, and 75-5-622 and rules adopted under those sections; and

1 ~~(e)(iii)~~ provide for civil penalties not to exceed \$1,000 per violation, provided that each day of
2 violation of a local ordinance constitutes a separate violation, and criminal penalties not to exceed \$500
3 per day of violation or imprisonment for not more than 30 days, or both.

4 (b) Board approval of an ordinance or local law that is more stringent than the corresponding state
5 law or for which no state law exists is not subject to the provisions of [section 1].

6 (6) The local ordinances authorized by this section may not:

7 (a) duplicate the department's requirements and procedures relating to permitting of waste
8 discharge sources and enforcement of water quality standards;

9 (b) regulate any facility or source of pollution to the extent that the facility or source is:

10 (i) required to obtain a permit or other approval from the department or federal government or is
11 the subject of an administrative order, a consent decree, or an enforcement action pursuant to Title 75,
12 chapter 5, part 4; Title 75, chapter 6; Title 75, chapter 10; the federal Comprehensive Environmental
13 Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675, as amended; or federal
14 environmental, safety, or health statutes and regulations;

15 (ii) exempted from obtaining a permit or other approval from the department because the facility
16 or source is required to obtain a permit or other approval from another state agency or is the subject of an
17 enforcement action by another state agency; or

18 (iii) subject to the provisions of Title 80, chapter 8 or chapter 15.

19 (7) If the boundaries of a district are changed after the board has approved the local water quality
20 program for the district, the board of directors of the local water quality district shall submit a program
21 amendment to the board and obtain the board's approval of the program amendment before implementing
22 the local water quality program in areas that have been added to the district.

23 (8) The department shall monitor the implementation of local water quality programs to ensure that
24 the programs are adequate to protect, preserve, and improve the quality of the surface water and ground
25 water and are being administered in a manner consistent with the purposes and requirements of Title 75,
26 chapter 5. If the department finds that a local water quality program is not adequate to protect, preserve,
27 and improve the quality of the surface water and ground water or is not being administered in a manner
28 consistent with the purposes and requirements of Title 75, chapter 5, the department shall report to the
29 board.

30 (9) If the board determines that a local water quality program is inadequate to protect, preserve,

1 and improve the quality of the surface water and ground water in the local water quality district or that the
2 program is being administered in a manner inconsistent with Title 75, chapter 5, the board shall give notice
3 and conduct a hearing on the matter.

4 (10) If after the hearing the board determines that the program is inadequate to protect, preserve,
5 and improve the quality of the surface water and ground water in the local water quality district or that it
6 is not being administered in a manner consistent with the purposes of Title 75, chapter 5, the board shall
7 require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

8 (11) If an ordinance adopted under this section conflicts with a requirement imposed by the
9 department’s water quality program, the department’s requirement supersedes the local ordinance.

10 (12) If the board finds that, because of the complexity or magnitude of a particular water pollution
11 source, the control of the source is beyond the reasonable capability of a local water quality district or may
12 be more efficiently and economically performed at the state level, the board may direct the department to
13 assume and retain control over the source. A charge may not be assessed against the local water quality
14 district for that source. Findings made under this subsection may be based on the nature of the source
15 involved or on the source’s relationship to the size of the community in which it is located.”

16

17 **Section 10.** Section 75-6-103, MCA, is amended to read:

18 **“75-6-103. Duties of the board.** (1) The board has general supervision over all state waters ~~which~~
19 that are directly or indirectly being used by a person for a public water supply system or domestic purposes
20 or as a source of ice.

21 (2) The board shall, subject to the provisions of [section 1], adopt rules and standards concerning:

22 (a) maximum contaminant levels for waters that are or will be used for a public water supply
23 system;

24 (b) fees, as described in 75-6-108, for services rendered by the department;

25 (c) monitoring, recordkeeping, and reporting by persons who own or operate a public water supply
26 system;

27 (d) requiring public notice to all users of a public water supply system when a person has been
28 granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

29 (e) the issuance of licenses by the department to laboratories that conduct analysis of public water
30 supply systems;

1 (f) the siting, construction, operation, and modification of a public water supply system or public
2 sewage system;

3 (g) the review of financial viability of a proposed public water supply system or public sewage
4 system, as necessary to ensure the capability of the system to meet the requirements of this part;

5 (h) the collection and analysis of samples of water used for drinking or domestic purposes;

6 (i) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act
7 and this part;

8 (j) administrative enforcement procedures and administrative penalties authorized under this part;
9 and

10 (k) any other requirement necessary for the protection of public health as described in this part.

11 (3) The board may issue orders necessary to fully implement the provisions of this part."
12

13 **Section 11.** Section 75-10-204, MCA, is amended to read:

14 **"75-10-204. Powers and duties of department.** The department shall, subject to the provisions of
15 [section 3], adopt rules governing solid waste management systems ~~which shall that must~~ include but are
16 not limited to:

17 (1) requirements for the plan of operation and maintenance that must be submitted with an
18 application under this part;

19 (2) the classification of disposal sites according to the physical capabilities of the site to contain
20 the type of solid waste to be disposed of;

21 (3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;

22 (4) the suitability of the site from a public health standpoint when hydrology, geology, and
23 climatology are considered;

24 (5) requirements relating to ground water monitoring, including but not limited to:

25 (a) information that owners and operators of municipal solid waste landfills and other disposal sites
26 specified in 75-10-207 must submit to the department to enable the department to prepare the priority
27 compliance list authorized by 75-10-207(3);

28 (b) the content of plans for the design, construction, operation, and maintenance of monitoring
29 wells and monitoring systems; and

30 (c) recordkeeping and reporting;

1 (6) fees related to the review of solid waste management system license applications;

2 (7) the renewal of solid waste management system licenses and related fees;

3 (8) a quarterly fee based on the justifiable direct and indirect costs to the state of administering
4 Title 75, chapter 10, parts 1 and 2, for solid waste generated outside Montana and disposed of or
5 incinerated within Montana; ~~These rules must be adopted by August 1, 1993.~~

6 (9) any other factors relating to the sanitary disposal or management of solid wastes."
7

8 **Section 12.** Section 75-10-405, MCA, is amended to read:

9 **"75-10-405. Administrative rules.** (1) The department may, subject to the provisions of [section
10 3], adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

11 (a) identification and classification of those hazardous wastes subject to regulation and those that
12 are not;

13 (b) requirements for the proper treatment, storage, transportation, and disposal of hazardous
14 waste;

15 (c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure,
16 postclosure, and reclamation of hazardous waste management facilities;

17 (d) requirements for the issuance, denial, reissuance, modification, and revocation of permits for
18 hazardous waste management facilities;

19 (e) requirements for corrective action within and outside of facility boundaries and for financial
20 assurance of that corrective action;

21 (f) requirements for manifests and the manifest system for tracking hazardous waste and for
22 reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste
23 management facilities;

24 (g) requirements for training of facility personnel and for financial assurance of facility owners and
25 operators and for liability of guarantors providing financial assurance;

26 (h) requirements for registration of generators and transporters;

27 (i) establishing a schedule of fees and procedures for the collection of fees for:

28 (i) the filing and review of hazardous waste management facility permits as provided in 75-10-432;

29 (ii) hazardous waste management as provided in 75-10-433;

30 (iii) the reissuance and modification of hazardous waste management facility permits; and

- 1 (iv) the registration of hazardous waste generators;
- 2 (j) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining
3 any state hazardous waste management facility authorized by 75-10-412;
- 4 (k) requirements for availability to the public of information obtained by the department regarding
5 facilities and sites used for the treatment, storage, and disposal of hazardous wastes;
- 6 (l) procedures for the assessment of administrative penalties as authorized by 75-10-424; and
- 7 (m) other rules ~~which~~ that are necessary to obtain and maintain authorization under the federal
8 program.
- 9 (2) The department may not adopt rules under this part that are more restrictive than those
10 promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as
11 amended, except that the department:
- 12 (a) may require the registration of transporters not otherwise required to register with the state of
13 Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;
- 14 (b) may require generators and facilities to report on an annual rather than on a biennial basis;
- 15 (c) may adopt requirements for the prevention and correction of leakage from underground storage
16 tanks, including:
- 17 (i) reporting by owners and operators;
- 18 (ii) financial responsibility;
- 19 (iii) release detection, prevention, and corrective action;
- 20 (iv) standards for design, construction, installation, and closure;
- 21 (v) development of a schedule of fees, not to exceed \$50 for a tank over 1,100 gallons and not
22 to exceed \$20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state
23 and local costs of implementing an underground storage tank program;
- 24 (vi) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals
25 under 75-10-423; and
- 26 (vii) delegation of authority and funds to local agents for inspections and implementation. The
27 delegation of authority to local agents must complement and may not duplicate existing authority for
28 implementation of rules adopted by the department of justice that relate to underground storage tanks.
- 29 (d) may adopt regulatory requirements for hazardous waste transfer facilities;
- 30 (e) shall require the owner or manager of any proposed commercial facility for the storage,

1 collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441; and

2 (f) may adopt rules and performance standards for industrial furnaces and boilers that burn
3 hazardous wastes. The rules and performance standards:

4 (i) may be adopted if there are no federal regulations; or

5 (ii) may be more restrictive than federal regulations.

6 (3) If the department adopts rules under subsection (2) that are more restrictive than those
7 promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as
8 amended, the department shall comply with the provisions of [section 3] if it receives a petition as provided
9 under [section 3(4)]."

10

11 **Section 13.** Section 75-10-603, MCA, is amended to read:

12 **"75-10-603. Cooperative agreement -- authority of department.** (1) In order to assist in
13 implementation of CERCLA, the department may, subject to the provisions of [section 3]:

14 (a) participate in the determination of appropriate remedial action to deal with the release or
15 threatened release within Montana of:

16 (i) any contaminant presenting an imminent and substantial danger to public health or welfare; or

17 (ii) any hazardous substance;

18 (b) in the event of the release or threatened release of any of the substances described in
19 subsection (1)(a), negotiate the terms of a cooperative agreement with the federal government containing
20 mutual commitments of each party to remedial action, including the elements required by subsection (2).

21 (2) A cooperative agreement may contain the following assurances:

22 (a) the state of Montana will ~~assure~~ ensure the future maintenance of the removal and remedial
23 actions agreed upon for the expected life of the actions;

24 (b) a hazardous waste disposal facility is available to the state of Montana that meets the
25 specifications of the president and complies with the requirements of subtitle C of the federal Solid Waste
26 Disposal Act for necessary offsite storage, destruction, treatment, or secure disposition of the hazardous
27 substances; and

28 (c) the state of Montana will pay or ~~assure~~ ensure payment of a share of the costs of the remedial
29 action, including all future maintenance."

30

1 **NEW SECTION. Section 14. Codification instructions.** (1) [Section 1] is intended to be codified
2 as an integral part of Title 75, chapter 5; and Title 75, chapter 6, and the provisions of Title 75, chapter
3 5; and Title 75, chapter 6, apply to [section 1].

4 (2) [Section 2] is intended to be codified as an integral part of Title 75, chapter 2, and the
5 provisions of Title 75, chapter 2, apply to [section 2].

6 (3) [Section 3] is intended to be codified as an integral part of Title 75, chapter 3; and Title 75,
7 chapter 10, and the provisions of Title 75, chapter 3; and Title 75, chapter 10, apply to [section 3].

8

9 **NEW SECTION. Section 15. Effective date.** [This act] is effective on passage and approval.

10

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0521, as introduced

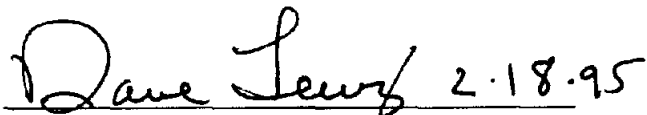
DESCRIPTION OF PROPOSED LEGISLATION:

An act prohibiting certain state administrative agency rules from being more stringent than corresponding federal regulations, and requiring the Board of Health and Environmental Sciences and the Department of Health and Environmental Sciences (DHES) to review and revise certain rules to ensure compliance with this act.

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to determine any fiscal impact due to this proposed legislation.
2. This act will apply only to rules where no current state statutes exist that direct the department to adopt certain standards, regardless of whether federal standards and/or guidelines for standards exist. Examples of rules which are not presumed reviewable under HB521, given this assumption are:
 - . Surface Water Quality Standards
 - . Mixing Zone Rules
 - . Non Degradations Rules
 - . Surface Water Discharge Permit Rules
 - . Preconstruction or Plan and Specification Review (Water)
 - . Groundwater Rules
3. This bill does not impact those areas where department standards are more stringent than federal standards, as specifically required by state law. Examples of rules under this category would be:
 - . Commercial hazardous and medical waste incinerator permitting rules (under development) that are intended to be more stringent than federal Boiler and Industrial Furnace (BIF) regulations by virtue of state statutory direction.
4. The bill will not impact rules that set fees or administrative penalty schedules since rules on these matters do not constitute regulatory "standards" and are not comparable on a stringency standards basis.
Examples of bills under this category would be:
 - . the fee rules to generate fees that are based upon state statutory authority to set such fees even though in some cases DHES fees are less than what would be charged by a federal counterpart. On the other hand, the federal counterpart agency would not charge fees that currently are being charged by the state. Nevertheless, state law creates fee setting authority.
5. The bill does not impact rules that are promulgated by the department under the authority of the primacy agreements with the federal EPA wherein the state is obligated to regulate a matter even in the absence of prescriptive federal standards.
Examples of rules under this category would be:
 - . Air Quality General Provision rules that address malfunctions, circumvention and source testing protocols.
 - . Air Quality Prevention of Significant Deterioration rules
 - . Air Quality Visibility Impact Assessment rules
 - . Air Quality Permit, Construction, and Operation of air contaminant sources rules
 - . Stack height and dispersion technique rules
 - . Open burning rules
 - . Emission standards rules

(continued)


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

DOUGLAS WAGNER, PRIMARY SPONSOR DATE

Fiscal Note for HB0521, as introduced

HB521

Many of the above listed air quality rules contain state standards for which there are federal counterparts. However, all of these rules are required as part of the general State Implementation Plan (SIP) which is required by federal law, reviewed by the EPA, approved by the EPA, and which is enforceable by the EPA. In effect, DHES, through the primacy agreement with the EPA, acts as an agent for the federal government in establishing rules, standards and requirements for SIP purposes in lieu of the EPA exercising its own authority to do the same thing through a Federal Implementation Plan (FIP). Therefore, state standards become the equivalent federal standards for SIP purposes.

6. The bill does not intend to review rules that are the equivalent of or "mirror" federal requirements or standards.

Examples of rules under this category are:

- . Permit requirements for Major Stationary Sources (Air Quality)
- . Preconstruction Permit requirements for Major Stationary sources (Air Quality)
- . Lead and copper rules for Drinking Water (Water Quality)

7. The items listed in assumptions two through six do not constitute an exhaustive or complete listing of the rules and standards that DHES assumes are not reviewable under this bill. Those that are listed serve as examples of those that do fit under the various categories.
8. Review of rules by October 1995 and re-promulgation of rules by October 1996 will have to be performed by additional staff since most current staff operating within specific program areas funded under specific grant program requirements could not work on this type of a project. EPA would not allow the use of federal grants dollars to be spent for this purpose.
9. The department, for those rules that are more stringent than the federal counterpart and therefore reviewable under the provisions of HB521, would opt to "roll back" to full conformity with federal requirements rather than to defend their stringency difference per HB521 procedures for most remaining rules. For the following specific exceptions, the department would conduct studies to defend state standards:
- Public drinking water rules relative to surface water treatment that requires each filter in a water treatment plant to meet turbidity standards as a means of protecting the public from infection from giardia and cryptosporidium. Estimated cost for complying with the cost risk analysis and other requirements of HB521 to re-promulgate this rule that is more stringent than the federal counterpart is \$200,000.
 - Public drinking water rules relative to requirements for a 12 month running maximum contaminant level for total coliform sampling. Estimated cost for complying with the cost risk analysis and other requirements of HB521 to re-promulgate this rule that is more stringent than the federal counterpart is \$200,000.
 - Petroleum contaminated soils cleanup guidelines for the Underground Storage Tank program. Since there are no comparable federal standards and no specific state mandate, the costs for defending these rules or guidelines would be approximately \$250,000.
 - Minimum treatment requirements for treatment of wastes containing nitrogen to state waters. Since there are no comparable federal requirements, the cost for defending this requirement would be approximately \$200,000 to \$500,000 dollars.
 - State ambient air quality standards for nine air pollutants. With the exception of the particulate (PM-10) standard, which is equivalent to the federal standard, the remaining state ambient air quality standards are more stringent than corresponding federal standards or have no federal counterpart. The state adopted these standards in 1980 after a two year study (costing approximately \$250,000) and completed a health risk assessment and an estimate of the costs (in 1980) to industry to implement the standards. If the 1980 Environmental Impact Statement and

analysis is not adequate to comply with HB521 requirements, the estimated cost for redoing the risk-cost and technology analyses is \$250,000 per standard for nine standards for a total cost of \$2,250,000.

FISCAL IMPACT:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Operating Expense	2,900,000	2,900,000

Funding:

General Fund	2,900,000	2,900,000
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Net Impact on General Fund Balance:

General Fund (Cost) (01)	(2,900,000)	(2,900,000)
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STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0521, as second reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring certain state administrative and local agencies to justify the adoption of rules that are more stringent than corresponding federal regulations, and requiring the Board of Health and Environmental Sciences, the Department of Health and Environmental Sciences (DHES), and local units of government to review and revise certain rules to ensure compliance with this act.

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to determine any fiscal impact due to this proposed legislation.
2. The bill as drafted and amended for second reading stipulates that retroactive petitions challenging rules already in effect can only impact rules promulgated from January 1, 1990, forward to the effective date of this act. The department does not have any method for determining how many substantive challenges would be made under this provision. For purposes of this fiscal note, assume there will be none.
3. The only rules that are reviewable under the provisions of this act, prospectively or retrospectively, are those rules where there is a direct comparable set of federal rules or guidelines. (Please see Technical Notes.)
4. HB521 is not intended to force the DHES to justify whether or not federal rules and regulations are sufficient to protect public health. Reasons of protecting public health and the environment are only at issue if the board, DHES, or local units of government promulgate a rule that is more stringent than a directly comparable federal counterpart of that rule.
5. HB521 intends to require either the board or DHES, when promulgating rules that are more stringent than directly comparable federal standards, to produce a formal "findings statement" that is supported by the documentation required in the second reading version. HB521 does not require DHES to engage in costly scientific and economic research other than to justify its actions on the basis of available validated research from other sources.
6. The bill is intended by the sponsor and proponents to focus solely on prospective reviews of rules that may be considered more stringent than comparable federal standards or guidelines, with a window provided for review of existing state guidelines (see assumption #2 above).

FISCAL IMPACT:

Minimal fiscal impact; however, it is not possible to determine the exact amount of additional workload. However, if there are substantive challenges through the petition process on rules already in effect between January 1, 1990 and the effective date of this bill, the impact would create a significant workload increase to the department.

TECHNICAL NOTES:

There are language issues in the bill, for example, "comparable federal rules or guidelines" should be defined to provide guidance in administering this law. Clarification of the department and local government expectations and responsibilities will make administration of this act much less likely to be subject to litigation.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Unknown, but counties would have the same documentation and justification requirements as the state board and DHES. This is likely to impact workload in the counties and cities.

Dave Lewis 3-21-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Douglas T. Wagner 3/21/95
DOUGLAS WAGNER, PRIMARY SPONSOR DATE

1 HOUSE BILL NO. 521

2 INTRODUCED BY WAGNER, GRINDE, TASH, STOVALL, DEVANEY, S. SMITH, ORR, SLITER, CURTISS,
3 COBB, MURDOCK, GRADY, T. NELSON, JORE, PAVLOVICH, BECK, HARP

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROHIBITING~~ REQUIRING CERTAIN STATE ADMINISTRATIVE
6 AGENCY AND LOCAL AGENCIES TO JUSTIFY THE ADOPTION OF RULES FROM BEING THAT ARE MORE
7 STRINGENT THAN CORRESPONDING FEDERAL REGULATIONS; REQUIRING THE BOARD OF HEALTH AND
8 ENVIRONMENTAL SCIENCES ~~AND~~, THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES,
9 AND LOCAL UNITS OF GOVERNMENT TO REVIEW AND REVISE CERTAIN RULES TO ENSURE
10 COMPLIANCE WITH THIS ACT; ~~CREATING AN AFFIRMATIVE DEFENSE FOR VIOLATIONS OF CERTAIN~~
11 ~~RULES MORE STRINGENT THAN CORRESPONDING FEDERAL RULES~~; AMENDING SECTIONS 50-2-116,
12 75-2-111, 75-2-301, 75-2-503, 75-3-201, 75-5-201, 75-5-311, 75-6-103, 75-10-204, 75-10-405, AND
13 75-10-603, 76-3-501, 76-3-504, 76-4-104, AND 80-15-105, MCA; AND PROVIDING AN IMMEDIATE
14 EFFECTIVE DATE."

15
16 WHEREAS, the federal government frequently regulates areas that are also subject to state
17 regulation; and

18 WHEREAS, differing state and federal policy goals and unique state prerogatives frequently result
19 in different levels of regulation, different standards, and different requirements being imposed by state and
20 federal programs covering the same subject matter; and

21 WHEREAS, Montana must simultaneously move toward reducing redundant and unnecessary
22 regulation that dulls the state's competitive advantage while being ever vigilant in the protection of the
23 public's health, safety, and welfare; and

24 WHEREAS, Montana's administrative agencies should consider applicable federal standards when
25 adopting, readopting, or amending rules with analogous federal counterparts; and

26 WHEREAS, Montana's administrative agencies should analyze whether analogous federal standards
27 sufficiently protect the health, safety, and welfare of Montana's citizens; and

28 WHEREAS, as part of the formal rulemaking process, the public should be advised of the agencies'
29 conclusions about whether analogous federal standards sufficiently protect the health, safety, and welfare
30 of Montana citizens.

STATEMENT OF INTENT

1
2 A statement of intent is required for this bill in order to provide guidance to the board of health and
3 environmental sciences ~~and to~~ the department of health and environmental sciences, AND LOCAL UNITS
4 OF GOVERNMENT in complying with [this act].

5 The legislature intends that in addition to all requirements imposed by existing law and rules, the
6 board or the department include as part of the initial publication and all subsequent publications of a rule
7 ~~a statement as to whether~~ WRITTEN FINDING IF the rule in question contains any standards or requirements
8 that exceed the standards or requirements imposed by COMPARABLE federal law.

9 If the rules are more stringent than COMPARABLE federal law, the ~~statement~~ WRITTEN FINDING
10 must include but is not limited to a discussion of the policy reasons and ~~a risk cost~~ AN analysis that
11 supports the board's or department's decision ~~to impose the~~ THAT THE PROPOSED STATE standards or
12 requirements ~~and also supports the fact that the state standards or requirements to be imposed are~~
13 ~~achievable under current technology, notwithstanding the federal government's determination that lesser~~
14 ~~standards or requirements are appropriate.~~

15 ~~The risk cost analysis must address the probability of harm to public health or the environment~~
16 ~~under the conditions imposed by the federal standards, the reduction in that probability of harm because~~
17 ~~of imposition of stricter state standards, and the costs required of the regulated community to mitigate the~~
18 ~~harm to public health or the environment via the stricter state standards.~~

19 ~~[This act] is~~ PROTECT PUBLIC HEALTH OR THE ENVIRONMENT OF THE STATE AND THAT THE
20 STATE STANDARDS OR REQUIREMENTS TO BE IMPOSED CAN MITIGATE HARM TO THE PUBLIC HEALTH
21 OR THE ENVIRONMENT AND ARE ACHIEVABLE UNDER CURRENT TECHNOLOGY. THE DEPARTMENT
22 IS NOT REQUIRED TO SHOW THAT THE FEDERAL REGULATION IS INADEQUATE TO PROTECT PUBLIC
23 HEALTH. THE WRITTEN FINDING MUST ALSO INCLUDE INFORMATION FROM THE HEARING RECORD
24 REGARDING THE COSTS TO THE REGULATED COMMUNITY DIRECTLY ATTRIBUTABLE TO THE
25 PROPOSED STATE STANDARD OR REQUIREMENT. [SECTIONS 1 THROUGH 3] ARE intended to apply
26 to any rule that is adopted, readopted, or amended under the authority of or in order to implement, comply
27 with, or participate in any program established under federal law or under a state statute that incorporates
28 or refers to federal law, federal standards, or federal requirements under Title 75, chapter 2; TITLE 75,
29 CHAPTER 3; Title 75, chapter 5; Title 75, chapter 6; or Title 75, chapter 10.

30 [SECTIONS 4 AND 5] APPLY TO LOCAL UNITS OF GOVERNMENT WHEN THEY ATTEMPT TO

1 REGULATE THE CONTROL AND DISPOSAL OF SEWAGE FROM PRIVATE AND PUBLIC BUILDINGS. [THIS
 2 ACT] IS NOT INTENDED TO APPLY TO THE ESTABLISHMENT OR SETTING OF FEES.

3
 4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5
 6 NEW SECTION. **Section 1. State standards REGULATIONS** no more stringent than federal
 7 **standards REGULATIONS OR GUIDELINES.** (1) ~~Except~~ AFTER [THE EFFECTIVE DATE OF THIS ACT],
 8 EXCEPT as provided in subsections (2) through ~~(6),~~ (5) AND unless required by state law, the board may
 9 not adopt a rule to implement this chapter that is more stringent than the ~~corresponding~~ COMPARABLE
 10 federal regulations OR GUIDELINES that address the same circumstances. The board may incorporate by
 11 reference ~~corresponding~~ COMPARABLE federal regulations OR GUIDELINES.

12 (2) The board may adopt a rule to implement this chapter that is more stringent than ~~corresponding~~
 13 COMPARABLE federal regulations or ~~adopt rules when there are no corresponding federal regulations~~
 14 GUIDELINES only if the board makes a written finding after a public hearing and public comment and based
 15 on evidence in the record that ~~the corresponding federal regulations are not adequate to protect public~~
 16 ~~health or the environment of the state. This finding must be accompanied by a summarizing conclusion~~
 17 ~~statement referring to and evaluating the probability of harm to public health or the environment at the level~~
 18 ~~of the federal rule or regulation and the specific improvement in the public health or environment from the~~
 19 ~~stricter state rule. The statement must reference information and studies contained in the record that form~~
 20 ~~the basis for the board's conclusion.~~

21 ~~(3) The summarizing conclusion statement must include but is not limited to a discussion of the~~
 22 ~~policy reasons and a risk cost analysis that supports the board's decision to impose the standards or~~
 23 ~~requirements and also supports the fact that the state standard or requirement to be imposed can mitigate~~
 24 ~~the increased probability of harm to the public health or environment and is achievable under current~~
 25 ~~technology, notwithstanding the federal government's determination that lesser standards or requirements~~
 26 ~~are appropriate and protective of public health or the environment.~~

27 ~~(4) If the board, upon petition by any person affected by a rule of the board, identifies rules more~~
 28 ~~stringent than federal regulations or identifies rules for which there are no corresponding federal regulations,~~
 29 ~~the board shall review and revise those rules to comply with this section within 9 months of the filing of~~
 30 ~~the petition.~~

1 ~~(5) a person who is issued a notice of violation or a denial of a permit or other approval based on~~
 2 ~~a rule that is more stringent than a corresponding federal regulation or for which there is no corresponding~~
 3 ~~regulation may assert a partial defense to that notice or a partial challenge to that denial on the basis and~~
 4 ~~to the extent that the rule violates this section because it imposes requirements more stringent than the~~
 5 ~~federal regulations, unless the more stringent rule was adopted in compliance with this section.~~

6 ~~(6) (a) The board shall review and propose revisions to its rules to ensure compliance with this~~
 7 ~~section by October 1, 1995. The board shall revise its rules to comply with this section by October 1,~~
 8 ~~1996.~~

9 ~~(b) The board may propose and adopt revisions to its rules prior to the dates specified in subsection~~
 10 ~~(6)(a) upon petition for rulemaking by a person as provided under 2-4-315 and subsection (4) of this~~
 11 ~~section.:~~

12 (A) THE PROPOSED STATE STANDARD OR REQUIREMENT PROTECTS PUBLIC HEALTH OR THE
 13 ENVIRONMENT OF THE STATE; AND

14 (B) THE STATE STANDARD OR REQUIREMENT TO BE IMPOSED CAN MITIGATE HARM TO THE
 15 PUBLIC HEALTH OR ENVIRONMENT AND IS ACHIEVABLE UNDER CURRENT TECHNOLOGY.

16 (3) THE WRITTEN FINDING MUST REFERENCE INFORMATION AND PEER-REVIEWED SCIENTIFIC
 17 STUDIES CONTAINED IN THE RECORD THAT FORMS THE BASIS FOR THE BOARD'S CONCLUSION. THE
 18 WRITTEN FINDING MUST ALSO INCLUDE INFORMATION FROM THE HEARING RECORD REGARDING THE
 19 COSTS TO THE REGULATED COMMUNITY THAT ARE DIRECTLY ATTRIBUTABLE TO THE PROPOSED
 20 STATE STANDARD OR REQUIREMENT.

21 (4) (A) A PERSON AFFECTED BY A RULE OF THE BOARD ADOPTED AFTER JANUARY 1, 1990,
 22 AND BEFORE (THE EFFECTIVE DATE OF THIS ACT) THAT THAT PERSON BELIEVES TO BE MORE
 23 STRINGENT THAN COMPARABLE FEDERAL REGULATIONS OR GUIDELINES MAY PETITION THE BOARD
 24 TO REVIEW THE RULE. IF THE BOARD DETERMINES THAT THE RULE IS MORE STRINGENT THAN
 25 COMPARABLE FEDERAL REGULATIONS OR GUIDELINES, THE BOARD SHALL COMPLY WITH THIS
 26 SECTION BY EITHER REVISING THE RULE TO CONFORM TO THE FEDERAL REGULATIONS OR
 27 GUIDELINES OR BY MAKING THE WRITTEN FINDING, AS PROVIDED UNDER SUBSECTION (2), WITHIN
 28 A REASONABLE PERIOD OF TIME, NOT TO EXCEED 12 MONTHS AFTER RECEIVING THE PETITION. A
 29 PETITION UNDER THIS SECTION DOES NOT RELIEVE THE PETITIONER OF THE DUTY TO COMPLY WITH
 30 THE CHALLENGED RULE. THE BOARD MAY CHARGE A PETITION FILING FEE IN AN AMOUNT NOT TO

1 EXCEED \$250.

2 (B) A PERSON MAY ALSO PETITION THE BOARD FOR A RULE REVIEW UNDER SUBSECTION
3 (4)(A) IF THE BOARD ADOPTS A RULE AFTER JANUARY 1, 1990, IN AN AREA IN WHICH NO FEDERAL
4 REGULATIONS OR GUIDELINES EXISTED AND THE FEDERAL GOVERNMENT SUBSEQUENTLY
5 ESTABLISHES COMPARABLE REGULATIONS OR GUIDELINES THAT ARE LESS STRINGENT THAN THE
6 PREVIOUSLY ADOPTED BOARD RULE.

7 (5) THIS SECTION DOES NOT APPLY TO A RULE ADOPTED UNDER THE EMERGENCY
8 RULEMAKING PROVISIONS OF 2-4-303(1).

9
10 NEW SECTION. Section 2. State standards REGULATIONS no more stringent than federal
11 standards REGULATIONS OR GUIDELINES. (1) Except AFTER [THE EFFECTIVE DATE OF THIS ACT],
12 EXCEPT as provided in subsections (2) through (6), (5) AND unless required by state law, the board or
13 department may not adopt a rule to implement this chapter that is more stringent than the corresponding
14 COMPARABLE federal regulations OR GUIDELINES that address the same circumstances. The board or
15 department may incorporate by reference corresponding COMPARABLE federal regulations OR GUIDELINES.

16 (2) The board or department may adopt a rule to implement this chapter that is more stringent than
17 corresponding COMPARABLE federal regulations or ~~adopt rules when there are no corresponding federal~~
18 ~~regulations~~ GUIDELINES only if the board or department makes a written finding after a public hearing and
19 public comment and based on evidence in the record that ~~the corresponding federal regulations are not~~
20 ~~adequate to protect public health or the environment of the state. This finding must be accompanied by~~
21 ~~a summarizing conclusion statement referring to and evaluating the probability of harm to public health or~~
22 ~~the environment at the level of the federal rule or regulation and the specific improvement in the public~~
23 ~~health or environment from the stricter state rule. The statement must reference information and studies~~
24 ~~contained in the record that form the basis for the board's or department's conclusion.~~

25 ~~(3) The summarizing conclusion statement must include but is not limited to a discussion of the~~
26 ~~policy reasons and a risk cost analysis that supports the board's or department's decision to impose the~~
27 ~~standards or requirements and also supports the fact that the state standard or requirement to be imposed~~
28 ~~can mitigate the increased probability of harm to the public health or environment and is achievable under~~
29 ~~current technology, notwithstanding the federal government's determination that lesser standards or~~
30 ~~requirements are appropriate and protective of public health or the environment.~~

1 ~~(4) If the board or department, upon petition by any person affected by a rule of the board or~~
 2 ~~department, identifies rules more stringent than federal regulations or identifies rules for which there are~~
 3 ~~no corresponding federal regulations, the board or department shall review and revise those rules to comply~~
 4 ~~with this section within 9 months of the filing of the petition.~~

5 ~~(5) A person who is issued a notice of violation or a denial of a permit or other approval based on~~
 6 ~~a rule that is more stringent than a corresponding federal regulation or for which there is no corresponding~~
 7 ~~regulation may assert a partial defense to that notice or a partial challenge to that denial on the basis and~~
 8 ~~to the extent that the rule violates this section because it imposes requirements more stringent than the~~
 9 ~~federal regulations, unless the more stringent rule was adopted in compliance with this section.~~

10 ~~(6) (a) The board or department shall review and propose revisions to its rules to ensure compliance~~
 11 ~~with this section by October 1, 1995. The board or department shall revise its rules to comply with this~~
 12 ~~section by October 1, 1996.~~

13 ~~(b) The board or department may propose and adopt revisions to its rules prior to the dates~~
 14 ~~specified in subsection (6)(a) upon petition for rulemaking by a person as provided under 2-4-316 and~~
 15 ~~subsection (4) of this section. ;~~

16 (A) THE PROPOSED STATE STANDARD OR REQUIREMENT PROTECTS PUBLIC HEALTH OR THE
 17 ENVIRONMENT OF THE STATE; AND

18 (B) THE STATE STANDARD OR REQUIREMENT TO BE IMPOSED CAN MITIGATE HARM TO THE
 19 PUBLIC HEALTH OR ENVIRONMENT AND IS ACHIEVABLE UNDER CURRENT TECHNOLOGY.

20 (3) THE WRITTEN FINDING MUST REFERENCE INFORMATION AND PEER-REVIEWED SCIENTIFIC
 21 STUDIES CONTAINED IN THE RECORD THAT FORMS THE BASIS FOR THE BOARD'S OR DEPARTMENT'S
 22 CONCLUSION. THE WRITTEN FINDING MUST ALSO INCLUDE INFORMATION FROM THE HEARING
 23 RECORD REGARDING THE COSTS TO THE REGULATED COMMUNITY THAT ARE DIRECTLY
 24 ATTRIBUTABLE TO THE PROPOSED STATE STANDARD OR REQUIREMENT.

25 (4) (A) A PERSON AFFECTED BY A RULE OF THE BOARD OR DEPARTMENT ADOPTED AFTER
 26 JANUARY 1, 1990, AND BEFORE [THE EFFECTIVE DATE OF THIS ACT] THAT THAT PERSON BELIEVES
 27 TO BE MORE STRINGENT THAN COMPARABLE FEDERAL REGULATIONS OR GUIDELINES MAY PETITION
 28 THE BOARD OR DEPARTMENT TO REVIEW THE RULE. IF THE BOARD OR DEPARTMENT DETERMINES
 29 THAT THE RULE IS MORE STRINGENT THAN COMPARABLE FEDERAL REGULATIONS OR GUIDELINES,
 30 THE BOARD OR DEPARTMENT SHALL COMPLY WITH THIS SECTION BY EITHER REVISING THE RULE TO

1 CONFORM TO THE FEDERAL REGULATIONS OR GUIDELINES OR BY MAKING THE WRITTEN FINDING,
 2 AS PROVIDED UNDER SUBSECTION (2), WITHIN A REASONABLE PERIOD OF TIME, NOT TO EXCEED 12
 3 MONTHS AFTER RECEIVING THE PETITION. A PETITION UNDER THIS SECTION DOES NOT RELIEVE THE
 4 PETITIONER OF THE DUTY TO COMPLY WITH THE CHALLENGED RULE. THE BOARD OR DEPARTMENT
 5 MAY CHARGE A PETITION FILING FEE IN AN AMOUNT NOT TO EXCEED \$250.

6 (B) A PERSON MAY ALSO PETITION THE BOARD OR DEPARTMENT FOR A RULE REVIEW UNDER
 7 SUBSECTION (4)(A) IF THE BOARD OR DEPARTMENT ADOPTS A RULE AFTER JANUARY 1, 1990, IN AN
 8 AREA IN WHICH NO FEDERAL REGULATIONS OR GUIDELINES EXISTED AND THE FEDERAL
 9 GOVERNMENT SUBSEQUENTLY ESTABLISHES COMPARABLE REGULATIONS OR GUIDELINES THAT ARE
 10 LESS STRINGENT THAN THE PREVIOUSLY ADOPTED BOARD OR DEPARTMENT RULE.

11 (5) THIS SECTION DOES NOT APPLY TO A RULE ADOPTED UNDER THE EMERGENCY
 12 RULEMAKING PROVISIONS OF 2-4-303(1).

13
 14 NEW SECTION. Section 3. State standards **REGULATIONS** no more stringent than federal
 15 standards **REGULATIONS OR GUIDELINES**. (1) Except AFTER [THE EFFECTIVE DATE OF THIS ACT],
 16 EXCEPT as provided in subsections (2) through ~~(6)~~, (5) AND unless required by state law, the department
 17 may not adopt a rule to implement this chapter that is more stringent than the ~~corresponding~~ COMPARABLE
 18 federal regulations OR GUIDELINES that address the same circumstances. The department may incorporate
 19 by reference ~~corresponding~~ COMPARABLE federal regulations OR GUIDELINES.

20 (2) The department may adopt a rule to implement this chapter that is more stringent than
 21 ~~corresponding~~ COMPARABLE federal regulations or ~~adopt rules where there are no corresponding federal~~
 22 ~~regulations~~ GUIDELINES only if the department makes a written finding after a public hearing and public
 23 comment and based on evidence in the record that the ~~corresponding federal regulations are not adequate~~
 24 ~~to protect public health or the environment of the state. This finding must be accompanied by a~~
 25 ~~summarizing conclusion statement referring to and evaluating the probability of harm to public health or the~~
 26 ~~environment at the level of the federal rule or regulation and the specific improvement in the public health~~
 27 ~~or environment from the stricter state rule. The statement must reference information and studies contained~~
 28 ~~in the record that form the basis for the department's conclusion.~~

29 ~~(3) The summarizing conclusion statement must include but is not limited to a discussion of the~~
 30 ~~policy reasons and a risk cost analysis that supports the department's decision to impose the standards or~~

1 requirements and also supports the fact that the state standard or requirement to be imposed can mitigate
 2 the increased probability of harm to the public health or environment and is achievable under current
 3 technology, notwithstanding the federal government's determination that lesser standards or requirements
 4 are appropriate and protective of public health or the environment.

5 (4) If the department, upon petition by any person affected by a rule of the department, identifies
 6 rules more stringent than federal regulations or identifies rules for which there are no corresponding federal
 7 regulations, the department shall review and revise those rules to comply with this section within 9 months
 8 of the filing of the petition.

9 (5) A person who is issued a notice of violation or a denial of a permit or other approval based on
 10 a rule that is more stringent than a corresponding federal regulation or for which there is no corresponding
 11 regulation may assert a partial defense to that notice or a partial challenge to that denial on the basis and
 12 to the extent that the rule violates this section because it imposes requirements more stringent than the
 13 federal regulations, unless the more stringent rule was adopted in compliance with this section.

14 (6) (a) The department shall review and propose revisions to its rules to ensure compliance with
 15 this section by October 1, 1995. The department shall revise its rules to comply with this section by
 16 October 1, 1996.

17 (b) The department may propose and adopt revisions to its rules prior to the dates specified in
 18 subsection (6)(a) upon petition for rulemaking by a person as provided under 2-4-315 and subsection (4)
 19 of this section :

20 (A) THE PROPOSED STATE STANDARD OR REQUIREMENT PROTECTS PUBLIC HEALTH OR THE
 21 ENVIRONMENT OF THE STATE; AND

22 (B) THE STATE STANDARD OR REQUIREMENT TO BE IMPOSED CAN MITIGATE HARM TO THE
 23 PUBLIC HEALTH OR ENVIRONMENT AND IS ACHIEVABLE UNDER CURRENT TECHNOLOGY.

24 (3) THE WRITTEN FINDING MUST REFERENCE INFORMATION AND PEER-REVIEWED SCIENTIFIC
 25 STUDIES CONTAINED IN THE RECORD THAT FORMS THE BASIS FOR THE DEPARTMENT'S CONCLUSION.
 26 THE WRITTEN FINDING MUST ALSO INCLUDE INFORMATION FROM THE HEARING RECORD REGARDING
 27 THE COSTS TO THE REGULATED COMMUNITY THAT ARE DIRECTLY ATTRIBUTABLE TO THE PROPOSED
 28 STATE STANDARD OR REQUIREMENT.

29 (4) (A) A PERSON AFFECTED BY A RULE OF THE DEPARTMENT ADOPTED AFTER JANUARY 1,
 30 1990, AND BEFORE [THE EFFECTIVE DATE OF THIS ACT] THAT THAT PERSON BELIEVES TO BE MORE

1 STRINGENT THAN COMPARABLE FEDERAL REGULATIONS OR GUIDELINES MAY PETITION THE
2 DEPARTMENT TO REVIEW THE RULE. IF THE DEPARTMENT DETERMINES THAT THE RULE IS MORE
3 STRINGENT THAN COMPARABLE FEDERAL REGULATIONS OR GUIDELINES, THE DEPARTMENT SHALL
4 COMPLY WITH THIS SECTION BY EITHER REVISING THE RULE TO CONFORM TO THE FEDERAL
5 REGULATIONS OR GUIDELINES OR BY MAKING THE WRITTEN FINDING, AS PROVIDED UNDER
6 SUBSECTION (2), WITHIN A REASONABLE PERIOD OF TIME, NOT TO EXCEED 12 MONTHS AFTER
7 RECEIVING THE PETITION. A PETITION UNDER THIS SECTION DOES NOT RELIEVE THE PETITIONER OF
8 THE DUTY TO COMPLY WITH THE CHALLENGED RULE. THE DEPARTMENT MAY CHARGE A PETITION
9 FILING FEE IN AN AMOUNT NOT TO EXCEED \$250.

10 (B) A PERSON MAY ALSO PETITION THE DEPARTMENT FOR A RULE REVIEW UNDER
11 SUBSECTION (4)(A) IF THE DEPARTMENT ADOPTS A RULE AFTER JANUARY 1, 1990, IN AN AREA IN
12 WHICH NO FEDERAL REGULATIONS OR GUIDELINES EXISTED AND THE FEDERAL GOVERNMENT
13 SUBSEQUENTLY ESTABLISHES COMPARABLE REGULATIONS OR GUIDELINES THAT ARE LESS
14 STRINGENT THAN THE PREVIOUSLY ADOPTED DEPARTMENT RULE.

15 (5) THIS SECTION DOES NOT APPLY TO A RULE ADOPTED UNDER THE EMERGENCY
16 RULEMAKING PROVISIONS OF 2-4-303(1).

17
18 NEW SECTION. SECTION 4. LOCAL REGULATIONS NO MORE STRINGENT THAN STATE
19 REGULATIONS OR GUIDELINES. (1) AFTER [THE EFFECTIVE DATE OF THIS ACT], EXCEPT AS PROVIDED
20 IN SUBSECTIONS (2) THROUGH (4) AND UNLESS REQUIRED BY STATE LAW, THE LOCAL BOARD MAY
21 NOT ADOPT A RULE UNDER 50-2-116(1)(I), (2)(K)(III), OR (2)(K)(V) THAT IS MORE STRINGENT THAN THE
22 COMPARABLE STATE REGULATIONS OR GUIDELINES THAT ADDRESS THE SAME CIRCUMSTANCES.
23 THE LOCAL BOARD MAY INCORPORATE BY REFERENCE COMPARABLE STATE REGULATIONS OR
24 GUIDELINES.

25 (2) THE LOCAL BOARD MAY ADOPT A RULE TO IMPLEMENT 50-2-116(1)(I), (2)(K)(III), OR
26 (2)(K)(V) THAT IS MORE STRINGENT THAN COMPARABLE STATE REGULATIONS OR GUIDELINES ONLY
27 IF THE LOCAL BOARD MAKES A WRITTEN FINDING, AFTER A PUBLIC HEARING AND PUBLIC COMMENT
28 AND BASED ON EVIDENCE IN THE RECORD, THAT:

29 (A) THE PROPOSED LOCAL STANDARD OR REQUIREMENT PROTECTS PUBLIC HEALTH OR THE
30 ENVIRONMENT; AND

1 (B) THE LOCAL BOARD STANDARD OR REQUIREMENT TO BE IMPOSED CAN MITIGATE HARM
2 TO THE PUBLIC HEALTH OR ENVIRONMENT AND IS ACHIEVABLE UNDER CURRENT TECHNOLOGY.

3 (3) THE WRITTEN FINDING MUST REFERENCE INFORMATION AND PEER-REVIEWED SCIENTIFIC
4 STUDIES CONTAINED IN THE RECORD THAT FORMS THE BASIS FOR THE LOCAL BOARD'S
5 CONCLUSION. THE WRITTEN FINDING MUST ALSO INCLUDE INFORMATION FROM THE HEARING
6 RECORD REGARDING THE COSTS TO THE REGULATED COMMUNITY THAT ARE DIRECTLY
7 ATTRIBUTABLE TO THE PROPOSED LOCAL STANDARD OR REQUIREMENT.

8 (4) (A) A PERSON AFFECTED BY A RULE OF THE LOCAL BOARD ADOPTED AFTER JANUARY
9 1, 1990, AND BEFORE [THE EFFECTIVE DATE OF THIS ACT] THAT THAT PERSON BELIEVES TO BE MORE
10 STRINGENT THAN COMPARABLE STATE REGULATIONS OR GUIDELINES MAY PETITION THE LOCAL
11 BOARD TO REVIEW THE RULE. IF THE LOCAL BOARD DETERMINES THAT THE RULE IS MORE
12 STRINGENT THAN COMPARABLE STATE REGULATIONS OR GUIDELINES, THE LOCAL BOARD SHALL
13 COMPLY WITH THIS SECTION BY EITHER REVISING THE RULE TO CONFORM TO THE STATE
14 REGULATIONS OR GUIDELINES OR BY MAKING THE WRITTEN FINDING, AS PROVIDED UNDER
15 SUBSECTION (2), WITHIN A REASONABLE PERIOD OF TIME, NOT TO EXCEED 12 MONTHS AFTER
16 RECEIVING THE PETITION. A PETITION UNDER THIS SECTION DOES NOT RELIEVE THE PETITIONER OF
17 THE DUTY TO COMPLY WITH THE CHALLENGED RULE. THE LOCAL BOARD MAY CHARGE A PETITION
18 FILING FEE IN AN AMOUNT NOT TO EXCEED \$250.

19 (B) A PERSON MAY ALSO PETITION THE LOCAL BOARD FOR A RULE REVIEW UNDER
20 SUBSECTION (4)(A) IF THE LOCAL BOARD ADOPTS A RULE AFTER JANUARY 1, 1990, IN AN AREA IN
21 WHICH NO STATE REGULATIONS OR GUIDELINES EXISTED AND THE STATE GOVERNMENT
22 SUBSEQUENTLY ESTABLISHES COMPARABLE REGULATIONS OR GUIDELINES THAT ARE LESS
23 STRINGENT THAN THE PREVIOUSLY ADOPTED LOCAL BOARD RULE.

24
25 NEW SECTION. SECTION 5. LOCAL REGULATIONS NO MORE STRINGENT THAN STATE
26 REGULATIONS OR GUIDELINES. (1) AFTER [THE EFFECTIVE DATE OF THIS ACT], EXCEPT AS PROVIDED
27 IN SUBSECTIONS (2) THROUGH (4) AND UNLESS REQUIRED BY STATE LAW, A GOVERNING BODY MAY
28 NOT ADOPT A RULE UNDER 76-3-501 OR 76-3-504(5)(C) THAT IS MORE STRINGENT THAN THE
29 COMPARABLE STATE REGULATIONS OR GUIDELINES THAT ADDRESS THE SAME CIRCUMSTANCES.
30 THE GOVERNING BODY MAY INCORPORATE BY REFERENCE COMPARABLE STATE REGULATIONS OR

1 GUIDELINES.

2 (2) THE GOVERNING BODY MAY ADOPT A RULE TO IMPLEMENT 76-3-501 OR 76-3-504(5)(C)
3 THAT IS MORE STRINGENT THAN COMPARABLE STATE REGULATIONS OR GUIDELINES ONLY IF THE
4 GOVERNING BODY MAKES A WRITTEN FINDING, AFTER A PUBLIC HEARING AND PUBLIC COMMENT
5 AND BASED ON EVIDENCE IN THE RECORD, THAT:

6 (A) THE PROPOSED LOCAL STANDARD OR REQUIREMENT PROTECTS PUBLIC HEALTH OR THE
7 ENVIRONMENT; AND

8 (B) THE LOCAL STANDARD OR REQUIREMENT TO BE IMPOSED CAN MITIGATE HARM TO THE
9 PUBLIC HEALTH OR ENVIRONMENT AND IS ACHIEVABLE UNDER CURRENT TECHNOLOGY.

10 (3) THE WRITTEN FINDING MUST REFERENCE INFORMATION AND PEER-REVIEWED SCIENTIFIC
11 STUDIES CONTAINED IN THE RECORD THAT FORMS THE BASIS FOR THE GOVERNING BODY'S
12 CONCLUSION. THE WRITTEN FINDING MUST ALSO INCLUDE INFORMATION FROM THE HEARING
13 RECORD REGARDING THE COSTS TO THE REGULATED COMMUNITY THAT ARE DIRECTLY
14 ATTRIBUTABLE TO THE PROPOSED LOCAL STANDARD OR REQUIREMENT.

15 (4) (A) A PERSON AFFECTED BY A RULE OF THE GOVERNING BODY ADOPTED AFTER JANUARY
16 1, 1990, AND BEFORE [THE EFFECTIVE DATE OF THIS ACT] THAT THAT PERSON BELIEVES TO BE MORE
17 STRINGENT THAN COMPARABLE STATE REGULATIONS OR GUIDELINES MAY PETITION THE GOVERNING
18 BODY TO REVIEW THE RULE. IF THE GOVERNING BODY DETERMINES THAT THE RULE IS MORE
19 STRINGENT THAN COMPARABLE STATE REGULATIONS OR GUIDELINES, THE GOVERNING BODY SHALL
20 COMPLY WITH THIS SECTION BY EITHER REVISING THE RULE TO CONFORM TO THE STATE
21 REGULATIONS OR GUIDELINES OR BY MAKING THE WRITTEN FINDING, AS PROVIDED UNDER
22 SUBSECTION (2), WITHIN A REASONABLE PERIOD OF TIME, NOT TO EXCEED 12 MONTHS AFTER
23 RECEIVING THE PETITION. A PETITION UNDER THIS SECTION DOES NOT RELIEVE THE PETITIONER OF
24 THE DUTY TO COMPLY WITH THE CHALLENGED RULE. THE GOVERNING BODY MAY CHARGE A
25 PETITION FILING FEE IN AN AMOUNT NOT TO EXCEED \$250.

26 (B) A PERSON MAY ALSO PETITION THE GOVERNING BODY FOR A RULE REVIEW UNDER
27 SUBSECTION (4)(A) IF THE GOVERNING BODY ADOPTS A RULE AFTER JANUARY 1, 1990, IN AN AREA
28 IN WHICH NO STATE REGULATIONS OR GUIDELINES EXISTED AND THE STATE GOVERNMENT
29 SUBSEQUENTLY ESTABLISHES COMPARABLE REGULATIONS OR GUIDELINES THAT ARE LESS
30 STRINGENT THAN THE PREVIOUSLY ADOPTED GOVERNING BODY RULE.

1 **SECTION 6. 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 salary;

6 (b) elect a chairman 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) subject to the provisions of [section 4], adopt necessary regulations that are no less stringent
14 than state standards for the control and disposal of sewage from private and public buildings that is not
15 regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for
16 granting variances from the minimum requirements that are identical to standards promulgated by the board
17 of health and environmental sciences and must provide for appeal of variance decisions to the department
18 as required by 75-5-305.

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) subject to the provisions of [section 4], on sanitation in public buildings that affects public
7 health;

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

10 (v) subject to the provisions of [section 4], for the maintenance of sewage treatment systems that
11 do not discharge an effluent directly into state waters and that are not required to have an operating permit
12 as required by rules adopted under 75-5-401."

13
14 **Section 7.** Section 75-2-111, MCA, is amended to read:

15 "**75-2-111. Powers of board.** The board shall, subject to the provisions of [section 2]:

16 (1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this
17 chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements
18 of 42 U.S.C. 7420 and regulations adopted pursuant thereto;

19 (2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place
20 designated by the board. The board may compel the attendance of witnesses and the production of
21 evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall
22 appoint a reporter who ~~shall~~ must be present at all hearings and take full stenographic notes of all
23 proceedings ~~thereat~~, transcripts of which will be available to the public at cost.

24 (3) issue orders necessary to effectuate the purposes of this chapter;

25 (4) by rule require access to records relating to emissions;

26 (5) by rule adopt a schedule of fees required for permits and permit applications, consistent with
27 this chapter;

28 (6) have the power to issue orders under and in accordance with 42 U.S.C. 7419."

29
30 **Section 8.** Section 75-2-301, MCA, is amended to read:

1 **"75-2-301. Local air pollution control programs.** (1) After public hearing, a municipality or county
 2 may establish and administer a local air pollution control program if the program is consistent with this
 3 chapter and is approved by the board.

4 (2) If a local air pollution control program established by a county encompasses all or part of a
 5 municipality, the county and each municipality shall approve the program in accordance with subsection
 6 (1).

7 (3) (a) Except as provided in subsection (4), the board by order may approve a local air pollution
 8 control program that:

9 ~~(a)(i)~~ provides by ordinance or local law for requirements compatible with, more stringent than, or
 10 more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217
 11 through 75-2-219, and 75-2-402, and rules adopted under these sections;

12 ~~(a)(ii)~~ provides for the enforcement of requirements established under subsection (3)~~(a)(i)~~ by
 13 appropriate administrative and judicial processes; and

14 ~~(a)(iii)~~ provides for administrative organization, staff, financial resources, and other resources
 15 necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a
 16 local air pollution control program may administer the permit fee provisions of 75-2-220. The permit fees
 17 collected by a local air pollution control program must be deposited in a county special revenue fund to be
 18 used by the local air pollution control program for administration of permitting activities.

19 (b) Board approval of an ordinance or local law that is more stringent than the corresponding
 20 COMPARABLE state law or for which no state law exists is not subject to the provisions of [section 2].

21 (4) Except for those emergency powers provided for in 75-2-402, the board may not delegate to
 22 a local air pollution control program the authority to control any air pollutant source that:

23 (a) requires the preparation of an environmental impact statement in accordance with Title 75,
 24 chapter 1, part 2;

25 (b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75,
 26 chapter 20; or

27 (c) has the potential to emit 250 tons ~~per~~ a year or more of any pollutant subject to regulation
 28 under this chapter, including fugitive emissions, unless the authority to control the source was delegated
 29 to a local air pollution control program prior to January 1, 1991.

30 (5) If the board finds that the location, character, or extent of particular concentrations of

1 population, air pollutant sources, or geographic, topographic, or meteorological considerations or any
2 combination of these ~~are such as to~~ make impracticable the maintenance of appropriate levels of air quality
3 without an areawide air pollution control program, the board may determine the boundaries within which
4 the program is necessary and require it as the only acceptable alternative to direct state administration.

5 (6) If the board has reason to believe that any part of an air pollution control program in force under
6 this section is either inadequate to prevent and control air pollution in the jurisdiction to which the program
7 relates or is being administered in a manner inconsistent with this chapter, the board shall, on notice,
8 conduct a hearing on the matter.

9 (7) If, after the hearing, the board determines that any part of the program is inadequate to prevent
10 and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes
11 of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not
12 to exceed 60 days.

13 (8) If the jurisdiction fails to take these measures within the time required, the department shall
14 administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any
15 applicable board order, that are necessary to correct the deficiencies found by the board. The department's
16 control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements
17 in the affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

18 (9) If the board finds that the control of a particular air pollutant source because of its complexity
19 or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and
20 economically performed at the state level, it may direct the department to assume and retain control over
21 that air pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this
22 subsection may be either on the basis of the nature of the sources involved or on the basis of their
23 relationship to the size of the communities in which they are located.

24 (10) A jurisdiction in which the department administers all or part of its air pollution control
25 program under subsection (8) may, with the approval of the board, establish or resume an air pollution
26 control program that meets the requirements of subsection (3).

27 (11) A municipality or county may administer all or part of its air pollution control program in
28 cooperation with one or more municipalities or counties of this state or of other states."

29
30 **Section 9.** Section 75-2-503, MCA, is amended to read:

1 **"75-2-503. Rulemaking authority -- issuance of permits.** (1) The department shall, subject to the
2 provisions of [section 2], adopt rules establishing standards and procedures for accreditation of
3 asbestos-related occupations and control of the work performed by persons in asbestos-related
4 occupations. The rules must be consistent with federal law and include but are not limited to:

5 (a) standards for training course review and approval;

6 (b) standards for accreditation of applicants for asbestos-related occupations;

7 (c) examination requirements for accreditation of applicants for asbestos-related occupations;

8 (d) requirements for renewal of accreditation, including periodic refresher courses;

9 (e) revocation of accreditation;

10 (f) inspection requirements for asbestos projects and asbestos-related occupations credentials;

11 (g) criteria to determine whether and what type of control measures are necessary for an asbestos
12 project and whether a project is completed in a manner sufficient to protect public health, including criteria
13 setting allowable limits on indoor airborne asbestos. A determination of whether asbestos abatement of a
14 structure is necessary may not be based solely upon the results of airborne asbestos testing.

15 (h) requirements for issuance of asbestos project permits and conditions that permit holders shall
16 meet;

17 (i) standards for seeking injunctions, criminal and civil penalties, or emergency actions;

18 (j) advance notification procedures and issuance of permits for asbestos projects; and

19 (k) fees, which must be commensurate with costs, for:

20 (i) review and approval of training courses;

21 (ii) application for and renewal of accreditation by a person seeking to pursue an asbestos-related
22 occupation;

23 (iii) issuance of asbestos project permits; and

24 (iv) requested inspections of asbestos projects.

25 (2) For asbestos projects having a cost of \$3,000 or less, the department shall issue asbestos
26 project permits within 7 calendar days following the receipt of a properly completed permit application and
27 the appropriate fee."

28
29 **Section 10.** Section 75-3-201, MCA, is amended to read:

30 **"75-3-201. State radiation control agency.** (1) The department is the state radiation control agency.

1 (2) Under the laws of this state, the department may employ, compensate, and prescribe the
2 powers and duties of the individuals ~~which~~ that are necessary to carry out this chapter.

3 (3) The department may, subject to the provisions of [section 3], for the protection of the
4 occupational and public health and safety:

5 (a) develop and conduct programs for evaluation and control of hazards associated with the use
6 of sources of ionizing radiation;

7 (b) develop programs and adopt rules with due regard for compatibility with federal programs for
8 licensing and regulation of byproduct, source, radioactive waste, and special nuclear materials and other
9 radioactive materials. These rules ~~shall~~ must cover equipment and facilities, methods for transporting,
10 handling, and storage of radioactive materials, permissible levels of exposure, technical qualifications of
11 personnel, required notification of accidents and other incidents involving radioactive materials, survey
12 methods and results, methods of disposal of radioactive materials, posting and labeling of areas and
13 sources, and methods and effectiveness of controlling individuals in posted and restricted areas.

14 (c) adopt rules relating to control of other sources of ionizing radiation. These rules ~~shall~~ must cover
15 equipment and facilities, permissible levels of exposure to personnel, posting of areas, surveys, and records.

16 (d) advise, consult, and cooperate with other agencies of the state, the federal government, other
17 states, interstate agencies, political subdivisions, and groups concerned with control of sources of ionizing
18 radiation;

19 (e) accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in
20 furtherance of its functions, from the federal government and from other sources, public or private;

21 (f) encourage, participate in, or conduct studies, investigations, training, research, and
22 demonstrations relating to control of sources of ionizing radiation;

23 (g) collect and disseminate information relating to control of sources of ionizing radiation, including:

24 (i) maintenance of a file of all license applications, issuances, denials, amendments, transfers,
25 renewals, modifications, suspensions, and revocations;

26 (ii) maintenance of a file of registrants possessing sources of ionizing radiation requiring registration
27 under this chapter and any administrative or judicial action pertaining ~~thereto~~ to this chapter;

28 (iii) maintenance of a file of all rules relating to regulation of sources of ionizing radiation, pending
29 or adopted, and proceedings ~~thereon~~."

30

1 **Section 11.** Section 75-5-201, MCA, is amended to read:

2 **"75-5-201. Board rules authorized.** (1) The board shall, subject to the provisions of [section 1],
3 adopt rules for the administration of this chapter.

4 (2) The board's rules may include a fee schedule or system for assessment of administrative
5 penalties as provided under 75-5-611."

6

7 **Section 12.** Section 75-5-311, MCA, is amended to read:

8 **"75-5-311. Local water quality districts -- board approval -- local water quality programs.** (1) A
9 county that establishes a local water quality district according to the procedures specified in Title 7, chapter
10 13, part 45, shall, in consultation with the department, undertake planning and information-gathering
11 activities necessary to develop a proposed local water quality program.

12 (2) A county may implement a local water quality program in a local water quality district if the
13 program is approved by the board after a hearing conducted under 75-5-202.

14 (3) In approving a local water quality program, the board shall determine that the program is
15 consistent with the purposes and requirements of Title 75, chapter 5, and that the program will be effective
16 in protecting, preserving, and improving the quality of surface water and ground water, considering the
17 administrative organization, staff, and financial and other resources available to implement the program.

18 (4) Subject to the board's approval, the commissioners and the governing bodies of cities and
19 towns that participate in a local water quality district may adopt local ordinances to regulate the following
20 specific facilities and sources of pollution:

21 (a) onsite waste water disposal facilities;

22 (b) storm water runoff from paved surfaces;

23 (c) service connections between buildings and publicly owned sewer mains;

24 (d) facilities that use or store halogenated and nonhalogenated solvents, including hazardous
25 substances that are referenced in 40 CFR 261.31, United States environmental protection agency
26 hazardous waste numbers F001 through F005, as amended; and

27 (e) internal combustion engine lubricants.

28 (5) (a) For the facilities and sources of pollution included in subsection (4) and consistent with the
29 provisions of subsection (6), the local ordinances may:

30 ~~(a)~~(i) be compatible with or more stringent or more extensive than the requirements imposed by

1 75-5-304, 75-5-305, and 75-5-401 through 75-5-404 and rules adopted under those sections to protect
 2 water quality, establish waste discharge permit requirements, and establish best management practices for
 3 substances that have the potential to pollute state waters;

4 ~~(b)~~(ii) provide for administrative procedures, administrative orders and actions, and civil
 5 enforcement actions that are consistent with 75-5-601 through 75-5-604, 75-5-611 through 75-5-616,
 6 75-5-621, and 75-5-622 and rules adopted under those sections; and

7 ~~(c)~~(iii) provide for civil penalties not to exceed \$1,000 per violation, provided that each day of
 8 violation of a local ordinance constitutes a separate violation, and criminal penalties not to exceed \$500
 9 per day of violation or imprisonment for not more than 30 days, or both.

10 (b) Board approval of an ordinance or local law that is more stringent than the corresponding
 11 COMPARABLE state law or for which no state law exists is not subject to the provisions of [section 1].

12 (6) The local ordinances authorized by this section may not:

13 (a) duplicate the department's requirements and procedures relating to permitting of waste
 14 discharge sources and enforcement of water quality standards;

15 (b) regulate any facility or source of pollution to the extent that the facility or source is:

16 (i) required to obtain a permit or other approval from the department or federal government or is
 17 the subject of an administrative order, a consent decree, or an enforcement action pursuant to Title 75,
 18 chapter 5, part 4; Title 75, chapter 6; Title 75, chapter 10; the federal Comprehensive Environmental
 19 Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675, as amended; or federal
 20 environmental, safety, or health statutes and regulations;

21 (ii) exempted from obtaining a permit or other approval from the department because the facility
 22 or source is required to obtain a permit or other approval from another state agency or is the subject of an
 23 enforcement action by another state agency; or

24 (iii) subject to the provisions of Title 80, chapter 8 or chapter 15.

25 (7) If the boundaries of a district are changed after the board has approved the local water quality
 26 program for the district, the board of directors of the local water quality district shall submit a program
 27 amendment to the board and obtain the board's approval of the program amendment before implementing
 28 the local water quality program in areas that have been added to the district.

29 (8) The department shall monitor the implementation of local water quality programs to ensure that
 30 the programs are adequate to protect, preserve, and improve the quality of the surface water and ground

1 water and are being administered in a manner consistent with the purposes and requirements of Title 75,
2 chapter 5. If the department finds that a local water quality program is not adequate to protect, preserve,
3 and improve the quality of the surface water and ground water or is not being administered in a manner
4 consistent with the purposes and requirements of Title 75, chapter 5, the department shall report to the
5 board.

6 (9) If the board determines that a local water quality program is inadequate to protect, preserve,
7 and improve the quality of the surface water and ground water in the local water quality district or that the
8 program is being administered in a manner inconsistent with Title 75, chapter 5, the board shall give notice
9 and conduct a hearing on the matter.

10 (10) If after the hearing the board determines that the program is inadequate to protect, preserve,
11 and improve the quality of the surface water and ground water in the local water quality district or that it
12 is not being administered in a manner consistent with the purposes of Title 75, chapter 5, the board shall
13 require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

14 (11) If an ordinance adopted under this section conflicts with a requirement imposed by the
15 department's water quality program, the department's requirement supersedes the local ordinance.

16 (12) If the board finds that, because of the complexity or magnitude of a particular water pollution
17 source, the control of the source is beyond the reasonable capability of a local water quality district or may
18 be more efficiently and economically performed at the state level, the board may direct the department to
19 assume and retain control over the source. A charge may not be assessed against the local water quality
20 district for that source. Findings made under this subsection may be based on the nature of the source
21 involved or on the source's relationship to the size of the community in which it is located."
22

23 **Section 13.** Section 75-6-103, MCA, is amended to read:

24 **"75-6-103. Duties of the board.** (1) The board has general supervision over all state waters ~~which~~
25 that are directly or indirectly being used by a person for a public water supply system or domestic purposes
26 or as a source of ice.

27 (2) The board shall, subject to the provisions of [section 1], adopt rules and standards concerning:

28 (a) maximum contaminant levels for waters that are or will be used for a public water supply
29 system;

30 (b) fees, as described in 75-6-108, for services rendered by the department;

- 1 (c) monitoring, recordkeeping, and reporting by persons who own or operate a public water supply
 2 system;
- 3 (d) requiring public notice to all users of a public water supply system when a person has been
 4 granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;
- 5 (e) the issuance of licenses by the department to laboratories that conduct analysis of public water
 6 supply systems;
- 7 (f) the siting, construction, operation, and modification of a public water supply system or public
 8 sewage system;
- 9 (g) the review of financial viability of a proposed public water supply system or public sewage
 10 system, as necessary to ensure the capability of the system to meet the requirements of this part;
- 11 (h) the collection and analysis of samples of water used for drinking or domestic purposes;
- 12 (i) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act
 13 and this part;
- 14 (j) administrative enforcement procedures and administrative penalties authorized under this part;
 15 and
- 16 (k) any other requirement necessary for the protection of public health as described in this part.
- 17 (3) The board may issue orders necessary to fully implement the provisions of this part."

18

19 **Section 14.** Section 75-10-204, MCA, is amended to read:

20 "**75-10-204. Powers and duties of department.** The department shall, subject to the provisions of
 21 [section 3], adopt rules governing solid waste management systems ~~which shall~~ that must include but are
 22 not limited to:

- 23 (1) requirements for the plan of operation and maintenance that must be submitted with an
 24 application under this part;
- 25 (2) the classification of disposal sites according to the physical capabilities of the site to contain
 26 the type of solid waste to be disposed of;
- 27 (3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;
- 28 (4) the suitability of the site from a public health standpoint when hydrology, geology, and
 29 climatology are considered;
- 30 (5) requirements relating to ground water monitoring, including but not limited to:

1 (a) information that owners and operators of municipal solid waste landfills and other disposal sites
 2 specified in 75-10-207 must submit to the department to enable the department to prepare the priority
 3 compliance list authorized by 75-10-207(3);

4 (b) the content of plans for the design, construction, operation, and maintenance of monitoring
 5 wells and monitoring systems; and

6 (c) recordkeeping and reporting;

7 (6) fees related to the review of solid waste management system license applications;

8 (7) the renewal of solid waste management system licenses and related fees;

9 (8) a quarterly fee based on the justifiable direct and indirect costs to the state of administering
 10 Title 75, chapter 10, parts 1 and 2, for solid waste generated outside Montana and disposed of or
 11 incinerated within Montana; ~~These rules must be adopted by August 1, 1993.~~

12 (9) any other factors relating to the sanitary disposal or management of solid wastes."

13
 14 **Section 15.** Section 75-10-405, MCA, is amended to read:

15 **"75-10-405. Administrative rules.** (1) The department may, subject to the provisions of (section
 16 3), adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

17 (a) identification and classification of those hazardous wastes subject to regulation and those that
 18 are not;

19 (b) requirements for the proper treatment, storage, transportation, and disposal of hazardous
 20 waste;

21 (c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure,
 22 postclosure, and reclamation of hazardous waste management facilities;

23 (d) requirements for the issuance, denial, reissuance, modification, and revocation of permits for
 24 hazardous waste management facilities;

25 (e) requirements for corrective action within and outside of facility boundaries and for financial
 26 assurance of that corrective action;

27 (f) requirements for manifests and the manifest system for tracking hazardous waste and for
 28 reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste
 29 management facilities;

30 (g) requirements for training of facility personnel and for financial assurance of facility owners and

- 1 operators and for liability of guarantors providing financial assurance;
- 2 (h) requirements for registration of generators and transporters;
- 3 (i) establishing a schedule of fees and procedures for the collection of fees for:
- 4 (i) the filing and review of hazardous waste management facility permits as provided in 75-10-432;
- 5 (ii) hazardous waste management as provided in 75-10-433;
- 6 (iii) the reissuance and modification of hazardous waste management facility permits; and
- 7 (iv) the registration of hazardous waste generators;
- 8 (j) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining
- 9 any state hazardous waste management facility authorized by 75-10-412;
- 10 (k) requirements for availability to the public of information obtained by the department regarding
- 11 facilities and sites used for the treatment, storage, and disposal of hazardous wastes;
- 12 (l) procedures for the assessment of administrative penalties as authorized by 75-10-424; and
- 13 (m) other rules ~~which~~ that are necessary to obtain and maintain authorization under the federal
- 14 program.
- 15 (2) The department may not adopt rules under this part that are more restrictive than those
- 16 promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as
- 17 amended, except that the department:
- 18 (a) may require the registration of transporters not otherwise required to register with the state of
- 19 Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;
- 20 (b) may require generators and facilities to report on an annual rather than on a biennial basis;
- 21 (c) may adopt requirements for the prevention and correction of leakage from underground storage
- 22 tanks, including:
- 23 (i) reporting by owners and operators;
- 24 (ii) financial responsibility;
- 25 (iii) release detection, prevention, and corrective action;
- 26 (iv) standards for design, construction, installation, and closure;
- 27 (v) development of a schedule of fees, not to exceed \$50 for a tank over 1,100 gallons and not
- 28 to exceed \$20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state
- 29 and local costs of implementing an underground storage tank program;
- 30 (vi) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals

1 under 75-10-423; and

2 (vii) delegation of authority and funds to local agents for inspections and implementation. The
3 delegation of authority to local agents must complement and may not duplicate existing authority for
4 implementation of rules adopted by the department of justice that relate to underground storage tanks.

5 (d) may adopt regulatory requirements for hazardous waste transfer facilities;

6 (e) shall require the owner or manager of any proposed commercial facility for the storage,
7 collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441; and

8 (f) may adopt rules and performance standards for industrial furnaces and boilers that burn
9 hazardous wastes. The rules and performance standards:

10 (i) may be adopted if there are no federal regulations; or

11 (ii) may be more restrictive than federal regulations.

12 ~~(3) If the department adopts rules under subsection (2) that are more restrictive than those~~
13 ~~promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as~~
14 ~~amended, the department shall comply with the provisions of [section 3] if it receives a petition as provided~~
15 ~~under [section 3(4)]."~~

16
17 **Section 16.** Section 75-10-603, MCA, is amended to read:

18 **"75-10-603. Cooperative agreement -- authority of department.** (1) In order to assist in
19 implementation of CERCLA, the department may, subject to the provisions of [section 3]:

20 (a) participate in the determination of appropriate remedial action to deal with the release or
21 threatened release within Montana of:

22 (i) any contaminant presenting an imminent and substantial danger to public health or welfare; or

23 (ii) any hazardous substance;

24 (b) in the event of the release or threatened release of any of the substances described in
25 subsection (1)(a), negotiate the terms of a cooperative agreement with the federal government containing
26 mutual commitments of each party to remedial action, including the elements required by subsection (2).

27 (2) A cooperative agreement may contain the following assurances:

28 (a) the state of Montana will ~~assure~~ ensure the future maintenance of the removal and remedial
29 actions agreed upon for the expected life of the actions;

30 (b) a hazardous waste disposal facility is available to the state of Montana that meets the

1 specifications of the president and complies with the requirements of subtitle C of the federal Solid Waste
 2 Disposal Act for necessary offsite storage, destruction, treatment, or secure disposition of the hazardous
 3 substances; and

4 (c) the state of Montana will pay or ~~assure~~ ensure payment of a share of the costs of the remedial
 5 action, including all future maintenance."
 6

7 **SECTION 17. SECTION 76-3-501, MCA, IS AMENDED TO READ:**

8 "76-3-501. **Local subdivision regulations.** (1) Before July 1, 1974, the governing body of every
 9 county, city, and town shall adopt and provide for the enforcement and administration of subdivision
 10 regulations reasonably providing for the orderly development of their jurisdictional areas; for the
 11 coordination of roads within subdivided land with other roads, both existing and planned; for the dedication
 12 of land for roadways and for public utility easements; for the improvement of roads; for the provision of
 13 adequate open spaces for travel, light, air, and recreation; for the provision of adequate transportation,
 14 water, and drainage, ~~and;~~ subject to the provisions of [section 5], for the regulation of sanitary facilities;
 15 for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve
 16 unnecessary environmental degradation and the avoidance of danger of injury to health, safety, or welfare
 17 by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services
 18 or would necessitate an excessive expenditure of public funds for the supply of such services.

19 (2) Review and approval or disapproval of a subdivision under this chapter may occur only under
 20 those regulations in effect at the time an application for approval of a preliminary plat or for an extension
 21 under 76-3-610 is submitted to the governing body."
 22

23 **SECTION 18. SECTION 76-3-504, MCA, IS AMENDED TO READ:**

24 "76-3-504. **Minimum requirements for subdivision regulations.** The subdivision regulations adopted
 25 under this chapter shall, at a minimum:

26 (1) require the subdivider to submit to the governing body an environmental assessment as
 27 prescribed in 76-3-603;

28 (2) establish procedures consistent with this chapter for the submission and review of subdivision
 29 plats;

30 (3) prescribe the form and contents of preliminary plats and the documents to accompany final

1 plats;

2 (4) provide for the identification of areas which, because of natural or ~~man-caused~~ human-caused
3 hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the
4 hazards can be eliminated or overcome by approved construction techniques;

5 (5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of
6 100-year frequency as defined by Title 76, chapter 5, or determined to be subject to flooding by the
7 governing body;

8 (6) prescribe standards for:

9 (a) the design and arrangement of lots, streets, and roads;

10 (b) grading and drainage;

11 (c) subject to the provisions of [section 5], water supply and sewage and solid waste disposal
12 ~~which that~~, at a minimum, meet the regulations adopted by the department of health and environmental
13 sciences under 76-4-104;

14 (d) the location and installation of utilities;

15 (7) provide procedures for the administration of the park and open-space requirements of this
16 chapter;

17 (8) provide for the review of preliminary plats by affected public utilities and those agencies of
18 local, state, and federal government having a substantial interest in a proposed subdivision; such utility or
19 agency review may not delay the governing body's action on the plat beyond the time limits specified in
20 this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection
21 of the plat by the governing body."

22

23 **SECTION 19. SECTION 76-4-104, MCA, IS AMENDED TO READ:**

24 **"76-4-104. Rules for administration and enforcement.** (1) The department shall, subject to the
25 provisions of [section 3], adopt reasonable rules, including adoption of sanitary standards, necessary for
26 administration and enforcement of this part.

27 (2) The rules and standards shall provide the basis for approving subdivision plats for various types
28 of water, sewage facilities, and solid waste disposal, both public and private, and shall be related to size
29 of lots, contour of land, porosity of soil, ground water level, distance from lakes, streams, and wells, type
30 and construction of private water and sewage facilities, and other factors affecting public health and the

1 quality of water for uses relating to agriculture, industry, recreation, and wildlife.

2 (3) The rules shall provide for the review of the following divisions of land by a local department
3 or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health
4 employs a registered sanitarian or a registered professional engineer and if the department certifies under
5 subsection (4) that the local department or board is competent to review these divisions of land:

6 (a) divisions of land containing five or fewer parcels, whenever each parcel will contain individual
7 onsite water and sewage disposal facilities; and

8 (b) divisions of land proposed to connect to existing municipal water and waste water systems
9 previously approved by the department, if no extension of the systems is required.

10 (4) The department shall also adopt standards and procedures for certification and maintaining
11 certification to ensure that a local department or board of health is competent to review the divisions of
12 land described in subsection (3).

13 (5) The department shall review those divisions of land described in subsection (3) if:

14 (a) a proposed division of land lies within more than one jurisdictional area and the respective
15 governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed
16 subdivision; or

17 (b) the local department or board of health elects not to be certified.

18 (6) The rules shall further provide for:

19 (a) the furnishing to the reviewing authority of a copy of the plat and other documentation showing
20 the layout or plan of development, including:

21 (i) total development area;

22 (ii) total number of proposed dwelling units;

23 (b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and
24 dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

25 (c) evidence concerning the potability of the proposed water supply for the subdivision;

26 (d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and
27 dependability;

28 (e) standards and technical procedures applicable to storm drainage plans and related designs, in
29 order to insure proper drainage ways;

30 (f) standards and technical procedures applicable to sanitary sewer plans and designs, including

1 soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal
2 systems when applicable;

3 (g) standards and technical procedures applicable to water systems;

4 (h) standards and technical procedures applicable to solid waste disposal;

5 (i) requiring evidence to establish that, if a public sewage disposal system is proposed, provision
6 has been made for the system and, if other methods of sewage disposal are proposed, evidence that the
7 systems will comply with state and local laws and regulations which are in effect at the time of submission
8 of the preliminary or final plan or plat.

9 (7) If the reviewing authority is a local department or board of health, it shall, upon approval of a
10 division of land under this part, notify the department of the approval and submit to the department a copy
11 of the approval statement.

12 (8) Review and certification or denial of certification that a division of land is not subject to sanitary
13 restrictions under this part may occur only under those rules in effect at the time plans and specifications
14 are submitted to the department, except in cases where current rules would preclude the use for which the
15 lot was originally intended, the applicable requirements in effect at the time such lot was recorded must
16 be applied. In the absence of specific requirements, minimum standards necessary to protect public health
17 and water quality will apply."

18

19 **SECTION 20. SECTION 80-15-105, MCA, IS AMENDED TO READ:**

20 **"80-15-105. Rulemaking.** (1) The board shall, subject to the provisions of [section 1], adopt rules
21 for the administration of this chapter for which the board and the department of health and environmental
22 sciences have responsibility. These rules must include but are not limited to:

23 (a) standards and interim numerical standards for agricultural chemicals in ground water as
24 authorized by 80-15-201;

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

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

30 (d) standards for maintaining the confidentiality of data and information declared confidential by

1 EPA and the confidentiality of chemical registrant data and information protected from disclosure by federal
2 or state law as required by 80-15-108; and

3 (e) administrative civil penalties as authorized by 80-15-412.

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

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

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

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

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

18 (e) emergency procedures as authorized by 80-15-405;

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

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

21

22 **NEW SECTION. Section 21. Codification instructions.** (1) [Section 1] is intended to be codified
23 as an integral part of Title 75, chapter 5; ~~and~~ Title 75, chapter 6; AND TITLE 80, CHAPTER 15, and the
24 provisions of Title 75, chapter 5; ~~and~~ Title 75, chapter 6; AND TITLE 80, CHAPTER 15, apply to [section
25 1].

26 (2) [Section 2] is intended to be codified as an integral part of Title 75, chapter 2, and the
27 provisions of Title 75, chapter 2, apply to [section 2].

28 (3) [Section 3] is intended to be codified as an integral part of Title 75, chapter 3; ~~and~~ Title 75,
29 chapter 10; AND TITLE 76, CHAPTER 4, and the provisions of Title 75, chapter 3; ~~and~~ Title 75, chapter
30 10; AND TITLE 76, CHAPTER 4, apply to [section 3].

1 (4) [SECTION 4] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 50, CHAPTER
2 2, AND THE PROVISIONS OF TITLE 50, CHAPTER 2, APPLY TO [SECTION 4].

3 (5) [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 76, CHAPTER
4 3, AND THE PROVISIONS OF TITLE 76, CHAPTER 3, APPLY TO [SECTION 5].

5

6 NEW SECTION. Section 22. Effective date. [This act] is effective on passage and approval.

7

-END-

HOUSE BILL NO. 521

INTRODUCED BY WAGNER, GRINDE, TASH, STOVALL, DEVANEY, S. SMITH, ORR, SLITER, CURTISS,
COBB, MURDOCK, GRADY, T. NELSON, JORE, PAVLOVICH, BECK, HARP

A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROHIBITING~~ REQUIRING CERTAIN STATE ADMINISTRATIVE
AGENCY AND LOCAL AGENCIES TO JUSTIFY THE ADOPTION OF RULES FROM BEING THAT ARE MORE
STRINGENT THAN CORRESPONDING FEDERAL REGULATIONS; REQUIRING THE BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES ~~AND~~ THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES,
AND LOCAL UNITS OF GOVERNMENT TO REVIEW AND REVISE CERTAIN RULES TO ENSURE
COMPLIANCE WITH THIS ACT; ~~CREATING AN AFFIRMATIVE DEFENSE FOR VIOLATIONS OF CERTAIN~~
~~RULES MORE STRINGENT THAN CORRESPONDING FEDERAL RULES~~; AMENDING SECTIONS 50-2-116,
75-2-111, 75-2-301, 75-2-503, 75-3-201, 75-5-201, 75-5-311, 75-6-103, 75-10-204, 75-10-405, AND
75-10-603, 76-3-501, 76-3-504, 76-4-104, AND 80-15-105, MCA; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE."

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 28, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration HB 521 (third reading copy -- blue), respectfully report that HB 521 be amended as follows and as so amended be concurred in.

Signed: 
Senator Lorents Grosfield, Chair

That such amendments read:

1. Page 3, line 2.

Following: "FEES"

Insert: "or to public participation requirements"

2. Page 3, line 8, page 5, line 12, and page 7, line 16.

Following: "(5)"

Strike: "AND"

Insert: "or"

3. Page 9, line 20, and page 10, line 27.

Following: "(4)"

Strike: "AND"

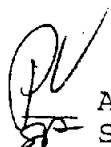
Insert: "or"

4. Page 23, line 15.

Strike: "The"

Insert: "Notwithstanding the provisions of [section 3], the"

-END-



Amd. Coord.
Sec. of Senate

Senator Carrying Bill

HB 521

SENATE

(1)

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 29, 1995 3:03 pm

Mr. Chairman: I move to amend HB 521 (third reading copy -- blue).

ADOPT J.V.

REJECT

Signed: Robert Grosfield
Senator Grosfield

That such amendments read:

1. AMEND THE SENATE NATURAL RESOURCES COMMITTEE REPORT DATED MARCH 28, 1995, AS FOLLOWS:

Amendment No. 1

Strike: Amendment No. 1 in its entirety

AND THAT SENATE BILL NO. 521, THIRD READING COPY BE FURTHER AMENDED AS FOLLOWS:

2. Title, line 14.

Following: "DATE"

Insert: "AND APPLICABILITY PROVISIONS"

3. Page 2, line 25 through page 3, line 2.

Strike: "SECTIONS" on page 2, line 25 through "FEES." on page 3, line 2

4. Page 30.

Following: line 4

Insert: "NEW SECTION. Section 22. Applicability. (1)

[Sections 1 through 3] are intended to apply to any rule that is in effect, adopted, or amended, and that regulates those resources or activities for which the state has been given primary authority to regulate by federal authority pursuant to Title 75, chapter 2; Title 75, chapter 3; Title 75, chapter 5; Title 75, chapter 6; or Title 75, chapter 10, as of [the effective date of this act].

(2) [Sections 4 and 5] apply to local units of government when they attempt to regulate the control and disposal of sewage from private and public buildings.

(3) [This act] does not apply to the establishment of fees or public participation requirements."

Renumber: subsequent section

-END-

HB 521

PV Amd. Coord.

SENATE

1 HOUSE BILL NO. 521

2 INTRODUCED BY WAGNER, GRINDE, TASH, STOVALL, DEVANEY, S. SMITH, ORR, SLITER, CURTISS,
3 COBB, MURDOCK, GRADY, T. NELSON, JORE, PAVLOVICH, BECK, HARP

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROHIBITING~~ REQUIRING CERTAIN STATE ADMINISTRATIVE
6 ~~AGENCY AND LOCAL AGENCIES TO JUSTIFY THE ADOPTION OF RULES FROM BEING THAT ARE MORE~~
7 STRINGENT THAN CORRESPONDING FEDERAL REGULATIONS; REQUIRING THE BOARD OF HEALTH AND
8 ENVIRONMENTAL SCIENCES ~~AND~~, THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES,
9 AND LOCAL UNITS OF GOVERNMENT TO REVIEW AND REVISE CERTAIN RULES TO ENSURE
10 COMPLIANCE WITH THIS ACT; ~~CREATING AN AFFIRMATIVE DEFENSE FOR VIOLATIONS OF CERTAIN~~
11 ~~RULES MORE STRINGENT THAN CORRESPONDING FEDERAL RULES~~; AMENDING SECTIONS 50-2-116,
12 75-2-111, 75-2-301, 75-2-503, 75-3-201, 75-5-201, 75-5-311, 75-6-103, 75-10-204, 75-10-405, AND
13 75-10-603, 76-3-501, 76-3-504, 76-4-104, AND 80-15-105, MCA; AND PROVIDING AN IMMEDIATE
14 EFFECTIVE DATE AND APPLICABILITY PROVISIONS."

15
16 WHEREAS, the federal government frequently regulates areas that are also subject to state
17 regulation; and

18 WHEREAS, differing state and federal policy goals and unique state prerogatives frequently result
19 in different levels of regulation, different standards, and different requirements being imposed by state and
20 federal programs covering the same subject matter; and

21 WHEREAS, Montana must simultaneously move toward reducing redundant and unnecessary
22 regulation that dulls the state's competitive advantage while being ever vigilant in the protection of the
23 public's health, safety, and welfare; and

24 WHEREAS, Montana's administrative agencies should consider applicable federal standards when
25 adopting, readopting, or amending rules with analogous federal counterparts; and

26 WHEREAS, Montana's administrative agencies should analyze whether analogous federal standards
27 sufficiently protect the health, safety, and welfare of Montana's citizens; and

28 WHEREAS, as part of the formal rulemaking process, the public should be advised of the agencies'
29 conclusions about whether analogous federal standards sufficiently protect the health, safety, and welfare
30 of Montana citizens.

1 STATEMENT OF INTENT

2 A statement of intent is required for this bill in order to provide guidance to the board of health and
3 environmental sciences ~~and to, the department of health and environmental sciences,~~ AND LOCAL UNITS
4 OF GOVERNMENT in complying with [this act].

5 The legislature intends that in addition to all requirements imposed by existing law and rules, the
6 board or the department include as part of the initial publication and all subsequent publications of a rule
7 a ~~statement as to whether~~ WRITTEN FINDING IF the rule in question contains any standards or requirements
8 that exceed the standards or requirements imposed by COMPARABLE federal law.

9 If the rules are more stringent than COMPARABLE federal law, the ~~statement~~ WRITTEN FINDING
10 must include but is not limited to a discussion of the policy reasons and ~~a risk cost~~ AN analysis that
11 supports the board's or department's decision ~~to impose the~~ THAT THE PROPOSED STATE standards or
12 requirements ~~and also supports the fact that the state standards or requirements to be imposed are~~
13 ~~achievable under current technology, notwithstanding the federal government's determination that lesser~~
14 ~~standards or requirements are appropriate.~~

15 ~~The risk cost analysis must address the probability of harm to public health or the environment~~
16 ~~under the conditions imposed by the federal standards, the reduction in that probability of harm because~~
17 ~~of imposition of stricter state standards, and the costs required of the regulated community to mitigate the~~
18 ~~harm to public health or the environment via the stricter state standards.~~

19 ~~{This act} is~~ PROTECT PUBLIC HEALTH OR THE ENVIRONMENT OF THE STATE AND THAT THE
20 STATE STANDARDS OR REQUIREMENTS TO BE IMPOSED CAN MITIGATE HARM TO THE PUBLIC HEALTH
21 OR THE ENVIRONMENT AND ARE ACHIEVABLE UNDER CURRENT TECHNOLOGY. THE DEPARTMENT
22 IS NOT REQUIRED TO SHOW THAT THE FEDERAL REGULATION IS INADEQUATE TO PROTECT PUBLIC
23 HEALTH. THE WRITTEN FINDING MUST ALSO INCLUDE INFORMATION FROM THE HEARING RECORD
24 REGARDING THE COSTS TO THE REGULATED COMMUNITY DIRECTLY ATTRIBUTABLE TO THE
25 PROPOSED STATE STANDARD OR REQUIREMENT. {SECTIONS 1 THROUGH 3} ARE intended to apply
26 ~~to any rule that is adopted, readopted, or amended under the authority of or in order to implement, comply~~
27 ~~with, or participate in any program established under federal law or under a state statute that incorporates~~
28 ~~or refers to federal law, federal standards, or federal requirements under Title 75, chapter 2; TITLE 75,~~
29 CHAPTER 3; Title 75, chapter 5; Title 75, chapter 6; or Title 75, chapter 10.

30 {SECTIONS 4 AND 5} APPLY TO LOCAL UNITS OF GOVERNMENT WHEN THEY ATTEMPT TO

1 ~~REGULATE THE CONTROL AND DISPOSAL OF SEWAGE FROM PRIVATE AND PUBLIC BUILDINGS. [THIS~~
 2 ~~ACT] IS NOT INTENDED TO APPLY TO THE ESTABLISHMENT OR SETTING OF FEES OR TO PUBLIC~~
 3 ~~PARTICIPATION REQUIREMENTS.~~

4

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

6

7 NEW SECTION. Section 1. State standards REGULATIONS no more stringent than federal
 8 ~~standards~~ REGULATIONS OR GUIDELINES. (1) ~~Except~~ AFTER [THE EFFECTIVE DATE OF THIS ACT],
 9 EXCEPT as provided in subsections (2) through (6), (5) AND OR unless required by state law, the board
 10 may not adopt a rule to implement this chapter that is more stringent than the ~~corresponding~~ COMPARABLE
 11 federal regulations OR GUIDELINES that address the same circumstances. The board may incorporate by
 12 reference ~~corresponding~~ COMPARABLE federal regulations OR GUIDELINES.

13 (2) The board may adopt a rule to implement this chapter that is more stringent than ~~corresponding~~
 14 COMPARABLE federal regulations or ~~adopt rules when there are no corresponding federal regulations~~
 15 GUIDELINES only if the board makes a written finding after a public hearing and public comment and based
 16 on evidence in the record that ~~the corresponding federal regulations are not adequate to protect public~~
 17 ~~health or the environment of the state. This finding must be accompanied by a summarizing conclusion~~
 18 ~~statement referring to and evaluating the probability of harm to public health or the environment at the level~~
 19 ~~of the federal rule or regulation and the specific improvement in the public health or environment from the~~
 20 ~~stricter state rule. The statement must reference information and studies contained in the record that form~~
 21 ~~the basis for the board's conclusion.~~

22 ~~(3) The summarizing conclusion statement must include but is not limited to a discussion of the~~
 23 ~~policy reasons and a risk cost analysis that supports the board's decision to impose the standards or~~
 24 ~~requirements and also supports the fact that the state standard or requirement to be imposed can mitigate~~
 25 ~~the increased probability of harm to the public health or environment and is achievable under current~~
 26 ~~technology, notwithstanding the federal government's determination that lesser standards or requirements~~
 27 ~~are appropriate and protective of public health or the environment.~~

28 (4) ~~If the board, upon petition by any person affected by a rule of the board, identifies rules more~~
 29 ~~stringent than federal regulations or identifies rules for which there are no corresponding federal regulations,~~
 30 ~~the board shall review and revise those rules to comply with this section within 9 months of the filing of~~

1 ~~the petition.~~

2 ~~(5) a person who is issued a notice of violation or a denial of a permit or other approval based on~~
 3 ~~a rule that is more stringent than a corresponding federal regulation or for which there is no corresponding~~
 4 ~~regulation may assert a partial defense to that notice or a partial challenge to that denial on the basis and~~
 5 ~~to the extent that the rule violates this section because it imposes requirements more stringent than the~~
 6 ~~federal regulations, unless the more stringent rule was adopted in compliance with this section.~~

7 ~~(6) (a) The board shall review and propose revisions to its rules to ensure compliance with this~~
 8 ~~section by October 1, 1995. The board shall revise its rules to comply with this section by October 1,~~
 9 ~~1996.~~

10 ~~(b) The board may propose and adopt revisions to its rules prior to the dates specified in subsection~~
 11 ~~(6)(a) upon petition for rulemaking by a person as provided under 2-4-315 and subsection (4) of this~~
 12 ~~section.;~~

13 (A) THE PROPOSED STATE STANDARD OR REQUIREMENT PROTECTS PUBLIC HEALTH OR THE
 14 ENVIRONMENT OF THE STATE; AND

15 (B) THE STATE STANDARD OR REQUIREMENT TO BE IMPOSED CAN MITIGATE HARM TO THE
 16 PUBLIC HEALTH OR ENVIRONMENT AND IS ACHIEVABLE UNDER CURRENT TECHNOLOGY.

17 (3) THE WRITTEN FINDING MUST REFERENCE INFORMATION AND PEER-REVIEWED SCIENTIFIC
 18 STUDIES CONTAINED IN THE RECORD THAT FORMS THE BASIS FOR THE BOARD'S CONCLUSION. THE
 19 WRITTEN FINDING MUST ALSO INCLUDE INFORMATION FROM THE HEARING RECORD REGARDING THE
 20 COSTS TO THE REGULATED COMMUNITY THAT ARE DIRECTLY ATTRIBUTABLE TO THE PROPOSED
 21 STATE STANDARD OR REQUIREMENT.

22 (4) (A) A PERSON AFFECTED BY A RULE OF THE BOARD ADOPTED AFTER JANUARY 1, 1990,
 23 AND BEFORE [THE EFFECTIVE DATE OF THIS ACT] THAT THAT PERSON BELIEVES TO BE MORE
 24 STRINGENT THAN COMPARABLE FEDERAL REGULATIONS OR GUIDELINES MAY PETITION THE BOARD
 25 TO REVIEW THE RULE. IF THE BOARD DETERMINES THAT THE RULE IS MORE STRINGENT THAN
 26 COMPARABLE FEDERAL REGULATIONS OR GUIDELINES, THE BOARD SHALL COMPLY WITH THIS
 27 SECTION BY EITHER REVISING THE RULE TO CONFORM TO THE FEDERAL REGULATIONS OR
 28 GUIDELINES OR BY MAKING THE WRITTEN FINDING, AS PROVIDED UNDER SUBSECTION (2), WITHIN
 29 A REASONABLE PERIOD OF TIME, NOT TO EXCEED 12 MONTHS AFTER RECEIVING THE PETITION. A
 30 PETITION UNDER THIS SECTION DOES NOT RELIEVE THE PETITIONER OF THE DUTY TO COMPLY WITH

1 THE CHALLENGED RULE. THE BOARD MAY CHARGE A PETITION FILING FEE IN AN AMOUNT NOT TO
 2 EXCEED \$250.

3 (B) A PERSON MAY ALSO PETITION THE BOARD FOR A RULE REVIEW UNDER SUBSECTION
 4 (4)(A) IF THE BOARD ADOPTS A RULE AFTER JANUARY 1, 1990, IN AN AREA IN WHICH NO FEDERAL
 5 REGULATIONS OR GUIDELINES EXISTED AND THE FEDERAL GOVERNMENT SUBSEQUENTLY
 6 ESTABLISHES COMPARABLE REGULATIONS OR GUIDELINES THAT ARE LESS STRINGENT THAN THE
 7 PREVIOUSLY ADOPTED BOARD RULE.

8 (5) THIS SECTION DOES NOT APPLY TO A RULE ADOPTED UNDER THE EMERGENCY
 9 RULEMAKING PROVISIONS OF 2-4-303(1).

10
 11 NEW SECTION. Section 2. State standards REGULATIONS no more stringent than federal
 12 standards REGULATIONS OR GUIDELINES. (1) Except AFTER [THE EFFECTIVE DATE OF THIS ACT],
 13 EXCEPT as provided in subsections (2) through (6), (5) AND OR unless required by state law, the board
 14 or department may not adopt a rule to implement this chapter that is more stringent than the corresponding
 15 COMPARABLE federal regulations OR GUIDELINES that address the same circumstances. The board or
 16 department may incorporate by reference corresponding COMPARABLE federal regulations OR GUIDELINES.

17 (2) The board or department may adopt a rule to implement this chapter that is more stringent than
 18 corresponding COMPARABLE federal regulations or adopt rules when there are no corresponding federal
 19 regulations GUIDELINES only if the board or department makes a written finding after a public hearing and
 20 public comment and based on evidence in the record that the corresponding federal regulations are not
 21 adequate to protect public health or the environment of the state. This finding must be accompanied by
 22 a summarizing conclusion statement referring to and evaluating the probability of harm to public health or
 23 the environment at the level of the federal rule or regulation and the specific improvement in the public
 24 health or environment from the stricter state rule. The statement must reference information and studies
 25 contained in the record that form the basis for the board's or department's conclusion.

26 (3) ~~The summarizing conclusion statement must include but is not limited to a discussion of the~~
 27 ~~policy reasons and a risk cost analysis that supports the board's or department's decision to impose the~~
 28 ~~standards or requirements and also supports the fact that the state standard or requirement to be imposed~~
 29 ~~can mitigate the increased probability of harm to the public health or environment and is achievable under~~
 30 ~~current technology, notwithstanding the federal government's determination that lesser standards or~~

1 ~~requirements are appropriate and protective of public health or the environment.~~

2 ~~(4) If the board or department, upon petition by any person affected by a rule of the board or~~
 3 ~~department, identifies rules more stringent than federal regulations or identifies rules for which there are~~
 4 ~~no corresponding federal regulations, the board or department shall review and revise those rules to comply~~
 5 ~~with this section within 9 months of the filing of the petition.~~

6 ~~(5) A person who is issued a notice of violation or a denial of a permit or other approval based on~~
 7 ~~a rule that is more stringent than a corresponding federal regulation or for which there is no corresponding~~
 8 ~~regulation may assert a partial defense to that notice or a partial challenge to that denial on the basis and~~
 9 ~~to the extent that the rule violates this section because it imposes requirements more stringent than the~~
 10 ~~federal regulations, unless the more stringent rule was adopted in compliance with this section.~~

11 ~~(6) (a) The board or department shall review and propose revisions to its rules to ensure compliance~~
 12 ~~with this section by October 1, 1995. The board or department shall revise its rules to comply with this~~
 13 ~~section by October 1, 1996.~~

14 ~~(b) The board or department may propose and adopt revisions to its rules prior to the dates~~
 15 ~~specified in subsection (6)(a) upon petition for rulemaking by a person as provided under 2-4-315 and~~
 16 ~~subsection (4) of this section.~~

17 (A) THE PROPOSED STATE STANDARD OR REQUIREMENT PROTECTS PUBLIC HEALTH OR THE
 18 ENVIRONMENT OF THE STATE; AND

19 (B) THE STATE STANDARD OR REQUIREMENT TO BE IMPOSED CAN MITIGATE HARM TO THE
 20 PUBLIC HEALTH OR ENVIRONMENT AND IS ACHIEVABLE UNDER CURRENT TECHNOLOGY.

21 (3) THE WRITTEN FINDING MUST REFERENCE INFORMATION AND PEER-REVIEWED SCIENTIFIC
 22 STUDIES CONTAINED IN THE RECORD THAT FORMS THE BASIS FOR THE BOARD'S OR DEPARTMENT'S
 23 CONCLUSION. THE WRITTEN FINDING MUST ALSO INCLUDE INFORMATION FROM THE HEARING
 24 RECORD REGARDING THE COSTS TO THE REGULATED COMMUNITY THAT ARE DIRECTLY
 25 ATTRIBUTABLE TO THE PROPOSED STATE STANDARD OR REQUIREMENT.

26 (4) (A) A PERSON AFFECTED BY A RULE OF THE BOARD OR DEPARTMENT ADOPTED AFTER
 27 JANUARY 1, 1990, AND BEFORE [THE EFFECTIVE DATE OF THIS ACT] THAT THAT PERSON BELIEVES
 28 TO BE MORE STRINGENT THAN COMPARABLE FEDERAL REGULATIONS OR GUIDELINES MAY PETITION
 29 THE BOARD OR DEPARTMENT TO REVIEW THE RULE. IF THE BOARD OR DEPARTMENT DETERMINES
 30 THAT THE RULE IS MORE STRINGENT THAN COMPARABLE FEDERAL REGULATIONS OR GUIDELINES,

1 THE BOARD OR DEPARTMENT SHALL COMPLY WITH THIS SECTION BY EITHER REVISING THE RULE TO
 2 CONFORM TO THE FEDERAL REGULATIONS OR GUIDELINES OR BY MAKING THE WRITTEN FINDING,
 3 AS PROVIDED UNDER SUBSECTION (2), WITHIN A REASONABLE PERIOD OF TIME, NOT TO EXCEED 12
 4 MONTHS AFTER RECEIVING THE PETITION. A PETITION UNDER THIS SECTION DOES NOT RELIEVE THE
 5 PETITIONER OF THE DUTY TO COMPLY WITH THE CHALLENGED RULE. THE BOARD OR DEPARTMENT
 6 MAY CHARGE A PETITION FILING FEE IN AN AMOUNT NOT TO EXCEED \$250.

7 (B) A PERSON MAY ALSO PETITION THE BOARD OR DEPARTMENT FOR A RULE REVIEW UNDER
 8 SUBSECTION (4)(A) IF THE BOARD OR DEPARTMENT ADOPTS A RULE AFTER JANUARY 1, 1990, IN AN
 9 AREA IN WHICH NO FEDERAL REGULATIONS OR GUIDELINES EXISTED AND THE FEDERAL
 10 GOVERNMENT SUBSEQUENTLY ESTABLISHES COMPARABLE REGULATIONS OR GUIDELINES THAT ARE
 11 LESS STRINGENT THAN THE PREVIOUSLY ADOPTED BOARD OR DEPARTMENT RULE.

12 (5) THIS SECTION DOES NOT APPLY TO A RULE ADOPTED UNDER THE EMERGENCY
 13 RULEMAKING PROVISIONS OF 2-4-303(1).

14
 15 NEW SECTION. Section 3. State standards REGULATIONS no more stringent than federal
 16 standards REGULATIONS OR GUIDELINES. (1) Except AFTER [THE EFFECTIVE DATE OF THIS ACT],
 17 EXCEPT as provided in subsections (2) through (6), (5) AND OR unless required by state law, the
 18 department may not adopt a rule to implement this chapter that is more stringent than the eorresponding
 19 COMPARABLE federal regulations OR GUIDELINES that address the same circumstances. The department
 20 may incorporate by reference eorresponding COMPARABLE federal regulations OR GUIDELINES.

21 (2) The department may adopt a rule to implement this chapter that is more stringent than
 22 eorresponding COMPARABLE federal regulations or adopt rules where there are no eorresponding federal
 23 regulations GUIDELINES only if the department makes a written finding after a public hearing and public
 24 comment and based on evidence in the record that the eorresponding federal regulations are not adequate
 25 to protect public health or the environment of the state. This finding must be accompanied by a
 26 summarizing conclusion statement referring to and evaluating the probability of harm to public health or the
 27 environment at the level of the federal rule or regulation and the specific improvement in the public health
 28 or environment from the stricter state rule. The statement must reference information and studies contained
 29 in the record that form the basis for the department's conclusion.

30 ~~(3) The summarizing conclusion statement must include but is not limited to a discussion of the~~

1 ~~policy reasons and a risk cost analysis that supports the department's decision to impose the standards or~~
 2 ~~requirements and also supports the fact that the state standard or requirement to be imposed can mitigate~~
 3 ~~the increased probability of harm to the public health or environment and is achievable under current~~
 4 ~~technology, notwithstanding the federal government's determination that lesser standards or requirements~~
 5 ~~are appropriate and protective of public health or the environment.~~

6 ~~(4) If the department, upon petition by any person affected by a rule of the department, identifies~~
 7 ~~rules more stringent than federal regulations or identifies rules for which there are no corresponding federal~~
 8 ~~regulations, the department shall review and revise those rules to comply with this section within 9 months~~
 9 ~~of the filing of the petition.~~

10 ~~(5) A person who is issued a notice of violation or a denial of a permit or other approval based on~~
 11 ~~a rule that is more stringent than a corresponding federal regulation or for which there is no corresponding~~
 12 ~~regulation may assert a partial defense to that notice or a partial challenge to that denial on the basis and~~
 13 ~~to the extent that the rule violates this section because it imposes requirements more stringent than the~~
 14 ~~federal regulations, unless the more stringent rule was adopted in compliance with this section.~~

15 ~~(6) (a) The department shall review and propose revisions to its rules to ensure compliance with~~
 16 ~~this section by October 1, 1995. The department shall revise its rules to comply with this section by~~
 17 ~~October 1, 1996.~~

18 ~~(b) The department may propose and adopt revisions to its rules prior to the dates specified in~~
 19 ~~subsection (6)(a) upon petition for rulemaking by a person as provided under 2-4-315 and subsection (4)~~
 20 ~~of this section;~~

21 (A) THE PROPOSED STATE STANDARD OR REQUIREMENT PROTECTS PUBLIC HEALTH OR THE
 22 ENVIRONMENT OF THE STATE; AND

23 (B) THE STATE STANDARD OR REQUIREMENT TO BE IMPOSED CAN MITIGATE HARM TO THE
 24 PUBLIC HEALTH OR ENVIRONMENT AND IS ACHIEVABLE UNDER CURRENT TECHNOLOGY.

25 (3) THE WRITTEN FINDING MUST REFERENCE INFORMATION AND PEER-REVIEWED SCIENTIFIC
 26 STUDIES CONTAINED IN THE RECORD THAT FORMS THE BASIS FOR THE DEPARTMENT'S CONCLUSION.
 27 THE WRITTEN FINDING MUST ALSO INCLUDE INFORMATION FROM THE HEARING RECORD REGARDING
 28 THE COSTS TO THE REGULATED COMMUNITY THAT ARE DIRECTLY ATTRIBUTABLE TO THE PROPOSED
 29 STATE STANDARD OR REQUIREMENT.

30 (4) (A) A PERSON AFFECTED BY A RULE OF THE DEPARTMENT ADOPTED AFTER JANUARY 1,

1 1990, AND BEFORE [THE EFFECTIVE DATE OF THIS ACT] THAT THAT PERSON BELIEVES TO BE MORE
 2 STRINGENT THAN COMPARABLE FEDERAL REGULATIONS OR GUIDELINES MAY PETITION THE
 3 DEPARTMENT TO REVIEW THE RULE. IF THE DEPARTMENT DETERMINES THAT THE RULE IS MORE
 4 STRINGENT THAN COMPARABLE FEDERAL REGULATIONS OR GUIDELINES, THE DEPARTMENT SHALL
 5 COMPLY WITH THIS SECTION BY EITHER REVISING THE RULE TO CONFORM TO THE FEDERAL
 6 REGULATIONS OR GUIDELINES OR BY MAKING THE WRITTEN FINDING, AS PROVIDED UNDER
 7 SUBSECTION (2), WITHIN A REASONABLE PERIOD OF TIME, NOT TO EXCEED 12 MONTHS AFTER
 8 RECEIVING THE PETITION. A PETITION UNDER THIS SECTION DOES NOT RELIEVE THE PETITIONER OF
 9 THE DUTY TO COMPLY WITH THE CHALLENGED RULE. THE DEPARTMENT MAY CHARGE A PETITION
 10 FILING FEE IN AN AMOUNT NOT TO EXCEED \$250.

11 (B) A PERSON MAY ALSO PETITION THE DEPARTMENT FOR A RULE REVIEW UNDER
 12 SUBSECTION (4)(A) IF THE DEPARTMENT ADOPTS A RULE AFTER JANUARY 1, 1990, IN AN AREA IN
 13 WHICH NO FEDERAL REGULATIONS OR GUIDELINES EXISTED AND THE FEDERAL GOVERNMENT
 14 SUBSEQUENTLY ESTABLISHES COMPARABLE REGULATIONS OR GUIDELINES THAT ARE LESS
 15 STRINGENT THAN THE PREVIOUSLY ADOPTED DEPARTMENT RULE.

16 (5) THIS SECTION DOES NOT APPLY TO A RULE ADOPTED UNDER THE EMERGENCY
 17 RULEMAKING PROVISIONS OF 2-4-303(1).

18
 19 NEW SECTION. SECTION 4. LOCAL REGULATIONS NO MORE STRINGENT THAN STATE
 20 REGULATIONS OR GUIDELINES. (1) AFTER [THE EFFECTIVE DATE OF THIS ACT], EXCEPT AS PROVIDED
 21 IN SUBSECTIONS (2) THROUGH (4) AND OR UNLESS REQUIRED BY STATE LAW, THE LOCAL BOARD
 22 MAY NOT ADOPT A RULE UNDER 50-2-116(1)(I), (2)(K)(III), OR (2)(K)(V) THAT IS MORE STRINGENT
 23 THAN THE COMPARABLE STATE REGULATIONS OR GUIDELINES THAT ADDRESS THE SAME
 24 CIRCUMSTANCES. THE LOCAL BOARD MAY INCORPORATE BY REFERENCE COMPARABLE STATE
 25 REGULATIONS OR GUIDELINES.

26 (2) THE LOCAL BOARD MAY ADOPT A RULE TO IMPLEMENT 50-2-116(1)(I), (2)(K)(III), OR
 27 (2)(K)(V) THAT IS MORE STRINGENT THAN COMPARABLE STATE REGULATIONS OR GUIDELINES ONLY
 28 IF THE LOCAL BOARD MAKES A WRITTEN FINDING, AFTER A PUBLIC HEARING AND PUBLIC COMMENT
 29 AND BASED ON EVIDENCE IN THE RECORD, THAT:

30 (A) THE PROPOSED LOCAL STANDARD OR REQUIREMENT PROTECTS PUBLIC HEALTH OR THE

1 ENVIRONMENT; AND

2 (B) THE LOCAL BOARD STANDARD OR REQUIREMENT TO BE IMPOSED CAN MITIGATE HARM
 3 TO THE PUBLIC HEALTH OR ENVIRONMENT AND IS ACHIEVABLE UNDER CURRENT TECHNOLOGY.

4 (3) THE WRITTEN FINDING MUST REFERENCE INFORMATION AND PEER-REVIEWED SCIENTIFIC
 5 STUDIES CONTAINED IN THE RECORD THAT FORMS THE BASIS FOR THE LOCAL BOARD'S
 6 CONCLUSION. THE WRITTEN FINDING MUST ALSO INCLUDE INFORMATION FROM THE HEARING
 7 RECORD REGARDING THE COSTS TO THE REGULATED COMMUNITY THAT ARE DIRECTLY
 8 ATTRIBUTABLE TO THE PROPOSED LOCAL STANDARD OR REQUIREMENT.

9 (4) (A) A PERSON AFFECTED BY A RULE OF THE LOCAL BOARD ADOPTED AFTER JANUARY 1,
 10 1990, AND BEFORE [THE EFFECTIVE DATE OF THIS ACT] THAT THAT PERSON BELIEVES TO BE MORE
 11 STRINGENT THAN COMPARABLE STATE REGULATIONS OR GUIDELINES MAY PETITION THE LOCAL
 12 BOARD TO REVIEW THE RULE. IF THE LOCAL BOARD DETERMINES THAT THE RULE IS MORE
 13 STRINGENT THAN COMPARABLE STATE REGULATIONS OR GUIDELINES, THE LOCAL BOARD SHALL
 14 COMPLY WITH THIS SECTION BY EITHER REVISING THE RULE TO CONFORM TO THE STATE
 15 REGULATIONS OR GUIDELINES OR BY MAKING THE WRITTEN FINDING, AS PROVIDED UNDER
 16 SUBSECTION (2), WITHIN A REASONABLE PERIOD OF TIME, NOT TO EXCEED 12 MONTHS AFTER
 17 RECEIVING THE PETITION. A PETITION UNDER THIS SECTION DOES NOT RELIEVE THE PETITIONER OF
 18 THE DUTY TO COMPLY WITH THE CHALLENGED RULE. THE LOCAL BOARD MAY CHARGE A PETITION
 19 FILING FEE IN AN AMOUNT NOT TO EXCEED \$250.

20 (B) A PERSON MAY ALSO PETITION THE LOCAL BOARD FOR A RULE REVIEW UNDER
 21 SUBSECTION (4)(A) IF THE LOCAL BOARD ADOPTS A RULE AFTER JANUARY 1, 1990, IN AN AREA IN
 22 WHICH NO STATE REGULATIONS OR GUIDELINES EXISTED AND THE STATE GOVERNMENT
 23 SUBSEQUENTLY ESTABLISHES COMPARABLE REGULATIONS OR GUIDELINES THAT ARE LESS
 24 STRINGENT THAN THE PREVIOUSLY ADOPTED LOCAL BOARD RULE.

25

26 NEW SECTION. SECTION 5. LOCAL REGULATIONS NO MORE STRINGENT THAN STATE
 27 REGULATIONS OR GUIDELINES. (1) AFTER [THE EFFECTIVE DATE OF THIS ACT], EXCEPT AS PROVIDED
 28 IN SUBSECTIONS (2) THROUGH (4) AND OR UNLESS REQUIRED BY STATE LAW, A GOVERNING BODY
 29 MAY NOT ADOPT A RULE UNDER 76-3-501 OR 76-3-504(5)(C) THAT IS MORE STRINGENT THAN THE
 30 COMPARABLE STATE REGULATIONS OR GUIDELINES THAT ADDRESS THE SAME CIRCUMSTANCES.

1 THE GOVERNING BODY MAY INCORPORATE BY REFERENCE COMPARABLE STATE REGULATIONS OR
2 GUIDELINES.

3 (2) THE GOVERNING BODY MAY ADOPT A RULE TO IMPLEMENT 76-3-501 OR 76-3-504(5)(C)
4 THAT IS MORE STRINGENT THAN COMPARABLE STATE REGULATIONS OR GUIDELINES ONLY IF THE
5 GOVERNING BODY MAKES A WRITTEN FINDING, AFTER A PUBLIC HEARING AND PUBLIC COMMENT
6 AND BASED ON EVIDENCE IN THE RECORD, THAT:

7 (A) THE PROPOSED LOCAL STANDARD OR REQUIREMENT PROTECTS PUBLIC HEALTH OR THE
8 ENVIRONMENT; AND

9 (B) THE LOCAL STANDARD OR REQUIREMENT TO BE IMPOSED CAN MITIGATE HARM TO THE
10 PUBLIC HEALTH OR ENVIRONMENT AND IS ACHIEVABLE UNDER CURRENT TECHNOLOGY.

11 (3) THE WRITTEN FINDING MUST REFERENCE INFORMATION AND PEER-REVIEWED SCIENTIFIC
12 STUDIES CONTAINED IN THE RECORD THAT FORMS THE BASIS FOR THE GOVERNING BODY'S
13 CONCLUSION. THE WRITTEN FINDING MUST ALSO INCLUDE INFORMATION FROM THE HEARING
14 RECORD REGARDING THE COSTS TO THE REGULATED COMMUNITY THAT ARE DIRECTLY
15 ATTRIBUTABLE TO THE PROPOSED LOCAL STANDARD OR REQUIREMENT.

16 (4) (A) A PERSON AFFECTED BY A RULE OF THE GOVERNING BODY ADOPTED AFTER JANUARY
17 1, 1990, AND BEFORE [THE EFFECTIVE DATE OF THIS ACT] THAT THAT PERSON BELIEVES TO BE MORE
18 STRINGENT THAN COMPARABLE STATE REGULATIONS OR GUIDELINES MAY PETITION THE GOVERNING
19 BODY TO REVIEW THE RULE. IF THE GOVERNING BODY DETERMINES THAT THE RULE IS MORE
20 STRINGENT THAN COMPARABLE STATE REGULATIONS OR GUIDELINES, THE GOVERNING BODY SHALL
21 COMPLY WITH THIS SECTION BY EITHER REVISING THE RULE TO CONFORM TO THE STATE
22 REGULATIONS OR GUIDELINES OR BY MAKING THE WRITTEN FINDING, AS PROVIDED UNDER
23 SUBSECTION (2), WITHIN A REASONABLE PERIOD OF TIME, NOT TO EXCEED 12 MONTHS AFTER
24 RECEIVING THE PETITION. A PETITION UNDER THIS SECTION DOES NOT RELIEVE THE PETITIONER OF
25 THE DUTY TO COMPLY WITH THE CHALLENGED RULE. THE GOVERNING BODY MAY CHARGE A
26 PETITION FILING FEE IN AN AMOUNT NOT TO EXCEED \$250.

27 (B) A PERSON MAY ALSO PETITION THE GOVERNING BODY FOR A RULE REVIEW UNDER
28 SUBSECTION (4)(A) IF THE GOVERNING BODY ADOPTS A RULE AFTER JANUARY 1, 1990, IN AN AREA
29 IN WHICH NO STATE REGULATIONS OR GUIDELINES EXISTED AND THE STATE GOVERNMENT
30 SUBSEQUENTLY ESTABLISHES COMPARABLE REGULATIONS OR GUIDELINES THAT ARE LESS

1 STRINGENT THAN THE PREVIOUSLY ADOPTED GOVERNING BODY RULE.

2

3 SECTION 6. SECTION 50-2-116, MCA, IS AMENDED TO READ:

4 "50-2-116. Powers and duties of local boards. (1) Local boards shall:

5 (a) appoint a local health officer who is a physician or a person with a master's degree in public
6 health or the equivalent and with appropriate experience, as determined by the department, and shall fix
7 his salary;

8 (b) elect a chairman and other necessary officers;

9 (c) employ necessary qualified staff;

10 (d) adopt bylaws to govern meetings;

11 (e) hold regular meetings quarterly and hold special meetings as necessary;

12 (f) supervise destruction and removal of all sources of filth that cause disease;

13 (g) guard against the introduction of communicable disease;

14 (h) supervise inspections of public establishments for sanitary conditions;

15 (i) subject to the provisions of [section 4], adopt necessary regulations that are no less stringent
16 than state standards for the control and disposal of sewage from private and public buildings that is not
17 regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for
18 granting variances from the minimum requirements that are identical to standards promulgated by the board
19 of health and environmental sciences and must provide for appeal of variance decisions to the department
20 as required by 75-5-305.

21 (2) Local boards may:

22 (a) quarantine persons who have communicable diseases;

23 (b) require isolation of persons or things that are infected with communicable diseases;

24 (c) furnish treatment for persons who have communicable diseases;

25 (d) prohibit the use of places that are infected with communicable diseases;

26 (e) require and provide means for disinfecting places that are infected with communicable diseases;

27 (f) accept and spend funds received from a federal agency, the state, a school district, or other
28 persons;

29 (g) contract with another local board for all or a part of local health services;

30 (h) reimburse local health officers for necessary expenses incurred in official duties;

1 (i) abate nuisances affecting public health and safety or bring action necessary to restrain the
2 violation of public health laws or rules;

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

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

6 (i) for the control of communicable diseases;

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

8 (iii) subject to the provisions of [section 4], on sanitation in public buildings that affects public
9 health;

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

12 (v) subject to the provisions of [section 4], for the maintenance of sewage treatment systems that
13 do not discharge an effluent directly into state waters and that are not required to have an operating permit
14 as required by rules adopted under 75-5-401."

15
16 **Section 7.** Section 75-2-111, MCA, is amended to read:

17 **"75-2-111. Powers of board.** The board shall, subject to the provisions of [section 2]:

18 (1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this
19 chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements
20 of 42 U.S.C. 7420 and regulations adopted pursuant thereto;

21 (2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place
22 designated by the board. The board may compel the attendance of witnesses and the production of
23 evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall
24 appoint a reporter who ~~shall~~ must be present at all hearings and take full stenographic notes of all
25 proceedings ~~thereat~~, transcripts of which will be available to the public at cost.

26 (3) issue orders necessary to effectuate the purposes of this chapter;

27 (4) by rule require access to records relating to emissions;

28 (5) by rule adopt a schedule of fees required for permits and permit applications, consistent with
29 this chapter;

30 (6) have the power to issue orders under and in accordance with 42 U.S.C. 7419."

1 **Section 8.** Section 75-2-301, MCA, is amended to read:

2 **"75-2-301. Local air pollution control programs.** (1) After public hearing, a municipality or county
3 may establish and administer a local air pollution control program if the program is consistent with this
4 chapter and is approved by the board.

5 (2) If a local air pollution control program established by a county encompasses all or part of a
6 municipality, the county and each municipality shall approve the program in accordance with subsection
7 (1).

8 (3) (a) Except as provided in subsection (4), the board by order may approve a local air pollution
9 control program that:

10 ~~(a)(i)~~ provides by ordinance or local law for requirements compatible with, more stringent than, or
11 more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217
12 through 75-2-219, and 75-2-402, and rules adopted under these sections;

13 ~~(b)(ii)~~ provides for the enforcement of requirements established under subsection (3)(a)(i) by
14 appropriate administrative and judicial processes; and

15 ~~(c)(iii)~~ provides for administrative organization, staff, financial resources, and other resources
16 necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a
17 local air pollution control program may administer the permit fee provisions of 75-2-220. The permit fees
18 collected by a local air pollution control program must be deposited in a county special revenue fund to be
19 used by the local air pollution control program for administration of permitting activities.

20 (b) Board approval of an ordinance or local law that is more stringent than the corresponding
21 COMPARABLE state law or for which no state law exists is not subject to the provisions of [section 2].

22 (4) Except for those emergency powers provided for in 75-2-402, the board may not delegate to
23 a local air pollution control program the authority to control any air pollutant source that:

24 (a) requires the preparation of an environmental impact statement in accordance with Title 75,
25 chapter 1, part 2;

26 (b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75,
27 chapter 20; or

28 (c) has the potential to emit 250 tons ~~per~~ a year or more of any pollutant subject to regulation
29 under this chapter, including fugitive emissions, unless the authority to control the source was delegated
30 to a local air pollution control program prior to January 1, 1991.

1 (5) If the board finds that the location, character, or extent of particular concentrations of
2 population, air pollutant sources, or geographic, topographic, or meteorological considerations or any
3 combination of these ~~are such as to~~ make impracticable the maintenance of appropriate levels of air quality
4 without an areawide air pollution control program, the board may determine the boundaries within which
5 the program is necessary and require it as the only acceptable alternative to direct state administration.

6 (6) If the board has reason to believe that any part of an air pollution control program in force under
7 this section is either inadequate to prevent and control air pollution in the jurisdiction to which the program
8 relates or is being administered in a manner inconsistent with this chapter, the board shall, on notice,
9 conduct a hearing on the matter.

10 (7) If, after the hearing, the board determines that any part of the program is inadequate to prevent
11 and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes
12 of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not
13 to exceed 60 days.

14 (8) If the jurisdiction fails to take these measures within the time required, the department shall
15 administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any
16 applicable board order, that are necessary to correct the deficiencies found by the board. The department's
17 control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements
18 in the affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

19 (9) If the board finds that the control of a particular air pollutant source because of its complexity
20 or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and
21 economically performed at the state level, it may direct the department to assume and retain control over
22 that air pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this
23 subsection may be either on the basis of the nature of the sources involved or on the basis of their
24 relationship to the size of the communities in which they are located.

25 (10) A jurisdiction in which the department administers all or part of its air pollution control
26 program under subsection (8) may, with the approval of the board, establish or resume an air pollution
27 control program that meets the requirements of subsection (3).

28 (11) A municipality or county may administer all or part of its air pollution control program in
29 cooperation with one or more municipalities or counties of this state or of other states."
30

1 **Section 9.** Section 75-2-503, MCA, is amended to read:

2 **"75-2-503. Rulemaking authority -- issuance of permits.** (1) The department shall, subject to the
3 provisions of [section 2], adopt rules establishing standards and procedures for accreditation of
4 asbestos-related occupations and control of the work performed by persons in asbestos-related
5 occupations. The rules must be consistent with federal law and include but are not limited to:

6 (a) standards for training course review and approval;

7 (b) standards for accreditation of applicants for asbestos-related occupations;

8 (c) examination requirements for accreditation of applicants for asbestos-related occupations;

9 (d) requirements for renewal of accreditation, including periodic refresher courses;

10 (e) revocation of accreditation;

11 (f) inspection requirements for asbestos projects and asbestos-related occupations credentials;

12 (g) criteria to determine whether and what type of control measures are necessary for an asbestos
13 project and whether a project is completed in a manner sufficient to protect public health, including criteria
14 setting allowable limits on indoor airborne asbestos. A determination of whether asbestos abatement of a
15 structure is necessary may not be based solely upon the results of airborne asbestos testing.

16 (h) requirements for issuance of asbestos project permits and conditions that permit holders shall
17 meet;

18 (i) standards for seeking injunctions, criminal and civil penalties, or emergency actions;

19 (j) advance notification procedures and issuance of permits for asbestos projects; and

20 (k) fees, which must be commensurate with costs, for:

21 (i) review and approval of training courses;

22 (ii) application for and renewal of accreditation by a person seeking to pursue an asbestos-related
23 occupation;

24 (iii) issuance of asbestos project permits; and

25 (iv) requested inspections of asbestos projects.

26 (2) For asbestos projects having a cost of \$3,000 or less, the department shall issue asbestos
27 project permits within 7 calendar days following the receipt of a properly completed permit application and
28 the appropriate fee."

29

30 **Section 10.** Section 75-3-201, MCA, is amended to read:

1 **"75-3-201. State radiation control agency.** (1) The department is the state radiation control agency.

2 (2) Under the laws of this state, the department may employ, compensate, and prescribe the
3 powers and duties of the individuals ~~which~~ that are necessary to carry out this chapter.

4 (3) The department may, subject to the provisions of [section 3], for the protection of the
5 occupational and public health and safety:

6 (a) develop and conduct programs for evaluation and control of hazards associated with the use
7 of sources of ionizing radiation;

8 (b) develop programs and adopt rules with due regard for compatibility with federal programs for
9 licensing and regulation of byproduct, source, radioactive waste, and special nuclear materials and other
10 radioactive materials. These rules ~~shall~~ must cover equipment and facilities, methods for transporting,
11 handling, and storage of radioactive materials, permissible levels of exposure, technical qualifications of
12 personnel, required notification of accidents and other incidents involving radioactive materials, survey
13 methods and results, methods of disposal of radioactive materials, posting and labeling of areas and
14 sources, and methods and effectiveness of controlling individuals in posted and restricted areas.

15 (c) adopt rules relating to control of other sources of ionizing radiation. These rules ~~shall~~ must cover
16 equipment and facilities, permissible levels of exposure to personnel, posting of areas, surveys, and records.

17 (d) advise, consult, and cooperate with other agencies of the state, the federal government, other
18 states, interstate agencies, political subdivisions, and groups concerned with control of sources of ionizing
19 radiation;

20 (e) accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in
21 furtherance of its functions, from the federal government and from other sources, public or private;

22 (f) encourage, participate in, or conduct studies, investigations, training, research, and
23 demonstrations relating to control of sources of ionizing radiation;

24 (g) collect and disseminate information relating to control of sources of ionizing radiation, including:

25 (i) maintenance of a file of all license applications, issuances, denials, amendments, transfers,
26 renewals, modifications, suspensions, and revocations;

27 (ii) maintenance of a file of registrants possessing sources of ionizing radiation requiring registration
28 under this chapter and any administrative or judicial action pertaining ~~thereto~~ to this chapter;

29 (iii) maintenance of a file of all rules relating to regulation of sources of ionizing radiation, pending
30 or adopted, and proceedings ~~thereon~~."

1 **Section 11.** Section 75-5-201, MCA, is amended to read:

2 **"75-5-201. Board rules authorized.** (1) The board shall, subject to the provisions of [section 1],
3 adopt rules for the administration of this chapter.

4 (2) The board's rules may include a fee schedule or system for assessment of administrative
5 penalties as provided under 75-5-611."

6

7 **Section 12.** Section 75-5-311, MCA, is amended to read:

8 **"75-5-311. Local water quality districts -- board approval -- local water quality programs.** (1) A
9 county that establishes a local water quality district according to the procedures specified in Title 7, chapter
10 13, part 45, shall, in consultation with the department, undertake planning and information-gathering
11 activities necessary to develop a proposed local water quality program.

12 (2) A county may implement a local water quality program in a local water quality district if the
13 program is approved by the board after a hearing conducted under 75-5-202.

14 (3) In approving a local water quality program, the board shall determine that the program is
15 consistent with the purposes and requirements of Title 75, chapter 5, and that the program will be effective
16 in protecting, preserving, and improving the quality of surface water and ground water, considering the
17 administrative organization, staff, and financial and other resources available to implement the program.

18 (4) Subject to the board's approval, the commissioners and the governing bodies of cities and
19 towns that participate in a local water quality district may adopt local ordinances to regulate the following
20 specific facilities and sources of pollution:

21 (a) onsite waste water disposal facilities;

22 (b) storm water runoff from paved surfaces;

23 (c) service connections between buildings and publicly owned sewer mains;

24 (d) facilities that use or store halogenated and nonhalogenated solvents, including hazardous
25 substances that are referenced in 40 CFR 261.31, United States environmental protection agency
26 hazardous waste numbers F001 through F005, as amended; and

27 (e) internal combustion engine lubricants.

28 (5) (a) For the facilities and sources of pollution included in subsection (4) and consistent with the
29 provisions of subsection (6), the local ordinances may:

30 ~~(a)~~ (i) be compatible with or more stringent or more extensive than the requirements imposed by

1 75-5-304, 75-5-305, and 75-5-401 through 75-5-404 and rules adopted under those sections to protect
2 water quality, establish waste discharge permit requirements, and establish best management practices for
3 substances that have the potential to pollute state waters;

4 ~~(b)(ii)~~ provide for administrative procedures, administrative orders and actions, and civil
5 enforcement actions that are consistent with 75-5-601 through 75-5-604, 75-5-611 through 75-5-616,
6 75-5-621, and 75-5-622 and rules adopted under those sections; and

7 ~~(e)(iii)~~ provide for civil penalties not to exceed \$1,000 per violation, provided that each day of
8 violation of a local ordinance constitutes a separate violation, and criminal penalties not to exceed \$500
9 per day of violation or imprisonment for not more than 30 days, or both.

10 (b) Board approval of an ordinance or local law that is more stringent than the corresponding
11 COMPARABLE state law or for which no state law exists is not subject to the provisions of [section 1].

12 (6) The local ordinances authorized by this section may not:

13 (a) duplicate the department's requirements and procedures relating to permitting of waste
14 discharge sources and enforcement of water quality standards;

15 (b) regulate any facility or source of pollution to the extent that the facility or source is:

16 (i) required to obtain a permit or other approval from the department or federal government or is
17 the subject of an administrative order, a consent decree, or an enforcement action pursuant to Title 75,
18 chapter 5, part 4; Title 75, chapter 6; Title 75, chapter 10; the federal Comprehensive Environmental
19 Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675, as amended; or federal
20 environmental, safety, or health statutes and regulations;

21 (ii) exempted from obtaining a permit or other approval from the department because the facility
22 or source is required to obtain a permit or other approval from another state agency or is the subject of an
23 enforcement action by another state agency; or

24 (iii) subject to the provisions of Title 80, chapter 8 or chapter 15.

25 (7) If the boundaries of a district are changed after the board has approved the local water quality
26 program for the district, the board of directors of the local water quality district shall submit a program
27 amendment to the board and obtain the board's approval of the program amendment before implementing
28 the local water quality program in areas that have been added to the district.

29 (8) The department shall monitor the implementation of local water quality programs to ensure that
30 the programs are adequate to protect, preserve, and improve the quality of the surface water and ground

1 water and are being administered in a manner consistent with the purposes and requirements of Title 75,
2 chapter 5. If the department finds that a local water quality program is not adequate to protect, preserve,
3 and improve the quality of the surface water and ground water or is not being administered in a manner
4 consistent with the purposes and requirements of Title 75, chapter 5, the department shall report to the
5 board.

6 (9) If the board determines that a local water quality program is inadequate to protect, preserve,
7 and improve the quality of the surface water and ground water in the local water quality district or that the
8 program is being administered in a manner inconsistent with Title 75, chapter 5, the board shall give notice
9 and conduct a hearing on the matter.

10 (10) If after the hearing the board determines that the program is inadequate to protect, preserve,
11 and improve the quality of the surface water and ground water in the local water quality district or that it
12 is not being administered in a manner consistent with the purposes of Title 75, chapter 5, the board shall
13 require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

14 (11) If an ordinance adopted under this section conflicts with a requirement imposed by the
15 department's water quality program, the department's requirement supersedes the local ordinance.

16 (12) If the board finds that, because of the complexity or magnitude of a particular water pollution
17 source, the control of the source is beyond the reasonable capability of a local water quality district or may
18 be more efficiently and economically performed at the state level, the board may direct the department to
19 assume and retain control over the source. A charge may not be assessed against the local water quality
20 district for that source. Findings made under this subsection may be based on the nature of the source
21 involved or on the source's relationship to the size of the community in which it is located."
22

23 **Section 13.** Section 75-6-103, MCA, is amended to read:

24 **"75-6-103. Duties of the board.** (1) The board has general supervision over all state waters ~~which~~
25 that are directly or indirectly being used by a person for a public water supply system or domestic purposes
26 or as a source of ice.

27 (2) The board shall, subject to the provisions of [section 1], adopt rules and standards concerning:

28 (a) maximum contaminant levels for waters that are or will be used for a public water supply
29 system;

30 (b) fees, as described in 75-6-108, for services rendered by the department;

- 1 (c) monitoring, recordkeeping, and reporting by persons who own or operate a public water supply
 2 system;
- 3 (d) requiring public notice to all users of a public water supply system when a person has been
 4 granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;
- 5 (e) the issuance of licenses by the department to laboratories that conduct analysis of public water
 6 supply systems;
- 7 (f) the siting, construction, operation, and modification of a public water supply system or public
 8 sewage system;
- 9 (g) the review of financial viability of a proposed public water supply system or public sewage
 10 system, as necessary to ensure the capability of the system to meet the requirements of this part;
- 11 (h) the collection and analysis of samples of water used for drinking or domestic purposes;
- 12 (i) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act
 13 and this part;
- 14 (j) administrative enforcement procedures and administrative penalties authorized under this part;
 15 and
- 16 (k) any other requirement necessary for the protection of public health as described in this part.
- 17 (3) The board may issue orders necessary to fully implement the provisions of this part."

18
 19 **Section 14.** Section 75-10-204, MCA, is amended to read:

20 **"75-10-204. Powers and duties of department.** The department shall, subject to the provisions of
 21 [section 3], adopt rules governing solid waste management systems ~~which shall~~ that must include but are
 22 not limited to:

- 23 (1) requirements for the plan of operation and maintenance that must be submitted with an
 24 application under this part;
- 25 (2) the classification of disposal sites according to the physical capabilities of the site to contain
 26 the type of solid waste to be disposed of;
- 27 (3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;
- 28 (4) the suitability of the site from a public health standpoint when hydrology, geology, and
 29 climatology are considered;
- 30 (5) requirements relating to ground water monitoring, including but not limited to:

1 (a) information that owners and operators of municipal solid waste landfills and other disposal sites
2 specified in 75-10-207 must submit to the department to enable the department to prepare the priority
3 compliance list authorized by 75-10-207(3);

4 (b) the content of plans for the design, construction, operation, and maintenance of monitoring
5 wells and monitoring systems; and

6 (c) recordkeeping and reporting;

7 (6) fees related to the review of solid waste management system license applications;

8 (7) the renewal of solid waste management system licenses and related fees;

9 (8) a quarterly fee based on the justifiable direct and indirect costs to the state of administering
10 Title 75, chapter 10, parts 1 and 2, for solid waste generated outside Montana and disposed of or
11 incinerated within Montana; ~~These rules must be adopted by August 1, 1993.~~

12 (9) any other factors relating to the sanitary disposal or management of solid wastes."

13
14 **Section 15.** Section 75-10-405, MCA, is amended to read:

15 **"75-10-405. Administrative rules.** (1) The department may, subject to the provisions of [section
16 3], adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

17 (a) identification and classification of those hazardous wastes subject to regulation and those that
18 are not;

19 (b) requirements for the proper treatment, storage, transportation, and disposal of hazardous
20 waste;

21 (c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure,
22 postclosure, and reclamation of hazardous waste management facilities;

23 (d) requirements for the issuance, denial, reissuance, modification, and revocation of permits for
24 hazardous waste management facilities;

25 (e) requirements for corrective action within and outside of facility boundaries and for financial
26 assurance of that corrective action;

27 (f) requirements for manifests and the manifest system for tracking hazardous waste and for
28 reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste
29 management facilities;

30 (g) requirements for training of facility personnel and for financial assurance of facility owners and

1 operators and for liability of guarantors providing financial assurance;

2 (h) requirements for registration of generators and transporters;

3 (i) establishing a schedule of fees and procedures for the collection of fees for:

4 (i) the filing and review of hazardous waste management facility permits as provided in 75-10-432;

5 (ii) hazardous waste management as provided in 75-10-433;

6 (iii) the reissuance and modification of hazardous waste management facility permits; and

7 (iv) the registration of hazardous waste generators;

8 (j) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining
9 any state hazardous waste management facility authorized by 75-10-412;

10 (k) requirements for availability to the public of information obtained by the department regarding
11 facilities and sites used for the treatment, storage, and disposal of hazardous wastes;

12 (l) procedures for the assessment of administrative penalties as authorized by 75-10-424; and

13 (m) other rules ~~which~~ that are necessary to obtain and maintain authorization under the federal
14 program.

15 (2) ~~The~~ NOTWITHSTANDING THE PROVISIONS OF [SECTION 3], THE department may not adopt
16 rules under this part that are more restrictive than those promulgated by the federal government under the
17 Resource Conservation and Recovery Act of 1976, as amended, except that the department:

18 (a) may require the registration of transporters not otherwise required to register with the state of
19 Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

20 (b) may require generators and facilities to report on an annual rather than on a biennial basis;

21 (c) may adopt requirements for the prevention and correction of leakage from underground storage
22 tanks, including:

23 (i) reporting by owners and operators;

24 (ii) financial responsibility;

25 (iii) release detection, prevention, and corrective action;

26 (iv) standards for design, construction, installation, and closure;

27 (v) development of a schedule of fees, not to exceed \$50 for a tank over 1,100 gallons and not
28 to exceed \$20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state
29 and local costs of implementing an underground storage tank program;

30 (vi) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals

1 under 75-10-423; and

2 (vii) delegation of authority and funds to local agents for inspections and implementation. The
3 delegation of authority to local agents must complement and may not duplicate existing authority for
4 implementation of rules adopted by the department of justice that relate to underground storage tanks.

5 (d) may adopt regulatory requirements for hazardous waste transfer facilities;

6 (e) shall require the owner or manager of any proposed commercial facility for the storage,
7 collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441; and

8 (f) may adopt rules and performance standards for industrial furnaces and boilers that burn
9 hazardous wastes. The rules and performance standards:

10 (i) may be adopted if there are no federal regulations; or

11 (ii) may be more restrictive than federal regulations.

12 ~~(3) If the department adopts rules under subsection (2) that are more restrictive than those~~
13 ~~promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as~~
14 ~~amended, the department shall comply with the provisions of [section 3] if it receives a petition as provided~~
15 ~~under [section 3(4)]."~~

16

17 **Section 16.** Section 75-10-603, MCA, is amended to read:

18 **"75-10-603. Cooperative agreement -- authority of department.** (1) In order to assist in
19 implementation of CERCLA, the department may, subject to the provisions of [section 3]:

20 (a) participate in the determination of appropriate remedial action to deal with the release or
21 threatened release within Montana of:

22 (i) any contaminant presenting an imminent and substantial danger to public health or welfare; or

23 (ii) any hazardous substance;

24 (b) in the event of the release or threatened release of any of the substances described in
25 subsection (1)(a), negotiate the terms of a cooperative agreement with the federal government containing
26 mutual commitments of each party to remedial action, including the elements required by subsection (2).

27 (2) A cooperative agreement may contain the following assurances:

28 (a) the state of Montana will ~~assure~~ ensure the future maintenance of the removal and remedial
29 actions agreed upon for the expected life of the actions;

30 (b) a hazardous waste disposal facility is available to the state of Montana that meets the

1 specifications of the president and complies with the requirements of subtitle C of the federal Solid Waste
2 Disposal Act for necessary offsite storage, destruction, treatment, or secure disposition of the hazardous
3 substances; and

4 (c) the state of Montana will pay or ~~assure~~ ensure payment of a share of the costs of the remedial
5 action, including all future maintenance."
6

7 **SECTION 17. SECTION 76-3-501, MCA, IS AMENDED TO READ:**

8 "76-3-501. **Local subdivision regulations.** (1) Before July 1, 1974, the governing body of every
9 county, city, and town shall adopt and provide for the enforcement and administration of subdivision
10 regulations reasonably providing for the orderly development of their jurisdictional areas; for the
11 coordination of roads within subdivided land with other roads, both existing and planned; for the dedication
12 of land for roadways and for public utility easements; for the improvement of roads; for the provision of
13 adequate open spaces for travel, light, air, and recreation; for the provision of adequate transportation,
14 water, and drainage, ~~and~~ subject to the provisions of [section 5], for the regulation of sanitary facilities;
15 for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve
16 unnecessary environmental degradation and the avoidance of danger of injury to health, safety, or welfare
17 by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services
18 or would necessitate an excessive expenditure of public funds for the supply of such services.

19 (2) Review and approval or disapproval of a subdivision under this chapter may occur only under
20 those regulations in effect at the time an application for approval of a preliminary plat or for an extension
21 under 76-3-610 is submitted to the governing body."
22

23 **SECTION 18. SECTION 76-3-504, MCA, IS AMENDED TO READ:**

24 "76-3-504. **Minimum requirements for subdivision regulations.** The subdivision regulations adopted
25 under this chapter shall, at a minimum:

26 (1) require the subdivider to submit to the governing body an environmental assessment as
27 prescribed in 76-3-603;

28 (2) establish procedures consistent with this chapter for the submission and review of subdivision
29 plats;

30 (3) prescribe the form and contents of preliminary plats and the documents to accompany final

1 plats;

2 (4) provide for the identification of areas which, because of natural or ~~man-caused~~ human-caused
3 hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the
4 hazards can be eliminated or overcome by approved construction techniques;

5 (5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of
6 100-year frequency as defined by Title 76, chapter 5, or determined to be subject to flooding by the
7 governing body;

8 (6) prescribe standards for:

9 (a) the design and arrangement of lots, streets, and roads;

10 (b) grading and drainage;

11 (c) subject to the provisions of [section 5], water supply and sewage and solid waste disposal
12 ~~which that~~, at a minimum, meet the regulations adopted by the department of health and environmental
13 sciences under 76-4-104;

14 (d) the location and installation of utilities;

15 (7) provide procedures for the administration of the park and open-space requirements of this
16 chapter;

17 (8) provide for the review of preliminary plats by affected public utilities and those agencies of
18 local, state, and federal government having a substantial interest in a proposed subdivision; such utility or
19 agency review may not delay the governing body's action on the plat beyond the time limits specified in
20 this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection
21 of the plat by the governing body."

22

23 **SECTION 19. SECTION 76-4-104, MCA, IS AMENDED TO READ:**

24 **"76-4-104. Rules for administration and enforcement.** (1) The department shall, subject to the
25 provisions of [section 3], adopt reasonable rules, including adoption of sanitary standards, necessary for
26 administration and enforcement of this part.

27 (2) The rules and standards shall provide the basis for approving subdivision plats for various types
28 of water, sewage facilities, and solid waste disposal, both public and private, and shall be related to size
29 of lots, contour of land, porosity of soil, ground water level, distance from lakes, streams, and wells, type
30 and construction of private water and sewage facilities, and other factors affecting public health and the

1 quality of water for uses relating to agriculture, industry, recreation, and wildlife.

2 (3) The rules shall provide for the review of the following divisions of land by a local department
3 or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health
4 employs a registered sanitarian or a registered professional engineer and if the department certifies under
5 subsection (4) that the local department or board is competent to review these divisions of land:

6 (a) divisions of land containing five or fewer parcels, whenever each parcel will contain individual
7 onsite water and sewage disposal facilities; and

8 (b) divisions of land proposed to connect to existing municipal water and waste water systems
9 previously approved by the department, if no extension of the systems is required.

10 (4) The department shall also adopt standards and procedures for certification and maintaining
11 certification to ensure that a local department or board of health is competent to review the divisions of
12 land described in subsection (3).

13 (5) The department shall review those divisions of land described in subsection (3) if:

14 (a) a proposed division of land lies within more than one jurisdictional area and the respective
15 governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed
16 subdivision; or

17 (b) the local department or board of health elects not to be certified.

18 (6) The rules shall further provide for:

19 (a) the furnishing to the reviewing authority of a copy of the plat and other documentation showing
20 the layout or plan of development, including:

21 (i) total development area;

22 (ii) total number of proposed dwelling units;

23 (b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and
24 dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

25 (c) evidence concerning the potability of the proposed water supply for the subdivision;

26 (d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and
27 dependability;

28 (e) standards and technical procedures applicable to storm drainage plans and related designs, in
29 order to insure proper drainage ways;

30 (f) standards and technical procedures applicable to sanitary sewer plans and designs, including

1 soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal
2 systems when applicable;

3 (g) standards and technical procedures applicable to water systems;

4 (h) standards and technical procedures applicable to solid waste disposal;

5 (i) requiring evidence to establish that, if a public sewage disposal system is proposed, provision
6 has been made for the system and, if other methods of sewage disposal are proposed, evidence that the
7 systems will comply with state and local laws and regulations which are in effect at the time of submission
8 of the preliminary or final plan or plat.

9 (7) If the reviewing authority is a local department or board of health, it shall, upon approval of a
10 division of land under this part, notify the department of the approval and submit to the department a copy
11 of the approval statement.

12 (8) Review and certification or denial of certification that a division of land is not subject to sanitary
13 restrictions under this part may occur only under those rules in effect at the time plans and specifications
14 are submitted to the department, except in cases where current rules would preclude the use for which the
15 lot was originally intended, the applicable requirements in effect at the time such lot was recorded must
16 be applied. In the absence of specific requirements, minimum standards necessary to protect public health
17 and water quality will apply."

18

19 **SECTION 20. SECTION 80-15-105, MCA, IS AMENDED TO READ:**

20 "80-15-105. **Rulemaking.** (1) The board shall, subject to the provisions of [section 1], adopt rules
21 for the administration of this chapter for which the board and the department of health and environmental
22 sciences have responsibility. These rules must include but are not limited to:

23 (a) standards and interim numerical standards for agricultural chemicals in ground water as
24 authorized by 80-15-201;

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

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

30 (d) standards for maintaining the confidentiality of data and information declared confidential by

1 EPA and the confidentiality of chemical registrant data and information protected from disclosure by federal
2 or state law as required by 80-15-108; and

3 (e) administrative civil penalties as authorized by 80-15-412.

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

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

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

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

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

18 (e) emergency procedures as authorized by 80-15-405;

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

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

21

22 **NEW SECTION. Section 21. Codification instructions.** (1) [Section 1] is intended to be codified
23 as an integral part of Title 75, chapter 5; ~~and~~ Title 75, chapter 6; AND TITLE 80, CHAPTER 15, and the
24 provisions of Title 75, chapter 5; ~~and~~ Title 75, chapter 6; AND TITLE 80, CHAPTER 15, apply to [section
25 1].

26 (2) [Section 2] is intended to be codified as an integral part of Title 75, chapter 2, and the
27 provisions of Title 75, chapter 2, apply to [section 2].

28 (3) [Section 3] is intended to be codified as an integral part of Title 75, chapter 3; ~~and~~ Title 75,
29 chapter 10; AND TITLE 76, CHAPTER 4, and the provisions of Title 75, chapter 3; ~~and~~ Title 75, chapter
30 10; AND TITLE 76, CHAPTER 4, apply to [section 3].

1 (4) [SECTION 4] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 50, CHAPTER
2 2, AND THE PROVISIONS OF TITLE 50, CHAPTER 2, APPLY TO [SECTION 4].

3 (5) [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 76, CHAPTER
4 3, AND THE PROVISIONS OF TITLE 76, CHAPTER 3, APPLY TO [SECTION 5].

5

6 **NEW SECTION. SECTION 22. APPLICABILITY.** (1) [SECTIONS 1 THROUGH 3] ARE INTENDED
7 TO APPLY TO ANY RULE THAT IS IN EFFECT, ADOPTED, OR AMENDED, AND THAT REGULATES THOSE
8 RESOURCES OR ACTIVITIES FOR WHICH THE STATE HAS BEEN GIVEN PRIMARY AUTHORITY TO
9 REGULATE BY FEDERAL AUTHORITY PURSUANT TO TITLE 75, CHAPTER 2; TITLE 75, CHAPTER 3; TITLE
10 75, CHAPTER 5; TITLE 75, CHAPTER 6; OR TITLE 75, CHAPTER 10, AS OF [THE EFFECTIVE DATE OF
11 THIS ACT].

12 (2) [SECTIONS 4 AND 5] APPLY TO LOCAL UNITS OF GOVERNMENT WHEN THEY ATTEMPT TO
13 REGULATE THE CONTROL AND DISPOSAL OF SEWAGE FROM PRIVATE AND PUBLIC BUILDINGS.

14 (3) [THIS ACT] DOES NOT APPLY TO THE ESTABLISHMENT OF FEES OR PUBLIC PARTICIPATION
15 REQUIREMENTS.

16

17 **NEW SECTION. Section 23. Effective date.** [This act] is effective on passage and approval.

18

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