

SENATE BILL NO. 48

INTRODUCED BY

*Kenting*

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AIR QUALITY LAWS TO ALLOW THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO EXTEND THE TIME FOR NOTIFYING AN APPLICANT FOR A CONSTRUCTION PERMIT OF APPROVAL OR DENIAL OF AN APPLICATION; REVISING CERTAIN PROVISIONS OF THE AIR QUALITY LAWS TO CONFORM WITH FEDERAL CLEAN AIR ACT REQUIREMENTS; AND AMENDING SECTIONS 75-2-211, 75-2-403, AND 75-2-413, MCA."

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

Section 1. Section 75-2-211, MCA, is amended to read:

"75-2-211. Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

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

(3) The permit program administered by the department pursuant to this section must include the following:

- (a) requirements and procedures for permit applications, including standard application forms;
- (b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;
- (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;
- (d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;
- (e) requirements for inspection, monitoring, recordkeeping, and reporting;

1 (f) procedures for the transfer of permits;

2 (g) requirements and procedures for suspension, modification, and revocation of permits by the  
3 department;

4 (h) requirements and procedures for appropriate emission limitations and other requirements,  
5 including enforceable measures necessary to ensure compliance with those limitations and requirements;

6 (i) requirements and procedures for permit modification and amendment; and

7 (j) requirements and procedures for issuing a single permit authorizing emissions from similar  
8 operations at multiple temporary locations, which permit may include conditions necessary to ensure  
9 compliance with the requirements of this chapter at all authorized locations and a requirement that the  
10 owner or operator notify the department in advance of each change in location.

11 (4) This section does not restrict the board's authority to adopt regulations providing for a single  
12 air quality permit system.

13 (5) The department may, for good cause shown, waive or shorten the time required for filing the  
14 appropriate applications.

15 (6) The department shall require that applications for permits be accompanied by any plans,  
16 specifications, and other information that it considers necessary.

17 (7) An application is not considered filed until the applicant has submitted all fees required under  
18 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and  
19 (6) of this section. If the department fails to notify the applicant in writing within 30 days after the  
20 purported filing of an application that the application is incomplete and fails to list the reasons why the  
21 application is considered incomplete, the application is considered filed as of the date of the purported  
22 filing.

23 (8) (a) If an application for a permit requires the preparation of an environmental impact statement  
24 under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall  
25 notify the applicant in writing of the approval or denial of the application within:

26 (i) 180 days after the department's receipt of a filed application, as provided in subsection (7), if  
27 the department prepares the environmental impact statement; or

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

1 (b) If an application does not require the preparation of an environmental impact statement, the  
2 department shall notify the applicant in writing within 60 days after its receipt of a filed application, as  
3 provided in subsection (7), of its approval or denial of the application. The time for notification may be  
4 extended for 30 days by written agreement of the department and the applicant. An additional 30-day  
5 extension may be granted by the department on request of the applicant. Notification of approval or denial  
6 may be served personally or by certified mail on the applicant or the applicant's agent.

7 (c) If an application for a permit is for the construction, installation, alteration, or use of a source  
8 that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the  
9 department shall act on the permit application within the time period provided for in 75-2-215(3)(e).

10 (d) Failure by the department to act in a timely manner does not constitute approval or denial of  
11 the application. This does not limit or abridge the right of any person to seek available judicial remedies to  
12 require the department to act in a timely manner.

13 (9) When the department approves or denies the application for a permit under this section, a  
14 person who is jointly or severally adversely affected by the department's decision may request a hearing  
15 before the board. The request for hearing must be filed within 15 days after the department renders its  
16 decision and must include an affidavit setting forth the grounds for the request. The contested case  
17 provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing  
18 before the board under this subsection.

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

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24 **Section 2.** Section 75-2-403, MCA, is amended to read:

25 "**75-2-403. Inspections.** (1) The department or an authorized representative, for the purpose of  
26 ascertaining the state of compliance with this chapter or ~~rules and permits~~ a rule, order, or permit in force  
27 under ~~it this chapter~~, may enter and inspect, at any reasonable time, any property, premises, or place,  
28 except a private residence, on or at which:

29 (a) an air contaminant source is located or is being constructed or installed;

30 (b) an emissions-related activity is being conducted; or

1           (c) records are kept as required under this chapter or a rule, order, or permit made or issued under  
 2 this chapter.

3           (2) A person may not refuse entry or access to an authorized representative of the department who  
 4 presents appropriate credentials when the department requests entry for purposes of inspection. A person  
 5 may not obstruct, hamper, or interfere with an inspection.

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15           ~~(3)~~(6) At his the owner's or operator's request, the owner or operator of the premises shall receive  
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18           **Section 3.** Section 75-2-413, MCA, is amended to read:

19           **"75-2-413. Civil penalties -- out-of-state litigants -- effect of action.** (1) A person who violates any  
 20 provision of this chapter, a rule adopted under this chapter, or any order or permit made or issued under  
 21 this chapter is subject to a civil penalty not to exceed \$10,000 per violation. Each day of each violation  
 22 constitutes a separate violation. The department may institute and maintain in the name of the state any  
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 24 county attorney of the county of violation shall petition the district court to impose, assess, and recover  
 25 the civil penalty. ~~The civil penalty is in lieu of the criminal penalty provided for in 75-2-412.~~

26           (2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order,  
 27 or permit made or issued under ~~#~~ this chapter by injunction or other appropriate civil remedies.

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2 OR AMBIENT CONCENTRATION SAMPLING, TESTING, OR MONITORING, OR AN ACTIVITY IN WHICH  
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4 (c) records are kept as required under this chapter or a rule, order, or permit made or issued under  
5 this chapter, FOR THE PURPOSE OF INSPECTING THOSE RECORDS. THE AUTHORITY GRANTED UNDER  
6 THIS SUBSECTION (C) DOES NOT LIMIT THE DEPARTMENT'S RIGHT TO INSPECT ANY PROPERTY,  
7 PREMISES, OR PLACE, EXCEPT A PRIVATE RESIDENCE, UNDER SUBSECTIONS (1)(A) AND (1)(B) IF  
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9 (2) A person may not refuse entry or access to an authorized representative of the department who  
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23 (7) INSPECTIONS UNDER THIS SECTION MUST BE CONDUCTED IN COMPLIANCE WITH ALL  
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7 THE CIVIL PENALTY IS IN LIEU OF THE CRIMINAL PENALTY PROVIDED FOR IN 75-2-412, EXCEPT FOR  
8 CIVIL PENALTIES FOR VIOLATION OF THE OPERATING PERMIT PROGRAM REQUIRED BY SUBCHAPTER  
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10 (2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order,  
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13 issued under ~~it~~ this chapter may be brought in the district court of any county where a violation occurs or  
14 is threatened if the defendant cannot be located in Montana.

15 (3) Money collected under this section must be deposited in the state general fund. This  
16 subsection does not apply to money collected by an approved local air pollution control program."

17 -END-

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11 or permit made or issued under ~~this chapter~~ by injunction or other appropriate civil remedies.

12 (b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or  
13 issued under ~~this chapter~~ may be brought in the district court of any county where a violation occurs or  
14 is threatened if the defendant cannot be located in Montana.

15 (3) Money collected under this section must be deposited in the state general fund. This  
16 subsection does not apply to money collected by an approved local air pollution control program."

17 -END-

## 1 SENATE BILL NO. 48

2 INTRODUCED BY KEATING

3 BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AIR QUALITY LAWS TO ALLOW THE DEPARTMENT  
6 OF HEALTH AND ENVIRONMENTAL SCIENCES TO EXTEND THE TIME FOR NOTIFYING AN APPLICANT  
7 FOR A CONSTRUCTION PERMIT OF APPROVAL OR DENIAL OF AN APPLICATION; REVISING CERTAIN  
8 PROVISIONS OF THE AIR QUALITY LAWS TO CONFORM WITH FEDERAL CLEAN AIR ACT  
9 REQUIREMENTS; AND AMENDING SECTIONS 75-2-211, 75-2-403, AND 75-2-413, MCA."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12  
13 **Section 1.** Section 75-2-211, MCA, is amended to read:

14 **"75-2-211. Permits for construction, installation, alteration, or use.** (1) The board shall by rule  
15 provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this  
16 part.

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

22 (3) The permit program administered by the department pursuant to this section must include the  
23 following:

- 24 (a) requirements and procedures for permit applications, including standard application forms;
- 25 (b) requirements and procedures for submittal of information necessary to determine the location,  
26 quantity, and type of emissions;
- 27 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;
- 28 (d) procedures for providing notice and an opportunity for comment to contiguous states and  
29 federal agencies, as appropriate;
- 30 (e) requirements for inspection, monitoring, recordkeeping, and reporting;



1 (f) procedures for the transfer of permits;

2 (g) requirements and procedures for suspension, modification, and revocation of permits by the  
3 department;

4 (h) requirements and procedures for appropriate emission limitations and other requirements,  
5 including enforceable measures necessary to ensure compliance with those limitations and requirements;

6 (i) requirements and procedures for permit modification and amendment; and

7 (j) requirements and procedures for issuing a single permit authorizing emissions from similar  
8 operations at multiple temporary locations, which permit may include conditions necessary to ensure  
9 compliance with the requirements of this chapter at all authorized locations and a requirement that the  
10 owner or operator notify the department in advance of each change in location.

11 (4) This section does not restrict the board's authority to adopt regulations providing for a single  
12 air quality permit system.

13 (5) The department may, for good cause shown, waive or shorten the time required for filing the  
14 appropriate applications.

15 (6) The department shall require that applications for permits be accompanied by any plans,  
16 specifications, and other information that it considers necessary.

17 (7) An application is not considered filed until the applicant has submitted all fees required under  
18 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and  
19 (6) of this section. If the department fails to notify the applicant in writing within 30 days after the  
20 purported filing of an application that the application is incomplete and fails to list the reasons why the  
21 application is considered incomplete, the application is considered filed as of the date of the purported  
22 filing.

23 (8) (a) If an application for a permit requires the preparation of an environmental impact statement  
24 under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall  
25 notify the applicant in writing of the approval or denial of the application within:

26 (i) 180 days after the department's receipt of a filed application, as provided in subsection (7), if  
27 the department prepares the environmental impact statement; or

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

1 (b) If an application does not require the preparation of an environmental impact statement, the  
 2 department shall notify the applicant in writing within 60 days after its receipt of a filed application, as  
 3 provided in subsection (7), of its approval or denial of the application. The time for notification may be  
 4 extended for 30 days by written agreement of the department and the applicant. An additional  
 5 ADDITIONAL 30-day extension EXTENSIONS may be granted by the department on request of the  
 6 applicant. Notification of approval or denial may be served personally or by certified mail on the applicant  
 7 or the applicant's agent.

8 (c) If an application for a permit is for the construction, installation, alteration, or use of a source  
 9 that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the  
 10 department shall act on the permit application within the time period provided for in 75-2-215(3)(e).

11 (d) Failure by the department to act in a timely manner does not constitute approval or denial of  
 12 the application. This does not limit or abridge the right of any person to seek available judicial remedies  
 13 to require the department to act in a timely manner.

14 (9) When the department approves or denies the application for a permit under this section, a  
 15 person who is jointly or severally adversely affected by the department's decision may request a hearing  
 16 before the board. The request for hearing must be filed within 15 days after the department renders its  
 17 decision and must include an affidavit setting forth the grounds for the request. The contested case  
 18 provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing  
 19 before the board under this subsection.

20 (10) The department's decision on the application is not final unless 15 days have elapsed from the  
 21 date of the decision and there is no request for a hearing under this section. The filing of a request for a  
 22 hearing postpones the effective date of the department's decision until the conclusion of the hearing and  
 23 issuance of a final decision by the board."  
 24

25 **Section 2.** Section 75-2-403, MCA, is amended to read:

26 **"75-2-403. Inspections.** (1) The department or an authorized representative, for the purpose of  
 27 ascertaining the state of compliance with this chapter or ~~rules and permits~~ a rule, order, or permit in force  
 28 under ~~it~~ this chapter, may enter and inspect, at any reasonable time, any property, premises, or place,  
 29 except a private residence, on or at which;

30 (a) an air contaminant source is located or is being constructed or installed;

1           **(b) an emissions-related activity is being conducted, SUCH AS AIR CONTAMINANT EMISSIONS**  
 2 **OR AMBIENT CONCENTRATION SAMPLING, TESTING, OR MONITORING, OR AN ACTIVITY IN WHICH**  
 3 **SAMPLES ARE GATHERED, PROCESSED, OR STORED; or**

4           **(c) records are kept as required under this chapter or a rule, order, or permit made or issued under**  
 5 **this chapter, FOR THE PURPOSE OF INSPECTING THOSE RECORDS. THE AUTHORITY GRANTED UNDER**  
 6 **THIS SUBSECTION (C) DOES NOT LIMIT THE DEPARTMENT'S RIGHT TO INSPECT ANY PROPERTY,**  
 7 **PREMISES, OR PLACE, EXCEPT A PRIVATE RESIDENCE, UNDER SUBSECTIONS (1)(A) AND (1)(B) IF**  
 8 **RECORDS ARE ALSO KEPT AT THOSE SITES.**

9           (2) A person may not refuse entry or access to an authorized representative of the department who  
 10 presents appropriate credentials when the department requests entry for purposes of inspection. A person  
 11 may not obstruct, hamper, or interfere with an inspection.

12           **(3) The department or an authorized representative must be provided access and must be allowed**  
 13 **to copy, at reasonable times, any record that is required to be kept under this chapter or a rule, order, or**  
 14 **permit made or issued under this chapter.**

15           **(4) The department or an authorized representative may inspect, at reasonable times, any facility,**  
 16 **equipment, practices, or operations regulated or required under this chapter or a rule, order, or permit made**  
 17 **or issued under this chapter.**

18           **(5) The department or an authorized representative must be allowed to sample or monitor, at**  
 19 **reasonable times, substances or parameters for the purpose of ensuring compliance with the provisions of**  
 20 **this chapter or a rule, order, or permit made or issued under this chapter.**

21           ~~(3)(6)~~ **At his the owner's or operator's request, the owner or operator of the premises shall receive**  
 22 **a report stating all facts found which that relate to compliance status.**

23           **(7) INSPECTIONS UNDER THIS SECTION MUST BE CONDUCTED IN COMPLIANCE WITH ALL**  
 24 **APPLICABLE FEDERAL OR STATE RULES OR REQUIREMENTS FOR WORKPLACE SAFETY AND WITH ALL**  
 25 **SOURCE-SPECIFIC FACILITY WORKPLACE SAFETY RULES OR REQUIREMENTS. THE SOURCE SHALL**  
 26 **INFORM THE INSPECTOR OF ALL APPLICABLE WORKPLACE SAFETY RULES OR REQUIREMENTS AT THE**  
 27 **TIME OF THE INSPECTION.**

28  
 29           **Section 3.** Section 75-2-413, MCA, is amended to read:

30           **"75-2-413. Civil penalties -- out-of-state litigants -- effect of action.** (1) A person who violates

1 any provision of this chapter, a rule adopted under this chapter, or any order or permit made or issued  
2 under this chapter is subject to a civil penalty not to exceed \$10,000 per violation. Each day of each  
3 violation constitutes a separate violation. The department may institute and maintain in the name of the  
4 state any enforcement proceedings under this section. Upon request of the department, the attorney  
5 general or the county attorney of the county of violation shall petition the district court to impose, assess,  
6 and recover the civil penalty. ~~The civil penalty is in lieu of the criminal penalty provided for in 75-2-412.~~  
7 THE CIVIL PENALTY IS IN LIEU OF THE CRIMINAL PENALTY PROVIDED FOR IN 75-2-412, EXCEPT FOR  
8 CIVIL PENALTIES FOR VIOLATION OF THE OPERATING PERMIT PROGRAM REQUIRED BY SUBCHAPTER  
9 V OF THE FEDERAL CLEAN AIR ACT.

10 (2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order,  
11 or permit made or issued under ~~§ this chapter~~ by injunction or other appropriate civil remedies.

12 (b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or  
13 issued under ~~§ this chapter~~ may be brought in the district court of any county where a violation occurs or  
14 is threatened if the defendant cannot be located in Montana.

15 (3) Money collected under this section must be deposited in the state general fund. This  
16 subsection does not apply to money collected by an approved local air pollution control program."

17 -END-