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SENATE BILL NO. 349
 INTRODUCED BY Foster

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING SITE-SPECIFIC AMBIENT AIR QUALITY AND METEOROLOGICAL MONITORING AT COMMERCIAL HAZARDOUS WASTE INCINERATORS; REQUIRING COMMERCIAL HAZARDOUS WASTE INCINERATORS TO PROVIDE TELEMETERING SERVICE TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES WITH AN IMMEDIATE NOTIFICATION SYSTEM ACTIVATED WHEN EMISSIONS APPROACH OR EXCEED PERMITTED LIMITS; SPECIFYING HAZARDOUS WASTE FUEL REQUIREMENTS FOR COMMERCIAL HAZARDOUS WASTE INCINERATORS; CLARIFYING ALLOWABLE INTAKES; REQUIRING COMMERCIAL HAZARDOUS WASTE INCINERATORS TO ACHIEVE THE LOWEST ALLOWABLE EMISSION LEVELS; CLASSIFYING CEMENT KILN DUST AS A HAZARDOUS WASTE; AUTHORIZING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO ASSESS ADDITIONAL FEES FOR COMMERCIAL HAZARDOUS WASTE INCINERATORS; ESTABLISHING A PRESUMPTION OF CONTINUING VIOLATION FOR CERTAIN VIOLATIONS OF THE CLEAN AIR ACT OF MONTANA; AMENDING SECTIONS 75-2-220, 75-2-231, 75-2-413, AND 75-10-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department authority to adopt administrative rules that specify meteorologic conditions that necessitate cessation of the burning of hazardous waste at a commercial hazardous waste incinerator if site-specific monitoring determines that inversion conditions exist.

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

NEW SECTION. Section 1. Commercial hazardous waste incinerators -- additional permit requirements. (1) In addition to the requirements under 75-2-231, the department shall require the owner or operator of an existing commercial hazardous waste incinerator or an applicant for an air quality permit for a commercial hazardous waste incinerator to submit a plan that requires the cessation of the burning of hazardous waste if site-specific monitoring determines that inversion conditions, as defined by

1 department rule, exist. The department shall consider the proximity of the commercial hazardous waste
2 incinerator to populated areas when determining the appropriate plan content. The plan must include a
3 site-specific ambient air quality and meteorological monitoring program in order to establish the conditions
4 under which hazardous burning must be halted and conditions under which hazardous burning may be
5 resumed. Conditions of the plan must be incorporated as a condition of the facility's permit.

6 (2) The department shall require the owner or operator of an existing commercial hazardous waste
7 incinerator or an applicant for an air quality permit for a commercial hazardous waste incinerator to provide
8 telemetering service to the department with an immediate notification system activated when emissions
9 approach or exceed permitted limits.

10 (3) A person may not dispose of or use as a fuel any hazardous waste by burning it in a commercial
11 hazardous waste incinerator unless the waste-derived fuel is spent potliners bearing the waste code K088
12 generated from the primary aluminum reduction industry.

13

14 **Section 2.** Section 75-2-220, MCA, is amended to read:

15 **"75-2-220. Fees -- special assessments -- late payment assessments.** (1) Concurrent with the
16 submittal of a permit application required under this chapter and annually for the duration of the permit, the
17 applicant shall submit to the department a fee sufficient to cover the reasonable costs, direct and indirect,
18 of developing and administering the permitting requirements in this chapter, including:

19 (a) reviewing and acting upon the application;

20 (b) implementing and enforcing the terms and conditions of the permit. This amount does not
21 include any court costs or other costs associated with an enforcement action. If the permit is not issued,
22 the department shall return this portion of the fee to the applicant.

23 (c) emissions and ambient monitoring;

24 (d) preparing generally applicable regulations or guidance;

25 (e) modeling, analysis, and demonstrations;

26 (f) preparing inventories and tracking emissions;

27 (g) providing support to sources under the small business stationary source technical and
28 environmental compliance assistance program; and

29 (h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act,
30 42 U.S.C. 7661, et seq.

1 (2) In recovering the costs described in subsection (1), the department may assess an application
2 fee based on estimated actual emissions or an annual fee based on actual emissions of air pollutants
3 regulated under this chapter, including but not limited to volatile organic compounds, each air pollutant
4 regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each air
5 pollutant subject to a national primary ambient air quality standard.

6 (3) The board shall by rule provide for the annual adjustment of all fees assessed for operating
7 permit applications under 75-2-217 and 75-2-218 to account for changes to the consumer price index, as
8 required by Subchapter V of the federal Clean Air Act.

9 (4) In addition to the fee required under subsection (1), the board may order the assessment of
10 additional fees required to fund specific activities of the department that are directed at a particular
11 geographic area if the legislature authorizes the activities and appropriates funds for the activities, including
12 emissions or ambient monitoring, modeling analysis or demonstrations, or emissions inventories or tracking.
13 Additional assessments may be levied only on those sources that are within or are believed by the
14 department to be impacting the geographic area. Before the board may require the fees, it shall first
15 determine, after opportunity for hearing, that the activities to be funded are necessary for the administration
16 or implementation of this chapter, that the amount of the requested fees is appropriate, that the
17 assessments apportion the required funding in an equitable manner, and that the department has obtained
18 the necessary appropriation. The contested case provisions of the Montana Administrative Procedure Act,
19 Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

20 (5) (a) If the applicant or permitholder fails to pay in a timely manner a fee required under
21 subsection (1), in addition to the fee, the department may:

22 (i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed at
23 the rate contained in 15-31-510(3); or

24 (ii) revoke the permit consistent with those procedures established under this chapter for permit
25 revocation.

26 (b) Within 1 year of revocation, the department may reissue the revoked permit after the applicant
27 or permitholder has paid all outstanding fees required under subsections (1) and (4), including all penalties
28 and interest provided for under this subsection (5). In reissuing the revoked permit, the department may
29 modify the terms and conditions of the permit as necessary to account for changes in air quality occurring
30 since revocation.

1 (c) The board shall by rule provide for the implementation of this subsection (5), including criteria
2 for imposition of the sanctions described in this subsection (5).

3 (6) The board may by rule allow the reduction of a fee required under this section for an operating
4 permit or permit renewal to account for the financial resources of a category of small business stationary
5 sources.

6 (7) As a condition of the continuing validity of a permit issued by the department under this chapter
7 prior to October 1, 1993, the board may by rule require the permitholder to pay the fees under subsections
8 (1) and (4).

9 (8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air
10 Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the
11 board may, as a condition of continued operation, require by rule that the owner or operator of the source
12 pay the fees under subsections (1) and (4).

13 (9) (a) The department shall give written notice of the fee to be assessed and the basis for the
14 department's fee assessment under this section to the owner or operator of the air pollutant source. The
15 owner or operator may appeal the department's fee assessment to the board within 20 days after receipt
16 of the written notice.

17 (b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive.
18 An appeal may not be based on the amount of the fee contained in the schedule adopted by the board.

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

21 (d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter
22 4, part 6, apply to a hearing before the board under this subsection (9).

23 (10) The Except as described in subsections (4) and (11), the department may not charge more
24 than one fee annually to a source of air pollutants for the costs identified in subsection (1).

25 (11) (a) In addition to the fee required under subsection (1), the board may order the assessment
26 of additional fees required to fund activities of the department that are directed at commercial hazardous
27 waste incinerators if the legislature authorizes the activities and appropriates funds for the activities,
28 including:

29 (i) reviewing and acting upon the application;

30 (ii) implementing and enforcing the terms and conditions of the permit. This amount does not

1 include any court costs or other costs associated with an enforcement action.

2 (iii) monitoring emissions and ambient concentrations;

3 (iv) preparing generally applicable regulations or guidance;

4 (v) modeling, analysis, and demonstrations; and

5 (vi) preparing inventories and tracking emissions.

6 (b) Before the board may require fees, it shall first determine, after opportunity for hearing, that
 7 the activities to be funded are necessary for the administration or implementation of this chapter, that the
 8 amount of the requested fees is appropriate, and that the department has obtained the necessary
 9 appropriation. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter
 10 4, part 6, apply to a hearing before the board under this subsection (11).

11 (c) In recovering the costs described in subsection (11)(a), the department may assess an annual
 12 fee on commercial hazardous waste incinerators that have submitted an application or have received a
 13 permit. The fee shall be based on estimated additional staff time and resources necessary to perform
 14 activities described in subsection (11)(a).

15 (d) The fees must be deposited into the same account as the fees collected under subsection (1)."

16
 17 **Section 3.** Section 75-2-231, MCA, is amended to read:

18 **"75-2-231. Medical waste and hazardous waste incineration -- additional permit requirements. (1)**

19 Because of the potential formation of chlorinated dioxins, furans, heavy metals, and carcinogens as a result
 20 of the incineration of medical waste and hazardous waste and the potential health risk these chemicals
 21 pose, the board shall adopt rules establishing additional permit requirements for commercial medical waste
 22 and commercial hazardous waste incinerators. For the purposes of this section, the term "commercial
 23 medical waste incinerator" does not include hospital or medical facility incinerators that primarily incinerate
 24 medical waste generated onsite. The board shall adopt rules that:

25 (a) regulate the type and amount of plastic and other materials in the medical waste stream and
 26 hazardous waste stream that may be a source of chlorine, in order to minimize the potential creation of
 27 chlorinated dioxins, furans, heavy metals, and carcinogens;

28 (b) require commercial medical waste and commercial hazardous waste incinerators to achieve the
 29 lowest achievable emission rate, ~~except when best available control technology is adequate to prevent the~~
 30 public health risk from air emissions or ambient concentrations from exceeding the negligible risk standard

1 required by 75-2-215 and any applicable federal allowable ~~daily~~ intake standards, as determined pursuant
2 to subsection (3), for dioxins, furans, heavy metals, and other ~~carcinogens~~ hazardous air pollutants;

3 (c) implement the requirements of subsection (2), including establishing procedures and standards
4 for the collection of ~~high-quality~~ high-quality scientific information and for the submission of the information
5 by the applicant;

6 (d) establish procedures for the monitoring, testing, and inspection of:

7 (i) the medical waste stream and hazardous waste stream, including possible precursors to the
8 formation of chlorinated dioxins, furans, heavy metals, and carcinogens;

9 (ii) combustion, including destruction and removal efficiencies; and

10 (iii) emissions, including continuous emission monitoring and air pollution control devices; and

11 (e) are necessary to implement the provisions of this section and to coordinate the requirements
12 under this section with the requirements contained in 75-2-211 and 75-2-215.

13 (2) A person who applies for an air quality permit or alteration pursuant to 75-2-211 and 75-2-215
14 for a commercial medical waste incinerator or commercial hazardous waste incinerator shall provide, to the
15 satisfaction of the department, the following information:

16 (a) a dispersion model of emissions, using approved methods, and those studies that are necessary
17 to identify the potential community exposure;

18 (b) an analysis of the potential pathways for human exposure to air contaminants, particularly
19 chlorinated dioxins, furans, heavy metals, and other carcinogens, including the potential for inhalation,
20 ingestion, and physical contact by the affected communities; and

21 (c) a quantitative analysis of the estimated total possible human exposure to chlorinated dioxins,
22 furans, heavy metals, and carcinogens for the affected communities.

23 (3) The department may not issue or alter an air quality permit pursuant to this chapter until the
24 department has determined, based upon an analysis of the information provided by the applicant pursuant
25 to subsection (2) and other necessary and relevant data, that the public health risk from air emissions or
26 ambient concentrations of chlorinated dioxins, furans, heavy metals, and other ~~carcinogens~~ hazardous air
27 pollutants will not exceed the negligible risk standard required by 75-2-215 and any applicable ~~appropriate~~
28 federal standards for allowable ~~daily~~ intake, as determined by the department after a review of established
29 and relevant federal standards and guidelines.

30 (4) This section may not be construed in any way to:

1 (a) require the board to promulgate standards for the allowable ~~daily~~ intake of any substances for
2 which the federal government has not established standards;

3 (b) allow the board to promulgate standards for the allowable ~~daily~~ intake of any substances for
4 which the federal government has established standards that are more stringent than the federal standards;
5 or

6 (c) limit or otherwise impair the duty of the department under 75-2-215 to determine that emissions
7 and ambient concentrations will constitute a negligible risk as required by 75-2-215(3)(d), including
8 emissions and ambient concentrations of dioxins, furans, heavy metals, and carcinogens, before issuing
9 an air quality permit pursuant to 75-2-211 and 75-2-215."

10
11 **Section 4.** Section 75-10-403, MCA, is amended to read:

12 **"75-10-403. Definitions.** Unless the context requires otherwise, in this part, the following
13 definitions apply:

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

15 (2) "Department" means the department of health and environmental sciences provided for in Title
16 2, chapter 15, part 21.

17 (3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or
18 placing of any regulated substance or hazardous waste into or onto the land or water so that the regulated
19 substance, hazardous waste, or any constituent of the regulated substance or hazardous waste may enter
20 the environment or be emitted into the air or discharged into any waters, including ground water.

21 (4) "Facility" or "hazardous waste management facility" means all contiguous land and structures,
22 other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous
23 waste. A facility may consist of several treatment, storage, or disposal operational units.

24 (5) "Generation" means the act or process of producing waste material.

25 (6) "Generator" means any person, by site, whose act or process produces hazardous waste or
26 whose act first causes a hazardous waste to become subject to regulation under this part.

27 (7) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity,
28 concentration, or physical, chemical, or infectious characteristics, may:

29 (i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible
30 or incapacitating reversible illness; or

1 (ii) pose a substantial present or potential hazard to human health or the environment when
2 improperly treated, stored, transported, or disposed of or otherwise managed.

3 (b) Hazardous waste includes cement kiln dust generated by cement kilns that burn hazardous
4 wastes. For purposes of this chapter, cement kiln dust means the dust collected at the air pollution control
5 devices associated with a kiln system.

6 ~~(b)(c) Hazardous wastes do~~ waste does not include those substances governed by Title 82, chapter
7 4, part 2.

8 (8) "Hazardous waste management" means the management of the collection, source separation,
9 storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

10 (9) "Hazardous waste transfer facility" means any land, structure, or improvement, including
11 loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary
12 storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period
13 of 10 days or less during the normal course of transportation up to but not including the point of ultimate
14 treatment, storage, or disposal.

15 (10) "Manifest" means the shipping document that is originated and signed by the generator and
16 ~~which~~ that is used to identify the hazardous waste, and its quantity, origin, and destination during its
17 transportation.

18 (11) "Person" means the United States, an individual, firm, trust, estate, partnership, company,
19 association, corporation, city, town, local governmental entity, or any other governmental or private entity,
20 whether organized for profit or not.

21 (12) "Regulated substance":

22 (a) means:

23 (i) a hazardous substance as defined in 75-10-602; or

24 (ii) petroleum, including crude oil or any fraction ~~thereof~~ of crude oil, ~~which~~ that is liquid at
25 standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

26 (b) does not include a substance regulated as a hazardous waste under this part.

27 (13) "Storage" means the actual or intended containment of regulated substances, hazardous
28 wastes, or both, either on a temporary basis or for a period of years.

29 (14) "Transportation" means the movement of hazardous wastes from the point of generation to
30 any intermediate points and finally to the point of ultimate storage or disposal.

1 (15) "Transporter" means a person engaged in the offsite transportation of hazardous waste by
2 air, rail, highway, or water.

3 (16) "Treatment" means a method, technique, or process, including neutralization, designed to
4 change the physical, chemical, or biological character or composition of any hazardous waste so as to
5 neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery,
6 amenable for storage, or reduced in volume.

7 (17) "Underground storage tank":

8 (a) means, except as provided in subsections (17)(b)(i) through (17)(b)(viii):

9 (i) any ~~one~~ tank or combination of tanks used to contain a regulated substance, the volume of
10 which is 10% or more beneath the surface of the ground; and

11 (ii) any underground pipes used to contain or transport a regulated substance and connected to
12 a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely
13 underground;

14 (b) does not include:

15 (i) a septic tank;

16 (ii) a pipeline facility (including gathering lines) regulated under:

17 (A) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

18 (B) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); or

19 (C) state law comparable to the provisions of law referred to in subsection (17)(b)(ii)(A) or
20 (17)(b)(ii)(B), if the facility is intrastate;

21 (iii) a surface impoundment, pit, pond, or lagoon;

22 (iv) a storm water or wastewater collection system;

23 (v) a flow-through process tank;

24 (vi) a liquid trap or associated gathering lines directly related to oil or gas production and gathering
25 operations;

26 (vii) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft,
27 or tunnel, if the storage tank is situated upon or above the surface of the floor; or

28 (viii) any pipe connected to a tank described in subsections (17)(b)(i) through (17)(b)(vi)."

29
30 **Section 5.** Section 75-2-413, MCA, is amended to read:

1 "75-2-413. **Civil penalties -- out-of-state litigants -- effect of action -- presumption of continuing**
 2 **violation under certain circumstances.** (1) A person who violates any provision of this chapter, a rule
 3 adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil
 4 penalty not to exceed \$10,000 per violation. Each day of each violation constitutes a separate violation.
 5 The department may institute and maintain in the name of the state any enforcement proceedings under
 6 this section. Upon request of the department, the attorney general or the county attorney of the county
 7 of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty
 8 is in lieu of the criminal penalty provided for in 75-2-412.

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

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

14 (3) If the department has notified a person operating a commercial hazardous waste incinerator of
 15 a violation and if the department makes a prima facie showing that the conduct or events giving rise to the
 16 violations are likely to have continued or recurred past the date of notice, the days of violation are
 17 presumed to include the date of the notice and every day after the notice until the person establishes that
 18 continuous compliance has been achieved. This presumption may be overcome to the extent that the
 19 person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that
 20 there were intervening days when a violation did not occur or that the violation was not continuing in
 21 nature.

22 ~~(3)(4)~~ Money collected under this section must be deposited in the state general fund. This
 23 subsection does not apply to money collected by an approved local air pollution control program."
 24

25 **NEW SECTION. Section 6. Codification instruction.** [Section 1] is intended to be codified as an
 26 integral part of Title 75, chapter 2, part 2, and the provisions of Title 75, chapter 2, part 2, apply to
 27 [section 1].
 28

29 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.
 30

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0349, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring site-specific ambient air quality and meteorological monitoring at commercial hazardous waste incinerators and requiring commercial hazardous waste incinerators to provide telemetering service to the Department of Health and Environmental Sciences (DHES) with an immediate notification; specifying hazardous waste fuel requirements for commercial hazardous waste incinerators; classifying cement kiln dust as a hazardous waste; authorizing DHES to assess additional fees; and establishing a presumption of continuing violation for certain violations of the clean air act.

ASSUMPTIONS:

1. Development of the rules required under this act will require research into the appropriate mechanisms for defining inversion conditions under which hazardous burning must be halted and conditions under which hazardous burning may be resumed, meetings with interested parties and rule-making procedures.
2. No commercial hazardous waste incinerators are currently licensed in the state. One application is under review, and another site is considering applying.
3. If either of these sites are permitted, the DHES would require additional personal services funding to be able to respond after hours, on weekends or holidays. Current employees are allowed up to 10 hours per week in compensatory time to respond to emergencies, which is used to the maximum.
4. If a commercial hazardous waste incinerator permit were to be granted, the DHES would require about \$10,000 of state special revenue authority each year to pay for 500 hours of overtime for required staff responses after working hours. The permittee would be required to reimburse the DHES for the cost of the overtime and the net fiscal impact of SB349 would be zero.
5. It is unlikely any permit would be approved before FY97.

FISCAL IMPACT:

	<u>FY96</u>	<u>FY97</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Personal services (overtime)	0	10,000
 <u>Funding:</u>		
Air quality SSR (02)	0	10,000
 <u>Revenue:</u>		
Fees (02)	0	10,000

Dave Lewis 2.17.95

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

MIKE FOSTER, PRIMARY SPONSOR DATE

Fiscal Note for SB0349, as introduced

SB 349

APPROVED BY COM ON
NATURAL RESOURCES

1 SENATE BILL NO. 349

2 INTRODUCED BY FOSTER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING SITE-SPECIFIC AMBIENT AIR QUALITY AND
5 METEOROLOGICAL MONITORING AT COMMERCIAL HAZARDOUS WASTE INCINERATORS; REQUIRING
6 COMMERCIAL HAZARDOUS WASTE INCINERATORS TO PROVIDE TELEMETERING SERVICE TO THE
7 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES WITH AN IMMEDIATE NOTIFICATION
8 SYSTEM ACTIVATED WHEN EMISSIONS APPROACH OR EXCEED PERMITTED LIMITS; ~~SPECIFYING~~
9 ~~HAZARDOUS WASTE FUEL REQUIREMENTS FOR COMMERCIAL HAZARDOUS WASTE INCINERATORS;~~
10 CLARIFYING ALLOWABLE INTAKES; REQUIRING COMMERCIAL HAZARDOUS WASTE INCINERATORS TO
11 ACHIEVE THE LOWEST ALLOWABLE EMISSION LEVELS; ~~CLASSIFYING CEMENT KILN DUST AS A~~
12 ~~HAZARDOUS WASTE; AUTHORIZING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO~~
13 ~~ASSESS ADDITIONAL FEES FOR COMMERCIAL HAZARDOUS WASTE INCINERATORS;~~ ESTABLISHING
14 A PRESUMPTION OF CONTINUING VIOLATION FOR CERTAIN VIOLATIONS OF THE CLEAN AIR ACT OF
15 MONTANA; AMENDING SECTIONS ~~75-2-220~~, 75-2-231, AND 75-2-413, ~~AND 75-10-403~~, MCA; AND
16 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

17
18 STATEMENT OF INTENT

19 A statement of intent is required for this bill because the bill gives the department authority to adopt
20 administrative rules that specify meteorologic conditions that necessitate cessation of the burning of
21 hazardous waste at a commercial hazardous waste incinerator if site-specific monitoring determines that
22 inversion conditions exist.

23
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25
26 NEW SECTION. Section 1. Commercial hazardous waste incinerators -- additional permit
27 requirements. (1) In addition to the requirements under 75-2-231, the department shall require the owner
28 or operator of an existing commercial hazardous waste incinerator or an applicant for an air quality permit
29 for a commercial hazardous waste incinerator to submit a plan that requires the cessation of the burning
30 of hazardous waste if site-specific monitoring determines that inversion conditions, as defined by

1 department rule, exist. The department shall consider the proximity of the commercial hazardous waste
 2 incinerator to populated areas when determining the appropriate plan content. The plan must include a
 3 site-specific ambient air quality and meteorological monitoring program in order to establish the conditions
 4 under which ~~hazardous~~ THE burning OF COMMERCIAL HAZARDOUS WASTE must be halted and conditions
 5 under which ~~hazardous~~ THE burning OF COMMERCIAL HAZARDOUS WASTE may be resumed. Conditions
 6 of the plan must be incorporated as a condition of the facility's permit.

7 (2) THE WHEN, BECAUSE OF THE PROXIMITY OF A COMMERCIAL HAZARDOUS WASTE
 8 INCINERATOR TO POPULATED AREAS, THE DEPARTMENT DETERMINES THAT CONTINUING
 9 MONITORING IS APPROPRIATE, THE department shall require the owner or operator of an existing
 10 commercial hazardous waste incinerator or an applicant for an air quality permit for a commercial hazardous
 11 waste incinerator to provide telemetering service to the department with an immediate notification system
 12 activated when emissions approach or exceed permitted limits.

13 ~~(3) A person may not dispose of or use as a fuel any hazardous waste by burning it in a commercial~~
 14 ~~hazardous waste incinerator unless the waste derived fuel is spent potliners bearing the waste code K088~~
 15 ~~generated from the primary aluminum reduction industry.~~

16
 17 **Section 2.** ~~Section 75-2-220, MCA, is amended to read:~~

18 ~~"75-2-220. Fees—special assessments—late payment assessments. (1) Concurrent with the~~
 19 ~~submittal of a permit application required under this chapter and annually for the duration of the permit, the~~
 20 ~~applicant shall submit to the department a fee sufficient to cover the reasonable costs, direct and indirect,~~
 21 ~~of developing and administering the permitting requirements in this chapter, including:~~

22 ~~(a) reviewing and acting upon the application;~~

23 ~~(b) implementing and enforcing the terms and conditions of the permit. This amount does not~~
 24 ~~include any court costs or other costs associated with an enforcement action. If the permit is not issued,~~
 25 ~~the department shall return this portion of the fee to the applicant.~~

26 ~~(c) emissions and ambient monitoring;~~

27 ~~(d) preparing generally applicable regulations or guidance;~~

28 ~~(e) modeling, analysis, and demonstrations;~~

29 ~~(f) preparing inventories and tracking emissions;~~

30 ~~(g) providing support to sources under the small business stationary source technical and~~

1 ~~environmental compliance assistance program; and~~

2 ~~(h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act,~~
3 ~~42 U.S.C. 7661, et seq.~~

4 ~~(2) In recovering the costs described in subsection (1), the department may assess an application~~
5 ~~fee based on estimated actual emissions or an annual fee based on actual emissions of air pollutants~~
6 ~~regulated under this chapter, including but not limited to volatile organic compounds, each air pollutant~~
7 ~~regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each air~~
8 ~~pollutant subject to a national primary ambient air quality standard.~~

9 ~~(3) The board shall by rule provide for the annual adjustment of all fees assessed for operating~~
10 ~~permit applications under 75-2-217 and 75-2-218 to account for changes to the consumer price index, as~~
11 ~~required by Subchapter V of the federal Clean Air Act.~~

12 ~~(4) In addition to the fee required under subsection (1), the board may order the assessment of~~
13 ~~additional fees required to fund specific activities of the department that are directed at a particular~~
14 ~~geographic area if the legislature authorizes the activities and appropriates funds for the activities, including~~
15 ~~emissions or ambient monitoring, modeling analysis or demonstrations, or emissions inventories or tracking.~~
16 ~~Additional assessments may be levied only on those sources that are within or are believed by the~~
17 ~~department to be impacting the geographic area. Before the board may require the fees, it shall first~~
18 ~~determine, after opportunity for hearing, that the activities to be funded are necessary for the administration~~
19 ~~or implementation of this chapter, that the amount of the requested fees is appropriate, that the~~
20 ~~assessments apportion the required funding in an equitable manner, and that the department has obtained~~
21 ~~the necessary appropriation. The contested case provisions of the Montana Administrative Procedure Act,~~
22 ~~Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.~~

23 ~~(5) (a) If the applicant or permit holder fails to pay in a timely manner a fee required under~~
24 ~~subsection (1), in addition to the fee, the department may:~~

25 ~~(i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed at~~
26 ~~the rate contained in 15-31-510(3); or~~

27 ~~(ii) revoke the permit consistent with those procedures established under this chapter for permit~~
28 ~~revocation.~~

29 ~~(b) Within 1 year of revocation, the department may reissue the revoked permit after the applicant~~
30 ~~or permit holder has paid all outstanding fees required under subsections (1) and (4), including all penalties~~

1 and interest provided for under this subsection (5). In reissuing the revoked permit, the department may
2 modify the terms and conditions of the permit as necessary to account for changes in air quality occurring
3 since revocation.

4 ~~(c) The board shall by rule provide for the implementation of this subsection (5), including criteria
5 for imposition of the sanctions described in this subsection (5).~~

6 ~~(6) The board may by rule allow the reduction of a fee required under this section for an operating
7 permit or permit renewal to account for the financial resources of a category of small business stationary
8 sources.~~

9 ~~(7) As a condition of the continuing validity of a permit issued by the department under this chapter
10 prior to October 1, 1993, the board may by rule require the permit holder to pay the fees under subsections
11 (1) and (4).~~

12 ~~(8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air
13 Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the
14 board may, as a condition of continued operation, require by rule that the owner or operator of the source
15 pay the fees under subsections (1) and (4).~~

16 ~~(9) (a) The department shall give written notice of the fee to be assessed and the basis for the
17 department's fee assessment under this section to the owner or operator of the air pollutant source. The
18 owner or operator may appeal the department's fee assessment to the board within 20 days after receipt
19 of the written notice.~~

20 ~~(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive.
21 An appeal may not be based on the amount of the fee contained in the schedule adopted by the board.~~

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

24 ~~(d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter
25 4, part 6, apply to a hearing before the board under this subsection (9).~~

26 ~~(10) Except as described in subsections (4) and (11), the department may not charge more
27 than one fee annually to a source of air pollutants for the costs identified in subsection (1).~~

28 ~~(11) (a) In addition to the fee required under subsection (1), the board may order the assessment
29 of additional fees required to fund activities of the department that are directed at commercial hazardous
30 waste incinerators if the legislature authorizes the activities and appropriates funds for the activities.~~

1 ~~including:~~

2 ~~(i) reviewing and acting upon the application;~~

3 ~~(ii) implementing and enforcing the terms and conditions of the permit. This amount does not~~
4 ~~include any court costs or other costs associated with an enforcement action.~~

5 ~~(iii) monitoring emissions and ambient concentrations;~~

6 ~~(iv) preparing generally applicable regulations or guidance;~~

7 ~~(v) modeling, analysis, and demonstrations; and~~

8 ~~(vi) preparing inventories and tracking emissions.~~

9 ~~(b) Before the board may require fees, it shall first determine, after opportunity for hearing, that~~
10 ~~the activities to be funded are necessary for the administration or implementation of this chapter, that the~~
11 ~~amount of the requested fees is appropriate, and that the department has obtained the necessary~~
12 ~~appropriation. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter~~
13 ~~4, part 6, apply to a hearing before the board under this subsection (11).~~

14 ~~(c) In recovering the costs described in subsection (11)(a), the department may assess an annual~~
15 ~~fee on commercial hazardous waste incinerators that have submitted an application or have received a~~
16 ~~permit. The fee shall be based on estimated additional staff time and resources necessary to perform~~
17 ~~activities described in subsection (11)(a).~~

18 ~~(d) The fees must be deposited into the same account as the fees collected under subsection (1)."~~

19

20 **Section 2.** Section 75-2-231, MCA, is amended to read:

21 **"75-2-231. Medical waste and hazardous waste incineration -- additional permit requirements. (1)**

22 Because of the potential formation of chlorinated dioxins, furans, heavy metals, and carcinogens as a result
23 of the incineration of medical waste and hazardous waste and the potential health risk these chemicals
24 pose, the board shall adopt rules establishing additional permit requirements for commercial medical waste
25 and commercial hazardous waste incinerators. For the purposes of this section, the term "commercial
26 medical waste incinerator" does not include hospital or medical facility incinerators that primarily incinerate
27 medical waste generated onsite. The board shall adopt rules that:

28 (a) regulate the type and amount of plastic and other materials in the medical waste stream and
29 hazardous waste stream that may be a source of chlorine, in order to minimize the potential creation of
30 chlorinated dioxins, furans, heavy metals, and carcinogens;

1 (b) require commercial medical waste and commercial hazardous waste incinerators to achieve the
2 lowest achievable emission rate, ~~except when best available control technology is adequate~~ to prevent the
3 public health risk from air emissions or ambient concentrations from exceeding the negligible risk standard
4 required by 75-2-215 and any applicable federal allowable daily intake standards, as determined pursuant
5 to subsection (3), for dioxins, furans, heavy metals, and other ~~carcinogens~~ hazardous air pollutants;

6 (c) implement the requirements of subsection (2), including establishing procedures and standards
7 for the collection of ~~high-quality~~ high-quality scientific information and for the submission of the information
8 by the applicant;

9 (d) establish procedures for the monitoring, testing, and inspection of:

10 (i) the medical waste stream and hazardous waste stream, including possible precursors to the
11 formation of chlorinated dioxins, furans, heavy metals, and carcinogens;

12 (ii) combustion, including destruction and removal efficiencies; and

13 (iii) emissions, including continuous emission monitoring and air pollution control devices; and

14 (e) are necessary to implement the provisions of this section and to coordinate the requirements
15 under this section with the requirements contained in 75-2-211 and 75-2-215.

16 (2) A person who applies for an air quality permit or alteration pursuant to 75-2-211 and 75-2-215
17 for a commercial medical waste incinerator or commercial hazardous waste incinerator shall provide, to the
18 satisfaction of the department, the following information:

19 (a) a dispersion model of emissions, using approved methods, and those studies that are necessary
20 to identify the potential community exposure;

21 (b) an analysis of the potential pathways for human exposure to air contaminants, particularly
22 chlorinated dioxins, furans, heavy metals, and other carcinogens, including the potential for inhalation,
23 ingestion, and physical contact by the affected communities; and

24 (c) a quantitative analysis of the estimated total possible human exposure to chlorinated dioxins,
25 furans, heavy metals, and carcinogens for the affected communities.

26 (3) The department may not issue or alter an air quality permit pursuant to this chapter until the
27 department has determined, based upon an analysis of the information provided by the applicant pursuant
28 to subsection (2) and other necessary and relevant data, that the public health risk from air emissions or
29 ambient concentrations of chlorinated dioxins, furans, heavy metals, and other ~~carcinogens~~ hazardous air
30 pollutants will not exceed the negligible risk standard required by 75-2-215 and any applicable appropriate

1 federal standards for allowable ~~daily~~ intake, as determined by the department after a review of established
2 and relevant federal standards and guidelines.

3 (4) This section may not be construed in any way to:

4 (a) require the board to promulgate standards for the allowable ~~daily~~ intake of any substances for
5 which the federal government has not established standards;

6 (b) allow the board to promulgate standards for the allowable ~~daily~~ intake of any substances for
7 which the federal government has established standards that are more stringent than the federal standards;

8 or

9 (c) limit or otherwise impair the duty of the department under 75-2-215 to determine that emissions
10 and ambient concentrations will constitute a negligible risk as required by 75-2-215(3)(d), including
11 emissions and ambient concentrations of dioxins, furans, heavy metals, and carcinogens, before issuing
12 an air quality permit pursuant to 75-2-211 and 75-2-215."

13

14 ~~Section 4. Section 75-10-403, MCA, is amended to read:~~

15 ~~"75-10-403. Definitions. Unless the context requires otherwise, in this part, the following~~
16 ~~definitions apply:~~

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

18 (2) ~~"Department" means the department of health and environmental sciences provided for in Title~~
19 ~~2, chapter 15, part 21.~~

20 (3) ~~"Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or~~
21 ~~placing of any regulated substance or hazardous waste into or onto the land or water so that the regulated~~
22 ~~substance, hazardous waste, or any constituent of the regulated substance or hazardous waste may enter~~
23 ~~the environment or be emitted into the air or discharged into any waters, including ground water.~~

24 (4) ~~"Facility" or "hazardous waste management facility" means all contiguous land and structures,~~
25 ~~other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous~~
26 ~~waste. A facility may consist of several treatment, storage, or disposal operational units.~~

27 (5) ~~"Generation" means the act or process of producing waste material.~~

28 (6) ~~"Generator" means any person, by site, whose act or process produces hazardous waste or~~
29 ~~whose act first causes a hazardous waste to become subject to regulation under this part.~~

30 (7) (a) ~~"Hazardous waste" means a waste or combination of wastes that, because of its quantity,~~

1 ~~concentration, or physical, chemical, or infectious characteristics, may:~~

2 ~~(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible~~
 3 ~~or incapacitating reversible illness; or~~

4 ~~(ii) pose a substantial present or potential hazard to human health or the environment when~~
 5 ~~improperly treated, stored, transported, or disposed of or otherwise managed.~~

6 ~~(b) Hazardous waste includes cement kiln dust generated by cement kilns that burn hazardous~~
 7 ~~wastes. For purposes of this chapter, cement kiln dust means the dust collected at the air pollution control~~
 8 ~~devices associated with a kiln system.~~

9 ~~(b)(c) Hazardous wastes do waste does not include those substances governed by Title 82, chapter~~
 10 ~~4, part 2.~~

11 ~~(8) "Hazardous waste management" means the management of the collection, source separation,~~
 12 ~~storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.~~

13 ~~(9) "Hazardous waste transfer facility" means any land, structure, or improvement, including~~
 14 ~~loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary~~
 15 ~~storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period~~
 16 ~~of 10 days or less during the normal course of transportation up to but not including the point of ultimate~~
 17 ~~treatment, storage, or disposal.~~

18 ~~(10) "Manifest" means the shipping document that is originated and signed by the generator and~~
 19 ~~which that is used to identify the hazardous waste, and its quantity, origin, and destination during its~~
 20 ~~transportation.~~

21 ~~(11) "Person" means the United States, an individual, firm, trust, estate, partnership, company,~~
 22 ~~association, corporation, city, town, local governmental entity, or any other governmental or private entity,~~
 23 ~~whether organized for profit or not.~~

24 ~~(12) "Regulated substance":~~

25 ~~(a) means:~~

26 ~~(i) a hazardous substance as defined in 75-10-602; or~~

27 ~~(ii) petroleum, including crude oil or any fraction thereof of crude oil, which that is liquid at~~
 28 ~~standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);~~

29 ~~(b) does not include a substance regulated as a hazardous waste under this part.~~

30 ~~(13) "Storage" means the actual or intended containment of regulated substances, hazardous~~

1 ~~wastes, or both, either on a temporary basis or for a period of years.~~

2 ~~(14) "Transportation" means the movement of hazardous wastes from the point of generation to~~
 3 ~~any intermediate points and finally to the point of ultimate storage or disposal.~~

4 ~~(15) "Transporter" means a person engaged in the offsite transportation of hazardous waste by~~
 5 ~~air, rail, highway, or water.~~

6 ~~(16) "Treatment" means a method, technique, or process, including neutralization, designed to~~
 7 ~~change the physical, chemical, or biological character or composition of any hazardous waste so as to~~
 8 ~~neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery,~~
 9 ~~amenable for storage, or reduced in volume.~~

10 ~~(17) "Underground storage tank":~~

11 ~~(a) means, except as provided in subsections (17)(b)(i) through (17)(b)(viii):~~

12 ~~(i) any one tank or combination of tanks used to contain a regulated substance, the volume of~~
 13 ~~which is 10% or more beneath the surface of the ground; and~~

14 ~~(ii) any underground pipes used to contain or transport a regulated substance and connected to~~
 15 ~~a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely~~
 16 ~~underground;~~

17 ~~(b) does not include:~~

18 ~~(i) a septic tank;~~

19 ~~(ii) a pipeline facility (including gathering lines) regulated under:~~

20 ~~(A) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);~~

21 ~~(B) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); or~~

22 ~~(C) state law comparable to the provisions of law referred to in subsection (17)(b)(ii)(A) or~~
 23 ~~(17)(b)(ii)(B), if the facility is intrastate;~~

24 ~~(iii) a surface impoundment, pit, pond, or lagoon;~~

25 ~~(iv) a storm water or wastewater collection system;~~

26 ~~(v) a flow through process tank;~~

27 ~~(vi) a liquid trap or associated gathering lines directly related to oil or gas production and gathering~~
 28 ~~operations;~~

29 ~~(vii) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft,~~
 30 ~~or tunnel, if the storage tank is situated upon or above the surface of the floor; or~~

1 ~~(viii) any pipe connected to a tank described in subsections (17)(b)(ii) through (17)(b)(vi)."~~

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

4 **"75-2-413. Civil penalties -- out-of-state litigants -- effect of action -- presumption of continuing**
5 **violation under certain circumstances.** (1) A person who violates any provision of this chapter, a rule
6 adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil
7 penalty not to exceed \$10,000 per violation. Each day of each violation constitutes a separate violation.
8 The department may institute and maintain in the name of the state any enforcement proceedings under
9 this section. Upon request of the department, the attorney general or the county attorney of the county
10 of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty
11 is in lieu of the criminal penalty provided for in 75-2-412.

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

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

17 (3) If the department has notified a person operating a commercial hazardous waste incinerator of
18 a violation and if the department makes a prima facie showing that the conduct or events giving rise to the
19 violations are likely to have continued or recurred past the date of notice, the days of violation are
20 presumed to include the date of the notice and every day after the notice until the person establishes that
21 continuous compliance has been achieved. This presumption may be overcome to the extent that the
22 person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that
23 there were intervening days when a violation did not occur or, that the violation was not continuing in
24 nature, OR THAT THE TELEMETERING DEVICE WAS COMPROMISED OR OTHERWISE TAMPERED WITH.

25 ~~(3)(4)~~ Money collected under this section must be deposited in the state general fund. This
26 subsection does not apply to money collected by an approved local air pollution control program."
27

28 **NEW SECTION.** **Section 4. Codification instruction.** [Section 1] is intended to be codified as an
29 integral part of Title 75, chapter 2, part 2, and the provisions of Title 75, chapter 2, part 2, apply to
30 [section 1].

1 SENATE BILL NO. 349

2 INTRODUCED BY FOSTER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING SITE-SPECIFIC AMBIENT AIR QUALITY AND
5 METEOROLOGICAL MONITORING AT COMMERCIAL HAZARDOUS WASTE INCINERATORS; REQUIRING
6 COMMERCIAL HAZARDOUS WASTE INCINERATORS TO PROVIDE TELEMETERING SERVICE TO THE
7 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES WITH AN IMMEDIATE NOTIFICATION
8 SYSTEM ACTIVATED WHEN EMISSIONS APPROACH OR EXCEED PERMITTED LIMITS; ~~SPECIFYING~~
9 ~~HAZARDOUS WASTE FUEL REQUIREMENTS FOR COMMERCIAL HAZARDOUS WASTE INCINERATORS;~~
10 CLARIFYING ALLOWABLE INTAKES; REQUIRING COMMERCIAL HAZARDOUS WASTE INCINERATORS TO
11 ACHIEVE THE LOWEST ALLOWABLE EMISSION LEVELS; ~~CLASSIFYING CEMENT KILN DUST AS A~~
12 ~~HAZARDOUS WASTE; AUTHORIZING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO~~
13 ~~ASSESS ADDITIONAL FEES FOR COMMERCIAL HAZARDOUS WASTE INCINERATORS;~~ ESTABLISHING
14 A PRESUMPTION OF CONTINUING VIOLATION FOR CERTAIN VIOLATIONS OF THE CLEAN AIR ACT OF
15 MONTANA; AMENDING SECTIONS ~~75-2-220, 75-2-231, AND 75-2-413, AND 75-10-403,~~ MCA; AND
16 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.



HOUSE STANDING COMMITTEE REPORT

March 22, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 349 (third reading copy -- blue) be concurred in as amended.

Signed: _____

Dick Knox
Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Grimes

1. Page 5, line 22.
Strike: "formation"
Insert: "emission"
2. Page 5, line 29.
Strike: "creation"
Insert: "emission"
3. Page 5, line 30.
Strike: "heavy metals,"
4. Page 6, line 10.
Following: "including"
Insert: "heavy metals and"
5. Page 6, line 11.
Strike: "heavy metals,"

-END-

Committee Vote:
Yes 10, No 7

SB349
HOUSE
661023SC.Hdh

1 SENATE BILL NO. 349

2 INTRODUCED BY FOSTER

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING SITE-SPECIFIC AMBIENT AIR QUALITY AND
 5 METEOROLOGICAL MONITORING AT COMMERCIAL HAZARDOUS WASTE INCINERATORS; REQUIRING
 6 COMMERCIAL HAZARDOUS WASTE INCINERATORS TO PROVIDE TELEMETERING SERVICE TO THE
 7 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES WITH AN IMMEDIATE NOTIFICATION
 8 SYSTEM ACTIVATED WHEN EMISSIONS APPROACH OR EXCEED PERMITTED LIMITS; ~~SPECIFYING~~
 9 ~~HAZARDOUS WASTE FUEL REQUIREMENTS FOR COMMERCIAL HAZARDOUS WASTE INCINERATORS;~~
 10 CLARIFYING ALLOWABLE INTAKES; REQUIRING COMMERCIAL HAZARDOUS WASTE INCINERATORS TO
 11 ACHIEVE THE LOWEST ALLOWABLE EMISSION LEVELS; ~~CLASSIFYING CEMENT KILN DUST AS A~~
 12 ~~HAZARDOUS WASTE; AUTHORIZING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO~~
 13 ~~ASSESS ADDITIONAL FEES FOR COMMERCIAL HAZARDOUS WASTE INCINERATORS;~~ ESTABLISHING
 14 A PRESUMPTION OF CONTINUING VIOLATION FOR CERTAIN VIOLATIONS OF THE CLEAN AIR ACT OF
 15 MONTANA; AMENDING SECTIONS ~~75-2-220~~, ~~75-2-231~~, AND ~~75-2-413~~, ~~AND 75-10-403~~, MCA; AND
 16 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 17

18 STATEMENT OF INTENT

19 A statement of intent is required for this bill because the bill gives the department authority to adopt
 20 administrative rules that specify meteorologic conditions that necessitate cessation of the burning of
 21 hazardous waste at a commercial hazardous waste incinerator if site-specific monitoring determines that
 22 inversion conditions exist.
 23

24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 25

26 NEW SECTION. **Section 1. Commercial hazardous waste incinerators -- additional permit**
 27 **requirements.** (1) In addition to the requirements under 75-2-231, the department shall require the owner
 28 or operator of an existing commercial hazardous waste incinerator or an applicant for an air quality permit
 29 for a commercial hazardous waste incinerator to submit a plan that requires the cessation of the burning
 30 of hazardous waste if site-specific monitoring determines that inversion conditions, as defined by

1 department rule, exist. The department shall consider the proximity of the commercial hazardous waste
 2 incinerator to populated areas when determining the appropriate plan content. The plan must include a
 3 site-specific ambient air quality and meteorological monitoring program in order to establish the conditions
 4 under which ~~hazardous~~ THE burning OF COMMERCIAL HAZARDOUS WASTE must be halted and conditions
 5 under which ~~hazardous~~ THE burning OF COMMERCIAL HAZARDOUS WASTE may be resumed. Conditions
 6 of the plan must be incorporated as a condition of the facility's permit.

7 (2) ~~The~~ WHEN, BECAUSE OF THE PROXIMITY OF A COMMERCIAL HAZARDOUS WASTE
 8 INCINERATOR TO POPULATED AREAS, THE DEPARTMENT DETERMINES THAT CONTINUING
 9 MONITORING IS APPROPRIATE, THE department shall require the owner or operator of an existing
 10 commercial hazardous waste incinerator or an applicant for an air quality permit for a commercial hazardous
 11 waste incinerator to provide telemetering service to the department with an immediate notification system
 12 activated when emissions approach or exceed permitted limits.

13 ~~(3) A person may not dispose of or use as a fuel any hazardous waste by burning it in a commercial~~
 14 ~~hazardous waste incinerator unless the waste-derived fuel is spent potliners bearing the waste code K088~~
 15 ~~generated from the primary aluminum reduction industry.~~

16
 17 **Section 2.** ~~Section 75-2-220, MCA, is amended to read:~~

18 ~~"75-2-220. Fees—special assessments—late payment assessments. (1) Concurrent with the~~
 19 ~~submittal of a permit application required under this chapter and annually for the duration of the permit, the~~
 20 ~~applicant shall submit to the department a fee sufficient to cover the reasonable costs, direct and indirect,~~
 21 ~~of developing and administering the permitting requirements in this chapter, including:~~

22 ~~(a) reviewing and acting upon the application;~~

23 ~~(b) implementing and enforcing the terms and conditions of the permit. This amount does not~~
 24 ~~include any court costs or other costs associated with an enforcement action. If the permit is not issued,~~
 25 ~~the department shall return this portion of the fee to the applicant.~~

26 ~~(c) emissions and ambient monitoring;~~

27 ~~(d) preparing generally applicable regulations or guidance;~~

28 ~~(e) modeling, analysis, and demonstrations;~~

29 ~~(f) preparing inventories and tracking emissions;~~

30 ~~(g) providing support to sources under the small business stationary source technical and~~

1 ~~environmental compliance assistance program; and~~

2 ~~(h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act,~~
3 ~~42 U.S.C. 7661, et seq.~~

4 ~~(2) In recovering the costs described in subsection (1), the department may assess an application~~
5 ~~fee based on estimated actual emissions or an annual fee based on actual emissions of air pollutants~~
6 ~~regulated under this chapter, including but not limited to volatile organic compounds, each air pollutant~~
7 ~~regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each air~~
8 ~~pollutant subject to a national primary ambient air quality standard.~~

9 ~~(3) The board shall by rule provide for the annual adjustment of all fees assessed for operating~~
10 ~~permit applications under 75-2-217 and 75-2-218 to account for changes to the consumer price index, as~~
11 ~~required by Subchapter V of the federal Clean Air Act.~~

12 ~~(4) In addition to the fee required under subsection (1), the board may order the assessment of~~
13 ~~additional fees required to fund specific activities of the department that are directed at a particular~~
14 ~~geographic area if the legislature authorizes the activities and appropriates funds for the activities, including~~
15 ~~emissions or ambient monitoring, modeling analysis or demonstrations, or emissions inventories or tracking.~~
16 ~~Additional assessments may be levied only on those sources that are within or are believed by the~~
17 ~~department to be impacting the geographic area. Before the board may require the fees, it shall first~~
18 ~~determine, after opportunity for hearing, that the activities to be funded are necessary for the administration~~
19 ~~or implementation of this chapter, that the amount of the requested fees is appropriate, that the~~
20 ~~assessments apportion the required funding in an equitable manner, and that the department has obtained~~
21 ~~the necessary appropriation. The contested case provisions of the Montana Administrative Procedure Act,~~
22 ~~Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.~~

23 ~~(5) (a) If the applicant or permit holder fails to pay in a timely manner a fee required under~~
24 ~~subsection (1), in addition to the fee, the department may:~~

25 ~~(i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed at~~
26 ~~the rate contained in 15-31-510(3); or~~

27 ~~(ii) revoke the permit consistent with those procedures established under this chapter for permit~~
28 ~~revocation.~~

29 ~~(b) Within 1 year of revocation, the department may reissue the revoked permit after the applicant~~
30 ~~or permit holder has paid all outstanding fees required under subsections (1) and (4), including all penalties~~

1 and interest provided for under this subsection (5). In reissuing the revoked permit, the department may
2 modify the terms and conditions of the permit as necessary to account for changes in air quality occurring
3 since revocation.

4 (c) ~~The board shall by rule provide for the implementation of this subsection (5), including criteria~~
5 ~~for imposition of the sanctions described in this subsection (5).~~

6 (6) ~~The board may by rule allow the reduction of a fee required under this section for an operating~~
7 ~~permit or permit renewal to account for the financial resources of a category of small business stationary~~
8 ~~sources.~~

9 (7) ~~As a condition of the continuing validity of a permit issued by the department under this chapter~~
10 ~~prior to October 1, 1993, the board may by rule require the permit holder to pay the fees under subsections~~
11 ~~(1) and (4).~~

12 (8) ~~For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air~~
13 ~~Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the~~
14 ~~board may, as a condition of continued operation, require by rule that the owner or operator of the source~~
15 ~~pay the fees under subsections (1) and (4).~~

16 (9) (a) ~~The department shall give written notice of the fee to be assessed and the basis for the~~
17 ~~department's fee assessment under this section to the owner or operator of the air pollutant source. The~~
18 ~~owner or operator may appeal the department's fee assessment to the board within 20 days after receipt~~
19 ~~of the written notice.~~

20 (b) ~~An appeal must be based upon the allegation that the fee assessment is erroneous or excessive.~~
21 ~~An appeal may not be based on the amount of the fee contained in the schedule adopted by the board.~~

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

24 (d) ~~The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter~~
25 ~~4, part 6, apply to a hearing before the board under this subsection (9).~~

26 (10) ~~The Except as described in subsections (4) and (11), the department may not charge more~~
27 ~~than one fee annually to a source of air pollutants for the costs identified in subsection (1).~~

28 (11) (a) ~~In addition to the fee required under subsection (1), the board may order the assessment~~
29 ~~of additional fees required to fund activities of the department that are directed at commercial hazardous~~
30 ~~waste incinerators if the legislature authorizes the activities and appropriates funds for the activities.~~

1 ~~including:~~

2 ~~(i) reviewing and acting upon the application;~~

3 ~~(ii) implementing and enforcing the terms and conditions of the permit. This amount does not~~
4 ~~include any court costs or other costs associated with an enforcement action.~~

5 ~~(iii) monitoring emissions and ambient concentrations;~~

6 ~~(iv) preparing generally applicable regulations or guidance;~~

7 ~~(v) modeling, analysis, and demonstrations; and~~

8 ~~(vi) preparing inventories and tracking emissions.~~

9 ~~(b) Before the board may require fees, it shall first determine, after opportunity for hearing, that~~
10 ~~the activities to be funded are necessary for the administration or implementation of this chapter, that the~~
11 ~~amount of the requested fees is appropriate, and that the department has obtained the necessary~~
12 ~~appropriation. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter~~
13 ~~4, part 6, apply to a hearing before the board under this subsection (11).~~

14 ~~(c) In recovering the costs described in subsection (11)(a), the department may assess an annual~~
15 ~~fee on commercial hazardous waste incinerators that have submitted an application or have received a~~
16 ~~permit. The fee shall be based on estimated additional staff time and resources necessary to perform~~
17 ~~activities described in subsection (11)(a).~~

18 ~~(d) The fees must be deposited into the same account as the fees collected under subsection (1)."~~

19

20 **Section 2.** Section 75-2-231, MCA, is amended to read:

21 **"75-2-231. Medical waste and hazardous waste incineration -- additional permit requirements. (1)**

22 Because of the potential ~~formation~~ EMISSION of chlorinated dioxins, furans, heavy metals, and carcinogens
23 as a result of the incineration of medical waste and hazardous waste and the potential health risk these
24 chemicals pose, the board shall adopt rules establishing additional permit requirements for commercial
25 medical waste and commercial hazardous waste incinerators. For the purposes of this section, the term
26 "commercial medical waste incinerator" does not include hospital or medical facility incinerators that
27 primarily incinerate medical waste generated onsite. The board shall adopt rules that:

28 (a) regulate the type and amount of plastic and other materials in the medical waste stream and
29 hazardous waste stream that may be a source of chlorine, in order to minimize the potential ~~creation~~
30 EMISSION of chlorinated dioxins, furans, ~~heavy metals,~~ and carcinogens;

1 (b) require commercial medical waste and commercial hazardous waste incinerators to achieve the
 2 lowest achievable emission rate, ~~except when best available control technology is adequate to prevent the~~
 3 public health risk from air emissions or ambient concentrations from exceeding the negligible risk standard
 4 required by 75-2-215 and any applicable federal allowable ~~daily~~ intake standards, as determined pursuant
 5 to subsection (3), for dioxins, furans, heavy metals, and other ~~carcinogens~~ hazardous air pollutants;

6 (c) implement the requirements of subsection (2), including establishing procedures and standards
 7 for the collection of ~~high-quality~~ high-quality scientific information and for the submission of the information
 8 by the applicant;

9 (d) establish procedures for the monitoring, testing, and inspection of:

10 (i) the medical waste stream and hazardous waste stream, including HEAVY METALS AND possible
 11 precursors to the formation of chlorinated dioxins, furans, ~~heavy metals~~, and carcinogens;

12 (ii) combustion, including destruction and removal efficiencies; and

13 (iii) emissions, including continuous emission monitoring and air pollution control devices; and

14 (e) are necessary to implement the provisions of this section and to coordinate the requirements
 15 under this section with the requirements contained in 75-2-211 and 75-2-215.

16 (2) A person who applies for an air quality permit or alteration pursuant to 75-2-211 and 75-2-215
 17 for a commercial medical waste incinerator or commercial hazardous waste incinerator shall provide, to the
 18 satisfaction of the department, the following information:

19 (a) a dispersion model of emissions, using approved methods, and those studies that are necessary
 20 to identify the potential community exposure;

21 (b) an analysis of the potential pathways for human exposure to air contaminants, particularly
 22 chlorinated dioxins, furans, heavy metals, and other carcinogens, including the potential for inhalation,
 23 ingestion, and physical contact by the affected communities; and

24 (c) a quantitative analysis of the estimated total possible human exposure to chlorinated dioxins,
 25 furans, heavy metals, and carcinogens for the affected communities.

26 (3) The department may not issue or alter an air quality permit pursuant to this chapter until the
 27 department has determined, based upon an analysis of the information provided by the applicant pursuant
 28 to subsection (2) and other necessary and relevant data, that the public health risk from air emissions or
 29 ambient concentrations of chlorinated dioxins, furans, heavy metals, and other ~~carcinogens~~ hazardous air
 30 pollutants will not exceed the negligible risk standard required by 75-2-215 and any applicable appropriate

1 federal standards for allowable ~~daily~~ intake, as determined by the department after a review of established
2 and relevant federal standards and guidelines.

3 (4) This section may not be construed in any way to:

4 (a) require the board to promulgate standards for the allowable ~~daily~~ intake of any substances for
5 which the federal government has not established standards;

6 (b) allow the board to promulgate standards for the allowable ~~daily~~ intake of any substances for
7 which the federal government has established standards that are more stringent than the federal standards;
8 or

9 (c) limit or otherwise impair the duty of the department under 75-2-215 to determine that emissions
10 and ambient concentrations will constitute a negligible risk as required by 75-2-215(3)(d), including
11 emissions and ambient concentrations of dioxins, furans, heavy metals, and carcinogens, before issuing
12 an air quality permit pursuant to 75-2-211 and 75-2-215."

13
14 ~~Section 4. Section 75-10-403, MCA, is amended to read:~~

15 ~~"75-10-403. Definitions. Unless the context requires otherwise, in this part, the following~~
16 ~~definitions apply:~~

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

18 (2) ~~"Department" means the department of health and environmental sciences provided for in Title~~
19 ~~2, chapter 15, part 21.~~

20 (3) ~~"Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or~~
21 ~~placing of any regulated substance or hazardous waste into or onto the land or water so that the regulated~~
22 ~~substance, hazardous waste, or any constituent of the regulated substance or hazardous waste may enter~~
23 ~~the environment or be emitted into the air or discharged into any waters, including ground water.~~

24 (4) ~~"Facility" or "hazardous waste management facility" means all contiguous land and structures,~~
25 ~~other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous~~
26 ~~waste. A facility may consist of several treatment, storage, or disposal operational units.~~

27 (5) ~~"Generation" means the act or process of producing waste material.~~

28 (6) ~~"Generator" means any person, by site, whose act or process produces hazardous waste or~~
29 ~~whose act first causes a hazardous waste to become subject to regulation under this part.~~

30 (7) (a) ~~"Hazardous waste" means a waste or combination of wastes that, because of its quantity,~~

1 concentration, or physical, chemical, or infectious characteristics, may:

2 (i) ~~cause or significantly contribute to an increase in mortality or an increase in serious irreversible~~
3 ~~or incapacitating reversible illness; or~~

4 (ii) ~~pose a substantial present or potential hazard to human health or the environment when~~
5 ~~improperly treated, stored, transported, or disposed of or otherwise managed.~~

6 ~~(b) Hazardous waste includes cement kiln dust generated by cement kilns that burn hazardous~~
7 ~~wastes. For purposes of this chapter, cement kiln dust means the dust collected at the air pollution control~~
8 ~~devices associated with a kiln system.~~

9 ~~(b)(c) Hazardous wastes do waste does not include those substances governed by Title 82, chapter~~
10 ~~4, part 2.~~

11 ~~(8) "Hazardous waste management" means the management of the collection, source separation,~~
12 ~~storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.~~

13 ~~(9) "Hazardous waste transfer facility" means any land, structure, or improvement, including~~
14 ~~loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary~~
15 ~~storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period~~
16 ~~of 10 days or less during the normal course of transportation up to but not including the point of ultimate~~
17 ~~treatment, storage, or disposal.~~

18 ~~(10) "Manifest" means the shipping document that is originated and signed by the generator and~~
19 ~~which that is used to identify the hazardous waste, and its quantity, origin, and destination during its~~
20 ~~transportation.~~

21 ~~(11) "Person" means the United States, an individual, firm, trust, estate, partnership, company,~~
22 ~~association, corporation, city, town, local governmental entity, or any other governmental or private entity,~~
23 ~~whether organized for profit or not.~~

24 ~~(12) "Regulated substance":~~

25 ~~(a) means:~~

26 ~~(i) a hazardous substance as defined in 75-10-602; or~~

27 ~~(ii) petroleum, including crude oil or any fraction thereof of crude oil, which that is liquid at~~
28 ~~standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);~~

29 ~~(b) does not include a substance regulated as a hazardous waste under this part.~~

30 ~~(13) "Storage" means the actual or intended containment of regulated substances, hazardous~~

1 ~~wastes, or both, either on a temporary basis or for a period of years.~~

2 ~~(14) "Transportation" means the movement of hazardous wastes from the point of generation to~~
 3 ~~any intermediate points and finally to the point of ultimate storage or disposal.~~

4 ~~(15) "Transporter" means a person engaged in the offsite transportation of hazardous waste by~~
 5 ~~air, rail, highway, or water.~~

6 ~~(16) "Treatment" means a method, technique, or process, including neutralization, designed to~~
 7 ~~change the physical, chemical, or biological character or composition of any hazardous waste so as to~~
 8 ~~neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery,~~
 9 ~~amenable for storage, or reduced in volume.~~

10 ~~(17) "Underground storage tank":~~

11 ~~(a) means, except as provided in subsections (17)(b)(i) through (17)(b)(viii):~~

12 ~~(i) any one tank or combination of tanks used to contain a regulated substance, the volume of~~
 13 ~~which is 10% or more beneath the surface of the ground; and~~

14 ~~(ii) any underground pipes used to contain or transport a regulated substance and connected to~~
 15 ~~a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely~~
 16 ~~underground;~~

17 ~~(b) does not include:~~

18 ~~(i) a septic tank;~~

19 ~~(ii) a pipeline facility (including gathering lines) regulated under:~~

20 ~~(A) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);~~

21 ~~(B) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); or~~

22 ~~(C) state law comparable to the provisions of law referred to in subsection (17)(b)(iii)(A) or~~
 23 ~~(17)(b)(iii)(B), if the facility is intrastate;~~

24 ~~(iii) a surface impoundment, pit, pond, or lagoon;~~

25 ~~(iv) a storm water or wastewater collection system;~~

26 ~~(v) a flow through process tank;~~

27 ~~(vi) a liquid trap or associated gathering lines directly related to oil or gas production and gathering~~
 28 ~~operations;~~

29 ~~(vii) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft,~~
 30 ~~or tunnel, if the storage tank is situated upon or above the surface of the floor; or~~

1 ~~(viii) any pipe connected to a tank described in subsections (17)(b)(i) through (17)(b)(vi)."~~

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

4 **"75-2-413. Civil penalties -- out-of-state litigants -- effect of action -- presumption of continuing**
5 **violation under certain circumstances.** (1) A person who violates any provision of this chapter, a rule
6 adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil
7 penalty not to exceed \$10,000 per violation. Each day of each violation constitutes a separate violation.
8 The department may institute and maintain in the name of the state any enforcement proceedings under
9 this section. Upon request of the department, the attorney general or the county attorney of the county
10 of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty
11 is in lieu of the criminal penalty provided for in 75-2-412.

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

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

17 (3) If the department has notified a person operating a commercial hazardous waste incinerator of
18 a violation and if the department makes a prima facie showing that the conduct or events giving rise to the
19 violations are likely to have continued or recurred past the date of notice, the days of violation are
20 presumed to include the date of the notice and every day after the notice until the person establishes that
21 continuous compliance has been achieved. This presumption may be overcome to the extent that the
22 person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that
23 there were intervening days when a violation did not occur or, that the violation was not continuing in
24 nature, OR THAT THE TELEMETERING DEVICE WAS COMPROMISED OR OTHERWISE TAMPERED WITH.

25 ~~(3)(4)~~ Money collected under this section must be deposited in the state general fund. This
26 subsection does not apply to money collected by an approved local air pollution control program."
27

28 **NEW SECTION.** **Section 4. Codification instruction.** [Section 1] is intended to be codified as an
29 integral part of Title 75, chapter 2, part 2, and the provisions of Title 75, chapter 2, part 2, apply to
30 [section 1].

