

## 1 HOUSE BILL NO. 427

2 INTRODUCED BY GUTSCHE

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO AIR QUALITY; CLARIFYING  
5 CERTAIN AIR QUALITY PERMIT APPLICATIONS THAT ARE SUBJECT TO DEPARTMENT OF  
6 ENVIRONMENTAL QUALITY ACTION WITHIN 60 DAYS AFTER THE DEPARTMENT'S RECEIPT OF THE  
7 APPLICATION; PROVIDING THAT THE DEPARTMENT HAS 75 DAYS FROM THE RECEIPT OF CERTAIN  
8 AIR QUALITY PERMIT APPLICATIONS TO TAKE ACTION; REQUIRING THAT THE DEPARTMENT PREPARE  
9 A SINGLE ENVIRONMENTAL REVIEW FOR CERTAIN PERMIT APPLICATIONS; REQUIRING THE BOARD  
10 OF ENVIRONMENTAL REVIEW TO ADOPT A RULE THAT PROVIDES FOR A 30-DAY PUBLIC COMMENT  
11 PERIOD ON CERTAIN PERMIT APPLICATIONS; AMENDING SECTION 75-2-211, MCA; AND PROVIDING  
12 AN IMMEDIATE EFFECTIVE DATE."

13

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

15

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

17 **"75-2-211. (Temporary) Permits for construction, installation, alteration, or use.** (1) The board shall  
18 by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this  
19 part.

20 (2) Except as provided in 75-1-208(4)(b), not later than 180 days before construction, installation, or  
21 alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may  
22 directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the  
23 emission of air pollutants, the owner or operator shall file with the department the appropriate permit application  
24 on forms available from the department except as provided in subsection (12).

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

27 (a) requirements and procedures for permit applications, including standard application forms;

28 (b) requirements and procedures for submittal of information necessary to determine the location,  
29 quantity, and type of emissions;

30 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

- 1 (d) procedures for providing notice and an opportunity for comment to contiguous states and federal  
2 agencies, as appropriate;
- 3 (e) requirements for inspection, monitoring, recordkeeping, and reporting;
- 4 (f) procedures for the transfer of permits;
- 5 (g) requirements and procedures for suspension, modification, and revocation of permits by the  
6 department;
- 7 (h) requirements and procedures for appropriate emission limitations and other requirements, including  
8 enforceable measures necessary to ensure compliance with those limitations and requirements;
- 9 (i) requirements and procedures for permit modification and amendment; and
- 10 (j) requirements and procedures for issuing a single permit authorizing emissions from similar  
11 operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance  
12 with the requirements of this chapter at all authorized locations and a requirement that the owner or operator  
13 notify the department in advance of each change in location.
- 14 (4) This section does not restrict the board's authority to adopt regulations providing for a single air  
15 quality permit system.
- 16 (5) Department approval of an application to transfer a portable emission source from one location to  
17 another is exempt from the provisions of 75-1-201(1).
- 18 (6) The department may, for good cause shown, waive or shorten the time required for filing the  
19 appropriate applications.
- 20 (7) The department shall require that applications for permits be accompanied by any plans,  
21 specifications, and other information that it considers necessary.
- 22 (8) An application is not considered filed until the applicant has submitted all fees required under  
23 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7)  
24 of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of  
25 an application that the application is incomplete and fails to list the reasons why the application is considered  
26 incomplete, the application is considered filed as of the date of the purported filing.
- 27 (9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of  
28 an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1  
29 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:  
30 (i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the

1 department prepares the environmental impact statement;

2 (ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state  
3 agency other than the department has been designated by the governor as lead agency for preparation of the  
4 environmental impact statement; or

5 (iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a  
6 permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement  
7 in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

8 (b) If an application does not require the preparation of an environmental impact statement, is not  
9 subject to the provisions of 75-2-215, and is not for construction of an emitting unit at a major stationary source  
10 subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall  
11 notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8),  
12 of its approval or denial of the application. ~~The time for notification may be extended for 30 days by written~~  
13 ~~agreement of the department and the applicant. Additional 30-day extensions may be granted by the department~~  
14 ~~on request of the applicant. Notification of approval or denial may be served personally or by certified mail on~~  
15 ~~the applicant or the applicant's agent.~~

16 (c) ~~If an application does not require the preparation of an environmental impact statement and is for~~  
17 ~~construction of an emitting unit at a major stationary source~~, subject to the federal air permitting provisions of  
18 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant, in writing, within 75 days after its  
19 receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

20 (d) Except as provided in subsection (9)(e), if an application does not require the preparation of an  
21 environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the  
22 applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed  
23 application, as provided in subsection (8).

24 (e)(e) If an application for a permit is for the construction, installation, alteration, or use of a source that  
25 is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department  
26 shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required  
27 under this section and the license or permit required under 75-10-221 or 75-10-405 75-10-406 and act on the  
28 permit application applications within the time period provided for in 75-2-215(3)(e).

29 (f) The time for notification may be extended for 30 days by written agreement of the department and  
30 the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant.

1 Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's  
2 agent.

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

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

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

16 (12) (a) Except as provided in subsections (12)(b) and (12)(c), an applicant who has received a written  
17 notice that its application is considered filed pursuant to subsection (8) may:

18 (i) for a temporary power generation unit or units with a total electrical generation capacity of not more  
19 than 125 megawatts, construct the unit or units. Operation of the unit or units may commence upon the  
20 department's issuance of a permit under this section.

21 (ii) for a temporary power generation unit or units with a total electrical generating capacity of 10  
22 megawatts or less, construct and operate the unit or units.

23 (b) The construction or operation of a temporary power generation unit or units described in subsection  
24 (12)(a) is not in violation of this part unless the operation of the temporary power generation unit or units  
25 continues after a department decision to deny the permit application becomes final as provided in this section.

26 (c) (i) A permit applicant shall discontinue construction or operation of a temporary power generation  
27 unit or units if the applicant is notified by the department in writing that the applicant has failed to submit by the  
28 department's deadline any additional information that is necessary to process the permit application.

29 (ii) The operation of a permit applicant's temporary power generation unit or units described in  
30 subsection (12)(a) may not violate ambient air quality standards.

1 (d) A permit issued under this part and pursuant to the provisions of this subsection (12) must expire  
 2 no later than 2 years from the date that the department received the permit application and must require removal  
 3 of the temporary power generation unit or units upon expiration of the permit unless an air quality permit for  
 4 permanent operation has been issued.

5 (13) The board shall provide, by rule, a period of 30 days in which the public may submit comments on  
 6 draft air quality permits for applications that:

7 (a) are for construction of an emitting unit at a major stationary source, subject to the federal air quality  
 8 permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

9 (b) are subject to the requirements of 75-2-215; or

10 (c) require the preparation of an environmental impact statement.

11 (Terminates July 1, 2005--sec. 4, Ch. 588, L. 2001.)

12 **75-2-211. (Effective July 1, 2005) Permits for construction, installation, alteration, or use.** (1) The  
 13 board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit  
 14 issued under this part.

15 (2) Except as provided in 75-1-208(4)(b), not later than 180 days before construction, installation, or  
 16 alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may  
 17 directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the  
 18 emission of air pollutants, the owner or operator shall file with the department the appropriate permit application  
 19 on forms available from the department.

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

22 (a) requirements and procedures for permit applications, including standard application forms;

23 (b) requirements and procedures for submittal of information necessary to determine the location,  
 24 quantity, and type of emissions;

25 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

26 (d) procedures for providing notice and an opportunity for comment to contiguous states and federal  
 27 agencies, as appropriate;

28 (e) requirements for inspection, monitoring, recordkeeping, and reporting;

29 (f) procedures for the transfer of permits;

30 (g) requirements and procedures for suspension, modification, and revocation of permits by the

1 department;

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

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

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

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

11 (5) Department approval of an application to transfer a portable emission source from one location to  
12 another is exempt from the provisions of 75-1-201(1).

13 (6) The department may, for good cause shown, waive or shorten the time required for filing the  
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11 (c) If an application does not require the preparation of an environmental impact statement and is for  
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1           (10) When the department approves or denies the application for a permit under this section, a person  
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16           (c) require the preparation of an environmental impact statement."

17

18           NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

19

- END -