

HOUSE BILL NO. 427

INTRODUCED BY GUTSCHE

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

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

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

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

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

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

- (a) requirements and procedures for permit applications, including standard application forms;
- (b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;
- (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) procedures for the transfer of permits;

(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
14 appropriate applications.

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

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

22 (9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of
23 an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1
24 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

25 (i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the
26 department prepares the environmental impact statement;

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

30 (iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a

1 permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement
2 in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

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

11 (c) If an application does not require the preparation of an environmental impact statement and is for
12 construction of an emitting unit at a major stationary source, subject to the federal air permitting provisions of
13 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant, in writing, within 75 days after its
14 receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

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

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

24 (f) The time for notification may be extended for 30 days by written agreement of the department and
25 the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant.
26 Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's
27 agent.

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

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

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

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

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

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

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

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

- END -