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SENATE BILL NO. 39

INTRODUCED BY D. BARTEL

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AIR QUALITY PERMIT REQUIREMENTS FOR INCINERATORS; PROVIDING REGISTRATION REQUIREMENTS FOR ANIMAL OR HUMAN CREMATORIALS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-2-103, 75-2-215, AND 75-2-234, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-2-103, MCA, is amended to read:

"75-2-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination of those air contaminants.
- (2) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.
- (3) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend to be injurious to human health or welfare, animal or plant life, or property or that would unreasonably interfere with the enjoyment of life, property, or the conduct of business.
- (4) "Associated supporting infrastructure" means:
 - (a) electric transmission and distribution facilities;
 - (b) pipeline facilities;
 - (c) aboveground ponds and reservoirs and underground storage reservoirs;
 - (d) rail transportation;

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- 1 (e) aqueducts and diversion dams;
- 2 (f) devices or equipment associated with the delivery of an energy form or product produced at an
3 energy development project; or
- 4 (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy
5 development project.
- 6 (5) "Board" means the board of environmental review provided for in 2-15-3502.
- 7 (6) (a) "Commercial hazardous waste incinerator" means:
- 8 (i) an incinerator that burns hazardous waste; or
- 9 (ii) a boiler or industrial furnace subject to the provisions of 75-10-406.
- 10 (b) Commercial hazardous waste incinerator does not include a research and development facility
11 that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate
12 waste treatment remediation technologies.
- 13 (7) "Department" means the department of environmental quality provided for in 2-15-3501.
- 14 (8) "Emission" means a release into the outdoor atmosphere of air contaminants.
- 15 (9) "Energy development project" means each plant, unit, or other development and associated
16 developments, including any associated supporting infrastructure, designed for or capable of:
- 17 (a) generating electricity;
- 18 (b) producing gas derived from coal;
- 19 (c) producing liquid hydrocarbon products;
- 20 (d) refining crude oil or natural gas;
- 21 (e) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax
22 incentive pursuant to Title 15, chapter 70, part 5; or
- 23 (f) transmitting electricity through an electric transmission line with a design capacity of equal to or
24 greater than 50 kilovolts.
- 25 (10) "Environmental protection law" means a law contained in or an administrative rule adopted
26 pursuant to Title 75, chapter 2, 5, 10, or 11.
- 27 (11) "Hazardous waste" means:

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- 1 (a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department
2 administrative rules adopted pursuant to Title 75, chapter 10, part 4; or
- 3 (b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).
- 4 (12) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns
5 combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the
6 purpose of removal, destruction, disposal, or volume reduction of any portion of the input material.
- 7 (b) Incinerator does not include:
- 8 (i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities,
9 such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus
10 plants;
- 11 (ii) space heaters that burn used oil;
- 12 (iii) wood-fired boilers; or
- 13 (iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners;
- 14 (v) air pollution control devices required by state or federal rule or another applicable requirement;
- 15 or
- 16 (vi) air pollution control devices that are:
- 17 (A) operating alone or at a facility where emissions are less than the permitting or registration
18 threshold; and
- 19 (B) exempt from the requirements of 75-2-211 or 75-2-234.
- 20 (13) "Medical waste" means any waste that is generated in the diagnosis, treatment, or
21 immunization of human beings or animals, in medical research on humans or animals, or in the production or
22 testing of biologicals. The term includes:
- 23 (a) cultures and stocks of infectious agents;
- 24 (b) human pathological wastes;
- 25 (c) waste human blood or products of human blood;
- 26 (d) sharps;
- 27 (e) contaminated animal carcasses, body parts, and bedding that were known to have been

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1 exposed to infectious agents during research;

2 (f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious
3 agents; and

4 (g) biological waste and discarded material contaminated with blood, excretion, exudates, or
5 secretions from humans or animals.

6 (14) (a) "Oil or gas well facility" means a well that produces oil or natural gas. The term includes:

7 (i) equipment associated with the well and used for the purpose of producing, treating, separating,
8 or storing oil, natural gas, or other liquids produced by the well; and

9 (ii) a group of wells under common ownership or control that produce oil or natural gas and that
10 share common equipment used for the purpose of producing, treating, separating, or storing oil, natural gas, or
11 other liquids produced by the wells.

12 (b) The equipment referred to in subsection (14)(a) includes but is not limited to wellhead
13 assemblies, amine units, prime mover engines, phase separators, heater treater units, dehydrator units, tanks,
14 and connecting tubing.

15 (c) The term does not include equipment such as compressor engines used for transmission of oil
16 or natural gas.

17 (15) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or
18 private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the
19 federal government or an agency of the federal government, or any other legal entity and includes persons
20 resident in Canada.

21 (16) "Principal" means a principal of a corporation, including but not limited to a partner, associate,
22 officer, parent corporation, or subsidiary corporation.

23 (17) "Small business stationary source" means a stationary source that:

24 (a) is owned or operated by a person who employs 100 or fewer individuals;

25 (b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

26 (c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42
27 U.S.C. 7661, et seq.;

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- 1 (d) emits less than 50 tons per year of an air pollutant;
- 2 (e) emits less than a total of 75 tons per year of all air pollutants combined; and
- 3 (f) is not excluded from this definition under 75-2-108(3).
- 4 (18) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous
- 5 wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial
- 6 wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution
- 7 control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal
- 8 droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts
- 9 thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials;
- 10 asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil
- 11 or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.
- 12 (b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes
- 13 regulated under the mining and reclamation laws administered by the department of environmental quality, or
- 14 slash and forest debris regulated under laws administered by the department of natural resources and
- 15 conservation."

16

17 **Section 2.** Section 75-2-215, MCA, is amended to read:

18 **"75-2-215. Solid or hazardous waste incineration -- additional permit or registration**

19 **requirements.** (1) ~~Until~~ Except as provided in subsection (2), until the department issues an air quality permit

20 pursuant to 75-2-211 or a registration in accordance with rules adopted pursuant to 75-2-234 that includes the

21 conditions required by this section, a person may not construct, install, alter, or use:

22 (a) _____ a solid or hazardous waste incinerator; or

23 (b) _____ a boiler or industrial furnace subject to the provisions of 75-10-406, ~~except as provided in~~

24 ~~subsection (2).~~

25 (2) An existing or permitted solid or hazardous waste incinerator, or a boiler or industrial furnace

26 subject to the provisions of 75-10-406 is subject to the provisions of subsection (1) only if it incinerates or uses

27 as fuel or would incinerate or use as fuel solid or hazardous waste in an amount, form, kind, or content that

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1 changes the nature, character, or composition of its emissions from its design or permitted operation.

2 (3) The department may not issue a permit or registration to a facility described in subsection (1)
3 until:

4 (a) the owner or operator provides to the department's satisfaction:

5 (i) a characterization of emissions and ambient concentrations of air pollutants, including
6 hazardous air pollutants, from any existing emission source at the facility; and

7 (ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air
8 pollutants, from the incineration of solid or hazardous waste or the use of hazardous waste as fuel for a boiler
9 or industrial furnace, as proposed in the registration, permit application, or permit modification;

10 (b) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the
11 applicant has published, in the county where the project is proposed, at least three notices, in accordance with
12 the procedures identified in 7-1-4127, describing the proposed project;

13 (c) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the
14 department has conducted a public hearing on an environmental review prepared pursuant to Title 75, chapter
15 1, and, as appropriate, provided additional opportunities for the public to review and comment on the permit
16 application or permit modification;

17 (d) except as provided in subsection (7), the department reaches a determination that the
18 projected emissions and ambient concentrations will constitute a negligible risk to the public health, safety, and
19 welfare and to the environment; and

20 (e) the department issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, if a
21 license or permit is required. The decision to issue, deny, or alter a permit pursuant to 75-2-211 and this section
22 must be made within 30 days from when the department issues a license pursuant to 75-10-221 or a permit
23 pursuant to 75-10-406 or within 90 days after the receipt of a complete application for a permit or a permit
24 alteration under 75-2-211 and this section, whichever is later.

25 (4) The department shall require the application of air pollution control equipment, engineering, or
26 other operating procedures as necessary to provide reductions of air pollutants, including hazardous air
27 pollutants, equivalent to or more stringent than those achieved through the best available control technology.

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1 (5) The department may by rule provide for general air quality permits under the provisions of 75-
2 2-211 and this section. The rules must cover numerous similar classes or categories of incinerators and boilers
3 or industrial furnaces.

4 (6) This section does not relieve an owner or operator of a solid or hazardous waste incinerator or
5 a boiler or industrial furnace that is not included under subsection (1) from the obligation to obtain any permit
6 otherwise required under this chapter or rules implementing this chapter.

7 (7) An animal or human crematorium eligible for registration under 75-2-234 is exempt from the
8 determination requirement established in subsection (3)(d)."

9

10 **Section 3.** Section 75-2-234, MCA, is amended to read:

11 **"75-2-234. Registration.** (1) The department may adopt rules for the registration of certain classes of
12 sources of air contaminants in lieu of a permit application required under 75-2-211(2).

13 (2) Rules adopted for the registration of animal or human crematoriums must include requirements
14 for:

15 (a) public notification prior to registration and a 15-day comment period; and

16 (b) the inclusion of documentation through a registration process that provides PROJECTED
17 EMISSIONS AND AMBIENT CONCENTRATIONS WILL CONSTITUTE A NEGLIGIBLE RISK for the protection of public health,
18 safety, and welfare and the environment."

19

20 NEW SECTION. Section 4. Saving clause. [This act] does not affect rights and duties that matured,
21 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

22

23 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

24

- END -