

SENATE BILL NO. 44

INTRODUCED BY J. KEANE

BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE AIR POLLUTION CONTROL ADVISORY COUNCIL AND ITS FUNCTIONS; ELIMINATING A PROVISION RELATED TO PUBLIC HEARINGS ON RULES; AMENDING SECTIONS 75-2-103 AND 75-2-402, MCA; REPEALING SECTIONS 2-15-2106, 75-2-121, 75-2-122, 75-2-123, AND 75-2-205, 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) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.~~

~~(2)~~(1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof of those air contaminants.

~~(3)~~(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.

~~(4)~~(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.

~~(5)~~(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;
- (e) aqueducts and diversion dams;
- (f) devices or equipment associated with the delivery of an energy form or product produced at an energy

1 development project; or

2 (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development
3 project.

4 ~~(6)~~(5) "Board" means the board of environmental review provided for in 2-15-3502.

5 ~~(7)~~(6) (a) "Commercial hazardous waste incinerator" means:

6 (i) an incinerator that burns hazardous waste; or

7 (ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

8 (b) Commercial hazardous waste incinerator does not include a research and development facility that
9 receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste
10 treatment remediation technologies.

11 ~~(8)~~(7) "Department" means the department of environmental quality provided for in 2-15-3501.

12 ~~(9)~~(8) "Emission" means a release into the outdoor atmosphere of air contaminants.

13 ~~(10)~~(9) (a) "Energy development project" means each plant, unit, or other development and associated
14 developments, including any associated supporting infrastructure, designed for or capable of:

15 (i) generating electricity;

16 (ii) producing gas derived from coal;

17 (iii) producing liquid hydrocarbon products;

18 (iv) refining crude oil or natural gas;

19 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive
20 pursuant to Title 15, chapter 70, part 5;

21 (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant
22 to 15-32-701; or

23 (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or
24 greater than 50 kilovolts.

25 (b) The term does not include a nuclear facility as defined in 75-20-1202.

26 ~~(11)~~(10) "Environmental protection law" means a law contained in or an administrative rule adopted
27 pursuant to Title 75, chapter 2, 5, 10, or 11.

28 ~~(12)~~(11) "Hazardous waste" means:

29 (a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department
30 administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

1 (b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

2 ~~(13)~~(12) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns
3 combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the
4 purpose of removal, destruction, disposal, or volume reduction of any portion of the input material.

5 (b) Incinerator does not include:

6 (i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as
7 refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

8 (ii) space heaters that burn used oil;

9 (iii) wood-fired boilers; or

10 (iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

11 ~~(14)~~(13) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization
12 of human beings or animals, in medical research on humans or animals, or in the production or testing of
13 biologicals. The term includes:

14 (a) cultures and stocks of infectious agents;

15 (b) human pathological wastes;

16 (c) waste human blood or products of human blood;

17 (d) sharps;

18 (e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed
19 to infectious agents during research;

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

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

23 ~~(15)~~(14) (a) "Oil or gas well facility" means a well that produces oil or natural gas. The term includes:

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

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

29 (b) The equipment referred to in subsection (15)(a) includes but is not limited to wellhead assemblies,
30 amine units, prime mover engines, phase separators, heater treater units, dehydrator units, tanks, and connecting

1 tubing.

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

4 ~~(16)~~(15) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or
5 private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the
6 federal government or an agency of the federal government, or any other legal entity and includes persons
7 resident in Canada.

8 ~~(17)~~(16) "Principal" means a principal of a corporation, including but not limited to a partner, associate,
9 officer, parent corporation, or subsidiary corporation.

10 ~~(18)~~(17) "Small business stationary source" means a stationary source that:

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

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

13 (c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C.
14 7661, et seq.;

15 (d) emits less than 50 tons per year of an air pollutant;

16 (e) emits less than a total of 75 tons per year of all air pollutants combined; and

17 (f) is not excluded from this definition under 75-2-108(3).

18 ~~(19)~~(18) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous
19 wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial
20 wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution
21 control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal
22 droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof;
23 wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt
24 shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or
25 petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

26 (b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes
27 regulated under the mining and reclamation laws administered by the department of environmental quality, or
28 slash and forest debris regulated under laws administered by the department of natural resources and
29 conservation."

30

1 **Section 2.** Section 75-2-402, MCA, is amended to read:

2 "**75-2-402. Emergency procedure.** (1) ~~Any other law to the contrary notwithstanding~~ Except as
3 otherwise provided in statute, if the department finds that a generalized condition of air pollution exists and that
4 it creates an emergency requiring immediate action to protect human health or safety, the department shall order
5 persons causing or contributing to the air pollution to immediately reduce or discontinue the emission of air
6 contaminants. Upon issuance of this order, the department shall fix a place and time within 24 hours for a hearing
7 to be held before the board. Within 24 hours after the ~~commencement~~ start of the hearing and without
8 adjournment, the board shall ~~affirm~~ confirm, modify, or set aside the order of the department.

9 (2) ~~In the absence of a generalized condition such as that referred to~~ Except as provided in subsection
10 (1), if the department finds that emissions from the operation of one or more air contaminant sources are causing
11 imminent danger to human health or safety, it may order the person responsible for the operation in question to
12 reduce or discontinue emissions immediately, without regard for 75-2-401. In this event, the requirements for
13 hearing and ~~affirmance~~ confirmation, modification, or setting aside of orders as provided in subsection (1) apply.

14 (3) This section does not limit any power ~~which that~~ the governor or any other officer may have to declare
15 an emergency and act on the basis of this declaration, whether the power is conferred by statute or ~~constitutional~~
16 ~~provisions~~ the constitution or ~~inheres in~~ is inherent to the office.

17 (4) ~~Nothing in 75-2-205 may be construed to require a hearing before the issuance of an emergency~~
18 ~~order pursuant to this section."~~

19
20 NEW SECTION. **Section 3. Repealer.** The following sections of the Montana Code Annotated are
21 repealed:

22 2-15-2106. Air pollution control advisory council.

23 75-2-121. Advisory council.

24 75-2-122. Presiding officer -- secretary.

25 75-2-123. Meetings.

26 75-2-205. Public hearings on rules.

27

28 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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