

## HOUSE BILL NO. 700

INTRODUCED BY BRUEGGEMAN, LAIBLE, MCCARTHY, A. OLSON, SHEA, TASH

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO THE ENVIRONMENT; PROVIDING THE BOARD OF ENVIRONMENTAL REVIEW WITH AUTHORITY FOR STAYING CERTAIN ACTIONS; ALLOWING THE BOARD TO REQUIRE A WRITTEN UNDERTAKING; ~~PROVIDING THAT UNDER CERTAIN PERMIT HEARINGS AND APPEALS, THE BOARD OR A COURT MAY ASSESS ATTORNEY FEES AND COSTS;~~ AUTHORIZING THE BOARD TO ADOPT RULES FOR REGISTRATION OF SOURCES OF AIR CONTAMINANTS AND GENERAL PERMITS AND MULTIPLE SIMILAR SOURCES; AUTHORIZING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES FOR GENERAL PERMITS FOR DISCHARGES FROM CATEGORIES OF POINT SOURCES; AMENDING SECTIONS 75-2-111, 75-2-204, 75-2-211, 75-2-218, 75-2-221, AND 75-5-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

**Section 1.** Section 75-2-111, MCA, is amended to read:**"75-2-111. Powers of board.** The board shall, subject to the provisions of 75-2-207:

(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant ~~thereto~~ to that section;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits, ~~and~~ permit applications, and registrations consistent with this chapter;

(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419."

**Section 2.** Section 75-2-204, MCA, is amended to read:

**"75-2-204. Rules relating to construction, installation, alteration, operation, or use.** The board may by rule prohibit the construction, installation, alteration, operation, or use of a machine, equipment, device, or facility that it 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, unless ~~a permit~~ the owner or operator has been obtained a permit under this part or has registered the source of air contaminants with the department if the source is in a category for which only registration is required by the rules adopted to implement this part."

**Section 3.** 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) and [section 7], 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;
- (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, the  
4 department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided  
5 in subsection (8), of its approval or denial of the application. The time for notification may be extended for 30  
6 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted  
7 by the department on request of the applicant. Notification of approval or denial may be served personally or  
8 by certified mail on the applicant or the applicant's agent.

9 (c) If an application for a permit is for the construction, installation, alteration, or use of a source that  
10 is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department  
11 shall act on the permit application within the time period provided for in 75-2-215(3)(e).

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

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

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

25 (b) The filing of a request for hearing does not stay the department's decision. However, the board may  
26 order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

27 (i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or  
28 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person  
29 requesting the stay.

30 (c) Upon granting a stay, the board may require a written undertaking to be given by the party

1 requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees  
2 if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use  
3 the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

4 ~~—— (d) If the department or the permit applicant is the substantially prevailing party regarding the board's~~  
5 ~~final decision, the board shall order any third party requesting the hearing to pay to both the department and the~~  
6 ~~permit applicant their respective reasonable attorney fees, including salaries of staff attorneys and costs incurred~~  
7 ~~to respond to a third party's hearing request and associated contested case proceedings.~~

8 ~~—— (e) If a decision of the board is appealed or subjected to review by a district court as a result of an~~  
9 ~~appeal or request for review of a third party and the department's or the board's decision to issue a permit is~~  
10 ~~upheld, the district court shall award the permit applicant and the department their reasonable attorney fees and~~  
11 ~~costs associated with the contested case proceedings, administrative hearings, and judicial review or appeal.~~

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

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

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

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

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

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

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

1       (13) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or  
2 creation of:

3       (i) general permits covering multiple similar sources; or

4       (ii) other permits covering multiple similar sources.

5       (b) Rules adopted pursuant to subsection (13)(a) may provide for construction and operation under the  
6 permit upon authorization by the department or upon notice to the department. (Terminates July 1, 2005--sec.  
7 4, Ch. 588, L. 2001.)

8       **75-2-211. (Effective July 1, 2005) Permits for construction, installation, alteration, or use.** (1) The  
9 board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit  
10 issued under this part.

11       (2) Except as provided in 75-1-208(4)(b) and [section 7], not later than 180 days before construction,  
12 installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the  
13 board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent  
14 or control the emission of air pollutants, the owner or operator shall file with the department the appropriate  
15 permit application on forms available from the department.

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

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

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

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

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

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

25       (f) procedures for the transfer of permits;

26       (g) requirements and procedures for suspension, modification, and revocation of permits by the  
27 department;

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

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

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

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

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

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

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

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

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

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

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

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

(b) If an application does not require the preparation of an environmental impact statement, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided

1 in subsection (8), of its approval or denial of the application. The time for notification may be extended for 30  
2 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted  
3 by the department on request of the applicant. Notification of approval or denial may be served personally or  
4 by certified mail on the applicant or the applicant's agent.

5 (c) If an application for a permit is for the construction, installation, alteration, or use of a source that  
6 is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department  
7 shall act on the permit application within the time period provided for in 75-2-215(3)(e).

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

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

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

21 (b) The filing of a request for hearing does not stay the department's decision. However, the board may  
22 order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

23 (i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

24 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person  
25 requesting the stay.

26 (c) Upon granting a stay, the board may require a written undertaking to be given by the party  
27 requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees  
28 if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use  
29 the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

30 (d) If the department or the permit applicant is the substantially prevailing party regarding the board's



~~final decision, the board shall order any third party requesting the hearing to pay to both the department and the permit applicant their respective reasonable attorney fees, including salaries of staff attorneys and costs incurred to respond to a third party's hearing request and associated contested case proceedings.~~

~~———— (e) If a decision of the board is appealed or subjected to review by a district court as a result of an appeal or request for review of a third party and the department's or the board's decision to issue a permit is upheld, the district court shall award the permit applicant and the department their reasonable attorney fees and costs associated with the contested case proceedings, administrative hearings, and judicial review or appeal.~~

(12) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (13)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department."

**Section 4.** Section 75-2-218, MCA, is amended to read:

**"75-2-218. Permits for operation -- application completeness -- action by department -- application shield -- review by board.** (1) An application for an operating permit or renewal is not considered filed until the department has determined that it is complete. An application is complete if all fees required under 75-2-220 and all information and completed application forms required under 75-2-217 have been submitted. A complete application must contain all of the information required for the department to begin processing the application. If the department fails to notify the applicant in writing within 60 days after submittal of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed on the date of the department's receipt of the application. The department may request additional information after a completeness determination has been made. The department shall adopt rules that contain criteria for use in determining both when an application is complete and when additional information is required after a completeness determination has been made.

(2) Except as provided in 75-1-208(4)(b) and subsection (3) of this section, the department shall, consistent with the procedures established under 75-2-217, approve or disapprove a complete application for an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing. Failure of the department to act in a timely manner does not constitute approval or denial of the

1 application. This does not limit or abridge the right of any person to seek available judicial remedies to require  
2 the department to act in a timely manner.

3 (3) The board may by rule provide for a transition schedule for both the submittal to the department of  
4 initial applications for operating permits by existing sources and action by the department on these initial permit  
5 applications. The board may require that one-third of all operating permit applications required for existing  
6 sources be submitted within the first calendar year after the adoption of rules implementing an operating permit  
7 program under 75-2-217.

8 (4) If an applicant submits a timely and complete application for an operating permit, the applicant's  
9 failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and  
10 complete application for an operating permit renewal, the expiration of the applicant's existing operating permit  
11 is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the  
12 expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The  
13 applicant is not entitled to the protection of this subsection if the delay in final action by the department on the  
14 application results from the applicant's failure to submit in a timely manner information requested by the  
15 department to process the application.

16 (5) Except as provided in subsection (8), if the department approves or denies an application for an  
17 operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any  
18 person that participated in the public comment process required under 75-2-217(7) may request a hearing before  
19 the board. The request for a hearing must be filed within 30 days after the department renders its decision and  
20 must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana  
21 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this  
22 subsection.

23 (6) (a) Except as provided in subsection (8), the department's decision on any application is not final  
24 until 30 days have elapsed from the date of the decision ~~and there is no request for a hearing under this section.~~  
25 ~~The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion~~  
26 ~~of the hearing and issuance of a final decision by the board.~~

27 (b) Except as provided in subsection (8), the filing of a request for hearing does not stay the  
28 department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice  
29 and opportunity for an informal hearing, that:

30 (i) the person requesting the hearing is entitled to the relief demanded in the request for a hearing; or

1 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person  
2 requesting the hearing.

3 (c) Upon granting a stay, the board may require a written undertaking to be given by the party  
4 requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees  
5 if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use  
6 the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

7 ~~—— (d) If the department or the permit applicant is the substantially prevailing party regarding the board's~~  
8 ~~final decision, the board shall order any third party requesting the hearing to pay to both the department and the~~  
9 ~~permit applicant their respective reasonable attorney fees, including salaries of staff attorneys and costs incurred~~  
10 ~~to respond to a third party's hearing request and associated contested case proceedings.~~

11 ~~—— (e) If a decision of the board is appealed or subjected to review by a district court as a result of an~~  
12 ~~appeal or request for review of a third party and the department's or the board's decision to issue a permit is~~  
13 ~~upheld, the district court shall award the permit applicant and the department their reasonable attorney fees and~~  
14 ~~costs associated with the contested case proceedings, administrative hearings, and judicial review or appeal.~~

15 (7) The requirements of subsections (5) and (6) also apply to any action initiated by the department to  
16 suspend, revoke, modify, or amend an operating permit issued under this section.

17 (8) The denial by the department of an application under 75-2-217 and this section is not subject to  
18 review by the board or judicial review if the basis for denial is the written objection of the appropriate federal  
19 agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

20 (9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is  
21 considered to be compliance with the requirements of this chapter only if the permit expressly includes those  
22 requirements or an express determination that those requirements are not applicable. This subsection does not  
23 apply to general permits provided for under 75-2-217."

24  
25 **Section 5.** Section 75-2-221, MCA, is amended to read:

26 **"75-2-221. Deposit of air quality permitting fees.** (1) All money collected by the department pursuant  
27 to 75-2-111 and 75-2-220 must be deposited in an account in the state special revenue fund to be appropriated  
28 by the legislature to the department for the development and administration of the permitting requirements of  
29 this chapter.

30 (2) Upon request, the expenditure by the department of funds in this account may be audited by a

1 qualified auditor at the end of each fiscal year. The cost of the audit must be paid by the person requesting the  
2 audit."

3  
4 **Section 6.** Section 75-5-401, MCA, is amended to read:

5 **"75-5-401. Board rules for permits -- ground water exclusions.** (1) Except as provided in subsection  
6 (5), the board shall adopt rules:

7 (a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state  
8 waters, including rules requiring the filing of plans and specifications relating to the construction, modification,  
9 or operation of disposal systems;

10 (b) governing the issuance, denial, modification, or revocation of permits. The board may not require  
11 a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not  
12 contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered  
13 from its ambient quality does not constitute a discharge requiring a permit under this part if:

14 (i) the discharge does not contain industrial waste, sewage, or other wastes;

15 (ii) the water discharged does not cause the receiving waters to exceed applicable standards for any  
16 parameters; and

17 (iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters,  
18 the discharge does not increase the concentration of the parameters.

19 (c) governing authorization to discharge under a general permit for storm water associated with  
20 construction activity. These rules must allow an owner or operator to notify the department of the intent to be  
21 covered under the general permit. This notice of intent must include a signed pollution prevention plan that  
22 requires the applicant to implement best management practices in accordance with the general permit. The rules  
23 must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by  
24 the department.

25 (2) The rules must allow the issuance or continuance of a permit only if the department finds that  
26 operation consistent with the limitations of the permit will not result in pollution of any state waters, except that  
27 the rules may allow the issuance of a temporary permit under which pollution may result if the department  
28 ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and  
29 water quality standards in the shortest reasonable period of time.

30 (3) The rules must provide that the department may revoke a permit if the department finds that the

holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required

1 to submit monitoring information pursuant to 75-5-602.

2 (8) The board may adopt rules identifying other activities or operations from which a discharge of  
3 sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit  
4 requirements adopted under subsections (1) through (4).

5 (9) The board may adopt rules authorizing general permits for categories of point source discharges.  
6 The rules may authorize discharge upon issuance of an individual authorization by the department or upon  
7 receipt of a notice of intent to be covered under the general permit."

8  
9 NEW SECTION. Section 7. Registration. The board may adopt rules for the registration of certain  
10 classes of sources of air contaminants in lieu of a permit application required under 75-2-211(2).

11  
12 NEW SECTION. Section 8. Codification instruction. [Section 7] is intended to be codified as an  
13 integral part of Title 75, chapter 2, part 2, and the provisions of Title 75, chapter 2, part 2, apply to [section 7].

14  
15 NEW SECTION. SECTION 9. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE  
16 SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS  
17 APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID  
18 APPLICATIONS.

19  
20 NEW SECTION. Section 10. Effective date. [This act] is effective on passage and approval.

21  
22 NEW SECTION. SECTION 11. RETROACTIVE APPLICABILITY. [SECTIONS 3 AND 4] APPLY RETROACTIVELY,  
23 WITHIN THE MEANING OF 1-2-109, TO A REQUEST FOR A HEARING OR AN APPEAL FILED ON OR AFTER JANUARY 1, 2003.

24 - END -