

1 HOUSE BILL NO. 412

2 INTRODUCED BY B. HARRIS

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PARTY THAT IS SEEKING AN INJUNCTION OR A
5 RESTRAINING ORDER AGAINST AN INDUSTRIAL OPERATION OR ACTIVITY TO DISCLOSE THE NAMES
6 OF INDIVIDUALS AND ORGANIZATIONS THAT PROVIDE FINANCIAL ASSISTANCE TO THE PARTY;
7 AMENDING SECTIONS 27-19-306, 75-2-211, AND 75-2-218, MCA; AND PROVIDING AN IMMEDIATE
8 EFFECTIVE DATE AND AN APPLICABILITY DATE."

9

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

11

12 **Section 1.** Section 27-19-306, MCA, is amended to read:

13 **"27-19-306. Security for damages -- disclosure of financial assistance.** (1) Subject to 25-1-402, on
14 granting an injunction or restraining order, the judge shall require a written undertaking to be given by the
15 applicant for the payment of the costs and damages that may be incurred or suffered by any party who is found
16 to have been wrongfully enjoined or restrained. Except as provided in subsection (2), the undertaking:

17 (a) must be fixed at a sum that the judge considers proper; and

18 (b) may be waived:

19 (i) in domestic disputes; or

20 (ii) in the interest of justice.

21 (2) (a) If a party seeks an injunction or restraining order against an industrial operation or activity, the
22 judge shall require a written undertaking to be filed by the applicant. The amount of the written undertaking must
23 be set in an amount that includes all of the wages, salaries, and benefits of the employees of the party enjoined
24 or restrained during the anticipated time that the injunction or restraining order will be in effect. The amount of
25 the written undertaking may not exceed \$50,000 unless the interests of justice require. The written undertaking
26 must be conditioned to indemnify the employees of the party enjoined or restrained against lost wages, salaries,
27 and benefits sustained by reason of the injunction or restraining order.

28 (b) As used in subsection (2)(a), "industrial operation or activity" includes but is not limited to
29 construction, mining, timber, and grazing operations.

30 (3) Within 30 days after the service of the injunction, the party enjoined may object to the sufficiency of

1 the sureties. If the party enjoined fails to object, all objections to the sufficiency of the sureties are waived. When
 2 objected to, the applicant's sureties, upon notice to the party enjoined of not less than 2 or more than 5 days, shall
 3 justify before a judge or clerk in the same manner as upon bail on arrest. If the sureties fail to justify or if others
 4 in their place fail to justify at the time and place appointed, the order granting the injunction must be dissolved.

5 (4) (a) A party seeking an injunction or a restraining order against an industrial operation or activity shall
 6 file an affidavit with the court that discloses the names of individuals and organizations that provide financial
 7 assistance to the party seeking the injunction or restraining order.

8 (b) The party enjoined or restrained may request a copy of the affidavit filed pursuant to subsection
 9 (4)(a).

10 ~~(4)(5)~~ This section does not prohibit a person who is wrongfully enjoined from filing an action for any
 11 claim for relief otherwise available to that person in law or equity and does not limit the recovery that may be
 12 obtained in that action."

13

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

15 **"75-2-211. Permits for construction, installation, alteration, or use.** (1) The board shall by rule
 16 provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

17 (2) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this section,
 18 not later than 180 days before construction, installation, or alteration begins or as a condition of use of any
 19 machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air
 20 pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator
 21 shall file with the department the appropriate permit application on forms available from the department.

22 (b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file
 23 the permit application with the department no later than January 3, 2006, or 60 days after the initial well
 24 completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas
 25 well facility is:

26 (i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead
 27 equipment into lease tanks from the ultimate producing interval after casing has been run; and

28 (ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of
 29 producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

30 (c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment

1 necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the
2 application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may
3 not operate the oil or gas well facility and is liable for a violation of this section for every day of construction,
4 installation, or operation of the facility.

5 (d) The board shall adopt rules establishing air emission control requirements applicable to an oil or gas
6 well facility during the time from the initial well completion date until the department's decision on the application
7 is final.

8 (e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to the
9 federal air permitting provisions of 42 U.S.C. 7475 or 7503.

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

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

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

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

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

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

19 (f) procedures for the transfer of permits;

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

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

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

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

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

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

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

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

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

12 (9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires the
13 preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter
14 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application:

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

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

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

23 (b) If an application does not require the preparation of an environmental impact statement, is not subject
24 to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475,
25 7503, or 7661a, the department shall notify the applicant in writing within 60 days after its receipt of a filed
26 application, as provided in subsection (8), of its approval or denial of the application, except as provided in
27 subsection (14).

28 (c) If an application does not require the preparation of an environmental impact statement and is subject
29 to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661a, the department shall notify the
30 applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its

1 approval or denial of the application.

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

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

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

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

18 (10) Except as provided in 75-2-213, when the department approves or denies the application for a permit
19 under this section, a person who is directly and adversely affected by the department's decision may request a
20 hearing before the board. The request for hearing must be filed within 15 days after the department renders its
21 decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department
22 renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter
23 4, part 6, apply to a hearing before the board under this subsection.

24 (11) Except as provided in 75-2-213:

25 (a) the department's decision on the application is not final until 15 days have elapsed from the date of
26 the decision;

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

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

30 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person

1 requesting the stay.

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

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

8 (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661a;

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

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

11 (13) The board shall provide, by rule, a period of 15 days in which the public may submit comments on
12 draft air quality permits not subject to subsection (12).

13 (14) The board shall provide, by rule, the basis upon which the department may extend by 15 days:

14 (a) the period as provided in subsection (13) in which the public may submit comments on draft air quality
15 permits not subject to subsection (12); and

16 (b) the period for notifying an applicant of its final decision on approval or denial of an application, as
17 provided in subsection (9)(b).

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

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

21 (ii) other permits covering multiple similar sources.

22 (b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under the
23 permit upon authorization by the department or upon notice to the department."

24

25 **Section 3.** Section 75-2-218, MCA, is amended to read:

26 **"75-2-218. Permits for operation -- application completeness -- action by department -- application**

27 **shield -- review by board.** (1) An application for an operating permit or renewal is not considered filed until the
28 department has determined that it is complete. An application is complete if all fees required under 75-2-220 and
29 all information and completed application forms required under 75-2-217 have been submitted. A complete
30 application must contain all of the information required for the department to begin processing the application.

1 If the department fails to notify the applicant in writing within 60 days after submittal of an application that the
2 application is incomplete and fails to list the reasons why the application is considered incomplete, the application
3 is considered filed on the date of the department's receipt of the application. The department may request
4 additional information after a completeness determination has been made. The board shall adopt rules that
5 contain criteria for use in determining both when an application is complete and when additional information is
6 required after a completeness determination has been made.

7 (2) Except as provided in 75-1-208(4)(b) and subsection (3) of this section, the department shall,
8 consistent with the procedures established under 75-2-217, approve or disapprove a complete application for an
9 operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing.
10 Failure of the department to act in a timely manner does not constitute approval or denial of the application. This
11 does not limit or abridge the right of any person to seek available judicial remedies to require the department to
12 act in a timely manner.

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

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

26 (5) Except as provided in subsection (8), if the department approves or denies an application for an
27 operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any
28 person that participated in the public comment process required under 75-2-217(7) may request a hearing before
29 the board. The request for a hearing must be filed within 30 days after the department renders its decision and
30 must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana

1 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

2 (6) (a) Except as provided in subsection (8), the department's decision on any application is not final until
3 30 days have elapsed from the date of the decision.

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

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

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

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

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

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

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

23

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

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26 **NEW SECTION. Section 5. Applicability.** [This act] applies to proceedings initiated after [the effective
27 date of this act].

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- END -