

**Unofficial Draft Copy**

As of: September 11, 2008 (3:06pm)

LC5009

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act requiring that a discharge permit must be obtained, if necessary, for an aquifer recharge plan or a mitigation plan in a closed basin; amending sections 75-5-401, 75-5-410, 85-2-362, and 85-2-364, MCA."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 75-5-401, MCA, is amended to read:

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

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

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

(i) the discharge does not contain industrial waste, sewage,

or other wastes;

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

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

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

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

(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

**Unofficial Draft Copy**

As of: September 11, 2008 (3:06pm)

LC5009

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) Except for subsection (5)(h), the exemptions in subsection (5) do not apply to permits required pursuant to 75-5-410.

~~(7)~~(8) 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 to submit monitoring information pursuant to 75-5-602.

~~(8)~~(9) The board may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under

subsections (1) through (4).

~~(9)~~ (10) The board may adopt rules authorizing general permits for categories of point source discharges. The rules may authorize discharge upon issuance of an individual authorization by the department or upon receipt of a notice of intent to be covered under the general permit."

{ Internal References to 75-5-401:

50-2-116x	75-5-308x	75-5-311x*	75-5-318x
75-5-405x	75-5-516x	75-5-516 x	75-5-605x }

**Section 2.** Section 75-5-410, MCA, is amended to read:

**"75-5-410. Water quality of ~~return flows and discharges~~ associated with aquifer recharge plan or certain mitigation plans -- minimum requirements. (1) (a) Except as provided in subsection (1) (b), a ~~A~~ person who proposes to use sewage from a system requiring a water quality permit for the purposes of aquifer recharge pursuant to 85-2-362 or plans to use sewage from a system requiring a water quality permit as a return flow to minimize the amount of water necessary to offset adverse effects resulting from net depletion of surface water through an aquifer recharge or mitigation plan pursuant to 85-2-362 shall obtain, if necessary, a current permit pursuant to this chapter.**

**(b) The requirements of this section do not apply to the portion of a mitigation plan that consists of a change in appropriation rights for instream flow filed pursuant to 85-2-402.**

(2) The minimum treatment requirements for sewage systems subject to this section are the federal requirements provided for in 40 CFR 133, and the system must meet, at a minimum, the

requirements of level two treatment for the removal of nitrogen in the effluent.

(3) In addition to the minimum treatment requirements of subsection (2), sewage systems subject to this section that are used for aquifer injection must meet the more stringent of either primary drinking water standards pursuant to Title 75, chapter 6, or the nondegradation requirements pursuant to 75-5-303 at the point of discharge.

(4) In addition to the minimum treatment requirements of subsection (2), sewage systems subject to this section that are used for aquifer recharge must meet either primary drinking water standards pursuant to Title 75, chapter 6, or the nondegradation requirements pursuant to 75-5-303 at the point of discharge.

~~(4) The appropriate interim legislative committee shall review drinking water standards and effluent treatment standards in other jurisdictions and recommend appropriate treatment standards for purposes of aquifer recharge and mitigation.~~

~~(5)~~ (5) For the purposes of this section, "aquifer injection" means the use of a well to inject water directly into an aquifer system without filtration through the geologic materials overlying the aquifer system for the purpose of aquifer recharge or for an aquifer storage and recovery project and "aquifer recharge" and "mitigation" have the meanings defined in 85-2-102.

{ Internal References to 75-5-410:

85-2-361 x	85-2-361 x	85-2-361 x	85-2-361x
85-2-362 a	85-2-368 x	85-2-370x	85-2-370 x}

**Section 3.** Section 85-2-362, MCA, is amended to read:

"85-2-362. Aquifer recharge or mitigation plans in closed basins -- minimum requirements. (1) An applicant whose hydrogeologic assessment conducted pursuant to 85-2-361 predicts that there will be a net depletion of surface water shall offset the net depletion that results in the adverse effect through a mitigation plan or an aquifer recharge plan.

(2) A mitigation plan must include:

(a) where and how the water in the plan will be put to beneficial use;

(b) when and where, generally, water reallocated through exchange or substitution will be required;

(c) the amount of water reallocated through exchange or substitution that is required;

(d) how the proposed project or beneficial use for which the mitigation plan is required will be operated;

(e) evidence that an application for a change in appropriation right, if necessary, has been submitted;

(f) evidence of water availability; and

(g) evidence of how the mitigation plan will offset the required amount of net depletion of surface water in a manner that will offset an adverse effect on a prior appropriator; and

(h) evidence that the appropriate water quality permits have been granted pursuant to Title 75, chapter 5, as required by 75-5-410 and 85-2-364.

(3) An aquifer recharge plan must include:

(a) evidence that the appropriate water quality related permits have been granted pursuant to Title 75, chapter 5, and

~~pursuant to~~ as required by 75-5-410 and 85-2-364;

(b) where and how the water in the plan will be put to beneficial use;

(c) when and where, generally, water reallocated through exchange or substitution will be required;

(d) the amount of water reallocated through exchange or substitution that is required;

(e) how the proposed project or beneficial use for which the aquifer recharge plan is required will be operated;

(f) evidence that an application for a change in appropriation right, if necessary, has been submitted;

(g) a description of the process by which water will be reintroduced to the aquifer;

(h) evidence of water availability; and

(i) evidence of how the aquifer recharge plan will offset the required amount of net depletion of surface water in a manner that will offset any adverse effect on a prior appropriator.

(4) The department may not require an applicant, through a mitigation plan or an aquifer recharge plan, to provide more water than the quantity needed to offset the adverse effects on a prior appropriator caused by the net depletion.

(5) An appropriation right that relies on a mitigation plan or aquifer recharge plan to offset net depletion of surface water that results in an adverse effect on a prior appropriator must be issued as a conditional permit that requires that the mitigation plan or aquifer recharge plan must be exercised when the appropriation right is exercised."

{ Internal References to 85-2-362:

75-5-410x	75-5-410 x	85-2-102x	85-2-102x
85-2-360x	85-2-360 x	85-2-360 x	85-2-361
85-2-368*x	85-2-369 x	85-2-370*x	85-2-370* x }

**Section 4.** Section 85-2-364, MCA, is amended to read:

**"85-2-364. Department permit coordination -- requirements for aquifer recharge or mitigation plans.** To ensure that the department and the department of environmental quality are coordinating their respective permitting activities:

(1) an applicant for a new appropriation right pursuant to 85-2-360 that involves aquifer recharge or mitigation shall provide the department with a copy of a relevant discharge permit if necessary; and

(2) the department may not grant a new appropriation right pursuant to 85-2-360 that involves aquifer recharge or mitigation until the discharge permit, if necessary, has been obtained and presented to the department."

{ Internal References to 85-2-364:

85-2-361x	85-2-361x	85-2-361x	85-2-361x
85-2-362 x	85-2-368x	85-2-370x	85-2-370x }

- END -

{ Name : Joe P. Kolman  
Title : Research Analyst  
Agency : LSD  
Phone : 444-9280  
E-Mail : jkolman@mt.gov }