

HOUSE BILL NO. 545
INTRODUCED BY HAINES

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING STATUTORY WATER QUALITY PERMIT FEES FOR SUCTION DREDGE OPERATIONS; AUTHORIZING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES FOR SUCTION DREDGING SUBJECT TO THE PERMIT FEES; AMENDING SECTIONS 75-5-201, 75-5-516, AND 82-4-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

SECTION 1. SECTION 75-5-201, MCA, IS AMENDED TO READ:

"75-5-201. Board rules authorized. (1) (a) The board shall, subject to the provisions of 75-5-203, adopt rules for the administration of this chapter.

(b) The board shall adopt rules that describe the location and the times of the year when suction dredging is permissible. These rules may be adopted only after consultation with the local conservation districts in the areas subject to the rule.

(2) The board's rules may include a fee schedule or system for assessment of administrative penalties as provided under 75-5-611."

Section 2. Section 75-5-516, MCA, is amended to read:

"75-5-516. Fees authorized for recovery -- process -- rulemaking. (1) The Except as provided in subsection (12), the board shall by rule prescribe fees to be assessed by the department that are sufficient to cover the board's and department's documented costs, both direct and indirect, of:

(a) reviewing and acting upon an application for a permit, permit modification, permit renewal, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

(b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;

(c) reviewing and acting upon an application for a permit, certificate, license, or other authorization for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

(d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a) through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any application fee to the applicant.

- (e) conducting compliance inspections and monitoring effluent and ambient water quality; and
- (f) preparing water quality rules or guidance documents.

(2) ~~The~~ Except as provided in subsection (12), the rules promulgated by the board under this section must include:

(a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and acting upon the applications. This fee may not be more than \$5,000 per discharge point for an application addressed under subsection (1), except that an application with multiple discharge points may be assessed a lower fee for those points according to board rule.

(b) an annual fee to be assessed according to the volume and concentration of waste discharged into state waters. The annual fee may not be more than \$3,000 per million gallons discharged per day on an annual average for any activity under permit or authorization, as described in subsection (1), except that:

(i) a permit or authorization with multiple discharge points may be assessed a lower fee for those points according to board rule; and

(ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent limitations and that is in compliance with other permit requirements, using the previous calendar year's discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to 25% of the permit fee may be given to facilities that consistently discharge effluent at levels between 50% and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its first year of operation, and a permittee with a violation of any effluent limit during the previous calendar year is not eligible for a fee reduction for the following year.

(3) To the extent permitted under subsection (2)(b), the annual fee must be sufficient to pay the department's estimated cost of conducting all tasks described under subsection (1) after subtracting:

- (a) the fees collected under subsection (2)(a);
- (b) state general fund appropriations for functions administered under this chapter; and
- (c) federal grants for functions administered under this chapter.

(4) For purposes of subsection (3), the department's estimated cost of conducting the tasks described under subsection (1) is the amount authorized by the legislature for the department's water quality discharge permit programs.

(5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this section within 90 days after the date established by rule for fee payment, the department may:

(a) impose an additional assessment consisting of not more than 20% of the fee plus interest on the required fee computed as provided in 15-1-216; or

(b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under subsection (5)(a).

(6) Fees collected pursuant to this section must be deposited in an account in the special revenue fund type pursuant to 75-5-517.

(7) The department shall give written notice to each person assessed a fee under this section of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be issued at least 30 days prior to the due date for payment of the assessment.

(8) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee assessment to the board within 20 days after receiving written notice of the department's fee determination under subsection (7). The appeal to the board must include a written statement detailing the reasons that the permit holder or applicant considers the department's fee assessment to be erroneous or excessive.

(9) If part of the department's fee assessment is not in dispute in an appeal filed under subsection (8), the undisputed portion of the fee must be paid to the department upon written request of the department.

(10) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

(11) A municipality may raise rates to cover costs associated with the fees prescribed in this section for a public sewer system without the hearing required in 69-7-111.

(12) (a) ~~The EXCEPT AS PROVIDED IN SUBSECTION (12)(C), THE~~ THE application fee assessed pursuant to this section for a suction dredge, as described in 82-4-310(2), may not be more than:

(i) ~~\$10~~ \$25 if it is owned and operated by a resident of this state; or

(ii) ~~\$30~~ \$100 if it is owned and operated by a nonresident of this state.

(b) The annual fee assessed pursuant to this section for a suction dredge, as described in 82-4-310(2), may not be more than:

(i) ~~\$10~~ \$25 if it is owned and operated by a resident of this state; or

(ii) ~~\$30~~ \$100 if it is owned and operated by a nonresident of this state."

Section 3. Section 82-4-310, MCA, is amended to read:

"82-4-310. Exemption -- scale and type of activity. (1) A person is exempt from this part when the

person is engaging in a mining activity that does not:

- (a) use motorized excavating equipment;
- (b) use blasting agents;
- (c) disturb more than 100 square feet or 50 cubic yards of material at any site;
- (d) leave unreclaimed sites that are less than 1 mile apart;
- (e) use mercury in any operations except in a contained facility that prevents the escape of any mercury

into the environment; or

- (f) use a cyanide ore-processing reagent or other metal leaching solvents or reagents in any operations.

(2) A person is exempt from this part when the person is engaging in a mining activity using a suction dredge if:

- (a) the dredge in use has an intake of 4 inches in diameter or less;
- (b) the person does not operate the dredge beyond the area of the streambed that is naturally under

water at the time of operation; and

- (c) the person has obtained for the activity:

- (i) project approval pursuant to Title 75, chapter 7, part 1; and

- (ii) a discharge permit issued pursuant to 75-5-402 and has paid the applicable fee provided in 75-5-516(12).

(3) This part does not apply to a person who, on land owned or controlled by that person, allows other persons to engage in mining activities if those activities cumulatively meet the requirements of subsection (1)."

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

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