

HOUSE BILL NO. 119
INTRODUCED BY J. COHENOUR
BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE PERMIT REQUIREMENTS IN THE WATER QUALITY LAWS; ELIMINATING THE REQUIREMENT TO ADOPT RULES FOR SUCTION DREDGING; AUTHORIZING TECHNOLOGY-BASED TREATMENT REQUIREMENTS FOR INDIVIDUAL PERMITS ON A CASE-BY-CASE BASIS; REQUIRING A PERMIT FOR CONSTRUCTION SITES OF 1 ACRE OR MORE; ELIMINATING EXEMPTIONS FROM GROUND WATER PERMIT REQUIREMENTS FOR MINES AND MAJOR FACILITIES; AND AMENDING SECTIONS 75-5-201, 75-5-305, 75-5-401, 75-5-605, AND 75-5-1102, MCA."

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 75-5-305, MCA, is amended to read:

"75-5-305. Adoption of requirements for treatment of wastes -- variance procedure -- appeals. (1) The board may establish minimum requirements for the treatment of wastes. For cases in which the federal government has adopted technology-based treatment requirements for a particular industry or activity in 40 CFR, chapter I, subchapter N, the board shall adopt those requirements by reference. To the extent that the federal government has not adopted minimum treatment requirements for a particular industry or activity, the board may do so, through rulemaking, for parameters likely to affect beneficial uses, ensuring that the requirements are cost-effective and economically, environmentally, and technologically feasible. ~~Except for the technology-based treatment requirements set forth in 40 CFR, chapter I, subchapter N, minimum treatment may not be required to~~

~~address the discharge of a parameter when the discharge is considered nonsignificant under rules adopted pursuant to 75-5-304. If neither the federal government nor the board has adopted technology-based treatment requirements applicable to a particular discharge, the department may develop requirements on a case-by-case basis in an individual permit for that discharge, taking into account the factors listed in 40 CFR 125.3(c)(2) and 125.3(d).~~

(2) The board shall establish minimum requirements for the control and disposal of sewage from private and public buildings, including standards and procedures for variances from the requirements.

(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116(1)(i) may appeal the local board of health's final decision to the department by submitting a written request for a hearing within 30 days after the decision. The written request must describe the activity for which the variance is requested, include copies of all documents submitted to the local board of health in support of the variance, and specify the reasons for the appeal of the local board of health's final decision.

(4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the board's standards for a variance.

(5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7."

Section 3. 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 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; or
- (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 to submit monitoring information pursuant to 75-5-602.

(8) 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) 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."

Section 4. Section 75-5-605, MCA, is amended to read:

"75-5-605. Prohibited activity -- exemption. (1) It is unlawful to:

(a) cause pollution, as defined in 75-5-103, of any state waters or to place or cause to be placed any wastes where they will cause pollution of any state waters. Any placement of materials that is authorized by a permit issued by any state or federal agency is not a placement of wastes within the prohibition of this subsection if the agency's permitting authority includes provisions for review of the placement of materials to ensure that it will not cause pollution of state waters.

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained in the permit;

(c) site and construct a sewage lagoon less than 500 feet from an existing water well;

- (d) cause degradation of state waters without authorization pursuant to 75-5-303;
- (e) violate any order issued pursuant to this chapter; or
- (f) violate any provision of this chapter.

(2) Except for the permit exclusions identified in 75-5-401(5), it is unlawful to carry on any of the following activities without a current permit from the department:

- (a) construct, modify, or operate a disposal system that discharges into any state waters;
- (b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; ~~or~~
- (c) discharge sewage, industrial wastes, or other wastes into any state waters; or
- (d) commence a construction activity that:
 - (i) disturbs more than 1 acre at a single site; or
 - (ii) is part of a larger common plan of development or sale that will ultimately disturb 1 acre or more.

(3) Activities associated with routine or periodic maintenance, repair, replacement, or operation of irrigation water conveyance systems, including activities associated with any constructed channel, canal, ditch, pipeline, or portion of any constructed channel, canal, ditch, or pipeline, are not prohibited activities under this chapter if the activities do not result in exceeding water quality standards for any receiving water outside the irrigation water conveyance system. The diversion of water in accordance with an existing water right or permit pursuant to Title 85, chapter 2, is not a prohibited activity under this chapter."

Section 5. Section 75-5-1102, MCA, is amended to read:

"75-5-1102. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department and the department of natural resources and conservation in the administration of the program, including but not limited to costs of servicing loans and issuing debt; program startup costs; financial, management, and legal consulting fees; and reimbursement costs for support services from other state agencies.

(2) "Cost" means, with reference to a project, all capital costs incurred or to be incurred by a municipality or a private person, including but not limited to engineering, construction, financing, and other fees, interest during construction, and a reasonable allowance for contingencies to the extent permitted by the federal act and regulations promulgated under the federal act.

(3) "Federal act" means the Federal Water Pollution Control Act, also known as the Clean Water Act,

33 U.S.C. 1251 through 1387, as amended.

(4) "Intended use plan" means the annual plan adopted by the department and submitted to the environmental protection agency that describes how the state intends to use the money in the revolving fund.

(5) "Loan" means a loan of money from the revolving fund to a municipality or a private person.

(6) "Municipality" means any state agency, city, town, or other public body created pursuant to state law, including an authority as defined in 75-6-304.

(7) "Private person" means an individual, corporation, partnership, or other nongovernmental legal entity.

(8) "Program" means the water pollution control state revolving fund program established by this part.

(9) "Project" means an activity that is eligible for financing by the program under the federal act, including treatment works, as defined ~~under section 1292 of the federal act~~ (in 33 U.S.C. 1292), and nonpoint source pollution control under ~~section 1329 of the federal act~~ (33 U.S.C. 1329), and for which a municipality or private person makes an application for a loan or other financial assistance.

(10) "Revolving fund" means the fund established by 75-5-1106."

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