

HOUSE BILL NO. 835  
INTRODUCED BY W. STAHL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE ENVIRONMENT; CREATING THE OFFICE OF ENVIRONMENTAL PERMIT FACILITATION WITHIN THE DEPARTMENT OF ENVIRONMENTAL QUALITY; ESTABLISHING THE PURPOSE AND RESPONSIBILITIES OF THE OFFICE; ESTABLISHING THE ENVIRONMENTAL PERMIT FACILITATION INTERNSHIP ACT; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 75-2-211 AND 75-5-403, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**NEW SECTION. Section 1. Office of environmental permit facilitation -- purpose and responsibilities -- headquarters.** (1) There is an office of environmental permit facilitation within the department of environmental quality. The office is a principal subdivision within one or more divisions that administer permitting laws in the department of environmental quality.

(2) The purpose of the office is to:

(a) expedite the water and air quality permitting process by reviewing certain environmental permit applications for completeness;

(b) improve the overall efficiency and timeliness of environmental permit processing; and

(c) provide educational internship opportunities.

(3) The office shall:

(a) review applications submitted under 75-2-211 and Title 75, chapter 5, part 4, for completeness; and

(b) implement the provisions of [sections 2 through 9].

(4) The central headquarters of the office of environmental permit facilitation must be located in Butte, Montana.

**NEW SECTION. Section 2. Short title.** [Sections 2 through 9] are known and may be cited as the "Environmental Permit Facilitation Internship Act".

**NEW SECTION. Section 3. Establishment of program.** It is the public policy of this state that there

be an environmental permit facilitation intern program open to students attending the university of Montana-Missoula, Montana state university-Bozeman, Montana state university-Billings, Montana state university-northern, university of Montana-western, and Montana tech of the university of Montana or a state-funded, 2-year postsecondary institution. A private college of higher education or a tribally controlled community college in the state may also establish an intern program for the purposes of [sections 2 through 9].

NEW SECTION. **Section 4. Term of service.** Each environmental permit facilitation intern shall serve for a period to be specified by the office of environmental permit facilitation.

NEW SECTION. **Section 5. Number of interns.** Subject to [section 9], each institution referred to in [section 3] may have at least one intern. An additional five positions may be chosen from applications submitted to the office of environmental permit facilitation.

NEW SECTION. **Section 6. Selection of interns.** The presidents of the several colleges and universities shall select the environmental permit facilitation interns. The students that are selected may be enrolled in any program offered by the college or university.

NEW SECTION. **Section 7. Intern qualifications.** (1) The interns must have the following qualifications:

- (a) successful completion of at least three courses in the disciplines of chemistry, biology, environmental sciences, or engineering at an institution of higher education;
  - (b) attainment of at least the level of a junior at a 4-year institution of higher education or attainment of at least the level of a sophomore at a 2-year postsecondary institution; and
  - (c) the necessary degree of scholastic achievement, leadership, and involvement in community affairs.
- (2) Preference must be given to Montana high school graduates.

NEW SECTION. **Section 8. Office to establish guidelines.** Each environmental permit facilitation intern is subject to guidelines established by the office of environmental permit facilitation.

NEW SECTION. **Section 9. Program not mandatory.** An institution of higher education may choose not to participate in the environmental permit facilitation intern program.

**Section 10.** Section 75-2-211, MCA, is amended to read:

**"75-2-211. 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) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this section, 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~~ office of environmental permit facilitation the appropriate permit application on forms available from the department.

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

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

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

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

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

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

(3) The permit program administered by the department and the office of environmental permit facilitation 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 department;

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

(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~~ office of environmental permit facilitation may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The ~~department~~ office of environmental permit facilitation 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 to the department and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section to the office of environmental permit facilitation. If the ~~department~~ office of environmental permit facilitation fails to notify the applicant in writing within ~~30~~ 15 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 75-1-205(4) and 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:

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

(ii) within 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, within 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, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after ~~its~~ the office of environmental permit facilitation's receipt of a filed application, as provided in subsection (8), of its approval or denial of the application, except as provided in subsection (14).

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

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

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

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

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

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) (a) The department's decision on the application is not final until 15 days have elapsed from the date of the decision.

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

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

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

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

- (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;
- (b) are subject to the requirements of 75-2-215; or
- (c) require the preparation of an environmental impact statement.

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

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

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

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

(15) (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 (15)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department."

**Section 11.** Section 75-5-403, MCA, is amended to read:

**"75-5-403. Denial or modification of permit -- time for review of permit application.** (1) The ~~department~~ office of environmental permit facilitation shall review for completeness all applications for new permits within 60 days of the receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all major deficiency issues, based on the information submitted. The ~~department~~ office of environmental permit facilitation and the applicant may extend these timeframes, by mutual agreement, by not more than 75 days. An application is considered complete unless the applicant is notified of a deficiency within the appropriate review period.

(2) If the department denies an application for a permit or modifies a permit, the department shall give written notice of its action to the applicant or holder and the applicant or holder may request a hearing before the board, in the manner stated in 75-5-611, for the purpose of petitioning the board to reverse or modify the action of the department. The hearing must be held within 30 days after receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the department. If the holder does not request a hearing before the board, modification of a permit is effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the holder does request a hearing before the board, an order modifying the permit is not effective until 20 days after receipt of notice of the action of the board."

NEW SECTION. **Section 12. Appropriation.** There is appropriated from the general fund to the department of environmental quality \$75,000 for the 2009 biennium for the purpose of funding the operations of the office of environmental permit facilitation.

NEW SECTION. **Section 13. Notification to tribal governments.** The secretary of state shall send

a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

NEW SECTION. **Section 14. Codification instruction.** [Sections 1 through 9] are intended to be codified as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 through 9].

NEW SECTION. **Section 15. Effective date.** [This act] is effective July 1, 2007.

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