

HOUSE BILL 35

Introduced by Raney, et al.

7/09	Introduced
7/09	Referred to Natural Resources
7/09	First Reading
7/10	Hearing
7/10	Fiscal Note Requested
7/11	Fiscal Note Received
7/12	Fiscal Note Printed
	Died in Committee

1
2 INTRODUCED BY House BILL NO. 35
3 *Randy Doherty*
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE
5 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO COLLECT
6 FEES FOR DEVELOPING AND ENFORCING AIR QUALITY PERMITS
7 REQUIRED UNDER TITLE 75, CHAPTER 2, AND FOR WATER QUALITY
8 PERMITS UNDER TITLE 75, CHAPTER 5; ESTABLISHING A WATER
9 QUALITY SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 75-2-211
10 AND 75-5-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
11 DATE."

12
13 STATEMENT OF INTENT

14 A statement of intent is required for this bill because
15 it requires the board of health and environmental sciences
16 to adopt rules, pursuant to 75-5-401, implementing fees to
17 be assessed for water quality permits. The intent of this
18 bill is to require the department of health and
19 environmental sciences to recover the reasonable costs, both
20 direct and indirect, of developing, administering,
21 implementing, and enforcing air quality permits required
22 under Title 75, chapter 2, and water quality permits
23 required under Title 75, chapter 5.

24 The reasonable costs associated with the department's
25 permitting responsibilities must be determined by the

1 department; however, the costs may not exceed the
2 department's and board's documentable costs. Generally, the
3 department's reasonable costs should encompass all marginal
4 costs associated with permitting, including but not limited
5 to staff time, travel, contracted services, supplies and
6 materials, court fees, laboratory work, communications, and
7 photocopying. Overhead costs, such as rent, employees
8 benefits, computers, vehicles, and other equipment, may not
9 be included in the determination of reasonable costs.
10

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

12 **Section 1.** Section 75-2-211, MCA, is amended to read:

13 "75-2-211. (Temporary) Permits for construction,
14 installation, alteration, or use. (1) The department shall
15 provide for the issuance, suspension, revocation, and
16 renewal of a permit issued under this part.

17 (2) Not later than 180 days before construction,
18 installation, or alteration begins or as a condition of use
19 of any machine, equipment, device, or facility which the
20 board finds may directly or indirectly cause or contribute
21 to air pollution or which is intended primarily to prevent
22 or control the emission of air pollutants, the owner or
23 operator shall file with the department the appropriate
24 permit application on forms available from the department.

25 (3) Concurrent with the submittal of a permit

1 application required by subsection (2) and annually for the
 2 duration of the permit, the applicant shall submit to the
 3 department a fee sufficient to cover the reasonable costs,
 4 both direct and indirect, of developing and administering
 5 the permitting requirements in this chapter, including the
 6 reasonable costs of:

7 (a) reviewing and acting upon the application;

8 (b) developing, implementing, and enforcing the terms
 9 and conditions of the permit if the permit is issued,
 10 including--However--this-amount-does-not-include--any--court
 11 costs-or-other costs associated with any enforcement action.
 12 If the permit is not issued, the department shall return
 13 this portion of the fee to the applicant.

14 (c) emissions and ambient monitoring;

15 (d) preparing generally applicable regulations or
 16 guidance;

17 (e) modeling, analysis, and demonstrations; and

18 (f) preparing inventories and tracking emissions.

19 (4) In addition to the fee required under subsection
 20 (3), the board may order the assessment of additional fees
 21 required to fund specific activities of the department that
 22 are directed at a particular geographic area if the
 23 legislature authorizes the activities and appropriates the
 24 funds for the activities, including emissions or ambient
 25 monitoring, modeling analysis or demonstrations, or

1 emissions inventories or tracking. Additional assessments
 2 may be levied only on those sources that are within or are
 3 believed by the department to be impacting the geographic
 4 area. Before the board may require the assessments, it shall
 5 first determine, after opportunity for hearing, that the
 6 activities to be funded are necessary for the administration
 7 or implementation of this chapter, that the assessments
 8 apportion the required funding in an equitable manner, and
 9 that the department has obtained legislative authorization
 10 for the expenditure and the necessary appropriation.

11 (5) As a condition of the continuing validity of
 12 permits issued by the department under this part prior to
 13 October 1, 1991, the department may require the permit holder
 14 to pay an annual fee sufficient to cover the costs
 15 identified in subsection (3).

16 (6) For any existing source of air contaminants that is
 17 subject to Title V of the federal Clean Air Act, 42 U.S.C.
 18 7401, et seq., as amended, and that is not required to hold
 19 an air quality permit from the department as of October 1,
 20 1991, the board may, as a condition of continued operation,
 21 require by rule that the owner or operator of the source pay
 22 the annual fee provided for in subsection (3). Nothing in
 23 this subsection may be construed as allowing the department
 24 to charge any source of air contaminants more than one
 25 annual fee that is designed to cover the costs identified in

1 subsection (3).

2 (7) The fees collected by the department pursuant to
3 this section must be deposited in the state special revenue
4 fund to be appropriated by the legislature to the department
5 for the development and administration of the permitting
6 requirements in this chapter.

7 (8) (a) The department shall give written notice of the
8 amount of the fee to be assessed and the basis for the
9 department's fee assessment under this section to the owner
10 or operator of the air contaminant source. The owner or
11 operator may appeal the department's fee assessment to the
12 board within 20 days after receipt of the written notice.

13 (b) An appeal must be based upon the allegation that
14 the fee assessment is erroneous or excessive. An appeal may
15 not be based only on the amount of the fee schedule adopted
16 by the board.

17 (c) If any part of the fee assessment is not appealed,
18 it must be paid to the department upon receipt of the notice
19 in subsection (8)(a).

20 (d) The contested case provisions of the Montana
21 Administrative Procedure Act provided for in Title 2,
22 chapter 4, apply to any hearing before the board under this
23 subsection (8).

24 (9) Nothing in this section shall restrict the board's
25 authority to adopt regulations providing for a single air

1 quality permit system.

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

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

8 (12) An application is not considered filed until the
9 applicant has submitted all fees and information and
10 completed all application forms required by subsections (2)
11 through (6) and (11). However, if the department fails to
12 notify the applicant in writing within 30 days after the
13 purported filing of an application that the application is
14 incomplete and fails to list the reasons why the application
15 is considered incomplete, the application is considered
16 filed as of the date of the purported filing.

17 (13) (a) Where an application for a permit requires the
18 compilation of an environmental impact statement under the
19 Montana Environmental Policy Act, the department shall
20 notify the applicant in writing of the approval or denial of
21 the application within:

22 (i) 180 days of the receipt of a filed application, as
23 defined in subsection (12), if the department prepares the
24 environmental impact statement; or

25 (ii) within 30 days after issuance of the final

1 environmental impact statement by the lead agency if a state
2 agency other than the department has been designated by the
3 governor as lead agency for preparation of the environmental
4 impact statement.

5 (b) However, where an application does not require the
6 compilation of an environmental impact statement, the
7 department shall notify the applicant in writing within 60
8 days of the receipt of a filed application, as defined in
9 subsection (12), of the approval or denial of the
10 application. Notification of approval or denial may be
11 served personally or by registered or certified mail on the
12 applicant or his agent.

13 (14) When the department approves or denies the
14 application for a permit under this section, a person who is
15 jointly or severally adversely affected by the department's
16 decision may request, within 15 days after the department
17 renders its decision, upon affidavit setting forth the
18 grounds therefor, a hearing before the board. A hearing
19 shall be held under the provisions of the Montana
20 Administrative Procedure Act.

21 (15) The department's decision on the application is not
22 final unless 15 days have elapsed and there is no request
23 for a hearing under this section. The filing of a request
24 for a hearing postpones the effective date of the
25 department's decision until the conclusion of the hearing

1 and issuance of a final decision by the board.

2 75-2-211. (Effective November 1, 1992) Permits for
3 construction, installation, alteration, or use. (1) The
4 department shall provide for the issuance, suspension,
5 revocation, and renewal of a permit issued under this part.

6 (2) For all sources of air contaminants that are
7 subject to the provisions of Title V of the federal Clean
8 Air Act, 42 U.S.C. 7401, et seq., as amended, the provisions
9 of this section apply in addition to the other applicable
10 provisions of this chapter.

11 (a) The board shall by rule require that permits issued
12 to sources described in subsection (2) be of limited
13 duration, but it may not limit the duration of the permits
14 beyond that required by the federal Clean Air Act, 42 U.S.C.
15 7401, et seq., as amended.

16 (b) The board shall by rule provide for the renewal of
17 permits issued to the sources.

18 (c) The board shall by rule establish a transition
19 schedule for air quality permits held by sources of air
20 contaminants subject to the provisions of subsection (2).
21 The transition schedule must specify dates for the
22 expiration of the permits, absent an application for renewal
23 by the source. The transition schedule may not specify
24 expiration dates that are earlier in time than those
25 required by Title V of the federal Clean Air Act, 42 U.S.C.

7401, et seq., as amended. The transition schedule established by the board also applies to existing sources of air contaminants that are subject to the provisions of Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended, and that do not hold an air quality permit from the department as of November 2, 1992.

(3) Not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility which the board finds may directly or indirectly cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(4) Concurrent with the submittal of a permit application required by subsection (3) and annually for the duration of the permit, the applicant shall submit to the department a fee sufficient to cover the reasonable costs, both direct and indirect, of developing and administering the permitting requirements in this chapter, including the reasonable costs of:

(a) reviewing and acting upon the application;

(b) developing, implementing, and enforcing the terms and conditions of the permit if the permit is issued, including~~---However, this amount does not include any court~~

~~costs or other~~ costs associated with any enforcement action. If the permit is not issued, the department shall return this portion of the fee to the applicant.

(c) emissions and ambient monitoring;

(d) preparing generally applicable regulations or guidance;

(e) modeling, analysis, and demonstrations; and

(f) preparing inventories and tracking emissions.

(5) In addition to the fee required under subsection (4), the board may order the assessment of additional fees required to fund specific activities of the department that are directed at a particular geographic area if the legislature authorizes the activities and appropriates the funds for the activities, including emissions or ambient monitoring, modeling analysis or demonstrations, or emissions inventories or tracking. Additional assessments may be levied only on those sources that are within or are believed by the department to be impacting the geographic area. Before the board may require the assessments, it shall first determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or implementation of this chapter, that the assessments apportion the required funding in an equitable manner, and that the department has obtained legislative authorization for the expenditure and the necessary appropriation.

1 (6) As a condition of the continuing validity of
 2 permits issued by the department under this part prior to
 3 October 1, 1991, the department may require the permitholder
 4 to pay an annual fee sufficient to cover the costs
 5 identified in subsection (4).

6 (7) For any existing source of air contaminants that is
 7 subject to Title V of the federal Clean Air Act, 42 U.S.C.
 8 7401, et seq., as amended, and that is not required to hold
 9 an air quality permit from the department as of October 1,
 10 1991, the board may, as a condition of continued operation,
 11 require by rule that the owner or operator of the source pay
 12 the annual fee provided for in subsection (4). Nothing in
 13 this subsection may be construed as allowing the department
 14 to charge any source of air contaminants more than one
 15 annual fee that is designed to cover the costs identified in
 16 subsection (4).

17 (8) The fees collected by the department pursuant to
 18 this section must be deposited in the state special revenue
 19 fund to be appropriated by the legislature to the department
 20 for the development and administration of the permitting
 21 requirements in this chapter.

22 (9) (a) The department shall give written notice of the
 23 amount of the fee to be assessed and the basis for the
 24 department's fee assessment under this section to the owner
 25 or operator of the air contaminant source. The owner or

1 operator may appeal the department's fee assessment to the
 2 board within 20 days after receipt of the written notice.

3 (b) An appeal must be based upon the allegation that
 4 the fee assessment is erroneous or excessive. An appeal may
 5 not be based only on the amount of the fee schedule adopted
 6 by the board.

7 (c) If any part of the fee assessment is not appealed,
 8 it must be paid to the department upon receipt of the notice
 9 in subsection (9)(a).

10 (d) The contested case provisions of the Montana
 11 Administrative Procedure Act provided for in Title 2,
 12 chapter 4, apply to any hearing before the board under this
 13 subsection (9).

14 (10) Nothing in this section shall restrict the board's
 15 authority to adopt regulations providing for a single air
 16 quality permit system.

17 (11) The department may, for good cause shown, waive or
 18 shorten the time required for filing the appropriate
 19 applications.

20 (12) The department shall require that applications for
 21 permits be accompanied by any plans, specifications, and
 22 other information it considers necessary.

23 (13) An application is not considered filed until the
 24 applicant has submitted all fees and information and
 25 completed all application forms required by subsections (3)

1 through (7) and (12). However, if the department fails to
 2 notify the applicant in writing within 30 days after the
 3 purported filing of an application that the application is
 4 incomplete and fails to list the reasons why the application
 5 is considered incomplete, the application is considered
 6 filed as of the date of the purported filing.

7 (14) (a) Where an application for a permit requires the
 8 compilation of an environmental impact statement under the
 9 Montana Environmental Policy Act, the department shall
 10 notify the applicant in writing of the approval or denial of
 11 the application within:

12 (i) 180 days of the receipt of a filed application, as
 13 defined in subsection (13), if the department prepares the
 14 environmental impact statement; or

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

20 (b) However, where an application does not require the
 21 compilation of an environmental impact statement, the
 22 department shall notify the applicant in writing within 60
 23 days of the receipt of a filed application, as defined in
 24 subsection (13), of the approval or denial of the
 25 application. Notification of approval or denial may be

1 served personally or by registered or certified mail on the
 2 applicant or his agent.

3 (15) When the department approves or denies the
 4 application for a permit under this section, a person who is
 5 jointly or severally adversely affected by the department's
 6 decision may request, within 15 days after the department
 7 renders its decision, upon affidavit setting forth the
 8 grounds therefor, a hearing before the board. A hearing
 9 shall be held under the provisions of the Montana
 10 Administrative Procedure Act.

11 (16) The department's decision on the application is not
 12 final unless 15 days have elapsed and there is no request
 13 for a hearing under this section. The filing of a request
 14 for a hearing postpones the effective date of the
 15 department's decision until the conclusion of the hearing
 16 and issuance of a final decision by the board."

17 **Section 2.** Section 75-5-402, MCA, is amended to read:

18 **"75-5-402. Duties of department.** The department shall:

19 (1) issue, suspend, revoke, modify, or deny permits to
 20 discharge sewage, industrial wastes, or other wastes into
 21 state waters, consistently with rules made by the board;

22 (2) examine plans and other information needed to
 23 determine whether a permit should be issued or suggest
 24 changes in plans as a condition to the issuance of a permit;

25 (3) clearly specify in any permit any limitations

1 imposed as to the volume, strength, and other significant
2 characteristics of the waste to be discharged; and

3 (4) establish as conditions to the issuance of permits
4 for which a performance bond or other surety is filed under
5 75-5-405 certain reclamation requirements sufficient to
6 prevent pollution of state waters during and after operation
7 of the project or activity for which a permit is issued; and
8 (5) adopt rules implementing the fee schedule contained
9 in [section 3]."

10 NEW SECTION. Section 3. Fees authorized for cost
11 recovery. (1) To recover the costs of permitting, the
12 department shall adopt a fee schedule for permits obtained
13 under the authority of this part. The fee must be sufficient
14 to cover the reasonable costs, both direct and indirect, of
15 developing, administering, implementing, and enforcing the
16 permit requirements of this part, including the costs of:

- 17 (a) reviewing and acting upon an application;
18 (b) any monitoring or compliance activity undertaken
19 pursuant to a permit;
20 (c) preparing generally applicable regulations or
21 guidance;
22 (d) determining nondegradation of state waters pursuant
23 to 75-5-303; and
24 (e) enforcing the terms and conditions of the permit if
25 the permit is issued, including any costs associated with

1 enforcement action.

2 (2) (a) The department shall give written notice of the
3 amount of the fee to be assessed and the basis for the
4 department's fee assessment to the applicant for a water
5 quality permit. The applicant may appeal the department's
6 fee assessment to the board within 20 days after receipt of
7 the written notice.

8 (b) An appeal must be based on the allegation that the
9 fee assessment is erroneous or excessive. An appeal may not
10 be based only on the fee schedule adopted by the department.

11 (c) If any part of the fee assessment is not appealed,
12 it must be paid to the department upon receipt of the notice
13 in subsection (2)(a).

14 (d) The contested case provisions of the Montana
15 Administrative Procedure Act, provided for in Title 2,
16 chapter 4, apply to any hearing before the board under this
17 subsection (2).

18 (3) The fee must be submitted by a permit applicant at
19 the time of application and annually thereafter for the
20 duration of the permit. An application is not considered
21 complete until the applicant has submitted all fees.

22 (4) The fee schedule may not result in the collection
23 of revenue that exceeds the board's and department's
24 documented costs.

25 (5) Fees collected pursuant to this section must be

1 deposited in the water quality special revenue account
2 established in [section 4].

3 NEW SECTION. **Section 4. Water quality special revenue**
4 **account.** (1) There is a water quality special revenue
5 account within the state special revenue fund established in
6 17-2-102. There must be paid into the account all revenue
7 collected pursuant to [section 3].

8 (2) Funds in the account may be used only to pay
9 department and board costs as described in [section 3].

10 NEW SECTION. **Section 5. Codification instruction.**
11 [Sections 3 and 4] are intended to be codified as an
12 integral part of Title 75, chapter 5, part 4, and the
13 provisions of Title 75, chapter 5, part 4, apply to
14 [sections 3 and 4].

15 NEW SECTION. **Section 6. Effective date.** [This act] is
16 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0035, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring the Department of Health and Environmental Sciences to collect fees for developing and enforcing air quality permits required under Title 75, Chapter 2, and for water quality permits under Title 75, Chapter 5; establishing a water quality special revenue account; and providing an immediate effective date.

Water Quality BureauASSUMPTIONS:

1. Actual program costs were used.
2. Fees would be available as of March 1, 1993.
3. Present level of federal support will be maintained through 1993.

FISCAL IMPACT:

	<u>FY93</u>
<u>Revenue:</u>	
Permit Fees (new)	\$299,300
RIT	(36,576)
Federal	(262,724)
<u>Funding:</u>	
RIT Account	(36,576)
Federal Revenue	(262,724)
Permit Fees	299,300


EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Permit holders such as cities and county sewer districts will be required to pay fees.

TECHNICAL NOTES:

On page 2, lines 7, 8 and 9 necessary and reasonable costs of maintaining the permit program are incorrectly excluded from cost recovery.

(Over)


 STEVE YEAKEL, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

7/11/92

ROBERT H. RANEY, PRIMARY SPONSOR

DATE

Fiscal Note for HB0035, as introduced

HB 35

Air Quality Bureau

ASSUMPTIONS:

1. The expense for fiscal year 1993 would be similar to those for fiscal year 1992.
2. Staff size and needs would remain the same.
3. No change in expenses except an increase in the amount attributed to legal fees and court costs.

FISCAL IMPACT:

	<u>FY93</u>
<u>Revenue</u>	
General Fund	\$43,520
State Special	(43,520)
 <u>Funding:</u>	
General Fund	43,520
State Special	(43,520)

EFFECT ON LOCAL GOVERNMENTS:

None of permit fee money is included in the current county grants.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Removing certain overhead costs from fee coverage will potentially increase reliance of the department on general fund or federal grant dollars (if available).

General fund or federal fund revenue will continually be needed to fund those costs deemed unreasonable by the Statement of Intent, yet which are essential to the operation of any permitting program.