

SENATE BILL 388

Introduced by Swysgood, et al.

2/13	Introduced
2/13	Referred to Natural Resources
2/13	First Reading
2/13	Fiscal Note Requested
2/16	Hearing
2/19	Tabled in Committee
2/19	Fiscal Note Received
2/20	Fiscal Note Printed

1 *Senate* BILL NO. *388*
 2 INTRODUCED BY *Sen. Jayne R. Berg*
 3 *Sen. David B. Bon*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE WATER
 5 QUALITY NONDEGRADATION POLICY; DEFINING "DEGRADATION" AND
 6 CERTAIN OTHER TERMS; ALLOWING THE USE OF MIXING ZONES;
 7 REQUIRING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO
 8 ADOPT RULES GOVERNING THE USE OF MIXING ZONES AND
 9 NONDEGRADATION POLICY IMPLEMENTATION; AND AMENDING SECTIONS
 10 75-5-103, 75-5-202, 75-5-301, AND 75-5-303, MCA."

12 STATEMENT OF INTENT

13 A statement of intent is required for this bill because
 14 the bill gives the board of health and environmental
 15 sciences authority to adopt administrative rules. It is the
 16 intent of the legislature that the board develop rules that
 17 effectively and efficiently implement the requirements of
 18 [this act].

19
 20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 **Section 1.** Section 75-5-103, MCA, is amended to read:

22 "75-5-103. Definitions. Unless the context requires
 23 otherwise, in this chapter, the following definitions apply:

24 (1) "Board" means the board of health and environmental
 25 sciences provided for in 2-15-2104.

1 (2) "Contamination" means impairment of the quality of
 2 state waters by sewage, industrial wastes, or other wastes,
 3 creating a hazard to human health.

4 (3) "Council" means the water pollution control
 5 advisory council provided for in 2-15-2107.

6 (4) (a) "Degradation" means a lowering of water quality
 7 to more than a de minimis extent as a result of a source
 8 discharging pollutants to surface water or ground water. The
 9 lowering of water quality may not:

10 (i) exceed numeric water quality standards established
 11 by the board for the applicable class of water pursuant to
 12 75-5-301; or

13 (ii) impair an existing use.

14 (b) Degradation does not mean:

15 (i) changes in surface water or ground water quality,
 16 whether or not applicable ground water quality standards for
 17 dissolved substances are violated, resulting from nonpoint
 18 source pollutants from lands on which all reasonable land,
 19 soil, and water management or conservation practices have
 20 been applied;

21 (ii) temporary changes in surface water quality
 22 resulting from short-term construction or rehabilitation
 23 activities performed in accordance with board rules
 24 providing for short-term exemptions from nondegradation
 25 requirements; or

1 (iii) changes in water quality that occur within a
2 mixing zone.

3 (5) "De minimis extent" means:

4 (a) insignificant in terms of the potential to impair
5 an existing or designated water use or cause lowering of
6 water quality; and

7 (b) in the case of national resource waters, as defined
8 by the board, insignificant in terms of the potential to
9 impair the qualities that caused the national resource
10 designation.

11 {4}{(6)} "Department" means the department of health and
12 environmental sciences provided for in Title 2, chapter 15,
13 part 21.

14 {5}{(7)} "Disposal system" means a system for disposing
15 of sewage, industrial, or other wastes and includes sewage
16 systems and treatment works.

17 {6}{(8)} "Effluent standard" means any a restriction or
18 prohibition on quantities, rates, and concentrations of
19 chemical, physical, biological, and other constituents which
20 that are discharged into state waters.

21 (9) "High quality waters" means state waters whose
22 quality is worse for not more than three parameters than the
23 standards established for the water's class pursuant to
24 75-5-301.

25 {7}{(10)} "Industrial waste" means any a waste substance

1 from the process of business or industry or from the
2 development of any natural resource, together with any
3 sewage that may be present.

4 {8}{(11)} "Local department of health" means the staff,
5 including health officers, employed by a county, city,
6 city-county, or district board of health.

7 (12) "Lowering of water quality" means a statistically
8 significant reduction, accounting for natural variations, in
9 water quality, as measured using appropriate assessment
10 protocols, for parameters for which numeric standards have
11 been adopted. In making a determination as to whether or not
12 water quality has been lowered, it is presumed that if the
13 numeric criteria established to protect specific uses are
14 met, the beneficial uses they were designed to protect are
15 protected.

16 (13) "Mixing zone" means an area established in a permit
17 issued by the department in which water quality standards
18 may be exceeded.

19 {9}{(14)} "Other wastes" means garbage, municipal refuse,
20 decayed wood, sawdust, shavings, bark, lime, sand, ashes,
21 offal, night soil, oil, grease, tar, heat, chemicals, dead
22 animals, sediment, wrecked or discarded equipment,
23 radioactive materials, solid waste, and all other substances
24 that may pollute state waters.

25 {10}{(15)} "Owner or operator" means any a person who

owns, leases, operates, controls, or supervises a point source.

~~(11)~~(16) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(12)~~(17) "Point source" means any a discernible, confined, and discrete conveyance, including but not limited to any a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(13)~~(18) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters which that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge, seepage, drainage, infiltration, or flow of any a liquid, gaseous, solid, radioactive, or other substance into any state water which that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration or flow which is authorized

under the pollution discharge permit rules of the board is not pollution under this chapter.

~~(14)~~(19) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(15)~~(20) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(16)~~(21) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

~~(17)~~(22) "State waters" means any a body of water, irrigation system, or drainage system, either surface or underground; however, this subsection does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters.

~~(18)~~(23) "Treatment works" means works installed for

treating or holding sewage, industrial wastes, or other wastes."

Section 2. Section 75-5-202, MCA, is amended to read:

"75-5-202. Board hearings. The board shall hold hearings necessary for the proper administration of this chapter, ~~or, in the case of permit-issuance hearings, it may~~ delegate this function to the department."

Section 3. Section 75-5-301, MCA, is amended to read:

"75-5-301. Classification and standards for state waters. Consistent with the provisions of 80-15-201, the board shall:

(1) establish and modify the classification of all waters in accordance with their present and future most beneficial uses;

(2) formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention;

(3) review, from time to time at intervals of not more than 3 years, established classifications of waters and standards of water purity and classification;

(4) adopt rules governing the use of mixing zones in permits issued by the department that, at a minimum, require that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for review and authorization of degradation; and

(b) establish criteria for determining important economic or social development."

Section 4. Section 75-5-303, MCA, is amended to read:

"75-5-303. Nondegradation policy. ~~The board shall~~ require:

~~(1) that any state waters whose existing quality is higher than the established water quality standards be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of these waters; and~~

~~(2) any industrial, public, or private project or development which would constitute a new source of pollution or an increased source of pollution to high quality waters, referred to in subsection (1), to provide the degree of waste treatment necessary to maintain that existing high water quality;~~ (1) Existing uses of state waters and the

1 level of water quality necessary to protect those uses must
2 be maintained and protected.

3 (2) Unless degradation is authorized by the board under
4 subsection (3), the quality of high quality waters must be
5 maintained.

6 (3) The board may not authorize degradation of high
7 quality waters unless it has been affirmatively demonstrated
8 to the board that:

9 (a) degradation is necessary to accommodate important
10 economic or social development in the area in which the
11 waters are located and that the requested degradation will
12 not preclude existing and anticipated use of state waters;
13 and

14 (b) all reasonable land, soil, and water management or
15 conservation practices will be implemented by the applicant
16 prior to and during the proposed activity."

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0388, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act clarifying the water quality nondegradation policy; defining "degradation" and certain other terms; allowing the use of mixing zones; and requiring the Board of Health and Environmental Sciences to adopt rules governing the use of mixing zones and nondegradation policy implementation.

ASSUMPTIONS:

1. The Board of Health and Environmental Sciences will delegate administration of Title 75, Chapter 5 to the DHES as authorized in SB0388 (MCA 75-5-202).
2. DHES will review subdivisions and municipal or industrial activities with discharges to state waters to determine if they are in compliance with the nondegradation requirements of the SB0388.
3. Current implementation of the nondegradation policy is conducted by portions of several FTEs for an approximate total of 1.0 FTE. These activities are funded by approximately \$43,000 of federal funds in CV 50052 Water Pollution Control and \$22,000 of general fund in CV 50051 Water Quality Management.
4. Personal services and operating expenses for fiscal impact are summarized below.

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	1.00	4.50	3.50	1.00	4.50	3.50
Personal Services	43,000	155,282	112,282	43,000	155,316	112,316
Operating	22,000	128,188	106,188	22,000	119,150	97,150
Total	65,000	283,470	218,470	65,000	274,466	209,466
 <u>Funding:</u>						
General Fund	22,000	22,000	0	22,000	22,000	0
State Special Fees		218,470	218,470	0	209,466	209,466
Federal Funds	43,000	43,000	0	43,000	43,000	0
Total	65,000	283,470	218,470	65,000	274,466	209,466

Dave Lewis 2-19-93
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Chuck Swysgood 2/24/93
 CHUCK SWYSGOOD, PRIMARY SPONSOR DATE

Fiscal Note for SB0388, as introduced

SB 388