

SENATE BILL NO. 401

INTRODUCED BY MCCLERNAN, DRISCOLL, WATERMAN,  
WEEDING, D. BROWN, ENDY, RYE, HALLIGAN

IN THE SENATE

FEBRUARY 15, 1993

INTRODUCED AND REFERRED TO COMMITTEE  
ON NATURAL RESOURCES.

FIRST READING.

MARCH 27, 1993

COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

MARCH 29, 1993

PRINTING REPORT.

SECOND READING, DO PASS AS AMENDED.

MARCH 30, 1993

ENGROSSING REPORT.

THIRD READING, PASSED.  
AYES, 29; NOES, 21.

TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 31, 1993

INTRODUCED AND REFERRED TO COMMITTEE  
ON NATURAL RESOURCES.

FIRST READING.

APRIL 13, 1993

COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

APRIL 14, 1993

SECOND READING, CONCURRED IN AS  
AMENDED.

ON MOTION, RULES SUSPENDED TO ALLOW  
SECOND AND THIRD READING ON SAME DAY.

THIRD READING, CONCURRED IN.  
AYES, 57; NOES, 42.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 19, 1993

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 20, 1993

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *401*  
2 INTRODUCED BY *McClam*  
3 *Water*  
4 *James W. Leach, Dave Brown, Emily C. G. Hall*  
5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE WATER  
6 QUALITY LAWS; DEFINING "DEGRADATION" AND CERTAIN OTHER  
7 TERMS; TRANSFERRING AUTHORITY FROM THE BOARD OF HEALTH AND  
8 ENVIRONMENTAL SCIENCES TO THE DEPARTMENT OF HEALTH AND  
9 ENVIRONMENTAL SCIENCES TO AUTHORIZE DEGRADATION OF STATE  
10 WATERS; ALLOWING APPEAL OF THE DEPARTMENT'S FINAL DECISION  
11 TO THE BOARD; REQUIRING THE BOARD TO ADOPT RULES REGARDING  
12 MIXING ZONES AND THE NONDEGRADATION POLICY; CLARIFYING THAT  
13 IT IS UNLAWFUL TO CAUSE DEGRADATION OF STATE WATERS WITHOUT  
14 AUTHORIZATION; AMENDING SECTIONS 75-5-103, 75-5-301,  
15 75-5-303, AND 75-5-605, MCA; AND PROVIDING AN APPLICABILITY  
16 DATE AND AN IMMEDIATE EFFECTIVE DATE."

## STATEMENT OF INTENT

17  
18 A statement of intent is required for this bill because  
19 the bill gives the board of health and environmental  
20 sciences authority to adopt administrative rules. The  
21 legislature clearly intends that the nondegradation policy  
22 protect and maintain existing quality of state waters from  
23 any loss in the quality of those waters. The nondegradation  
24 policy is intended to apply to any activity that has the  
25 potential to affect existing water quality and requires

1 department review of all such activities to ensure that  
2 degradation does not occur.

3 In recognition that certain activities promote general  
4 welfare and may justify lower water quality in a particular  
5 water segment, the legislature intends that degradation be  
6 allowed in limited circumstances and under certain  
7 conditions. For example, if there is no alternative to a  
8 proposed project that does not result in degradation and the  
9 project is found to be in the best interests of the state,  
10 degradation may be allowed provided that water quality  
11 protection practices are implemented that limit degradation  
12 to the extent determined to be economically and  
13 technologically feasible.

14 To promote the goal of maintaining existing high-quality  
15 water, the board is to develop rules specifying the level of  
16 protection or treatment required if degradation is allowed.  
17 Rules are to be developed that provide procedures for  
18 department review of applications to degrade state waters,  
19 that provide guidance or standards for the level of  
20 treatment required, and that establish criteria that allow  
21 the department to weigh the social and economic benefit to  
22 the public of allowing the proposed project against the loss  
23 of water quality. It is the intent of the legislature that  
24 the department's decision involve public and governmental  
25 agencies' comment prior to a final decision.

It is further the intent of the legislature that the board develop rules that will provide guidance to the department in the use and creation of mixing zones. The rules are to ensure that water quality impacts from the use of mixing zones are minimized.

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

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

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

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

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

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

(4) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6) "Disposal system" means a system for disposing

of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(7) "Effluent standard" means any a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into state waters.

(8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(9) "High-quality waters" means state waters whose quality for a parameter is better than standards established pursuant to 75-3-301.

(10) "Industrial waste" means any a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(11) "Interested person" means a person who has submitted comments on the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(12) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(13) "Mixing zone" means an area established in a permit

or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

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

{10}(15) "Owner or operator" means any a person who owns, leases, operates, controls, or supervises a point source.

(16) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

{11}(17) "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}(18) "Point source" means any a discernible, confined, and discrete conveyance, including but not limited to any 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}(19) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters which 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 liquid, gaseous, solid, radioactive, or other substance into any state water which 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}(20) "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}(21) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

{16}(22) "Standard of performance" means a standard

1 adopted by the board for the control of the discharge of  
2 pollutants which reflects the greatest degree of effluent  
3 reduction achievable through application of the best  
4 available demonstrated control technology, processes,  
5 operating methods, or other alternatives, including, where  
6 practicable, a standard permitting no discharge of  
7 pollutants.

8 ~~{17}~~(23) "State waters" means any a body of water,  
9 irrigation system, or drainage system, either surface or  
10 underground; however, this subsection does not apply to  
11 irrigation waters where the waters are used up within the  
12 irrigation system and the waters are not returned to any  
13 other state waters.

14 ~~{18}~~(24) "Treatment works" means works installed for  
15 treating or holding sewage, industrial wastes, or other  
16 wastes.

17 (25) "Water quality protection practices" means those  
18 activities, prohibitions, maintenance procedures, or other  
19 management practices applied to point and nonpoint sources  
20 designed to protect, maintain, and improve the quality of  
21 state waters. Water quality protection practices include but  
22 are not limited to treatment requirements, standards of  
23 performance, effluent standards, and operating procedures  
24 and practices to control site runoff, spillage or leaks,  
25 sludge or water disposal, or drainage from material

1 storage."

2 **Section 2.** Section 75-5-301, MCA, is amended to read:

3 "75-5-301. Classification and standards for state  
4 waters. Consistent with the provisions of 75-5-302 through  
5 75-5-307 and 80-15-201, the board shall:

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

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

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

16 (4) adopt rules governing the use of mixing zones that,  
17 at a minimum, require that mixing zones have:

18 (a) the smallest practicable size;

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

20 (c) definable boundaries; and

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

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

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality; and

(c) establish criteria for determining whether a proposed activity or class of activities will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3)."

**Section 3.** 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 level of water quality necessary to protect those uses must be maintained and protected.**

**(2) Unless authorized by the department under subsection (3), the quality of high-quality waters must be maintained.**

**(3) The department may not authorize degradation of high-quality waters unless it has been affirmatively demonstrated to the department that:**

**(a) degradation is necessary because there are no economically and technologically feasible alternatives to the proposed project that would result in no degradation;**

**(b) the proposed project will result in important economic or social development that exceeds the benefit to society of maintaining existing high-quality waters;**

**(c) existing and anticipated use of state waters will be fully protected; and**

**(d) the least degrading water quality protection practices determined by the department to be economically and technologically feasible will be fully implemented by the applicant prior to and during the proposed activity.**

**(4) The department shall issue a preliminary decision either denying or authorizing degradation and shall provide public notice and a 30-day comment period prior to issuing a**

1 final decision.

2 (5) An interested person wishing to challenge a final  
3 department decision may request a hearing before the board  
4 within 20 days of the final department decision. The  
5 contested case procedures of Title 2, chapter 4, part 6,  
6 apply to a hearing under this section.

7 (6) Every 5 years, the department shall review  
8 authorizations to degrade state water to ensure that the  
9 objectives of the nondegradation policy are being met.  
10 Whenever the objectives of the policy are not being met, the  
11 department may revoke or modify the authorization."

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

13 **"75-5-605. Prohibited activity.** (1) It is unlawful to:

14 (a) cause pollution as defined in 75-5-103 of any state  
15 waters or to place or cause to be placed any wastes in a  
16 location where they are likely to cause pollution of any  
17 state waters;

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

21 (c) cause degradation of state waters without  
22 authorization pursuant to 75-5-303;

23 ~~(c)~~(d) violate any order issued pursuant to this  
24 chapter; or

25 ~~(d)~~(e) violate any provision of this chapter.

1 (2) It is unlawful to carry on any of the following  
2 activities without a current permit from the department:

3 (a) construct, modify, or operate a disposal system  
4 which discharges into any state waters;

5 (b) construct or use any outlet for the discharge of  
6 sewage, industrial wastes, or other wastes into any state  
7 waters; or

8 (c) discharge sewage, industrial wastes, or other  
9 wastes into any state waters."

10 **NEW SECTION. Section 5.** Rulemaking authority. The  
11 board may adopt rules to implement 75-5-301 and 75-5-303.

12 **NEW SECTION. Section 6.** Codification instruction.  
13 [Section 5] is intended to be codified as an integral part  
14 of Title 75, chapter 5, part 3, and the provisions of Title  
15 75, chapter 5, part 3, apply to [section 5].

16 **NEW SECTION. Section 7.** Applicability. [This act]  
17 applies to all requests to degrade state waters filed with  
18 the department after [the effective date of this act].

19 **NEW SECTION. Section 8.** Effective date. [This act] is  
20 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 SB0401, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act amending the water quality laws; defining "degradation" and certain other terms; transferring authority from the Board of Health and Environmental Sciences to the Department of Health and Environmental Sciences to authorize degradation of state waters; allowing appeal of the department's final decision to the Board; requiring the Board to adopt rules regarding mixing zones and the nondegradation policy; and clarifying that it is unlawful to cause degradation of state waters without authorization.

ASSUMPTIONS:

1. 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 and issue or deny authorizations to degrade state waters when appropriate.
2. 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.
3. Personal services and operating expenses for proposed fiscal impact are shown below.
4. The same fiscal note was prepared and submitted by DHES for SB0388. This fiscal note for SB0401 does not double the workload or FTE level. The fiscal impact to DHES will remain constant regardless of whether SB0388, SB0401, or both bills are enacted.

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</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	<u>22,000</u>	<u>128,188</u>	<u>106,188</u>	<u>22,000</u>	<u>119,150</u>	<u>97,150</u>
Total	65,000	283,470	218,470	65,000	274,466	209,466

Funding:

General Fund	22,000	22,000	0	22,000	22,000	0
State Special Fees	0	218,470	218,470	0	209,466	209,466
Federal Funds	<u>43,000</u>	<u>43,000</u>	<u>0</u>	<u>43,000</u>	<u>43,000</u>	<u>0</u>
Total	65,000	283,470	218,470	65,000	274,466	209,466

Net Impact:

State Special Fees	0	218,470	218,470	0	209,466	209,466
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(Continued)

*David Lewis* 2-20-93  
 DAVID LEWIS, BUDGET DIRECTOR DATE  
 Office of Budget and Program Planning

*Henry McClernan* 2/22/93  
 HENRY MCCLERNAN, PRIMARY SPONSOR DATE

Fiscal Note for SB0401, as introduced

SB 401

Fiscal Note Request SB0401, as introduced  
Form BD-15 page 2  
(continued)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: DHES will process nondegradation reviews for activities that discharge wastes to state waters and will issue or deny authorizations to degrade where appropriate. The time required for applying for an authorization to degrade state waters and obtaining a decision to issue or deny the authorization should be shortened as compared to the current process that requires a decision by the Board.

SB 401

APPROVED BY COMM. ON  
NATURAL RESOURCES

## SENATE BILL NO. 401

INTRODUCED BY MCCLERNAN, DRISCOLL, WATERMAN,  
GERVAIS, WEEDING, D. BROWN, ENDY, RYE, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE WATER  
QUALITY LAWS; DEFINING "DEGRADATION" AND CERTAIN OTHER  
TERMS; TRANSFERRING AUTHORITY FROM THE BOARD OF HEALTH AND  
ENVIRONMENTAL SCIENCES TO THE DEPARTMENT OF HEALTH AND  
ENVIRONMENTAL SCIENCES TO AUTHORIZE DEGRADATION OF STATE  
WATERS; ALLOWING APPEAL OF THE DEPARTMENT'S FINAL DECISION  
TO THE BOARD; REQUIRING THE BOARD TO ADOPT RULES REGARDING  
MIXING ZONES AND THE NONDEGRADATION POLICY; CLARIFYING THAT  
IT IS UNLAWFUL TO CAUSE DEGRADATION OF STATE WATERS WITHOUT  
AUTHORIZATION; ESTABLISHING A FEE; AMENDING SECTIONS  
75-5-103, 75-5-301, 75-5-303, AND 75-5-605, MCA; AND  
PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE  
DATE."

## STATEMENT OF INTENT

A statement of intent is required for this bill because  
the bill gives REQUIRES the board of health and  
environmental sciences authority to adopt administrative  
rules. The legislature clearly intends that the  
nondegradation policy protect and maintain existing quality  
of state waters from any loss in the quality of those

waters. The nondegradation policy is intended to apply to  
any activity that has the potential to affect existing water  
quality and requires department review of all such  
activities to ensure that degradation does not occur.

In recognition that certain activities promote general  
welfare and may justify lower water quality in a particular  
water segment, the legislature intends that degradation be  
allowed in limited circumstances and under certain  
conditions. For example, if there is no alternative to a  
proposed project that does not result in degradation and the  
project is found to be in the best interests of the state,  
degradation may be allowed provided that water quality  
protection practices are implemented that limit degradation  
to the extent determined to be economically and  
technologically feasible.

To promote the goal of maintaining existing high-quality  
water, the board is to develop rules specifying the level of  
protection or treatment required if degradation is allowed.  
Rules are to be developed that provide procedures for  
department review of applications to degrade state waters,  
that provide guidance or standards for the level of  
treatment required, and that establish criteria that allow  
the department to weigh the social and economic benefit to  
the public of allowing the proposed project against the loss  
of water quality. It is the intent of the legislature that

the department's decision involve public and governmental agencies' comment prior to a final decision.

It is further the intent of the legislature that the board develop rules that will provide guidance to the department in the use and creation of mixing zones. The rules are to ensure that water quality impacts from the use of mixing zones are minimized.

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

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

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

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

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

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

(4) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15,

part 21.

(6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(7) "Effluent standard" means any a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into state waters.

(8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(9) "High-quality waters" means state waters whose quality for a parameter is better than standards established pursuant to 75-3-301 75-5-301.

(10) "Industrial waste" means any a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(11) "Interested person" means a person who has submitted ORAL OR WRITTEN comments on the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(12) "Local department of health" means the staff, including health officers, employed by a county, city,

city-county, or district board of health.

(13) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

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

(15) "Owner or operator" means any a person who owns, leases, operates, controls, or supervises a point source.

(16) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

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

(18) "Point source" means any a discernible, confined, and discrete conveyance, including but not limited to any 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.

(19) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters which 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 liquid, gaseous, solid, radioactive, or other substance into any state water which 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.

(20) "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.

(21) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to

an ultimate disposal point.

{16}(22) "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}(23) "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}(24) "Treatment works" means works installed for treating or holding sewage, industrial wastes, or other wastes.

(25) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures

and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage."

**Section 2.** Section 75-5-301, MCA, is amended to read:

"75-5-301. Classification and standards for state waters. Consistent with the provisions of 75-5-302 through 75-5-307 and 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 GRANTING of mixing zones that, at a minimum, require that mixing zones have, REQUIRING THAT MIXING ZONES GRANTED BY THE DEPARTMENT BE SPECIFICALLY IDENTIFIED, AND REQUIRING THAT MIXING ZONES HAVE:

(a) the smallest practicable size;

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

(c) definable boundaries; and

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

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

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality; and

(c) establish criteria for determining whether a proposed activity or class of activities will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3)."

**Section 3.** 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 level of water quality necessary to protect those uses must be maintained and protected.**

**(2) Unless authorized by the department under subsection (3), the quality of high-quality waters must be maintained.**

**(3) The department may not authorize degradation of high-quality waters unless it has been affirmatively demonstrated to the department that:**

**(a) degradation is necessary because there are no economically, ENVIRONMENTALLY, and technologically feasible alternatives to the proposed project that would result in no degradation;**

**(b) the proposed project will result in important economic or social development that exceeds the benefit to society of maintaining existing high-quality waters AND EXCEEDS THE COSTS TO SOCIETY OF ALLOWING DEGRADATION OF HIGH-QUALITY WATERS;**

**(c) existing and anticipated use of state waters will**

be fully protected; and

(d) the least degrading water quality protection practices determined by the department to be economically, ENVIRONMENTALLY, and technologically feasible will be fully implemented by the applicant prior to and during the proposed activity.

(4) The department shall issue a preliminary decision either denying or authorizing degradation and shall provide public notice and a 30-day comment period prior to issuing a final decision. THE DEPARTMENT'S PRELIMINARY AND FINAL DECISIONS MUST INCLUDE:

(A) A STATEMENT OF THE BASIS FOR THE DECISION; AND

(B) A DETAILED DESCRIPTION OF ALL CONDITIONS APPLIED TO ANY AUTHORIZATION TO DEGRADE STATE WATERS, INCLUDING, WHEN APPLICABLE, MONITORING REQUIREMENTS, REQUIRED WATER PROTECTION PRACTICES, REPORTING REQUIREMENTS, EFFLUENT LIMITS, DESIGNATION OF THE MIXING ZONES, THE LIMITS OF DEGRADATION AUTHORIZED, AND METHODS OF DETERMINING COMPLIANCE WITH THE AUTHORIZATION FOR DEGRADATION.

(5) An interested person wishing to challenge a final department decision may request a hearing before the board within 20 30 days of the final department decision. The contested case procedures of Title 2, chapter 4, part 6, apply to a hearing under this section.

(6) Every---5---years,---the---department---shall---review

~~authorisations-to-degrade-state-water--to--ensure--that--the objectives--of--the--nondegradation--policy--are--being-met. Whenever-the-objectives-of-the-policy-are-not-being-met, the department--may--revoke--or--modify--the--authorization~~ THE DEPARTMENT MAY ISSUE AN AUTHORIZATION TO DEGRADE HIGH-QUALITY WATERS UNDER THE PROVISIONS OF THIS SECTION FOR A PERIOD NOT TO EXCEED 5 YEARS. THE HOLDER OF AN AUTHORIZATION MAY APPLY FOR REAUTHORIZATION UNDER THE PROVISIONS OF THIS SECTION."

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

**"75-5-605. Prohibited activity.** (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 in a location where they are likely to cause pollution of any state waters;

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

(c) cause degradation of state waters without authorization pursuant to 75-5-303;

~~(c)~~(d) violate any order issued pursuant to this chapter; or

~~(d)~~(e) violate any provision of this chapter.

(2) It is unlawful to carry on any of the following activities without a current permit from the department:



1 (a) construct, modify, or operate a disposal system  
2 which discharges into any state waters;

3 (b) construct or use any outlet for the discharge of  
4 sewage, industrial wastes, or other wastes into any state  
5 waters; or

6 (c) discharge sewage, industrial wastes, or other  
7 wastes into any state waters."

8 NEW SECTION. Section 5. Rulemaking authority. The  
9 board may SHALL adopt rules to implement 75-5-301 and  
10 75-5-303.

11 NEW SECTION. SECTION 6. FEE REQUIRED. A REQUEST TO  
12 DEGRADE STATE WATERS PURSUANT TO 75-5-301 MUST INCLUDE A  
13 \$25,000 NONREFUNDABLE FEE PAYABLE TO THE DEPARTMENT UPON  
14 APPLICATION.

15 NEW SECTION. Section 7. Codification instruction.  
16 {Section-5}-is [SECTIONS 5 AND 6] ARE intended to be  
17 codified as an integral part of Title 75, chapter 5, part 3,  
18 and the provisions of Title 75, chapter 5, part 3, apply to  
19 {section-5 SECTIONS 5 AND 6}.

20 NEW SECTION. Section 8. Applicability. [This act]  
21 applies to all requests to degrade state waters filed with  
22 the department after [the effective date of this act].

23 NEW SECTION. Section 9. Effective date. [This act] is  
24 effective on passage and approval.

-End-

## SENATE BILL NO. 401

INTRODUCED BY MCCLERNAN, DRISCOLL, WATERMAN,  
GERVAIS, WEEDING, D. BROWN, ENDY, RYE, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE WATER  
QUALITY LAWS; DEFINING "DEGRADATION" AND CERTAIN OTHER  
TERMS; TRANSFERRING AUTHORITY FROM THE BOARD OF HEALTH AND  
ENVIRONMENTAL SCIENCES TO THE DEPARTMENT OF HEALTH AND  
ENVIRONMENTAL SCIENCES TO AUTHORIZE DEGRADATION OF STATE  
WATERS; ALLOWING APPEAL OF THE DEPARTMENT'S FINAL DECISION  
TO THE BOARD; REQUIRING THE BOARD TO ADOPT RULES REGARDING  
MIXING ZONES AND THE NONDEGRADATION POLICY; CLARIFYING THAT  
IT IS UNLAWFUL TO CAUSE DEGRADATION OF STATE WATERS WITHOUT  
AUTHORIZATION; ESTABLISHING A FEE; AMENDING SECTIONS  
75-5-103, 75-5-301, 75-5-303, AND 75-5-605, MCA; AND  
PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE  
DATE."

## STATEMENT OF INTENT

A statement of intent is required for this bill because  
the bill gives REQUIRES the board of health and  
environmental sciences authority to adopt administrative  
rules. The legislature clearly intends that the  
nondegradation policy protect and maintain existing quality  
of state waters from any loss in the quality of those

waters. The nondegradation policy is intended to apply to  
any activity that has the potential to affect existing water  
quality and requires department review of all such  
activities to ensure that degradation does not occur.

In recognition that certain activities promote general  
welfare and may justify lower water quality in a particular  
water segment, the legislature intends that degradation be  
allowed in limited circumstances and under certain  
conditions. For example, if there is no alternative to a  
proposed project that does not result in degradation and the  
project is found to be in the best interests of the state,  
degradation may be allowed provided that water quality  
protection practices are implemented that limit degradation  
to the extent determined to be economically and  
technologically feasible.

To promote the goal of maintaining existing high-quality  
water, the board is to develop rules specifying the level of  
protection or treatment required if degradation is allowed.  
Rules are to be developed that provide procedures for  
department review of applications to degrade state waters,  
that provide guidance or standards for the level of  
treatment required, and that establish criteria that allow  
the department to weigh the social and economic benefit to  
the public of allowing the proposed project against the loss  
of water quality. It is the intent of the legislature that

the department's decision involve public and governmental agencies' comment prior to a final decision.

It is further the intent of the legislature that the board develop rules that will provide guidance to the department in the use and creation of mixing zones. The rules are to ensure that water quality impacts from the use of mixing zones are minimized.

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

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

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

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

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

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

(4) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(4)(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15,

part 21.

(5)(6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(6)(7) "Effluent standard" means any a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into state waters.

(8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(9) "High-quality waters" means state waters whose quality for a parameter is better than standards established pursuant to ~~75-3-301~~ 75-5-301.

(7)(10) "Industrial waste" means any a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(11) "Interested person" means a person who has submitted ORAL OR WRITTEN comments on the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(8)(12) "Local department of health" means the staff, including health officers, employed by a county, city,

1 city-county, or district board of health.

2 (13) "Mixing zone" means an area established in a permit  
 3 or final decision on nondegradation issued by the department  
 4 where water quality standards may be exceeded, subject to  
 5 conditions that are imposed by the department and that are  
 6 consistent with the rules adopted by the board.

7 (9)(14) "Other wastes" means garbage, municipal refuse,  
 8 decayed wood, sawdust, shavings, bark, lime, sand, ashes,  
 9 offal, night soil, oil, grease, tar, heat, chemicals, dead  
 10 animals, sediment, wrecked or discarded equipment,  
 11 radioactive materials, solid waste, and all other substances  
 12 that may pollute state waters.

13 (10)(15) "Owner or operator" means any a person who  
 14 owns, leases, operates, controls, or supervises a point  
 15 source.

16 (16) "Parameter" means a physical, biological, or  
 17 chemical property of state water when a value of that  
 18 property affects the quality of the state water.

19 (11)(17) "Person" means the state, a political  
 20 subdivision of the state, institution, firm, corporation,  
 21 partnership, individual, or other entity and includes  
 22 persons resident in Canada.

23 (12)(18) "Point source" means any a discernible,  
 24 confined, and discrete conveyance, including but not limited  
 25 to any pipe, ditch, channel, tunnel, conduit, well, discrete

1 fissure, container, rolling stock, or vessel or other  
 2 floating craft, from which pollutants are or may be  
 3 discharged.

4 (13)(19) "Pollution" means contamination or other  
 5 alteration of the physical, chemical, or biological  
 6 properties of any state waters which exceeds that permitted  
 7 by Montana water quality standards, including but not  
 8 limited to standards relating to change in temperature,  
 9 taste, color, turbidity, or odor; or the discharge, seepage,  
 10 drainage, infiltration, or flow of any liquid, gaseous,  
 11 solid, radioactive, or other substance into any state water  
 12 which will or is likely to create a nuisance or render the  
 13 waters harmful, detrimental, or injurious to public health,  
 14 recreation, safety, welfare, livestock, wild animals, birds,  
 15 fish, or other wildlife. A discharge, seepage, drainage,  
 16 infiltration or flow which is authorized under the pollution  
 17 discharge permit rules of the board is not pollution under  
 18 this chapter.

19 (14)(20) "Sewage" means water-carried waste products  
 20 from residences, public buildings, institutions, or other  
 21 buildings, including discharge from human beings or animals,  
 22 together with ground water infiltration and surface water  
 23 present.

24 (15)(21) "Sewage system" means a device for collecting  
 25 or conducting sewage, industrial wastes, or other wastes to

an ultimate disposal point.

(16)(22) "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)(23) "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)(24) "Treatment works" means works installed for treating or holding sewage, industrial wastes, or other wastes.

(25) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures

and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage."

**Section 2.** Section 75-5-301, MCA, is amended to read:

"75-5-301. Classification and standards for state waters. Consistent with the provisions of 75-5-302 through 75-5-307 and 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 GRANTING of mixing zones ~~that--at-a-minimum--require-that-mixing-zones-have,~~ REQUIRING THAT MIXING ZONES GRANTED BY THE DEPARTMENT BE SPECIFICALLY IDENTIFIED, AND REQUIRING THAT MIXING ZONES HAVE:

(a) the smallest practicable size;

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

(c) definable boundaries; and

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

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

6 (b) establish criteria for the following:

7 (i) determining important economic or social  
 8 development; and

9 (ii) weighing the social and economic importance to the  
 10 public of allowing the proposed project against the cost to  
 11 society associated with a loss of water quality; and

12 (c) establish criteria for determining whether a  
 13 proposed activity or class of activities will result in  
 14 nonsignificant changes in water quality for any parameter in  
 15 order that those activities are not required to undergo  
 16 review under 75-5-303(3)."

17 **Section 3.** Section 75-5-303, MCA, is amended to read:

18 "75-5-303. Nondegradation policy. The---board---shall  
 19 require:

20 ~~{1}--that--any--state--waters--whose-existing-quality-is~~  
 21 ~~higher-than--the--established--water--quality--standards--be~~  
 22 ~~maintained---at---that--high--quality--unless--it--has--been~~  
 23 ~~affirmatively-demonstrated-to-the-board--that--a--change--is~~  
 24 ~~justifiable--as--a--result--of--necessary-economic-or-social~~  
 25 ~~development-and-will-not-preclude--present--and--anticipated~~

1 ~~use-of-these-waters;-and~~

2 ~~{2}--any--industrial;-public;-or--private--project--or~~  
 3 ~~development-which-would-constitute-a-new-source-of-pollution~~  
 4 ~~or--an-increased-source-of-pollution-to-high-quality-waters;~~  
 5 ~~referred-to-in-subsection-{1};--to--provide--the--degree--of~~  
 6 ~~waste--treatment--necessary--to--maintain-that-existing-high~~  
 7 ~~water-quality. (1) Existing uses of state waters and the~~  
 8 ~~level of water quality necessary to protect those uses must~~  
 9 ~~be maintained and protected.~~

10 ~~(2) Unless authorized by the department under~~  
 11 ~~subsection (3), the quality of high-quality waters must be~~  
 12 ~~maintained.~~

13 ~~(3) The department may not authorize degradation of~~  
 14 ~~high-quality waters unless it has been affirmatively~~  
 15 ~~demonstrated BY A PREPONDERANCE OF EVIDENCE to the~~  
 16 ~~department that:~~

17 ~~(a) degradation is necessary because there are no~~  
 18 ~~economically, ENVIRONMENTALLY, and technologically feasible~~  
 19 ~~alternatives to the proposed project that would result in no~~  
 20 ~~degradation;~~

21 ~~(b) the proposed project will result in important~~  
 22 ~~economic or social development that exceeds the benefit to~~  
 23 ~~society of maintaining existing high-quality waters AND~~  
 24 ~~EXCEEDS THE COSTS TO SOCIETY OF ALLOWING DEGRADATION OF~~  
 25 ~~HIGH-QUALITY WATERS;~~

1 (c) existing and anticipated use of state waters will  
2 be fully protected; and

3 (d) the least degrading water quality protection  
4 practices determined by the department to be economically,  
5 ENVIRONMENTALLY, and technologically feasible will be fully  
6 implemented by the applicant prior to and during the  
7 proposed activity.

8 (4) The department shall issue a preliminary decision  
9 either denying or authorizing degradation and shall provide  
10 public notice and a 30-day comment period prior to issuing a  
11 final decision. THE DEPARTMENT'S PRELIMINARY AND FINAL  
12 DECISIONS MUST INCLUDE:

13 (A) A STATEMENT OF THE BASIS FOR THE DECISION; AND

14 (B) A DETAILED DESCRIPTION OF ALL CONDITIONS APPLIED TO  
15 ANY AUTHORIZATION TO DEGRADE STATE WATERS, INCLUDING, WHEN  
16 APPLICABLE, MONITORING REQUIREMENTS, REQUIRED WATER  
17 PROTECTION PRACTICES, REPORTING REQUIREMENTS, EFFLUENT  
18 LIMITS, DESIGNATION OF THE MIXING ZONES, THE LIMITS OF  
19 DEGRADATION AUTHORIZED, AND METHODS OF DETERMINING  
20 COMPLIANCE WITH THE AUTHORIZATION FOR DEGRADATION.

21 (5) An interested person wishing to challenge a final  
22 department decision may request a hearing before the board  
23 within 30 days of the final department decision. The  
24 contested case procedures of Title 2, chapter 4, part 6,  
25 apply to a hearing under this section.

1 (6) Every--5--years,--the--department--shall--review  
2 authorizations--to--degrade--state--water--to--ensure--that--the  
3 objectives--of--the--nondegradation--policy--are--being--met;  
4 Whenever--the--objectives--of--the--policy--are--not--being--met,--the  
5 department--may--revoke--or--modify--the--authorization THE  
6 DEPARTMENT MAY ISSUE AN AUTHORIZATION TO DEGRADE  
7 HIGH-QUALITY WATERS UNDER THE PROVISIONS OF THIS SECTION FOR  
8 A PERIOD NOT TO EXCEED 5 YEARS. THE HOLDER OF AN  
9 AUTHORIZATION MAY APPLY FOR REAUTHORIZATION UNDER THE  
10 PROVISIONS OF THIS SECTION."

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

12 "75-5-605. Prohibited activity. (1) It is unlawful to:

13 (a) cause pollution as defined in 75-5-103 of any state  
14 waters or to place or cause to be placed any wastes in a  
15 location where they are likely to cause pollution of any  
16 state waters;

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

20 (c) cause degradation of state waters without  
21 authorization pursuant to 75-5-303;

22 ~~(c)~~(d) violate any order issued pursuant to this  
23 chapter; or

24 ~~(d)~~(e) violate any provision of this chapter.

25 (2) 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 which 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."

NEW SECTION. **Section 5.** Rulemaking authority. The board may SHALL adopt rules to implement 75-5-301 and 75-5-303.

NEW SECTION. **SECTION 6.** FEE REQUIRED. A REQUEST TO DEGRADE STATE WATERS PURSUANT TO 75-5-301 MUST INCLUDE A \$25,000 NONREFUNDABLE FEE PAYABLE TO THE DEPARTMENT UPON APPLICATION.

NEW SECTION. **Section 7.** Codification instruction. ~~{Section--5}~~--is [SECTIONS 5 AND 6] ARE intended to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to ~~[section-5 SECTIONS 5 AND 6]~~.

NEW SECTION. **Section 8.** Applicability. [This act] applies to all requests to degrade state waters filed with the department after [the effective date of this act].

NEW SECTION. **Section 9.** Effective date. [This act] is effective on passage and approval.

-End-

-13-

SB 401



HOUSE STANDING COMMITTEE REPORT

April 13, 1993  
Page 2 of 2

April 13, 1993

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 401 (third reading copy -- blue) be concurred in as amended.

Signed: \_\_\_\_\_

Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Orr

1. Title, line 14.

Strike: "A FEE"

Insert: "FEES"

2. Page 4, line 14.

Following: "75-5-301."

Insert: "All waters are high-quality water unless classified by the board within a classification for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and associated aquatic life."

3. Page 9, line 16.

Following: "75-5-303(3)."

Insert: "These criteria must be established in a manner that generally:

- (i) equates significance with the potential for harm to human health or the environment;
- (ii) considers both the quantity and the strength of the pollutant;
- (iii) considers the length of time the degradation will occur; and
- (iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent."

4. Page 12, lines 5 through 10.

Strike: "THE" on line 5 through "SECTION." on line 10

Insert: "Every 5 years, the department shall review authorizations to degrade state waters. To enable the department to adequately review authorizations as required

under this section, the authorization holder shall revise the initial authorization application no sooner than 3 1/2 years and no later than 4 years after the date of the authorization or the date of the latest department review. The specific revised information required must be determined by the department. If, based on the review, the department determines that the standards and objectives of 75-5-303 or the rules adopted pursuant to 75-5-303 are not being met, it shall revoke or modify the authorization. A decision by the department to revoke or modify an authorization may be appealed to the board."

5. Page 13, lines 12 through 15.

Strike: Section 6 in its entirety

Insert: "NEW SECTION. Section 6. Fees required for nondegradation application, monitoring, and enforcement. (1) Application fees for authorization to degrade state waters and fees for authorization review under 75-5-303(6) may not exceed the following:  
(a) \$2,500 for domestic sewage treatment plant discharges;  
(b) \$5,000 for industrial discharges; and  
(c) \$200 per lot for subdivisions reviewed under Title 76, chapter 4.  
(2) The minimum annual monitoring and enforcement fee for degradation authorizations is \$250 and may not exceed \$2,500 per million gallons discharged per day."

6. Page 13.

Following: line 20

Insert: "NEW SECTION. Section 8. Coordination instruction. If House Bill No. 388 is passed and approved and if it requires the department of health and environmental sciences to impose and collect fees for authorizations to degrade state waters, then [section 6 of this act] is void."

NEW SECTION. Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

-END-

Committee Vote:

Yes 10, No 6

811624SC.Hpf

HOUSE  
SB 401

811624SC.Hpf

#2

HOUSE COMMITTEE OF THE WHOLE AMENDMENT  
Senate Bill 401  
Representative Toole

April 14, 1993 9:55 am  
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 401 (third reading copy -- blue).

Signed: Howard Toole  
Representative Toole

And, that such amendments to Senate Bill 401 read as follows:

1. Page 8, line 25.

Strike: "and"

2. Page 9, line 16.

Following: 75-5-303(3)

Insert: "; and

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3)."

ADOPT

REJECT

HOUSE

SB 401

## 1 SENATE BILL NO. 401

2 INTRODUCED BY MCCLERNAN, DRISCOLL, WATERMAN,  
3 GERVAIS, WEEDING, D. BROWN, ENDY, RYE, HALLIGAN  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE WATER  
6 QUALITY LAWS; DEFINING "DEGRADATION" AND CERTAIN OTHER  
7 TERMS; TRANSFERRING AUTHORITY FROM THE BOARD OF HEALTH AND  
8 ENVIRONMENTAL SCIENCES TO THE DEPARTMENT OF HEALTH AND  
9 ENVIRONMENTAL SCIENCES TO AUTHORIZE DEGRADATION OF STATE  
10 WATERS; ALLOWING APPEAL OF THE DEPARTMENT'S FINAL DECISION  
11 TO THE BOARD; REQUIRING THE BOARD TO ADOPT RULES REGARDING  
12 MIXING ZONES AND THE NONDEGRADATION POLICY; CLARIFYING THAT  
13 IT IS UNLAWFUL TO CAUSE DEGRADATION OF STATE WATERS WITHOUT  
14 AUTHORIZATION; ESTABLISHING A-PHE FEES; AMENDING SECTIONS  
15 75-5-103, 75-5-301, 75-5-303, AND 75-5-605, MCA; AND  
16 PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE  
17 DATE."  
18

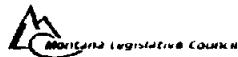
## 19 STATEMENT OF INTENT

20 A statement of intent is required for this bill because  
21 the bill gives REQUIRES the board of health and  
22 environmental sciences authority to adopt administrative  
23 rules. The legislature clearly intends that the  
24 nondegradation policy protect and maintain existing quality  
25 of state waters from any loss in the quality of those

1 waters. The nondegradation policy is intended to apply to  
2 any activity that has the potential to affect existing water  
3 quality and requires department review of all such  
4 activities to ensure that degradation does not occur.

5 In recognition that certain activities promote general  
6 welfare and may justify lower water quality in a particular  
7 water segment, the legislature intends that degradation be  
8 allowed in limited circumstances and under certain  
9 conditions. For example, if there is no alternative to a  
10 proposed project that does not result in degradation and the  
11 project is found to be in the best interests of the state,  
12 degradation may be allowed provided that water quality  
13 protection practices are implemented that limit degradation  
14 to the extent determined to be economically and  
15 technologically feasible.

16 To promote the goal of maintaining existing high-quality  
17 water, the board is to develop rules specifying the level of  
18 protection or treatment required if degradation is allowed.  
19 Rules are to be developed that provide procedures for  
20 department review of applications to degrade state waters,  
21 that provide guidance or standards for the level of  
22 treatment required, and that establish criteria that allow  
23 the department to weigh the social and economic benefit to  
24 the public of allowing the proposed project against the loss  
25 of water quality. It is the intent of the legislature that



the department's decision involve public and governmental agencies' comment prior to a final decision.

It is further the intent of the legislature that the board develop rules that will provide guidance to the department in the use and creation of mixing zones. The rules are to ensure that water quality impacts from the use of mixing zones are minimized.

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

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

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

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

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

(4) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15,

part 21.

(6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(7) "Effluent standard" means any a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into state waters.

(8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(9) "High-quality waters" means state waters whose quality for a parameter is better than standards established pursuant to ~~75-3-301~~ 75-5-301. ALL WATERS ARE HIGH-QUALITY WATER UNLESS CLASSIFIED BY THE BOARD WITHIN A CLASSIFICATION FOR WATERS THAT ARE NOT SUITABLE FOR HUMAN CONSUMPTION OR NOT SUITABLE FOR GROWTH AND PROPAGATION OF FISH AND ASSOCIATED AQUATIC LIFE.

(10) "Industrial waste" means any a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(11) "Interested person" means a person who has submitted ORAL OR WRITTEN comments on the department's preliminary decision regarding degradation of state waters,

pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(12) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(13) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

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

(15) "Owner or operator" means any a person who owns, leases, operates, controls, or supervises a point source.

(16) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(17) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes

persons resident in Canada.

(18) "Point source" means any a discernible, confined, and discrete conveyance, including but not limited to any 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.

(19) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters which 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 liquid, gaseous, solid, radioactive, or other substance into any state water which 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.

(20) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals,

1 together with ground water infiltration and surface water  
2 present.

3 {15}{21} "Sewage system" means a device for collecting  
4 or conducting sewage, industrial wastes, or other wastes to  
5 an ultimate disposal point.

6 {16}{22} "Standard of performance" means a standard  
7 adopted by the board for the control of the discharge of  
8 pollutants which reflects the greatest degree of effluent  
9 reduction achievable through application of the best  
10 available demonstrated control technology, processes,  
11 operating methods, or other alternatives, including, where  
12 practicable, a standard permitting no discharge of  
13 pollutants.

14 {17}{23} "State waters" means any a body of water,  
15 irrigation system, or drainage system, either surface or  
16 underground; however, this subsection does not apply to  
17 irrigation waters where the waters are used up within the  
18 irrigation system and the waters are not returned to any  
19 other state waters.

20 {18}{24} "Treatment works" means works installed for  
21 treating or holding sewage, industrial wastes, or other  
22 wastes.

23 {25} "Water quality protection practices" means those  
24 activities, prohibitions, maintenance procedures, or other  
25 management practices applied to point and nonpoint sources

1 designed to protect, maintain, and improve the quality of  
2 state waters. Water quality protection practices include but  
3 are not limited to treatment requirements, standards of  
4 performance, effluent standards, and operating procedures  
5 and practices to control site runoff, spillage or leaks,  
6 sludge or water disposal, or drainage from material  
7 storage."

8 **Section 2.** Section 75-5-301, MCA, is amended to read:

9 "75-5-301. Classification and standards for state  
10 waters. Consistent with the provisions of 75-5-302 through  
11 75-5-307 and 80-15-201, the board shall:

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

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

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

22 (4) adopt rules governing the use GRANTING of mixing  
23 zones that, at a minimum, require that mixing zones have,  
24 REQUIRING THAT MIXING ZONES GRANTED BY THE DEPARTMENT BE  
25 SPECIFICALLY IDENTIFIED, AND REQUIRING THAT MIXING ZONES

1 HAVE:

2 (a) the smallest practicable size;

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

4 (c) definable boundaries; and

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

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

10 (b) establish criteria for the following:

11 (i) determining important economic or social  
12 development; and

13 (ii) weighing the social and economic importance to the  
14 public of allowing the proposed project against the cost to  
15 society associated with a loss of water quality; and

16 (c) establish criteria for determining whether a  
17 proposed activity or class of activities will result in  
18 nonsignificant changes in water quality for any parameter in  
19 order that those activities are not required to undergo  
20 review under 75-5-303(3). THESE CRITERIA MUST BE ESTABLISHED  
21 IN A MANNER THAT GENERALLY:

22 (I) EQUATES SIGNIFICANCE WITH THE POTENTIAL FOR HARM TO  
23 HUMAN HEALTH OR THE ENVIRONMENT;

24 (II) CONSIDERS BOTH THE QUANTITY AND THE STRENGTH OF THE  
25 POLLUTANT;

1 (III) CONSIDERS THE LENGTH OF TIME THE DEGRADATION WILL  
2 OCCUR; AND

3 (IV) CONSIDERS THE CHARACTER OF THE POLLUTANT SO THAT  
4 GREATER SIGNIFICANCE IS ASSOCIATED WITH CARCINOGENS AND  
5 TOXINS THAT BIOACCUMULATE OR BIOMAGNIFY AND LESSER  
6 SIGNIFICANCE IS ASSOCIATED WITH SUBSTANCES THAT ARE LESS  
7 HARMFUL OR LESS PERSISTENT; AND

8 (6) TO THE EXTENT PRACTICABLE, ENSURE THAT THE RULES  
9 ADOPTED UNDER SUBSECTION (5) ESTABLISH OBJECTIVE AND  
10 QUANTIFIABLE CRITERIA FOR VARIOUS PARAMETERS. THESE CRITERIA  
11 MUST, TO THE EXTENT PRACTICABLE, CONSTITUTE GUIDELINES FOR  
12 GRANTING OR DENYING APPLICATIONS FOR AUTHORIZATION TO  
13 DEGRADE HIGH-QUALITY WATERS UNDER THE POLICY ESTABLISHED IN  
14 75-5-303(2) AND (3)."

15 **Section 3.** Section 75-5-303, MCA, is amended to read:

16 "75-5-303. Nondegradation policy. The--board--shall  
17 require:

18 {1}--that--any--state--waters--whose--existing--quality--is  
19 higher--than--the--established--water--quality--standards--be  
20 maintained--at--that--high--quality--unless--it--has--been  
21 affirmatively--demonstrated--to--the--board--that--a--change--is  
22 justifiable--as--a--result--of--necessary--economic--or--social  
23 development--and--will--not--preclude--present--and--anticipated  
24 use--of--these--waters;--and

25 {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 level of water quality necessary to protect those uses must be maintained and protected.

(2) Unless authorized by the department under subsection (3), the quality of high-quality waters must be maintained.

(3) The department may not authorize degradation of high-quality waters unless it has been affirmatively demonstrated BY A PREPONDERANCE OF EVIDENCE to the department that:

(a) degradation is necessary because there are no economically, ENVIRONMENTALLY, and technologically feasible alternatives to the proposed project that would result in no degradation;

(b) the proposed project will result in important economic or social development that exceeds the benefit to society of maintaining existing high-quality waters AND EXCEEDS THE COSTS TO SOCIETY OF ALLOWING DEGRADATION OF HIGH-QUALITY WATERS;

(c) existing and anticipated use of state waters will be fully protected; and

(d) the least degrading water quality protection practices determined by the department to be economically, ENVIRONMENTALLY, and technologically feasible will be fully implemented by the applicant prior to and during the proposed activity.

(4) The department shall issue a preliminary decision either denying or authorizing degradation and shall provide public notice and a 30-day comment period prior to issuing a final decision. THE DEPARTMENT'S PRELIMINARY AND FINAL DECISIONS MUST INCLUDE:

(A) A STATEMENT OF THE BASIS FOR THE DECISION; AND

(B) A DETAILED DESCRIPTION OF ALL CONDITIONS APPLIED TO ANY AUTHORIZATION TO DEGRADE STATE WATERS, INCLUDING, WHEN APPLICABLE, MONITORING REQUIREMENTS, REQUIRED WATER PROTECTION PRACTICES, REPORTING REQUIREMENTS, EFFLUENT LIMITS, DESIGNATION OF THE MIXING ZONES, THE LIMITS OF DEGRADATION AUTHORIZED, AND METHODS OF DETERMINING COMPLIANCE WITH THE AUTHORIZATION FOR DEGRADATION.

(5) An interested person wishing to challenge a final department decision may request a hearing before the board within 20 30 days of the final department decision. The contested case procedures of Title 2, chapter 4, part 6, apply to a hearing under this section.

(6) Every---5---years,---the---department---shall---review authorizations to degrade state water---to---ensure---that---the



1 ~~objectives--of--the--nondegradation--policy--are--being--met.~~  
 2 ~~Whenever--the--objectives--of--the--policy--are--not--being--met,~~ the  
 3 ~~department--may--revoke--or--modify--the--authorization~~ THE  
 4 ~~DEPARTMENT--MAY--ISSUE--AN--AUTHORIZATION--TO--DEGRADE~~  
 5 ~~HIGH-QUALITY-WATERS-UNDER-THE-PROVISIONS-OF-THIS-SECTION-FOR~~  
 6 ~~A--PERIOD--NOT--TO--EXCEED--5--YEARS.--THE--HOLDER--OF--AN~~  
 7 ~~AUTHORIZATION--MAY--APPLY--FOR--REAUTHORIZATION--UNDER--THE~~  
 8 ~~PROVISIONS-OF-THIS-SECTION.~~ EVERY 5 YEARS, THE DEPARTMENT  
 9 SHALL REVIEW AUTHORIZATIONS TO DEGRADE STATE WATERS. TO  
 10 ENABLE THE DEPARTMENT TO ADEQUATELY REVIEW AUTHORIZATIONS AS  
 11 REQUIRED UNDER THIS SECTION, THE AUTHORIZATION HOLDER SHALL  
 12 REVISE THE INITIAL AUTHORIZATION APPLICATION NO SOONER THAN  
 13 3 1/2 YEARS AND NO LATER THAN 4 YEARS AFTER THE DATE OF THE  
 14 AUTHORIZATION OR THE DATE OF THE LATEST DEPARTMENT REVIEW.  
 15 THE SPECIFIC REVISED INFORMATION REQUIRED MUST BE DETERMINED  
 16 BY THE DEPARTMENT. IF, BASED ON THE REVIEW, THE DEPARTMENT  
 17 DETERMINES THAT THE STANDARDS AND OBJECTIVES OF 75-5-303 OR  
 18 THE RULES ADOPTED PURSUANT TO 75-5-303 ARE NOT BEING MET, IT  
 19 SHALL REVOKE OR MODIFY THE AUTHORIZATION. A DECISION BY THE  
 20 DEPARTMENT TO REVOKE OR MODIFY AN AUTHORIZATION MAY BE  
 21 APPEALED TO THE BOARD."

22 **Section 4.** Section 75-5-605, MCA, is amended to read:  
 23 "75-5-605. Prohibited activity. (1) It is unlawful to:  
 24 (a) cause pollution as defined in 75-5-103 of any state  
 25 waters or to place or cause to be placed any wastes in a

1 location where they are likely to cause pollution of any  
 2 state waters;

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

6 (c) cause degradation of state waters without  
 7 authorization pursuant to 75-5-303;

8 (d) violate any order issued pursuant to this  
 9 chapter; or

10 (e) violate any provision of this chapter.

11 (2) It is unlawful to carry on any of the following  
 12 activities without a current permit from the department:

13 (a) construct, modify, or operate a disposal system  
 14 which discharges into any state waters;

15 (b) construct or use any outlet for the discharge of  
 16 sewage, industrial wastes, or other wastes into any state  
 17 waters; or

18 (c) discharge sewage, industrial wastes, or other  
 19 wastes into any state waters."

20 **NEW SECTION. Section 5.** Rulemaking authority. The  
 21 board may SHALL adopt rules to implement 75-5-301 and  
 22 75-5-303.

23 ~~NEW-SECTION--SECTION-6--FEE-REQUIRED--A-REQUEST-TO-~~  
 24 ~~DEGRADE-STATE-WATERS-PURSUANT-TO--75-5-301--MUST--INCLUDE--A~~  
 25 ~~\$25,000--NONREFUNDABLE--FEE--PAYABLE--TO--THE-DEPARTMENT--UPON~~

APPLICATION:

NEW SECTION. SECTION 6. FEES REQUIRED FOR  
NONDEGRADATION APPLICATION, MONITORING, AND ENFORCEMENT. (1)  
APPLICATION FEES FOR AUTHORIZATION TO DEGRADE STATE WATERS  
AND FEES FOR AUTHORIZATION REVIEW UNDER 75-5-303(6) MAY NOT  
EXCEED THE FOLLOWING:

(A) \$2,500 FOR DOMESTIC SEWAGE TREATMENT PLANT  
DISCHARGES;

(B) \$5,000 FOR INDUSTRIAL DISCHARGES; AND

(C) \$200 PER LOT FOR SUBDIVISIONS REVIEWED UNDER TITLE  
76, CHAPTER 4.

(2) THE MINIMUM ANNUAL MONITORING AND ENFORCEMENT FEE  
FOR DEGRADATION AUTHORIZATIONS IS \$250 AND MAY NOT EXCEED  
\$2,500 PER MILLION GALLONS DISCHARGED PER DAY.

NEW SECTION. Section 7. Codification instruction.  
{Section--5}--is [SECTIONS 5 AND 6] ARE intended to be  
codified as an integral part of Title 75, chapter 5, part 3,  
and the provisions of Title 75, chapter 5, part 3, apply to  
[section-5 SECTIONS 5 AND 6].

NEW SECTION. SECTION 8. COORDINATION INSTRUCTION. IF  
HOUSE BILL NO. 388 IS PASSED AND APPROVED AND IF IT REQUIRES  
THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO  
IMPOSE AND COLLECT FEES FOR AUTHORIZATIONS TO DEGRADE STATE  
WATERS, THEN [SECTION 6 OF THIS ACT] IS VOID.

NEW SECTION. SECTION 9. SEVERABILITY. IF A PART OF

[THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE  
FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS  
ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART  
REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE  
SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. Section 10. Applicability. [This act]  
applies to all requests to degrade state waters filed with  
the department after [the effective date of this act].

NEW SECTION. Section 11. Effective date. [This act] is  
effective on passage and approval.

-End-