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SENATE BILL NO. 78
INTRODUCED BY Grofffield Knox Cocchiarella Dineen
BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING CERTAIN REQUIREMENTS FOR THE WATER POLLUTION CONTROL ADVISORY COUNCIL; REMOVING THE VOLUNTARY PERFORMANCE BOND REQUIREMENTS UNDER THE WATER QUALITY LAWS AND AUTHORIZING THE DEPARTMENT TO REQUIRE PERFORMANCE BONDS FOR DISCHARGE PERMITS ISSUED TO APPLICANTS WHOSE ACTIVITIES WILL REQUIRE RECLAMATION OF DISTURBED LAND THAT MAY AFFECT WATER QUALITY; REVISING FEE REQUIREMENTS FOR HOLDERS OF A PERMIT OR AUTHORIZATION UNDER THE WATER QUALITY LAWS; REVISING THE ENFORCEMENT PROVISIONS OF THE WATER QUALITY LAWS TO CLARIFY EXISTING ENFORCEMENT AUTHORITY; AMENDING SECTIONS 75-5-103, 75-5-221, 75-5-401, 75-5-405, 75-5-516, 75-5-601, 75-5-616, 75-5-621, 75-5-631, 75-5-632, AND 75-5-636, MCA; AND PROVIDING AN EFFECTIVE DATE."

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



1 includes sewage systems and treatment works.

2 (7) "Disturbed land" means the area of land altered by activities associated with a permit issued
3 pursuant to this chapter that may affect the quality of waters located at or near lands owned or under the
4 control of the permittee.

5 ~~(7)~~(8) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations
6 of chemical, physical, biological, and other constituents ~~which~~ that are discharged into state waters.

7 ~~(8)~~(9) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,
8 whether or not those uses are included in the water quality standards.

9 ~~(9)~~(10) "High-quality waters" means state waters whose quality for a parameter is better than
10 standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the
11 board within a classification for waters that are not suitable for human consumption or not suitable for
12 growth and propagation of fish and associated aquatic life.

13 ~~(10)~~(11) "Industrial waste" means a waste substance from the process of business or industry or
14 from the development of any natural resource, together with any sewage that may be present.

15 ~~(11)~~(12) "Interested person" means a person who has submitted oral or written comments on the
16 department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term
17 includes a person who has requested authorization to degrade high-quality waters.

18 ~~(12)~~(13) "Local department of health" means the staff, including health officers, employed by a
19 county, city, city-county, or district board of health.

20 ~~(13)~~(14) "Mixing zone" means an area established in a permit or final decision on nondegradation
21 issued by the department where water quality standards may be exceeded, subject to conditions that are
22 imposed by the department and that are consistent with the rules adopted by the board.

23 ~~(14)~~(15) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,
24 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
25 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state
26 waters.

27 ~~(15)~~(16) "Owner or operator" means a person who owns, leases, operates, controls, or supervises
28 a point source.

29 ~~(16)~~(17) "Parameter" means a physical, biological, or chemical property of state water when a value
30 of that property affects the quality of the state water.

1 ~~(17)~~(18) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
2 partnership, individual, or other entity and includes persons resident in Canada.

3 ~~(18)~~(19) "Point source" means a discernible, confined, and discrete conveyance, including but not
4 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel
5 or other floating craft, from which pollutants are or may be discharged.

6 ~~(19)~~(20) "Pollution" means contamination or other alteration of the physical, chemical, or biological
7 properties of state waters ~~which~~ that exceeds that permitted by Montana water quality standards, including
8 but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the
9 discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance
10 into state water ~~which~~ that will or is likely to create a nuisance or render the waters harmful, detrimental,
11 or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.
12 A discharge, seepage, drainage, infiltration, or flow ~~which~~ that is authorized under the pollution discharge
13 permit rules of the board is not pollution under this chapter. Activities conducted under the conditions
14 imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution
15 under this chapter.

16 ~~(20)~~(21) "Sewage" means water-carried waste products from residences, public buildings,
17 institutions, or other buildings, including discharge from human beings or animals, together with ground
18 water infiltration and surface water present.

19 ~~(21)~~(22) "Sewage system" means a device for collecting or conducting sewage, industrial wastes,
20 or other wastes to an ultimate disposal point.

21 ~~(22)~~(23) "Standard of performance" means a standard adopted by the board for the control of the
22 discharge of pollutants ~~which~~ that reflects the greatest degree of effluent reduction achievable through
23 application of the best available demonstrated control technology, processes, operating methods, or other
24 alternatives, including, where practicable, a standard permitting no discharge of pollutants.

25 ~~(23)~~(24) "State waters" means a body of water, irrigation system, or drainage system, either
26 surface or underground; however, this subsection does not apply to irrigation waters ~~where~~ when the
27 waters are used up within the irrigation system and the waters are not returned to any other state waters.

28 ~~(24)~~(25) "Treatment works" means works, including sewage lagoons, installed for treating or
29 holding sewage, industrial wastes, or other wastes.

30 ~~(25)~~(26) "Water quality protection practices" means those activities, prohibitions, maintenance

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

6 ~~(26)~~(27) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,
 7 jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition
 8 of ground water."

9

10 **Section 2.** Section 75-5-221, MCA, is amended to read:

11 **"75-5-221. Water pollution control advisory council -- general.** (1) The council provided for in
 12 2-15-2107 shall select a ~~chairman~~ presiding officer from among its members. The director of ~~health and~~
 13 ~~environmental sciences~~ the department shall designate a member of the staff of the department to act as
 14 secretary to the council. The secretary shall keep records of all actions taken by the council.

15 (2) ~~It shall hold at least two regular meetings each calendar year. Special meetings shall~~ Meetings
 16 must be held at the call of the ~~chairman~~ presiding officer or on written request of two or more members.

17 (3) Each member may, by filing with the secretary, designate a deputy or alternate to perform ~~his~~
 18 the member's duties.

19 (4) The council shall act only in an advisory capacity to the department on matters relating to water
 20 pollution.

21 (5) The director of the department may designate other persons to participate with council
 22 members in evaluating particular issues arising under this chapter that are brought before the council."

23

24 **Section 3.** Section 75-5-401, MCA, is amended to read:

25 **"75-5-401. Board rules for permits.** (1) The board shall adopt rules:

26 (a) governing application for permits to discharge sewage, industrial wastes, or other wastes into
 27 state waters, including rules requiring the filing of plans and specifications relating to the construction,
 28 modification, or operation of disposal systems;

29 (b) governing the issuance, denial, modification, or revocation of permits.

30 (2) The rules ~~shall~~ must allow the issuance or continuance of a permit only if the department finds

1 that operation consistent with the limitations of the permit will not result in pollution of any state waters,
 2 except that the rules may allow the issuance of a temporary permit under which pollution may result if the
 3 department ~~insures~~ ensures that ~~such~~ the permit contains a compliance schedule designed to meet all
 4 applicable effluent standards and water quality standards in the shortest reasonable period of time.

5 (3) The rules ~~shall~~ must provide that the department may revoke a permit if the department finds
 6 that the holder of the permit has violated its terms, unless the department also finds that the violation was
 7 accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the
 8 violation as soon as was reasonably possible.

9 (4) The board may adopt rules governing reclamation of sites disturbed by construction,
 10 modification, or operation of ~~disposal systems~~ permitted activities for which a bond is ~~voluntarily~~
 11 a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing
 12 release of the bond or other surety and release of portions of a bond or other surety."

13
 14 **NEW SECTION. Section 4. Performance bond -- statement of policy.** (1) The department may
 15 not require a bond under 75-5-405 unless it determines that the permitted activity disturbs land in a
 16 magnitude or manner that poses a significant threat to the quality of state waters. A bond required under
 17 75-5-405 must be used, if needed, only to reclaim disturbed land that may impact water quality. A bond
 18 required under 75-5-405 may not be used to remediate damages to state waters.

19 (2) The department may not require a bond for a permitted activity if the permitholder or applicant
 20 has posted a bond for the permitted activity with another state agency to reclaim disturbed land that may
 21 impact water quality.

22 (3) The bond amount must be limited to the reasonable costs necessary to eliminate anticipated
 23 potential impacts to state waters. In determining the bond amount, the department shall consult with the
 24 permitholder or applicant and give consideration to alternative means of water quality protection offered
 25 by the permitholder or applicant.

26
 27 **Section 5.** Section 75-5-405, MCA, is amended to read:

28 **"75-5-405. ~~Voluntary filing of performance~~ Performance bond -- terms -- hearing.** (1) A person
 29 who holds or has applied for a permit pursuant to 75-5-401 may ~~voluntarily~~ be required to file a
 30 performance bond or other surety with the department for an amount sufficient to enable the state to

1 ~~reclaim the land~~ reclaim the disturbed lands resulting from activity authorized by the permit that may impact water
 2 quality by the project or activity authorized by the permit in accordance with all permit requirements and
 3 as needed to prevent pollution of state waters.

4 (2) ~~If the~~ The department determines that shall determine the appropriate bonding level, does not
 5 which must represent the present cost of reclaiming the disturbed land according to the reclamation
 6 requirements specified in the permit and the present cost of preventing pollution of state waters; ~~the~~
 7 ~~department shall notify the permittee and the permittee may modify the amount of the bond to accurately~~
 8 ~~reflect the present cost.~~

9 (3) The applicant shall file with the department a bond payable to the state of Montana with surety
 10 satisfaction to the department in an amount determined by the department to be reasonably necessary to
 11 protect the quality of state waters from impacts resulting from disturbed land associated with the permitted
 12 activity. The bond must be conditioned upon compliance with the provisions of this chapter, rules
 13 implementing this chapter, and the conditions or limitations of the discharge permit.

14 (4) The department shall review the amount of each bond at the time of the permit renewal and
 15 shall notify the permittee if the review indicates that the bond level should be adjusted. When determined
 16 by the department that the bonding level of a permit does not represent the present costs of compliance
 17 with this chapter or of the protection of state waters, the department may modify the bonding requirements
 18 of that permit.

19 ~~(3)(5)~~ (5) The department may not release all or any a portion of a performance bond or other surety
 20 filed pursuant to this section until reclamation of the disturbed land has been completed to the satisfaction
 21 of the department and the department has determined that pollution of state waters has not occurred. The
 22 department may initiate bond forfeiture proceedings if the permittee fails to satisfactorily reclaim the
 23 disturbed land or prevent pollution of state waters.

24 ~~(4)(6)~~ (6) The department may not release a bond or other surety filed pursuant to this section until
 25 the public has been provided an opportunity for a hearing."

26
 27 **Section 6.** Section 75-5-516, MCA, is amended to read:

28 **"75-5-516. Fees authorized for recovery -- process -- rulemaking.** (1) The board shall by rule
 29 prescribe fees to be assessed by the department that are sufficient to cover the board's and department's
 30 documented costs, both direct and indirect, of:

1 (a) reviewing and acting upon an application for a permit, permit modification, permit renewal,
2 certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

3 (b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;

4 (c) reviewing and acting upon an application for a permit, certificate, license, or other authorization
5 for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

6 (d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a)
7 through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any
8 application fee to the applicant.

9 (e) conducting compliance inspections and monitoring effluent and ambient water quality; and

10 (f) preparing water quality rules or guidance documents.

11 (2) The rules promulgated by the board under this section must include:

12 (a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through
13 (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and
14 acting upon the applications. This fee may not be ~~less than \$250 or~~ more than \$5,000 per discharge point
15 for an application addressed under subsection (1), except that an application with multiple ~~storm water~~
16 discharge points may be assessed a lower fee for those points according to board rule.

17 (b) an annual fee to be assessed according to the volume and concentration of waste discharged
18 into state waters. The annual fee may not be ~~less than \$250 and may not be~~ more than \$3,000 per million
19 gallons discharged per day on an annual average for any activity under permit or authorization, as described
20 in subsection (1), except that:

21 (i) a permit or authorization with multiple ~~storm water~~ discharge points may be assessed a lower
22 fee for those points according to board rule; and

23 (ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent
24 limitations and that is in compliance with other permit requirements, using the previous calendar year's
25 discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to
26 25% of the permit fee may be given to facilities that consistently discharge effluent at levels between 50%
27 and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its
28 first year of operation, and a permittee with a violation of any effluent limit during the previous calendar
29 year is not eligible for a fee reduction for the following year.

30 (3) To the extent permitted under ~~this limitation~~ subsection (2)(b), the annual fee must be sufficient

1 to pay the department's estimated cost of conducting all tasks described under subsection (1) after
2 subtracting:

3 ~~ii~~(a) the fees collected under subsection (2)(a);

4 ~~iii~~(b) state general fund appropriations for functions administered under this chapter; and

5 ~~iiii~~(c) federal grants for functions administered under this chapter.

6 ~~3~~(4) For purposes of subsection ~~2~~(3), the department's estimated cost of conducting the tasks
7 described under subsection (1) is the amount authorized by the legislature for the department's water
8 quality discharge permit programs.

9 ~~4~~(5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under
10 this section within 90 days after the date established by rule for fee payment, the department may:

11 (a) impose an additional assessment consisting of not more than 20% of the fee plus interest on
12 the required fee computed at the rate established under 15-31-510(3); or

13 (b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1
14 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties,
15 assessments, and interest imposed under subsection ~~4~~(a)(5)(a).

16 ~~5~~(6) Fees collected pursuant to this section must be deposited in an account in the special
17 revenue fund type pursuant to 75-5-517.

18 ~~6~~(7) The department shall give written notice to each person assessed a fee under this section
19 of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice
20 must be issued at least 30 days prior to the due date for payment of the assessment.

21 ~~7~~(8) A holder of or an applicant for a permit, certificate, or license may appeal the department's
22 fee assessment to the board within 20 days after receiving written notice of the department's fee
23 determination under subsection ~~6~~(7). The appeal to the board must include a written statement detailing
24 the reasons that the permitholder or applicant considers the department's fee assessment to be erroneous
25 or excessive.

26 ~~8~~(9) If part of the department's fee assessment is not in dispute in an appeal filed under
27 subsection ~~7~~(8), the undisputed portion of the fee must be paid to the department upon written request
28 of the department.

29 ~~9~~(10) The contested case provisions of the Montana Administrative Procedure Act, provided for
30 in Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

1 ~~(10)~~(11) A municipality may raise rates to cover costs associated with the fees prescribed in this
2 section for a public sewer system without the hearing required in 69-7-111."

3
4 **Section 7.** Section 75-5-601, MCA, is amended to read:

5 "**75-5-601. Cleanup orders.** (1) The department ~~shall~~ may issue ~~orders~~ an order to a person to
6 clean up any material that ~~he~~ the person or ~~his~~ the person's employee, agent, or subcontractor has
7 accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and that may
8 pollute ~~them~~ state waters.

9 (2) If a unit of state or local government, including but not limited to a local board of health, county
10 commission, governing body of a municipality, or state agency, has granted a permit or license to a person
11 to discharge waste or has otherwise authorized an activity that involves the placement of waste and the
12 department has reason to believe that the waste is causing or is likely to cause pollution of state waters,
13 the department may issue an order to the unit of state or local government to take measures to ensure that
14 the wastes causing or likely to cause the pollution are cleaned up.

15 (3) The department may include in an order issued to a county commission pursuant to subsection
16 (2) a request that the commission create a sewer district in the geographic area affected by the order for
17 the purpose of establishing a public sewer system in accordance with the petition and election procedures
18 provided by 7-13-2204 and 7-13-2208 through 7-13-2214."

19
20 **NEW SECTION. Section 8. Enforcement response.** (1) Whenever, on the basis of information
21 available to the department, the department finds that a person is in violation of this chapter, a rule adopted
22 under this chapter, or a condition or limitation in a permit, authorization, or order issued under this chapter,
23 the department shall initiate an enforcement response, which may include any of the following actions:

24 (a) issuance of a letter notifying the person of the violation and requiring compliance;

25 (b) issuance of an order requiring the person to correct the violation pursuant to 75-5-601,
26 75-5-611, 75-5-613, and 75-5-621;

27 (c) bringing a judicial action as authorized by 75-5-614 and 75-5-622; or

28 (d) seeking administrative or judicial penalties as provided under 75-5-611, 75-5-615, and
29 75-5-631 through 75-5-633.

30 (2) The provisions of this chapter do not limit the authority of the department to bring a judicial

1 action, which may include the assessment of penalties, prior to initiating any administrative action
2 authorized by this chapter.

3

4 **Section 9.** Section 75-5-616, MCA, is amended to read:

5 **"75-5-616. Enforcement of permits and chapter.** The department shall take ~~such~~ actions ~~as that~~
6 are authorized ~~or required~~ under ~~75-5-612 through 75-5-615~~ this part to ~~insure~~ ensure that the terms and
7 conditions of issued permits are complied with and to ~~insure~~ ensure that violations of this chapter are
8 appropriately prosecuted."

9

10 **Section 10.** Section 75-5-621, MCA, is amended to read:

11 **"75-5-621. Emergencies.** (1) Notwithstanding ~~any~~ other provisions of this chapter, if the
12 department finds that a person is committing or is about to commit an act in violation of this chapter or an
13 order or rule issued under ~~it which~~ this chapter that, if it occurs or continues, will cause substantial
14 pollution the harmful effects of which will not be remedied immediately after the commission or cessation
15 of the act, the department ~~shall~~ may order the person to stop, avoid, or moderate the act so that the
16 substantial injury will not occur. The order ~~shall be~~ is effective immediately upon receipt by the person to
17 whom it is directed, unless the department provides otherwise.

18 (2) Notice of the order ~~shall~~ must conform to the requirements of 75-5-611(1) so far as practicable.
19 The notice ~~shall~~ must indicate that the order is an emergency order.

20 (3) Upon issuing ~~such~~ an order, the department shall fix a place and time for a hearing before the
21 board, not later than 5 days ~~thereafter~~ after issuing the order unless the person to whom the order is
22 directed ~~shall request~~ requests a later time. The department may deny a request for a later time if it finds
23 that the person to whom the order is directed is not complying with the order. The hearing ~~shall~~ must
24 be conducted in the manner specified in 75-5-611. As soon as practicable after the hearing, the board shall
25 affirm, modify, or set aside the order of the department. The order of the board ~~shall~~ must be accompanied
26 by the statement specified in 75-5-611(5). An action for review of the order of the board may be initiated
27 in the manner specified in 75-5-641. The initiation of ~~such~~ an action or taking of an appeal may not stay
28 the effectiveness of the order unless the court finds that the board did not have reasonable cause to issue
29 an order under this section."

30

1 **Section 11.** Section 75-5-631, MCA, is amended to read:

2 **"75-5-631. Civil penalties -- injunctions not barred.** (1) ~~A~~ In an action initiated by the department
3 to collect civil penalties against a person who ~~violates~~ is found to have violated this chapter or a rule,
4 permit, effluent standard, or order issued under the provisions of this chapter, the person shall be ~~is~~ subject
5 to a civil penalty not to exceed \$25,000. Each day of violation constitutes a separate violation.

6 (2) Action under this section does not bar enforcement of this chapter or of rules or orders issued
7 under it by injunction or other appropriate remedy.

8 (3) The department shall institute and maintain any enforcement proceedings in the name of the
9 state.

10 (4) When seeking penalties under this section, the department shall take into account the following
11 factors in determining an appropriate settlement, or judgment, as appropriate if any, subsequent to the filing
12 ~~of a complaint:~~

13 (a) the nature, circumstances, extent, and gravity of the violation; and

14 (b) with respect to the violator, ~~his~~ the violator's ability to pay, ~~any~~ prior history of ~~such~~ violations,
15 the economic benefit or savings, if any, to the violator resulting from the violator's action, and ~~any~~ other
16 matters ~~as~~ that justice may require."

17

18 **Section 12.** Section 75-5-632, MCA, is amended to read:

19 **"75-5-632. Criminal penalties.** A person who willfully or negligently violates 75-5-605 or any
20 pretreatment standard established pursuant to this chapter is guilty of an offense and, upon conviction,
21 subject to a fine not to exceed \$25,000 per day of violation or imprisonment for not more than 1 year, or
22 both. Following an initial conviction under this section, subsequent convictions ~~shall~~ subject a person to
23 a fine of not more than \$50,000 per day of violation or imprisonment for not more than 2 years, or both."
24

25 **Section 13.** Section 75-5-636, MCA, is amended to read:

26 **"75-5-636. Action Investigation of complaints by other parties.** A person, association, corporation,
27 or agency of the state or federal government may ~~apply to~~ notify the department ~~protecting a~~ of an alleged
28 violation of this chapter. ~~The~~ Based upon information submitted by the person, association, corporation,
29 or agency, the department shall make conduct an investigation and make a written report to the person,
30 association, corporation, or agency which made the protest to determine the validity of the complaint. If

1 a violation is established by the department's investigation of the department, the department shall initiate
2 an appropriate enforcement action shall be taken response as described in [section 7]."

3

4 **NEW SECTION. Section 14. Codification instructions.** (1) [Section 4] is intended to be codified
5 as an integral part of Title 75, chapter 5, part 4, and the provisions of Title 75, chapter 5, part 4, apply to
6 [section 4].

7 (2) [Section 8] is intended to be codified as an integral part of Title 75, chapter 5, part 6, and the
8 provisions of Title 75, chapter 5, part 6, apply to [section 8].

9

10 **NEW SECTION. Section 15. Effective date.** [This act] is effective July 1, 1995.

11

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0078, as introduced

DESCRIPTION OF PROPOSED LEGISLATION: An Act modifying certain requirements for the Water Pollution Control Advisory Council; removing the voluntary performance bond requirements under the water quality laws and authorizing the department to require performance bonds for discharge permits issued to applicants, where the activities under the permit will require reclamation of disturbed land that may affect water quality; revising fee requirements for holders of a permit or authorization under the water quality laws; revising the enforcement of water quality laws to clarify existing enforcement authority.

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point for determining any fiscal impact due to this bill.
2. Permitted facilities that are already required to post a reclamation bond with another state agency will not be required to obtain a bond under this bill.
3. During each year of the biennium, two to four facilities will be required to post performance bonds. This will cost the department approximately \$2,000 to \$4,000 in administrative costs to process these bonds. However, this is already reflected in the Executive Budget present law, so there is no additional impact.
4. Approximately 65% of the 700 permittees will qualify for an annual fee reduction. The overall fee reduction will be about 20%. This is also reflected in the Executive Budget present law, so there is no additional impact.
5. Fee rules enacted in compliance with the HB0388 (1993 Session) statement of intent mitigate a potential decrease in fee revenue due to this bill. There may be some minimal decrease, but the department is not able to determine the amount at this time.

FISCAL IMPACT:


Not able to determine at this time. (Please see assumption 5, above.)

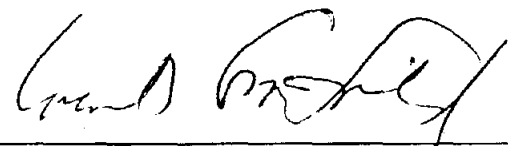
Net Impact:

Not able to determine at this time. (Please see assumption 5, above.)

TECHNICAL NOTES:

The statement of intent of HB0388 (1993 Session) contained the provision for up to a 25% annual fee reduction based on compliance with permit limits. Revenue projections at that time assumed an overall reduction in fee revenue of about 20%, which was approximately \$140,000. Fee rules were adopted containing the provision for up to a 25% reduction in fees, thus the actual revenue decrease if this bill passes will be minimal. At this time, fees appear to be sufficient to cover program costs.

 1-16-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1/16/95
LORENTS GROSFIELD, PRIMARY SPONSOR DATE

Fiscal Note for SB0078, as introduced

SB18

1 SENATE BILL NO. 78

2 INTRODUCED BY GROSFIELD, KNOX, COCCHIARELLA, DOHERTY

3 BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING CERTAIN REQUIREMENTS FOR THE WATER
6 POLLUTION CONTROL ADVISORY COUNCIL; ~~REMOVING THE VOLUNTARY PERFORMANCE BOND~~
7 ~~REQUIREMENTS UNDER THE WATER QUALITY LAWS AND AUTHORIZING THE DEPARTMENT TO~~
8 ~~REQUIRE PERFORMANCE BONDS FOR DISCHARGE PERMITS ISSUED TO APPLICANTS WHOSE~~
9 ~~ACTIVITIES WILL REQUIRE RECLAMATION OF DISTURBED LAND THAT MAY AFFECT WATER QUALITY;~~
10 REVISING FEE REQUIREMENTS FOR HOLDERS OF A PERMIT OR AUTHORIZATION UNDER THE WATER
11 QUALITY LAWS; REVISING THE ENFORCEMENT PROVISIONS OF THE WATER QUALITY LAWS TO
12 CLARIFY EXISTING ENFORCEMENT AUTHORITY; AMENDING SECTIONS ~~75-5-103~~, 75-5-221, 75-5-401,
13 ~~75-5-405~~, 75-5-516, 75-5-601, 75-5-616, 75-5-621, 75-5-631, 75-5-632, AND 75-5-636, MCA; AND
14 PROVIDING AN EFFECTIVE DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
1718 ~~Section 1. Section 75-5-103, MCA, is amended to read:~~19 ~~"75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following~~
20 ~~definitions apply:~~21 ~~(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~22 ~~(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,~~
23 ~~or other wastes, creating a hazard to human health.~~24 ~~(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.~~25 ~~(4) "Degradation" means a change in water quality that lowers the quality of high quality waters~~
26 ~~for a parameter. The term does not include those changes in water quality determined to be nonsignificant~~
27 ~~pursuant to 75-5-301(5)(c).~~28 ~~(5) "Department" means the department of health and environmental sciences provided for in Title~~
29 ~~2, chapter 15, part 21.~~30 ~~(6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and~~

1 ~~includes sewage systems and treatment works.~~

2 ~~(7) "Disturbed land" means the area of land altered by activities associated with a permit issued~~
3 ~~pursuant to this chapter that may affect the quality of waters located at or near lands owned or under the~~
4 ~~control of the permittee.~~

5 ~~(7)(8) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations~~
6 ~~of chemical, physical, biological, and other constituents which that are discharged into state waters.~~

7 ~~(8)(9) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,~~
8 ~~whether or not those uses are included in the water quality standards.~~

9 ~~(9)(10) "High quality waters" means state waters whose quality for a parameter is better than~~
10 ~~standards established pursuant to 75-5-301. All waters are high quality water unless classified by the~~
11 ~~board within a classification for waters that are not suitable for human consumption or not suitable for~~
12 ~~growth and propagation of fish and associated aquatic life.~~

13 ~~(10)(11) "Industrial waste" means a waste substance from the process of business or industry or~~
14 ~~from the development of any natural resource, together with any sewage that may be present.~~

15 ~~(11)(12) "Interested person" means a person who has submitted oral or written comments on the~~
16 ~~department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term~~
17 ~~includes a person who has requested authorization to degrade high quality waters.~~

18 ~~(12)(13) "Local department of health" means the staff, including health officers, employed by a~~
19 ~~county, city, city county, or district board of health.~~

20 ~~(13)(14) "Mixing zone" means an area established in a permit or final decision on nondegradation~~
21 ~~issued by the department where water quality standards may be exceeded, subject to conditions that are~~
22 ~~imposed by the department and that are consistent with the rules adopted by the board.~~

23 ~~(14)(15) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,~~
24 ~~lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or~~
25 ~~discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state~~
26 ~~waters.~~

27 ~~(15)(16) "Owner or operator" means a person who owns, leases, operates, controls, or supervises~~
28 ~~a point source.~~

29 ~~(16)(17) "Parameter" means a physical, biological, or chemical property of state water when a value~~
30 ~~of that property affects the quality of the state water.~~

1 ~~(17),(18)~~ "Person" means the state, a political subdivision of the state, institution, firm, corporation,
2 partnership, individual, or other entity and includes persons resident in Canada.

3 ~~(18),(19)~~ "Point source" means a discernible, confined, and discrete conveyance, including but not
4 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel
5 or other floating craft, from which pollutants are or may be discharged.

6 ~~(19),(20)~~ "Pollution" means contamination or other alteration of the physical, chemical, or biological
7 properties of state waters which that exceeds that permitted by Montana water quality standards, including
8 but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the
9 discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance
10 into state water which that will or is likely to create a nuisance or render the waters harmful, detrimental,
11 or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.
12 A discharge, seepage, drainage, infiltration, or flow which that is authorized under the pollution discharge
13 permit rules of the board is not pollution under this chapter. Activities conducted under the conditions
14 imposed by the department in short term authorizations pursuant to 75-5-308 are not considered pollution
15 under this chapter.

16 ~~(20),(21)~~ "Sewage" means water carried waste products from residences, public buildings,
17 institutions, or other buildings, including discharge from human beings or animals, together with ground
18 water infiltration and surface water present.

19 ~~(21),(22)~~ "Sewage system" means a device for collecting or conducting sewage, industrial wastes,
20 or other wastes to an ultimate disposal point.

21 ~~(22),(23)~~ "Standard of performance" means a standard adopted by the board for the control of the
22 discharge of pollutants which that reflects the greatest degree of effluent reduction achievable through
23 application of the best available demonstrated control technology, processes, operating methods, or other
24 alternatives, including, where practicable, a standard permitting no discharge of pollutants.

25 ~~(23),(24)~~ "State waters" means a body of water, irrigation system, or drainage system, either
26 surface or underground; however, this subsection does not apply to irrigation waters where when the
27 waters are used up within the irrigation system and the waters are not returned to any other state waters.

28 ~~(24),(25)~~ "Treatment works" means works, including sewage lagoons, installed for treating or
29 holding sewage, industrial wastes, or other wastes.

30 ~~(25),(26)~~ "Water quality protection practices" means those activities, prohibitions, maintenance

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

6 ~~(26)(27) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,~~
 7 ~~jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition~~
 8 ~~of ground water."~~

9
 10 **Section 1.** Section 75-5-221, MCA, is amended to read:

11 **"75-5-221. Water pollution control advisory council -- general.** (1) The council provided for in
 12 2-15-2107 shall select a chairman presiding officer from among its members. The director of ~~health and~~
 13 ~~environmental sciences~~ the department shall designate a member of the staff of the department to act as
 14 secretary to the council. The secretary shall keep records of all actions taken by the council.

15 (2) ~~It shall hold at least two regular meetings each calendar year. Special meetings shall~~ Meetings
 16 must be held at the call of the chairman presiding officer or on written request of two or more members.

17 (3) Each member may, by filing with the secretary, designate a deputy or alternate to perform ~~his~~
 18 the member's duties.

19 (4) The council shall act only in an advisory capacity to the department on matters relating to water
 20 pollution.

21 (5) The director of the department may designate other persons to participate with council
 22 members in evaluating particular issues arising under this chapter that are brought before the council."

23
 24 **Section 2.** Section 75-5-401, MCA, is amended to read:

25 **"75-5-401. Board rules for permits.** (1) The board shall adopt rules:

26 (a) governing application for permits to discharge sewage, industrial wastes, or other wastes into
 27 state waters, including rules requiring the filing of plans and specifications relating to the construction,
 28 modification, or operation of disposal systems;

29 (b) governing the issuance, denial, modification, or revocation of permits.

30 (2) The rules ~~shall~~ must allow the issuance or continuance of a permit only if the department finds

1 that operation consistent with the limitations of the permit will not result in pollution of any state waters,
 2 except that the rules may allow the issuance of a temporary permit under which pollution may result if the
 3 department ~~insures~~ ensures that ~~such~~ the permit contains a compliance schedule designed to meet all
 4 applicable effluent standards and water quality standards in the shortest reasonable period of time.

5 (3) The rules ~~shall~~ must provide that the department may revoke a permit if the department finds
 6 that the holder of the permit has violated its terms, unless the department also finds that the violation was
 7 accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the
 8 violation as soon as was reasonably possible.

9 (4) The board may adopt rules governing reclamation of sites disturbed by construction,
 10 modification, or operation of ~~disposal systems~~ permitted activities for which a bond is ~~voluntarily~~
 11 a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing
 12 release of the bond or other surety and release of portions of a bond or other surety."

13
 14 ~~**NEW SECTION. Section 4. Performance bond statement of policy.**~~ (1) ~~The department may
 15 not require a bond under 75-5-405 unless it determines that the permitted activity disturbs land in a
 16 magnitude or manner that poses a significant threat to the quality of state waters. A bond required under
 17 75-5-405 must be used, if needed, only to reclaim disturbed land that may impact water quality. A bond
 18 required under 75-5-405 may not be used to remediate damages to state waters.~~

19 ~~(2) The department may not require a bond for a permitted activity if the permitholder or applicant
 20 has posted a bond for the permitted activity with another state agency to reclaim disturbed land that may
 21 impact water quality.~~

22 ~~(3) The bond amount must be limited to the reasonable costs necessary to eliminate anticipated
 23 potential impacts to state waters. In determining the bond amount, the department shall consult with the
 24 permitholder or applicant and give consideration to alternative means of water quality protection offered
 25 by the permitholder or applicant.~~

26
 27 ~~**Section 5.**~~ Section 75-5-405, MCA, is amended to read:

28 ~~**"75-5-405. Voluntary filing of performance Performance bond terms hearing.**~~ (1) A person
 29 who holds or has applied for a permit pursuant to 75-5-401 may voluntarily be required to file a
 30 performance bond or other surety with the department for an amount sufficient to enable the state to

1 ~~reclaim the land disturbed lands resulting from activity authorized by the permit that may impact water~~
 2 ~~quality by the project or activity authorized by the permit in accordance with all permit requirements and~~
 3 ~~as needed to prevent pollution of state waters.~~

4 ~~(2) If the The department determines that shall determine the appropriate bonding level, does not~~
 5 ~~which must represent the present cost of reclaiming the disturbed land according to the reclamation~~
 6 ~~requirements specified in the permit and the present cost of preventing pollution of state waters, the~~
 7 ~~department shall notify the permittee and the permittee may modify the amount of the bond to accurately~~
 8 ~~reflect the present cost.~~

9 ~~(3) The applicant shall file with the department a bond payable to the state of Montana with surety~~
 10 ~~satisfaction to the department in an amount determined by the department to be reasonably necessary to~~
 11 ~~protect the quality of state waters from impacts resulting from disturbed land associated with the permitted~~
 12 ~~activity. The bond must be conditioned upon compliance with the provisions of this chapter, rules~~
 13 ~~implementing this chapter, and the conditions or limitations of the discharge permit.~~

14 ~~(4) The department shall review the amount of each bond at the time of the permit renewal and~~
 15 ~~shall notify the permittee if the review indicates that the bond level should be adjusted. When determined~~
 16 ~~by the department that the bonding level of a permit does not represent the present costs of compliance~~
 17 ~~with this chapter or of the protection of state waters, the department may modify the bonding requirements~~
 18 ~~of that permit.~~

19 ~~(3)(5) The department may not release all or any a portion of a performance bond or other surety~~
 20 ~~filed pursuant to this section until reclamation of the disturbed land has been completed to the satisfaction~~
 21 ~~of the department and the department has determined that pollution of state waters has not occurred. The~~
 22 ~~department may initiate bond forfeiture proceedings if the permittee fails to satisfactorily reclaim the~~
 23 ~~disturbed land or prevent pollution of state waters.~~

24 ~~(4)(6) The department may not release a bond or other surety filed pursuant to this section until~~
 25 ~~the public has been provided an opportunity for a hearing."~~

26
 27 **Section 3.** Section 75-5-516, MCA, is amended to read:

28 **"75-5-516. Fees authorized for recovery -- process -- rulemaking.** (1) The board shall by rule
 29 prescribe fees to be assessed by the department that are sufficient to cover the board's and department's
 30 documented costs, both direct and indirect, of:

1 (a) reviewing and acting upon an application for a permit, permit modification, permit renewal,
2 certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

3 (b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;

4 (c) reviewing and acting upon an application for a permit, certificate, license, or other authorization
5 for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

6 (d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a)
7 through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any
8 application fee to the applicant.

9 (e) conducting compliance inspections and monitoring effluent and ambient water quality; and

10 (f) preparing water quality rules or guidance documents.

11 (2) The rules promulgated by the board under this section must include:

12 (a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through
13 (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and
14 acting upon the applications. This fee may not be ~~less than \$250 or~~ more than \$5,000 per discharge point
15 for an application addressed under subsection (1), except that an application with multiple ~~storm-water~~
16 discharge points may be assessed a lower fee for those points according to board rule.

17 (b) an annual fee to be assessed according to the volume and concentration of waste discharged
18 into state waters. The annual fee may not be ~~less than \$250 and may not be~~ more than \$3,000 per million
19 gallons discharged per day on an annual average for any activity under permit or authorization, as described
20 in subsection (1), except that:

21 (i) a permit or authorization with multiple ~~storm-water~~ discharge points may be assessed a lower
22 fee for those points according to board rule; and

23 (ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent
24 limitations and that is in compliance with other permit requirements, using the previous calendar year's
25 discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to
26 25% of the permit fee may be given to facilities that consistently discharge effluent at levels between 50%
27 and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its
28 first year of operation, and a permittee with a violation of any effluent limit during the previous calendar
29 year is not eligible for a fee reduction for the following year.

30 (3) To the extent permitted under ~~this limitation~~ subsection (2)(b), the annual fee must be sufficient

1 to pay the department's estimated cost of conducting all tasks described under subsection (1) after
2 subtracting:

3 ~~++(a)~~ the fees collected under subsection (2)(a);

4 ~~+++ (b)~~ state general fund appropriations for functions administered under this chapter; and

5 ~~+++ (c)~~ federal grants for functions administered under this chapter.

6 ~~(3)(4)~~ For purposes of subsection ~~(2)(3)~~, the department's estimated cost of conducting the tasks
7 described under subsection (1) is the amount authorized by the legislature for the department's water
8 quality discharge permit programs.

9 ~~(4)(5)~~ If the applicant or holder fails to pay a fee assessed under this section or rules adopted under
10 this section within 90 days after the date established by rule for fee payment, the department may:

11 (a) impose an additional assessment consisting of not more than 20% of the fee plus interest on
12 the required fee computed at the rate established under 15-31-510(3); or

13 (b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1
14 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties,
15 assessments, and interest imposed under subsection ~~(4)(a)(5)(a)~~.

16 ~~(5)(6)~~ Fees collected pursuant to this section must be deposited in an account in the special
17 revenue fund type pursuant to 75-5-517.

18 ~~(6)(7)~~ The department shall give written notice to each person assessed a fee under this section
19 of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice
20 must be issued at least 30 days prior to the due date for payment of the assessment.

21 ~~(7)(8)~~ A holder of or an applicant for a permit, certificate, or license may appeal the department's
22 fee assessment to the board within 20 days after receiving written notice of the department's fee
23 determination under subsection ~~(6)(7)~~. The appeal to the board must include a written statement detailing
24 the reasons that the permitholder or applicant considers the department's fee assessment to be erroneous
25 or excessive.

26 ~~(8)(9)~~ If part of the department's fee assessment is not in dispute in an appeal filed under
27 subsection ~~(7)(8)~~, the undisputed portion of the fee must be paid to the department upon written request
28 of the department.

29 ~~(9)(10)~~ The contested case provisions of the Montana Administrative Procedure Act, provided for
30 in Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

1 ~~(10)(11)~~ A municipality may raise rates to cover costs associated with the fees prescribed in this
 2 section for a public sewer system without the hearing required in 69-7-111."

3
 4 **Section 4.** Section 75-5-601, MCA, is amended to read:

5 "**75-5-601. Cleanup orders.** (1) The department ~~shall~~ may issue ~~orders~~ an order to a person to
 6 clean up any material that ~~he~~ the person or ~~his~~ the person's employee, agent, or subcontractor has
 7 accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and that may
 8 pollute ~~them~~ state waters.

9 (2) If a unit of state or local government, including but not limited to a local board of health, county
 10 commission, governing body of a municipality, or state agency, has granted a permit or license to a person
 11 to discharge waste or has otherwise authorized an activity that involves the placement of waste and the
 12 department has reason to believe that the waste is causing or is likely to cause pollution of state waters,
 13 the department may issue an order to the unit of state or local government to take measures to ensure that
 14 the wastes causing or likely to cause the pollution are cleaned up.

15 (3) The department may include in an order issued to a county commission pursuant to subsection
 16 (2) a request that the commission create a sewer district in the geographic area affected by the order for
 17 the purpose of establishing a public sewer system in accordance with the petition and election procedures
 18 provided by 7-13-2204 and 7-13-2208 through 7-13-2214."

19
 20 **NEW SECTION.** **Section 5. Enforcement response.** (1) Whenever, on the basis of information
 21 available to the department, the department finds that a person is in violation of this chapter, a rule adopted
 22 under this chapter, or a condition or limitation in a permit, authorization, or order issued under this chapter,
 23 the department shall initiate an enforcement response, which may include any of the following actions:

24 (a) issuance of a letter notifying the person of the violation and requiring compliance;

25 (b) issuance of an order requiring the person to correct the violation pursuant to 75-5-601,
 26 75-5-611, 75-5-613, and 75-5-621;

27 (c) bringing a judicial action as authorized by 75-5-614 and 75-5-622; or

28 (d) seeking administrative or judicial penalties as provided under 75-5-611, 75-5-615, and
 29 75-5-631 through 75-5-633.

30 (2) UNLESS AN ALLEGED VIOLATION REPRESENTS AN IMMINENT THREAT TO HUMAN HEALTH,

1 SAFETY, OR WELFARE OR TO THE ENVIRONMENT, THE DEPARTMENT SHALL FIRST ISSUE A LETTER
 2 NOTIFYING THE PERSON OF THE VIOLATION AND REQUIRING COMPLIANCE. IF THE PERSON FAILS TO
 3 RESPOND TO THE DEPARTMENT'S LETTER, THEN THE DEPARTMENT MAY TAKE FURTHER ACTION AS
 4 PROVIDED IN SUBSECTION (1).

5 ~~(2)~~(3) The provisions of this chapter do not limit the authority of the department to bring a judicial
 6 action, which may include the assessment of penalties, prior to initiating any administrative action
 7 authorized by this chapter.

8

9 **Section 6.** Section 75-5-616, MCA, is amended to read:

10 **"75-5-616. Enforcement of permits and chapter.** The department shall take ~~such~~ actions as that
 11 are authorized ~~or required~~ under ~~75-5-612 through 75-5-615~~ this part to ~~insure~~ ensure that the terms and
 12 conditions of issued permits are complied with and to ~~insure~~ ensure that violations of this chapter are
 13 appropriately prosecuted."

14

15 **Section 7.** Section 75-5-621, MCA, is amended to read:

16 **"75-5-621. Emergencies.** (1) Notwithstanding ~~any~~ other provisions of this chapter, if the
 17 department finds that a person is committing or is about to commit an act in violation of this chapter or an
 18 order or rule issued under ~~it which~~ this chapter that, if it occurs or continues, will cause substantial
 19 pollution the harmful effects of which will not be remedied immediately after the commission or cessation
 20 of the act, the department ~~shall~~ may order the person to stop, avoid, or moderate the act so that the
 21 substantial injury will not occur. The order ~~shall be~~ is effective immediately upon receipt by the person to
 22 whom it is directed, unless the department provides otherwise.

23 (2) Notice of the order ~~shall~~ must conform to the requirements of 75-5-611(1) so far as practicable.
 24 The notice ~~shall~~ must indicate that the order is an emergency order.

25 (3) Upon issuing ~~such~~ an order, the department shall fix a place and time for a hearing before the
 26 board, not later than 5 days ~~thereafter~~ after issuing the order unless the person to whom the order is
 27 directed ~~shall request~~ requests a later time. The department may deny a request for a later time if it finds
 28 that the person to whom the order is directed is not complying with the order. The hearing ~~shall~~ must be
 29 conducted in the manner specified in 75-5-611. As soon as practicable after the hearing, the board shall
 30 affirm, modify, or set aside the order of the department. The order of the board ~~shall~~ must be accompanied

1 by the statement specified in 75-5-611(5). An action for review of the order of the board may be initiated
 2 in the manner specified in 75-5-641. The initiation of ~~such~~ an action or taking of an appeal may not stay
 3 the effectiveness of the order unless the court finds that the board did not have reasonable cause to issue
 4 an order under this section."

5
 6 **Section 8.** Section 75-5-631, MCA, is amended to read:

7 "**75-5-631. Civil penalties -- injunctions not barred.** (1) ~~A~~ In an action initiated by the department
 8 to collect civil penalties against a person who violates is found to have violated this chapter or a rule,
 9 permit, effluent standard, or order issued under the provisions of this chapter, the person shall be ~~is~~ subject
 10 to a civil penalty not to exceed \$25,000. Each day of violation constitutes a separate violation.

11 (2) Action under this section does not bar enforcement of this chapter or of rules or orders issued
 12 under it by injunction or other appropriate remedy.

13 (3) The department shall institute and maintain any enforcement proceedings in the name of the
 14 state.

15 (4) When seeking penalties under this section, the department shall take into account the following
 16 factors in determining an appropriate ~~settlement, or judgment, as appropriate if any, subsequent to the filing~~
 17 ~~of a complaint:~~

18 (a) the nature, circumstances, extent, and gravity of the violation; and

19 (b) with respect to the violator, ~~his~~ the violator's ability to pay, ~~any~~ prior history of ~~such~~ violations,
 20 the economic benefit or savings, if any, to the violator resulting from the violator's action, and ~~any~~ other
 21 matters ~~as~~ that justice may require."

22
 23 **Section 9.** Section 75-5-632, MCA, is amended to read:

24 "**75-5-632. Criminal penalties.** A person who willfully or negligently violates 75-5-605 or any
 25 pretreatment standard established pursuant to this chapter is guilty of an offense and, upon conviction, is
 26 subject to a fine not to exceed \$25,000 per day of violation or imprisonment for not more than 1 year, or
 27 both. Following an initial conviction under this section, subsequent convictions ~~shall~~ subject a person to
 28 a fine of not more than \$50,000 per day of violation or imprisonment for not more than 2 years, or both."

29
 30 **Section 10.** Section 75-5-636, MCA, is amended to read:

1 "**75-5-636. ~~Action~~ Investigation of complaints by other parties.** A person, association, corporation,
2 or agency of the state or federal government may ~~apply to notify~~ the department ~~protecting a of an alleged~~
3 violation of this chapter. ~~The~~ Based upon information submitted by the person, association, corporation,
4 or agency, the department shall ~~make~~ conduct an investigation ~~and make a written report to the person,~~
5 ~~association, corporation, or agency which made the protest~~ to determine the validity of the complaint. If
6 a violation is established by the department's investigation of the department, the department shall initiate
7 an appropriate enforcement action shall be taken response as described in [section 7 5]."

8

9 **NEW SECTION. Section 11. Codification instructions.** ~~{1} [Section 4] is intended to be codified~~
10 ~~as an integral part of Title 75, chapter 5, part 4, and the provisions of Title 75, chapter 5, part 4, apply to~~
11 ~~{section 4}.~~

12 ~~{2} [Section 8] [SECTION 5] is intended to be codified as an integral part of Title 75, chapter 5,~~
13 ~~part 6, and the provisions of Title 75, chapter 5, part 6, apply to [section 8 5].~~

14

15 **NEW SECTION. Section 12. Effective date.** [This act] is effective July 1, 1995.

16

-END-

1 SENATE BILL NO. 78

2 INTRODUCED BY GROSFIELD, KNOX, COCCHIARELLA, DOHERTY

3 BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING CERTAIN REQUIREMENTS FOR THE WATER
6 POLLUTION CONTROL ADVISORY COUNCIL; ~~REMOVING THE VOLUNTARY PERFORMANCE BOND~~
7 ~~REQUIREMENTS UNDER THE WATER QUALITY LAWS AND AUTHORIZING THE DEPARTMENT TO~~
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23 ~~or other wastes, creating a hazard to human health.~~24 ~~(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.~~25 ~~(4) "Degradation" means a change in water quality that lowers the quality of high quality waters~~
26 ~~for a parameter. The term does not include those changes in water quality determined to be nonsignificant~~
27 ~~pursuant to 75-5-301(5)(e).~~28 ~~(5) "Department" means the department of health and environmental sciences provided for in Title~~
29 ~~2, chapter 15, part 21.~~30 ~~(6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and~~

1 ~~includes sewage systems and treatment works.~~

2 ~~(7) "Disturbed land" means the area of land altered by activities associated with a permit issued~~
 3 ~~pursuant to this chapter that may affect the quality of waters located at or near lands owned or under the~~
 4 ~~control of the permittee.~~

5 ~~(7)(9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations~~
 6 ~~of chemical, physical, biological, and other constituents which that are discharged into state waters.~~

7 ~~(8)(9) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,~~
 8 ~~whether or not these uses are included in the water quality standards.~~

9 ~~(9)(10) "High quality waters" means state waters whose quality for a parameter is better than~~
 10 ~~standards established pursuant to 75-5-301. All waters are high quality water unless classified by the~~
 11 ~~board within a classification for waters that are not suitable for human consumption or not suitable for~~
 12 ~~growth and propagation of fish and associated aquatic life.~~

13 ~~(10)(11) "Industrial waste" means a waste substance from the process of business or industry or~~
 14 ~~from the development of any natural resource, together with any sewage that may be present.~~

15 ~~(11)(12) "Interested person" means a person who has submitted oral or written comments on the~~
 16 ~~department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term~~
 17 ~~includes a person who has requested authorization to degrade high quality waters.~~

18 ~~(12)(13) "Local department of health" means the staff, including health officers, employed by a~~
 19 ~~county, city, city county, or district board of health.~~

20 ~~(13)(14) "Mixing zone" means an area established in a permit or final decision on nondegradation~~
 21 ~~issued by the department where water quality standards may be exceeded, subject to conditions that are~~
 22 ~~imposed by the department and that are consistent with the rules adopted by the board.~~

23 ~~(14)(15) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,~~
 24 ~~lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or~~
 25 ~~discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state~~
 26 ~~waters.~~

27 ~~(15)(16) "Owner or operator" means a person who owns, leases, operates, controls, or supervises~~
 28 ~~a point source.~~

29 ~~(16)(17) "Parameter" means a physical, biological, or chemical property of state water when a value~~
 30 ~~of that property affects the quality of the state water.~~

1 ~~(17),(18)~~ "Person" means the state, a political subdivision of the state, institution, firm, corporation,
2 partnership, individual, or other entity and includes persons resident in Canada.

3 ~~(18),(19)~~ "Point source" means a discernible, confined, and discrete conveyance, including but not
4 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel
5 or other floating craft, from which pollutants are or may be discharged.

6 ~~(19),(20)~~ "Pollution" means contamination or other alteration of the physical, chemical, or biological
7 properties of state waters which that exceeds that permitted by Montana water quality standards, including
8 but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the
9 discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance
10 into state water which that will or is likely to create a nuisance or render the waters harmful, detrimental,
11 or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.
12 A discharge, seepage, drainage, infiltration, or flow which that is authorized under the pollution discharge
13 permit rules of the board is not pollution under this chapter. Activities conducted under the conditions
14 imposed by the department in short term authorizations pursuant to 75-5-308 are not considered pollution
15 under this chapter.

16 ~~(20),(21)~~ "Sewage" means water carried waste products from residences, public buildings,
17 institutions, or other buildings, including discharge from human beings or animals, together with ground
18 water infiltration and surface water present.

19 ~~(21),(22)~~ "Sewage system" means a device for collecting or conducting sewage, industrial wastes,
20 or other wastes to an ultimate disposal point.

21 ~~(22),(23)~~ "Standard of performance" means a standard adopted by the board for the control of the
22 discharge of pollutants which that reflects the greatest degree of effluent reduction achievable through
23 application of the best available demonstrated control technology, processes, operating methods, or other
24 alternatives, including, where practicable, a standard permitting no discharge of pollutants.

25 ~~(23),(24)~~ "State waters" means a body of water, irrigation system, or drainage system, either
26 surface or underground; however, this subsection does not apply to irrigation waters where when the
27 waters are used up within the irrigation system and the waters are not returned to any other state waters.

28 ~~(24),(25)~~ "Treatment works" means works, including sewage lagoons, installed for treating or
29 holding sewage, industrial wastes, or other wastes.

30 ~~(25),(26)~~ "Water quality protection practices" means those activities, prohibitions, maintenance

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

6 ~~(26)(27) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,~~
 7 ~~jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition~~
 8 ~~of ground water."~~

9

10 **Section 1.** Section 75-5-221, MCA, is amended to read:

11 **"75-5-221. Water pollution control advisory council -- general.** (1) The council provided for in
 12 2-15-2107 shall select a chairman presiding officer from among its members. The director of ~~health and~~
 13 ~~environmental sciences~~ the department shall designate a member of the staff of the department to act as
 14 secretary to the council. The secretary shall keep records of all actions taken by the council.

15 (2) ~~It shall hold at least two regular meetings each calendar year. Special meetings shall~~ Meetings
 16 must be held at the call of the chairman presiding officer or on written request of two or more members.

17 (3) Each member may, by filing with the secretary, designate a deputy or alternate to perform ~~his~~
 18 the member's duties.

19 (4) The council shall act only in an advisory capacity to the department on matters relating to water
 20 pollution.

21 (5) The director of the department may designate other persons to participate with council
 22 members in evaluating particular issues arising under this chapter that are brought before the council."

23

24 **Section 2.** Section 75-5-401, MCA, is amended to read:

25 **"75-5-401. Board rules for permits.** (1) The board shall adopt rules:

26 (a) governing application for permits to discharge sewage, industrial wastes, or other wastes into
 27 state waters, including rules requiring the filing of plans and specifications relating to the construction,
 28 modification, or operation of disposal systems;

29 (b) governing the issuance, denial, modification, or revocation of permits.

30 (2) The rules ~~shall~~ must allow the issuance or continuance of a permit only if the department finds

1 that operation consistent with the limitations of the permit will not result in pollution of any state waters,
 2 except that the rules may allow the issuance of a temporary permit under which pollution may result if the
 3 department ~~insures~~ ensures that ~~such~~ the permit contains a compliance schedule designed to meet all
 4 applicable effluent standards and water quality standards in the shortest reasonable period of time.

5 (3) The rules ~~shall~~ must provide that the department may revoke a permit if the department finds
 6 that the holder of the permit has violated its terms, unless the department also finds that the violation was
 7 accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the
 8 violation as soon as was reasonably possible.

9 (4) The board may adopt rules governing reclamation of sites disturbed by construction,
 10 modification, or operation of ~~disposal systems~~ permitted activities for which a bond is ~~voluntarily~~
 11 a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing
 12 release of the bond or other surety and release of portions of a bond or other surety."

13
 14 ~~NEW SECTION. Section 4. Performance bond — statement of policy. (1) The department may~~
 15 ~~not require a bond under 75-5-405 unless it determines that the permitted activity disturbs land in a~~
 16 ~~magnitude or manner that poses a significant threat to the quality of state waters. A bond required under~~
 17 ~~75-5-405 must be used, if needed, only to reclaim disturbed land that may impact water quality. A bond~~
 18 ~~required under 75-5-405 may not be used to remediate damages to state waters.~~

19 (2) ~~The department may not require a bond for a permitted activity if the permitholder or applicant~~
 20 ~~has posted a bond for the permitted activity with another state agency to reclaim disturbed land that may~~
 21 ~~impact water quality.~~

22 (3) ~~The bond amount must be limited to the reasonable costs necessary to eliminate anticipated~~
 23 ~~potential impacts to state waters. In determining the bond amount, the department shall consult with the~~
 24 ~~permitholder or applicant and give consideration to alternative means of water quality protection offered~~
 25 ~~by the permitholder or applicant.~~

26
 27 ~~Section 5. Section 75-5-405, MCA, is amended to read:~~

28 ~~"75-5-405. Voluntary filing of performance Performance bond terms hearing. (1) A person~~
 29 ~~who holds or has applied for a permit pursuant to 75-5-401 may voluntarily be required to file a~~
 30 ~~performance bond or other surety with the department for an amount sufficient to enable the state to~~

1 ~~reclaim the land disturbed lands resulting from activity authorized by the permit that may impact water~~
 2 ~~quality by the project or activity authorized by the permit in accordance with all permit requirements and~~
 3 ~~as needed to prevent pollution of state waters.~~

4 ~~(2) If the The department determines that shall determine the appropriate bonding level, does not~~
 5 ~~which must represent the present cost of reclaiming the disturbed land according to the reclamation~~
 6 ~~requirements specified in the permit and the present cost of preventing pollution of state waters, the~~
 7 ~~department shall notify the permittee and the permittee may modify the amount of the bond to accurately~~
 8 ~~reflect the present cost.~~

9 ~~(3) The applicant shall file with the department a bond payable to the state of Montana with surety~~
 10 ~~satisfaction to the department in an amount determined by the department to be reasonably necessary to~~
 11 ~~protect the quality of state waters from impacts resulting from disturbed land associated with the permitted~~
 12 ~~activity. The bond must be conditioned upon compliance with the provisions of this chapter, rules~~
 13 ~~implementing this chapter, and the conditions or limitations of the discharge permit.~~

14 ~~(4) The department shall review the amount of each bond at the time of the permit renewal and~~
 15 ~~shall notify the permittee if the review indicates that the bond level should be adjusted. When determined~~
 16 ~~by the department that the bonding level of a permit does not represent the present costs of compliance~~
 17 ~~with this chapter or of the protection of state waters, the department may modify the bonding requirements~~
 18 ~~of that permit.~~

19 ~~(3)(5) The department may not release all or any a portion of a performance bond or other surety~~
 20 ~~filed pursuant to this section until reclamation of the disturbed land has been completed to the satisfaction~~
 21 ~~of the department and the department has determined that pollution of state waters has not occurred. The~~
 22 ~~department may initiate bond forfeiture proceedings if the permittee fails to satisfactorily reclaim the~~
 23 ~~disturbed land or prevent pollution of state waters.~~

24 ~~(4)(6) The department may not release a bond or other surety filed pursuant to this section until~~
 25 ~~the public has been provided an opportunity for a hearing."~~

26
 27 **Section 3.** Section 75-5-516, MCA, is amended to read:

28 **"75-5-516. Fees authorized for recovery -- process -- rulemaking.** (1) The board shall by rule
 29 prescribe fees to be assessed by the department that are sufficient to cover the board's and department's
 30 documented costs, both direct and indirect, of:

1 (a) reviewing and acting upon an application for a permit, permit modification, permit renewal,
2 certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

3 (b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;

4 (c) reviewing and acting upon an application for a permit, certificate, license, or other authorization
5 for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

6 (d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a)
7 through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any
8 application fee to the applicant.

9 (e) conducting compliance inspections and monitoring effluent and ambient water quality; and

10 (f) preparing water quality rules or guidance documents.

11 (2) The rules promulgated by the board under this section must include:

12 (a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through
13 (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and
14 acting upon the applications. This fee may not be less than ~~\$250~~ or more than \$5,000 per discharge point
15 for an application addressed under subsection (1), except that an application with multiple ~~storm water~~
16 discharge points may be assessed a lower fee for those points according to board rule.

17 (b) an annual fee to be assessed according to the volume and concentration of waste discharged
18 into state waters. The annual fee may not be less than ~~\$250~~ and may not be more than \$3,000 per million
19 gallons discharged per day on an annual average for any activity under permit or authorization, as described
20 in subsection (1), except that:

21 (i) a permit or authorization with multiple ~~storm water~~ discharge points may be assessed a lower
22 fee for those points according to board rule; and

23 (ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent
24 limitations and that is in compliance with other permit requirements, using the previous calendar year's
25 discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to
26 25% of the permit fee may be given to facilities that consistently discharge effluent at levels between 50%
27 and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its
28 first year of operation, and a permittee with a violation of any effluent limit during the previous calendar
29 year is not eligible for a fee reduction for the following year.

30 (3) To the extent permitted under ~~this limitation~~ subsection (2)(b), the annual fee must be sufficient

1 to pay the department's estimated cost of conducting all tasks described under subsection (1) after
2 subtracting:

3 ~~ii~~(a) the fees collected under subsection (2)(a);

4 ~~iii~~(b) state general fund appropriations for functions administered under this chapter; and

5 ~~iiii~~(c) federal grants for functions administered under this chapter.

6 ~~3~~(4) For purposes of subsection ~~2~~(3), the department's estimated cost of conducting the tasks
7 described under subsection (1) is the amount authorized by the legislature for the department's water
8 quality discharge permit programs.

9 ~~4~~(5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under
10 this section within 90 days after the date established by rule for fee payment, the department may:

11 (a) impose an additional assessment consisting of not more than 20% of the fee plus interest on
12 the required fee computed at the rate established under 15-31-510(3); or

13 (b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1
14 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties,
15 assessments, and interest imposed under subsection ~~4~~(a)(5)(a).

16 ~~5~~(6) Fees collected pursuant to this section must be deposited in an account in the special
17 revenue fund type pursuant to 75-5-517.

18 ~~6~~(7) The department shall give written notice to each person assessed a fee under this section
19 of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice
20 must be issued at least 30 days prior to the due date for payment of the assessment.

21 ~~7~~(8) A holder of or an applicant for a permit, certificate, or license may appeal the department's
22 fee assessment to the board within 20 days after receiving written notice of the department's fee
23 determination under subsection ~~6~~(7). The appeal to the board must include a written statement detailing
24 the reasons that the permitholder or applicant considers the department's fee assessment to be erroneous
25 or excessive.

26 ~~8~~(9) If part of the department's fee assessment is not in dispute in an appeal filed under
27 subsection ~~7~~(8), the undisputed portion of the fee must be paid to the department upon written request
28 of the department.

29 ~~9~~(10) The contested case provisions of the Montana Administrative Procedure Act, provided for
30 in Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

1 ~~(10)~~(11) A municipality may raise rates to cover costs associated with the fees prescribed in this
 2 section for a public sewer system without the hearing required in 69-7-111."

3
 4 **Section 4.** Section 75-5-601, MCA, is amended to read:

5 "**75-5-601. Cleanup orders.** (1) The department ~~shall~~ may issue ~~orders~~ an order to a person to
 6 clean up any material that ~~he~~ the person or ~~his~~ the person's employee, agent, or subcontractor has
 7 accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and that may
 8 pollute ~~them~~ state waters.

9 (2) If a unit of state or local government, including but not limited to a local board of health, county
 10 commission, governing body of a municipality, or state agency, has granted a permit or license to a person
 11 to discharge waste or has otherwise authorized an activity that involves the placement of waste and the
 12 department has reason to believe that the waste is causing or is likely to cause pollution of state waters,
 13 the department may issue an order to the unit of state or local government to take measures to ensure that
 14 the wastes causing or likely to cause the pollution are cleaned up.

15 (3) The department may include in an order issued to a county commission pursuant to subsection
 16 (2) a request that the commission create a sewer district in the geographic area affected by the order for
 17 the purpose of establishing a public sewer system in accordance with the petition and election procedures
 18 provided by 7-13-2204 and 7-13-2208 through 7-13-2214."

19
 20 **NEW SECTION.** **Section 5. Enforcement response.** (1) Whenever, on the basis of information
 21 available to the department, the department finds that a person is in violation of this chapter, a rule adopted
 22 under this chapter, or a condition or limitation in a permit, authorization, or order issued under this chapter,
 23 the department shall initiate an enforcement response, which may include any of the following actions:

- 24 (a) issuance of a letter notifying the person of the violation and requiring compliance;
 25 (b) issuance of an order requiring the person to correct the violation pursuant to 75-5-601,
 26 75-5-611, 75-5-613, and 75-5-621;
 27 (c) bringing a judicial action as authorized by 75-5-614 and 75-5-622; or
 28 (d) seeking administrative or judicial penalties as provided under 75-5-611, 75-5-615, and
 29 75-5-631 through 75-5-633.

30 (2) UNLESS AN ALLEGED VIOLATION REPRESENTS AN IMMEDIATE THREAT TO HUMAN HEALTH,

1 SAFETY, OR WELFARE OR TO THE ENVIRONMENT, THE DEPARTMENT SHALL FIRST ISSUE A LETTER
 2 NOTIFYING THE PERSON OF THE VIOLATION AND REQUIRING COMPLIANCE. IF THE PERSON FAILS TO
 3 RESPOND TO THE DEPARTMENT'S LETTER, THEN THE DEPARTMENT MAY TAKE FURTHER ACTION AS
 4 PROVIDED IN SUBSECTION (1).

5 ~~(2)~~(3) The provisions of this chapter do not limit the authority of the department to bring a judicial
 6 action, which may include the assessment of penalties, prior to initiating any administrative action
 7 authorized by this chapter.

8

9 **Section 6.** Section 75-5-616, MCA, is amended to read:

10 **"75-5-616. Enforcement of permits and chapter.** The department shall take ~~such~~ actions ~~as that~~
 11 are authorized ~~or required~~ under ~~75-5-612 through 75-5-615~~ this part to ~~insure~~ ensure that the terms and
 12 conditions of issued permits are complied with and to ~~insure~~ ensure that violations of this chapter are
 13 appropriately prosecuted."

14

15 **Section 7.** Section 75-5-621, MCA, is amended to read:

16 **"75-5-621. Emergencies.** (1) Notwithstanding ~~any~~ other provisions of this chapter, if the
 17 department finds that a person is committing or is about to commit an act in violation of this chapter or an
 18 order or rule issued under ~~it which~~ this chapter that, if it occurs or continues, will cause substantial
 19 pollution the harmful effects of which will not be remedied immediately after the commission or cessation
 20 of the act, the department ~~shall~~ may order the person to stop, avoid, or moderate the act so that the
 21 substantial injury will not occur. The order ~~shall be~~ is effective immediately upon receipt by the person to
 22 whom it is directed, unless the department provides otherwise.

23 (2) Notice of the order ~~shall~~ must conform to the requirements of 75-5-611(1) so far as practicable.
 24 The notice ~~shall~~ must indicate that the order is an emergency order.

25 (3) Upon issuing ~~such~~ an order, the department shall fix a place and time for a hearing before the
 26 board, not later than 5 days ~~thereafter~~ after issuing the order unless the person to whom the order is
 27 directed ~~shall request~~ requests a later time. The department may deny a request for a later time if it finds
 28 that the person to whom the order is directed is not complying with the order. The hearing ~~shall~~ must be
 29 conducted in the manner specified in 75-5-611. As soon as practicable after the hearing, the board shall
 30 affirm, modify, or set aside the order of the department. The order of the board ~~shall~~ must be accompanied

1 by the statement specified in 75-5-611(5). An action for review of the order of the board may be initiated
 2 in the manner specified in 75-5-641. The initiation of ~~such~~ an action or taking of an appeal may not stay
 3 the effectiveness of the order unless the court finds that the board did not have reasonable cause to issue
 4 an order under this section."

5
 6 **Section 8.** Section 75-5-631, MCA, is amended to read:

7 **"75-5-631. Civil penalties -- injunctions not barred.** (1) A In an action initiated by the department
 8 to collect civil penalties against a person who violates is found to have violated this chapter or a rule,
 9 permit, effluent standard, or order issued under the provisions of this chapter, the person shall be is subject
 10 to a civil penalty not to exceed \$25,000. Each day of violation constitutes a separate violation.

11 (2) Action under this section does not bar enforcement of this chapter or of rules or orders issued
 12 under it by injunction or other appropriate remedy.

13 (3) The department shall institute and maintain any enforcement proceedings in the name of the
 14 state.

15 (4) When seeking penalties under this section, the department shall take into account the following
 16 factors in determining an appropriate settlement, or judgment, as appropriate if any, subsequent to the filing
 17 of a complaint:

18 (a) the nature, circumstances, extent, and gravity of the violation; and

19 (b) with respect to the violator, ~~his~~ the violator's ability to pay, ~~any~~ prior history of ~~such~~ violations,
 20 the economic benefit or savings, if any, to the violator resulting from the violator's action, and ~~any~~ other
 21 matters ~~as~~ that justice may require."

22
 23 **Section 9.** Section 75-5-632, MCA, is amended to read:

24 **"75-5-632. Criminal penalties.** A person who willfully or negligently violates 75-5-605 or any
 25 pretreatment standard established pursuant to this chapter is guilty of an offense and, upon conviction, is
 26 subject to a fine not to exceed \$25,000 per day of violation or imprisonment for not more than 1 year, or
 27 both. Following an initial conviction under this section, subsequent convictions ~~shall~~ subject a person to
 28 a fine of not more than \$50,000 per day of violation or imprisonment for not more than 2 years, or both."

29
 30 **Section 10.** Section 75-5-636, MCA, is amended to read:

1 "75-5-636. ~~Action~~ Investigation of complaints by other parties. A person, association, corporation,
2 or agency of the state or federal government may ~~apply to~~ notify the department ~~protecting a~~ of an alleged
3 violation of this chapter. ~~The~~ Based upon information submitted by the person, association, corporation,
4 or agency, the department shall ~~make~~ conduct an investigation ~~and make a written report to the person,~~
5 ~~association, corporation, or agency which made the protest~~ to determine the validity of the complaint. If
6 a violation is established by the ~~department's~~ department's investigation ~~of the department,~~ the department shall initiate
7 an appropriate enforcement ~~action shall be taken~~ response as described in [section 7 5]."

8

9 NEW SECTION. Section 11. Codification instructions. (1) ~~[Section 4] is intended to be codified~~
10 ~~as an integral part of Title 75, chapter 5, part 4, and the provisions of Title 75, chapter 5, part 4, apply to~~
11 ~~{section 4}.~~

12 (2) ~~[Section 8]~~ [SECTION 5] is intended to be codified as an integral part of Title 75, chapter 5,
13 part 6, and the provisions of Title 75, chapter 5, part 6, apply to [section 8 5].

14

15 NEW SECTION. Section 12. Effective date. [This act] is effective July 1, 1995.

16

-END-



HOUSE STANDING COMMITTEE REPORT

March 7, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 78 (third reading copy -- blue) be concurred in as amended.

Signed: _____

Dick Knox
Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Knox

1. Page 5, line 10.

Following: "~~voluntarily~~"

Insert: "voluntarily"

2. Page 10, line 3.

Following: "THE"

Insert: "conditions in the"

3. Page 10, line 3.

Following: "DEPARTMENT"

Strike: "MAY"

Insert: "shall"

4. Page 11, line 20.

Following: "action,"

Insert: "the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation to waters of the state,"

-END-

Committee Vote:

Yes 7, No 0.

SB 78
HOUSE
531128SC.Hdh

SENATE BILL NO. 78

INTRODUCED BY GROSFIELD, KNOX, COCCHIARELLA, DOHERTY

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING CERTAIN REQUIREMENTS FOR THE WATER POLLUTION CONTROL ADVISORY COUNCIL; ~~REMOVING THE VOLUNTARY PERFORMANCE BOND REQUIREMENTS UNDER THE WATER QUALITY LAWS AND AUTHORIZING THE DEPARTMENT TO REQUIRE PERFORMANCE BONDS FOR DISCHARGE PERMITS ISSUED TO APPLICANTS WHOSE ACTIVITIES WILL REQUIRE RECLAMATION OF DISTURBED LAND THAT MAY AFFECT WATER QUALITY;~~ REVISING FEE REQUIREMENTS FOR HOLDERS OF A PERMIT OR AUTHORIZATION UNDER THE WATER QUALITY LAWS; REVISING THE ENFORCEMENT PROVISIONS OF THE WATER QUALITY LAWS TO CLARIFY EXISTING ENFORCEMENT AUTHORITY; AMENDING SECTIONS ~~75-5-103~~, 75-5-221, 75-5-401, ~~75-5-405~~, 75-5-516, 75-5-601, 75-5-616, 75-5-621, 75-5-631, 75-5-632, AND 75-5-636, MCA; AND PROVIDING AN EFFECTIVE DATE."

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~~

1 includes sewage systems and treatment works.

2 ~~(7)~~ (7) "Disturbed land" means the area of land altered by activities associated with a permit issued
3 pursuant to this chapter that may affect the quality of waters located at or near lands owned or under the
4 control of the permittee.

5 ~~(7)~~ (8) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations
6 of chemical, physical, biological, and other constituents which that are discharged into state waters.

7 ~~(8)~~ (9) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,
8 whether or not those uses are included in the water quality standards.

9 ~~(9)~~ (10) "High quality waters" means state waters whose quality for a parameter is better than
10 standards established pursuant to 75-5-301. All waters are high quality water unless classified by the
11 board within a classification for waters that are not suitable for human consumption or not suitable for
12 growth and propagation of fish and associated aquatic life.

13 ~~(10)~~ (11) "Industrial waste" means a waste substance from the process of business or industry or
14 from the development of any natural resource, together with any sewage that may be present.

15 ~~(11)~~ (12) "Interested person" means a person who has submitted oral or written comments on the
16 department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term
17 includes a person who has requested authorization to degrade high quality waters.

18 ~~(12)~~ (13) "Local department of health" means the staff, including health officers, employed by a
19 county, city, city county, or district board of health.

20 ~~(13)~~ (14) "Mixing zone" means an area established in a permit or final decision on nondegradation
21 issued by the department where water quality standards may be exceeded, subject to conditions that are
22 imposed by the department and that are consistent with the rules adopted by the board.

23 ~~(14)~~ (15) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,
24 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
25 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state
26 waters.

27 ~~(15)~~ (16) "Owner or operator" means a person who owns, leases, operates, controls, or supervises
28 a point source.

29 ~~(16)~~ (17) "Parameter" means a physical, biological, or chemical property of state water when a value
30 of that property affects the quality of the state water.

1 ~~(17)(18)~~ "Person" means the state, a political subdivision of the state, institution, firm, corporation,
2 partnership, individual, or other entity and includes persons resident in Canada.

3 ~~(18)(19)~~ "Point source" means a discernible, confined, and discrete conveyance, including but not
4 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel
5 or other floating craft, from which pollutants are or may be discharged.

6 ~~(19)(20)~~ "Pollution" means contamination or other alteration of the physical, chemical, or biological
7 properties of state waters which that exceeds that permitted by Montana water quality standards, including
8 but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the
9 discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance
10 into state water which that will or is likely to create a nuisance or render the waters harmful, detrimental,
11 or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.
12 A discharge, seepage, drainage, infiltration, or flow which that is authorized under the pollution discharge
13 permit rules of the board is not pollution under this chapter. Activities conducted under the conditions
14 imposed by the department in short term authorizations pursuant to 75-5-308 are not considered pollution
15 under this chapter.

16 ~~(20)(21)~~ "Sewage" means water carried waste products from residences, public buildings,
17 institutions, or other buildings, including discharge from human beings or animals, together with ground
18 water infiltration and surface water present.

19 ~~(21)(22)~~ "Sewage system" means a device for collecting or conducting sewage, industrial wastes,
20 or other wastes to an ultimate disposal point.

21 ~~(22)(23)~~ "Standard of performance" means a standard adopted by the board for the control of the
22 discharge of pollutants which that reflects the greatest degree of effluent reduction achievable through
23 application of the best available demonstrated control technology, processes, operating methods, or other
24 alternatives, including, where practicable, a standard permitting no discharge of pollutants.

25 ~~(23)(24)~~ "State waters" means a body of water, irrigation system, or drainage system, either
26 surface or underground; however, this subsection does not apply to irrigation waters where when the
27 waters are used up within the irrigation system and the waters are not returned to any other state waters.

28 ~~(24)(25)~~ "Treatment works" means works, including sewage lagoons, installed for treating or
29 holding sewage, industrial wastes, or other wastes.

30 ~~(25)(26)~~ "Water quality protection practices" means those activities, prohibitions, maintenance

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

6 ~~(26)(27) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,~~
 7 ~~jettied, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition~~
 8 ~~of ground water."~~

9

10 **Section 1.** Section 75-5-221, MCA, is amended to read:

11 **"75-5-221. Water pollution control advisory council -- general.** (1) The council provided for in
 12 2-15-2107 shall select a ~~chairman~~ presiding officer from among its members. The director of ~~health and~~
 13 ~~environmental sciences~~ the department shall designate a member of the staff of the department to act as
 14 secretary to the council. The secretary shall keep records of all actions taken by the council.

15 (2) ~~It shall hold at least two regular meetings each calendar year. Special meetings shall~~ Meetings
 16 must be held at the call of the chairman presiding officer or on written request of two or more members.

17 (3) Each member may, by filing with the secretary, designate a deputy or alternate to perform ~~his~~
 18 the member's duties.

19 (4) The council shall act only in an advisory capacity to the department on matters relating to water
 20 pollution.

21 (5) The director of the department may designate other persons to participate with council
 22 members in evaluating particular issues arising under this chapter that are brought before the council."

23

24 **Section 2.** Section 75-5-401, MCA, is amended to read:

25 **"75-5-401. Board rules for permits.** (1) The board shall adopt rules:

26 (a) governing application for permits to discharge sewage, industrial wastes, or other wastes into
 27 state waters, including rules requiring the filing of plans and specifications relating to the construction,
 28 modification, or operation of disposal systems;

29 (b) governing the issuance, denial, modification, or revocation of permits.

30 (2) The rules ~~shall~~ must allow the issuance or continuance of a permit only if the department finds

1 that operation consistent with the limitations of the permit will not result in pollution of any state waters,
 2 except that the rules may allow the issuance of a temporary permit under which pollution may result if the
 3 department ~~insures~~ ensures that ~~each~~ the permit contains a compliance schedule designed to meet all
 4 applicable effluent standards and water quality standards in the shortest reasonable period of time.

5 (3) The rules ~~shall~~ must provide that the department may revoke a permit if the department finds
 6 that the holder of the permit has violated its terms, unless the department also finds that the violation was
 7 accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the
 8 violation as soon as was reasonably possible.

9 (4) The board may adopt rules governing reclamation of sites disturbed by construction,
 10 modification, or operation of ~~disposal systems~~ permitted activities for which a bond is ~~voluntarily~~
 11 VOLUNTARILY filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria
 12 and procedures governing release of the bond or other surety and release of portions of a bond or other
 13 surety."

14

15 ~~NEW SECTION. Section 4. Performance bond — statement of policy.~~ (1) The department may
 16 not require a bond under 75-5-405 unless it determines that the permitted activity disturbs land in a
 17 magnitude or manner that poses a significant threat to the quality of state waters. A bond required under
 18 75-5-405 must be used, if needed, only to reclaim disturbed land that may impact water quality. A bond
 19 required under 75-5-405 may not be used to remediate damages to state waters.

20 (2) The department may not require a bond for a permitted activity if the permitholder or applicant
 21 has posted a bond for the permitted activity with another state agency to reclaim disturbed land that may
 22 impact water quality.

23 (3) The bond amount must be limited to the reasonable costs necessary to eliminate anticipated
 24 potential impacts to state waters. In determining the bond amount, the department shall consult with the
 25 permitholder or applicant and give consideration to alternative means of water quality protection offered
 26 by the permitholder or applicant.

27

28 ~~**Section 5.**~~ Section 75-5-405, MCA, is amended to read:

29 ~~"75-5-405. Voluntary filing of performance Performance bond — terms — hearing.~~ (1) A person
 30 who holds or has applied for a permit pursuant to 75-5-401 may voluntarily be required to file a

1 ~~performance bond or other surety with the department for an amount sufficient to enable the state to~~
 2 ~~reclaim the land disturbed lands resulting from activity authorized by the permit that may impact water~~
 3 ~~quality by the project or activity authorized by the permit in accordance with all permit requirements and~~
 4 ~~as needed to prevent pollution of state waters.~~

5 ~~(2) If the The department determines that shall determine the appropriate bonding level, does not~~
 6 ~~which must represent the present cost of reclaiming the disturbed land according to the reclamation~~
 7 ~~requirements specified in the permit and the present cost of preventing pollution of state waters, the~~
 8 ~~department shall notify the permittee and the permittee may modify the amount of the bond to accurately~~
 9 ~~reflect the present cost.~~

10 ~~(3) The applicant shall file with the department a bond payable to the state of Montana with surety~~
 11 ~~satisfaction to the department in an amount determined by the department to be reasonably necessary to~~
 12 ~~protect the quality of state waters from impacts resulting from disturbed land associated with the permitted~~
 13 ~~activity. The bond must be conditioned upon compliance with the provisions of this chapter, rules~~
 14 ~~implementing this chapter, and the conditions or limitations of the discharge permit.~~

15 ~~(4) The department shall review the amount of each bond at the time of the permit renewal and~~
 16 ~~shall notify the permittee if the review indicates that the bond level should be adjusted. When determined~~
 17 ~~by the department that the bonding level of a permit does not represent the present costs of compliance~~
 18 ~~with this chapter or of the protection of state waters, the department may modify the bonding requirements~~
 19 ~~of that permit.~~

20 ~~(3)(5) The department may not release all or any a portion of a performance bond or other surety~~
 21 ~~filed pursuant to this section until reclamation of the disturbed land has been completed to the satisfaction~~
 22 ~~of the department and the department has determined that pollution of state waters has not occurred. The~~
 23 ~~department may initiate bond forfeiture proceedings if the permittee fails to satisfactorily reclaim the~~
 24 ~~disturbed land or prevent pollution of state waters.~~

25 ~~(4)(6) The department may not release a bond or other surety filed pursuant to this section until~~
 26 ~~the public has been provided an opportunity for a hearing."~~

27
 28 **Section 3.** Section 75-5-516, MCA, is amended to read:

29 **"75-5-516. Fees authorized for recovery -- process -- rulemaking.** (1) The board shall by rule
 30 prescribe fees to be assessed by the department that are sufficient to cover the board's and department's

1 documented costs, both direct and indirect, of:

2 (a) reviewing and acting upon an application for a permit, permit modification, permit renewal,
3 certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

4 (b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;

5 (c) reviewing and acting upon an application for a permit, certificate, license, or other authorization
6 for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

7 (d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a)
8 through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any
9 application fee to the applicant.

10 (e) conducting compliance inspections and monitoring effluent and ambient water quality; and

11 (f) preparing water quality rules or guidance documents.

12 (2) The rules promulgated by the board under this section must include:

13 (a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through
14 (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and
15 acting upon the applications. This fee may not be ~~less than \$250 or~~ more than \$5,000 per discharge point
16 for an application addressed under subsection (1), except that an application with multiple ~~storm water~~
17 discharge points may be assessed a lower fee for those points according to board rule.

18 (b) an annual fee to be assessed according to the volume and concentration of waste discharged
19 into state waters. The annual fee may not be ~~less than \$250 and may not be~~ more than \$3,000 per million
20 gallons discharged per day on an annual average for any activity under permit or authorization, as described
21 in subsection (1), except that:

22 (i) a permit or authorization with multiple ~~storm water~~ discharge points may be assessed a lower
23 fee for those points according to board rule; and

24 (ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent
25 limitations and that is in compliance with other permit requirements, using the previous calendar year's
26 discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to
27 25% of the permit fee may be given to facilities that consistently discharge effluent at levels between 50%
28 and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its
29 first year of operation, and a permittee with a violation of any effluent limit during the previous calendar
30 year is not eligible for a fee reduction for the following year.

1 ~~(3)~~ To the extent permitted under ~~this limitation~~ subsection (2)(b), the annual fee must be sufficient
 2 to pay the department's estimated cost of conducting all tasks described under subsection (1) after
 3 subtracting:

4 ~~(i)~~(a) the fees collected under subsection (2)(a);

5 ~~(ii)~~(b) state general fund appropriations for functions administered under this chapter; and

6 ~~(iii)~~(c) federal grants for functions administered under this chapter.

7 ~~(3)~~(4) For purposes of subsection ~~(2)~~(3), the department's estimated cost of conducting the tasks
 8 described under subsection (1) is the amount authorized by the legislature for the department's water
 9 quality discharge permit programs.

10 ~~(4)~~(5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under
 11 this section within 90 days after the date established by rule for fee payment, the department may:

12 (a) impose an additional assessment consisting of not more than 20% of the fee plus interest on
 13 the required fee computed at the rate established under 15-31-510(3); or

14 (b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1
 15 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties,
 16 assessments, and interest imposed under subsection ~~(4)~~(5)~~(a)~~.

17 ~~(5)~~(6) Fees collected pursuant to this section must be deposited in an account in the special
 18 revenue fund type pursuant to 75-5-517.

19 ~~(6)~~(7) The department shall give written notice to each person assessed a fee under this section
 20 of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice
 21 must be issued at least 30 days prior to the due date for payment of the assessment.

22 ~~(7)~~(8) A holder of or an applicant for a permit, certificate, or license may appeal the department's
 23 fee assessment to the board within 20 days after receiving written notice of the department's fee
 24 determination under subsection ~~(6)~~(7). The appeal to the board must include a written statement detailing
 25 the reasons that the permitholder or applicant considers the department's fee assessment to be erroneous
 26 or excessive.

27 ~~(8)~~(9) If part of the department's fee assessment is not in dispute in an appeal filed under
 28 subsection ~~(7)~~(8), the undisputed portion of the fee must be paid to the department upon written request
 29 of the department.

30 ~~(9)~~(10) The contested case provisions of the Montana Administrative Procedure Act, provided for

1 in Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

2 ~~(10)~~(11) A municipality may raise rates to cover costs associated with the fees prescribed in this
3 section for a public sewer system without the hearing required in 69-7-111."

4
5 **Section 4.** Section 75-5-601, MCA, is amended to read:

6 "75-5-601. **Cleanup orders.** (1) The department ~~shall~~ may issue ~~orders~~ an order to a person to
7 clean up any material that ~~he~~ the person or ~~his~~ the person's employee, agent, or subcontractor has
8 accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and that may
9 pollute ~~them~~ state waters.

10 (2) If a unit of state or local government, including but not limited to a local board of health, county
11 commission, governing body of a municipality, or state agency, has granted a permit or license to a person
12 to discharge waste or has otherwise authorized an activity that involves the placement of waste and the
13 department has reason to believe that the waste is causing or is likely to cause pollution of state waters,
14 the department may issue an order to the unit of state or local government to take measures to ensure that
15 the wastes causing or likely to cause the pollution are cleaned up.

16 (3) The department may include in an order issued to a county commission pursuant to subsection
17 (2) a request that the commission create a sewer district in the geographic area affected by the order for
18 the purpose of establishing a public sewer system in accordance with the petition and election procedures
19 provided by 7-13-2204 and 7-13-2208 through 7-13-2214."

20
21 **NEW SECTION.** **Section 5. Enforcement response.** (1) Whenever, on the basis of information
22 available to the department, the department finds that a person is in violation of this chapter, a rule adopted
23 under this chapter, or a condition or limitation in a permit, authorization, or order issued under this chapter,
24 the department shall initiate an enforcement response, which may include any of the following actions:

- 25 (a) issuance of a letter notifying the person of the violation and requiring compliance;
- 26 (b) issuance of an order requiring the person to correct the violation pursuant to 75-5-601,
27 75-5-611, 75-5-613, and 75-5-621;
- 28 (c) bringing a judicial action as authorized by 75-5-614 and 75-5-622; or
- 29 (d) seeking administrative or judicial penalties as provided under 75-5-611, 75-5-615, and
30 75-5-631 through 75-5-633.

1 (2) UNLESS AN ALLEGED VIOLATION REPRESENTS AN IMMEDIATE THREAT TO HUMAN HEALTH,
 2 SAFETY, OR WELFARE OR TO THE ENVIRONMENT, THE DEPARTMENT SHALL FIRST ISSUE A LETTER
 3 NOTIFYING THE PERSON OF THE VIOLATION AND REQUIRING COMPLIANCE. IF THE PERSON FAILS TO
 4 RESPOND TO THE CONDITIONS IN THE DEPARTMENT'S LETTER, THEN THE DEPARTMENT MAY SHALL
 5 TAKE FURTHER ACTION AS PROVIDED IN SUBSECTION (1).

6 ~~(2)(3)~~ The provisions of this chapter do not limit the authority of the department to bring a judicial
 7 action, which may include the assessment of penalties, prior to initiating any administrative action
 8 authorized by this chapter.

9

10 **Section 6.** Section 75-5-616, MCA, is amended to read:

11 "**75-5-616. Enforcement of permits and chapter.** The department shall take ~~such~~ actions as that
 12 are authorized ~~or required~~ under ~~75-5-612 through 75-5-615~~ this part to ~~insure~~ ensure that the terms and
 13 conditions of issued permits are complied with and to ~~insure~~ ensure that violations of this chapter are
 14 appropriately prosecuted."

15

16 **Section 7.** Section 75-5-621, MCA, is amended to read:

17 "**75-5-621. Emergencies.** (1) Notwithstanding ~~any~~ other provisions of this chapter, if the
 18 department finds that a person is committing or is about to commit an act in violation of this chapter or an
 19 order or rule issued under ~~it which this chapter that~~, if it occurs or continues, will cause substantial
 20 pollution the harmful effects of which will not be remedied immediately after the commission or cessation
 21 of the act, the department ~~shall~~ may order the person to stop, avoid, or moderate the act so that the
 22 substantial injury will not occur. The order ~~shall be~~ is effective immediately upon receipt by the person to
 23 whom it is directed, unless the department provides otherwise.

24 (2) Notice of the order ~~shall~~ must conform to the requirements of 75-5-611(1) so far as practicable.
 25 The notice ~~shall~~ must indicate that the order is an emergency order.

26 (3) Upon issuing ~~such~~ an order, the department shall fix a place and time for a hearing before the
 27 board, not later than 5 days ~~thereafter~~ after issuing the order unless the person to whom the order is
 28 directed ~~shall request~~ requests a later time. The department may deny a request for a later time if it finds
 29 that the person to whom the order is directed is not complying with the order. The hearing ~~shall~~ must be
 30 conducted in the manner specified in 75-5-611. As soon as practicable after the hearing, the board shall

1 affirm, modify, or set aside the order of the department. The order of the board ~~shall~~ must be accompanied
 2 by the statement specified in 75-5-611(5). An action for review of the order of the board may be initiated
 3 in the manner specified in 75-5-641. The initiation of ~~such~~ an action or taking of an appeal may not stay
 4 the effectiveness of the order unless the court finds that the board did not have reasonable cause to issue
 5 an order under this section."

6

7 **Section 8.** Section 75-5-631, MCA, is amended to read:

8 **"75-5-631. Civil penalties -- injunctions not barred.** (1) A In an action initiated by the department
 9 to collect civil penalties against a person who violates is found to have violated this chapter or a rule,
 10 permit, effluent standard, or order issued under the provisions of this chapter, the person shall be is subject
 11 to a civil penalty not to exceed \$25,000. Each day of violation constitutes a separate violation.

12 (2) Action under this section does not bar enforcement of this chapter or of rules or orders issued
 13 under it by injunction or other appropriate remedy.

14 (3) The department shall institute and maintain any enforcement proceedings in the name of the
 15 state.

16 (4) When seeking penalties under this section, the department shall take into account the following
 17 factors in determining an appropriate settlement, or judgment, as appropriate if any, subsequent to the filing
 18 of a complaint:

19 (a) the nature, circumstances, extent, and gravity of the violation; and

20 (b) with respect to the violator, ~~his~~ the violator's ability to pay, ~~any~~ prior history of ~~such~~ violations,
 21 the economic benefit or savings, if any, to the violator resulting from the violator's action, THE AMOUNTS
 22 VOLUNTARILY EXPENDED BY THE VIOLATOR TO ADDRESS OR MITIGATE THE VIOLATION OR IMPACTS
 23 OF THE VIOLATION TO WATERS OF THE STATE, and ~~any~~ other matters ~~as~~ that justice may require."

24

25 **Section 9.** Section 75-5-632, MCA, is amended to read:

26 **"75-5-632. Criminal penalties.** A person who willfully or negligently violates 75-5-605 or any
 27 pretreatment standard established pursuant to this chapter is guilty of an offense and, upon conviction, is
 28 subject to a fine not to exceed \$25,000 per day of violation or imprisonment for not more than 1 year, or
 29 both. Following an initial conviction under this section, subsequent convictions ~~shall~~ subject a person to
 30 a fine of not more than \$50,000 per day of violation or imprisonment for not more than 2 years, or both."

1 **Section 10.** Section 75-5-636, MCA, is amended to read:

2 "**75-5-636. ~~Action~~ Investigation of complaints by other parties.** A person, association, corporation,
3 or agency of the state or federal government may ~~apply to~~ notify the department ~~protecting a~~ of an alleged
4 violation of this chapter. ~~The~~ Based upon information submitted by the person, association, corporation,
5 or agency, the department shall ~~make~~ conduct an investigation ~~and make a written report to the person,~~
6 ~~association, corporation, or agency which made the protest~~ to determine the validity of the complaint. If
7 a violation is established by the department's investigation of the department, the department shall initiate
8 an appropriate enforcement action shall be taken response as described in [section 7 5]."

9

10 NEW SECTION. Section 11. Codification instructions. (1) ~~[Section 4] is intended to be codified~~
11 ~~as an integral part of Title 75, chapter 5, part 4, and the provisions of Title 75, chapter 5, part 4, apply to~~
12 ~~[section 4].~~

13 (2) ~~[Section 8]~~ [SECTION 5] is intended to be codified as an integral part of Title 75, chapter 5,
14 part 6, and the provisions of Title 75, chapter 5, part 6, apply to ~~[section 8 5]~~.

15

16 NEW SECTION. Section 12. Effective date. [This act] is effective July 1, 1995.

17

-END-