

SENATE BILL NO. 123

INTRODUCED BY F. MANDEVILLE

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DIVISION OF DISASTER AND EMERGENCY SERVICES TO COORDINATE CERTAIN STREAM PERMITS, PERMISSIONS, AND AUTHORIZATIONS DURING A GOVERNOR'S PROCLAIMED STATE OF EMERGENCY OR DISASTER; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 75-5-318, 75-5-402, 75-7-113, AND 87-5-502, MCA."

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

NEW SECTION. Section 1. Coordination of stream, wetland, floodplain, and other water body permitting, authorization, and certification. (1) During a state of emergency or disaster proclaimed pursuant to the governor's authority as provided in 10-3-104 and subject to the division's duties as provided in 10-3-105, the division shall coordinate local, state, and federal emergency activities related to the following permits, permissions, or authorizations:

(a) a project requiring written consent of conservation supervisors for work in or near a perennial stream pursuant to 75-7-112;

(b) a notice of construction or hydraulic projects in a streambed by an agency of state government, a county, a municipality, or other subdivision of the state granted by the department of fish, wildlife, and parks pursuant to 87-5-501;

(c) a permit or variance for a use or an obstruction in a flood plain or floodway granted by the department of natural resources and conservation or a responsible political subdivision pursuant to Title 76, chapter 5, part 4;

(d) a permit granted by the U.S. army corps of engineers for a structure in or construction affecting a navigable waterway pursuant to the Rivers and Harbors Act of 1899, 33 U.S.C. 401, et seq.;

(e) a permit granted by the U.S. army corps of engineers for the discharge of dredged or fill material into the waters of the United States pursuant to the Federal Water Pollution Control Act, 33 U.S.C.

1 1251 through 1387;

2 (f) water quality certification by the department of environmental quality for federally permitted
3 activities that may result in a discharge to state waters under the authority provided in 75-5-401 and pursuant to
4 the Federal Water Pollution Control Act, 33 U.S.C. 1251 through 1387;

5 (g) an authorization by the department of environmental quality for a short-term water quality
6 standard for turbidity;

7 (h) a written authorization from the department of natural resources and conservation for the
8 historical use of the bed of a navigable river below the low-water mark pursuant to 77-1-1112; and

9 (i) a lease, license, or easement granted by the department of natural resources and conservation
10 for use of the bed of a navigable river up to the low-water mark pursuant to 77-1-1115.

11 (2) Coordination activities subject to division jurisdiction include requirements for:

12 (a) the physical presence of agency personnel at onsite meetings;

13 (b) the timely submission by agency personnel of required documents;

14 (c) the tracking of each permit, permission, or authorization in subsection (1) for communication to
15 the general public;

16 (d) the development of comparison benchmarks for each agency to measure and determine
17 progress on a permit, permission, or authorization;

18 (e) the sharing and use of engineering studies, site surveys, and other technical information to
19 prevent duplicative efforts by other agency personnel.

20 (3) The division may not compel a federal agency to take action.

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22 NEW SECTION. **Section 2. Coordination during state of emergency or disaster.** During a state of
23 emergency or disaster and pursuant to [section 1], the division of disaster and emergency services shall
24 coordinate activities related to permitting uses or obstacles within a flood plain or floodway.

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26 NEW SECTION. **Section 3. Coordination during state of emergency or disaster.** During a state of
27 emergency or disaster and pursuant to [section 1], the division of disaster and emergency services shall
28 coordinate department activities related to a lease, license, or easement granted for the use of the bed of a

1 navigable river up to the low-water mark.

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3 **Section 4.** Section 75-5-318, MCA, is amended to read:

4 **"75-5-318. Short-term water quality standards for turbidity.** (1) Upon authorization by the
5 department or the department of fish, wildlife, and parks pursuant to subsection (4), the short-term water quality
6 standards for total suspended sediment and turbidity resulting from stream-related construction activities or
7 stream enhancement projects are the narrative standards for total suspended sediment adopted by the
8 department under 75-5-301. If a short-term narrative standard is authorized under this section, the numeric
9 standard for turbidity adopted by the department under 75-5-301 does not apply to the affected water body
10 during the term of the narrative standard.

11 (2) The department shall review each application for short-term standards on a case-by-case basis
12 to determine whether there are reasonable alternatives that preclude the need for a narrative standard. If the
13 department determines that the numeric standard for turbidity adopted under 75-5-301 cannot be achieved
14 during the term of the activity and that there are no reasonable alternatives to achieve the numeric standard,
15 the department may authorize the use of a narrative standard for a specified term.

16 (3) Each authorization issued by the department must include conditions that minimize, to the
17 extent practicable, the magnitude of any change in water quality and the length of time during which any
18 change may occur. The authorization must also include site-specific conditions that ensure that the activity is
19 not harmful, detrimental, or injurious to public health and the uses of state waters and that ensure that existing
20 and designated beneficial uses of state water are protected and maintained upon completion of the activity. The
21 department may not authorize short-term narrative standards for activities requiring a discharge permit under
22 rules adopted pursuant to 75-5-401. Authorizations issued under this section may include conditions that
23 require water quality or quantity monitoring and reporting.

24 (4) In the performance of its responsibilities under this section, the department may negotiate
25 operating agreements with other departments of state government that are intended to minimize duplication in
26 review of activities eligible for authorizations under this section. The department of fish, wildlife, and parks may,
27 in accordance with subsections (1), (2), and (3), authorize short-term water quality standards for total
28 suspended sediment and turbidity for any stream construction project that it reviews under Title 75, chapter 7,

1 part 1, or Title 87, chapter 5, part 5.

2 (5) During a state of emergency or disaster, the department is subject to the coordination of
3 application activities by the division of disaster and emergency services pursuant to [section 1]."

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

6 **"75-5-402. Duties of department.** The department shall:

7 (1) issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or
8 other wastes into state waters, consistently with rules made by the department;

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

11 (3) clearly specify in any permit any limitations imposed as to the volume, strength, and other
12 significant characteristics of the waste to be discharged; and

13 (4) establish as conditions to the issuance of permits for which a performance bond or other surety
14 is filed under 75-5-405 certain reclamation requirements sufficient to prevent pollution of state waters during
15 and after operation of the project or activity for which a permit is issued; and

16 (5) submit to the coordination of permit activities by the division of disaster and emergency
17 services during a state of emergency or disaster pursuant to [section 1]."

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19 **Section 6.** Section 75-7-113, MCA, is amended to read:

20 **"75-7-113. Emergencies -- procedure.** (1) The provisions of this part do not apply to those actions
21 that are necessary to safeguard life or property, including growing crops, during periods of emergency. The
22 person responsible for a taking action under this section shall notify the supervisors in writing within 15 days of
23 the action taken as a result of an emergency. During a state of emergency or disaster, the person and the
24 supervisors are subject to the coordination of activities by the division of disaster and emergency services
25 pursuant to [section 1].

26 (2) The emergency notice given under subsection (1) must contain the following information:

27 (a) the location of the action taken;

28 (b) a general description of the action taken;

1 (c) the date on which the action was taken; and

2 (d) an explanation of the emergency causing the need for the action taken.

3 (3) If the supervisors determine that the action taken meets the definition of a project, the
4 supervisors shall send one copy of the notice, within 5 working days of its receipt, to the department.

5 (4) A team, called together as described in 75-7-112(2), shall make an onsite inspection within 20
6 days of receipt of the emergency notice.

7 (5) Each member of the team shall recommend in writing, within 30 days of the date of the
8 emergency notice, denial, approval, or modification of the project.

9 (6) The supervisors shall review the emergency project and affirm, overrule, or modify the
10 individual team recommendations and notify the applicant and team members of their decision within 60 days of
11 receipt of the emergency notice.

12 (7) A person who has undertaken an emergency action that is denied or modified shall submit
13 written notice, as provided in 75-7-111, to obtain approval pursuant to 75-7-112 to mitigate the damages to the
14 stream caused by the emergency action and to achieve a long-term solution, if feasible, to the emergency
15 situation. Notice under this subsection must be filed within 90 days after the supervisors' decision.

16 (8) (a) When a member of the team, other than an applicant, disagrees with the supervisors'
17 decision of an emergency action, the team member shall request that an arbitration panel, as provided for in
18 75-7-114, be appointed to hear the dispute and to make a final written decision on the dispute.

19 (b) When an applicant disagrees with the supervisors' decision, the applicant shall, within 30
20 working days of receipt of the supervisors' decision:

21 (i) agree to arbitration under this section and request that an arbitration panel, as provided for in
22 75-7-114, be appointed to hear the dispute and make a final written decision regarding the dispute; or

23 (ii) appeal the decision of the supervisors to the district court for the county where the project is
24 located.

25 (9) The failure of a person to perform the following subjects the person to civil and criminal
26 penalties under 75-7-123:

27 (a) failure to provide emergency notice under subsection (1);

28 (b) failure to submit a notice of the project under subsection (7); or

1 (c) failure to implement the terms of a supervisors' decision for the purpose of mitigating the
2 damage to the stream caused by the emergency action and of achieving a permanent solution, if feasible, to
3 the emergency situation."
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5 **Section 7.** Section 87-5-502, MCA, is amended to read:

6 **"87-5-502. Notice of construction or hydraulic projects.** An agency of state government, county,
7 municipality, or other subdivision of the state of Montana, ~~hereafter~~ from now on called applicant, ~~shall~~ may not
8 construct, modify, operate, maintain, or fail to maintain ~~any~~ a construction project or hydraulic project ~~which~~
9 ~~may or will obstruct, damage, diminish, destroy, change, modify, or vary~~ that obstructs, damages, diminishes,
10 destroys, changes, modifies, or varies the natural existing shape and form of ~~any~~ a stream or its banks or
11 tributaries by any type or form of construction without first ~~causing~~ serving notice of ~~such~~ the planned
12 construction ~~to be served upon~~ on the department on forms furnished by the department as soon as preliminary
13 plans are completed but not less than 60 days prior to commencement of final plans for construction. ~~Such~~ The
14 notice ~~shall~~ must include detailed plans and specifications of ~~so much of said~~ the project ~~as may or will affect~~
15 ~~any such~~ that affects a stream in any manner specified above. During a state of emergency or disaster, the
16 applicant is subject to coordination of activities by the division of disaster and emergency services pursuant to
17 [section 1]."
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19 **NEW SECTION. Section 8. Codification instruction.** (1) [Section 1] is intended to be codified as an
20 integral part of Title 10, chapter 3, part 3, and the provisions of Title 10, chapter 3, part 3, apply to [section 1].

21 (2) [Section 2] is intended to be codified as an integral part of Title 76, chapter 5, part 4, and the
22 provisions of Title 76, chapter 5, part 4, apply to [section 2].

23 (3) [Section 3] is intended to be codified as an integral part of Title 77, chapter 1, part 11, and the
24 provisions of Title 77, chapter 1, part 11, apply to [section 3].

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