

SENATE BILL NO. 559

INTRODUCED BY J. ELLIS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR APPEALS OF DEPARTMENT DECISIONS ON PERMITS FOR AIR QUALITY, WATER QUALITY, OR STRIP, UNDERGROUND, COAL, URANIUM, OR METAL MINES; PROVIDING FOR A FILING FEE; AMENDING SECTIONS 75-2-211, 75-2-213, AND 75-5-107, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Hearing -- appeal -- venue. (1) Subject to 75-2-104, a person whose interests are or may be adversely affected by a final decision of the department to approve or disapprove a permit application or a permit amendment application is entitled to a hearing before a district court subject to subsection (2) if a written request stating the reasons for the appeal and a fee of \$100 is submitted to the board within 30 days of the department's decision.

(2) A petition for judicial review of a department decision made pursuant to this section must be brought in the county in which the permitted activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.

(3) The petition for judicial review must include the party to whom the permit was issued or the applicant unless otherwise agreed to by the permitholder or applicant. All judicial challenges of permits for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court.

NEW SECTION. Section 2. Hearing -- appeal -- venue. (1) A person whose interests are or may be adversely affected by a final decision of the department to approve or disapprove a permit application or a permit amendment application is entitled to a hearing before the board subject to subsection (2) or a district court subject to subsection (3) if a written request stating the reasons for the appeal and a fee of \$100 is

1 submitted to the board within 30 days of the department's decision.

2 (2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
3 part 6, apply to a board hearing held under this section.

4 (3) A petition for judicial review of a department decision made pursuant to this section must be
5 brought in the county in which the permitted activity is proposed to occur. If an activity is proposed to occur in
6 more than one county, the action may be brought in any of the counties in which the activity is proposed to
7 occur.

8 (4) The petition for judicial review must include the party to whom the permit was issued or the
9 applicant unless otherwise agreed to by the permit holder or applicant. All judicial challenges of permits for
10 projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any
11 civil cause of a different nature pending in that court.

12
13 **NEW SECTION. Section 3. Hearing -- appeal -- venue.** A person whose interests are or may be
14 adversely affected by a final decision of the department to approve or disapprove a permit application or a
15 permit amendment application is entitled to a hearing before the board subject to subsection (2) or a district
16 court subject to subsection (3) if a written request stating the reasons for the appeal and a fee of \$100 is
17 submitted to the board within 30 days of the department's decision.

18 (2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
19 part 6, apply to a board hearing held under this section.

20 (3) A petition for judicial review of a department decision made pursuant to this section must be
21 brought in the county in which the permitted activity is proposed to occur. If an activity is proposed to occur in
22 more than one county, the action may be brought in any of the counties in which the activity is proposed to
23 occur.

24 (4) The petition for judicial review must include the party to whom the permit was issued or the
25 applicant unless otherwise agreed to by the permit holder or applicant. All judicial challenges of permits for
26 projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any
27 civil cause of a different nature pending in that court.

1 **NEW SECTION. Section 4. Hearing -- appeals -- venue.** (1) A person whose interests are or may
2 be adversely affected by a final decision of the department to approve or disapprove a permit application or a
3 permit amendment application is entitled to a hearing before the board subject to subsection (2) or a district
4 court subject to subsection (3) if a written request stating the reasons for the appeal and a fee of \$100 is
5 submitted to the board within 30 days of the department's decision.

6 (2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
7 part 6, apply to a board hearing held under this section.

8 (3) A petition for judicial review of a department decision made pursuant to this section must be
9 brought in the county in which the permitted activity is proposed to occur. If an activity is proposed to occur in
10 more than one county, the action may be brought in any of the counties in which the activity is proposed to
11 occur.

12 (4) The petition for judicial review must include the party to whom the permit was issued or the
13 applicant unless otherwise agreed to by the permitholder or applicant. All judicial challenges of permits for
14 projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any
15 civil cause of a different nature pending in that court.

16
17 **Section 5.** Section 75-2-211, MCA, is amended to read:

18 **"75-2-211. Permits for construction, installation, alteration, or use.** (1) The department shall by
19 rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this
20 part.

21 (2) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this
22 section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of
23 any machine, equipment, device, or facility that the department finds may directly or indirectly cause or
24 contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the
25 owner or operator shall file with the department the appropriate permit application on forms available from the
26 department.

27 (b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall
28 file the permit application with the department no later than January 3, 2006, or 60 days after the initial well

1 completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas
2 well facility is:

3 (i) for an oil or gas well facility producing oil, the date when the first oil is produced through
4 wellhead equipment into lease tanks from the ultimate producing interval after casing has been run; and

5 (ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable
6 of producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

7 (c) An owner or operator who complies with subsection (2)(b) may construct, install, or use
8 equipment necessary to complete or operate an oil or gas well facility without a permit until the department's
9 decision on the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or
10 operator may not operate the oil or gas well facility and is liable for a violation of this section for every day of
11 construction, installation, or operation of the facility.

12 (d) The department shall adopt rules establishing air emission control requirements applicable to
13 an oil or gas well facility during the time from the initial well completion date until the department's decision on
14 the application is final.

15 (e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject
16 to the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

17 (3) The permit program administered by the department pursuant to this section must include the
18 following:

19 (a) requirements and procedures for permit applications, including standard application forms;

20 (b) requirements and procedures for submittal of information necessary to determine the location,
21 quantity, and type of emissions;

22 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

23 (d) procedures for providing notice and an opportunity for comment to contiguous states and
24 federal agencies, as appropriate;

25 (e) requirements for inspection, monitoring, recordkeeping, and reporting;

26 (f) procedures for the transfer of permits;

27 (g) requirements and procedures for suspension, modification, and revocation of permits by the
28 department;

1 (h) requirements and procedures for appropriate emission limitations and other requirements,
2 including enforceable measures necessary to ensure compliance with those limitations and requirements;
3 (i) requirements and procedures for permit modification and amendment; and
4 (j) requirements and procedures for issuing a single permit authorizing emissions from similar
5 operations at multiple temporary locations, which permit may include conditions necessary to ensure
6 compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or
7 operator notify the department in advance of each change in location.

8 (4) This section does not restrict the department's authority to adopt regulations providing for a
9 single air quality permit system.

10 (5) Department approval of an application to transfer a portable emission source from one location
11 to another is exempt from the provisions of 75-1-201(1).

12 (6) The department may, for good cause shown, waive or shorten the time required for filing the
13 appropriate applications.

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

16 (8) An application is not considered filed until the applicant has submitted all fees required under
17 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7)
18 of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of
19 an application that the application is incomplete and fails to list the reasons why the application is considered
20 incomplete, the application is considered filed as of the date of the purported filing.

21 (9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires
22 the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75,
23 chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the
24 application:

25 (i) within 180 days after the department's receipt of a filed application, as provided in subsection
26 (8), if the department prepares the environmental impact statement;

27 (ii) within 30 days after issuance of the final environmental impact statement by the lead agency if
28 a state agency other than the department has been designated by the governor as lead agency for preparation

1 of the environmental impact statement; or

2 (iii) if the application is for a machine, equipment, a device, or a facility at an operation that
3 requires a permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental
4 impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

5 (b) If an application does not require the preparation of an environmental impact statement, is not
6 subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42
7 U.S.C. 7475, 7503, or 7661a, the department shall notify the applicant in writing within 60 days after its receipt
8 of a filed application, as provided in subsection (8), of its approval or denial of the application, except as
9 provided in subsection (14).

10 (c) If an application does not require the preparation of an environmental impact statement and is
11 subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661a, the department shall notify
12 the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its
13 approval or denial of the application.

14 (d) Except as provided in subsection (9)(e), if an application does not require the preparation of an
15 environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the
16 applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed
17 application, as provided in subsection (8).

18 (e) If an application for a permit is for the construction, installation, alteration, or use of a source
19 that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the
20 department shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit
21 required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the
22 applications within the time period provided for in 75-2-215(3)(e).

23 (f) The time for notification may be extended for 30 days by written agreement of the department
24 and the applicant. Additional 30-day extensions may be granted by the department upon the request of the
25 applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the
26 applicant's agent.

27 (g) Failure by the department to act in a timely manner does not constitute approval or denial of
28 the application. This does not limit or abridge the right of any person to seek available judicial remedies to

1 require the department to act in a timely manner.

2 (10) Except as provided in 75-2-213 and [section 1], when the department approves or denies the
3 application for a permit under this section, a person who is directly and adversely affected by the department's
4 decision may request a hearing before the board. The request for hearing must be filed within 15 days after the
5 department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30
6 days after the department renders its decision. The contested case provisions of the Montana Administrative
7 Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

8 (11) Except as provided in 75-2-213:

9 (a) the department's decision on the application is not final until 15 days have elapsed from the
10 date of the decision;

11 (b) the filing of a request for hearing does not stay the department's decision. However, the board
12 may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

13 (i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

14 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the
15 person requesting the stay.

16 (c) upon granting a stay, the board may require a written undertaking to be given by the party
17 requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if
18 the board determines that the permit was properly issued. When requiring an undertaking, the board shall use
19 the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on
20 injunctions.

21 (12) The department shall provide, by rule, a period of 30 days in which the public may submit
22 comments on draft air quality permits for applications that:

23 (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661a;

24 (b) are subject to the requirements of 75-2-215; or

25 (c) require the preparation of an environmental impact statement.

26 (13) The department shall provide, by rule, a period of 15 days in which the public may submit
27 comments on draft air quality permits not subject to subsection (12).

28 (14) The department shall provide, by rule, the basis upon which the department may extend by 15

1 days:

2 (a) the period as provided in subsection (13) in which the public may submit comments on draft air
3 quality permits not subject to subsection (12); and

4 (b) the period for notifying an applicant of its final decision on approval or denial of an application,
5 as provided in subsection (9)(b).

6 (15) (a) The department may adopt rules for issuance, modification, suspension, revocation,
7 renewal, or creation of:

8 (i) general permits covering multiple similar sources; or

9 (ii) other permits covering multiple similar sources.

10 (b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under
11 the permit upon authorization by the department or upon notice to the department."

12

13 **Section 6.** Section 75-2-213, MCA, is amended to read:

14 **"75-2-213. Energy development project -- hearing and procedures.** (1) (a) When the department
15 approves or denies the application for a permit under 75-2-211 for an energy development project, the applicant
16 or a person who has provided the department with formal comments and who is directly and adversely affected
17 by the department's decision may request a hearing before the board or a district court pursuant to [section 1].
18 If the department provided an opportunity for public comment on the application, the request for a hearing must
19 be limited to those issues raised in comments made to the department during the comment period unless the
20 issues are related to a material change in federal or state law made during the comment period, to a judicial
21 decision issued after the comment period, or to a material change to the draft permit, which was submitted for
22 public comment, made by the department in the final permit decision and upon which the public did not have a
23 meaningful opportunity to comment. The request for hearing must be filed within 30 days after the department
24 renders its decision. An affidavit setting forth the grounds for the request must be filed with the request for a
25 hearing.

26 (b) (i) If a hearing is requested by a person other than the applicant for or permittee of an energy
27 development project, the applicant or permittee may, by filing a written election with the board within 15 days of
28 receipt of the request for hearing, elect to have the matter proceed to hearing before the board or to have the

1 matter submitted directly to the district court for judicial review of the agency decision. The party who requests
2 the hearing may elect to have the matter submitted either to the board for a hearing or to the district court for
3 judicial review by submitting a written election to the board with the request for hearing. If there are conflicting
4 elections between the parties, the matter must proceed to district court.

5 (ii) If the applicant or permittee is not the person who requested the hearing and has elected to
6 have the matter submitted to the district court, the person who submitted the request for a hearing shall file a
7 petition for review of the permit decision within 15 days of receipt of notice from the permittee. If the person who
8 requested the hearing has elected to have the matter proceed to district court, that person shall file a petition in
9 district court within 15 days of filing the request.

10 (iii) The petition must be limited to matters raised in the request for hearing and must be filed in the
11 county in which the facility is located.

12 (iv) If a party does not elect to submit the matter directly to district court, the matter must proceed
13 through the contested case process before the board pursuant to the Montana Administrative Procedure Act.

14 (v) The board or the district court shall apply the laws and rules in place when the department
15 issued its decision, and the board or the district court may not consider any issue that was not presented to the
16 department for the department's consideration during the formal comment period unless the issue is related to a
17 material change in federal or state law made during the comment period, to a judicial decision issued after the
18 comment period, or to a material change to the draft permit, which was submitted for public comment, made by
19 the department in the final permit decision and upon which the public did not have a meaningful opportunity to
20 comment.

21 (c) (i) Except as provided in subsection (1)(c)(ii), if the person requesting the hearing is not the
22 applicant or permittee of an energy development project, the board or the district court shall require a written
23 undertaking to be given by the party requesting the hearing for the payment of costs and damages incurred by
24 the permit applicant and its employees if the request for a hearing or judicial review was for an improper
25 purpose designed to harass, cause unnecessary delay, or improperly interfere with the issuance of the permit
26 without a reasonable basis in law or fact.

27 (ii) The board or the district court may not require a written undertaking if the party requesting the
28 hearing is an indigent person.

(d) If grounds for requesting the hearing are based on alleged error in applying best available control technology requirements, the board or the district court shall give deference to the best available control technology determination made by the department. The board or the district court may not reject the best available control technology determination unless the determination was incorrect as a matter of law or the factual basis for the determination was clearly erroneous.

(2) The board shall issue a final decision within 4 months from the close of the hearing on the merits or, if no hearing is held, within 3 months from the date that briefing by the parties is complete unless the applicant or permittee and the party other than the applicant or permittee agree in writing to an extension of time. The board shall require the parties to prepare the case for hearing without unreasonable delay.

(3) (a) Any requirement in a permit to commence construction, installation, or alteration within a certain time period is tolled during a contested case or judicial review proceeding, but not by more than 12 months, unless the applicant or permittee in its discretion waives the tolling in writing.

(b) If there are multiple appeals of one permit, tolling under this subsection (3) may not exceed a total of 12 months for all appeals.

(c) The applicant may not engage in construction during the period that the time period is tolled under subsection (3)(a).

(4) The department shall, for good cause shown, waive for up to 1 year any requirement that construction of an energy development project must proceed with due diligence. During the period that a waiver is in effect, an air quality permit does not expire because construction of an energy development project failed to proceed with due diligence."

Section 7. Section 75-5-107, MCA, is amended to read:

"75-5-107. Venue generally. ~~(1) Except as otherwise provided by this chapter in subsection (2),~~ any challenge to an action taken by the department or to a decision issued by the board pursuant to this chapter must be brought in the district court in the county where the activity that is the subject of the challenge is proposed to occur. If an activity is proposed to occur or will occur in more than one county, the challenge may be brought in the district court in any of the counties where the activity is proposed to occur or will occur.

(2) A person whose interests are or may be adversely affected by a final decision of the

1 department to approve or disapprove a permit application or a permit amendment application is entitled to a
2 hearing before the board subject to subsection (3) or a district court subject to subsection (4) if a written request
3 stating the reasons for the appeal and a fee of \$100 is submitted to the board within 30 days of the
4 department's decision.

5 (3) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
6 part 6, apply to a board hearing held under this section.

7 (4) A petition for judicial review of a department decision made pursuant to this section must be
8 brought in the county in which the permitted activity is proposed to occur. If an activity is proposed to occur in
9 more than one county, the action may be brought in any of the counties in which the activity is proposed to
10 occur.

11 (5) The petition for judicial review must include the party to whom the permit was issued or the
12 applicant unless otherwise agreed to by the permitholder or applicant. All judicial challenges of permits for
13 projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any
14 civil cause of a different nature pending in that court."

15
16 **NEW SECTION. Section 8. Codification instruction.** (1) [Section 1] is intended to be codified as an
17 integral part of Title 75, chapter 2, part 1, and the provisions of Title 75, chapter 2, part 1, apply to [section 1].

18 (2) [Section 2] is intended to be codified as an integral part of Title 82, chapter 4, part 1, and the
19 provisions of Title 82, chapter 4, part 1, apply to [section 2].

20 (3) [Section 3] is intended to be codified as an integral part of Title 82, chapter 4, part 2, and the
21 provisions of Title 82, chapter 4, part 2, apply to [section 3].

22 (4) [Section 4] is intended to be codified as an integral part of Title 82, chapter 4, part 3, and the
23 provisions of Title 82, chapter 4, part 3, apply to [section 4].

24
25 **NEW SECTION. Section 9. Effective date.** [This act] is effective July 1, 2025.

26 - END -