

HOUSE BILL 799

Introduced by Wallin, et al.

2/13	Introduced
2/13	Referred to Natural Resources
2/13	First Reading
2/13	Fiscal Note Requested
2/20	Fiscal Note Received
2/21	Fiscal Note Printed
2/22	Hearing
2/22	Tabled in Committee

1 *House* BILL NO. *799*
 2 INTRODUCED BY *NATHAN S...*
 3 *Donny Thayer Knox T. Bond Fred T. Keller*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE
 5 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MAY NOT
 6 REGULATE UNDERGROUND STORAGE TANKS THAT ARE NOT REGULATED BY
 7 THE FEDERAL GOVERNMENT; AMENDING SECTIONS 75-10-403,
 8 75-10-405, 75-11-209, AND 75-11-308, MCA; AND REPEALING
 9 SECTION 75-11-217, MCA."

11 STATEMENT OF INTENT

12 A statement of intent is required for this bill in order
 13 to provide guidance to the department of health and
 14 environmental sciences concerning the adoption of rules to
 15 regulate underground storage tanks. The department shall
 16 revise its existing rules to remove requirements relating to
 17 types of tanks and piping that are not "underground storage
 18 tanks" as defined in 75-10-403. The department may not adopt
 19 new rules or retain existing rules that are more stringent
 20 than federal requirements for the prevention and correction
 21 of leakage from underground storage tanks.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24 **Section 1.** Section 75-10-403, MCA, is amended to read:
 25 "75-10-403. Definitions. Unless the context requires

1 otherwise, in this part the following definitions apply:
 2 (1) "Board" means the board of health and environmental
 3 sciences provided for in 2-15-2104.
 4 (2) "Department" means the department of health and
 5 environmental sciences provided for in Title 2, chapter 15,
 6 part 21.
 7 (3) "Dispose" or "disposal" means the discharge,
 8 injection, deposit, dumping, spilling, leaking, or placing
 9 of any regulated substance or hazardous waste into or onto
 10 the land or water so that the regulated substance, hazardous
 11 waste, or any constituent of the regulated substance or
 12 hazardous waste may enter the environment or be emitted into
 13 the air or discharged into any waters, including ground
 14 water.
 15 (4) "Facility" or "hazardous waste management facility"
 16 means all contiguous land and structures, other
 17 appurtenances, and improvements on the land used for
 18 treating, storing, or disposing of hazardous waste. A
 19 facility may consist of several treatment, storage, or
 20 disposal operational units.
 21 (5) "Generation" means the act or process of producing
 22 waste material.
 23 (6) "Generator" means any person, by site, whose act or
 24 process produces hazardous waste or whose act first causes a
 25 hazardous waste to become subject to regulation under this

INTRODUCED BILL
HB 799



1 part.

2 (7) (a) "Hazardous waste" means a waste or combination
3 of wastes that, because of its quantity, concentration, or
4 physical, chemical, or infectious characteristics, may:

5 (i) cause or significantly contribute to an increase in
6 mortality or an increase in serious irreversible or
7 incapacitating reversible illness; or

8 (ii) pose a substantial present or potential hazard to
9 human health or the environment when improperly treated,
10 stored, transported, or disposed of or otherwise managed.

11 (b) Hazardous wastes do not include those substances
12 governed by Title 82, chapter 4, part 2.

13 (8) "Hazardous waste management" means the management
14 of the collection, source separation, storage,
15 transportation, processing, treatment, recovery, and
16 disposal of hazardous wastes.

17 (9) "Hazardous waste transfer facility" means any land,
18 structure, or improvement, including loading docks, parking
19 areas, holding sites, and other similar areas, used for the
20 transfer and temporary storage of hazardous wastes and where
21 shipments of hazardous waste are temporarily held for a
22 period of 10 days or less during the normal course of
23 transportation up to but not including the point of ultimate
24 treatment, storage, or disposal.

25 (10) "Manifest" means the shipping document originated

1 and signed by the generator and which is used to identify
2 the hazardous waste, its quantity, origin, and destination
3 during its transportation.

4 (11) "Person" means the United States, an individual,
5 firm, trust, estate, partnership, company, association,
6 corporation, city, town, local governmental entity, or any
7 other governmental or private entity, whether organized for
8 profit or not.

9 (12) "Regulated substance":

10 (a) means:

11 (i) a hazardous substance as defined in 75-10-602; or

12 (ii) petroleum, including crude oil or any fraction
13 thereof, which is liquid at standard conditions of
14 temperature and pressure (60 degrees F and 14.7 pounds per
15 square inch absolute);

16 (b) does not include a substance regulated as a
17 hazardous waste under this part.

18 (13) "Storage" means the actual or intended containment
19 of regulated substances, hazardous wastes, or both, either
20 on a temporary basis or for a period of years.

21 (14) "Transportation" means the movement of hazardous
22 wastes from the point of generation to any intermediate
23 points and finally to the point of ultimate storage or
24 disposal.

25 (15) "Transporter" means a person engaged in the offsite

1 transportation of hazardous waste by air, rail, highway, or
2 water.

3 (16) "Treatment" means a method, technique, or process,
4 including neutralization, designed to change the physical,
5 chemical, or biological character or composition of any
6 hazardous waste so as to neutralize the waste or so as to
7 render it nonhazardous, safer for transportation, amenable
8 for recovery, amenable for storage, or reduced in volume.

9 (17) "Underground storage tank":

10 (a) means, except as provided in subsections (17)(b)(i)
11 through ~~(17)(b)(viii)~~: (17)(b)(x),

12 ~~(i)~~ any one or combination of tanks, including
13 underground pipes connected to the tank or tanks, used to
14 contain a regulated substance, the volume of which,
15 including the volume of the underground pipes, is 10% or
16 more beneath the surface of the ground; and

17 ~~(ii) any underground pipes used to contain or transport~~
18 ~~a regulated substance and connected to a storage tank,~~
19 ~~whether the storage tank is entirely above ground, partially~~
20 ~~above ground, or entirely underground;~~

21 (b) does not include:

22 (i) a septic tank;

23 (ii) a pipeline facility (including gathering lines)
24 regulated under:

25 (A) the Natural Gas Pipeline Safety Act of 1968 (49

1 U.S.C. 1671, et seq.);

2 (B) the Hazardous Liquid Pipeline Safety Act of 1979
3 (49 U.S.C. 2001, et seq.); or

4 (C) state law comparable to the provisions of law
5 referred to in subsection (17)(b)(ii)(A) or (17)(b)(ii)(B),
6 if the facility is intrastate;

7 (iii) a surface impoundment, pit, pond, or lagoon;

8 (iv) a storm water or wastewater collection system;

9 (v) a flow-through process tank;

10 (vi) a liquid trap or associated gathering lines
11 directly related to oil or gas production and gathering
12 operations;

13 (vii) a storage tank situated in an underground area,
14 such as a basement, cellar, mine, draft drift, shaft, or
15 tunnel, if the storage tank is situated upon or above the
16 surface of the floor;

17 (viii) a farm or residential tank of 1,100 gallons or
18 less capacity used for storing motor fuel for noncommercial
19 purposes;

20 (ix) a tank used for storing heating oil for consumptive
21 use on the premises where stored; or

22 ~~(viii)(x)~~ any pipe connected to a tank described in
23 subsections (17)(b)(i) through ~~(17)(b)(vii)~~ (17)(b)(ix)."

24 **Section 2.** Section 75-10-405, MCA, is amended to read:

25 "75-10-405. **Administrative rules.** (1) The department

1 may adopt, amend, or repeal rules governing hazardous waste,
2 including but not limited to the following:

3 (a) identification and classification of those
4 hazardous wastes subject to regulation and those that are
5 not;

6 (b) requirements for the proper treatment, storage,
7 transportation, and disposal of hazardous waste;

8 (c) requirements for siting, design, operation,
9 maintenance, monitoring, inspection, closure, postclosure,
10 and reclamation of hazardous waste management facilities;

11 (d) requirements for the issuance, denial, renewal,
12 modification, and revocation of permits for hazardous waste
13 management facilities;

14 (e) requirements for corrective action within and
15 outside of facility boundaries and for financial assurance
16 of that corrective action;

17 (f) requirements for manifests and the manifest system
18 for tracking hazardous waste and for reporting and
19 recordkeeping by generators, transporters, and owners and
20 operators of hazardous waste management facilities;

21 (g) requirements for training of facility personnel and
22 for financial assurance of facility owners and operators and
23 for liability of guarantors providing financial assurance;

24 (h) requirements for registration of generators and
25 transporters;

1 (i) a schedule of fees for hazardous waste management
2 facility permits and registration of hazardous waste
3 generators;

4 (j) a schedule of fees to defray a portion of the costs
5 of establishing, operating, and maintaining any state
6 hazardous waste management facility authorized by 75-10-412;

7 (k) requirements for availability to the public of
8 information obtained by the department regarding facilities
9 and sites used for the treatment, storage, and disposal of
10 hazardous wastes; and

11 (l) requirements for the prevention and correction of
12 leakage from underground storage tanks, including:

13 (i) reporting by owners and operators;

14 (ii) financial responsibility;

15 (iii) release detection, prevention, and corrective
16 action;

17 (iv) standards for design, construction, installation,
18 and closure;

19 (v) development of a schedule of fees, not to exceed
20 \$50 for each tank, for tank notification and permits to
21 defray state and local costs of implementing an underground
22 storage tank program; and

23 (vi) delegation of authority and funds to local agents
24 for inspections and implementation. The delegation of
25 authority to local agents must complement and may not

1 duplicate existing authority for implementation of rules
 2 adopted by the state fire marshal that relate to underground
 3 storage tanks; and

4 (m) other rules which that are necessary to obtain and
 5 maintain authorization under the federal program.

6 (2) The department may not adopt rules under this part
 7 that are more restrictive than those promulgated by the
 8 federal government under the Resource Conservation and
 9 Recovery Act of 1976, as amended, except that the
 10 department:

11 (a) may require the registration of transporters not
 12 otherwise required to register with the state of Montana
 13 pursuant to the federal Resource Conservation and Recovery
 14 Act of 1976, as amended;

15 (b) may require generators and facilities to report on
 16 an annual rather than on a biennial basis;

17 (c) may--adopt--requirements--for--the--prevention--and
 18 ~~correction--of--leakage--from--underground--storage---tanks,~~
 19 including:

20 ~~(i)--reporting-by-owners-and-operators;~~

21 ~~(ii)--financial-responsibility;~~

22 ~~(iii)--release---detection;--prevention;--and--corrective~~
 23 ~~action;~~

24 ~~(iv)--standards-for-design;--construction;--installation;~~
 25 ~~and-closure;~~

1 ~~{v}--development--of--a--schedule-of-fees;--not-to-exceed~~
 2 ~~\$50-for-a-tank-over-1,100-gallons-and-not-to-exceed-\$20--for~~
 3 ~~a---tank---1,100---gallons--or--less;--per--tank;--for--tank~~
 4 ~~notification-and-permits-to-defray-state-and-local-costs--of~~
 5 ~~implementing-an-underground-storage-tank-program;--and~~

6 ~~{vi}--delegation--of--authority-and-funds-to-local-agents~~
 7 ~~for--inspections--and--implementation;--The--delegation---of~~
 8 ~~authority--to--local--agents--must--complement--and--may-not~~
 9 ~~duplicate-existing-authority--for--implementation--of--rules~~
 10 ~~adopted-by-the-state-fire-marshal-that-relate-to-underground~~
 11 ~~storage-tanks;~~

12 ~~{d}~~ may adopt regulatory requirements for hazardous
 13 waste transfer facilities; and

14 ~~{e}{d}~~ shall require the owner or manager of any
 15 proposed commercial facility for the storage, collection, or
 16 transfer of hazardous waste to conduct a public hearing, as
 17 provided for in 75-10-441."

18 **Section 3.** Section 75-11-209, MCA, is amended to read:

19 "75-11-209. Permits -- requirement for licensed
 20 installer. (1) An owner or operator of an underground
 21 storage tank may not install or close, or cause to be
 22 installed or closed, an underground storage tank without a
 23 permit issued by the department as provided in 75-11-212.

24 (2) In addition to obtaining a permit, an owner or
 25 operator shall obtain the services of a licensed installer

1 for the installation or closure of an underground storage
 2 tank unless the installation or closure is:
 3 (a) inspected by a department inspector or a designated
 4 local inspector as provided in 75-11-213, or
 5 (b) ~~exempt from the requirement for a licensed~~
 6 ~~installer, as provided in 75-11-217.~~"

7 **Section 4.** Section 75-11-308, MCA, is amended to read:

8 "75-11-308. Eligibility. (1) An owner or operator is
 9 eligible for reimbursement for eligible costs caused by a
 10 release from a petroleum storage tank only if:

11 (a) the release was discovered on or after April 13,
 12 1989;

13 (b) the department is notified of the release in the
 14 manner and within the time provided by law or rule;

15 (c) the department has been notified of the existence
 16 of the tank in the manner required by department rule;

17 (d) the release was an accidental release; and

18 (e) with the exception of the release, the operation
 19 and management of the tank complied with applicable state
 20 and federal laws and rules when the release occurred and
 21 remained in compliance following detection of the release.

22 (2) An owner or operator is not eligible for
 23 reimbursement for expenses caused by releases from the
 24 following petroleum storage tanks:

25 (a) a tank located at a refinery or a terminal of a

1 refiner;

2 (b) a tank located at an oil and gas production
 3 facility;

4 (c) a tank that is or was previously under the
 5 ownership or control of a railroad;

6 (d) a tank belonging to the federal government;

7 (e) ~~a farm or residential tank with a capacity of 27100~~
 8 ~~gallons or less that is used for storing motor fuel for~~
 9 ~~noncommercial purposes or a tank used for storing heating~~
 10 ~~oil for consumptive use on the premises where stored;~~

11 (f) a tank owned or operated by a person who has been
 12 convicted of a substantial violation of state or federal law
 13 or rule that relates to the installation, operation, or
 14 management of petroleum storage tanks; or

15 (g) ~~(f)~~ a mobile storage tank used to transport
 16 petroleum or petroleum products from one location to
 17 another."

18 **NEW SECTION. Section 5. Repealer.** Section 75-11-217,
 19 MCA, is repealed.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0799, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


A bill providing that the Department of Health and Environmental Sciences may not regulate underground storage tanks that are not regulated by the federal government.

ASSUMPTIONS:

1. 16,295 facilities meet the current state definition of an "underground storage tank". Under current law, 9,547 tanks are assessed \$20 and \$6,748 are assessed \$50 per year.
2. Approximately 9,294 facilities meet the federal definition and would be assessed \$50 per year.
3. Current law expenditures are based on appropriation subcommittee actions to date.
4. DHES administrative costs would be maintained in order to satisfy federal program equivalency requirements. DHES would reduce county grants for local inspection activities by \$55,300 per year due to eliminating inspections for facilities not under the federal definition.

FISCAL IMPACT:

see next page


ROD SUNDSTED, BUDGET DIRECTOR 2-20-91 DATE
Office of Budget and Program Planning


NORM WALLIN, PRIMARY SPONSOR 2/21/91 DATE

Fiscal Note for HB0799, as introduced.

HB 799

Fiscal Note Request, HB0799, as introduced.

Form BD-15

Page 2

FISCAL IMPACT:

Department of Health and Environmental Sciences:

Expenditures:

	FY92			FY93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	11.25	11.25	0.00	11.25	11.25	0.00
Personal Services	347,523	347,523	0	347,236	347,236	0
Operating Expenses	208,372	208,372	0	209,378	209,378	0
Equipment	8,000	8,000	0	8,000	8,000	0
Grants	<u>262,604</u>	<u>207,304</u>	<u>(55,300)</u>	<u>262,604</u>	<u>207,304</u>	<u>(55,300)</u>
Total	826,499	771,199	(55,300)	827,218	771,918	(55,300)
<u>Funding:</u>						
Haz. Waste/CERCLA (02)	58,962	58,962	0	58,728	58,728	0
UST Fees (02)	590,853	535,553	(55,300)	592,510	537,210	(55,300)
EPA LUST/Solid Waste (03)	<u>176,684</u>	<u>176,684</u>	<u>0</u>	<u>175,980</u>	<u>175,980</u>	<u>0</u>
Total	826,499	771,199	(55,300)	827,218	771,918	(55,300)

Revenues and Fund Balance:

Beginning Fund Balance	228,832	228,832	0	194,429	157,979	(36,450)
UST Fees (02)	<u>556,450</u>	<u>464,700</u>	<u>(91,750)</u>	<u>556,450</u>	<u>464,700</u>	<u>(91,750)</u>
Total	785,282	693,532	(91,750)	750,879	622,679	(128,200)

EFFECT ON COUNTIES OR OTHER LOCAL REVENUES OR EXPENDITURES:

Grants to counties for inspection activities of regulated facilities would be reduced by \$55,300 per year. The number of facilities which would no longer be subject to inspection would be reduced by 7,001. The facilities no longer subject to inspection would tend to be noncommercial tanks for which inspections are not as cost-intensive as commercial facilities.

LONG RANGE EFFECT OF PROPOSED LEGISLATION:

Appropriations actions to date would exceed projected revenues. The net loss of \$36,450 per year in fee revenues would more quickly diminish the existing fund balance.

HB 799