

SENATE BILL 185

Introduced by Yellowtail, et al.

1/22	Introduced
1/23	Referred to Agriculture, Livestock & Irrig.
1/23	First Reading
2/04	Hearing
2/08	Fiscal Note Requested
2/13	Fiscal Note Received
2/14	Fiscal Note Printed
2/19	Tabled in Committee

1 *Senate* BILL NO. *185*
 2 INTRODUCED BY *Yellowtail*
 3 BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PESTICIDE
 6 REGISTRANTS TO SUBMIT TO THE DEPARTMENT OF AGRICULTURE A
 7 COPY OF THE TESTS AND RESULTS OF PESTICIDE LEACHABILITY
 8 TESTS; REQUIRING THE DEPARTMENT TO PROVIDE COPIES OF TESTS
 9 AND TEST RESULTS TO INTERESTED PERSONS; AUTHORIZING THE
 10 DEPARTMENT TO CHARGE A FEE COMMENSURATE WITH COSTS FOR
 11 OBTAINING AND PROVIDING THE INFORMATION; AND AMENDING
 12 SECTIONS 80-8-201, 80-8-303, AND 80-15-302, MCA."

STATEMENT OF INTENT

13
 14
 15 A statement of intent is required for this bill because
 16 [section 1] grants rulemaking authority to the department of
 17 agriculture. The department shall adopt rules identifying
 18 the characteristics of pesticides that contribute to a
 19 significant potential to impair ground water, including but
 20 not limited to pesticide mobility and a pesticide's
 21 persistence in the subsurface and in the environment
 22 generally. The department may also adopt rules identifying
 23 specific ingredients in pesticides that are known to have
 24 significant potential to impair ground water. The purpose of
 25 these rules is to identify those pesticides and ingredients

1 for which pesticide registrants must submit to the
 2 department of agriculture a copy of the tests and results of
 3 pesticide leachability tests.

4
 5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 80-8-201, MCA, is amended to read:

6
 7 "80-8-201. Registration. (1) Every pesticide
 8 distributed, sold, or offered for sale within this state or
 9 delivered for transportation or transported in intrastate
 10 commerce or between points within this state shall be
 11 registered with the department. The registration shall be
 12 renewed annually by the manufacturer, formulator, or
 13 distributor of the pesticide. The department shall register
 14 all federally approved pesticides, and those registered are
 15 subject to registration fees and all other provisions of
 16 this chapter. All registrations of pesticides expire on
 17 December 31 following the date of issuance unless otherwise
 18 terminated.

19 (2) The applicant for registration shall file with the
 20 department a statement including:

21 (a) the name and address of the applicant and the name
 22 and address of the person whose name will appear on the
 23 label, if other than the registrant;

24 (b) a complete copy of the label of the pesticide, the
 25 United States environmental protection agency registration



1 number if the pesticide is so registered, and a statement of
2 all claims to be made for it, including directions for use;

3 (c) the trade and chemical name of the pesticide;

4 (d) a full description of tests and results on
5 pesticide leachability for pesticides that have significant
6 potential to impair ground water. The department shall adopt
7 rules identifying the characteristics of pesticides that
8 contribute to significant potential to impair ground water,
9 and the department may identify pesticide ingredients known
10 to have significant potential to impair ground water.

11 (d)(e) if requested by the department, a full
12 description of tests made, other than the tests specified in
13 subsection (2)(d), and the results upon which the claims are
14 based. In the case of renewal of registration, a statement
15 shall be required only with respect to information which is
16 different from that furnished when the pesticide was
17 registered or last reregistered.

18 (3) Upon the written request of any person, the
19 department shall obtain and provide a copy of tests, test
20 results, formulas, and certified analytical standards
21 referenced in subsections (2)(d), (2)(e), and (6) that are
22 not otherwise protected by the confidentiality requirements
23 of 80-8-107 and 80-15-108. The department may charge a fee
24 commensurate with the costs of obtaining and providing the
25 requested information. Fees collected by the department

1 under this subsection must be deposited in the department of
2 agriculture agricultural chemical ground water protection
3 special revenue account established by 80-15-301.

4 ~~(3)~~(4) Any pesticide imported into this state which is
5 subject to the provisions of any federal act providing for
6 the registration of pesticides and has been registered under
7 the provisions of a federal act shall be registered in the
8 state. However, the state may restrict the sale or use and
9 application of the pesticide by type of dealer, applicator,
10 time, and place and may establish special registrations of
11 pesticides as outlined in subsection ~~(8)~~ (9) of this section
12 and 80-8-105(3). The annual registration fee must also be
13 paid, and registration information required by the
14 department must be provided.

15 ~~(4)~~(5) The applicant shall pay an annual fee of \$75 for
16 each pesticide registered. A registration fee is not
17 required to register a federally approved experimental use
18 permit. Fees collected shall be deposited in the state
19 treasury to the credit of the general fund.

20 ~~(5)~~(6) The department may require the submission of the
21 complete formula and certified analytical standards of any
22 pesticide. If it appears to the department that the
23 composition of the article warrants the proposed claims for
24 it and if the article and its labeling and other material
25 required to be submitted comply with the requirements of

1 80-8-202, it shall register the article.
 2 ~~(6)~~(7) If it does not appear to the department that the
 3 article warrants the proposed claims for it or if the
 4 article and its labeling and other material required to be
 5 submitted do not comply with this chapter, it shall notify
 6 the applicant of the manner in which the article, labeling,
 7 or other material required to be submitted fails to comply
 8 with the chapter so as to afford the applicant an
 9 opportunity to make the necessary corrections. If the
 10 applicant does not make the corrections upon receipt of the
 11 notice, the department may refuse to register the article.
 12 The department may suspend or cancel the registration of a
 13 pesticide whenever it does not appear that the article or
 14 its labeling comply with this chapter or whenever scientific
 15 evidence proves that the article endangers man or the
 16 general environment afforded protection under
 17 80-8-105(3)(a). When an application for registration is
 18 refused or the department proposes to suspend or cancel a
 19 registration, the registrant may pursue administrative
 20 remedies under the Montana Administrative Procedure Act and
 21 rules of the department.
 22 ~~(7)~~(8) Registration is not required in the case of a
 23 pesticide shipped from one plant in this state to another
 24 plant in this state by the same person.
 25 ~~(8)~~(9) (a) The departments of health and environmental

1 sciences, agriculture, and fish, wildlife, and parks shall
 2 review all applications for registration of an
 3 experimental-use permit or a registration for special local
 4 needs. The applicant shall pay a one-time fee of \$75 for a
 5 special local need or experimental-use permit registration.
 6 The departments shall utilize the same requirements and
 7 standards for reviewing registrations established by the
 8 Federal Insecticide, Fungicide, and Rodenticide Act, as
 9 amended, and regulations adopted thereunder. The department
 10 of agriculture shall provide the departments of health and
 11 environmental sciences and fish, wildlife, and parks with a
 12 complete copy of the application, related correspondence,
 13 and a statement of the department of agriculture's proposed
 14 action on the application. The departments of health and
 15 environmental sciences and fish, wildlife, and parks shall
 16 approve or disapprove the application within 10 days after
 17 the receipt of the application. If the departments of health
 18 and environmental sciences, agriculture, and fish, wildlife,
 19 and parks are in agreement with the proposed registration,
 20 the department of agriculture shall issue the registration.
 21 (b) The department of agriculture shall establish a
 22 time and place for an interagency conference for the
 23 purposes of resolving the registration of any pesticide or
 24 device. If two of the departments approve the proposed
 25 registration, the department of agriculture shall issue the

1 registration.

2 (c) The registrant applying for registration shall be
3 notified as to proposed changes in registration. If the
4 departments cannot resolve the proposed registration
5 following the interagency conference, the registrant may
6 request a joint administrative hearing before the
7 departments of agriculture, health and environmental
8 sciences, and fish, wildlife, and parks.

9 (d) Following the interagency conference and, if
10 requested, the administrative hearing, if the proposed
11 registration of a pesticide or device has not been resolved,
12 the department of agriculture shall appoint an advisory
13 council as outlined in 80-8-108 to resolve by majority vote
14 the registration of any pesticide. The advisory council's
15 recommendations on the registration shall be accepted by the
16 departments and implemented by the department of
17 agriculture.

18 ~~(9)~~(10) Pesticides registered under any federal law when
19 canceled for sale and use in total or in part by a federal
20 agency responsible for registration are considered canceled
21 in total or in part for sale and use in Montana. The
22 cancellation is effective on the final date of sale or use
23 allowed under the federal law and rules or orders of the
24 federal agency. If the federal cancellation allows existing
25 stock to be used past the final date of cancellation, such

1 sale or use in this state may not exceed 2 years. The
2 department shall provide technical assistance to any person
3 in possession of such products to insure their proper
4 disposal, relabeling, or removal."

5 **Section 2.** Section 80-8-303, MCA, is amended to read:

6 "80-8-303. Embargo. (1) Whenever a duly authorized
7 agent of the department of agriculture finds or has probable
8 cause to believe that any pesticide or device is adulterated
9 or misbranded, has not been registered under the provisions
10 of 80-8-201~~(5)~~(6), fails to bear on its label the
11 information required by this chapter, or is a white powder
12 pesticide and is not colored as required under this chapter,
13 he shall affix to such article a tag or other appropriate
14 marking giving notice thereof and stating that the article
15 has been detained or embargoed and warning all persons not
16 to remove or dispose of such article by sale or otherwise
17 until permission for removal or disposal is given by such
18 agent or the court. Any person who removes or disposes of
19 such detained or embargoed article by sale or otherwise,
20 without prior permission, or removes or alters the tag or
21 marking, is guilty of a misdemeanor and may be charged
22 accordingly or may be subjected to appropriate
23 administrative proceedings, or both.

24 (2) When an article detained or embargoed under
25 subsection (1) has been found by such agent to be in

1 violation, if after 30 days the violation has not been
 2 resolved, he may petition the district court in whose
 3 jurisdiction the article is detained or embargoed for a
 4 condemnation of such article. When such agent has found that
 5 an article so detained or embargoed is not adulterated or
 6 misbranded, he shall remove the tag or other marking.

7 (3) If the court finds that a detained or embargoed
 8 article is in violation of this chapter or rules adopted
 9 thereunder, such article shall after entry of the decree be
 10 destroyed at the expense of the claimant thereof, under the
 11 supervision of such agent, and all court costs and fees and
 12 storage and other proper expenses shall be assessed against
 13 the claimant of such pesticide or device or his agent,
 14 provided that when the adulteration or misbranding can be
 15 corrected by proper labeling or processing of the article,
 16 the court, after entry of the decree and after such costs,
 17 fees, and expenses have been paid and a good and sufficient
 18 bond has been executed, conditioned upon the proper labeling
 19 or processing of such pesticide or device, may by order
 20 direct that such article be delivered to the claimant
 21 thereof for such labeling or processing under the
 22 supervision of an agent of the department. The expense of
 23 such supervision shall be paid by claimant. The article
 24 shall be returned to the claimant of the pesticide or device
 25 on the representation to the court by the department that

1 the article is no longer in violation of this chapter and
 2 that the expenses of such supervision have been paid."

3 **Section 3.** Section 80-15-302, MCA, is amended to read:

4 **"80-15-302. Special funding.** (1) A fee of \$15 is
 5 assessed for the registration of pesticides in addition to
 6 the fee imposed by 80-8-201~~(4)~~(5).

7 (2) A fee of \$10 is assessed for the registration of
 8 fertilizers in addition to the fee imposed by 80-10-201(1).
 9 The additional fee must be used for the ground water
 10 protection responsibilities of the department relating to
 11 fertilizers. Revenues collected from this fee must be
 12 credited to the commercial fertilizer account within the
 13 state special revenue fund for the administration of this
 14 chapter."

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0185, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill: 1) requires pesticide registrants to submit to the Department of Agriculture a copy of the tests and results of pesticide leachability tests; 2) requires the department to provide copies of tests and test results to interested persons; and 3) authorizes the department to charge a fee commensurate with costs for obtaining and providing the information.

ASSUMPTIONS:

1. Department of Agriculture must adopt rules to identify those pesticides for which registrants must submit tests and results on leachability of pesticides. Estimate of costs - \$210. Department will assume this expenditure.
2. Required tests and studies will primarily involve EPA required registration data from registrants.
3. There are 35 pesticide products registered in Montana that are known to leach into groundwater under certain conditions. There is \$1,350 in one-time FY92 costs for three file cabinets.
4. Any person may request copies of studies. Estimate 30 requests for summary of studies and 10 requests for complete studies per year, which will cost \$815. Fees of a like amount will be charged.
5. Revenues deposited in state special revenue fund established by 80-15-301, MCA.

FISCAL IMPACT:

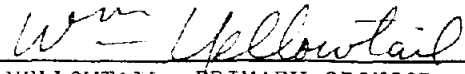
Department of Agriculture:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
Operating Costs	0	2,165	2,165	0	815	815
<u>Funding:</u>						
General Fund	0	1,350	1,350	0	0	0
State Special	0	815	815	0	815	815
Total	0	2,165	2,165	0	815	815
<u>Revenues:</u>						
State Special	0	815	815	0	815	815

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Costs of fining studies, summarizing studies, numbers of requests from the public may increase in the future. Request for information under MCA 80-8-201 (2)(e) and (6) was not possible to determine.


ROD SUNDSTED, BUDGET DIRECTOR 2-12-91 DATE
Office of Budget and Program Planning


BILL YELLOWTAIL, PRIMARY SPONSOR 2/13/91 DATE
Fiscal Note for SB0185, as introduced **SB185**