

HEALTH AND ENVIRONMENTAL SCIENCES, DEPARTMENT OF -
Exemptions of individuals from the Solid Waste
Management Act;

LAND USE - Exemptions of individuals from the Solid
Waste Management Act;

SOLID WASTE - Solid Waste Management Act, exemptions
from;

MONTANA CODE ANNOTATED - Sections 75-10-203(4),
75-10-206, 75-10-214, 75-10-221;

MONTANA CONSTITUTION - Article V, section 11(3);

MONTANA LAWS OF 1965 - Chapter 35, sections 3, 8;

MONTANA LAWS OF 1969 - Chapter 349, section 4;

MONTANA LAWS OF 1977 - Chapter 542, section 3.

HELD: The exception in section 75-10-214, MCA, to
the Solid Waste Management Act does not apply
to waste generated by members of the general
public but applies only to waste generated by
the owner or lessee of the disposal site for
such waste, or to waste generated by persons
in the family or to business-related waste
generated by persons in the employ of such
owner or lessee.

30 May 1985

John J. Drynan, M.D., Director
Department of Health and
Environmental Sciences
Room C108, Cogswell Building
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Dear Dr. Drynan:

You have requested my opinion on the following question:

Whether the exemption in section 75-10-214, MCA, for a person disposing of his own solid waste upon land owned or leased by that person is properly limited to (1) an individual disposing of solid waste from his own family household and (2) business-related waste not generated by persons outside of the employ of the business.

One of the purposes of the Solid Waste Management Act is to provide licensed facilities for the disposal of solid waste. Every individual, firm, partnership, company, association, corporation, city, town, local government, or other governmental or private entity must comply with the act unless they are granted a variance, or fall under the exclusion outlined in section 75-10-214, MCA. See §§ 75-10-221, 75-10-203(4), 75-10-206, MCA. The exclusion in section 75-10-214(1), MCA, provides:

This [act] may not be construed to prohibit a person from disposing of his own solid waste upon land owned or leased by that person or covered by easement or permit as long as it does not create a nuisance or public health hazard.

As I understand the facts in your question, small businesses, such as guest ranches, are claiming an exemption from the Solid Waste Management Act. They claim they are disposing of guest ranch waste on guest ranch property, and therefore need not comply with the statute, even though they offer goods and services to the general public. In contrast, the Department of Health and Environmental Sciences, which has been charged with administering the Solid Waste Management Act since 1967, has consistently interpreted this

exclusion to apply only to waste generated by a person or by that person's family or employees, and disposed of on land owned or leased by that person.

The Solid Waste Management Act was originally enacted in 1965. 1965 Mont. Laws, ch. 35. "Person" was not defined at that time, but three provisions of the original act clearly indicate that the exclusion was intended to apply only to family or household waste. First, the title of the act stated it was "Excluding Refuse Disposal by an Individual of His Own Refuse on His Own Property from this Act." (Emphasis added.)

Second, the original legislation distinguished between persons and cities, towns, and counties in the exclusion:

This act shall not be construed to prohibit any person from disposing of garbage, rubbish or refuse upon his own land as long as such disposal does not create a nuisance. Any incorporated city, town, rural improvement district or county may establish a disposal area and operate same without paying the annual license fee, but must meet all other requirements of this act.

1965 Mont. Laws, ch. 35, § 8.

Third, the original legislation lists persons separately from partnerships, companies, and corporations:

No person, partnership, company or corporation shall hereafter dispose of any garbage, rubbish or refuse in any place except as permitted under this act.

1965 Mont. Laws, ch. 35, § 3.

Clearly, the Legislature did not consider partnerships, companies, or corporations to be "persons," or only one term would have been used to describe all of these entities.

The title of the act indicates that individuals alone were to be excluded from the act, and the language within the act distinguishes between persons and other entities. Therefore, it is clear that the original

legislation was intended to exclude only individuals disposing of waste on their own land.

The exclusion was clarified and narrowed by the following 1969 amendment:

This act shall not be construed to prohibit any person from disposing of his own garbage, rubbish or refuse upon his own land as long as such disposal does not create a nuisance. [Amendment underlined.]

1969 Mont. Laws, ch. 349, § 4.

As the Legislature inserted "his own" into the exclusionary language, it is clear that the exclusion was intended to apply only to waste generated by the owner of the land, and not to waste generated by the general public who may be on the land.

In 1977 the current definition of "person" was added to the Solid Waste Management Act:

"Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity whether organized for profit or not.

1977 Mont. Laws, ch. 542, § 3, codified as § 75-10-203(4), MCA.

Initially, it appears that the statutory definition of "person" dramatically expands the exclusion within the act. However, the same section indicates that the definition should not be used if the context requires otherwise. 1977 Mont. Laws, ch. 542, § 3, codified as § 75-10-203, MCA; see also § 1-2-107, MCA. The substance of the exclusionary clause was not altered by the 1977 amendments. Nor does the title of the 1977 act indicate an intent to expand the exclusion. See Mont. Const. art. V, § 11(3) (the title of each act must clearly express the subject of the act). This, combined with the clear historical intent of limiting the exclusion to waste generated by a landowner and his family or employees, indicates that "person" should be narrowly defined in the exclusionary clause.

This is also consistent with the administration of the act by the Department of Health and Environmental Sciences since 1967. The Department has interpreted the exclusion to apply both to individuals and to self-contained business operations (such as farms and ranches), but it has never allowed landowners to dispose of the general public's waste. Such a long-standing agency policy is entitled to deference. State Department of Highways v. Midland Materials, 40 St. Rptr. 666, 662 P.2d 1322 (1983).

It has been suggested by some businesses that "person," as used in the exclusionary clause, includes all governmental and private entities, pursuant to the definition of person in section 75-10-203(4), MCA. However, such an interpretation would exempt virtually every person, institution, and entity in Montana. Few cities, counties, businesses, restaurants, or guest ranches would utilize a licensed solid waste management system if they could claim an exemption by simply dumping waste onto a piece of land they owned or leased. Such a broad interpretation of the exclusion would be absurd, and would therefore not be favored by the courts. Dover Ranch v. County of Yellowstone, 187 Mont. 276, 609 P.2d 711 (1980). Nor is there a scintilla of evidence that the Legislature ever intended the exclusion to be so broad. The exemption clearly applies only to the solid waste of individual households, or to businesses that are self-contained (i.e., they are not offering goods or services to the public at their business location). Therefore, businesses such as restaurants, guest ranches, resorts, etc., which offer goods and services to the general public do not qualify for the exemption.

This opinion does not address whether a small business otherwise covered by the Solid Waste Management Act might qualify for a variance under section 75-10-206, MCA. Nor does this opinion address whether an individual whose disposal of his own waste on his own land constitutes a nuisance should comply with the Solid Waste Management Act.

THEREFORE, IT IS MY OPINION:

The exception in section 75-10-214, MCA, to the Solid Waste Management Act does not apply to waste generated by members of the general public but

applies only to waste generated by the owner or lessee of the disposal site for such waste, or to waste generated by persons in the family or to business-related waste generated by persons in the employ of such owner or lessee.

Very truly yours,

MIKE GREELY
Attorney General