

SENATE BILL NO. 212

INTRODUCED BY HAGER

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

IN THE SENATE

January 20, 1981	Introduced and referred to Committee on Public Health, Welfare and Safety
	Fiscal note requested.
January 26, 1981	Fiscal note returned.
February 9, 1981	Committee recommend bill do pass as amended. Report adopted.
	Statement of intent attached.
February 10, 1981	Bill printed and placed on members' desks.
February 11, 1981	Second reading, pass consideration.
February 12, 1981	Second reading, do pass.
February 13, 1981	Correctly engrossed.
February 14, 1981	Third reading, passed. Ayes, 48; Noes, 1. Transmitted to House.

IN THE HOUSE

February 16, 1981	Introduced and referred to Committee on Human Services.
March 21, 1981	Committee recommend bill be concurred in as amended. Report adopted.

March 28, 1981 Second reading, concurred in
as amended.

March 30, 1981 On motion rules suspended
and bill allowed to be
transmitted on 71st
legislative day.
Motion adopted.

March 31, 1981 Third reading, concurred in
as amended.
Ayes, 92; Noes, 6.

IN THE SENATE

April 1, 1981 Returned from House with
amendments.

April 3, 1981 Second reading, amendments
concurred in.

April 6, 1981 Third reading, amendments
concurred in. Ayes, 49;
Noes, 0. Sent to enrolling.
Reported correctly enrolled.

1 *Senate* BILL NO. *212*
 2 INTRODUCED BY *Hager*
 3 BY REQUEST OF

4 THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROGRAM OF
 7 HAZARDOUS WASTE MANAGEMENT SEPARATE FROM THE NONHAZARDOUS
 8 SOLID WASTE MANAGEMENT PROGRAM IN MONTANA; AMENDING SECTIONS
 9 75-10-202 THROUGH 75-10-204, 75-10-212, 75-10-214,
 10 75-10-221, AND 75-10-232, MCA; AND REPEALING SECTIONS
 11 75-10-211 AND 75-10-225, MCA."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 75-10-202, MCA, is amended to read:

15 "75-10-202. Legislative findings and policy. It is
 16 hereby found and declared that the health and welfare of
 17 Montana citizens are being endangered by improperly operated
 18 solid waste management systems and by the improper and
 19 unregulated disposal of hazardous wastes. It is declared the
 20 public policy of this state to control solid waste
 21 management systems to protect the public health and safety
 22 and to conserve natural resources whenever possible."

23 Section 2. Section 75-10-203, MCA, is amended to read:

24 "75-10-203. Definitions. Unless the context requires
 25 otherwise, in this part the following definitions apply:

1 (1) "Board" means the board of health and
 2 environmental sciences provided for in 2-15-2104.

3 (2) "Department" means the department of health and
 4 environmental sciences provided for in Title 2, chapter 15,
 5 part 21.

6 (3) "Dispose" or "disposal" means the discharge,
 7 injection, deposit, dumping, spilling, leaking, or placing
 8 of any solid waste or hazardous waste into or onto the land
 9 so that the solid waste or hazardous waste or any
 10 constituent of it may enter the environment or be emitted
 11 into the air or discharged into any waters, including
 12 groundwaters.

13 ~~(4) "Hazardous waste" means any waste or combination~~
 14 ~~of wastes of a solid, liquid, contained, gaseous, or~~
 15 ~~semisolid form which may cause or contribute to an increase~~
 16 ~~in mortality or an increase in serious illness, taking into~~
 17 ~~account the toxicity of the waste, its persistence, and~~
 18 ~~degradability, in nature, its potential for assimilation or~~
 19 ~~concentration in tissue, and other factors that may~~
 20 ~~otherwise cause or contribute to adverse acute or chronic~~
 21 ~~effects on the health of persons or other living organisms.~~
 22 ~~Hazardous wastes include but are not limited to those which~~
 23 ~~are toxic, radioactive, corrosive, flammable, irritants,~~
 24 ~~strong sensitizers, or which generate pressure through~~
 25 ~~decomposition, heat, or other means, excluding wood chips~~

1 ~~and wood used for manufacturing or fuel purposes.~~

2 ~~(5) "Hazardous waste management" means the management~~

3 ~~of the storage, transport, treatment, recycling, recovery,~~

4 ~~or disposal of hazardous wastes.~~

5 ~~(6)(4) "Person" means an individual, firm,~~

6 ~~partnership, company, association, corporation, city, town,~~

7 ~~local governmental entity, or any other governmental or~~

8 ~~private entity, whether organized for profit or not.~~

9 ~~(7)(5) "Resource recovery" means the recovery of~~

10 ~~material or energy from solid waste.~~

11 ~~(8)(6) "Resource recovery facility" means a facility~~

12 ~~at which solid waste is processed for the purpose of~~

13 ~~extracting, converting to energy, or otherwise separating~~

14 ~~and preparing solid waste for reuse.~~

15 ~~(9)(7) "Resource recovery system" means a solid waste~~

16 ~~management system which provides for the collection,~~

17 ~~separation, recycling, or recovery of solid wastes,~~

18 ~~including disposal of nonrecoverable waste residues.~~

19 ~~(10)(8) "Solid waste" means all putrescible and~~

20 ~~nonputrescible wastes, including but not limited to garbage;~~

21 ~~rubbish; refuse; hazardous wastes; ashes; sludge from sewage~~

22 ~~treatment plants, water supply treatment plants, or air~~

23 ~~pollution control facilities; construction and demolition~~

24 ~~wastes; dead animals, including offal; discarded home and~~

25 ~~industrial appliances; and wood products or wood byproducts~~

1 and inert materials. "Solid waste" does not mean municipal

2 sewage, industrial wastewater effluents, mining wastes

3 regulated under the mining and reclamation laws administered

4 by the department of state lands, slash and forest debris

5 regulated under laws administered by the department of

6 natural resources and conservation, or marketable wood

7 byproducts.

8 ~~(11)(9) "Solid waste management system" means a system~~

9 ~~which controls the storage, treatment, recycling, recovery,~~

10 ~~or disposal of solid waste.~~

11 ~~(12)(10) "Storage" means the actual or intended~~

12 ~~containment of wastes, either on a temporary basis or for a~~

13 ~~period of years.~~

14 ~~(13)(11) "Transport" means the movement of wastes from~~

15 ~~the point of generation to any intermediate points and~~

16 ~~finally to the point of ultimate storage or disposal.~~

17 ~~(14)(12) "Treatment" means a method, technique, or~~

18 ~~process, including neutralization, designed to change the~~

19 ~~physical, chemical, or biological character or composition~~

20 ~~of any solid waste so as to neutralize the waste or so as to~~

21 ~~render it nonhazardous, safer for transport, amenable for~~

22 ~~recovery, amenable for storage, or reduced in volume."~~

23 Section 3. Section 75-10-204, MCA, is amended to read:

24 "75-10-204. Powers and duties of department. The

25 department shall adopt rules governing solid waste

1 management systems which shall include but not be limited
2 to:

3 (1) requirements for the plan of operation and
4 maintenance that must be submitted with an application under
5 this part;

6 (2) the classification of disposal sites according to
7 the physical capabilities of the site to contain the type of
8 solid waste to be disposed of;

9 (3) the procedures to be followed in the disposal,
10 treatment, or transport of solid wastes;

11 (4) the suitability of the site from a public health
12 standpoint when hydrology, geology, and climatology are
13 considered; and

14 ~~{5}--procedures-and-requirements-for-the-submission--of~~
15 ~~reports--on--the--operation--and--maintenance-of-a-hazardous~~
16 ~~waste-disposal-site;--the-transport-of-hazardous--waste;--and~~
17 ~~the-generation-of-hazardous-wastes;--and~~

18 {6}{5} any other factors relating to the sanitary
19 disposal or management of solid wastes."

20 Section 4. Section 75-10-212, MCA, is amended to read:

21 "75-10-212. Disposal in unauthorized area prohibited
22 -- exception. (1) No person may dispose of solid waste or
23 transport hazardous waste except as permitted under this
24 part.

25 (2) It shall be unlawful to dump or leave any garbage,

1 dead animal, or other debris or refuse:

2 (a) in or upon any highway, road, street, or alley of
3 this state;

4 (b) in or upon any public recreational property,
5 highway, street, or alley under the control of the state of
6 Montana or any political subdivision thereof or any officer
7 or agent or department thereof;

8 (c) within 200 yards of such public highway, road,
9 street, or alley or public recreational property;

10 (d) on privately owned property where hunting,
11 fishing, or other recreation is permitted, provided this
12 subsection shall not apply to the owner, his agents, or
13 those disposing of debris or refuse with the owner's
14 consent."

15 Section 5. Section 75-10-214, MCA, is amended to read:

16 "75-10-214. Exclusions -- exceptions to exclusions.

17 (1) {a} This part may not be construed to prohibit a person
18 from disposing of his own solid waste -- except -- hazardous
19 waste, upon land owned or leased by that person or covered
20 by easement or permit as long as it does not create a
21 nuisance or public health hazard.

22 {b} -- A person -- may dispose of his own hazardous wastes
23 upon land owned or leased -- by -- that -- person -- or -- covered -- by
24 easement -- or -- permit -- after -- complying -- with -- the -- licensing
25 requirements of this part and the rules adopted to regulate

1 ~~the disposal or transport of hazardous wastes~~

2 ~~(e)(2)~~ The exclusion contained in subsection (1)~~(e)~~ of
 3 this section does not apply to a division of land of 5 acres
 4 or less made after July 1, 1977, which falls within the
 5 definition of subdivision in Title 76, chapter 4, part 1, or
 6 the Montana Subdivision and Platting Act in Title 76,
 7 chapter 3.

8 ~~(2) The licensing requirements of this part do not~~
 9 ~~apply to the transportation of marketable hazardous wastes~~
 10 ~~to a manufacturing or processing center.~~

11 Section 6. Section 75-10-221, MCA, is amended to read:

12 "75-10-221. License required -- application. (1)
 13 Except as provided in 75-10-214, no person may dispose of
 14 solid waste or hazardous waste, operate a solid waste
 15 management system, or transport hazardous waste without a
 16 license from the department.

17 (2) The department shall provide application forms for
 18 a license as provided in this part.

19 (3) The application shall contain the name and
 20 business address of the applicant, the location of the
 21 proposed solid waste management system, a plan of operation
 22 and maintenance, and such other information as the
 23 department may by rule require."

24 Section 7. Section 75-10-232, MCA, is amended to read:

25 "75-10-232. Penalty for violations. (1) ~~(e)~~ A person

1 violating this part or regulations prescribed by the
 2 department under this part, except 75-10-212(2), is guilty
 3 of a misdemeanor and upon conviction shall be fined not less
 4 than \$50 or more than \$500.

5 ~~(b) A person who stores, treats, transports, or~~
 6 ~~disposes of a hazardous waste in violation of this part, a~~
 7 ~~rule adopted as authorized by this part or an order issued~~
 8 ~~as provided in this part is subject to a civil penalty of~~
 9 ~~not more than \$25,000.~~

10 (2) Each day upon which a violation occurs is a
 11 separate violation."

12 NEW SECTION. Section 8. Short title. [Section 8
 13 through 28] shall be known and may be cited as the "Montana
 14 Hazardous Waste Act".

15 NEW SECTION. Section 9. Findings and purpose. (1) The
 16 legislature finds that the safe and proper management of
 17 hazardous wastes, the permitting of hazardous waste
 18 facilities, and the siting of such facilities are
 19 environmental issues that should properly be addressed and
 20 controlled by the state rather than by the federal
 21 government.

22 (2) It is the purpose of [sections 8 through 28] and
 23 it is the policy of this state to protect the public health
 24 and safety, the health of living organisms, and the
 25 environment from the effects of the improper, inadequate, or

1 unsound management of hazardous wastes; to establish a
 2 program of regulation over the generation, storage,
 3 transportation, treatment, and disposal of hazardous wastes;
 4 to assure the safe and adequate management of hazardous
 5 wastes within this state; and to authorize the department to
 6 adopt, administer, and enforce a hazardous waste program
 7 pursuant to the federal Resource Conservation and Recovery
 8 Act of 1976, (42 U.S.C. 6901 - 6987), as amended.

9 NEW SECTION. Section 10. Definitions. Unless the
 10 context requires otherwise, in [sections 8 through 28] the
 11 following definitions apply:

12 (1) "Board" means the board of health and
 13 environmental sciences provided for in 2-15-2104.

14 (2) "Department" means the department of health and
 15 environmental sciences provided for in Title 2, chapter 15,
 16 part 21.

17 (3) "Dispose" or "disposal" means the discharge,
 18 injection, deposit, dumping, spilling, leaking, or placing
 19 of any hazardous waste into or onto the land or water so
 20 that the hazardous waste or any constituent of it may enter
 21 the environment or be emitted into the air or discharged
 22 into any waters, including ground waters.

23 (4) "Facility" or "hazardous waste management
 24 facility" means all contiguous land and structures, other
 25 appurtenances, and improvements on the land used for

1 treating, storing, or disposing of hazardous waste. A
 2 facility may consist of several treatment, storage, or
 3 disposal operational units.

4 (5) "Generation" means the act or process of producing
 5 waste material.

6 (6) "Generator" means any person, by site, whose act
 7 or process produces hazardous waste or whose act first
 8 causes a hazardous waste to become subject to regulation
 9 under [sections 8 through 28].

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

13 (i) cause or significantly contribute to an increase
 14 in mortality or an increase in serious irreversible or
 15 incapacitating reversible illness; or

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

19 (b) Hazardous wastes include but are not limited to
 20 those wastes which are ignitable, corrosive, reactive,
 21 toxic, radioactive, or infectious.

22 (8) "Hazardous waste management" means the management
 23 of the collection, source separation, storage,
 24 transportation, processing, treatment, recovery, and
 25 disposal of hazardous wastes.

1 (9) "Manifest" means the shipping document originated
2 and signed by the generator and which is used to identify
3 the hazardous waste, its quantity, origin, and destination
4 during its transportation.

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

10 (11) "Storage" means the actual or intended containment
11 of wastes, either on a temporary basis or for a period of
12 years.

13 (12) "Transportation" means the movement of hazardous
14 wastes from the point of generation to any intermediate
15 points and finally to the point of ultimate storage or
16 disposal.

17 (13) "Transporter" means a person engaged in the
18 offsite transportation of hazardous waste by air, rail,
19 highway, or water.

20 (14) "Treatment" means a method, technique, or process,
21 including neutralization, designed to change the physical,
22 chemical, or biological character or composition of any
23 hazardous waste so as to neutralize the waste or so as to
24 render it nonhazardous, safer for transportation, amenable
25 for recovery, amenable for storage, or reduced in volume.

1 NEW SECTION. Section 11. Powers of department. (1)

2 The department may:

3 (a) administer and enforce the provisions of [sections
4 8 through 28], rules implementing [sections 8 through 28],
5 and orders and permits issued pursuant to [sections 8
6 through 28];

7 (b) conduct and publish studies on hazardous wastes
8 and hazardous waste management;

9 (c) initiate, conduct, and support research,
10 demonstration projects, and investigation, as its resources
11 may allow, and coordinate state agency research programs
12 pertaining to hazardous waste management;

13 (d) accept and administer grants from the federal
14 government and from other sources, public and private.

15 (2) The department shall integrate all provisions of
16 [sections 8 through 28] with other laws administered by the
17 department to avoid unnecessary duplication. Furthermore,
18 the department shall coordinate its activities under
19 [sections 8 through 28] with the program administered by the
20 department of agriculture under the Montana Pesticides Act,
21 the programs administered by the department of state lands
22 related to mining and mine reclamation, the program
23 administered by the department of public service regulation
24 related to hazardous material transportation, and provisions
25 of the Montana Major Facility Siting Act administered by the

1 department of natural resources and conservation. Such
 2 integration and coordination shall be effected only to the
 3 extent that it can be done in a manner consistent with the
 4 goals and policies of [sections 8 through 28] and the other
 5 laws referred to in this section.

6 NEW SECTION. Section 12. Administrative rules. The
 7 department may adopt, amend, or repeal rules governing
 8 hazardous waste, including but not limited to the following:

9 (1) identification and classification of those
 10 hazardous wastes subject to regulation and those that are
 11 not;

12 (2) requirements for the proper treatment, storage,
 13 transportation, and disposal of hazardous waste;

14 (3) requirements for siting, design, operation,
 15 maintenance, monitoring, inspection, closure, postclosure,
 16 and reclamation of hazardous waste management facilities;

17 (4) requirements for the issuance, denial, renewal,
 18 modification, and revocation of permits for hazardous waste
 19 management facilities and the assessment of permit fees for
 20 these facilities;

21 (5) requirements for manifests and the manifest system
 22 for tracking hazardous waste and for reporting and
 23 recordkeeping by generators, transporters, and owners and
 24 operators of hazardous waste management facilities;

25 (6) requirements for training of facility personnel

1 and for financial assurance of facility owners and
 2 operators;

3 (7) requirements for registration of generators and
 4 transporters; and

5 (8) other rules which are necessary to obtain and
 6 maintain authorization under the federal program.

7 NEW SECTION. Section 13. Permits. (1) No person may
 8 construct or operate a hazardous waste management facility
 9 without first obtaining a permit from the department for
 10 such facility, except that the department may, by rule,
 11 prescribe conditions under which specified hazardous wastes
 12 or specified quantities of hazardous waste may be disposed
 13 of at solid waste disposal sites licensed by the department
 14 pursuant to Title 75, chapter 10, part 2.

15 (2) Any person who wishes to construct or operate a
 16 hazardous waste management facility shall apply to the
 17 department for a permit on forms provided by the department.
 18 An application must contain, at a minimum, the name and
 19 business address of the applicant, the location of the
 20 proposed facility, a plan of operation and maintenance, and
 21 a description of pertinent site characteristics.

22 (3) A permit may be issued for a period specified by
 23 the department and shall be subject to renewal by the
 24 department upon a showing that the facility has been
 25 operated in accordance with the terms of the permit and the

1 rules applicable to such facility and in compliance with the
2 provisions of [sections 8 through 28] and any applicable
3 order of the board or department.

4 (4) Any permit issued is subject to revocation by the
5 department for failure of the permittee to comply with the
6 terms and conditions of the permit, the department rules, an
7 order of the board or the department, or the provisions of
8 [sections 8 through 28]. Any person who is denied a permit
9 by the department or who has such permit revoked or modified
10 shall be afforded an opportunity for a hearing before the
11 board upon written application made within 30 days after
12 service of notice of such denial, revocation, or
13 modification by mail. Service by mail is complete upon
14 mailing.

15 (5) Notwithstanding any other provisions of [sections
16 8 through 28], the department may, in the event of an
17 imminent and substantial danger to public health or the
18 environment, issue a temporary emergency permit to any
19 person for treatment, storage, or disposal of hazardous
20 waste or to any facility to handle hazardous waste not
21 covered by the existing facility permit. Such emergency
22 permits may be oral or written, may not exceed 90 days in
23 duration, and may be terminated by the department at any
24 time prior to 90 days.

25 (6) The department may, as it considers appropriate,

1 grant permits by rule to classes or categories of hazardous
2 waste management facilities where the facility owner or
3 operator is already licensed or permitted by the department
4 pursuant to other state environmental statutes or where an
5 interim period exists until final administrative disposition
6 of a permit application is made.

7 NEW SECTION. Section 14. Concurrent permit and major
8 facility siting decisions. If it is determined that an
9 application for a certificate under the Montana Major
10 Facility Siting Act, Title 75, chapter 20, will result in
11 the generation, transportation, storage, or disposal of
12 hazardous wastes as defined in [section 10], the department
13 shall conduct its review under the provisions of [sections 8
14 through 28] concurrently with the studies of air and water
15 quality conducted under the provisions of the Montana Major
16 Facility Siting Act. A decision to grant or deny a permit
17 for the treatment, storage, or disposal of hazardous wastes
18 under the provisions of [section 13] is appealable
19 concurrently with and subject to the same procedures
20 established for the appeal of the department's air and water
21 quality certification decision under the Montana Major
22 Facility Siting Act. If the initial permit has been granted
23 as specified in this section, all renewals or modifications
24 of a permit or enforcement actions concerning alleged
25 violations of the permit and the provisions of [sections 8

1 through 28] shall be conducted pursuant to the procedures
2 and enforcement provisions established in [sections 8
3 through 28].

4 ~~NEW SECTION.~~ Section 15. Variances -- renewals. (1) A
5 person who is a generator or transporter of hazardous wastes
6 or who owns or operates a hazardous waste management
7 facility may apply to the board for a variance or partial
8 variance from the application of or compliance with any
9 requirement of [sections 8 through 28] or any rule adopted
10 under [sections 8 through 28]. The board may grant a
11 variance or partial variance if it finds that:

12 (a) the applicant's actions or proposed actions
13 regarding generation, transportation, treatment, storage, or
14 disposal of hazardous wastes do not constitute a danger to
15 public health or safety or cause substantially adverse
16 environmental effects; and

17 (b) the application of or compliance with the
18 requirement or rule would produce unreasonable hardship
19 without equal or greater benefits to the public.

20 (2) No variance or partial variance may be granted
21 except after public hearing on due notice and until the
22 board has considered the relative interests of the
23 applicant, other persons specifically affected, and the
24 general public.

25 (3) No variance or partial variance may be granted for

1 a period to exceed 1 year, but the variance or partial
2 variance may be renewed for like periods if no complaint is
3 made to the board because of it or if, after the complaint
4 has been made and duly considered at a public hearing held
5 by the board on due notice, the board finds that renewal is
6 justified. No renewal may be granted except on application
7 therefor. An application for renewal shall be made in the
8 manner and upon such notice as specified in rules
9 promulgated under [sections 8 through 28]. A renewal
10 pursuant to this subsection shall be on the same grounds and
11 subject to the same limitations and requirements as provided
12 in subsection (1).

13 (4) A variance, partial variance, or renewal thereof
14 is not a right of the applicant or holder thereof but shall
15 be granted at the discretion of the board. However, a person
16 adversely affected by a variance, partial variance, or
17 renewal granted by the board may obtain judicial review
18 thereof as provided by the judicial review of contested case
19 provisions of the Montana Administrative Procedure Act.

20 (5) Nothing in this section and no variance, partial
21 variance, or renewal granted pursuant to this section may be
22 construed to prevent or limit the application of the
23 emergency provisions and procedures of [section 22].

24 (6) Under no conditions may a variance be granted by
25 the board that would result in a less stringent requirement

1 or degree of control than would be imposed by the applicable
2 federal regulations adopted under the federal Resource
3 Conservation and Recovery Act.

4 NEW SECTION. Section 16. Compliance monitoring and
5 reporting. The department may, as a condition of a permit,
6 require the owner or operator of a facility to install
7 equipment, collect and analyze samples, and maintain records
8 in order to monitor and demonstrate compliance with
9 [sections 8 through 28], rules adopted under [sections 8
10 through 28], any order of the board or department, and
11 permit conditions. The department may require the owner or
12 operator of a facility to submit reports on such compliance
13 monitoring activities, including notice to the department of
14 any noncompliance with permit conditions, rules adopted
15 under [sections 8 through 28], the provisions of [sections 8
16 through 28], or any orders of the department or board.

17 NEW SECTION. Section 17. Inspections -- sampling. (1)
18 An employee or agent of the department, at any reasonable
19 time and upon presentation of credentials, may enter upon
20 and inspect any property, premises, or place at which
21 hazardous wastes are or have been generated, stored,
22 treated, disposed of, or loaded for transportation or any
23 property, premises, or place at which records pertinent to
24 such hazardous waste activities are maintained. The employee
25 or agent of the department may have access to and may copy

1 any records relating to such hazardous wastes for the
2 purposes of developing rules under [sections 8 through 28]
3 or enforcing the provisions of [sections 8 through 28],
4 rules adopted under [sections 8 through 28], or a permit or
5 an order issued under [sections 8 through 28].

6 (2) In the course of an inspection under this section,
7 the employee or agent of the department may take samples of
8 any wastes, including samples from any vehicle in which
9 wastes are transported, or samples of any containers or
10 labeling for such wastes. If the employee or agent of the
11 department takes a sample of any hazardous waste or
12 suspected hazardous waste he shall, prior to leaving the
13 premises, give to the owner, operator, or agent in charge a
14 receipt describing the sample taken and, if requested, a
15 portion of each such sample equal in volume or weight to the
16 portion retained. If any analysis is made of such samples, a
17 copy of the results of such analysis must be furnished to
18 the owner, operator, or agent in charge.

19 NEW SECTION. Section 18. Hazardous waste site
20 inventory. (1) The department is authorized to conduct an
21 inventory of sites and locations in the state where
22 hazardous wastes have been stored or disposed of at any
23 time.

24 (2) If the department determines that the presence of
25 a hazardous waste or the release of the waste or any waste

1 constituent at any such site may present a substantial
2 hazard to public health or the environment, it may issue an
3 order requiring the owner or operator of the facility or
4 site to conduct reasonable monitoring, testing, analysis,
5 and reporting with respect to the site in order to ascertain
6 the nature and extent of the hazard.

7 (3) An order issued under subsection (2) must require
8 that the person to whom the order is issued submit to the
9 department within 30 days a proposal for carrying out the
10 required monitoring, testing, analysis, and reporting.

11 (4) If the department determines that no owner or
12 operator is able to conduct monitoring, testing, and
13 analysis in a satisfactory manner, the department may
14 conduct such activities.

15 (5) For the purposes of carrying out this section, the
16 department may exercise the powers set forth in [section
17 17].

18 NEW SECTION. Section 19. State hazardous waste
19 facilities. The department may, if it considers such action
20 to be necessary, establish, maintain, and operate state
21 hazardous waste management facilities to provide for the
22 treatment, storage, or disposal of hazardous wastes. The
23 department may acquire interests in real property by gift,
24 purchase, lease, or other means in order to develop any such
25 facility. Such a facility may be operated and maintained by

1 the department directly or through agreement with public or
2 private persons. A state facility must meet all applicable
3 requirements for a hazardous waste management facility under
4 [sections 8 through 28].

5 NEW SECTION. Section 20. Administrative enforcement.
6 (1) When the department believes that a violation of
7 [sections 8 through 28], a rule adopted under [it], or a
8 permit provision has occurred, it may serve written notice
9 of the violation by mail on the alleged violator or his
10 agent. The notice must specify the provision of [sections 8
11 through 28], the rule, or the permit provision alleged to be
12 violated and the facts alleged to constitute a violation and
13 may include an order to take necessary corrective action
14 within a reasonable period of time stated in the order. The
15 order becomes final unless, within 30 days after the notice
16 is served, the person named requests in writing a hearing
17 before the board. On receipt of the request, the board shall
18 schedule a hearing. Service by mail is complete on the date
19 of mailing.

20 (2) If, after a hearing held under subsection (1), the
21 board finds that a violation has occurred, it shall either
22 affirm or modify the department's order previously issued.
23 An order issued by the department or by the board may
24 prescribe the date by which the violation must cease and may
25 prescribe time limits for particular action. If, after

1 hearing, the board finds no violation has occurred, it shall
2 rescind the department's order.

3 (3) Instead of issuing an order pursuant to subsection
4 (1), the department may either:

5 (a) require the alleged violator to appear before the
6 board for a hearing at a time and place specified in the
7 notice and answer the charges complained of; or

8 (b) initiate action under [section 21], [section 24],
9 or [section 25].

10 (4) This section does not prevent the board or
11 department from making efforts to obtain voluntary
12 compliance through warning, conference, or any other
13 appropriate means.

14 NEW SECTION. Section 21. Injunctions. The department
15 may institute and maintain in the name of the state actions
16 for injunctive relief as provided in Title 27, chapter 19,
17 MCA, to:

18 (1) immediately restrain any person from engaging in
19 any unauthorized activity which is endangering or causing
20 damage to public health or the environment; or

21 (2) enjoin a violation of [sections 8 through 28], a
22 rule adopted under [it], an order of the department or the
23 board, or a permit provision without the necessity of prior
24 revocation of the permit.

25 NEW SECTION. Section 22. Imminent hazard. Upon

1 receipt of evidence that the handling, storage, treatment,
2 transportation, or disposal of any hazardous waste may
3 present an imminent and substantial danger to public health
4 or the environment, the department may commence legal
5 proceedings to immediately restrain or enjoin any person
6 contributing to such handling, storage, treatment,
7 transportation, or disposal from engaging in such activities
8 or take such other action as may be necessary.

9 NEW SECTION. Section 23. Cleanup orders. The
10 department may issue a cleanup order to any person who has
11 discharged, deposited, or spilled any hazardous waste into
12 or onto any land or water in an unlawful or unapproved
13 manner or who has discharged, deposited, or spilled any
14 material or substance into or onto any land or water so as
15 to result in unlawful or unapproved hazardous waste
16 disposal. The order shall direct the person to clean up and
17 remove the waste, treat it so as to render it nonhazardous,
18 or to take such other actions as may be considered
19 reasonable by the department.

20 NEW SECTION. Section 24. Civil penalties. (1) Any
21 person who violates any provision of [sections 8 through
22 28], a rule adopted under [it], an order of the department
23 or the board, or a permit is subject to a civil penalty not
24 to exceed \$10,000. Each day of violation constitutes a
25 separate violation.

1 (2) The department may institute and maintain in the
 2 name of the state any enforcement proceedings under this
 3 section. Upon request of the department, the attorney
 4 general or the county attorney of the county of violation
 5 shall petition the district court to impose, assess, and
 6 recover the civil penalty. Any civil penalty collected
 7 under this section is in lieu of the criminal penalty
 8 provided for in [section 25].

9 (3) Action under this section does not bar enforcement
 10 of [sections 8 through 28], rules adopted under [it], orders
 11 of the department or the board, or permits by injunction or
 12 other appropriate remedy.

13 (4) Money collected under this section shall be
 14 deposited in the state general fund.

15 NEW SECTION. Section 25. Criminal penalties. (1) Any
 16 person who knowingly transports any hazardous waste to an
 17 unpermitted facility; who treats, stores, or disposes of
 18 hazardous waste without a permit; or who makes any false
 19 statement or representation in any application, label,
 20 manifest, record, report, permit, or other document filed or
 21 maintained as required by the provisions of [sections 8
 22 through 28] or rules made under [it] is subject to a fine of
 23 not less than \$10,000 for each violation or imprisonment for
 24 no less than 6 months, or both. Each day of violation
 25 constitutes a separate violation.

1 (2) Action under this section does not bar enforcement
 2 of [sections 8 through 28], rules made under [it], orders of
 3 the department or the board, or permits by injunction or
 4 other appropriate remedy.

5 (3) Money collected under this section shall be
 6 deposited in the state general fund.

7 NEW SECTION. Section 26. Department designated agency
 8 for federal program participation -- interstate cooperation.

9 (1) The department is designated as the official agency for
 10 the state for all purposes of the federal Resource
 11 Conservation and Recovery Act of 1976 (42 U.S.C. 6901
 12 through 6987), as amended, and for the purpose of such other
 13 state or federal legislation as has or may be enacted after
 14 [the effective date of this act] to assist in the management
 15 of hazardous wastes.

16 (2) The legislature of this state encourages
 17 cooperative activities by the department with other states
 18 for the improved management of hazardous wastes and, so far
 19 as is practicable, encourages the adoption of uniform state
 20 laws relating to the management of hazardous wastes and
 21 compacts between this and other states for the improved
 22 management of hazardous wastes. The department may enter
 23 into agreements with the responsible authorities of the
 24 United States and of other states, subject to approval by
 25 the governor, relative to policies, methods, means, and

1 procedures to be employed in the management of hazardous
2 wastes not inconsistent with the provisions of [sections 8
3 through 28] and may carry out the agreements.

4 NEW SECTION. Section 27. Venue for legal proceedings.
5 All legal proceedings affecting hazardous waste management
6 facilities in the state shall be brought in the county in
7 which the facility is located.

8 NEW SECTION. Section 28. Construction in event of
9 conflict — remedies cumulative. (1) The provisions of
10 [sections 8 through 28] and rules promulgated pursuant to
11 [it] govern if they conflict with other provisions of
12 Montana law or any action taken by the department under such
13 provisions.

14 (2) The remedies provided for in [sections 8 through
15 28] are cumulative with other remedies provided by law.

16 NEW SECTION. Section 29. Existing rules, orders,
17 permits, legal proceedings. (1) All existing rules of the
18 department not inconsistent with the provisions of this act
19 relating to subjects embraced within this act remain in full
20 force and effect until expressly repealed, amended, or
21 superseded by the department.

22 (2) All orders entered, permits granted, and pending
23 legal proceedings instituted by the department relating to
24 subjects embraced within this act remain unimpaired and in
25 full force and effect until superseded by actions taken by

1 the department under this act.

2 Section 30. Repealer. Sections 75-10-211 and
3 75-10-225, MCA, are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 181-81

FISCAL NOTE

Form BD-15

In compliance with a written request received January 22, 1981, there is hereby submitted a Fiscal Note for Senate Bill 212 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to regulate the generation, storage, transportation, treatment, and disposal of hazardous waste to assure the safe and adequate management of hazardous waste within the state; and to authorize the Department of Health and Environmental Sciences to adopt, administer, and enforce the hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976.

ASSUMPTIONS:

- 1. The authority of the Montana State Department of Health and Environmental Sciences will be clarified.
2. Enforcement actions available to the Department of Health will be increased.
3. The funding available under the Resource Conservation and Recovery Act of 1976 from the federal government will require a 25% match from the State of Montana.
4. The additional general funds must be authorized in the 82-83 biennium appropriation to the Montana State Department of Health and Environmental Sciences.

FISCAL IMPACT:

Table with 3 columns: Expenditures, FY 82, FY 83. Rows include From Federal Funds, From State General Fund, and Total.

Handwritten signature of David M. Lewis

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: 1-26-81

1 STATEMENT OF INTENT

2 SENATE BILL 212

3 Senate Public Health Committee
4

5 A statement of intent is required for this bill because
6 it delegates rulemaking and licensing authority to the
7 Department of Health and Environmental Sciences. Senate
8 Bill 212 is intended to separate from the existing Montana
9 Solid Waste Management Act (Sects: 75-10-201, et seq., MCA)
10 all references to the treatment, storage, disposal,
11 generation, and transportation of hazardous wastes and place
12 the statutes regulating hazardous wastes into a separate
13 part of the code. The specific objective and intent of the
14 bill is to clarify and extend state rulemaking authority in
15 order to be totally authorized by the Administrator of the
16 Environmental Protection Agency (EPA) to operate a hazardous
17 waste program in Montana which is equivalent to and in lieu
18 of the federal hazardous waste program established by
19 Subtitle C of the Resource Conservation and Recovery Act
20 (RCRA) of 1976, P.L. 94-580, as amended.

21 The rules promulgated and permitting procedures adopted
22 under this bill shall meet minimum standards under RCRA and
23 shall not be more restrictive than those analogous
24 provisions in which EPA has adopted regulations under RCRA.
25 In the limited situations in which no federal regulations

1 have been adopted or the drafting of regulations has been
2 purposefully left to the states, the Department must be
3 guided and constrained by the purpose set forth in Section
4 9, the powers of the Department noted in Section 11, the
5 rulemaking guidelines of Section 12, and the minimum
6 requirements of RCRA.

7 It should be noted that Montana has enacted regulatory
8 provisions under existing Title 75, chapter 10, part 2, the
9 Solid Waste Management Act, and has sufficient coverage of
10 hazardous waste responsibilities enabling the state to
11 qualify for interim authorization from EPA to carry out a
12 program in lieu of the federal RCRA hazardous waste program.
13 This bill grants the Department authority to make additional
14 adjustments, through rulemaking, which will bring its
15 program affecting generators and transporters of hazardous
16 wastes, the universe of hazardous waste, inspection and
17 sampling, definitions, enforcement alternatives and
18 penalties for hazardous wastes into equivalency and
19 consistency with federal requirements.

20 Senate Bill 212 intends that the Department of Health
21 and Environmental Sciences shall have authority to require
22 by rule, in accordance with the Montana Administrative
23 Procedure Act, that generators of hazardous wastes, prior to
24 transporting hazardous wastes or offering them for
25 transport off-site, must perform certain packaging,

1 labeling, marking and placarding of the wastes in a manner
 2 equivalent to the provisions of federal regulations
 3 contained in 40 CFR 262.30 through 262.33. The Department
 4 shall have authority under the bill to adopt rules setting
 5 penalties or fines for generators of hazardous wastes that
 6 set upper limitations which are no less than the amount of
 7 \$10,000 per day, as required for final authorization under
 8 the federal program. Furthermore, Senate Bill 212 allows
 9 additional rulemaking to clarify the Department's authority
 10 to make inspections of and take samples from generators of
 11 hazardous wastes in a manner equivalent to federal
 12 inspection authority provided in Section 3007 of RCRA and
 13 federal rules promulgated under RCRA.

14 Under existing law, the Department has promulgated
 15 rules which define a broad spectrum of hazardous wastes (the
 16 universe of hazardous wastes) by specific listing and by
 17 characteristics; which list exclusions from the definition
 18 of hazardous waste; which define terms necessary to
 19 implement the hazardous waste program; which establish
 20 manifest requirements specifying how a hazardous waste is
 21 documented from time of generation through transport to time
 22 of disposal by the operator of a treatment, storage or
 23 disposal facility; which set recordkeeping and emergency
 24 cleanup procedures for transporters of hazardous wastes;
 25 which establish licensure procedures and standards for

1 operators of hazardous waste treatment storage and disposal
 2 systems; and which provide enforcement alternatives for
 3 treatment, storage and disposal facility licenses. All of
 4 the existing rules are equivalent to and consistent with the
 5 federal program established by RCRA; in many instances, EPA
 6 rules have been incorporated by reference.

7 Under Senate Bill 212, the Department will have
 8 authority to amend and revise these rules, and to adopt new
 9 rules, in accordance with the Montana Administrative
 10 Procedure Act, which may be needed to meet changing minimum
 11 federal standards for a hazardous waste program authorized
 12 for state control under RCRA, as amended. Thus, Montana will
 13 be able to continue to maintain federal authorization for an
 14 independent hazardous waste program, equivalent to the
 15 federal program, but operated by the Department.

16 First adopted by the Senate Public Health Committee on
 17 the 9th day of February, 1981.

Approved by Comm. on
Public Health, Safety and Welfare

1 SENATE BILL NO. 212
2 INTRODUCED BY HAGER
3 BY REQUEST OF
4 THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROGRAM OF
7 HAZARDOUS WASTE MANAGEMENT SEPARATE FROM THE NONHAZARDOUS
8 SOLID WASTE MANAGEMENT PROGRAM IN MONTANA; AMENDING SECTIONS
9 75-10-202 THROUGH 75-10-204, 75-10-212, 75-10-214,
10 75-10-221, AND 75-10-232, MCA; AND REPEALING SECTIONS
11 75-10-211 AND 75-10-225, MCA."
12

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

14 Section 1. Section 75-10-202, MCA, is amended to read:

15 "75-10-202. Legislative findings and policy. It is
16 hereby found and declared that the health and welfare of
17 Montana citizens are being endangered by improperly operated
18 solid waste management systems and by the improper and
19 unregulated disposal of hazardous wastes. It is declared the
20 public policy of this state to control solid waste
21 management systems to protect the public health and safety
22 and to conserve natural resources whenever possible."

23 Section 2. Section 75-10-203, MCA, is amended to read:

24 "75-10-203. Definitions. Unless the context requires
25 otherwise, in this part the following definitions apply:

1 (1) "Board" means the board of health and
2 environmental sciences provided for in 2-15-2104.

3 (2) "Department" means the department of health and
4 environmental sciences provided for in Title 2, chapter 15,
5 part 21.

6 (3) "Dispose" or "disposal" means the discharge,
7 injection, deposit, dumping, spilling, leaking, or placing
8 of any solid waste or hazardous waste into or onto the land
9 so that the solid waste or hazardous waste or any
10 constituent of it may enter the environment or be emitted
11 into the air or discharged into any waters, including
12 groundwaters.

13 (4) "Hazardous waste" means any waste or combination
14 of wastes of a solid, liquid, contained gaseous, or
15 semisolid form which may cause or contribute to an increase
16 in mortality or an increase in serious illness, taking into
17 account the toxicity of the waste, its persistence and
18 degradability in nature, its potential for assimilation or
19 concentration in tissue and other factors that may
20 otherwise cause or contribute to adverse acute or chronic
21 effects on the health of persons or other living organisms.
22 Hazardous wastes include but are not limited to those which
23 are toxic, radioactive, corrosive, flammable, irritants,
24 strong sensitizers, or which generate pressure through
25 decomposition, heat, or other means, excluding wood chips

1 ~~and wood used for manufacturing or fuel purposes.~~
 2 ~~(5) "Hazardous waste management" means the management~~
 3 ~~of the storage, transport, treatment, recycling, recovery,~~
 4 ~~or disposal of hazardous wastes.~~
 5 (6)(4) "Person" means an individual, firm,
 6 partnership, company, association, corporation, city, town,
 7 local governmental entity, or any other governmental or
 8 private entity, whether organized for profit or not.
 9 (7)(5) "Resource recovery" means the recovery of
 10 material or energy from solid waste.
 11 (8)(6) "Resource recovery facility" means a facility
 12 at which solid waste is processed for the purpose of
 13 extracting, converting to energy, or otherwise separating
 14 and preparing solid waste for reuse.
 15 (9)(7) "Resource recovery system" means a solid waste
 16 management system which provides for the collection,
 17 separation, recycling, or recovery of solid wastes,
 18 including disposal of nonrecoverable waste residues.
 19 (10)(8) "Solid waste" means all putrescible and
 20 nonputrescible wastes, including but not limited to garbage;
 21 rubbish; refuse; ~~hazardous wastes~~ ashes; sludge from sewage
 22 treatment plants, water supply treatment plants, or air
 23 pollution control facilities; construction and demolition
 24 wastes; dead animals, including offal; discarded home and
 25 industrial appliances; and wood products or wood byproducts

1 and inert materials. "Solid waste" does not mean municipal
 2 sewage, industrial wastewater effluents, mining wastes
 3 regulated under the mining and reclamation laws administered
 4 by the department of state lands, slash and forest debris
 5 regulated under laws administered by the department of
 6 natural resources and conservation, or marketable wood
 7 byproducts.

8 (11)(9) "Solid waste management system" means a system
 9 which controls the storage, treatment, recycling, recovery,
 10 or disposal of solid waste.

11 (12)(10) "Storage" means the actual or intended
 12 containment of wastes, either on a temporary basis or for a
 13 period of years.

14 (13)(11) "Transport" means the movement of wastes from
 15 the point of generation to any intermediate points and
 16 finally to the point of ultimate storage or disposal.

17 (14)(12) "Treatment" means a method, technique, or
 18 process, including neutralization, designed to change the
 19 physical, chemical, or biological character or composition
 20 of any solid waste so as to neutralize the waste or so as to
 21 render it ~~nonhazardous~~, safer for transport, amenable for
 22 recovery, amenable for storage, or reduced in volume."

23 Section 3. Section 75-10-204, MCA, is amended to read:
 24 "75-10-204. Powers and duties of department. The
 25 department shall adopt rules governing solid waste

1 management systems which shall include but not be limited
2 to:

3 (1) requirements for the plan of operation and
4 maintenance that must be submitted with an application under
5 this part;

6 (2) the classification of disposal sites according to
7 the physical capabilities of the site to contain the type of
8 solid waste to be disposed of;

9 (3) the procedures to be followed in the disposal,
10 treatment, or transport of solid wastes;

11 (4) the suitability of the site from a public health
12 standpoint when hydrology, geology, and climatology are
13 considered; and

14 ~~{5}--procedures--and--requirements--for--the--submission--of~~
15 ~~reports--on--the--operation--and--maintenance--of--a--hazardous~~
16 ~~waste--disposal--site--the--transport--of--hazardous--waste--and~~
17 ~~the--generation--of--hazardous--wastes--and~~

18 ~~{6}~~{5} any other factors relating to the sanitary
19 disposal or management of solid wastes."

20 Section 4. Section 75-10-212, MCA, is amended to read:

21 "75-10-212. Disposal in unauthorized area prohibited
22 -- exception. (1) No person may dispose of solid waste or
23 transport--hazardous--waste except as permitted under this
24 part.

25 (2) It shall be unlawful to dump or leave any garbage,

1 dead animal, or other debris or refuse:

2 (a) in or upon any highway, road, street, or alley of
3 this state;

4 (b) in or upon any public recreational property,
5 highway, street, or alley under the control of the state of
6 Montana or any political subdivision thereof or any officer
7 or agent or department thereof;

8 (c) within 200 yards of such public highway, road,
9 street, or alley or public recreational property;

10 (d) on privately owned property where hunting,
11 fishing, or other recreation is permitted, provided this
12 subsection shall not apply to the owner, his agents, or
13 those disposing of debris or refuse with the owner's
14 consent."

15 Section 5. Section 75-10-214, MCA, is amended to read:

16 "75-10-214. Exclusions -- exceptions to exclusions.

17 (1) ~~{a}~~ This part may not be construed to prohibit a person
18 from disposing of his own solid waste--except-hazardous
19 waste upon land owned or leased by that person or covered
20 by easement or permit as long as it does not create a
21 nuisance or public health hazard.

22 ~~{b}~~--A-person-may-dispose-of-his-own--hazardous--wastes
23 upon--land--owned--or--leased--by--that-person-or-covered-by
24 easement--or--permit--after--complying--with--the--licensing
25 requirements--of--this--part--and--the--rules--adopted--to--regulate

1 ~~the disposal or transport of hazardous wastes.~~
 2 ~~(c)~~(2) The exclusion contained in subsection (1)~~(c)~~ of
 3 this section does not apply to a division of land of 5 acres
 4 or less made after July 1, 1977, which falls within the
 5 definition of subdivision in Title 76, chapter 4, part 1, or
 6 the Montana Subdivision and Platting Act in Title 76,
 7 chapter 3.

8 ~~(2) The licensing requirements of this part do not~~
 9 ~~apply to the transportation of marketable hazardous wastes~~
 10 ~~to a manufacturing or processing center."~~

11 Section 6. Section 75-10-221, MCA, is amended to read:

12 "75-10-221. License required -- application. (1)
 13 Except as provided in 75-10-214, no person may dispose of
 14 solid waste or ~~hazardous waste~~ operate a solid waste
 15 management system ~~or transport hazardous waste~~ without a
 16 license from the department.

17 (2) The department shall provide application forms for
 18 a license as provided in this part.

19 (3) The application shall contain the name and
 20 business address of the applicant, the location of the
 21 proposed solid waste management system, a plan of operation
 22 and maintenance, and such other information as the
 23 department may by rule require."

24 Section 7. Section 75-10-232, MCA, is amended to read:

25 "75-10-232. Penalty for violations. (1) ~~(c)~~ A person

1 violating this part or regulations prescribed by the
 2 department under this part, except 75-10-212(2), is guilty
 3 of a misdemeanor and upon conviction shall be fined not less
 4 than \$50 or more than \$500.

5 ~~(b) A person who stores, treats, transports, or~~
 6 ~~disposes of a hazardous waste in violation of this part or~~
 7 ~~rule adopted as authorized by this part or an order issued~~
 8 ~~as provided in this part is subject to a civil penalty of~~
 9 ~~not more than \$25,000.~~

10 (2) Each day upon which a violation occurs is a
 11 separate violation."

12 NEW SECTION. Section 8. Short title. [Section 8
 13 through 28] shall be known and may be cited as the "Montana
 14 Hazardous Waste Act".

15 NEW SECTION. Section 9. Findings and purpose. (1) The
 16 legislature finds that the safe and proper management of
 17 hazardous wastes, the permitting of hazardous waste
 18 facilities, and the siting of such facilities are
 19 environmental issues that should properly be addressed and
 20 controlled by the state rather than by the federal
 21 government.

22 (2) It is the purpose of [sections 8 through 28] and
 23 it is the policy of this state to protect the public health
 24 and safety, the health of living organisms, and the
 25 environment from the effects of the improper, inadequate, or

1 unsound management of hazardous wastes; to establish a
2 program of regulation over the generation, storage,
3 transportation, treatment, and disposal of hazardous wastes;
4 to assure the safe and adequate management of hazardous
5 wastes within this state; and to authorize the department to
6 adopt, administer, and enforce a hazardous waste program
7 pursuant to the Federal Resource Conservation and Recovery
8 Act of 1976, (42 U.S.C. 6901 - 6987), as amended.

9 NEW SECTION. Section 10. Definitions. Unless the
10 context requires otherwise, in [sections 8 through 28] the
11 following definitions apply:

12 (1) "Board" means the board of health and
13 environmental sciences provided for in 2-15-2104.

14 (2) "Department" means the department of health and
15 environmental sciences provided for in Title 2, chapter 15,
16 part 21.

17 (3) "Dispose" or "disposal" means the discharge,
18 injection, deposit, dumping, spilling, leaking, or placing
19 of any hazardous waste into or onto the land or water so
20 that the hazardous waste or any constituent of it may enter
21 the environment or be emitted into the air or discharged
22 into any waters, including ground waters.

23 (4) "Facility" or "hazardous waste management
24 facility" means all contiguous land and structures, other
25 appurtenances, and improvements on the land used for

1 treating, storing, or disposing of hazardous waste. A
2 facility may consist of several treatment, storage, or
3 disposal operational units.

4 (5) "Generation" means the act or process of producing
5 waste material.

6 (6) "Generator" means any person, by site, whose act
7 or process produces hazardous waste or whose act first
8 causes a hazardous waste to become subject to regulation
9 under [sections 8 through 28].

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

13 (i) cause or significantly contribute to an increase
14 in mortality or an increase in serious irreversible or
15 incapacitating reversible illness; or

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

19 (b) Hazardous EXCEPT AS PROVIDED IN (C), HAZARDOUS
20 wastes include but are not limited to those wastes which are
21 ignitable, corrosive, reactive, toxic, radioactive, or
22 infectious.

23 (C) HAZARDOUS WASTES DO NOT INCLUDE THOSE SUBSTANCES
24 GOVERNED BY TITLE 82, CHAPTER 4, PART 2.

25 (8) "Hazardous waste management" means the management

1 of the collection, source separation, storage,
2 transportation, processing, treatment, recovery, and
3 disposal of hazardous wastes.

4 (9) "Manifest" means the shipping document originated
5 and signed by the generator and which is used to identify
6 the hazardous waste, its quantity, origin, and destination
7 during its transportation.

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

13 (11) "Storage" means the actual or intended containment
14 of wastes, either on a temporary basis or for a period of
15 years.

16 (12) "Transportation" means the movement of hazardous
17 wastes from the point of generation to any intermediate
18 points and finally to the point of ultimate storage or
19 disposal.

20 (13) "Transporter" means a person engaged in the
21 offsite transportation of hazardous waste by air, rail,
22 highway, or water.

23 (14) "Treatment" means a method, technique, or process,
24 including neutralization, designed to change the physical,
25 chemical, or biological character or composition of any

1 hazardous waste so as to neutralize the waste or so as to
2 render it nonhazardous, safer for transportation, amenable
3 for recovery, amenable for storage, or reduced in volume.

4 NEW SECTION. Section 11. Powers of department. (1)
5 The department may:

6 (a) administer and enforce the provisions of [sections
7 8 through 28], rules implementing [sections 8 through 28],
8 and orders and permits issued pursuant to [sections 8
9 through 28];

10 (b) conduct and publish studies on hazardous wastes
11 and hazardous waste management;

12 (c) initiate, conduct, and support research,
13 demonstration projects, and investigation, as its resources
14 may allow, and coordinate state agency research programs
15 pertaining to hazardous waste management;

16 (d) accept and administer grants from the federal
17 government and from other sources, public and private.

18 (2) The department shall integrate all provisions of
19 [sections 8 through 28] with other laws administered by the
20 department to avoid unnecessary duplication. Furthermore,
21 the department shall coordinate its activities under
22 [sections 8 through 28] with the program administered by the
23 department of agriculture under the Montana Pesticides Act,
24 the programs administered by the department of state lands
25 related to mining and mine reclamation, the program

1 administered by the department of public service regulation
 2 related to hazardous material transportation, and provisions
 3 of the Montana Major Facility Siting Act administered by the
 4 department of natural resources and conservation. Such
 5 integration and coordination shall be effected only to the
 6 extent that it can be done in a manner consistent with the
 7 goals and policies of [sections 8 through 28] and the other
 8 laws referred to in this section.

9 NEW SECTION. Section 12. Administrative rules. The
 10 department may adopt, amend, or repeal rules governing
 11 hazardous waste, including but not limited to the following:

12 (1) identification and classification of those
 13 hazardous wastes subject to regulation and those that are
 14 not;

15 (2) requirements for the proper treatment, storage,
 16 transportation, and disposal of hazardous waste;

17 (3) requirements for siting, design, operation,
 18 maintenance, monitoring, inspection, closure, postclosure,
 19 and reclamation of hazardous waste management facilities;

20 (4) requirements for the issuance, denial, renewal,
 21 modification, and revocation of permits for hazardous waste
 22 management facilities and the assessment of permit fees for
 23 these facilities;

24 (5) requirements for manifests and the manifest system
 25 for tracking hazardous waste and for reporting and

1 recordkeeping by generators, transporters, and owners and
 2 operators of hazardous waste management facilities;

3 (6) requirements for training of facility personnel
 4 and for financial assurance of facility owners and
 5 operators;

6 (7) requirements for registration of generators and
 7 transporters; and

8 (8) other rules which are necessary to obtain and
 9 maintain authorization under the federal program, EXCEPT
 10 THAT THE DEPARTMENT MAY NOT ADOPT RULES UNDER [SECTIONS 8
 11 THROUGH 28] THAT ARE MORE RESTRICTIVE THAN THOSE PROMULGATED
 12 BY THE FEDERAL GOVERNMENT UNDER THE RESOURCE CONSERVATION
 13 AND RECOVERY ACT OF 1976, AS AMENDED.

14 NEW SECTION. Section 13. Permits. (1) No person may
 15 construct or operate a hazardous waste management facility
 16 without first obtaining a permit from the department for
 17 such facility, except that the department may, by rule,
 18 prescribe conditions under which specified hazardous wastes
 19 or specified quantities of hazardous waste may be disposed
 20 of at solid waste disposal sites licensed by the department
 21 pursuant to Title 75, chapter 10, part 2.

22 (2) Any person who wishes to construct or operate a
 23 hazardous waste management facility shall apply to the
 24 department for a permit on forms provided by the department.
 25 An application must contain, at a minimum, the name and

1 business address of the applicant, the location of the
2 proposed facility, a plan of operation and maintenance, and
3 a description of pertinent site characteristics.

4 (3) A permit may be issued for a period specified by
5 the department and shall be subject to renewal by the
6 department upon a showing that the facility has been
7 operated in accordance with the terms of the permit and the
8 rules applicable to such facility and in compliance with the
9 provisions of [sections 8 through 28] and any applicable
10 order of the board or department.

11 (4) Any permit issued is subject to revocation by the
12 department for failure of the permittee to comply with the
13 terms and conditions of the permit, the department rules, an
14 order of the board or the department, or the provisions of
15 [sections 8 through 28]. Any person who is denied a permit
16 by the department or who has such permit revoked or modified
17 shall be afforded an opportunity for a hearing before the
18 board upon written application made within 30 days after
19 service of notice of such denial, revocation, or
20 modification by mail. Service by mail is complete upon
21 mailing.

22 (5) Notwithstanding any other provisions of [sections
23 8 through 28], the department may, in the event of an
24 imminent and substantial danger to public health or the
25 environment, issue a temporary emergency permit to any

1 person for treatment, storage, or disposal of hazardous
2 waste or to any facility to handle hazardous waste not
3 covered by the existing facility permit. Such emergency
4 permits may be oral or written, may not exceed 90 days in
5 duration, and may be terminated by the department at any
6 time prior to 90 days.

7 (6) The department may, as it considers appropriate,
8 grant permits by rule to classes or categories of hazardous
9 waste management facilities where the facility owner or
10 operator is already licensed or permitted by the department
11 pursuant to other state environmental statutes or where an
12 interim period exists until final administrative disposition
13 of a permit application is made.

14 NEW SECTION. Section 14. Concurrent permit and major
15 facility siting decisions. If it is determined that an
16 application for a certificate under the Montana Major
17 Facility Siting Act, Title 75, chapter 20, will result in
18 the generation, transportation, storage, or disposal of
19 hazardous wastes as defined in [section 10], the department
20 shall conduct its review under the provisions of [sections 8
21 through 28] concurrently with the studies of air and water
22 quality conducted under the provisions of the Montana Major
23 Facility Siting Act. A decision to grant or deny a permit
24 for the treatment, storage, or disposal of hazardous wastes
25 under the provisions of [section 13] is appealable

1 concurrently with and subject to the same procedures
 2 established for the appeal of the department's air and water
 3 quality certification decision under the Montana Major
 4 Facility Siting Act. If the initial permit has been granted
 5 as specified in this section, all renewals or modifications
 6 of a permit or enforcement actions concerning alleged
 7 violations of the permit and the provisions of [sections 8
 8 through 28] shall be conducted pursuant to the procedures
 9 and enforcement provisions established in [sections 8
 10 through 28].

11 NEW SECTION. Section 15. Variances -- renewals. (1) A
 12 person who is a generator or transporter of hazardous wastes
 13 or who owns or operates a hazardous waste management
 14 facility may apply to the board for a variance or partial
 15 variance from the application of or compliance with any
 16 requirement of [sections 8 through 28] or any rule adopted
 17 under [sections 8 through 28]. The board may grant a
 18 variance or partial variance if it finds that:

19 (a) the applicant's actions or proposed actions
 20 regarding generation, transportation, treatment, storage, or
 21 disposal of hazardous wastes do not constitute a danger to
 22 public health or safety or cause substantially adverse
 23 environmental effects; and

24 (b) the application of or compliance with the
 25 requirement or rule would produce unreasonable hardship

1 without equal or greater benefits to the public.

2 (2) No variance or partial variance may be granted
 3 except after public hearing on due notice and until the
 4 board has considered the relative interests of the
 5 applicant, other persons specifically affected, and the
 6 general public.

7 (3) No variance or partial variance may be granted for
 8 a period to exceed 1 year, but the variance or partial
 9 variance may be renewed for like periods if no complaint is
 10 made to the board because of it or if, after the complaint
 11 has been made and duly considered at a public hearing held
 12 by the board on due notice, the board finds that renewal is
 13 justified. No renewal may be granted except on application
 14 therefor. An application for renewal shall be made in the
 15 manner and upon such notice as specified in rules
 16 promulgated under [sections 8 through 28]. A renewal
 17 pursuant to this subsection shall be on the same grounds and
 18 subject to the same limitations and requirements as provided
 19 in subsection (1).

20 (4) A variance, partial variance, or renewal thereof
 21 is not a right of the applicant or holder thereof but shall
 22 be granted at the discretion of the board. However, a person
 23 adversely affected by a variance, partial variance, or
 24 renewal granted by the board may obtain judicial review
 25 thereof as provided by the judicial review of contested case

1 provisions of the Montana Administrative Procedure Act.

2 (5) Nothing in this section and no variance, partial
3 variance, or renewal granted pursuant to this section may be
4 construed to prevent or limit the application of the
5 emergency provisions and procedures of [section 22].

6 (6) Under no conditions may a variance be granted by
7 the board that would result in a less stringent requirement
8 or degree of control than would be imposed by the applicable
9 federal regulations adopted under the federal Resource
10 Conservation and Recovery Act.

11 NEW SECTION. Section 16. Compliance monitoring and
12 reporting. The department may, as a condition of a permit,
13 require the owner or operator of a facility to install
14 equipment, collect and analyze samples, and maintain records
15 in order to monitor and demonstrate compliance with
16 [sections 8 through 28], rules adopted under [sections 8
17 through 28], any order of the board or department, and
18 permit conditions. The department may require the owner or
19 operator of a facility to submit reports on such compliance
20 monitoring activities, including notice to the department of
21 any noncompliance with permit conditions, rules adopted
22 under [sections 8 through 28], the provisions of [sections 8
23 through 28], or any orders of the department or board.

24 NEW SECTION. Section 17. Inspections -- sampling. (1)
25 An employee or agent of the department, at any reasonable

1 time and upon presentation of credentials, may enter upon
2 and inspect any property, premises, or place at which
3 hazardous wastes are or have been generated, stored,
4 treated, disposed of, or loaded for transportation or any
5 property, premises, or place at which records pertinent to
6 such hazardous waste activities are maintained. The employee
7 or agent of the department may have access to and may copy
8 any records relating to such hazardous wastes for the
9 purposes of developing rules under [sections 8 through 28]
10 or enforcing the provisions of [sections 8 through 28],
11 rules adopted under [sections 8 through 28], or a permit or
12 an order issued under [sections 8 through 28].

13 (2) In the course of an inspection under this section,
14 the employee or agent of the department may take samples of
15 any wastes, including samples from any vehicle in which
16 wastes are transported, or samples of any containers or
17 labeling for such wastes. If the employee or agent of the
18 department takes a sample of any hazardous waste or
19 suspected hazardous waste he shall, prior to leaving the
20 premises, give to the owner, operator, or agent in charge a
21 receipt describing the sample taken and, if requested, a
22 portion of each such sample equal in volume or weight to the
23 portion retained. If any analysis is made of such samples, a
24 copy of the results of such analysis must be furnished to
25 the owner, operator, or agent in charge.

1 NEW SECTION. Section 18. Hazardous waste site
2 inventory. (1) The department is authorized to conduct an
3 inventory of sites and locations in the state where
4 hazardous wastes have been stored or disposed of at any
5 time.

6 (2) If the department determines that the presence of
7 a hazardous waste or the release of the waste or any waste
8 constituent at any such site may present a substantial
9 hazard to public health or the environment, it may issue an
10 order requiring the owner or operator of the facility or
11 site to conduct reasonable monitoring, testing, analysis,
12 and reporting with respect to the site in order to ascertain
13 the nature and extent of the hazard.

14 (3) An order issued under subsection (2) must require
15 that the person to whom the order is issued submit to the
16 department within 30 days a proposal for carrying out the
17 required monitoring, testing, analysis, and reporting.

18 (4) If the department determines that no owner or
19 operator is able to conduct monitoring, testing, and
20 analysis in a satisfactory manner, the department may
21 conduct such activities.

22 (5) For the purposes of carrying out this section, the
23 department may exercise the powers set forth in [section
24 17].

25 NEW SECTION. Section 19. State hazardous waste

1 facilities. The department may, if it considers such action
2 to be necessary, establish, maintain, and operate state
3 hazardous waste management facilities to provide for the
4 treatment, storage, or disposal of hazardous wastes. The
5 department may acquire interests in real property by gift,
6 purchase, lease, or other means in order to develop any such
7 facility. Such a facility may be operated and maintained by
8 the department directly or through agreement with public or
9 private persons. A state facility must meet all applicable
10 requirements for a hazardous waste management facility under
11 [sections 8 through 28].

12 NEW SECTION. Section 20. Administrative enforcement.
13 (1) When the department believes that a violation of
14 [sections 8 through 28], a rule adopted under [it], or a
15 permit provision has occurred, it may serve written notice
16 of the violation by mail on the alleged violator or his
17 agent. The notice must specify the provision of [sections 8
18 through 28], the rule, or the permit provision alleged to be
19 violated and the facts alleged to constitute a violation and
20 may include an order to take necessary corrective action
21 within a reasonable period of time stated in the order. The
22 order becomes final unless, within 30 days after the notice
23 is served, the person named requests in writing a hearing
24 before the board. On receipt of the request, the board shall
25 schedule a hearing. Service by mail is complete on the date

1 of mailing.

2 (2) If, after a hearing held under subsection (1), the
3 board finds that a violation has occurred, it shall either
4 affirm or modify the department's order previously issued.
5 An order issued by the department or by the board may
6 prescribe the date by which the violation must cease and may
7 prescribe time limits for particular action. If, after
8 hearing, the board finds no violation has occurred, it shall
9 rescind the department's order.

10 (3) Instead of issuing an order pursuant to subsection
11 (1), the department may either:

12 (a) require the alleged violator to appear before the
13 board for a hearing at a time and place specified in the
14 notice and answer the charges complained of; or

15 (b) initiate action under [section 21], [section 24],
16 or [section 25].

17 (4) This section does not prevent the board or
18 department from making efforts to obtain voluntary
19 compliance through warning, conference, or any other
20 appropriate means.

21 NEW SECTION. Section 21. Injunctions. The department
22 may institute and maintain in the name of the state actions
23 for injunctive relief as provided in Title 27, chapter 19,
24 MCA, to:

25 (1) immediately restrain any person from engaging in

1 any unauthorized activity which is endangering or causing
2 damage to public health or the environment; or

3 (2) enjoin a violation of [sections 8 through 28], a
4 rule adopted under [it], an order of the department or the
5 board, or a permit provision without the necessity of prior
6 revocation of the permit.

7 NEW SECTION. Section 22. Imminent hazard. Upon
8 receipt of evidence that the handling, storage, treatment,
9 transportation, or disposal of any hazardous waste may
10 present an imminent and substantial danger to public health
11 or the environment, the department may commence legal
12 proceedings to immediately restrain or enjoin any person
13 contributing to such handling, storage, treatment,
14 transportation, or disposal from engaging in such activities
15 or take such other action as may be necessary.

16 NEW SECTION. Section 23. Cleanup orders. The
17 department may issue a cleanup order to any person who has
18 discharged, deposited, or spilled any hazardous waste into
19 or onto any land or water in an unlawful or unapproved
20 manner or who has discharged, deposited, or spilled any
21 material or substance into or onto any land or water so as
22 to result in unlawful or unapproved hazardous waste
23 disposal. The order shall direct the person to clean up and
24 remove the waste, treat it so as to render it nonhazardous,
25 or to take such other actions as may be considered

1 reasonable by the department.

2 NEW SECTION. Section 24. Civil penalties. (1) Any
3 person who violates any provision of [sections 8 through
4 28], a rule adopted under [it], an order of the department
5 or the board, or a permit is subject to a civil penalty not
6 to exceed \$10,000. Each day of violation constitutes a
7 separate violation.

8 (2) The department may institute and maintain in the
9 name of the state any enforcement proceedings under this
10 section. Upon request of the department, the attorney
11 general or the county attorney of the county of violation
12 shall petition the district court to impose, assess, and
13 recover the civil penalty. Any civil penalty collected
14 under this section is in lieu of the criminal penalty
15 provided for in [section 25].

16 (3) Action under this section does not bar enforcement
17 of [sections 8 through 28], rules adopted under [it], orders
18 of the department or the board, or permits by injunction or
19 other appropriate remedy.

20 (4) Money collected under this section shall be
21 deposited in the state general fund.

22 NEW SECTION. Section 25. Criminal penalties. (1) Any
23 person who knowingly transports any hazardous waste to an
24 unpermitted facility; who treats, stores, or disposes of
25 hazardous waste without a permit; or who makes any false

1 statement or representation in any application, label,
2 manifest, record, report, permit, or other document filed or
3 maintained as required by the provisions of [sections 8
4 through 28] or rules made under [it] is subject to a fine of
5 ~~not less than~~ NOT TO EXCEED \$10,000 for each violation or
6 ~~imprisonment for no less than~~ NOT TO EXCEED 6 months, or
7 both. A PERSON CONVICTED FOR A VIOLATION OF THIS SECTION
8 AFTER A FIRST CONVICTION UNDER THIS SECTION IS SUBJECT TO A
9 FINE NOT TO EXCEED \$20,000 FOR EACH VIOLATION OR
10 IMPRISONMENT NOT TO EXCEED 1 YEAR, OR BOTH. Each day of
11 violation constitutes a separate violation.

12 (2) Action under this section does not bar enforcement
13 of [sections 8 through 28], rules made under [it], orders of
14 the department or the board, or permits by injunction or
15 other appropriate remedy.

16 (3) Money collected under this section shall be
17 deposited in the state general fund.

18 NEW SECTION. Section 26. Department designated agency
19 for federal program participation -- interstate cooperation.
20 (1) The department is designated as the official agency for
21 the state for all purposes of the federal Resource
22 Conservation and Recovery Act of 1976 (42 U.S.C. 6901
23 through 6987), as amended, and for the purpose of such other
24 state or federal legislation as has or may be enacted after
25 [the effective date of this act] to assist in the management

1 of hazardous wastes.

2 (2) The legislature of this state encourages
3 cooperative activities by the department with other states
4 for the improved management of hazardous wastes and, so far
5 as is practicable, encourages the adoption of uniform state
6 laws relating to the management of hazardous wastes and
7 compacts between this and other states for the improved
8 management of hazardous wastes. The department may enter
9 into agreements with the responsible authorities of the
10 United States and of other states, subject to approval by
11 the governor, relative to policies, methods, means, and
12 procedures to be employed in the management of hazardous
13 wastes not inconsistent with the provisions of [sections 8
14 through 28] and may carry out the agreements.

15 NEW SECTION. Section 27. Venue for legal proceedings.
16 All legal proceedings affecting hazardous waste management
17 facilities in the state shall be brought in the county in
18 which the facility is located.

19 NEW SECTION. Section 28. Construction in event of
20 conflict -- remedies cumulative. (1) The provisions of
21 [sections 8 through 28] and rules promulgated pursuant to
22 [it] govern if they conflict with other provisions of
23 Montana law or any action taken by the department under such
24 provisions.

25 (2) The remedies provided for in [sections 8 through

1 28] are cumulative with other remedies provided by law.

2 Section 29. Existing rules, orders, permits, legal
3 proceedings. (1) All existing rules of the department not
4 inconsistent with the provisions of this act relating to
5 subjects embraced within this act remain in full force and
6 effect until expressly repealed, amended, or superseded by
7 the department.

8 (2) All orders entered, permits granted, and pending
9 legal proceedings instituted by the department relating to
10 subjects embraced within this act remain unimpaired and in
11 full force and effect until superseded by actions taken by
12 the department under this act.

13 Section 30. Repealer. Sections 75-10-211 and
14 75-10-225, MCA, are repealed.

-End-

1 STATEMENT OF INTENT

2 SENATE BILL 212

3 Senate Public Health Committee

4
5 A statement of intent is required for this bill because
6 it delegates rulemaking and licensing authority to the
7 Department of Health and Environmental Sciences. Senate
8 Bill 212 is intended to separate from the existing Montana
9 Solid Waste Management Act (Sects: 75-10-201, et seq., MCA)
10 all references to the treatment, storage, disposal,
11 generation, and transportation of hazardous wastes and place
12 the statutes regulating hazardous wastes into a separate
13 part of the code. The specific objective and intent of the
14 bill is to clarify and extend state rulemaking authority in
15 order to be totally authorized by the Administrator of the
16 Environmental Protection Agency (EPA) to operate a hazardous
17 waste program in Montana which is equivalent to and in lieu
18 of the federal hazardous waste program established by
19 Subtitle C of the Resource Conservation and Recovery Act
20 (RCRA) of 1976, P.L. 94-580, as amended.

21 The rules promulgated and permitting procedures adopted
22 under this bill shall meet minimum standards under RCRA and
23 shall not be more restrictive than those analogous
24 provisions in which EPA has adopted regulations under RCRA.
25 In the limited situations in which no federal regulations

1 have been adopted or the drafting of regulations has been
2 purposefully left to the states, the Department must be
3 guided and constrained by the purpose set forth in Section
4 9, the powers of the Department noted in Section 11, the
5 rulemaking guidelines of Section 12, and the minimum
6 requirements of RCRA.

7 It should be noted that Montana has enacted regulatory
8 provisions under existing Title 75, chapter 10, part 2, the
9 Solid Waste Management Act, and has sufficient coverage of
10 hazardous waste responsibilities enabling the state to
11 qualify for interim authorization from EPA to carry out a
12 program in lieu of the federal RCRA hazardous waste program.
13 This bill grants the Department authority to make additional
14 adjustments, through rulemaking, which will bring its
15 program affecting generators and transporters of hazardous
16 wastes, the universe of hazardous waste, inspection and
17 sampling, definitions, enforcement alternatives and
18 penalties for hazardous wastes into equivalency and
19 consistency with federal requirements.

20 Senate Bill 212 intends that the Department of Health
21 and Environmental Sciences shall have authority to require
22 by rule, in accordance with the Montana Administrative
23 Procedure Act, that generators of hazardous wastes, prior to
24 transporting hazardous wastes or offering them for
25 transport off-site, must perform certain packaging,

1 labeling, marking and placarding of the wastes in a manner
2 equivalent to the provisions of federal regulations
3 contained in 40 CFR 262.30 through 262.33. The Department
4 shall have authority under the bill to adopt rules setting
5 penalties or fines for generators of hazardous wastes that
6 set upper limitations which are no less than the amount of
7 \$10,000 per day, as required for final authorization under
8 the federal program. Furthermore, Senate Bill 212 allows
9 additional rulemaking to clarify the Department's authority
10 to make inspections of and take samples from generators of
11 hazardous wastes in a manner equivalent to federal
12 inspection authority provided in Section 3007 of RCRA and
13 federal rules promulgated under RCRA.

14 Under existing law, the Department has promulgated
15 rules which define a broad spectrum of hazardous wastes (the
16 universe of hazardous wastes) by specific listing and by
17 characteristics; which list exclusions from the definition
18 of hazardous waste; which define terms necessary to
19 implement the hazardous waste program; which establish
20 manifest requirements specifying how a hazardous waste is
21 documented from time of generation through transport to time
22 of disposal by the operator of a treatment, storage or
23 disposal facility; which set recordkeeping and emergency
24 cleanup procedures for transporters of hazardous wastes;
25 which establish licensure procedures and standards for

1 operators of hazardous waste treatment storage and disposal
2 systems; and which provide enforcement alternatives for
3 treatment, storage and disposal facility licenses. All of
4 the existing rules are equivalent to and consistent with the
5 federal program established by RCRA; in many instances, EPA
6 rules have been incorporated by reference.

7 Under Senate Bill 212, the Department will have
8 authority to amend and revise these rules, and to adopt new
9 rules, in accordance with the Montana Administrative
10 Procedure Act, which may be needed to meet changing minimum
11 federal standards for a hazardous waste program authorized
12 for state control under RCRA, as amended. Thus, Montana will
13 be able to continue to maintain federal authorization for an
14 independent hazardous waste program, equivalent to the
15 federal program, but operated by the Department.

16 First adopted by the Senate Public Health Committee on
17 the 9th day of February, 1981.

1 SENATE BILL NO. 212

2 INTRODUCED BY HAGER

3 BY REQUEST OF

4 THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROGRAM OF
7 HAZARDOUS WASTE MANAGEMENT SEPARATE FROM THE NONHAZARDOUS
8 SOLID WASTE MANAGEMENT PROGRAM IN MONTANA; AMENDING SECTIONS
9 75-10-202 THROUGH 75-10-204, 75-10-212, 75-10-214,
10 75-10-221, AND 75-10-232, MCA; AND REPEALING SECTIONS
11 75-10-211 AND 75-10-225, MCA."
12

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

14 Section 1. Section 75-10-202, MCA, is amended to read:

15 "75-10-202. Legislative findings and policy. It is
16 hereby found and declared that the health and welfare of
17 Montana citizens are being endangered by improperly operated
18 solid waste management systems and by the improper and
19 unregulated disposal of hazardous wastes. It is declared the
20 public policy of this state to control solid waste
21 management systems to protect the public health and safety
22 and to conserve natural resources whenever possible."

23 Section 2. Section 75-10-203, MCA, is amended to read:

24 "75-10-203. Definitions. Unless the context requires
25 otherwise, in this part the following definitions apply:

1 (1) "Board" means the board of health and
2 environmental sciences provided for in 2-15-2104.

3 (2) "Department" means the department of health and
4 environmental sciences provided for in Title 2, chapter 15,
5 part 21.

6 (3) "Dispose" or "disposal" means the discharge,
7 injection, deposit, dumping, spilling, leaking, or placing
8 of any solid waste or hazardous waste into or onto the land
9 so that the solid waste or hazardous waste or any
10 constituent of it may enter the environment or be emitted
11 into the air or discharged into any waters, including
12 groundwaters.

13 (4) "Hazardous waste" means any waste or combination
14 of wastes of a solid, liquid, contained, gaseous, or
15 semisolid form which may cause or contribute to an increase
16 in mortality or an increase in serious illness, taking into
17 account the toxicity of the waste, its persistence and
18 degradability in nature, its potential for assimilation or
19 concentration in tissue, and other factors that may
20 otherwise cause or contribute to adverse acute or chronic
21 effects on the health of persons or other living organisms.
22 Hazardous wastes include but are not limited to those which
23 are toxic, radioactive, corrosive, flammable, irritants,
24 strong sensitizers, or which generate pressure through
25 decomposition, heat, or other means, excluding wood chips

1 ~~and wood used for manufacturing or fuel purposes.~~
 2 ~~(5) "Hazardous waste management" means the management~~
 3 ~~of the storage, transport, treatment, recycling, recovery,~~
 4 ~~or disposal of hazardous wastes.~~
 5 ~~(6)(4) "Person" means an individual, firm,~~
 6 ~~partnership, company, association, corporation, city, town,~~
 7 ~~local governmental entity, or any other governmental or~~
 8 ~~private entity, whether organized for profit or not.~~
 9 ~~(7)(5) "Resource recovery" means the recovery of~~
 10 ~~material or energy from solid waste.~~
 11 ~~(8)(6) "Resource recovery facility" means a facility~~
 12 ~~at which solid waste is processed for the purpose of~~
 13 ~~extracting, converting to energy, or otherwise separating~~
 14 ~~and preparing solid waste for reuse.~~
 15 ~~(9)(7) "Resource recovery system" means a solid waste~~
 16 ~~management system which provides for the collection,~~
 17 ~~separation, recycling, or recovery of solid wastes,~~
 18 ~~including disposal of nonrecoverable waste residues.~~
 19 ~~(10)(8) "Solid waste" means all putrescible and~~
 20 ~~nonputrescible wastes, including but not limited to garbage;~~
 21 ~~rubbish; refuse; hazardous wastes; ashes; sludge from sewage~~
 22 ~~treatment plants, water supply treatment plants, or air~~
 23 ~~pollution control facilities; construction and demolition~~
 24 ~~wastes; dead animals, including offal; discarded home and~~
 25 ~~industrial appliances; and wood products or wood byproducts~~

1 and inert materials. "Solid waste" does not mean municipal
 2 sewage, industrial wastewater effluents, mining wastes
 3 regulated under the mining and reclamation laws administered
 4 by the department of state lands, slash and forest debris
 5 regulated under laws administered by the department of
 6 natural resources and conservation, or marketable wood
 7 byproducts.
 8 ~~(11)(9) "Solid waste management system" means a system~~
 9 ~~which controls the storage, treatment, recycling, recovery,~~
 10 ~~or disposal of solid waste.~~
 11 ~~(12)(10) "Storage" means the actual or intended~~
 12 ~~containment of wastes, either on a temporary basis or for a~~
 13 ~~period of years.~~
 14 ~~(13)(11) "Transport" means the movement of wastes from~~
 15 ~~the point of generation to any intermediate points and~~
 16 ~~finally to the point of ultimate storage or disposal.~~
 17 ~~(14)(12) "Treatment" means a method, technique, or~~
 18 ~~process, including neutralization, designed to change the~~
 19 ~~physical, chemical, or biological character or composition~~
 20 ~~of any solid waste so as to neutralize the waste or so as to~~
 21 ~~render it nonhazardous, safer for transport, amenable for~~
 22 ~~recovery, amenable for storage, or reduced in volume."~~
 23 Section 3. Section 75-10-204, MCA, is amended to read:
 24 "75-10-204. Powers and duties of department. The
 25 department shall adopt rules governing solid waste

1 management systems which shall include but not be limited
2 to:

3 (1) requirements for the plan of operation and
4 maintenance that must be submitted with an application under
5 this part;

6 (2) the classification of disposal sites according to
7 the physical capabilities of the site to contain the type of
8 solid waste to be disposed of;

9 (3) the procedures to be followed in the disposal,
10 treatment, or transport of solid wastes;

11 (4) the suitability of the site from a public health
12 standpoint when hydrology, geology, and climatology are
13 considered; and

14 ~~(5) procedures and requirements for the submission of~~
15 ~~reports on the operation and maintenance of a hazardous~~
16 ~~waste disposal site, the transport of hazardous wastes, and~~
17 ~~the generation of hazardous wastes, and~~

18 ~~(6) (5)~~ any other factors relating to the sanitary
19 disposal or management of solid wastes."

20 Section 4. Section 75-10-212, MCA, is amended to read:

21 "75-10-212. Disposal in unauthorized area prohibited
22 -- exception. (1) No person may dispose of solid waste or
23 transport hazardous waste except as permitted under this
24 part.

25 (2) It shall be unlawful to dump or leave any garbage,

1 dead animal, or other debris or refuse:

2 (a) in or upon any highway, road, street, or alley of
3 this state;

4 (b) in or upon any public recreational property,
5 highway, street, or alley under the control of the state of
6 Montana or any political subdivision thereof or any officer
7 or agent or department thereof;

8 (c) within 200 yards of such public highway, road,
9 street, or alley or public recreational property;

10 (d) on privately owned property where hunting,
11 fishing, or other recreation is permitted, provided this
12 subsection shall not apply to the owner, his agents, or
13 those disposing of debris or refuse with the owner's
14 consent."

15 Section 5. Section 75-10-214, MCA, is amended to read:

16 "75-10-214. Exclusions -- exceptions to exclusions.

17 (1) ~~(a)~~ This part may not be construed to prohibit a person
18 from disposing of his own solid waste ~~except hazardous~~
19 waste upon land owned or leased by that person or covered
20 by easement or permit as long as it does not create a
21 nuisance or public health hazard.

22 ~~(b) A person may dispose of his own hazardous wastes~~
23 ~~upon land owned or leased by that person or covered by~~
24 ~~easement or permit after complying with the licensing~~
25 ~~requirements of this part and the rules adopted to regulate~~

~~the disposal or transport of hazardous wastes.~~

~~(c) (2)~~ The exclusion contained in subsection (1) ~~(c)~~ of this section does not apply to a division of land of 5 acres or less made after July 1, 1977, which falls within the definition of subdivision in Title 76, chapter 4, part 1, or the Montana Subdivision and Platting Act in Title 76, chapter 3.

~~(2) -- The licensing requirements of this part do not apply to the transportation of marketable hazardous wastes to a manufacturing or processing center.~~

Section 6. Section 75-10-221, MCA, is amended to read:

"75-10-221. License required -- application. (1) Except as provided in 75-10-214, no person may dispose of solid waste or hazardous ~~waste~~ operate a solid waste management system ~~or transport hazardous waste~~ without a license from the department.

(2) The department shall provide application forms for a license as provided in this part.

(3) The application shall contain the name and business address of the applicant, the location of the ~~proposed solid waste~~ management system, a plan of operation and maintenance, and such other information as the department may by rule require."

Section 7. Section 75-10-232, MCA, is amended to read:

"75-10-232. Penalty for violations. (1) ~~(c)~~ A person

violating this part or regulations prescribed by the department under this part, except 75-10-212(2), is guilty of a misdemeanor and upon conviction shall be fined not less than \$50 or more than \$500.

~~(b) -- A person who stores, treats, transports, or disposes of a hazardous waste in violation of this part, or a rule adopted as authorized by this part, or an order issued as provided in this part is subject to a civil penalty of not more than \$25,000.~~

(2) Each day upon which a violation occurs is a separate violation."

NEW SECTION. Section 8. Short title. [Section 8 through 28] shall be known and may be cited as the "Montana Hazardous Waste Act".

NEW SECTION. Section 9. Findings and purpose. (1) The legislature finds that the safe and proper management of hazardous wastes, the permitting of hazardous waste facilities, and the siting of such facilities are environmental issues that should properly be addressed and controlled by the state rather than by the federal government.

(2) It is the purpose of [sections 8 through 28] and it is the policy of this state to protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or

1 unsound management of hazardous wastes; to establish a
 2 program of regulation over the generation, storage,
 3 transportation, treatment, and disposal of hazardous wastes;
 4 to assure the safe and adequate management of hazardous
 5 wastes within this state; and to authorize the department to
 6 adopt, administer, and enforce a hazardous waste program
 7 pursuant to the federal Resource Conservation and Recovery
 8 Act of 1976, (42 U.S.C. 6901 - 6987), as amended.

9 NEW SECTION. Section 10. Definitions. Unless the
 10 context requires otherwise, in [sections 8 through 28] the
 11 following definitions apply:

12 (1) "Board" means the board of health and
 13 environmental sciences provided for in 2-15-2104.

14 (2) "Department" means the department of health and
 15 environmental sciences provided for in Title 2, chapter 15,
 16 part 21.

17 (3) "Dispose" or "disposal" means the discharge,
 18 injection, deposit, dumping, spilling, leaking, or placing
 19 of any hazardous waste into or onto the land or water so
 20 that the hazardous waste or any constituent of it may enter
 21 the environment or be emitted into the air or discharged
 22 into any waters, including ground waters.

23 (4) "Facility" or "hazardous waste management
 24 facility" means all contiguous land and structures, other
 25 appurtenances, and improvements on the land used for

1 treating, storing, or disposing of hazardous waste. A
 2 facility may consist of several treatment, storage, or
 3 disposal operational units.

4 (5) "Generation" means the act or process of producing
 5 waste material.

6 (6) "Generator" means any person, by site, whose act
 7 or process produces hazardous waste or whose act first
 8 causes a hazardous waste to become subject to regulation
 9 under [sections 8 through 28].

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

13 (i) cause or significantly contribute to an increase
 14 in mortality or an increase in serious irreversible or
 15 incapacitating reversible illness; or

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

19 (b) Hazardous EXCEPT AS PROVIDED IN (C), HAZARDOUS
 20 wastes include but are not limited to those wastes which are
 21 ignitable, corrosive, reactive, toxic, radioactive, or
 22 infectious.

23 (C) HAZARDOUS WASTES DO NOT INCLUDE THOSE SUBSTANCES
 24 GOVERNED BY TITLE 82, CHAPTER 4, PART 2.

25 (8) "Hazardous waste management" means the management

1 of the collection, source separation, storage,
2 transportation, processing, treatment, recovery, and
3 disposal of hazardous wastes.

4 (9) "Manifest" means the shipping document originated
5 and signed by the generator and which is used to identify
6 the hazardous waste, its quantity, origin, and destination
7 during its transportation.

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

13 (11) "Storage" means the actual or intended containment
14 of wastes, either on a temporary basis or for a period of
15 years.

16 (12) "Transportation" means the movement of hazardous
17 wastes from the point of generation to any intermediate
18 points and finally to the point of ultimate storage or
19 disposal.

20 (13) "Transporter" means a person engaged in the
21 offsite transportation of hazardous waste by air, rail,
22 highway, or water.

23 (14) "Treatment" means a method, technique, or process,
24 including neutralization, designed to change the physical,
25 chemical, or biological character or composition of any

1 hazardous waste so as to neutralize the waste or so as to
2 render it nonhazardous, safer for transportation, amenable
3 for recovery, amenable for storage, or reduced in volume.

4 NEW SECTION. Section 11. Powers of department. (1)
5 The department may:

6 (a) administer and enforce the provisions of [sections
7 8 through 28], rules implementing [sections 8 through 28],
8 and orders and permits issued pursuant to [sections 8
9 through 28];

10 (b) conduct and publish studies on hazardous wastes
11 and hazardous waste management;

12 (c) initiate, conduct, and support research,
13 demonstration projects, and investigation, as its resources
14 may allow, and coordinate state agency research programs
15 pertaining to hazardous waste management;

16 (d) accept and administer grants from the federal
17 government and from other sources, public and private.

18 (2) The department shall integrate all provisions of
19 [sections 8 through 28] with other laws administered by the
20 department to avoid unnecessary duplication. Furthermore,
21 the department shall coordinate its activities under
22 [sections 8 through 28] with the program administered by the
23 department of agriculture under the Montana Pesticides Act,
24 the programs administered by the department of state lands
25 related to mining and mine reclamation, the program

1 administered by the department of public service regulation
 2 related to hazardous material transportation, and provisions
 3 of the Montana Major Facility Siting Act administered by the
 4 department of natural resources and conservation. Such
 5 integration and coordination shall be effected only to the
 6 extent that it can be done in a manner consistent with the
 7 goals and policies of [sections 8 through 28] and the other
 8 laws referred to in this section.

9 NEW SECTION. Section 12. Administrative rules. The
 10 department may adopt, amend, or repeal rules governing
 11 hazardous waste, including but not limited to the following:

12 (1) identification and classification of those
 13 hazardous wastes subject to regulation and those that are
 14 not;

15 (2) requirements for the proper treatment, storage,
 16 transportation, and disposal of hazardous waste;

17 (3) requirements for siting, design, operation,
 18 maintenance, monitoring, inspection, closure, postclosure,
 19 and reclamation of hazardous waste management facilities;

20 (4) requirements for the issuance, denial, renewal,
 21 modification, and revocation of permits for hazardous waste
 22 management facilities and the assessment of permit fees for
 23 these facilities;

24 (5) requirements for manifests and the manifest system
 25 for tracking hazardous waste and for reporting and

1 recordkeeping by generators, transporters, and owners and
 2 operators of hazardous waste management facilities;

3 (6) requirements for training of facility personnel
 4 and for financial assurance of facility owners and
 5 operators;

6 (7) requirements for registration of generators and
 7 transporters; and

8 (8) other rules which are necessary to obtain and
 9 maintain authorization under the federal program, EXCEPT
 10 THAT THE DEPARTMENT MAY NOT ADOPT RULES UNDER [SECTIONS 8
 11 THROUGH 28] THAT ARE MORE RESTRICTIVE THAN THOSE PROMULGATED
 12 BY THE FEDERAL GOVERNMENT UNDER THE RESOURCE CONSERVATION
 13 AND RECOVERY ACT OF 1976, AS AMENDED.

14 NEW SECTION. Section 13. Permits. (1) No person may
 15 construct or operate a hazardous waste management facility
 16 without first obtaining a permit from the department for
 17 such facility, except that the department may, by rule,
 18 prescribe conditions under which specified hazardous wastes
 19 or specified quantities of hazardous waste may be disposed
 20 of at solid waste disposal sites licensed by the department
 21 pursuant to Title 75, chapter 10, part 2.

22 (2) Any person who wishes to construct or operate a
 23 hazardous waste management facility shall apply to the
 24 department for a permit on forms provided by the department.
 25 An application must contain, at a minimum, the name and

1 business address of the applicant, the location of the
2 proposed facility, a plan of operation and maintenance, and
3 a description of pertinent site characteristics.

4 (3) A permit may be issued for a period specified by
5 the department and shall be subject to renewal by the
6 department upon a showing that the facility has been
7 operated in accordance with the terms of the permit and the
8 rules applicable to such facility and in compliance with the
9 provisions of [sections 8 through 28] and any applicable
10 order of the board or department.

11 (4) Any permit issued is subject to revocation by the
12 department for failure of the permittee to comply with the
13 terms and conditions of the permit, the department rules, an
14 order of the board or the department, or the provisions of
15 [sections 8 through 28]. Any person who is denied a permit
16 by the department or who has such permit revoked or modified
17 shall be afforded an opportunity for a hearing before the
18 board upon written application made within 30 days after
19 service of notice of such denial, revocation, or
20 modification by mail. Service by mail is complete upon
21 mailing.

22 (5) Notwithstanding any other provisions of [sections
23 8 through 28], the department may, in the event of an
24 imminent and substantial danger to public health or the
25 environment, issue a temporary emergency permit to any

1 person for treatment, storage, or disposal of hazardous
2 waste or to any facility to handle hazardous waste not
3 covered by the existing facility permit. Such emergency
4 permits may be oral or written, may not exceed 90 days in
5 duration, and may be terminated by the department at any
6 time prior to 90 days.

7 (6) The department may, as it considers appropriate,
8 grant permits by rule to classes or categories of hazardous
9 waste management facilities where the facility owner or
10 operator is already licensed or permitted by the department
11 pursuant to other state environmental statutes or where an
12 interim period exists until final administrative disposition
13 of a permit application is made.

14 NEW SECTION. Section 14. Concurrent permit and major
15 facility siting decisions. If it is determined that an
16 application for a certificate under the Montana Major
17 Facility Siting Act, Title 75, chapter 20, will result in
18 the generation, transportation, storage, or disposal of
19 hazardous wastes as defined in [section 10], the department
20 shall conduct its review under the provisions of [sections 8
21 through 28] concurrently with the studies of air and water
22 quality conducted under the provisions of the Montana Major
23 Facility Siting Act. A decision to grant or deny a permit
24 for the treatment, storage, or disposal of hazardous wastes
25 under the provisions of [section 13] is appealable

1 concurrently with and subject to the same procedures
 2 established for the appeal of the department's air and water
 3 quality certification decision under the Montana Major
 4 Facility Siting Act. If the initial permit has been granted
 5 as specified in this section, all renewals or modifications
 6 of a permit or enforcement actions concerning alleged
 7 violations of the permit and the provisions of [sections 8
 8 through 28] shall be conducted pursuant to the procedures
 9 and enforcement provisions established in [sections 8
 10 through 28].

11 NEW SECTION. Section 15. Variances -- renewals. (1) A
 12 person who is a generator or transporter of hazardous wastes
 13 or who owns or operates a hazardous waste management
 14 facility may apply to the board for a variance or partial
 15 variance from the application of or compliance with any
 16 requirement of [sections 8 through 28] or any rule adopted
 17 under [sections 8 through 28]. The board may grant a
 18 variance or partial variance if it finds that:

19 (a) the applicant's actions or proposed actions
 20 regarding generation, transportation, treatment, storage, or
 21 disposal of hazardous wastes do not constitute a danger to
 22 public health or safety or cause substantially adverse
 23 environmental effects; and

24 (b) the application of or compliance with the
 25 requirement or rule would produce unreasonable hardship

1 without equal or greater benefits to the public.

2 (2) No variance or partial variance may be granted
 3 except after public hearing on due notice and until the
 4 board has considered the relative interests of the
 5 applicant, other persons specifically affected, and the
 6 general public.

7 (3) No variance or partial variance may be granted for
 8 a period to exceed 1 year, but the variance or partial
 9 variance may be renewed for like periods if no complaint is
 10 made to the board because of it or if, after the complaint
 11 has been made and duly considered at a public hearing held
 12 by the board on due notice, the board finds that renewal is
 13 justified. No renewal may be granted except on application
 14 therefor. An application for renewal shall be made in the
 15 manner and upon such notice as specified in rules
 16 promulgated under [sections 8 through 28]. A renewal
 17 pursuant to this subsection shall be on the same grounds and
 18 subject to the same limitations and requirements as provided
 19 in subsection (1).

20 (4) A variance, partial variance, or renewal thereof
 21 is not a right of the applicant or holder thereof but shall
 22 be granted at the discretion of the board. However, a person
 23 adversely affected by a variance, partial variance, or
 24 renewal granted by the board may obtain judicial review
 25 thereof as provided by the judicial review of contested case

1 provisions of the Montana Administrative Procedure Act.

2 (5) Nothing in this section and no variance, partial
3 variance, or renewal granted pursuant to this section may be
4 construed to prevent or limit the application of the
5 emergency provisions and procedures of [section 22].

6 (6) Under no conditions may a variance be granted by
7 the board that would result in a less stringent requirement
8 or degree of control than would be imposed by the applicable
9 federal regulations adopted under the federal Resource
10 Conservation and Recovery Act.

11 NEW SECTION. Section 16. Compliance monitoring and
12 reporting. The department may, as a condition of a permit,
13 require the owner or operator of a facility to install
14 equipment, collect and analyze samples, and maintain records
15 in order to monitor and demonstrate compliance with
16 [sections 8 through 28], rules adopted under [sections 8
17 through 28], any order of the board or department, and
18 permit conditions. The department may require the owner or
19 operator of a facility to submit reports on such compliance
20 monitoring activities, including notice to the department of
21 any noncompliance with permit conditions, rules adopted
22 under [sections 8 through 28], the provisions of [sections 8
23 through 28], or any orders of the department or board.

24 NEW SECTION. Section 17. Inspections -- sampling. (1)
25 An employee or agent of the department, at any reasonable

1 time and upon presentation of credentials, may enter upon
2 and inspect any property, premises, or place at which
3 hazardous wastes are or have been generated, stored,
4 treated, disposed of, or loaded for transportation or any
5 property, premises, or place at which records pertinent to
6 such hazardous waste activities are maintained. The employee
7 or agent of the department may have access to and may copy
8 any records relating to such hazardous wastes for the
9 purposes of developing rules under [sections 8 through 28]
10 or enforcing the provisions of [sections 8 through 28],
11 rules adopted under [sections 8 through 28], or a permit or
12 an order issued under [sections 8 through 28].

13 (2) In the course of an inspection under this section,
14 the employee or agent of the department may take samples of
15 any wastes, including samples from any vehicle in which
16 wastes are transported, or samples of any containers or
17 labeling for such wastes. If the employee or agent of the
18 department takes a sample of any hazardous waste or
19 suspected hazardous waste he shall, prior to leaving the
20 premises, give to the owner, operator, or agent in charge a
21 receipt describing the sample taken and, if requested, a
22 portion of each such sample equal in volume or weight to the
23 portion retained. If any analysis is made of such samples, a
24 copy of the results of such analysis must be furnished to
25 the owner, operator, or agent in charge.

1 NEW SECTION. Section 18. Hazardous waste site
2 inventory. (1) The department is authorized to conduct an
3 inventory of sites and locations in the state where
4 hazardous wastes have been stored or disposed of at any
5 time.

6 (2) If the department determines that the presence of
7 a hazardous waste or the release of the waste or any waste
8 constituent at any such site may present a substantial
9 hazard to public health or the environment, it may issue an
10 order requiring the owner or operator of the facility or
11 site to conduct reasonable monitoring, testing, analysis,
12 and reporting with respect to the site in order to ascertain
13 the nature and extent of the hazard.

14 (3) An order issued under subsection (2) must require
15 that the person to whom the order is issued submit to the
16 department within 30 days a proposal for carrying out the
17 required monitoring, testing, analysis, and reporting.

18 (4) If the department determines that no owner or
19 operator is able to conduct monitoring, testing, and
20 analysis in a satisfactory manner, the department may
21 conduct such activities.

22 (5) For the purposes of carrying out this section, the
23 department may exercise the powers set forth in [section
24 17].

25 NEW SECTION. Section 19. State hazardous waste

1 facilities. The department may, if it considers such action
2 to be necessary, establish, maintain, and operate state
3 hazardous waste management facilities to provide for the
4 treatment, storage, or disposal of hazardous wastes. The
5 department may acquire interests in real property by gift,
6 purchase, lease, or other means in order to develop any such
7 facility. Such a facility may be operated and maintained by
8 the department directly or through agreement with public or
9 private persons. A state facility must meet all applicable
10 requirements for a hazardous waste management facility under
11 [sections 8 through 28].

12 NEW SECTION. Section 20. Administrative enforcement.

13 (1) When the department believes that a violation of
14 [sections 8 through 28], a rule adopted under [it], or a
15 permit provision has occurred, it may serve written notice
16 of the violation by mail on the alleged violator or his
17 agent. The notice must specify the provision of [sections 8
18 through 28], the rule, or the permit provision alleged to be
19 violated and the facts alleged to constitute a violation and
20 may include an order to take necessary corrective action
21 within a reasonable period of time stated in the order. The
22 order becomes final unless, within 30 days after the notice
23 is served, the person named requests in writing a hearing
24 before the board. On receipt of the request, the board shall
25 schedule a hearing. Service by mail is complete on the date

1 of mailing.

2 (2) If, after a hearing held under subsection (1), the
3 board finds that a violation has occurred, it shall either
4 affirm or modify the department's order previously issued.
5 An order issued by the department or by the board may
6 prescribe the date by which the violation must cease and may
7 prescribe time limits for particular action. If, after
8 hearing, the board finds no violation has occurred, it shall
9 rescind the department's order.

10 (3) Instead of issuing an order pursuant to subsection
11 (1), the department may either:

12 (a) require the alleged violator to appear before the
13 board for a hearing at a time and place specified in the
14 notice and answer the charges complained of; or

15 (b) initiate action under [section 21], [section 24],
16 or [section 25].

17 (4) This section does not prevent the board or
18 department from making efforts to obtain voluntary
19 compliance through warning, conference, or any other
20 appropriate means.

21 ~~NEW SECTION~~ Section 21. Injunctions. The department
22 may institute and maintain in the name of the state actions
23 for injunctive relief as provided in Title 27, chapter 19,
24 MCA, to:

25 (1) immediately restrain any person from engaging in

1 any unauthorized activity which is endangering or causing
2 damage to public health or the environment; or

3 (2) enjoin a violation of [sections 8 through 28], a
4 rule adopted under [it], an order of the department or the
5 board, or a permit provision without the necessity of prior
6 revocation of the permit.

7 NEW SECTION. Section 22. Imminent hazard. Upon
8 receipt of evidence that the handling, storage, treatment,
9 transportation, or disposal of any hazardous waste may
10 present an imminent and substantial danger to public health
11 or the environment, the department may commence legal
12 proceedings to immediately restrain or enjoin any person
13 contributing to such handling, storage, treatment,
14 transportation, or disposal from engaging in such activities
15 or take such other action as may be necessary.

16 NEW SECTION. Section 23. Cleanup orders. The
17 department may issue a cleanup order to any person who has
18 discharged, deposited, or spilled any hazardous waste into
19 or onto any land or water in an unlawful or unapproved
20 manner or who has discharged, deposited, or spilled any
21 material or substance into or onto any land or water so as
22 to result in unlawful or unapproved hazardous waste
23 disposal. The order shall direct the person to clean up and
24 remove the waste, treat it so as to render it nonhazardous,
25 or to take such other actions as may be considered

1 reasonable by the department.

2 NEW SECTION. Section 24. Civil penalties. (1) Any
3 person who violates any provision of [sections 8 through
4 28], a rule adopted under [it], an order of the department
5 or the board, or a permit is subject to a civil penalty not
6 to exceed \$10,000. Each day of violation constitutes a
7 separate violation.

8 (2) The department may institute and maintain in the
9 name of the state any enforcement proceedings under this
10 section. Upon request of the department, the attorney
11 general or the county attorney of the county of violation
12 shall petition the district court to impose, assess, and
13 recover the civil penalty. Any civil penalty collected
14 under this section is in lieu of the criminal penalty
15 provided for in [section 25].

16 (3) Action under this section does not bar enforcement
17 of [sections 8 through 28], rules adopted under [it], orders
18 of the department or the board, or permits by injunction or
19 other appropriate remedy.

20 (4) Money collected under this section shall be
21 deposited in the state general fund.

22 NEW SECTION. Section 25. Criminal penalties. (1) Any
23 person who knowingly transports any hazardous waste to an
24 unpermitted facility; who treats, stores, or disposes of
25 hazardous waste without a permit; or who makes any false

1 statement or representation in any application, label,
2 manifest, record, report, permit, or other document filed or
3 maintained as required by the provisions of [sections 8
4 through 28] or rules made under [it] is subject to a fine of
5 ~~not--less--than~~ NOT TO EXCEED \$10,000 for each violation or
6 imprisonment ~~for--no--less--than~~ NOT TO EXCEED 6 months, or
7 both. A PERSON CONVICTED FOR A VIOLATION OF THIS SECTION
8 AFTER A FIRST CONVICTION UNDER THIS SECTION IS SUBJECT TO A
9 FINE NOT TO EXCEED \$20,000 FOR EACH VIOLATION OR
10 IMPRISONMENT NOT TO EXCEED 1 YEAR, OR BOTH. Each day of
11 violation constitutes a separate violation.

12 (2) Action under this section does not bar enforcement
13 of [sections 8 through 28], rules made under [it], orders of
14 the department or the board, or permits by injunction or
15 other appropriate remedy.

16 (3) Money collected under this section shall be
17 deposited in the state general fund.

18 NEW SECTION. Section 26. Department designated agency
19 for federal program participation -- interstate cooperation.

20 (1) The department is designated as the official agency for
21 the state for all purposes of the Federal Resource
22 Conservation and Recovery Act of 1976 (42 U.S.C. 6901
23 through 6987), as amended, and for the purpose of such other
24 state or federal legislation as has or may be enacted after
25 [the effective date of this act] to assist in the management

1 of hazardous wastes.

2 (2) The legislature of this state encourages
3 cooperative activities by the department with other states
4 for the improved management of hazardous wastes and, so far
5 as is practicable, encourages the adoption of uniform state
6 laws relating to the management of hazardous wastes and
7 compacts between this and other states for the improved
8 management of hazardous wastes. The department may enter
9 into agreements with the responsible authorities of the
10 United States and of other states, subject to approval by
11 the governor, relative to policies, methods, means, and
12 procedures to be employed in the management of hazardous
13 wastes not inconsistent with the provisions of [sections 8
14 through 28] and may carry out the agreements.

15 NEW SECTION. Section 27. Venue for legal proceedings.
16 All legal proceedings affecting hazardous waste management
17 facilities in the state shall be brought in the county in
18 which the facility is located.

19 NEW SECTION. Section 28. Construction in event of
20 conflict -- remedies cumulative. (1) The provisions of
21 [sections 8 through 28] and rules promulgated pursuant to
22 [it] govern if they conflict with other provisions of
23 Montana law or any action taken by the department under such
24 provisions.

25 (2) The remedies provided for in [sections 8 through

1 28] are cumulative with other remedies provided by law.

2 Section 29. Existing rules, orders, permits, legal
3 proceedings. (1) All existing rules of the department not
4 inconsistent with the provisions of this act relating to
5 subjects embraced within this act remain in full force and
6 effect until expressly repealed, amended, or superseded by
7 the department.

8 (2) All orders entered, permits granted, and pending
9 legal proceedings instituted by the department relating to
10 subjects embraced within this act remain unimpaired and in
11 full force and effect until superseded by actions taken by
12 the department under this act.

13 Section 30. Repealer. Sections 75-10-211 and
14 75-10-225, MCA, are repealed.

-End-

1 STATEMENT OF INTENT

2 SENATE BILL 212

3 Senate Public Health Committee

4

5 A statement of intent is required for this bill because

6 it delegates rulemaking and licensing authority to the

7 Department of Health and Environmental Sciences. Senate

8 Bill 212 is intended to separate from the existing Montana

9 Solid Waste Management Act (~~Sections 75-10-2017 et seq.~~ MCA

10 TITLE 75, CH. 10, PART 2) all references to the treatment,

11 storage, disposal, generation, and transportation of

12 hazardous wastes and place the statutes regulating hazardous

13 wastes into a separate part of the code. The specific

14 objective and intent of the bill is to clarify and extend

15 state rulemaking authority in order to be totally authorized

16 by the Administrator of the Environmental Protection Agency

17 (EPA) to operate a hazardous waste program in Montana which

18 is equivalent to and in lieu of the federal hazardous waste

19 program established by Subtitle C of the Resource

20 Conservation and Recovery Act (RCRA) of 1976, P.L. 94-580,

21 as amended.

22 The rules promulgated and permitting procedures adopted

23 under this bill shall meet minimum standards under RCRA and

24 shall not be more restrictive than those analogous

25 provisions in which EPA has adopted regulations under RCRA.

1 In the limited situations in which no federal regulations

2 have been adopted or the drafting of regulations has been

3 purposefully left to the states, the Department must be

4 guided and constrained by the purpose set forth in Section

5 9, the powers of the Department noted in Section 11, the

6 rulemaking guidelines of Section 12, and the minimum

7 requirements of RCRA.

8 It should be noted that Montana has enacted regulatory

9 provisions under existing Title 75, chapter 10, part 2, the

10 Solid Waste Management Act, and has sufficient coverage of

11 hazardous waste responsibilities enabling the state to

12 qualify for interim authorization from EPA to carry out a

13 program in lieu of the federal RCRA hazardous waste program.

14 This bill grants the Department authority to make additional

15 adjustments, through rulemaking, which will bring its

16 program affecting generators and transporters of hazardous

17 wastes, the universe of hazardous waste, inspection and

18 sampling, definitions, enforcement alternatives and

19 penalties ~~for hazardous wastes~~ into equivalency and

20 consistency with federal requirements.

21 Senate Bill 212 intends that the Department of Health

22 and Environmental Sciences shall have authority to require

23 by rule, in accordance with the Montana Administrative

24 Procedure Act, that generators of hazardous wastes, prior to

25 transporting hazardous wastes or offering them for

1 transport off-site, must perform certain packaging,
 2 labeling, marking and placarding of the wastes in a manner
 3 equivalent to the provisions of federal regulations
 4 contained in 40 CFR 262.30 through 262.33. The Department
 5 shall have authority under the bill to adopt rules setting
 6 penalties or fines for generators of hazardous wastes that
 7 set upper limitations which are no less than the amount of
 8 \$10,000 per day, as required for final authorization under
 9 the federal program. Furthermore, Senate Bill 212 allows
 10 additional rulemaking to clarify the Department's authority
 11 to make inspections of and take samples from generators of
 12 hazardous wastes in a manner equivalent to federal
 13 inspection authority provided in Section 3007 of RCRA and
 14 federal rules promulgated under RCRA.

15 Under existing law, the Department has promulgated
 16 rules which define a broad spectrum of hazardous wastes (the
 17 universe of hazardous wastes) by specific listing and by
 18 characteristics; which list exclusions from the definition
 19 of hazardous waste; which define terms necessary to
 20 implement the hazardous waste program; which establish
 21 manifest requirements specifying how a hazardous waste is
 22 documented from time of generation through transport to time
 23 of disposal by the operator of a treatment, storage or
 24 disposal facility; which set recordkeeping and emergency
 25 cleanup procedures for transporters of hazardous wastes;

1 which establish licensure procedures and standards for
 2 operators of hazardous waste treatment storage and disposal
 3 systems; and which provide enforcement alternatives for
 4 treatment, storage and disposal facility licenses. All of
 5 the existing rules are equivalent to and consistent with the
 6 federal program established by RCRA; in many instances, EPA
 7 rules have been incorporated by reference.

8 Under Senate Bill 212, the Department will have
 9 authority to amend and revise these rules, and to adopt new
 10 rules, in accordance with the Montana Administrative
 11 Procedure Act, which may be needed to meet changing minimum
 12 federal standards for a hazardous waste program authorized
 13 for state control under RCRA, as amended. Thus, Montana will
 14 be able to continue to maintain federal authorization for an
 15 independent hazardous waste program, equivalent to the
 16 federal program, but operated by the Department.

17 First adopted by the Senate Public Health Committee on
 18 the 9th day of February, 1981.

1 SENATE BILL NO. 212

2 INTRODUCED BY HAGER

3 BY REQUEST OF

4 THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROGRAM OF
7 HAZARDOUS WASTE MANAGEMENT SEPARATE FROM THE NONHAZARDOUS
8 SOLID WASTE MANAGEMENT PROGRAM IN MONTANA; AMENDING SECTIONS
9 75-10-202 THROUGH 75-10-204, 75-10-212, 75-10-214,
10 75-10-221, AND 75-10-232, MCA; AND REPEALING SECTIONS
11 75-10-211 AND 75-10-225, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 75-10-202, MCA, is amended to read:

15 "75-10-202. Legislative findings and policy. It is
16 hereby found and declared that the health and welfare of
17 Montana citizens are being endangered by improperly operated
18 solid waste management systems and by the improper and
19 unregulated disposal of hazardous wastes. It is declared the
20 public policy of this state to control solid waste
21 management systems to protect the public health and safety
22 and to conserve natural resources whenever possible."

23 Section 2. Section 75-10-203, MCA, is amended to read:

24 "75-10-203. Definitions. Unless the context requires
25 otherwise, in this part the following definitions apply:

1 (1) "Board" means the board of health, and
2 environmental sciences provided for in 2-15-2104.

3 (2) "Department" means the department of health and
4 environmental sciences provided for in Title 2, chapter 15,
5 part 21.

6 (3) "Dispose" or "disposal" means the discharge,
7 injection, deposit, dumping, spilling, leaking, or placing
8 of any solid waste or hazardous waste into or onto the land
9 so that the solid waste or hazardous waste or any
10 constituent of it may enter the environment or be emitted
11 into the air or discharged into any waters, including
12 groundwaters.

13 (4) "Hazardous waste" means any waste or combination
14 of wastes of a solid, liquid, contained gaseous, or
15 semisolid form which may cause or contribute to an increase
16 in mortality or an increase in serious illness, taking into
17 account the toxicity of the waste, its persistence and
18 degradability in nature, its potential for assimilation or
19 concentration in tissue, and other factors that may
20 otherwise cause or contribute to adverse acute or chronic
21 effects on the health of persons or other living organisms.
22 Hazardous wastes include but are not limited to those which
23 are toxic, radioactive, corrosive, flammable, irritants,
24 strong sensitizers, or which generate pressure through
25 decomposition, heat, or other means, excluding wood chips

1 ~~and wood used for manufacturing or fuel purposes.~~
 2 ~~(5) "Hazardous waste management" means the management~~
 3 ~~of the storage, transport, treatment, recycling, recovery,~~
 4 ~~or disposal of hazardous wastes.~~
 5 ~~(6)(4)~~ "Person" means an individual, firm,
 6 partnership, company, association, corporation, city, town,
 7 local governmental entity, or any other governmental or
 8 private entity, whether organized for profit or not.
 9 ~~(7)(5)~~ "Resource recovery" means the recovery of
 10 material or energy from solid waste.
 11 ~~(8)(6)~~ "Resource recovery facility" means a facility
 12 at which solid waste is processed for the purpose of
 13 extracting, converting to energy, or otherwise separating
 14 and preparing solid waste for reuse.
 15 ~~(9)(7)~~ "Resource recovery system" means a solid waste
 16 management system which provides for the collection,
 17 separation, recycling, or recovery of solid wastes,
 18 including disposal of nonrecoverable waste residues.
 19 ~~(10)(8)~~ "Solid waste" means all putrescible and
 20 nonputrescible wastes, including but not limited to garbage;
 21 rubbish; refuse; hazardous wastes; ashes; sludge from sewage
 22 treatment plants, water supply treatment plants, or air
 23 pollution control facilities; construction and demolition
 24 wastes; dead animals, including offal; discarded home and
 25 industrial appliances; and wood products or wood byproducts

1 and inert materials. "Solid waste" does not mean municipal
 2 sewage, industrial wastewater effluents, mining wastes
 3 regulated under the mining and reclamation laws administered
 4 by the department of state lands, slash and forest debris
 5 regulated under laws administered by the department of
 6 natural resources and conservation, or marketable wood
 7 byproducts.
 8 ~~(11)(9)~~ "Solid waste management system" means a system
 9 which controls the storage, treatment, recycling, recovery,
 10 or disposal of solid waste.
 11 ~~(12)(10)~~ "Storage" means the actual or intended
 12 containment of wastes, either on a temporary basis or for a
 13 period of years.
 14 ~~(13)(11)~~ "Transport" means the movement of wastes from
 15 the point of generation to any intermediate points and
 16 finally to the point of ultimate storage or disposal.
 17 ~~(14)(12)~~ "Treatment" means a method, technique, or
 18 process, including neutralization, designed to change the
 19 physical, chemical, or biological character or composition
 20 of any solid waste so as to neutralize the waste or so as to
 21 render it nonhazardous, safer for transport, amenable for
 22 recovery, amenable for storage, or reduced in volume."
 23 Section 3. Section 75-10-204, MCA, is amended to read:
 24 "75-10-204. Powers and duties of department. The
 25 department shall adopt rules governing solid waste

1 management systems which shall include but not be limited
2 to:

3 (1) requirements for the plan of operation and
4 maintenance that must be submitted with an application under
5 this part;

6 (2) the classification of disposal sites according to
7 the physical capabilities of the site to contain the type of
8 solid waste to be disposed of;

9 (3) the procedures to be followed in the disposal,
10 treatment, or transport of solid wastes;

11 (4) the suitability of the site from a public health
12 standpoint when hydrology, geology, and climatology are
13 considered; and

14 ~~(5) procedures and requirements for the submission of~~
15 ~~reports on the operation and maintenance of a hazardous~~
16 ~~waste disposal site, the transport of hazardous waste, and~~
17 ~~the generation of hazardous wastes, and~~

18 ~~(6) (5)~~ any other factors relating to the sanitary
19 disposal or management of solid wastes."

20 Section 4. Section 75-10-212, MCA, is amended to read:

21 "75-10-212. Disposal in unauthorized area prohibited
22 -- exception. (1) No person may dispose of solid waste or
23 transport hazardous waste except as permitted under this
24 part.

25 (2) It shall be unlawful to dump or leave any garbage,

1 dead animal, or other debris or refuse:

2 (a) in or upon any highway, road, street, or alley of
3 this state;

4 (b) in or upon any public recreational property,
5 highway, street, or alley under the control of the state of
6 Montana or any political subdivision thereof or any officer
7 or agent or department thereof;

8 (c) within 200 yards of such public highway, road,
9 street, or alley or public recreational property;

10 (d) on privately owned property where hunting,
11 fishing, or other recreation is permitted, provided this
12 subsection shall not apply to the owner, his agents, or
13 those disposing of debris or refuse with the owner's
14 consent."

15 Section 5. Section 75-10-214, MCA, is amended to read:

16 "75-10-214. Exclusions -- exceptions to exclusions.

17 (1) ~~(a)~~ This part may not be construed to prohibit a person
18 from disposing of his own solid waste, except hazardous
19 waste, upon land owned or leased by that person or covered
20 by easement or permit as long as it does not create a
21 nuisance or public health hazard.

22 ~~(b) A person may dispose of his own hazardous wastes~~
23 ~~upon land owned or leased by that person or covered by~~
24 ~~easement or permit after complying with the licensing~~
25 ~~requirements of this part and the rules adopted to regulate~~

1 ~~the disposal or transport of hazardous wastes.~~

2 ~~(c)~~⁽²⁾ The exclusion contained in subsection (1)~~(c)~~ of
3 this section does not apply to a division of land of 5 acres
4 or less made after July 1, 1977, which falls within the
5 definition of subdivision in Title 76, chapter 4, part 1, or
6 the Montana Subdivision and Platting Act in Title 76,
7 chapter 3.

8 ~~(2) The licensing requirements of this part do not~~
9 ~~apply to the transportation of marketable hazardous wastes~~
10 ~~to a manufacturing or processing center."~~

11 Section 6. Section 75-10-221, MCA, is amended to read:

12 "75-10-221. License required -- application. (1)
13 Except as provided in 75-10-214, no person may dispose of
14 solid waste or hazardous waste operate a solid waste
15 management system or transport hazardous waste without a
16 license from the department.

17 (2) The department shall provide application forms for
18 a license as provided in this part.

19 (3) The application shall contain the name and
20 business address of the applicant, the location of the
21 proposed solid waste management system, a plan of operation
22 and maintenance, and such other information as the
23 department may by rule require."

24 Section 7. Section 75-10-232, MCA, is amended to read:

25 "75-10-232. Penalty for violations. (1) ~~(a)~~ A person

1 violating this part or regulations prescribed by the
2 department under this part, except 75-10-212(2), is guilty
3 of a misdemeanor and upon conviction shall be fined not less
4 than \$50 or more than \$500.

5 ~~(b) A person who stores, treats, transports, or~~
6 ~~disposes of a hazardous waste in violation of this part, a~~
7 ~~rule adopted or authorized by this part, or an order issued~~
8 ~~as provided in this part is subject to a civil penalty of~~
9 ~~not more than \$25,000.~~

10 (2) Each day upon which a violation occurs is a
11 separate violation."

12 NEW SECTION. Section 8. Short title. [Section 8
13 through 28] shall be known and may be cited as the "Montana
14 Hazardous Waste Act".

15 NEW SECTION. Section 9. Findings and purpose. (1) The
16 legislature finds that the safe and proper management of
17 hazardous wastes, the permitting of hazardous waste
18 facilities, and the siting of such facilities are
19 environmental issues that should properly be addressed and
20 controlled by the state rather than by the federal
21 government.

22 (2) It is the purpose of [sections 8 through 28] and
23 it is the policy of this state to protect the public health
24 and safety, the health of living organisms, and the
25 environment from the effects of the improper, inadequate, or

1 unsound management of hazardous wastes; to establish a
 2 program of regulation over the generation, storage,
 3 transportation, treatment, and disposal of hazardous wastes;
 4 to assure the safe and adequate management of hazardous
 5 wastes within this state; and to authorize the department to
 6 adopt, administer, and enforce a hazardous waste program
 7 pursuant to the federal Resource Conservation and Recovery
 8 Act of 1976, (42 U.S.C. 6901 - 6987), as amended.

9 NEW SECTION. Section 10. Definitions. Unless the
 10 context requires otherwise, in [sections 8 through 28] the
 11 following definitions apply:

12 (1) "Board" means the board of health and
 13 environmental sciences provided for in 2-15-2104.

14 (2) "Department" means the department of health and
 15 environmental sciences provided for in Title 2, chapter 15,
 16 part 21.

17 (3) "Dispose" or "disposal" means the discharge,
 18 injection, deposit, dumping, spilling, leaking, or placing
 19 of any hazardous waste into or onto the land or water so
 20 that the hazardous waste or any constituent of it may enter
 21 the environment or be emitted into the air or discharged
 22 into any waters, including ground waters.

23 (4) "Facility" or "hazardous waste management
 24 facility" means all contiguous land and structures, other
 25 appurtenances, and improvements on the land used for

1 treating, storing, or disposing of hazardous waste. A
 2 facility may consist of several treatment, storage, or
 3 disposal operational units.

4 (5) "Generation" means the act or process of producing
 5 waste material.

6 (6) "Generator" means any person, by site, whose act
 7 or process produces hazardous waste or whose act first
 8 causes a hazardous waste to become subject to regulation
 9 under [sections 8 through 28].

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

13 (i) cause or significantly contribute to an increase
 14 in mortality or an increase in serious irreversible or
 15 incapacitating reversible illness; or

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

19 ~~(b) --Hazardous EXCEPT AS PROVIDED IN (c) --HAZARDOUS~~
 20 ~~wastes include but are not limited to those wastes which are~~
 21 ~~ignitable, --corrosive, --reactive, --toxic, --radioactive, --or~~
 22 ~~infectious.~~

23 ~~(c) (B) HAZARDOUS WASTES DO NOT INCLUDE THOSE~~
 24 ~~SUBSTANCES GOVERNED BY TITLE 82, CHAPTER 4, PART 2.~~

25 (8) "Hazardous waste management" means the management

1 of the collection, source separation, storage,
2 transportation, processing, treatment, recovery, and
3 disposal of hazardous wastes.

4 (9) "Manifest" means the shipping document originated
5 and signed by the generator and which is used to identify
6 the hazardous waste, its quantity, origin, and destination
7 during its transportation.

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

13 (11) "Storage" means the actual or intended containment
14 of wastes, either on a temporary basis or for a period of
15 years.

16 (12) "Transportation" means the movement of hazardous
17 wastes from the point of generation to any intermediate
18 points and finally to the point of ultimate storage or
19 disposal.

20 (13) "Transporter" means a person engaged in the
21 offsite transportation of hazardous waste by air, rail,
22 highway, or water.

23 (14) "Treatment" means a method, technique, or process,
24 including neutralization, designed to change the physical,
25 chemical, or biological character or composition of any

1 hazardous waste so as to neutralize the waste or so as to
2 render it nonhazardous, safer for transportation, amenable
3 for recovery, amenable for storage, or reduced in volume.

4 NEW SECTION. Section 11. Powers of department. (1)
5 The department may:

6 (a) administer and enforce the provisions of [sections
7 8 through 28], rules implementing [sections 8 through 28],
8 and orders and permits issued pursuant to [sections 8
9 through 28];

10 (b) conduct and publish studies on hazardous wastes
11 and hazardous waste management;

12 (c) initiate, conduct, and support research,
13 demonstration projects, and investigation, as its resources
14 may allow, and coordinate state agency research programs
15 pertaining to hazardous waste management;

16 (d) accept and administer grants from the federal
17 government and from other sources, public and private.

18 (2) The department shall integrate all provisions of
19 [sections 8 through 28] with other laws administered by the
20 department to avoid unnecessary duplication. Furthermore,
21 the department shall coordinate its activities under
22 [sections 8 through 28] with the program administered by the
23 department of agriculture under the Montana Pesticides Act,
24 the programs administered by the department of state lands
25 related to mining and mine reclamation, the program

1 administered by the department of public service regulation
 2 related to hazardous material transportation, and provisions
 3 of the Montana Major Facility Siting Act administered by the
 4 department of natural resources and conservation. Such
 5 integration and coordination shall be effected only to the
 6 extent that it can be done in a manner consistent with the
 7 goals and policies of [sections 8 through 28] and the other
 8 laws referred to in this section.

9 NEW SECTION. Section 12. Administrative rules. The
 10 department may adopt, amend, or repeal rules governing
 11 hazardous waste, including but not limited to the following:

12 (1) identification and classification of those
 13 hazardous wastes subject to regulation and those that are
 14 not;

15 (2) requirements for the proper treatment, storage,
 16 transportation, and disposal of hazardous waste;

17 (3) requirements for siting, design, operation,
 18 maintenance, monitoring, inspection, closure, postclosure,
 19 and reclamation of hazardous waste management facilities;

20 (4) requirements for the issuance, denial, renewal,
 21 modification, and revocation of permits for hazardous waste
 22 management facilities and the assessment of permit fees for
 23 these facilities;

24 (5) requirements for manifests and the manifest system
 25 for tracking hazardous waste and for reporting and

1 recordkeeping by generators, transporters, and owners and
 2 operators of hazardous waste management facilities;

3 (6) requirements for training of facility personnel
 4 and for financial assurance of facility owners and
 5 operators;

6 (7) requirements for registration of generators and
 7 transporters; and

8 (8) other rules which are necessary to obtain and
 9 maintain authorization under the federal program, EXCEPT
 10 THAT THE DEPARTMENT MAY NOT ADOPT RULES UNDER [SECTIONS 8
 11 THROUGH 28] THAT ARE MORE RESTRICTIVE THAN THOSE PROMULGATED
 12 BY THE FEDERAL GOVERNMENT UNDER THE RESOURCE CONSERVATION
 13 AND RECOVERY ACT OF 1976, AS AMENDED.

14 NEW SECTION. Section 13. Permits. (1) No person may
 15 construct or operate a hazardous waste management facility
 16 without first obtaining a permit from the department for
 17 such facility, except that the department may, by rule,
 18 prescribe conditions under which specified hazardous wastes
 19 or specified quantities of hazardous waste may be disposed
 20 of at solid waste disposal sites licensed by the department
 21 pursuant to Title 75, chapter 10, part 2.

22 (2) Any person who wishes to construct or operate a
 23 hazardous waste management facility shall apply to the
 24 department for a permit on forms provided by the department.
 25 An application must contain, at a minimum, the name and

1 business address of the applicant, the location of the
2 proposed facility, a plan of operation and maintenance, and
3 a description of pertinent site characteristics.

4 (3) A permit may be issued for a period specified by
5 the department and shall be subject to renewal by the
6 department upon a showing that the facility has been
7 operated in accordance with the terms of the permit and the
8 rules applicable to such facility and in compliance with the
9 provisions of [sections 8 through 28] and any applicable
10 order of the board or department.

11 (4) Any permit issued is subject to revocation by the
12 department for failure of the permittee to comply with the
13 terms and conditions of the permit, the department rules, an
14 order of the board or the department, or the provisions of
15 [sections 8 through 28]. Any person who is denied a permit
16 by the department or who has such permit revoked or modified
17 shall be afforded an opportunity for a hearing before the
18 board upon written application made within 30 days after
19 service of notice of such denial, revocation, or
20 modification by mail. Service by mail is complete upon
21 mailing.

22 (5) Notwithstanding any other provisions of [sections
23 8 through 28], the department may, in the event of an
24 imminent and substantial danger to public health or the
25 environment, issue a temporary emergency permit to any

1 person for treatment, storage, or disposal of hazardous
2 waste or to any facility to handle hazardous waste not
3 covered by the existing facility permit. Such emergency
4 permits may be oral or written, may not exceed 90 days in
5 duration, and may be terminated by the department at any
6 time prior to 90 days.

7 (6) The department may, as it considers appropriate,
8 grant permits by rule to classes or categories of hazardous
9 waste management facilities where the facility owner or
10 operator is already licensed or permitted by the department
11 pursuant to other state environmental statutes or where an
12 interim period exists until final administrative disposition
13 of a permit application is made.

14 NEW SECTION. Section 14. Concurrent permit and major
15 facility siting decisions. If it is determined that an
16 application for a certificate under the Montana Major
17 Facility Siting Act, Title 75, chapter 20, will result in
18 the generation, transportation, storage, or disposal of
19 hazardous wastes as defined in [section 10], the department
20 shall conduct its review under the provisions of [sections 8
21 through 28] concurrently with the studies of air and water
22 quality conducted under the provisions of the Montana Major
23 Facility Siting Act. A decision to grant or deny a permit
24 for the treatment, storage, or disposal of hazardous wastes
25 under the provisions of [section 13] is appealable

1 concurrently with and subject to the same procedures
 2 established for the appeal of the department's air and water
 3 quality certification decision under the Montana Major
 4 Facility Siting Act. If the initial permit has been granted
 5 as specified in this section, all renewals or modifications
 6 of a permit or enforcement actions concerning alleged
 7 violations of the permit and the provisions of [sections 8
 8 through 28] shall be conducted pursuant to the procedures
 9 and enforcement provisions established in [sections 8
 10 through 28].

11 NEW SECTION. Section 15. Variances -- renewals. (1) A
 12 person who is a generator or transporter of hazardous wastes
 13 or who owns or operates a hazardous waste management
 14 facility may apply to the board for a variance or partial
 15 variance from the application of or compliance with any
 16 requirement of [sections 8 through 28] or any rule adopted
 17 under [sections 8 through 28]. The board may grant a
 18 variance or partial variance if it finds that:

19 (a) the applicant's actions or proposed actions
 20 regarding generation, transportation, treatment, storage, or
 21 disposal of hazardous wastes do not constitute a danger to
 22 public health or safety or cause substantially adverse
 23 environmental effects; and

24 (b) the application of or compliance with the
 25 requirement or rule would produce unreasonable hardship

1 without equal or greater benefits to the public.

2 (2) No variance or partial variance may be granted
 3 except after public hearing on due notice and until the
 4 board has considered the relative interests of the
 5 applicant, other persons specifically affected, and the
 6 general public.

7 (3) No variance or partial variance may be granted for
 8 a period to exceed 1 year, but the variance or partial
 9 variance may be renewed for like periods if no complaint is
 10 made to the board because of it or if, after the complaint
 11 has been made and duly considered at a public hearing held
 12 by the board on due notice, the board finds that renewal is
 13 justified. No renewal may be granted except on application
 14 therefor. An application for renewal shall be made in the
 15 manner and upon such notice as specified in rules
 16 promulgated under [sections 8 through 28]. A renewal
 17 pursuant to this subsection shall be on the same grounds and
 18 subject to the same limitations and requirements as provided
 19 in subsection (1).

20 (4) A variance, partial variance, or renewal thereof
 21 is not a right of the applicant or holder thereof but shall
 22 be granted at the discretion of the board. However, a person
 23 adversely affected by a variance, partial variance, or
 24 renewal granted by the board may obtain judicial review
 25 thereof as provided by the judicial review of contested case

1 provisions of the Montana Administrative Procedure Act.

2 (5) Nothing in this section and no variance, partial
3 variance, or renewal granted pursuant to this section may be
4 construed to prevent or limit the application of the
5 emergency provisions and procedures of [section 22].

6 (6) Under no conditions may a variance be granted by
7 the board that would result in a less stringent requirement
8 or degree of control than would be imposed by the applicable
9 federal regulations adopted under the federal Resource
10 Conservation and Recovery Act.

11 NEW SECTION. Section 16. Compliance monitoring and
12 reporting. The department may, as a condition of a permit,
13 require the owner or operator of a facility to install
14 equipment, collect and analyze samples, and maintain records
15 in order to monitor and demonstrate compliance with
16 [sections 8 through 28], rules adopted under [sections 8
17 through 28], any order of the board or department, and
18 permit conditions. The department may require the owner or
19 operator of a facility to submit reports on such compliance
20 monitoring activities, including notice to the department of
21 any noncompliance with permit conditions, rules adopted
22 under [sections 8 through 28], the provisions of [sections 8
23 through 28], or any orders of the department or board.

24 NEW SECTION. Section 17. Inspections -- sampling. (1)
25 An employee or agent of the department, at any reasonable

1 time and upon presentation of credentials, may enter upon
2 and inspect any property, premises, or place at which
3 hazardous wastes are or have been generated, stored,
4 treated, disposed of, or loaded for transportation or any
5 property, premises, or place at which records pertinent to
6 such hazardous waste activities are maintained. The employee
7 or agent of the department may have access to and may copy
8 any records relating to such hazardous wastes for the
9 purposes of developing rules under [sections 8 through 23]
10 or enforcing the provisions of [sections 8 through 28],
11 rules adopted under [sections 8 through 28], or a permit or
12 an order issued under [sections 8 through 28].

13 (2) In the course of an inspection under this section,
14 the employee or agent of the department may take samples of
15 any wastes, including samples from any vehicle in which
16 wastes are transported, or samples of any containers or
17 labeling for such wastes. If the employee or agent of the
18 department takes a sample of any hazardous waste or
19 suspected hazardous waste he shall, prior to leaving the
20 premises, give to the owner, operator, or agent in charge a
21 receipt describing the sample taken and, if requested, a
22 portion of each such sample equal in volume or weight to the
23 portion retained. If any analysis is made of such samples, a
24 copy of the results of such analysis must be furnished to
25 the owner, operator, or agent in charge.

1 NEW SECTION. Section 18. Hazardous waste site
2 inventory. (1) The department is authorized to conduct an
3 inventory of sites and locations in the state where
4 hazardous wastes have been stored or disposed of at any
5 time.

6 (2) If the department determines that the presence of
7 a hazardous waste or the release of the waste or any waste
8 constituent at any such site may present a substantial
9 hazard to public health or the environment, it may issue an
10 order requiring the owner or operator of the facility or
11 site to conduct reasonable monitoring, testing, analysis,
12 and reporting with respect to the site in order to ascertain
13 the nature and extent of the hazard.

14 (3) An order issued under subsection (2) must require
15 that the person to whom the order is issued submit to the
16 department within 30 days a proposal for carrying out the
17 required monitoring, testing, analysis, and reporting.

18 (4) If the department determines that no owner or
19 operator is able to conduct monitoring, testing, and
20 analysis in a satisfactory manner, the department may
21 conduct such activities.

22 (5) For the purposes of carrying out this section, the
23 department may exercise the powers set forth in [section
24 17].

25 NEW SECTION. Section 19. State hazardous waste

1 facilities. The department may, if it considers such action
2 to be necessary, establish, maintain, and operate state
3 hazardous waste management facilities to provide for the
4 treatment, storage, or disposal of hazardous wastes. The
5 department may acquire interests in real property by gift,
6 purchase, lease, or other means in order to develop any such
7 facility. Such a facility may be operated and maintained by
8 the department directly or through agreement with public or
9 private persons. A state facility must meet all applicable
10 requirements for a hazardous waste management facility under
11 [sections 8 through 28].

12 NEW SECTION. Section 20. Administrative enforcement.
13 (1) When the department believes that a violation of
14 [sections 8 through 28], a rule adopted under [it], or a
15 permit provision has occurred, it may serve written notice
16 of the violation by CERTIFIED mail on the alleged violator
17 or his agent. The notice must specify the provision of
18 [sections 8 through 28], the rule, or the permit provision
19 alleged to be violated and the facts alleged to constitute a
20 violation and may include an order to take necessary
21 corrective action within a reasonable period of time stated
22 in the order. The order becomes final unless, within 30
23 days after the notice is served, the person named requests
24 in writing a hearing before the board. On receipt of the
25 request, the board shall schedule a hearing. Service by mail

1 is complete on the date of mailing.

2 (2) If, after a hearing held under subsection (1), the
3 board finds that a violation has occurred, it shall either
4 affirm or modify the department's order previously issued.
5 An order issued by the department or by the board may
6 prescribe the date by which the violation must cease and may
7 prescribe time limits for particular action. If, after
8 hearing, the board finds no violation has occurred, it shall
9 rescind the department's order.

10 (3) Instead of issuing an order pursuant to subsection
11 (1), the department may either:

12 (a) require the alleged violator to appear before the
13 board for a hearing at a time and place specified in the
14 notice and answer the charges complained of; or

15 (b) initiate action under [section 21], [section 24],
16 or [section 25].

17 (4) This section does not prevent the board or
18 department from making efforts to obtain voluntary
19 compliance through warning, conference, or any other
20 appropriate means.

21 NEW SECTION. Section 21. Injunctions. The department
22 may institute and maintain in the name of the state actions
23 for injunctive relief as provided in Title 27, chapter 19,
24 MCA, to:

25 (1) immediately restrain any person from engaging in

1 any unauthorized activity which is endangering or causing
2 damage to public health or the environment; or

3 (2) enjoin a violation of [sections 8 through 28], a
4 rule adopted under [it], an order of the department or the
5 board, or a permit provision without the necessity of prior
6 revocation of the permit.

7 NEW SECTION. Section 22. Imminent hazard. Upon
8 receipt of evidence that the handling, storage, treatment,
9 transportation, or disposal of any hazardous waste may
10 present an imminent and substantial danger to public health
11 or the environment, the department may commence legal
12 proceedings to immediately restrain or enjoin any person
13 contributing to such handling, storage, treatment,
14 transportation, or disposal from engaging in such activities
15 or take such other action as may be necessary.

16 NEW SECTION. Section 23. Cleanup orders. The
17 department may issue a cleanup order to any person who has
18 discharged, deposited, or spilled any hazardous waste into
19 or onto any land or water in an unlawful or unapproved
20 manner or who has discharged, deposited, or spilled any
21 material or substance into or onto any land or water so as
22 to result in unlawful or unapproved hazardous waste
23 disposal. The order shall direct the person to clean up and
24 remove the waste, treat it so as to render it nonhazardous,
25 or to take such other actions as may be considered

1 reasonable by the department.

2 NEW SECTION. Section 24. Civil penalties. (1) Any
3 person who violates any provision of [sections 8 through
4 28], a rule adopted under [it], an order of the department
5 or the board, or a permit is subject to a civil penalty not
6 to exceed \$10,000. Each day of violation constitutes a
7 separate violation.

8 (2) The department may institute and maintain in the
9 name of the state any enforcement proceedings under this
10 section. Upon request of the department, the attorney
11 general or the county attorney of the county of violation
12 shall petition the district court to impose, assess, and
13 recover the civil penalty. Any civil penalty collected
14 under this section is in lieu of the criminal penalty
15 provided for in [section 25].

16 (3) Action under this section does not bar enforcement
17 of [sections 8 through 28], rules adopted under [it], orders
18 of the department or the board, or permits by injunction or
19 other appropriate remedy.

20 (4) Money collected under this section shall be
21 deposited in the state general fund.

22 NEW SECTION. Section 25. Criminal penalties. (1) Any
23 person who knowingly transports any hazardous waste to an
24 unpermitted facility; who treats, stores, or disposes of
25 hazardous waste without a permit; or who makes any false

1 statement or representation in any application, label,
2 manifest, record, report, permit, or other document filed or
3 maintained as required by the provisions of [sections 8
4 through 28] or rules made under [it] is subject to a fine of
5 ~~not less than~~ NOT TO EXCEED \$10,000 for each violation or
6 imprisonment ~~for no less than~~ NOT TO EXCEED 6 months, or
7 both. A PERSON CONVICTED FOR A VIOLATION OF THIS SECTION
8 AFTER A FIRST CONVICTION UNDER THIS SECTION IS SUBJECT TO A
9 FINE NOT TO EXCEED \$20,000 FOR EACH VIOLATION OR
10 IMPRISONMENT NOT TO EXCEED 1 YEAR, OR BOTH. Each day of
11 violation constitutes a separate violation.

12 (2) Action under this section does not bar enforcement
13 of [sections 8 through 28], rules made under [it], orders of
14 the department or the board, or permits by injunction or
15 other appropriate remedy.

16 (3) Money collected under this section shall be
17 deposited in the state general fund.

18 NEW SECTION. Section 26. Department designated agency
19 for federal program participation -- interstate cooperation.
20 (1) The department is designated as the official agency for
21 the state for all purposes of the federal Resource
22 Conservation and Recovery Act of 1976 (42 U.S.C. 6901
23 through 6987), as amended, and for the purpose of such other
24 state or federal legislation as has or may be enacted after
25 [the effective date of this act] to assist in the management

1 of hazardous wastes.

2 (2) The legislature of this state encourages
3 cooperative activities by the department with other states
4 for the improved management of hazardous wastes and, so far
5 as is practicable, encourages the adoption of uniform state
6 laws relating to the management of hazardous wastes and
7 compacts between this and other states for the improved
8 management of hazardous wastes. The department may enter
9 into agreements with the responsible authorities of the
10 United States and of other states, subject to approval by
11 the governor, relative to policies, methods, means, and
12 procedures to be employed in the management of hazardous
13 wastes not inconsistent with the provisions of [sections 8
14 through 28] and may carry out the agreements.

15 NEW SECTION. Section 27. Venue for legal proceedings.
16 All legal proceedings affecting hazardous waste management
17 facilities in the state shall be brought in the county in
18 which the facility is located.

19 NEW SECTION. Section 28. Construction in event of
20 conflict -- remedies cumulative. (1) The provisions of
21 [sections 8 through 28] and rules promulgated pursuant to
22 [it] govern if they conflict with other provisions of
23 Montana law or any action taken by the department under such
24 provisions.

25 (2) The remedies provided for in [sections 8 through

1 28] are cumulative with other remedies provided by law.

2 Section 29. Existing rules, orders, permits, legal
3 proceedings. (1) All existing rules of the department not
4 inconsistent with the provisions of this act relating to
5 subjects embraced within this act remain in full force and
6 effect until expressly repealed, amended, or superseded by
7 the department.

8 (2) All orders entered, permits granted, and pending
9 legal proceedings instituted by the department relating to
10 subjects embraced within this act remain unimpaired and in
11 full force and effect until superseded by actions taken by
12 the department under this act.

13 Section 30. Repealer. Sections 75-10-211 and
14 75-10-225, MCA, are repealed.

-End-

House amendment to Senate Bill 212:

1. Page 22, line 16.

Following: "by"

Insert: "certified"

House amendments to Senate Bill 212:

1. Statement of Intent, page 1, line 9.
Following: "Act ("
Strike: "Sects: 75-10-201, et seq. MCA"
Insert: "Title 75, ch. 10, part 2"
2. Statement of Intent, page 2, line 18.
Following: "penalties"
Strike: "for hazardous wastes"
3. Page 10, lines 19 through 22.
Strike: subsection (b) in its entirety
Reletter: the subsequent subsection