

HOUSE BILL NO. 802

INTRODUCED BY D. BROWN, MOHAR, REGAN,
BERGENE, REAM, HARPER, RAMIREZ

IN THE HOUSE

February 15, 1983	Introduced and referred to Committee on Natural Resources.
February 21, 1983	Committee recommend bill do pass as amended. Report adopted.
February 22, 1983	Bill printed and placed on members' desks.
February 23, 1983	Second reading, do pass as amended.
	Correctly engrossed.
	Third reading, passed.
	Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
March 16, 1983	Committee recommend bill be concurrent in as amended. Report adopted.
March 18, 1983	Second reading, pass consideration.
March 19, 1983	Second reading, pass consideration until 3/22.
March 22, 1983	Second reading, concurred in as amended.

March 24, 1983

Third reading, concurred in.
Ayes, 41; Noes, 8.

IN THE HOUSE

March 24, 1983

Returned to House with
amendments.

March 31, 1983

Second reading, pass
consideration.

April 1, 1983

Second reading, amendments
not concurred in.

On motion Conference
Committee requested and
appointed.

April 8, 1983

Conference Committee
dissolved.

On motion Free Conference
Committee requested and
appointed.

April 9, 1983

Free Conference Committee
reported.

April 12, 1983

Second reading, Free
Conference Committee report
adopted.

April 13, 1983

Third reading, Free
Conference Committee report
adopted.

April 16, 1983

Free Conference Committee
report adopted by Senate.

Sent to enrolling.

Reported correctly enrolled.

1 *House* BILL NO. *802*
 2 INTRODUCED BY *Don Brun* *Mol* *Ben Belegone*
 3 *Dean Hager Ramsey*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 LAWS RELATING TO THE REGULATION OF THE SALE AND USE OF
 6 PESTICIDES; AMENDING SECTIONS 80-8-105, 80-8-109, 80-8-201,
 7 80-8-203, 80-8-204, 80-8-207, 80-8-209, 80-8-213, AND
 8 80-8-306, MCA."
 9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Section 80-8-105, MCA, is amended to read:
 12 "80-8-105. Rules. (1) The department may adopt by
 13 reference without a public hearing regulations adopted under
 14 the Federal Insecticide, Fungicide, and Rodenticide Act, as
 15 amended. The department may, after a public hearing, adopt
 16 all rules necessary to carry out this chapter.
 17 (2) The rules may prescribe methods of:
 18 (a) registration, ~~suspension or cancellation of~~
 19 ~~registration~~, application, use, or restricting use,
 20 prohibiting use, offering or exposing for sale of any
 21 pesticide;
 22 (b) determining whether pesticides are highly toxic to
 23 man;
 24 (c) determining standards of coloring or discoloring
 25 for pesticides and subjecting pesticides to the requirements

1 of 80-8-202;
 2 (d) licensing commercial applicators, operators, and
 3 dealers, establishing methods of recordkeeping for
 4 applicators, operators, and dealers, and providing for the
 5 review of the records by the department's authorized agent
 6 and the submission of the records to the department upon
 7 written request;
 8 (e) issuing farm applicator special-use permits and
 9 the maintenance and submission of records by farm
 10 applicators issued special-use permits;
 11 (f) collection, examination, and standard deviation
 12 from guarantee analysis and umpire analysis of pesticides
 13 and devices;
 14 (g) operating and maintaining equipment used by
 15 applicators;
 16 (h) developing examinations which shall be held
 17 periodically throughout the state;
 18 (i) establishing the form and content of all
 19 applications for licenses and permits;
 20 (j) designating pesticides that may be sold at retail
 21 for home, yard, garden, and lawn use. The department may
 22 also limit retail sale of pesticides, up to a specific
 23 number of pounds or gallons and concentration which would be
 24 sublethal to humans and animals if small amounts of it were
 25 accidentally swallowed, inhaled, sprayed, or dusted on the

skin.

(k) revoking licenses and permits;

(l) registering or controlling any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect of that other pesticide, whether or not distributed in a package or container separate from that of a pesticide with which it is to be used;

(m) registering pesticide-fertilizer and other chemical blends or, instead of registration, establishing licensing, inspection, and fees for blending plants;

(n) establishing registration procedures for devices, with a fee not to exceed \$5 per type of device, specifying classes of devices to be registered and providing for additional requirements;

~~(o) imposing conditions for renewal of dealer, applicator, and operator licenses and permits, including requalification training;~~

~~(p) establishing procedures for implementing and administering the civil penalties under 80-8-306; and~~

~~(q) establishing fees for training courses and materials.~~

(3) (a) Whenever the department finds that those rules are necessary to carry out the purposes and intent of this chapter, the rules may relate to the time, place, manner, and method of registration, ~~suspension or cancellation of registration~~, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time, and shall encompass all reasonable factors which the department considers necessary to prevent damage or injury to:

(i) persons, animals, ~~crops~~, or pollinating insects from the effect of drift or careless application;

(ii) the environment;

(iii) plants, including forage plants;

(iv) wildlife;

(v) fish and other aquatic life.

(b) In issuing the rules, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government.

(4) If the department finds that an emergency exists which requires immediate action with regard to the registration, use, or application of pesticides, the department may, without notice or hearing, issue necessary orders or rules to protect the public health, welfare, and safety. An order or rule issued under this subsection is

effective for the period prescribed by the Montana Administrative Procedure Act. If the department determines that the emergency order or rule should remain in effect, a public hearing under 80-8-106 shall be held within the above period to determine whether the order or rule should be adopted by the department.

(5) All rules and orders issued by the department shall be in writing, shall be entered in full in books to be kept by the department for that purpose, shall be indexed, and shall be public records open for inspection at all times during reasonable office hours. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the department shall include and be based upon written findings of fact. A copy of any rule or order certified by the department shall be received in evidence in all courts of this state with the same effect as the original."

Section 2. Section 80-8-109, MCA, is amended to read:

"80-8-109. Educational programs. ~~(1)~~ The department ~~in cooperation with other state and federal agencies~~ shall develop and conduct appropriate educational programs. The educational programs shall inform those individuals dealing in and applying pesticides as to correct methods of formulating, applying, storing, disposing of, handling, and transporting pesticides.

~~(2) In developing and administering such programs, the department may consult other state and federal agencies, as well as such other persons it considers necessary, and may charge a fee for the programs commensurate with their administration costs. The fee may not include the salary or travel expenses of any employee of the state or a unit of the Montana university system.~~

~~(3) All fees collected in any fiscal year and not expended within that fiscal year must be placed in an educational and manuals account of the earmarked revenue fund for future use for that purpose."~~

Section 3. Section 80-8-201, MCA, is amended to read:

"80-8-201. Registration. (1) Every pesticide distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state shall be registered with the department. ~~The registration shall be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all approved pesticides and those registered Applications for registration shall be filed annually with the department by the manufacturer, formulator, or distributor of the pesticide. The department shall review the application and, subject to the provisions of subsection (8), may register the pesticide for use in the state. Pesticides so approved~~

1 are subject to registration fees and all other provisions of
 2 this chapter. All registrations of pesticides expire on
 3 December 31 following the date of issuance unless otherwise
 4 terminated. Within the first 2 months of each calendar
 5 year, the department shall prepare a list of all pesticides
 6 registered within the state. The list must be distributed
 7 to the department of health and environmental sciences and
 8 the department of fish, wildlife, and parks and must be made
 9 available to the public.

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

12 (a) the name and address of the applicant and the name
 13 and address of the person whose name will appear on the
 14 label, if other than the registrant;

15 (b) a complete copy of the label of the pesticide, the
 16 United States environmental protection agency registration
 17 number if the pesticide is so registered, and a statement of
 18 all claims to be made for it, including directions for use;

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

20 (d) if requested by the department, a full description
 21 of tests made and the results upon which the claims are
 22 based, including all available information about the effects
 23 of the pesticide on nontarget species. In the case of
 24 renewal of registration, a statement shall be required only
 25 with respect to information which is different from that

1 furnished when the pesticide was registered or last
 2 reregistered.

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

14 (4) The applicant shall pay an annual fee of ~~\$15~~ \$20
 15 for each pesticide registered. A registration fee is not
 16 required to register on a federally approved experimental
 17 use permit. Fees collected shall be deposited in the state
 18 treasury to the credit of the general fund.

19 (5) The department may require the submission of the
 20 complete formula and certified analytical standards of any
 21 pesticide. If it appears to the department that the
 22 composition of the article warrants the proposed claims for
 23 it and if the article and its labeling and other material
 24 required to be submitted comply with the requirements of
 25 80-8-202, it shall register the article.

(6) If it does not appear to the department that the article warrants the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with this chapter, it shall notify the applicant of the manner in which the article, labeling, or other material required to be submitted fails to comply with the chapter so as to afford the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the article. The department may suspend or cancel the registration of a pesticide whenever it does not appear that the article or its labeling comply with this chapter. When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may appeal the department's decision pursue administrative remedies under the Montana Administrative Procedure Act and rules of the department.

(7) Registration is not required in the case of a pesticide shipped from one plant in this state to another plant in this state by the same person.

(8) (a) The departments of health and environmental sciences, agriculture, and fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for special local

needs. The applicant shall pay a one-time fee of \$50 for a special local need or experimental use permit registration. Within 30 days of receipt of the list of registered pesticides provided for under subsection (1), each department may also request that any pesticide registered by the department or being considered for registration by the department be reviewed in accordance with this subsection. The departments shall utilize but are not limited to the same requirements and standards for reviewing registrations as established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted thereunder. The department of agriculture shall provide the departments of health and environmental sciences and fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the department of agriculture's proposed action on the application. The departments of health and environmental sciences and fish, wildlife, and parks shall approve or disapprove the application within 10 days after the receipt of the application. If the departments of health and environmental sciences, agriculture, and fish, wildlife, and parks are in agreement with the proposed registration, the department of agriculture shall issue the registration.

(b) The department of agriculture shall establish a time and place for an interagency conference for the

1 purposes of resolving the registration of any pesticide or
2 device. If two of the departments approve the proposed
3 registration, the department of agriculture shall issue the
4 registration.

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

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

21 (9) Pesticides registered under any federal law when
22 cancelled for sale and use in total or part by a federal
23 agency responsible for registration are considered cancelled
24 in total or part for sale and use in Montana. For the
25 purposes of bringing such pesticides into Montana for sale

1 or use, the cancellation is effective upon announcement of
2 the cancellation by the federal agency. Such pesticides in
3 Montana at the time of the announcement may be sold or used
4 until the final date of sale or use allowed under the
5 federal law and rules or orders of the federal agency. If
6 the federal cancellation allows existing stock to be used
7 past the final date of cancellation, such sale or use in
8 this state may not exceed 2 years. The department shall
9 provide technical assistance to any person in possession of
10 such products to insure their proper disposal, relabeling,
11 or removal."

12 Section 4. Section 80-8-203, MCA, is amended to read:

13 "80-8-203. Commercial applicator. (1) It shall be
14 unlawful for any person to engage in the business of
15 applying pesticides for another without a pesticide
16 applicator's license obtained from the department of
17 agriculture. The application shall be accompanied by a fee
18 of \$15 \$50. Applicators applying for a dealer's license
19 under this chapter shall be required to pay only a \$10 \$30
20 licensing fee for the dealer's license. The provisions of
21 this section subsection shall not apply to any person
22 employed only to operate any equipment used for the
23 application of any pesticide and in which the person has no
24 financial interest or other control over such apparatus
25 other than its day-to-day mechanical operation for the

purpose of applying any pesticide.

~~(2) Each applicator shall have his license in his possession when using pesticides and shall display the license upon request of an authorized agent of the department.~~

~~(2)(3)~~ Public utility applicators shall be licensed in the same manner as commercial applicators, provided that public utility operators working under public utility applicators are not required to be licensed except as provided for under 80-8-205.

~~(3)(4)~~ Veterinarians licensed as provided in Title 37, chapter 18, part 3, shall not be required to be licensed to apply nonrestricted pesticides, provided that these veterinarians shall register with the department each year; provided further that the veterinarians shall be required to meet all other requirements and rules of the Montana Pesticides Act. The department shall consider the professional licensing requirements for veterinarians when adopting rules."

Section 5. Section 80-8-204, MCA, is amended to read:

"80-8-204. Application for applicator's license. (1) Application for a pesticide applicator's license provided for in 80-8-203 shall be made annually to the department before applying pesticides in any calendar year, provided that pesticide applicators applying for renewal of license

shall do so on or before May 1 of that calendar year. Any applicator applying for renewal of license after May 1 shall be assessed a \$15.125 late licensing fee.

(2) An individual applying for a license to engage in aerial application of pesticides shall certify on the application that he has met all the federal aviation administration and the department of commerce requirements for aerial pesticide applicators."

Section 6. Section 80-8-207, MCA, is amended to read:

"80-8-207. Dealers. (1) It is unlawful for any person to sell, offer for sale, deliver, or have delivered within this state any pesticide without first procuring a license from the department of agriculture for each calendar year or portion thereof. A separate dealer's license and fee shall be required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide fieldmen or salesmen employed directly out of the same location or outlet and under a licensed dealer shall not be required to obtain a license. The dealer shall furnish the department the names and addresses of its fieldmen and salesmen selling pesticides within the state. ~~A dealer shall have his license in his possession when selling pesticides and shall display the license upon request of an authorized agent of the department.~~

(2) The application for a license shall be accompanied

1 by a fee of ~~\$15~~ \$50. Dealers applying for renewal of license
 2 shall do so on or before May 1 of that calendar year. Any
 3 dealer applying for renewal of license after May 1 shall be
 4 assessed a ~~\$15~~ \$25 late licensing fee.

5 (3) The dealer shall require the purchaser of any
 6 restricted pesticide to exhibit his license or permit issued
 7 under authority of this chapter before completing a sale.

8 (4) Dealers may make one application for two annual
 9 licenses if the application is accompanied by a ~~\$15~~ \$50
 10 licensing fee for each year of the state biennium.

11 (5) Pharmacists licensed as provided for in 37-7-302
 12 and 37-7-303, veterinarians licensed as provided for in
 13 37-18-302 and 37-18-303, and certified pharmacies licensed
 14 under 37-7-321 shall not be required to be licensed to sell
 15 pesticides, provided that the certified pharmacies and
 16 veterinarians shall register with the department each year.
 17 However, the certified pharmacies and veterinarians shall be
 18 required to meet all other requirements concerning the
 19 commercial sale of pesticides. The department shall take
 20 into account the professional licensing requirements of
 21 pharmacists, certified pharmacies, and veterinarians when
 22 adopting rules."

23 Section 7. Section 80-8-209, MCA, is amended to read:

24 "80-8-209. Farm applicators. (1) Farm applicators
 25 shall obtain a special-use permit prior to purchasing and

1 using any pesticide designated by the department as a
 2 restricted-use pesticide. The fee for the permit is \$15.
 3 The special-use permit shall be effective for 5 calendar
 4 years. The department may establish a staggered years system
 5 of issuing permits.

6 (2) Restricted pesticides may not be utilized by farm
 7 applicators or their employees except for the purpose of
 8 producing or protecting any agricultural commodity on
 9 property owned, leased, or rented by such applicator ~~or as~~
 10 ~~provided in (6) of this section.~~

11 (3) Farm applicators shall qualify for ~~the~~ their first
 12 permit by either passing a graded written examination or
 13 attending a training course approved by the department and
 14 taking an ungraded written examination. The examinations and
 15 course shall require and demonstrate practical knowledge of
 16 the applicator's ability to:

17 (a) recognize common pests to be controlled and damage
 18 caused by them;

19 (b) read and understand the label and labeling
 20 information, including the common name of the pesticide(s)
 21 applied, pest(s) to be controlled, timing and methods of
 22 application, safety precautions, any preharvest or reentry
 23 restrictions, and any specific disposal procedures;

24 (c) apply pesticides in accordance with label
 25 instructions and warnings, including the ability to prepare

the proper concentration of pesticides to be used under particular circumstances, taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;

(d) recognize local environmental situations that must be considered during application to avoid contamination; and

(e) recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

(4) The department may require farm applicators to attend a mandatory training session and pass a written examination for those restricted pesticides that are extremely toxic or for which an effective antidote is not available. The department may require farm applicators handling these pesticides to maintain use records.

~~(5) Farm applicators manifesting reading disabilities may become certified to use as many as two restricted-use pesticides by passing a specific oral examination on the particular pesticides; if the applicator documents that a certified applicator in the immediate vicinity can advise him. The department shall require farm applicators to requalify for renewal of the 5-year permit by obtaining 100 training credits. The department shall establish by rule a uniform system of administering the requalification training credits. The department may credit only training related to~~

~~the standards set forth in subsection (3).~~

(6) Provisions of this chapter relating to certification of farm applicators do not apply to any farm applicator applying nonrestricted pesticides on his own land or on lands of his neighbors if he:

(a) operates farm property and operates and maintains pesticide application equipment primarily for his own use;

(b) is not regularly engaged in the business of applying pesticides for hire and does not publicly hold himself out as a pesticide applicator;

(c) operates his pesticide application equipment only in the vicinity of his own property and for the accommodation of his immediate neighbors."

Section 8. Section 80-8-213, MCA, is amended to read:

"80-8-213. Government agencies. (1) All state agencies, municipal corporations, or any other governmental agency shall be subject to the provisions of this chapter and rules adopted thereunder concerning the application or sale of pesticides. Applicators and operators applying pesticides and dealers selling pesticides for agencies, municipal corporations, or any governmental agencies shall be subject to the provisions of 80-8-203 through 80-8-208, ~~and the,~~

(2) The department shall issue a limited commercial applicator's ~~or operator's~~ or dealer's license without a fee

1 ~~for an annual fee of \$50,~~ which shall be valid only when
 2 ~~such applicators, operators, and dealers are applicator or~~
 3 ~~dealer is~~ applying or selling pesticides for such agencies,
 4 provided that the jurisdictional health officer, state
 5 veterinarian, their duly authorized representatives, or
 6 governmental research personnel are exempt from this
 7 licensing requirement when applying pesticides to
 8 experimental areas.

9 ~~(3) A governmental agency shall pay the annual~~
 10 ~~applicator's fee for its first four employee applicators.~~
 11 ~~The agency shall pay an annual fee of \$5 for each additional~~
 12 ~~employee applicator.~~

13 ~~(4) Government employees becoming certified~~
 14 ~~applicators only to qualify for conducting pesticide~~
 15 ~~education courses may not be charged a license fee but are~~
 16 ~~limited to providing such courses. Government operators are~~
 17 ~~subject to rules adopted pursuant to 80-8-205, including the~~
 18 ~~license fee.~~

19 Section 9. Section 80-8-306, MCA, is amended to read:

20 "80-8-306. Penalties. (1) Any person convicted of
 21 violating any of the provisions of this chapter or the rules
 22 issued thereunder or who may misrepresent, impede, obstruct,
 23 hinder, or otherwise prevent or attempt to prevent the
 24 department or its duly authorized agent in performance of
 25 its duty in connection with the provisions of this chapter

1 shall be adjudged guilty of a misdemeanor and shall be fined
 2 not less than ~~\$100~~ ~~\$500~~ but not more than ~~\$500~~ ~~\$2,500~~ or
 3 imprisoned in the county jail for a term not to exceed 6
 4 months, or both.

5 (2) The department or its authorized representative is
 6 hereby authorized to apply to the district court of the
 7 county or any county wherein a violation is about to occur
 8 or has occurred to grant a temporary or permanent injunction
 9 restraining any person from violating or continuing to
 10 violate any of the provisions of this chapter or any rule
 11 promulgated under the chapter notwithstanding the existence
 12 of other remedies of law. When a person makes pesticide
 13 applications in more than one county on a commercial basis
 14 without a license or permit or operates in violation of a
 15 lawful written order of the department in more than one
 16 county, the district court of Lewis and Clark County has
 17 concurrent jurisdiction with the district court of any other
 18 county wherein a violation has occurred or is about to
 19 occur, and the department may select and proceed in the
 20 court most appropriate under the circumstances. The
 21 injunction is to be issued without bond.

22 (3) Nothing in this chapter is to be construed as
 23 requiring the department or its authorized agent to report
 24 minor violations of the chapter for prosecution or for the
 25 institution of seizure proceedings when it believes the

public interest will be best served by other remedial action, by a suitable notice of warning in writing, or by a lawful written order; nor is any part of this chapter to be construed to apply to common carriers transporting shipments tendered to them by the general public.

(4) Any person who with intent to defraud uses or reveals information relative to formulas of products acquired under the authority of 80-8-201 shall, upon conviction, be fined not more than \$500 or imprisoned for not more than 1 year, or both.

~~(5) (a) Any registrant, applicator, dealer, retailer, or other person who violates any provision of this chapter may be assessed a civil penalty by the department of not more than \$1,000 for each offense. However, farm applicators possessing a permit may not be assessed a civil penalty over \$200 for the first offense. Assessment of a civil penalty may be made in conjunction with any other department order or administrative action authorized by this chapter.~~

~~(b) No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Montana Administrative Procedure Act.~~

~~(c) In determining an appropriate penalty, the department shall consider the effect on the person's ability to continue in business, the gravity of the violation which~~

~~occurred, the degree of care exercised by the offender, and whether significant harm resulted to health, environment, agricultural crops, or livestock. The department may issue a warning or take any other appropriate action allowed by this chapter.~~

~~(d) If the department is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court."~~

NEW SECTION. Section 10. Earmarked funds. That portion of all licensings, permitting, registration, and equipment inspection fees collected which constitutes an increase after October 1, 1983, must be deposited in the earmarked revenue fund for the purpose of supporting a portion of the costs of administering this chapter. The administration of this chapter is to be funded from both the earmarked revenue fund and the general fund because of the mutual benefits to the industry and the public, as stated in 80-8-103. Reserve earmarked revenue fund money may be invested by the department through the board of investments. The income from such investments must be credited to the proper department account in the earmarked revenue fund.

NEW SECTION. Section 11. Codification Instruction. Section 10 is intended to be codified as an integral part of

1 Title 80, chapter 8.

2 NEW SECTION. Section 12. Saving clause. This act does
3 not affect rights and duties that matured, penalties that
4 were incurred, or proceedings that were begun before the
5 effective date of this act.

6 NEW SECTION. Section 13. Severability. If a part of
7 this act is invalid, all valid parts that are severable from
8 the invalid part remain in effect. If a part of this act is
9 invalid in one or more of its applications, the part remains
10 in effect in all valid applications that are severable from
11 the invalid applications.

-End-

Approved by Committee
on Natural Resources

HOUSE BILL NO. 802

INTRODUCED BY D. BROWN, MOHAR, REGAN,

BERGENE, REAM, HARPER, RAMIREZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE REGULATION OF THE SALE AND USE OF PESTICIDES; AMENDING SECTIONS 80-8-105, 80-8-109, 80-8-201, 80-8-203, 80-8-204, 80-8-207, 80-8-209, 80-8-213, AND 80-8-306, MCA."

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

Section 1. Section 80-8-105, MCA, is amended to read:

"80-8-105. Rules. (1) The department may adopt by reference without a public hearing regulations adopted under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. The department may, after a public hearing, adopt all rules necessary to carry out this chapter.

(2) The rules may prescribe methods of:

(a) registration, ~~suspension or cancellation of registration~~, application, use, or restricting use, prohibiting use, offering or exposing for sale of any pesticide;

(b) determining whether pesticides are highly toxic to man;

(c) determining standards of coloring or discoloring

for pesticides and subjecting pesticides to the requirements of 80-3-202;

(d) licensing commercial applicators, operators, and dealers, establishing methods of recordkeeping for applicators, operators, and dealers, and providing for the review of the records by the department's authorized agent and the submission of the records to the department upon written request;

(e) issuing farm applicator special-use permits and the maintenance and submission of records by farm applicators issued special-use permits;

(f) collection, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides and devices;

(g) operating and maintaining equipment used by applicators;

(h) developing examinations which shall be held periodically throughout the state;

(i) establishing the form and content of all applications for licenses and permits;

(j) designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The department may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration which would be sublethal to humans and animals if small amounts of it were

1 accidentally swallowed, inhaled, sprayed, or dusted on the
2 skin.

3 (k) revoking licenses and permits;

4 (l) registering or controlling any spray adjuvant,
5 such as a wetting agent, spreading agent, deposit builder,
6 adhesive, emulsifying agent, deflocculating agent, water
7 modifier, or similar agent with or without toxic properties
8 of its own intended to be used with any other pesticide as
9 an aid to the application or effect of that other pesticide,
10 whether or not distributed in a package or container
11 separate from that of a pesticide with which it is to be
12 used;

13 (m) registering pesticide-fertilizer and other
14 chemical blends or, instead of registration, establishing
15 licensing, inspection, and fees for blending plants;

16 (n) establishing registration procedures for devices,
17 with a fee not to exceed \$5 per type of device, specifying
18 classes of devices to be registered and providing for
19 additional requirements;

20 ~~(o) imposing conditions for renewal of dealer,~~
21 ~~applicator, and operator licenses and permits, including~~
22 ~~requalification training;~~

23 ~~(p) establishing procedures for implementing and~~
24 ~~administering the civil penalties under 80-8-306; and~~

25 ~~(q) establishing fees for training courses and~~

1 Materials.

2 (3) (a) Whenever the department finds that those rules
3 are necessary to carry out the purposes and intent of this
4 chapter, the rules may relate to the time, place, manner,
5 and method of registration, suspension or cancellation of
6 registration, application, or selling of the pesticides, may
7 restrict or prohibit use of pesticides in the state or in
8 designated areas during specified periods of time, and shall
9 encompass all reasonable factors which the department
10 considers necessary to prevent damage or injury to:

11 (i) persons, animals, ~~crops~~, or pollinating insects
12 from the effect of drift or careless application;

13 (ii) the environment;

14 (iii) plants, including forage plants;

15 (iv) wildlife;

16 (v) fish and other aquatic life.

17 (b) In issuing the rules, the department shall give
18 consideration to pertinent research findings and
19 recommendations of other agencies of this state or of the
20 federal government.

21 (4) If the department finds that an emergency exists
22 which requires immediate action with regard to the
23 registration, use, or application of pesticides, the
24 department may, without notice or hearing, issue necessary
25 orders or rules to protect the public health, welfare, and

safety. An order or rule issued under this subsection is effective for the period prescribed by the Montana Administrative Procedure Act. If the department determines that the emergency order or rule should remain in effect, a public hearing under 80-8-106 shall be held within the above period to determine whether the order or rule should be adopted by the department.

(5) All rules and orders issued by the department shall be in writing, shall be entered in full in books to be kept by the department for that purpose, shall be indexed, and shall be public records open for inspection at all times during reasonable office hours. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the department shall include and be based upon written findings of fact. A copy of any rule or order certified by the department shall be received in evidence in all courts of this state with the same effect as the original."

Section 2. Section 80-8-109, MCA, is amended to read:

"80-8-109. Educational programs. (1) The department in cooperation with other state and federal agencies shall develop and conduct appropriate educational programs. The educational programs shall inform those individuals dealing in and applying pesticides as to correct methods of formulating, applying, storing, disposing of, handling, and

transporting pesticides.

(2) In developing and administering such programs, the department may consult other state and federal agencies, as well as such other persons it considers necessary, and may charge a fee for the programs commensurate with their administration costs. The fee may not include the salary or travel expenses of any employee of the state or a unit of the Montana university system.

(3) All fees collected in any fiscal year and not expended within that fiscal year must be placed in an educational and manuals account of the earmarked revenue fund for future use for that purpose."

Section 3. Section 80-8-201, MCA, is amended to read:

"80-8-201. Registration. (1) Every pesticide distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state shall be registered with the department. The registration shall be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all approved pesticides and those registered Applications for registration shall be filed annually with the department by the manufacturer, formulator, or distributor of the pesticide. The department shall review the application and, subject to the provisions of subsection (8), may register

1 ~~the pesticide for use in the state. Pesticides so approved~~
 2 ~~are subject to registration fees and all other provisions of~~
 3 ~~this chapter. All registrations of pesticides expire on~~
 4 ~~December 31 following the date of issuance unless otherwise~~
 5 ~~terminated. Within the first 2 months of each calendar~~
 6 ~~year, the department shall prepare a list of all pesticides~~
 7 ~~registered within the state. The list must be distributed~~
 8 ~~to the department of health and environmental sciences and~~
 9 ~~the department of fish, wildlife, and parks and must be made~~
 10 ~~available to the public.~~

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

13 (a) the name and address of the applicant and the name
 14 and address of the person whose name will appear on the
 15 label, if other than the registrant;

16 (b) a complete copy of the label of the pesticide, the
 17 United States environmental protection agency registration
 18 number if the pesticide is so registered, and a statement of
 19 all claims to be made for it, including directions for use;

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

21 (d) if requested by the department, a full description
 22 of tests made and the results upon which the claims are
 23 based, ~~including all available information IN THE POSSESSION~~
 24 ~~OF THE APPLICANT about the effects of the pesticide on~~
 25 ~~REPRESENTATIVE nontarget species.~~ In the case of renewal of

1 registration, a statement shall be required only with
 2 respect to information which is different from that
 3 furnished when the pesticide was registered or last
 4 reregistered.

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

16 (4) The applicant shall pay an annual fee of ~~\$15~~ **\$50**
 17 for each pesticide registered. A registration fee is not
 18 required to register on a ~~federally approved~~ experimental
 19 use permit. Fees collected shall be deposited in the state
 20 treasury to the credit of the general fund.

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

1 required to be submitted comply with the requirements of
2 80-8-202, it shall register the article.

3 (6) If it does not appear to the department that the
4 article warrants the proposed claims for it or if the
5 article and its labeling and other material required to be
6 submitted do not comply with this chapter, it shall notify
7 the applicant of the manner in which the article, labeling,
8 or other material required to be submitted fails to comply
9 with the chapter so as to afford the applicant an
10 opportunity to make the necessary corrections. If the
11 applicant does not make the corrections upon receipt of the
12 notice, the department may refuse to register the article.
13 The department may suspend or cancel the registration of a
14 pesticide whenever it does not appear that the article or
15 its labeling comply with this chapter. When an application
16 for registration is refused or the department proposes to
17 suspend or cancel a registration, the registrant may appeal
18 the department's decision pursue administrative remedies
19 under the Montana Administrative Procedure Act and rules of
20 the department.

21 (7) Registration is not required in the case of a
22 pesticide shipped from one plant in this state to another
23 plant in this state by the same person.

24 (8) (a) The departments of health and environmental
25 sciences, agriculture, and fish, wildlife, and parks shall

1 review all applications for registration of an
2 experimental-use permit or a registration for special local
3 needs. The applicant shall pay a one-time fee of \$50 for a
4 special local need or experimental use permit registration.
5 Within 30 days of receipt of the list of registered
6 pesticides provided for under subsection (1), each
7 department may also request that any A pesticide registered
8 by the department or being considered for registration by
9 the department be reviewed in accordance with this
10 subsection. THE DEPARTMENTS, IN DETERMINING WHETHER TO
11 REQUEST SUCH REVIEW FOR A PARTICULAR CHEMICAL PRODUCT, MAY
12 NOT REQUEST A REVIEW UNLESS THE CHEMICAL MATERIAL OR ITS
13 BYPRODUCTS HAVE BEEN SHOWN TO:

14 (I) HAVE A HALF-LIFE IN THE ENVIRONMENT GREATER THAN 7
15 DAYS;

16 (III) ACCUMULATE IN VEGETATION, SOILS, OR ANIMAL
17 ISSUES; AND

18 (IIII) BE A SUSPECTED CARCINOGEN, MUTAGEN, OR TERATOGEN.

19 The departments shall utilize but are not limited to the
20 same requirements and standards for reviewing registrations
21 as established by the Federal Insecticide, Fungicide, and
22 Rodenticide Act, as amended, and regulations adopted
23 thereunder. The department of agriculture shall provide the
24 departments of health and environmental sciences and fish,
25 wildlife, and parks with a complete copy of the application,

1 related correspondence, and a statement of the department of
2 agriculture's proposed action on the application. The
3 departments of health and environmental sciences and fish,
4 wildlife, and parks shall approve or disapprove the
5 application within 10 days after the receipt of the
6 application. If the departments of health and environmental
7 sciences, agriculture, and fish, wildlife, and parks are in
8 agreement with the proposed registration, the department of
9 agriculture shall issue the registration.

10 (b) The department of agriculture shall establish a
11 time and place for an interagency conference for the
12 purposes of resolving the registration of any pesticide or
13 device. If two of the departments approve the proposed
14 registration, the department of agriculture shall issue the
15 registration.

16 (c) The registrant applying for registration shall be
17 notified as to proposed changes in registration. If the
18 departments cannot resolve the proposed registration
19 following the interagency conference, the registrant may
20 request a joint administrative hearing before the
21 departments of agriculture, health and environmental
22 sciences, and fish, wildlife, and parks.

23 (d) Following the interagency conference and, if
24 requested, the administrative hearing, if the proposed
25 registration of a pesticide or device has not been resolved,

1 the department of agriculture shall appoint an advisory
2 council as outlined in 80-8-108 to resolve by majority vote
3 the registration of any pesticide. The advisory council's
4 recommendations on the registration shall be accepted by the
5 departments and implemented by the department of
6 agriculture.

7 ~~(9) Pesticides registered under any federal law when~~
8 ~~canceled for sale and use in total or part by a federal~~
9 ~~agency responsible for registration are considered canceled~~
10 ~~in total or part for sale and use in Montana. For the~~
11 ~~purposes of bringing such pesticides into Montana for sale~~
12 ~~or use, the cancellation is effective upon announcement of~~
13 ~~the cancellation by the federal agency. Such pesticides in~~
14 ~~Montana at the time of the announcement may be sold or used~~
15 ~~until the final date of sale or use allowed under the~~
16 ~~federal law and rules or orders of the federal agency. If~~
17 ~~the federal cancellation allows existing stock to be used~~
18 ~~past the final date of cancellation, such sale or use in~~
19 ~~this state may not exceed 2 years. The department shall~~
20 ~~provide technical assistance to any person in possession of~~
21 ~~such products to insure their proper disposal, relabeling,~~
22 ~~or removal."~~

23 Section 4. Section 80-8-203, MCA, is amended to read:
24 "80-8-203. Commercial applicator. (1) It shall be
25 unlawful for any person to engage in the business of

1 applying pesticides for another without a pesticide
 2 applicator's license obtained from the department of
 3 agriculture. The application shall be accompanied by a fee
 4 of ~~\$15~~ \$50. Applicators applying for a dealer's license
 5 under this chapter shall be required to pay only a ~~\$10~~ \$30
 6 licensing fee for the dealer's license. The provisions of
 7 this ~~section~~ subsection shall not apply to any person
 8 employed only to operate any equipment used for the
 9 application of any pesticide and in which the person has no
 10 financial interest or other control over such apparatus
 11 other than its day-to-day mechanical operation for the
 12 purpose of applying any pesticide.

13 ~~(2) Each applicator shall have his license in his~~
 14 ~~possession when using pesticides and shall display the~~
 15 ~~license upon request of an authorized agent of the~~
 16 ~~department.~~

17 ~~(3)(1)~~ Public utility applicators shall be licensed in
 18 the same manner as commercial applicators, provided that
 19 public utility operators working under public utility
 20 applicators are not required to be licensed except as
 21 provided for under 80-8-205.

22 ~~(3)(4)~~ Veterinarians licensed as provided in Title 37,
 23 chapter 18, part 3, shall not be required to be licensed to
 24 apply nonrestricted pesticides, provided that these
 25 veterinarians shall register with the department each year;

1 provided further that the veterinarians shall be required to
 2 meet all other requirements and rules of the Montana
 3 Pesticides Act. The department shall consider the
 4 professional licensing requirements for veterinarians when
 5 adopting rules."

6 Section 5. Section 80-8-204, MCA, is amended to read:
 7 "80-8-204. Application for applicator's license. (1)
 8 Application for a pesticide applicator's license provided
 9 for in 80-8-203 shall be made annually to the department
 10 before applying pesticides in any calendar year, provided
 11 that pesticide applicators applying for renewal of license
 12 shall do so on or before May 1 of that calendar year. Any
 13 applicator applying for renewal of license after May 1 shall
 14 be assessed a ~~\$15~~ \$25 late licensing fee.

15 (2) An individual applying for a license to engage in
 16 aerial application of pesticides shall certify on the
 17 application that he has met all the federal aviation
 18 administration and the department of commerce requirements
 19 for aerial pesticide applicators."

20 Section 6. Section 80-8-207, MCA, is amended to read:
 21 "80-8-207. Dealers. (1) It is unlawful for any person
 22 to sell, offer for sale, deliver, or have delivered within
 23 this state any pesticide without first procuring a license
 24 from the department of agriculture for each calendar year or
 25 portion thereof. A separate dealer's license and fee shall

1 be required for each location or outlet from which
 2 pesticides are distributed, sold, held for sale, or offered
 3 for sale. Pesticide fieldmen or salesmen employed directly
 4 out of the same location or outlet and under a licensed
 5 dealer shall not be required to obtain a license. The dealer
 6 shall furnish the department the names and addresses of its
 7 fieldmen and salesmen selling pesticides within the state.
 8 ~~A dealer shall have his license in his possession when~~
 9 ~~selling pesticides and shall display the license upon~~
 10 ~~request of an authorized agent of the department.~~

11 (2) The application for a license shall be accompanied
 12 by a fee of ~~\$15~~ \$50. Dealers applying for renewal of license
 13 shall do so on or before May 1 of that calendar year. Any
 14 dealer applying for renewal of license after May 1 shall be
 15 assessed a ~~\$15~~ \$25 late licensing fee.

16 (3) The dealer shall require the purchaser of any
 17 restricted pesticide to exhibit his license or permit issued
 18 under authority of this chapter before completing a sale.

19 (4) Dealers may make one application for two annual
 20 licenses if the application is accompanied by a ~~\$15~~ \$50
 21 licensing fee for each year of the state biennium.

22 (5) Pharmacists licensed as provided for in 37-7-302
 23 and 37-7-303, veterinarians licensed as provided for in
 24 37-18-302 and 37-18-303, and certified pharmacies licensed
 25 under 37-7-321 shall not be required to be licensed to sell

1 pesticides, provided that the certified pharmacies and
 2 veterinarians shall register with the department each year.
 3 However, the certified pharmacies and veterinarians shall be
 4 required to meet all other requirements concerning the
 5 commercial sale of pesticides. The department shall take
 6 into account the professional licensing requirements of
 7 pharmacists, certified pharmacies, and veterinarians when
 8 adopting rules."

9 Section 7. Section 80-8-209, MCA, is amended to read:
 10 "80-8-209. Farm applicators. (1) Farm applicators
 11 shall obtain a special-use permit prior to purchasing and
 12 using any pesticide designated by the department as a
 13 restricted-use pesticide. ~~The fee for the permit is \$15.~~
 14 The special-use permit shall be effective for 5 calendar
 15 years. The department may establish a staggered years system
 16 of issuing permits.

17 (2) Restricted pesticides may not be utilized by farm
 18 applicators or their employees except for the purpose of
 19 producing or protecting any agricultural commodity on
 20 property owned, leased, or rented by such applicator or ~~as~~
 21 ~~provided in (6) of this section OR AS PROVIDED IN SUBSECTION~~
 22 ~~(6) OF THIS SECTION.~~

23 (3) Farm applicators shall qualify for the their first
 24 permit by either passing a graded written examination or
 25 attending a training course approved by the department and

1 taking an ungraded written examination. The examinations and
2 course shall require and demonstrate practical knowledge of
3 the applicator's ability to:

4 (a) recognize common pests to be controlled and damage
5 caused by them;

6 (b) read and understand the label and labeling
7 information, including the common name of the pesticide(s)
8 applied, pest(s) to be controlled, timing and methods of
9 application, safety precautions, any preharvest or reentry
10 restrictions, and any specific disposal procedures;

11 (c) apply pesticides in accordance with label
12 instructions and warnings, including the ability to prepare
13 the proper concentration of pesticides to be used under
14 particular circumstances, taking into account such factors
15 as area to be covered, speed at which application equipment
16 will be driven, and the quantity dispersed in a given period
17 of operation;

18 (d) recognize local environmental situations that must
19 be considered during application to avoid contamination; and

20 (e) recognize poisoning symptoms and procedures to
21 follow in case of a pesticide accident.

22 (4) The department may require farm applicators to
23 attend a mandatory training session and pass a written
24 examination for those restricted pesticides that are
25 extremely toxic or for which an effective antidote is not

1 available. The department may require farm applicators
2 handling these pesticides to maintain use records.

3 ~~(5) Farm applicators manifesting reading disabilities~~
4 ~~may become certified to use as many as two restricted use~~
5 ~~pesticides by passing a specific oral examination on the~~
6 ~~particular pesticide(s) if the applicator documents that a~~
7 ~~certified applicator in the immediate vicinity can advise~~
8 ~~him. The department shall require farm applicators to~~
9 ~~requalify for renewal of the 5-year permit by obtaining 100~~
10 ~~training credits. The department shall establish by rule a~~
11 ~~uniform system of administering the requalification training~~
12 ~~credits. The department may credit only training related to~~
13 ~~the standards set forth in subsection (3).~~

14 (6) Provisions of this chapter relating to
15 certification of farm applicators do not apply to any farm
16 applicator applying nonrestricted pesticides on his own land
17 or on lands of his neighbors if he:

18 (a) operates farm property and operates and maintains
19 pesticide application equipment primarily for his own use;

20 (b) is not regularly engaged in the business of
21 applying pesticides for hire and does not publicly hold
22 himself out as a pesticide applicator;

23 (c) operates his pesticide application equipment only
24 in the vicinity of his own property and for the
25 accommodation of his immediate neighbors."

Section 8. Section 80-8-213, MCA, is amended to read:

"80-8-213. Government agencies. (1) All state agencies, municipal corporations, or any other governmental agency shall be subject to the provisions of this chapter and rules adopted thereunder concerning the application or sale of pesticides. Applicators and operators applying pesticides and dealers selling pesticides for agencies, municipal corporations, or any governmental agencies shall be subject to the provisions of 80-8-203 through 80-8-208, ~~and the,~~

~~(2) The department shall issue a limited commercial applicator's or operator's or dealer's license without a fee for an annual fee of \$50,~~ which shall be valid only when such ~~applicator, operator, and dealer~~ applicator or dealer is applying or selling pesticides for such agencies, provided that the jurisdictional health officer, state veterinarian, their duly authorized representatives, or governmental research personnel are exempt from this licensing requirement when applying pesticides to experimental areas.

~~(3) A governmental agency shall pay the annual applicator's fee for its first four employee applicators. The agency shall pay an annual fee of \$5 for each additional employee applicator.~~

~~(4) Government employees becoming certified~~

applicators only to qualify for conducting pesticide education courses may not be charged a license fee but are limited to providing such courses. Government operators are subject to rules adopted pursuant to 80-8-205, including the license fee."

Section 9. Section 80-8-306, MCA, is amended to read:

"80-8-306. Penalties. (1) Any person convicted of violating any of the provisions of this chapter or the rules issued thereunder or who may misrepresent, impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department or its duly authorized agent in performance of its duty in connection with the provisions of this chapter shall be adjudged guilty of a misdemeanor and shall be fined not less than \$100 ~~\$500~~ but not more than \$500 ~~\$2,500~~ or imprisoned in the county jail for a term not to exceed 6 months, or both.

(2) The department or its authorized representative is hereby authorized to apply to the district court of the county or any county wherein a violation is about to occur or has occurred to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule promulgated under the chapter notwithstanding the existence of other remedies of law. When a person makes pesticide applications in more than one county on a commercial basis

1 without a license or permit or operates in violation of a
 2 lawful written order of the department in more than one
 3 county, the district court of Lewis and Clark County has
 4 concurrent jurisdiction with the district court of any other
 5 county wherein a violation has occurred or is about to
 6 occur, and the department may select and proceed in the
 7 court most appropriate under the circumstances. The
 8 injunction is to be issued without bond.

9 (3) Nothing in this chapter is to be construed as
 10 requiring the department or its authorized agent to report
 11 minor violations of the chapter for prosecution or for the
 12 institution of seizure proceedings when it believes the
 13 public interest will be best served by other remedial
 14 action, by a suitable notice of warning in writing, or by a
 15 lawful written order; nor is any part of this chapter to be
 16 construed to apply to common carriers transporting shipments
 17 tendered to them by the general public.

18 (4) Any person who with intent to defraud uses or
 19 reveals information relative to formulas of products
 20 acquired under the authority of 80-8-201 shall, upon
 21 conviction, be fined not more than \$500 or imprisoned for
 22 not more than 1 year, or both.

23 ~~(5) (a) Any registrant, applicator, dealer, retailer,~~
 24 ~~or other person who violates any provision of this chapter~~
 25 ~~may be assessed a civil penalty by the department of not~~

1 more than \$1,000 for each offense. However, farm
 2 applicators possessing a permit may not be assessed a civil
 3 penalty over \$200 for the first offense. Assessment of a
 4 civil penalty may be made in conjunction with any other
 5 department order or administrative action authorized by this
 6 chapter.

7 (b) No civil penalty may be assessed unless the person
 8 charged was given notice and opportunity for a hearing
 9 pursuant to the Montana Administrative Procedure Act.

10 (c) In determining an appropriate penalty, the
 11 department shall consider the effect on the person's ability
 12 to continue in business, the gravity of the violation which
 13 occurred, the degree of care exercised by the offender, and
 14 whether significant harm resulted to health, environment,
 15 agricultural crops, or livestock. A CIVIL PENALTY SHALL ONLY
 16 BE ASSESSED AGAINST A PERSON WHEN ONE OR MORE MAJOR
 17 VIOLATIONS ARE PROVEN UNDER THE PROCEDURES OF THIS ACT AND
 18 THE MONTANA ADMINISTRATIVE PROCEDURE ACT. MAJOR VIOLATIONS
 19 INCLUDE MISUSE OF A PESTICIDE WHICH RESULTS IN PROVEN HARM
 20 TO HUMAN HEALTH, THE ENVIRONMENT, OR AGRICULTURAL CROPS OR
 21 LIVESTOCK; SELLING OF A RESTRICTED PESTICIDE TO A PERSON NOT
 22 CERTIFIED OR AUTHORIZED TO PURCHASE SUCH PESTICIDES; USE OR
 23 SALE OF UNREGISTERED PESTICIDES; FAILURE TO MAINTAIN ANY
 24 INDIVIDUAL PESTICIDE APPLICATION AND SALES RECORDS; USING OR
 25 SELLING PESTICIDES WITHOUT THE REQUIRED LICENSE OR PERMIT;

1 ~~OR REOCCURRENCE OF ANY IDENTICAL VIOLATIONS WITHIN THE SAME~~
 2 ~~CALENDAR YEAR. The department may issue a warning or take~~
 3 ~~any other appropriate action allowed by this chapter.~~

4 ~~Id1. If the department is unable to collect such civil~~
 5 ~~penalty or if any person fails to pay all or a set portion~~
 6 ~~of the civil penalty as determined by the department, it may~~
 7 ~~recover such amount by action in the appropriate district~~
 8 ~~courts."~~

9 ~~NEW SECTION. Section 10. Earmarked--fund DEPOSIT OF~~
 10 ~~FEES AND PENALTIES IN GENERAL FUND. That--portion--of--off~~
 11 ~~licensing--permitting--registration--and--equipment~~
 12 ~~inspection fees--collected--which--constitutes--an--increase~~
 13 ~~after--October--1--1983--must--be--deposited--in--the--earmarked~~
 14 ~~revenue fund for the purpose of supporting a portion of--the~~
 15 ~~costs--of--administering--this--chapter--The--administration--of~~
 16 ~~this--chapter--is--to--be--funded--from--both--the--earmarked--revenue~~
 17 ~~fund--and--the--general--fund--because--of--the--mutual--benefits--to~~
 18 ~~the--industry--and--the--public--as--stated--in--88-8-103--Reserve~~
 19 ~~earmarked--revenue--fund--money--may--be--invested--by--the~~
 20 ~~department--through--the--board--of--investments--The--income--from~~
 21 ~~such--investments--must--be--credited--to--the--proper--department~~
 22 ~~account--in--the--earmarked--revenue--fund ALL LICENSING,~~
 23 ~~PERMITTING, REGISTRATION, AND EQUIPMENT INSPECTION FEES~~
 24 ~~COLLECTED UNDER PART 2 OF THIS CHAPTER AND ANY CIVIL~~
 25 ~~PENALTIES COLLECTED UNDER 89-8-306 MUST BE DEPOSITED IN THE~~

1 ~~GENERAL FUND.~~

2 ~~NEW SECTION. Section 11. Codification instruction.~~
 3 ~~Section 10 is intended to be codified as an integral part of~~
 4 ~~Title 80, chapter 8.~~

5 ~~NEW SECTION. Section 12. Saving clause. This act does~~
 6 ~~not affect rights and duties that matured, penalties that~~
 7 ~~were incurred, or proceedings that were begun before the~~
 8 ~~effective date of this act.~~

9 ~~NEW SECTION. Section 13. Severability. If a part of~~
 10 ~~this act is invalid, all valid parts that are severable from~~
 11 ~~the invalid part remain in effect. If a part of this act is~~
 12 ~~invalid in one or more of its applications, the part remains~~
 13 ~~in effect in all valid applications that are severable from~~
 14 ~~the invalid applications.~~

-End-

HOUSE BILL NO. 802

INTRODUCED BY D. BROWN, MOHAR, REGAN,

BERGENE, REAM, HARPER, RAMIREZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE REGULATION OF THE SALE AND USE OF PESTICIDES; AMENDING SECTIONS 80-8-105, 80-8-109, 80-8-201, 80-8-203, 80-8-204, 80-8-207, 80-8-209, 80-8-213, AND 80-8-306, MCA."

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

Section 1. Section 80-8-105, MCA, is amended to read:

"80-8-105. Rules. (1) The department may adopt by reference without a public hearing regulations adopted under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. The department may, after a public hearing, adopt all rules necessary to carry out this chapter.

(2) The rules may prescribe methods of:

(a) registration, ~~suspension or cancellation of~~ ~~registrations~~ application, use, or restricting use, prohibiting use, offering or exposing for sale of any pesticide;

(b) determining whether pesticides are highly toxic to man;

(c) determining standards of coloring or discoloring

for pesticides and subjecting pesticides to the requirements of 80-8-202;

(d) licensing commercial applicators, operators, and dealers, establishing methods of recordkeeping for applicators, operators, and dealers, and providing for the review of the records by the department's authorized agent and the submission of the records to the department upon written request;

(e) issuing farm applicator special-use permits and the maintenance and submission of records by farm applicators issued special-use permits;

(f) collection, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides and devices;

(g) operating and maintaining equipment used by applicators;

(h) developing examinations which shall be held periodically throughout the state;

(i) establishing the form and content of all applications for licenses and permits;

(j) designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The department may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration which would be sublethal to humans and animals if small amounts of it were

1 accidentally swallowed, inhaled, sprayed, or dusted on the
2 skin.

3 (k) revoking licenses and permits;

4 (l) registering or controlling any spray adjuvant,
5 such as a wetting agent, spreading agent, deposit builder,
6 adhesive, emulsifying agent, deflocculating agent, water
7 modifier, or similar agent with or without toxic properties
8 of its own intended to be used with any other pesticide as
9 an aid to the application or effect of that other pesticide,
10 whether or not distributed in a package or container
11 separate from that of a pesticide with which it is to be
12 used;

13 (m) registering pesticide-fertilizer and other
14 chemical blends or, instead of registration, establishing
15 licensing, inspection, and fees for blending plants;

16 (n) establishing registration procedures for devices,
17 with a fee not to exceed \$5 per type of device, specifying
18 classes of devices to be registered and providing for
19 additional requirements;

20 ~~(o) imposing conditions for renewal of dealer,~~
21 ~~applicator, and operator licenses and permits, including~~
22 ~~requelification training;~~

23 ~~(p) establishing procedures for implementing and~~
24 ~~administering the civil penalties under 80-8-306; and~~

25 ~~(q) establishing fees for training courses and~~

1 ~~materials.~~

2 (3) (a) Whenever the department finds that those rules
3 are necessary to carry out the purposes and intent of this
4 chapter, the rules may relate to the time, place, manner,
5 and method of registration, ~~suspension or cancellation of~~
6 ~~registration,~~ application, or selling of the pesticides, may
7 restrict or prohibit use of pesticides in the state or in
8 designated areas during specified periods of time, and shall
9 encompass all reasonable factors which the department
10 considers necessary to prevent damage or injury to:

11 (i) persons, animals, ~~crops,~~ or pollinating insects
12 from the effect of drift or careless application;

13 (ii) the environment;

14 (iii) plants, including forage plants;

15 (iv) wildlife;

16 (v) fish and other aquatic life.

17 (b) In issuing the rules, the department shall give
18 consideration to pertinent research findings and
19 recommendations of other agencies of this state or of the
20 federal government.

21 (4) If the department finds that an emergency exists
22 which requires immediate action with regard to the
23 registration, use, or application of pesticides, the
24 department may, without notice or hearing, issue necessary
25 orders or rules to protect the public health, welfare, and

1 safety. An order or rule issued under this subsection is
 2 effective for the period prescribed by the Montana
 3 Administrative Procedure Act. If the department determines
 4 that the emergency order or rule should remain in effect, a
 5 public hearing under 80-8-106 shall be held within the above
 6 period to determine whether the order or rule should be
 7 adopted by the department.

8 (5) All rules and orders issued by the department
 9 shall be in writing, shall be entered in full in books to be
 10 kept by the department for that purpose, shall be indexed,
 11 and shall be public records open for inspection at all times
 12 during reasonable office hours. Except for orders
 13 establishing or changing rules of practice and procedure,
 14 all orders made and published by the department shall
 15 include and be based upon written findings of fact. A copy
 16 of any rule or order certified by the department shall be
 17 received in evidence in all courts of this state with the
 18 same effect as the original."

19 Section 2. Section 80-8-109, MCA, is amended to read:

20 "80-8-109. Educational programs. ~~(1)~~ The department in
 21 ~~cooperation with other state and federal agencies~~ shall
 22 develop and conduct appropriate educational programs. The
 23 educational programs shall inform those individuals dealing
 24 in and applying pesticides as to correct methods of
 25 formulating, applying, storing, disposing of, handling, and

1 transporting pesticides.

2 ~~(2) In developing and administering such programs, the~~
 3 ~~department may consult other state and federal agencies, as~~
 4 ~~well as such other persons it considers necessary, and may~~
 5 ~~charge a fee for the programs commensurate with their~~
 6 ~~administration costs. The fee may not include the salary or~~
 7 ~~travel expenses of any employee of the state or a unit of~~
 8 ~~the Montana university system.~~

9 ~~(3) All fees collected in any fiscal year and not~~
 10 ~~expended within that fiscal year must be placed in an~~
 11 ~~educational and manuals account of the earmarked revenue~~
 12 ~~fund for future use for that purpose."~~

13 Section 3. Section 80-8-201, MCA, is amended to read:

14 "80-8-201. Registration. (1) Every pesticide
 15 distributed, sold, or offered for sale within this state or
 16 delivered for transportation or transported in intrastate
 17 commerce or between points within this state shall be
 18 registered with the department. ~~The registration shall be~~
 19 ~~renewed annually by the manufacturer, formulator, or~~
 20 ~~distributor of the pesticide. The department shall register~~
 21 ~~all approved pesticides and those registered Applications~~
 22 ~~for registration shall be filed annually with the department~~
 23 ~~by the manufacturer, formulator, or distributor of the~~
 24 ~~pesticide. The department shall review the application and~~
 25 ~~subject to the provisions of subsection (8), may register~~

1 ~~the pesticide for use in the state. Pesticides so approved~~
 2 are subject to registration fees and all other provisions of
 3 this chapter. All registrations of pesticides expire on
 4 December 31 following the date of issuance unless otherwise
 5 terminated. ~~Within the first 2 months of each calendar~~
 6 ~~year, the department shall prepare a list of all pesticides~~
 7 ~~registered within the state. The list must be distributed~~
 8 ~~to the department of health and environmental sciences and~~
 9 ~~the department of fish, wildlife, and parks and must be made~~
 10 ~~available to the public.~~

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

13 (a) the name and address of the applicant and the name
 14 and address of the person whose name will appear on the
 15 label, if other than the registrant;

16 (b) a complete copy of the label of the pesticide, the
 17 United States environmental protection agency registration
 18 number if the pesticide is so registered, and a statement of
 19 all claims to be made for it, including directions for use;

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

21 (d) if requested by the department, a full description
 22 of tests made and the results upon which the claims are
 23 based, ~~including all available information in the possession~~
 24 ~~of the applicant about the effects of the pesticide on~~
 25 ~~representative nontarget species.~~ In the case of renewal of

1 registration, a statement shall be required only with
 2 respect to information which is different from that
 3 furnished when the pesticide was registered or last
 4 reregistered.

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

16 (4) The applicant shall pay an annual fee of ~~\$15~~ **\$50**
 17 for each pesticide registered. A registration fee is not
 18 required to register on a ~~federally approved~~ experimental
 19 use permit. Fees collected shall be deposited in the state
 20 treasury to the credit of the general fund.

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

1 required to be submitted comply with the requirements of
2 80-8-202, it shall register the article.

3 (6) If it does not appear to the department that the
4 article warrants the proposed claims for it or if the
5 article and its labeling and other material required to be
6 submitted do not comply with this chapter, it shall notify
7 the applicant of the manner in which the article, labeling,
8 or other material required to be submitted fails to comply
9 with the chapter so as to afford the applicant an
10 opportunity to make the necessary corrections. If the
11 applicant does not make the corrections upon receipt of the
12 notice, the department may refuse to register the article.
13 The department may suspend or cancel the registration of a
14 pesticide whenever it does not appear that the article or
15 its labeling comply with this chapter. When an application
16 for registration is refused or the department proposes to
17 suspend or cancel a registration, the registrant may appeal
18 the department's decision pursue administrative remedies
19 under the Montana Administrative Procedure Act and rules of
20 the department.

21 (7) Registration is not required in the case of a
22 pesticide shipped from one plant in this state to another
23 plant in this state by the same person.

24 (8) (a) The departments of health and environmental
25 sciences, agriculture, and fish, wildlife, and parks shall

1 review all applications for registration of an
2 experimental-use permit or a registration for special local
3 needs. The applicant shall pay a one-time fee of \$50 for a
4 special local need or experimental use permit registration.
5 Within 30 days of receipt of the list of registered
6 pesticides provided for under subsection (1), each
7 department may also request that any A pesticide registered
8 by the department or being considered for registration by
9 the department be reviewed in accordance with this
10 subsection. THE DEPARTMENTS, IN DETERMINING WHETHER TO
11 REQUEST SUCH REVIEW FOR A PARTICULAR CHEMICAL PRODUCT, MAY
12 NOT REQUEST A REVIEW UNLESS THE CHEMICAL MATERIAL OR ITS
13 BYPRODUCTS HAVE BEEN SHOWN TO:

14 (I) HAVE A HALF-LIFE IN THE ENVIRONMENT GREATER THAN 7
15 DAYS;

16 (II) ACCUMULATE IN VEGETATION, SOILS, OR ANIMAL
17 ISSUES; AND

18 (III) BE A SUSPECTED CARCINOGEN, MUTAGEN, OR TERATOGEN.

19 The departments shall utilize but are not limited to the
20 same requirements and standards for reviewing registrations
21 as established by the Federal Insecticide, Fungicide, and
22 Rodenticide Act, as amended, and regulations adopted
23 thereunder. The department of agriculture shall provide the
24 departments of health and environmental sciences and fish,
25 wildlife, and parks with a complete copy of the application,

1 related correspondence, and a statement of the department of
 2 agriculture's proposed action on the application. The
 3 departments of health and environmental sciences and fish,
 4 wildlife, and parks shall approve or disapprove the
 5 application within 10 days after the receipt of the
 6 application. If the departments of health and environmental
 7 sciences, agriculture, and fish, wildlife, and parks are in
 8 agreement with the proposed registration, the department of
 9 agriculture shall issue the registration.

10 (b) The department of agriculture shall establish a
 11 time and place for an interagency conference for the
 12 purposes of resolving the registration of any pesticide or
 13 device. If two of the departments approve the proposed
 14 registration, the department of agriculture shall issue the
 15 registration.

16 (c) The registrant applying for registration shall be
 17 notified as to proposed changes in registration. If the
 18 departments cannot resolve the proposed registration
 19 following the interagency conference, the registrant may
 20 request a joint administrative hearing before the
 21 departments of agriculture, health and environmental
 22 sciences, and fish, wildlife, and parks.

23 (d) Following the interagency conference and, if
 24 requested, the administrative hearing, if the proposed
 25 registration of a pesticide or device has not been resolved,

1 the department of agriculture shall appoint an advisory
 2 council as outlined in 80-8-108 to resolve by majority vote
 3 the registration of any pesticide. The advisory council's
 4 recommendations on the registration shall be accepted by the
 5 departments and implemented by the department of
 6 agriculture.

7 ~~(9) Pesticides registered under any federal law when~~
 8 ~~canceled for sale and use in total or part by a federal~~
 9 ~~agency responsible for registration are considered canceled~~
 10 ~~in total or part for sale and use in Montana for the~~
 11 ~~purposes of bringing such pesticides into Montana for sale~~
 12 ~~or use; the cancellation is effective upon announcement of~~
 13 ~~the cancellation by the federal agency. Such pesticides in~~
 14 ~~Montana at the time of the announcement may be sold or used~~
 15 ~~until the final date of sale or use allowed under the~~
 16 ~~federal law and rules or orders of the federal agency. If~~
 17 ~~the federal cancellation allows existing stock to be used~~
 18 ~~past the final date of cancellation, such sale or use in~~
 19 ~~this state may not exceed 2 years. The department shall~~
 20 ~~provide technical assistance to any person in possession of~~
 21 ~~such products to insure their proper disposal, relabeling,~~
 22 ~~or removal."~~

23 Section 4. Section 80-8-203, MCA, is amended to read:
 24 "80-8-203. Commercial applicator. (1) It shall be
 25 unlawful for any person to engage in the business of

1 applying pesticides for another without a pesticide
 2 applicator's license obtained from the department of
 3 agriculture. The application shall be accompanied by a fee
 4 of ~~\$15~~ ~~\$50~~. Applicators applying for a dealer's license
 5 under this chapter shall be required to pay only a ~~\$10~~ ~~\$30~~
 6 licensing fee for the dealer's license. The provisions of
 7 this ~~section~~ ~~subsection~~ shall not apply to any person
 8 employed only to operate any equipment used for the
 9 application of any pesticide and in which the person has no
 10 financial interest or other control over such apparatus
 11 other than its day-to-day mechanical operation for the
 12 purpose of applying any pesticide.

13 ~~(2) Each applicator shall have his license in his~~
 14 ~~possession when using pesticides and shall display the~~
 15 ~~license upon request of an authorized agent of the~~
 16 ~~department.~~

17 ~~(3)~~ ~~(1)~~ Public utility applicators shall be licensed in
 18 the same manner as commercial applicators, provided that
 19 public utility operators working under public utility
 20 applicators are not required to be licensed except as
 21 provided for under 80-8-205.

22 ~~(4)~~ ~~(1)~~ Veterinarians licensed as provided in Title 37,
 23 chapter 18, part 3, shall not be required to be licensed to
 24 apply nonrestricted pesticides, provided that these
 25 veterinarians shall register with the department each year;

1 provided further that the veterinarians shall be required to
 2 meet all other requirements and rules of the Montana
 3 Pesticides Act. The department shall consider the
 4 professional licensing requirements for veterinarians when
 5 adopting rules."

6 Section 5. Section 80-8-204, MCA, is amended to read:

7 "80-8-204. Application for applicator's license. (1)
 8 Application for a pesticide applicator's license provided
 9 for in 80-8-203 shall be made annually to the department
 10 before applying pesticides in any calendar year, provided
 11 that pesticide applicators applying for renewal of license
 12 shall do so on or before May 1 of that calendar year. Any
 13 applicator applying for renewal of license after May 1 shall
 14 be assessed a ~~\$15~~ ~~\$25~~ late licensing fee.

15 (2) An individual applying for a license to engage in
 16 aerial application of pesticides shall certify on the
 17 application that he has met all the federal aviation
 18 administration and the department of commerce requirements
 19 for aerial pesticide applicators."

20 Section 6. Section 80-8-207, MCA, is amended to read:

21 "80-8-207. Dealers. (1) It is unlawful for any person
 22 to sell, offer for sale, deliver, or have delivered within
 23 this state any pesticide without first procuring a license
 24 from the department of agriculture for each calendar year or
 25 portion thereof. A separate dealer's license and fee shall

1 be required for each location or outlet from which
 2 pesticides are distributed, sold, held for sale, or offered
 3 for sale. Pesticide fieldmen or salesmen employed directly
 4 out of the same location or outlet and under a licensed
 5 dealer shall not be required to obtain a license. The dealer
 6 shall furnish the department the names and addresses of its
 7 fieldmen and salesmen selling pesticides within the state.
 8 ~~A dealer shall have his license in his possession when~~
 9 ~~selling pesticides and shall display the license upon~~
 10 ~~request of an authorized agent of the department.~~

11 (2) The application for a license shall be accompanied
 12 by a fee of ~~\$15 \$50~~. Dealers applying for renewal of license
 13 shall do so on or before May 1 of that calendar year. Any
 14 dealer applying for renewal of license after May 1 shall be
 15 assessed a ~~\$15 \$25~~ late licensing fee.

16 (3) The dealer shall require the purchaser of any
 17 restricted pesticide to exhibit his license or permit issued
 18 under authority of this chapter before completing a sale.

19 (4) Dealers may make one application for two annual
 20 licenses if the application is accompanied by a ~~\$15 \$50~~
 21 licensing fee for each year of the state biennium.

22 (5) Pharmacists licensed as provided for in 37-7-302
 23 and 37-7-303, veterinarians licensed as provided for in
 24 37-18-302 and 37-18-303, and certified pharmacies licensed
 25 under 37-7-321 shall not be required to be licensed to sell

1 pesticides, provided that the certified pharmacies and
 2 veterinarians shall register with the department each year.
 3 However, the certified pharmacies and veterinarians shall be
 4 required to meet all other requirements concerning the
 5 commercial sale of pesticides. The department shall take
 6 into account the professional licensing requirements of
 7 pharmacists, certified pharmacies, and veterinarians when
 8 adopting rules."

9 Section 7. Section 80-8-209, MCA, is amended to read:

10 "80-8-209. Farm applicators. (1) Farm applicators
 11 shall obtain a special-use permit prior to purchasing and
 12 using any pesticide designated by the department as a
 13 restricted-use pesticide. ~~The fee for the permit is \$15.~~
 14 The special-use permit shall be effective for 5 calendar
 15 years. The department may establish a staggered years system
 16 of issuing permits.

17 (2) Restricted pesticides may not be utilized by farm
 18 applicators or their employees except for the purpose of
 19 producing or protecting any agricultural commodity on
 20 property owned, leased, or rented by such applicator or-as
 21 ~~provided in (6) of this section~~ OR AS PROVIDED IN SUBSECTION
 22 (6) OF THIS SECTION.

23 (3) Farm applicators shall qualify for the ~~their first~~
 24 permit by either passing a graded written examination or
 25 attending a training course approved by the department and

1 taking an ungraded written examination. The examinations and
2 course shall require and demonstrate practical knowledge of
3 the applicator's ability to:

4 (a) recognize common pests to be controlled and damage
5 caused by them;

6 (b) read and understand the label and labeling
7 information, including the common name of the pesticide(s)
8 applied, pest(s) to be controlled, timing and methods of
9 application, safety precautions, any preharvest or reentry
10 restrictions, and any specific disposal procedures;

11 (c) apply pesticides in accordance with label
12 instructions and warnings, including the ability to prepare
13 the proper concentration of pesticides to be used under
14 particular circumstances, taking into account such factors
15 as area to be covered, speed at which application equipment
16 will be driven, and the quantity dispersed in a given period
17 of operation;

18 (d) recognize local environmental situations that must
19 be considered during application to avoid contamination; and

20 (e) recognize poisoning symptoms and procedures to
21 follow in case of a pesticide accident.

22 (4) The department may require farm applicators to
23 attend a mandatory training session and pass a written
24 examination for those restricted pesticides that are
25 extremely toxic or for which an effective antidote is not

1 available. The department may require farm applicators
2 handling these pesticides to maintain use records.

3 ~~(5) Farm applicators manifesting reading disabilities~~
4 ~~may become certified to use as many as two restricted-use~~
5 ~~pesticides by passing a specific oral examination on the~~
6 ~~particular pesticide(s) if the applicator documents that a~~
7 ~~certified applicator in the immediate vicinity can advise~~
8 ~~him.~~ The department shall require farm applicators to
9 requalify for renewal of the 5-year permit by obtaining 100
10 training credits. The department shall establish by rule a
11 uniform system of administering the requalification training
12 credits. The department may credit only training related to
13 the standards set forth in subsection (3).

14 (6) Provisions of this chapter relating to
15 certification of farm applicators do not apply to any farm
16 applicator applying nonrestricted pesticides on his own land
17 or on lands of his neighbors if he:

18 (a) operates farm property and operates and maintains
19 pesticide application equipment primarily for his own use;

20 (b) is not regularly engaged in the business of
21 applying pesticides for hire and does not publicly hold
22 himself out as a pesticide applicator;

23 (c) operates his pesticide application equipment only
24 in the vicinity of his own property and for the
25 accommodation of his immediate neighbors."

Section 8. Section 80-8-213, MCA, is amended to read:

"80-8-213. Government agencies. (1) All state agencies, municipal corporations, or any other governmental agency shall be subject to the provisions of this chapter and rules adopted thereunder concerning the application or sale of pesticides. Applicators and operators applying pesticides and dealers selling pesticides for agencies, municipal corporations, or any governmental agencies shall be subject to the provisions of 80-8-203 through 80-8-208, ~~and the~~

(2) ~~The~~ department shall issue a limited commercial applicator's ~~operator's~~ or dealer's license ~~without a fee~~ ~~for an annual fee of \$50~~, which shall be valid only when such ~~applicator's operator's and dealers are~~ ~~applicator or dealer is~~ applying or selling pesticides for such agencies, provided that the jurisdictional health officer, state veterinarian, their duly authorized representatives, or governmental research personnel are exempt from this licensing requirement when applying pesticides to experimental areas.

(3) ~~A governmental agency shall pay the annual applicator's fee for its first four employee applicators. The agency shall pay an annual fee of \$5 for each additional employee applicator.~~

(4) ~~Government employees becoming certified~~

~~applicators only to qualify for conducting pesticide education courses may not be charged a license fee but are limited to providing such courses. Government operators are subject to rules adopted pursuant to 80-8-205, including the license fee."~~

Section 9. Section 80-8-306, MCA, is amended to read:

"80-8-306. Penalties. (1) Any person convicted of violating any of the provisions of this chapter or the rules issued thereunder or who may misrepresent, impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department or its duly authorized agent in performance of its duty in connection with the provisions of this chapter shall be adjudged guilty of a misdemeanor and shall be fined not less than ~~\$100~~ ~~\$500~~ but not more than ~~\$500~~ ~~\$2,500~~ or imprisoned in the county jail for a term not to exceed 6 months, or both.

(2) The department or its authorized representative is hereby authorized to apply to the district court of the county or any county wherein a violation is about to occur or has occurred to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule promulgated under the chapter notwithstanding the existence of other remedies of law. When a person makes pesticide applications in more than one county on a commercial basis

without a license or permit or operates in violation of a lawful written order of the department in more than one county, the district court of Lewis and Clark County has concurrent jurisdiction with the district court of any other county wherein a violation has occurred or is about to occur, and the department may select and proceed in the court most appropriate under the circumstances. The injunction is to be issued without bond.

(3) Nothing in this chapter is to be construed as requiring the department or its authorized agent to report minor violations of the chapter for prosecution or for the institution of seizure proceedings when it believes the public interest will be best served by other remedial action, by a suitable notice of warning in writing, or by a lawful written order; nor is any part of this chapter to be construed to apply to common carriers transporting shipments tendered to them by the general public.

(4) Any person who with intent to defraud uses or reveals information relative to formulas of products acquired under the authority of 80-8-201 shall, upon conviction, be fined not more than \$500 or imprisoned for not more than 1 year, or both.

~~(5) (a) Any registrant, applicator, dealer, retailer, or other person who violates any provision of this chapter may be assessed a civil penalty by the department of not~~

~~more than \$1,000 for each offense. However, farm applicators possessing a permit may not be assessed a civil penalty over \$200 for the first offense. Assessment of a civil penalty may be made in conjunction with any other department order or administrative action authorized by this chapter.~~

~~(b) No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Montana Administrative Procedure Act.~~

~~(c) In determining an appropriate penalty, the department shall consider the effect on the person's ability to continue in business, the gravity of the violation which occurred, the degree of harm exercised by the offender, and whether significant harm resulted to health, environment, agriculture, crops, or livestock. A CIVIL PENALTY SHALL ONLY BE ASSESSED AGAINST A PERSON WHEN ONE OR MORE MAJOR VIOLATIONS ARE PROVEN UNDER THE PROCEDURES OF THIS ACT AND THE MONTANA ADMINISTRATIVE PROCEDURE ACT. MAJOR VIOLATIONS INCLUDE MISUSE OF A PESTICIDE WHICH RESULTS IN PROVEN HARM TO HUMAN HEALTH, THE ENVIRONMENT, OR AGRICULTURAL CROPS OR LIVESTOCK; SELLING OF A RESTRICTED PESTICIDE TO A PERSON NOT CERTIFIED OR AUTHORIZED TO PURCHASE SUCH PESTICIDES; USE OR SALE OF UNREGISTERED PESTICIDES; FAILURE TO MAINTAIN ANY INDIVIDUAL PESTICIDE APPLICATION AND SALES RECORDS; USING OR SELLING PESTICIDES WITHOUT THE REQUIRED LICENSE OR PERMIT;~~

1 ~~OR REOCCURRENCE OF ANY IDENTICAL VIOLATIONS WITHIN THE SAME~~
 2 ~~CALENDAR YEAR. The department may issue a warning or take~~
 3 ~~any other appropriate action allowed by this chapter.~~

4 ~~(d) If the department is unable to collect such civil~~
 5 ~~penalty or if any person fails to pay all or a set portion~~
 6 ~~of the civil penalty as determined by the department, it may~~
 7 ~~recover such amount by action in the appropriate district~~
 8 ~~courts."~~

9 ~~NEW SECTION. Section 10. Earmarked--fund DEPOSIT OF~~
 10 ~~FEES AND PENALTIES IN GENERAL FUND. That--portion--of--all~~
 11 ~~licensing--permittings--registrations--and--equipment~~
 12 ~~inspection fees--collected--which--constitutes--an--increase~~
 13 ~~after--October--14--1983--must--be--deposited--in--the--earmarked~~
 14 ~~revenue fund for the purpose of supporting a portion of--the~~
 15 ~~costs--of--administering--this--chapter--The--administration--of~~
 16 ~~this--chapter--is--to--be--funded--from--both--the--earmarked--revenue~~
 17 ~~fund--and--the--general--fund--because--of--the--mutual--benefits--to~~
 18 ~~the--industry--and--the--public--as--stated--in--80-8-103. Reserve~~
 19 ~~earmarked--revenue--fund--money--may--be--invested--by--the~~
 20 ~~department--through--the--board--of--investments--The--income--from~~
 21 ~~such--investments--must--be--credited--to--the--proper--department~~
 22 ~~account--in--the--earmarked--revenue--fund ALL LICENSING,~~
 23 ~~PERMITTING, REGISTRATION, AND EQUIPMENT INSPECTION FEES~~
 24 ~~COLLECTED UNDER PART 2 OF THIS CHAPTER AND ANY CIVIL~~
 25 ~~PENALTIES COLLECTED UNDER 80-8-306 MUST BE DEPOSITED IN THE~~

1 ~~GENERAL FUND.~~

2 ~~NEW SECTION. Section 11. Codification instruction.~~
 3 ~~Section 10 is intended to be codified as an integral part of~~
 4 ~~Title 80, chapter 8.~~

5 ~~NEW SECTION. Section 12. Saving clause. This act does~~
 6 ~~not affect rights and duties that matured, penalties that~~
 7 ~~were incurred, or proceedings that were begun before the~~
 8 ~~effective date of this act.~~

9 ~~NEW SECTION. Section 13. Severability. If a part of~~
 10 ~~this act is invalid, all valid parts that are severable from~~
 11 ~~the invalid part remain in effect. If a part of this act is~~
 12 ~~invalid in one or more of its applications, the part remains~~
 13 ~~in effect in all valid applications that are severable from~~
 14 ~~the invalid applications.~~

15 ~~SECTION 14. TERMINATION. SECTION 3 TERMINATES JULY 1,~~
 16 ~~1985.~~

-End-

March 16, 1983

SENATE STANDING COMMITTEE REPORT
(Agriculture, Livestock & Irrigation)

That House Bill No. 802 be amended as follows:

1. Page 6, line 3.
Following: "agencies"
Insert: "and private industry"
2. Page 6, lines 21 and 22.
Strike: "Applications" on line 21 through "department" on line 22
Insert: "The registration shall be renewed annually"
3. Page 6, line 24 through line 1 on page 7.
Strike: "review" on page 6, line 24 through "approved" on page 7, line 1
Insert: "register all federally approved pesticides and those registered"
4. Page 7, lines 5 through 10.
Following: "." on line 5
Strike: the remainder of line 5 through line 10 in their entirety
5. Page 7, lines 23 through 25.
Strike: ", " on line 23 through "species" on line 25
6. Page 8, line 16.
Strike: "\$50"
Insert: "\$20"
7. Page 9, line 15.
Following: "chapter"
Insert: "or whenever scientific evidence proves that the article endangers man or the general environment afforded protection under 80-8-105(3) (a)"
8. Page 10, lines 5 through 18.
Strike: These lines in their entirety
9. Page 10, line 19.
Strike: "but are not limited to"
Following: "the"
Insert: "same"
10. Page 12, line 8.
Following: "or"
Insert: "in"
11. Page 12, line 10.
Following: "or"
Insert: "in"

12. Page 12, lines 13 through 15.

Strike: "Such" on line 13

through "until" on line 15

Insert: "The cancellation is effective on"

13. Page 13, line 4.

Strike: "\$50"

Insert: "\$20"

14. Page 13, line 5.

Strike: "\$30"

Insert: "\$15"

15. Page 13, lines 13 through 16.

Strike: These lines in their entirety

Renumber: subsequent subsections

16. Page 14, line 12.

Strike: "May"

Insert: "March"

17. Page 14, line 13.

Strike: "May"

Insert: "March"

18. Page 15, lines 8 through 10.

Strike: These lines in their entirety

19. Page 15, line 12.

Strike: "\$50"

Insert: "\$20"

20. Page 15, line 13.

Strike: "May"

Insert: "March"

21. Page 15, line 14.

Strike: "May"

Insert: "March"

22. Page 15, line 15.

Strike: "\$25"

Insert: "\$15"

23. Page 15, line 20.

Strike: "\$50"

Insert: "\$20"

24. Page 16, lines 21 and 22.

Strike: "OR" on line 21

through "SECTION" on line 22

25. Page 20, lines 14 through 16.

Strike: "\$500" on line 14

Insert: "\$100"

Strike: "\$2,500" on line 14

Insert: "\$1,500"

Strike: "or" on line 14 through "both" on line 16

March 22, 1983

Senate COMMITTEE OF THE WHOLE AMENDMENT

That House Bill No. 802 be amended as follows:

1. Page 23, line 25.

Following: "court."

Insert: "(6) Any person against whom the department has assessed a civil penalty under this section may, within 30 days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred. Appeal is by trial de novo and a jury trial must be granted if requested. Where the provisions of this subsection conflict with 2-4-702 through 2-4-704, the provisions of this subsection govern."

26. Page 21, line 24.

Strike: "violates any provision"

Insert: "commits a major violation"

Following: "chapter"

Insert: "as defined in subsection (5)(d)"

27. Page 22, line 5.

Following: "department"

Insert: "warning,"

Following: "order"

Insert: ", "

28. Page 22, lines 15 through 19.

Strike: "A" on line 15 through "INCLUDE" on line 19

Insert: "In determining an appropriate penalty, the department shall consider the effect on the person's ability to continue in business, the gravity of the violation which occurred, the degree of care exercised by the offender, and whether significant harm resulted to health, environment, agricultural crops, or livestock.
(d) A major violation of this chapter includes:
(i)"

29. Page 22, line 21.

Following: "i;"

Insert: "(ii)"

30. Page 22, line 22.

Following: "i;"

Insert: "(iii)"

31. Page 22, line 23.

Following: "i;"

Insert: "(iv)"

32. Page 22, line 24.

Following: "i;"

Insert: "(v)"

33. Page 22, line 25.

Following: "WITHOUT"

Insert: "having obtained"

34. Page 23, line 1.

Following: "OR"

Insert: "(vi)"

Strike: "VIOLATIONS"

Insert: "violation of this chapter"

35. Page 23, lines 2 and 3.

Strike: "The" on line 2 through "." on line 3

36. Page 23, line 4.

Strike: "(d)"

Insert: "(e)"

37. Page 24, lines 15 and 16.

Strike: section 14 in its entirety

HOUSE BILL NO. 802

INTRODUCED BY D. BROWN, MOHAR, REGAN,

BERGENE, REAM, HARPER, RAMIREZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE REGULATION OF THE SALE AND USE OF PESTICIDES; AMENDING SECTIONS 80-8-105, 80-8-109, 80-8-201, 80-8-203, 80-8-204, 80-8-207, 80-8-209, 80-8-213, AND 80-8-306, MCA."

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

Section 1. Section 80-8-105, MCA, is amended to read:

"80-8-105. Rules. (1) The department may adopt by reference without a public hearing regulations adopted under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. The department may, after a public hearing, adopt all rules necessary to carry out this chapter.

(2) The rules may prescribe methods of:

(a) registration, ~~suspension or cancellation of registration~~, application, use or restricting use, prohibiting use, offering or exposing for sale of any pesticide;

(b) determining whether pesticides are highly toxic to man;

(c) determining standards of coloring or discoloring

for pesticides and subjecting pesticides to the requirements of 80-8-202;

(d) licensing commercial applicators, operators, and dealers, establishing methods of recordkeeping for applicators, operators, and dealers, and providing for the review of the records by the department's authorized agent and the submission of the records to the department upon written request;

(e) issuing farm applicator special-use permits and the maintenance and submission of records by farm applicators issued special-use permits;

(f) collection, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides and devices;

(g) operating and maintaining equipment used by applicators;

(h) developing examinations which shall be held periodically throughout the state;

(i) establishing the form and content of all applications for licenses and permits;

(j) designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The department may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration which would be sublethal to humans and animals if small amounts of it were

1 accidentally swallowed, inhaled, sprayed, or dusted on the
2 skin.

3 (k) revoking licenses and permits;

4 (l) registering or controlling any spray adjuvant,
5 such as a wetting agent, spreading agent, deposit builder,
6 adhesive, emulsifying agent, deflocculating agent, water
7 modifier, or similar agent with or without toxic properties
8 of its own intended to be used with any other pesticide as
9 an aid to the application or effect of that other pesticide,
10 whether or not distributed in a package or container
11 separate from that of a pesticide with which it is to be
12 used;

13 (m) registering pesticide-fertilizer and other
14 chemical blends or, instead of registration, establishing
15 licensing, inspection, and fees for blending plants;

16 (n) establishing registration procedures for devices,
17 with a fee not to exceed \$5 per type of device, specifying
18 classes of devices to be registered and providing for
19 additional requirements;

20 ~~(o) imposing conditions for renewal of dealers~~
21 ~~applicators, and operator licenses and permits, including~~
22 ~~regualification training;~~

23 ~~(p) establishing procedures for implementing and~~
24 ~~administering the civil penalties under 80-8-306; and~~

25 ~~(q) establishing fees for training courses, and~~

1 ~~materials.~~

2 (3) (a) Whenever the department finds that those rules
3 are necessary to carry out the purposes and intent of this
4 chapter, the rules may relate to the time, place, manner,
5 and method of registration, ~~suspension or cancellation of~~
6 ~~registrations,~~ application, or selling of the pesticides, may
7 restrict or prohibit use of pesticides in the state or in
8 designated areas during specified periods of time, and shall
9 encompass all reasonable factors which the department
10 considers necessary to prevent damage or injury to:

11 (i) persons, animals, ~~crops,~~ or pollinating insects
12 from the effect of drift or careless application;

13 (ii) the environment;

14 (iii) plants, including forage plants;

15 (iv) wildlife;

16 (v) fish and other aquatic life.

17 (b) In issuing the rules, the department shall give
18 consideration to pertinent research findings and
19 recommendations of other agencies of this state or of the
20 federal government.

21 (4) If the department finds that an emergency exists
22 which requires immediate action with regard to the
23 registration, use, or application of pesticides, the
24 department may, without notice or hearing, issue necessary
25 orders or rules to protect the public health, welfare, and

1 safety. An order or rule issued under this subsection is
 2 effective for the period prescribed by the Montana
 3 Administrative Procedure Act. If the department determines
 4 that the emergency order or rule should remain in effect, a
 5 public hearing under 80-8-106 shall be held within the above
 6 period to determine whether the order or rule should be
 7 adopted by the department.

8 (5) All rules and orders issued by the department
 9 shall be in writing, shall be entered in full in books to be
 10 kept by the department for that purpose, shall be indexed,
 11 and shall be public records open for inspection at all times
 12 during reasonable office hours. Except for orders
 13 establishing or changing rules of practice and procedure,
 14 all orders made and published by the department shall
 15 include and be based upon written findings of fact. A copy
 16 of any rule or order certified by the department shall be
 17 received in evidence in all courts of this state with the
 18 same effect as the original."

19 Section 2. Section 80-8-109, MCA, is amended to read:

20 "80-8-109. Educational programs. ~~(1)~~ The department ~~in~~
 21 ~~cooperation with other state and federal agencies~~ shall
 22 develop and conduct appropriate educational programs. The
 23 educational programs shall inform those individuals dealing
 24 in and applying pesticides as to correct methods of
 25 formulating, applying, storing, disposing of, handling, and

1 transporting pesticides.

2 ~~(2) In developing and administering such programs, the~~
 3 ~~department may consult other state and federal agencies AND~~
 4 ~~PRIVATE INDUSTRY, as well as such other persons it considers~~
 5 ~~necessary, and may charge a fee for the programs~~
 6 ~~commensurate with their administration costs. The fee may~~
 7 ~~not include the salary or travel expenses of any employee of~~
 8 ~~the state or a unit of the Montana university system.~~

9 ~~(3) All fees collected in any fiscal year and not~~
 10 ~~expended within that fiscal year must be placed in an~~
 11 ~~educational and manuals account of the earmarked revenue~~
 12 ~~fund for future use for that purpose."~~

13 Section 3. Section 80-8-201, MCA, is amended to read:

14 "80-8-201. Registration. (1) Every pesticide
 15 distributed, sold, or offered for sale within this state or
 16 delivered for transportation or transported in intrastate
 17 commerce or between points within this state shall be
 18 registered with the department. ~~The registration shall be~~
 19 ~~renewed annually by the manufacturer, formulator, or~~
 20 ~~distributor of the pesticide. The department shall register~~
 21 ~~all approved pesticides and those registered applications~~
 22 ~~for registration shall be filed annually with the department~~
 23 ~~THE REGISTRATION SHALL BE RENEWED ANNUALLY by the~~
 24 ~~manufacturer, formulator, or distributor of the pesticide.~~
 25 ~~The department shall review the application and subject to~~

~~the provisions of subsection 141x may register the pesticide for use in the state. Pesticides so approved REGISTER ALL FEDERALLY APPROVED PESTICIDES, AND THOSE REGISTERED~~ are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated. ~~Within the first 2 months of each calendar year, the department shall prepare a list of all pesticides registered within the state. The list must be distributed to the department of health and environmental sciences and the department of fish, wildlife and parks and must be made available to the public.~~

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

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

(b) a complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is so registered, and a statement of all claims to be made for it, including directions for use;

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

(d) if requested by the department, a full description of tests made and the results upon which the claims are based; ~~including all available information in the possession~~

~~BE THE APPLICANT about the effects of the pesticide on REPRESENTATIVE nontarget species.~~ In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

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

(4) The applicant shall pay an annual fee of ~~\$15~~ **\$25** **\$20** for each pesticide registered. A registration fee is not required to register on a ~~federally approved~~ experimental use permit. Fees collected shall be deposited in the state treasury to the credit of the general fund.

(5) The department may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department that the

1 composition of the article warrants the proposed claims for
2 it and if the article and its labeling and other material
3 required to be submitted comply with the requirements of
4 80-8-202, it shall register the article.

5 (6) If it does not appear to the department that the
6 article warrants the proposed claims for it or if the
7 article and its labeling and other material required to be
8 submitted do not comply with this chapter, it shall notify
9 the applicant of the manner in which the article, labeling,
10 or other material required to be submitted fails to comply
11 with the chapter so as to afford the applicant an
12 opportunity to make the necessary corrections. If the
13 applicant does not make the corrections upon receipt of the
14 notice, the department may refuse to register the article.
15 The department may suspend or cancel the registration of a
16 pesticide whenever it does not appear that the article or
17 its labeling comply with this chapter OR WHENEVER SCIENTIFIC
18 EVIDENCE PROVES THAT THE ARTICLE ENDANGERS MAN OR THE
19 GENERAL ENVIRONMENT AFFORDED PROTECTION UNDER
20 80-8-105(3)(A). When an application for registration is
21 refused or the department proposes to suspend or cancel a
22 registration, the registrant may appeal ~~the~~ department's
23 decision pursue administrative remedies under the Montana
24 Administrative Procedure Act and rules of the department.

25 (7) Registration is not required in the case of a

1 pesticide shipped from one plant in this state to another
2 plant in this state by the same person.

3 (8) (a) The departments of health and environmental
4 sciences, agriculture, and fish, wildlife, and parks shall
5 review all applications for registration of an
6 experimental-use permit or a registration for special local
7 needs. The applicant shall pay a one-time fee of \$50 for a
8 special local need or experimental use permit registration.
9 Within 30 days of receipt of the list of registered
10 pesticides provided for under subsection (f), each
11 department may also request that any pesticide registered
12 by the department or being considered for registration by
13 the department be reviewed in accordance with this
14 subsection. THE DEPARTMENTS, IN DETERMINING WHETHER TO
15 REQUEST SUCH REVIEW FOR A PARTICULAR CHEMICAL PRODUCT, MAY
16 NOT REQUEST A REVIEW UNLESS THE CHEMICAL MATERIAL OR ITS
17 BYPRODUCTS HAVE BEEN SHOWN TO

18 (i) HAVE A HALF-LIFE IN THE ENVIRONMENT GREATER THAN 7
19 DAYS;

20 (ii) ACCUMULATE IN VEGETATION, SOILS, OR ANIMAL
21 ISSUES; AND

22 (iii) BE A SUSPECTED CARCINOGEN, MUTAGEN, OR TERATOGEN.

23 The departments shall utilize ~~but are not limited to~~ the
24 same SAME requirements and standards for reviewing
25 registrations as established by the Federal Insecticide,

1 Fungicide, and Rodenticide Act, as amended, and regulations
2 adopted thereunder. The department of agriculture shall
3 provide the departments of health and environmental sciences
4 and fish, wildlife, and parks with a complete copy of the
5 application, related correspondence, and a statement of the
6 department of agriculture's proposed action on the
7 application. The departments of health and environmental
8 sciences and fish, wildlife, and parks shall approve or
9 disapprove the application within 10 days after the receipt
10 of the application. If the departments of health and
11 environmental sciences, agriculture, and fish, wildlife, and
12 parks are in agreement with the proposed registration, the
13 department of agriculture shall issue the registration.

14 (b) The department of agriculture shall establish a
15 time and place for an interagency conference for the
16 purposes of resolving the registration of any pesticide or
17 device. If two of the departments approve the proposed
18 registration, the department of agriculture shall issue the
19 registration.

20 (c) The registrant applying for registration shall be
21 notified as to proposed changes in registration. If the
22 departments cannot resolve the proposed registration
23 following the interagency conference, the registrant may
24 request a joint administrative hearing before the
25 departments of agriculture, health and environmental

1 sciences, and fish, wildlife, and parks.

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

11 ~~(2) Pesticides registered under any federal law when~~
12 ~~cancelled for sale and use in total or in part by a federal~~
13 ~~agency responsible for registration are considered canceled~~
14 ~~in total or in part for sale and use in Montana. For the~~
15 ~~purpose of bringing such pesticides into Montana for sale~~
16 ~~or use, the cancellation is effective upon announcement of~~
17 ~~the cancellation by the federal agency. Such pesticides in~~
18 ~~Montana at the time of the announcement may be sold or used~~
19 ~~until the cancellation is effective on the final date of~~
20 ~~sale or use allowed under the federal law and rules or~~
21 ~~orders of the federal agency. If the federal cancellation~~
22 ~~allows existing stock to be used past the final date of~~
23 ~~cancellation, such sale or use in this state may not exceed~~
24 ~~2 years. The department shall provide technical assistance~~
25 ~~to any person in possession of such products to insure their~~

1 ~~proper disposal, relabeling, or removal."~~

2 Section 4. Section 80-8-203, MCA, is amended to read:

3 "80-8-203. Commercial applicator. (1) It shall be
4 unlawful for any person to engage in the business of
5 applying pesticides for another without a pesticide
6 applicator's license obtained from the department of
7 agriculture. The application shall be accompanied by a fee
8 of ~~\$15~~ ~~150~~ ~~120~~. Applicators applying for a dealer's license
9 under this chapter shall be required to pay only a ~~\$10~~ ~~120~~
10 ~~115~~ licensing fee for the dealer's license. The provisions
11 of this ~~section~~ ~~subsection~~ shall not apply to any person
12 employed only to operate any equipment used for the
13 application of any pesticide and in which the person has no
14 financial interest or other control over such apparatus
15 other than its day-to-day mechanical operation for the
16 purpose of applying any pesticide.

17 ~~Each applicator shall have his license in his~~
18 ~~possession when using pesticides and shall display the~~
19 ~~license upon request of an authorized agent of the~~
20 ~~department.~~

21 ~~(2)(1)(2)~~ Public utility applicators shall be licensed
22 in the same manner as commercial applicators, provided that
23 public utility operators working under public utility
24 applicators are not required to be licensed except as
25 provided for under 80-8-205.

1 ~~(3)(1)(3)~~ Veterinarians licensed as provided in Title
2 37, chapter 18, part 3, shall not be required to be licensed
3 to apply nonrestricted pesticides, provided that these
4 veterinarians shall register with the department each year;
5 provided further that the veterinarians shall be required to
6 meet all other requirements and rules of the Montana
7 Pesticides Act. The department shall consider the
8 professional licensing requirements for veterinarians when
9 adopting rules."

10 Section 5. Section 80-8-204, MCA, is amended to read:

11 "80-8-204. Application for applicator's license. (1)
12 Application for a pesticide applicator's license provided
13 for in 80-8-203 shall be made annually to the department
14 before applying pesticides in any calendar year, provided
15 that pesticide applicators applying for renewal of license
16 shall do so on or before ~~May~~ ~~MARCH~~ 1 of that calendar year.
17 Any applicator applying for renewal of license after ~~May~~
18 ~~MARCH~~ 1 shall be assessed a ~~\$15~~ ~~125~~ late licensing fee.

19 (2) An individual applying for a license to engage in
20 aerial application of pesticides shall certify on the
21 application that he has met all the federal aviation
22 administration and the department of commerce requirements
23 for aerial pesticide applicators."

24 Section 6. Section 80-8-207, MCA, is amended to read:

25 "80-8-207. Dealers. (1) It is unlawful for any person

1 to sell, offer for sale, deliver, or have delivered within
 2 this state any pesticide without first procuring a license
 3 from the department of agriculture for each calendar year or
 4 portion thereof. A separate dealer's license and fee shall
 5 be required for each location or outlet from which
 6 pesticides are distributed, sold, held for sale, or offered
 7 for sale. Pesticide fieldmen or salesmen employed directly
 8 out of the same location or outlet and under a licensed
 9 dealer shall not be required to obtain a license. The dealer
 10 shall furnish the department the names and addresses of its
 11 fieldmen and salesmen selling pesticides within the state.
 12 ~~A dealer shall have his license in his possession when~~
 13 ~~selling pesticides and shall display the license upon~~
 14 ~~request of an authorized agent of the department.~~

15 (2) The application for a license shall be accompanied
 16 by a fee of ~~\$15 \$50 \$20~~. Dealers applying for renewal of
 17 license shall do so on or before May ~~MARCH~~ 1 of that
 18 calendar year. Any dealer applying for renewal of license
 19 after May ~~MARCH~~ 1 shall be assessed a ~~\$15 \$25 \$15~~ late
 20 licensing fee.

21 (3) The dealer shall require the purchaser of any
 22 restricted pesticide to exhibit his license or permit issued
 23 under authority of this chapter before completing a sale.

24 (4) Dealers may make one application for two annual
 25 licenses if the application is accompanied by a ~~\$15 \$50 \$20~~

1 licensing fee for each year of the state biennium.

2 (5) Pharmacists licensed as provided for in 37-7-302
 3 and 37-7-303, veterinarians licensed as provided for in
 4 37-18-302 and 37-18-303, and certified pharmacies licensed
 5 under 37-7-321 shall not be required to be licensed to sell
 6 pesticides, provided that the certified pharmacies and
 7 veterinarians shall register with the department each year.
 8 However, the certified pharmacies and veterinarians shall be
 9 required to meet all other requirements concerning the
 10 commercial sale of pesticides. The department shall take
 11 into account the professional licensing requirements of
 12 pharmacists, certified pharmacies, and veterinarians when
 13 adopting rules."

14 Section 7. Section 80-8-209, MCA, is amended to read:
 15 "80-8-209. Farm applicators. (1) Farm applicators
 16 shall obtain a special-use permit prior to purchasing and
 17 using any pesticide designated by the department as a
 18 restricted-use pesticide. ~~The fee for the permit is \$15.~~
 19 The special-use permit shall be effective for 5 calendar
 20 years. The department may establish a staggered years system
 21 of issuing permits.

22 (2) Restricted pesticides may not be utilized by farm
 23 applicators or their employees except for the purpose of
 24 producing or protecting any agricultural commodity on
 25 property owned, leased, or rented by such applicator or--es

1 provided in (6) of this section ~~OR AS PROVIDED IN SUBSECTION~~
 2 ~~(6) OF THIS SECTION.~~

3 (3) Farm applicators shall qualify for the their first
 4 permit by either passing a graded written examination or
 5 attending a training course approved by the department and
 6 taking an ungraded written examination. The examinations and
 7 course shall require and demonstrate practical knowledge of
 8 the applicator's ability to:

9 (a) recognize common pests to be controlled and damage
 10 caused by them;

11 (b) read and understand the label and labeling
 12 information, including the common name of the pesticide(s)
 13 applied, pest(s) to be controlled, timing and methods of
 14 application, safety precautions, any preharvest or reentry
 15 restrictions, and any specific disposal procedures;

16 (c) apply pesticides in accordance with label
 17 instructions and warnings, including the ability to prepare
 18 the proper concentration of pesticides to be used under
 19 particular circumstances, taking into account such factors
 20 as area to be covered, speed at which application equipment
 21 will be driven, and the quantity dispersed in a given period
 22 of operations;

23 (d) recognize local environmental situations that must
 24 be considered during application to avoid contamination; and

25 (e) recognize poisoning symptoms and procedures to

1 follow in case of a pesticide accident.

2 (4) The department may require farm applicators to
 3 attend a mandatory training session and pass a written
 4 examination for those restricted pesticides that are
 5 extremely toxic or for which an effective antidote is not
 6 available. The department may require farm applicators
 7 handling these pesticides to maintain use records.

8 ~~(5) Farm applicators manifesting reading disabilities~~
 9 ~~may become certified to use as many as two restricted-use~~
 10 ~~pesticides by passing a specific oral examination on the~~
 11 ~~particular pesticide(s) if the applicator documents that a~~
 12 ~~certified applicator in the immediate vicinity can advise~~
 13 ~~him. The department shall require farm applicators to~~
 14 ~~requalify for renewal of the 5-year permit by obtaining 100~~
 15 ~~training credits. The department shall establish by rule a~~
 16 ~~uniform system of administering the requalification training~~
 17 ~~credits. The department may credit only training related to~~
 18 ~~the standards set forth in subsection (3).~~

19 (6) Provisions of this chapter relating to
 20 certification of farm applicators do not apply to any farm
 21 applicator applying nonrestricted pesticides on his own land
 22 or on lands of his neighbors if he:

23 (a) operates farm property and operates and maintains
 24 pesticide application equipment primarily for his own use;

25 (b) is not regularly engaged in the business of

1 applying pesticides for hire and does not publicly hold
2 himself out as a pesticide applicator;

3 (c) operates his pesticide application equipment only
4 in the vicinity of his own property and for the
5 accommodation of his immediate neighbors."

6 Section 8. Section 80-8-213, MCA, is amended to read:

7 "80-8-213. Government agencies. (1) All state
8 agencies, municipal corporations, or any other governmental
9 agency shall be subject to the provisions of this chapter
10 and rules adopted thereunder concerning the application or
11 sale of pesticides. Applicators and operators applying
12 pesticides and dealers selling pesticides for agencies,
13 municipal corporations, or any governmental agencies shall
14 be subject to the provisions of 80-8-203 through 80-8-208
15 and the

16 (2) ~~The~~ department shall issue a limited commercial
17 applicator's, operator's, or dealer's license without a fee
18 for an annual fee of \$50, which shall be valid only when
19 such applicator, operator, and dealer are applicator or
20 dealer is applying or selling pesticides for such agencies,
21 provided that the jurisdictional health officer, state
22 veterinarian, their duly authorized representatives, or
23 governmental research personnel are exempt from this
24 licensing requirement when applying pesticides to
25 experimental areas.

1 (3) A governmental agency shall pay the annual
2 applicator's fee for its first four employee applicators.
3 The agency shall pay an annual fee of \$5 for each additional
4 employee applicator.

5 (4) Government employees becoming certified
6 applicators only to qualify for conducting pesticide
7 education courses may not be charged a license fee but are
8 limited to providing such courses. Government operators are
9 subject to rules adopted pursuant to 80-8-205, including the
10 license fee."

11 Section 9. Section 80-8-306, MCA, is amended to read:

12 "80-8-306. Penalties. (1) Any person convicted of
13 violating any of the provisions of this chapter or the rules
14 issued thereunder or who may misrepresent, impede, obstruct,
15 hinder, or otherwise prevent or attempt to prevent the
16 department or its duly authorized agent in performance of
17 its duty in connection with the provisions of this chapter
18 shall be adjudged guilty of a misdemeanor and shall be fined
19 not less than \$100 ~~\$500~~ \$100 but not more than \$500 ~~\$2,500~~
20 \$1,500 or imprisoned in the county jail for a term not to
21 exceed 6 months or both.

22 (2) The department or its authorized representative is
23 hereby authorized to apply to the district court of the
24 county or any county wherein a violation is about to occur
25 or has occurred to grant a temporary or permanent injunction

1 restraining any person from violating or continuing to
 2 violate any of the provisions of this chapter or any rule
 3 promulgated under the chapter notwithstanding the existence
 4 of other remedies of law. When a person makes pesticide
 5 applications in more than one county on a commercial basis
 6 without a license or permit or operates in violation of a
 7 lawful written order of the department in more than one
 8 county, the district court of Lewis and Clark County has
 9 concurrent jurisdiction with the district court of any other
 10 county wherein a violation has occurred or is about to
 11 occur, and the department may select and proceed in the
 12 court most appropriate under the circumstances. The
 13 injunction is to be issued without bond.

14 (3) Nothing in this chapter is to be construed as
 15 requiring the department or its authorized agent to report
 16 minor violations of the chapter for prosecution or for the
 17 institution of seizure proceedings when it believes the
 18 public interest will be best served by other remedial
 19 action, by a suitable notice of warning in writing, or by a
 20 lawful written order; nor is any part of this chapter to be
 21 construed to apply to common carriers transporting shipments
 22 tendered to them by the general public.

23 (4) Any person who with intent to defraud uses or
 24 reveals information relative to formulas of products
 25 acquired under the authority of 80-8-201 shall, upon

1 conviction, be fined not more than \$500 or imprisoned for
 2 not more than 1 year, or both.

3 ~~(5) (a) Any registrant, applicator, dealer, retailer,~~
 4 ~~or other person who violates any provision~~ COMMITTS A MAJOR
 5 VIOLATION of this chapter AS DEFINED IN SUBSECTION (5)(D)
 6 may be assessed a civil penalty by the department of not
 7 more than \$1,000 for each offense. However, farm
 8 applicators possessing a permit may not be assessed a civil
 9 penalty over \$200 for the first offense. Assessment of a
 10 civil penalty may be made in conjunction with any other
 11 department WARNING, order, or administrative action
 12 authorized by this chapter.

13 ~~(b) No civil penalty may be assessed unless the person~~
 14 ~~charged was given notice and opportunity for a hearing~~
 15 ~~pursuant to the Montana Administrative Procedure Act.~~

16 ~~(c) In determining an appropriate penalty, the~~
 17 ~~department shall consider the effect on the person's ability~~
 18 ~~to continue in business, the gravity of the violation, which~~
 19 ~~occurred, the degree of care exercised by the offender, and~~
 20 ~~whether significant harm resulted to health, environment,~~
 21 ~~agricultural crops, or livestock. A CIVIL PENALTY SHALL ONLY~~
 22 ~~BE ASSESSED AGAINST A PERSON WHEN ONE OR MORE MAJOR~~
 23 ~~VIOLATIONS ARE PROVEN UNDER THE PROCEEDURES OF THIS ACT AND~~
 24 ~~THE MONTANA ADMINISTRATIVE PROCEDURE ACT. MAJOR VIOLATIONS~~
 25 INCLUE IN DETERMINING AN APPROPRIATE PENALTY, THE

DEPARTMENT SHALL CONSIDER THE EFFECT ON THE PERSON'S ABILITY TO CONTINUE IN BUSINESS, THE GRAVITY OF THE VIOLATION WHICH OCCURRED, THE DEGREE OF CARE EXERCISED BY THE OFFENDER, AND WHETHER SIGNIFICANT HARM RESULTED TO HEALTH, ENVIRONMENT, AGRICULTURAL CROPS, OR LIVESTOCK.

(D) A MAJOR VIOLATION OF THIS CHAPTER INCLUDES:

(I) MISUSE OF A PESTICIDE WHICH RESULTS IN PROVEN HARM TO HUMAN HEALTH, THE ENVIRONMENT, OR AGRICULTURAL CROPS OR LIVESTOCK;

(II) SELLING OF A RESTRICTED PESTICIDE TO A PERSON NOT CERTIFIED OR AUTHORIZED TO PURCHASE SUCH PESTICIDES;

(III) USE OR SALE OF UNREGISTERED PESTICIDES;

(IV) FAILURE TO MAINTAIN ANY INDIVIDUAL PESTICIDE APPLICATION AND SALES RECORDS;

(V) USING OR SELLING PESTICIDES WITHOUT HAVING OBTAINED THE REQUIRED LICENSE OR PERMIT; OR

(VI) REOCCURRENCE OF ANY IDENTICAL VIOLATIONS VIOLATION OF THIS CHAPTER WITHIN THE SAME CALENDAR YEAR. The department may issue a warning or take any other appropriate action allowed by this chapter.

(E) If the department is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court.

(6) ANY PERSON AGAINST WHOM THE DEPARTMENT HAS ASSESSED A CIVIL PENALTY UNDER THIS SECTION MAY, WITHIN 30 DAYS OF THE FINAL AGENCY ACTION MAKING THE ASSESSMENT, APPEAL THE ASSESSMENT TO THE DISTRICT COURT OF THE COUNTY IN WHICH THE VIOLATION IS ALLEGED BY THE DEPARTMENT TO HAVE OCCURRED. APPEAL IS BY TRIAL DE MOVO, AND A JURY TRIAL MUST BE GRANTED IF REQUESTED, WHERE THE PROVISIONS OF THIS SUBSECTION CONFLICT WITH 2-4-702 THROUGH 2-4-704, THE PROVISIONS OF THIS SUBSECTION GOVERN."

NEW SECTION. Section 10. Earmarked--fund DEPOSIT OF FEES AND PENALTIES IN GENERAL FUND. That portion of all licensing, permitting, registration, and equipment inspection fees collected which constitutes an increase after October 1, 1983, must be deposited in the earmarked revenue fund for the purpose of supporting a portion of the costs of administering this chapter. The administration of this chapter is to be funded from both the earmarked revenue fund and the general fund because of the mutual benefits to the industry and the public as stated in 80-8-183. Reserve earmarked revenue fund money may be invested by the department through the board of investments. The income from such investments must be credited to the proper department account in the earmarked revenue fund. ALL LICENSING, PERMIT, REGISTRATION, AND EQUIPMENT INSPECTION FEES COLLECTED UNDER PART 2 OF THIS CHAPTER AND ANY CIVIL PENALTIES COLLECTED

1 ~~UNDER 80-8-306 MUST BE DEPOSITED IN THE GENERAL FUND.~~

2 ~~NEW SECTION.~~ Section 11. Codification instruction.
3 Section 10 is intended to be codified as an integral part of
4 Title 80, chapter 8.

5 ~~NEW SECTION.~~ Section 12. Saving clause. This act does
6 not affect rights and duties that matured, penalties that
7 were incurred, or proceedings that were begun before the
8 effective date of this act.

9 ~~NEW SECTION.~~ Section 13. Severability. If a part of
10 this act is invalid, all valid parts that are severable from
11 the invalid part remain in effect. If a part of this act is
12 invalid in one or more of its applications, the part remains
13 in effect in all valid applications that are severable from
14 the invalid applications.

15 ~~SECTION 14--TERMINATION--SECTION 3--TERMINATES JULY 1,~~
16 ~~1985~~

-End-

.....April.....9, 1983.....

FREE CONFERENCE COMMITTEE
HOUSE BILL 802
(Report No. 1, 10 a.m.)

MR. SPEAKER:

We, your Free Conference Committee on House Bill 802, met and considered:

1. Senate Agriculture, Livestock, and Irrigation Committee amendments to Third Reading copy, dated March 16, 1983; and
2. Senate Committee of the Whole amendment to the Third Reading copy, dated March 22, 1983.

We respectfully recommend as follows:

That the House accede to the Senate Committee of the Whole amendment and to the Senate Agriculture, Livestock, and Irrigation Committee amendment nos. 1 through 5, 7 through 12, 15 through 18, 20, 21, and 24 through 37;

That the Senate recede from the Senate Agriculture, Livestock and Irrigation Committee amendment nos. 6, 13, 14, 19, 22, and 23;

That House Bill 802 be further amended as specified in the Clerical Instructions 1, 2, 3, 4, 5, 6 and 7; and

That this Free Conference Committee report be adopted.

CLERICAL INSTRUCTIONS FOR REFERENCE COPY (SALMON)

- 1) Strike Senate Agriculture, Livestock, and Irrigation Committee amendment nos. 6, 13, 14, 19, 22, and 23;
- 2) Page 8, line 19.
Strike: "\$20"
Insert: "\$50"
- 3) Page 13, line 8.
Strike: "\$20"
Insert: "\$35"
- 4) Page 13, line 10.
Strike: "\$15"
Insert: "\$20"
- 5) Page 15, line 16.
Strike: "\$20"
Insert: "\$35"

Gene Brown

(2 of 2)

..... 19

6) Page 15, line 19.

Strike: "\$15"


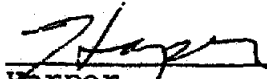
Insert: "\$25"

7) Page 15, line 25.



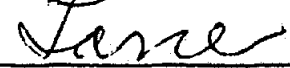
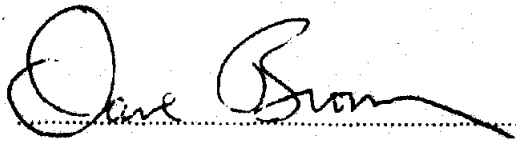
Strike: "\$20"

Insert: "\$35"

FOR THE HOUSE:


Dave Brown, Chairman
Bergene
Harper

FOR THE SENATE:


Galt, Chairman
Kolstad
Lane

1 HOUSE BILL NO. 802

2 INTRODUCED BY D. BROWN, MOHAR, REGAN,

3 BERGENE, REAM, HARPER, RAMIREZ

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 LAWS RELATING TO THE REGULATION OF THE SALE AND USE OF
7 PESTICIDES; AMENDING SECTIONS 80-8-105, 80-8-109, 80-8-201,
8 80-8-203, 80-8-204, 80-8-207, 80-8-209, 80-8-213, AND
9 80-8-306, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 80-8-105, MCA, is amended to read:

13 "80-8-105. Rules. (1) The department may adopt by
14 reference without a public hearing regulations adopted under
15 the Federal Insecticide, Fungicide, and Rodenticide Act, as
16 amended. The department may, after a public hearing, adopt
17 all rules necessary to carry out this chapter.

18 (2) The rules may prescribe methods of:

19 (a) registration, suspension or cancellation of
20 registration, application, use, or restricting use,
21 prohibiting use, offering or exposing for sale of any
22 pesticide;

23 (b) determining whether pesticides are highly toxic to
24 man;

25 (c) determining standards of coloring or discoloring

1 for pesticides and subjecting pesticides to the requirements
2 of 80-8-202;

3 (d) licensing commercial applicators, operators, and
4 dealers, establishing methods of recordkeeping for
5 applicators, operators, and dealers, and providing for the
6 review of the records by the department's authorized agent
7 and the submission of the records to the department upon
8 written request;

9 (e) issuing farm applicator special-use permits and
10 the maintenance and submission of records by farm
11 applicators issued special-use permits;

12 (f) collection, examination, and standard deviation
13 from guarantee analysis and umpire analysis of pesticides
14 and devices;

15 (g) operating and maintaining equipment used by
16 applicators;

17 (h) developing examinations which shall be held
18 periodically throughout the state;

19 (i) establishing the form and content of all
20 applications for licenses and permits;

21 (j) designating pesticides that may be sold at retail
22 for home, yard, garden, and lawn use. The department may
23 also limit retail sale of pesticides, up to a specific
24 number of pounds or gallons and concentration which would be
25 sublethal to humans and animals if small amounts of it were

1 accidentally swallowed, inhaled, sprayed, or dusted on the
2 skin.

3 (k) revoking licenses and permits;

4 (l) registering or controlling any spray adjuvant,
5 such as a wetting agent, spreading agent, deposit builder,
6 adhesive, emulsifying agent, deflocculating agent, water
7 modifier, or similar agent with or without toxic properties
8 of its own intended to be used with any other pesticide as
9 an aid to the application or effect of that other pesticide,
10 whether or not distributed in a package or container
11 separate from that of a pesticide with which it is to be
12 used;

13 (m) registering pesticide-fertilizer and other
14 chemical blends or, instead of registration, establishing
15 licensing, inspection, and fees for blending plants;

16 (n) establishing registration procedures for devices,
17 with a fee not to exceed \$5 per type of device, specifying
18 classes of devices to be registered and providing for
19 additional requirements;

20 ~~(o) imposing conditions for renewal of dealer,~~
21 ~~applicator, and operator licenses and permits, including~~
22 ~~requalification training;~~

23 ~~(p) establishing procedures for implementing and~~
24 ~~administering the civil penalties under 80-8-306; and~~

25 ~~(q) establishing fees for training courses and~~

1 ~~materials.~~

2 (3) (a) Whenever the department finds that those rules
3 are necessary to carry out the purposes and intent of this
4 chapter, the rules may relate to the time, place, manner,
5 and method of registration, ~~suspension or cancellation of~~
6 ~~registration,~~ application, or selling of the pesticides, may
7 restrict or prohibit use of pesticides in the state or in
8 designated areas during specified periods of time, and shall
9 encompass all reasonable factors which the department
10 considers necessary to prevent damage or injury to:

11 (i) persons, animals, ~~crops,~~ or pollinating insects
12 from the effect of drift or careless application;

13 (ii) the environment;

14 (iii) plants, including forage plants;

15 (iv) wildlife;

16 (v) fish and other aquatic life.

17 (b) In issuing the rules, the department shall give
18 consideration to pertinent research findings and
19 recommendations of other agencies of this state or of the
20 federal government.

21 (4) If the department finds that an emergency exists
22 which requires immediate action with regard to the
23 registration, use, or application of pesticides, the
24 department may, without notice or hearing, issue necessary
25 orders or rules to protect the public health, welfare, and

1 safety. An order or rule issued under this subsection is
 2 effective for the period prescribed by the Montana
 3 Administrative Procedure Act. If the department determines
 4 that the emergency order or rule should remain in effect, a
 5 public hearing under 80-8-106 shall be held within the above
 6 period to determine whether the order or rule should be
 7 adopted by the department.

8 (5) All rules and orders issued by the department
 9 shall be in writing, shall be entered in full in books to be
 10 kept by the department for that purpose, shall be indexed,
 11 and shall be public records open for inspection at all times
 12 during reasonable office hours. Except for orders
 13 establishing or changing rules of practice and procedure,
 14 all orders made and published by the department shall
 15 include and be based upon written findings of fact. A copy
 16 of any rule or order certified by the department shall be
 17 received in evidence in all courts of this state with the
 18 same effect as the original."

19 Section 2. Section 80-8-109, MCA, is amended to read:
 20 "80-8-109. Educational programs. ~~(1)~~ The department in
 21 ~~cooperation with other state and federal agencies~~ shall
 22 develop and conduct appropriate educational programs. The
 23 educational programs shall inform those individuals dealing
 24 in and applying pesticides as to correct methods of
 25 formulating, applying, storing, disposing of, handling, and

1 transporting pesticides.

2 ~~(2) In developing and administering such programs, the~~
 3 ~~department may consult other state and federal agencies AND~~
 4 ~~PRIVATE INDUSTRY, as well as such other persons it considers~~
 5 ~~necessary, and may charge a fee for the programs~~
 6 ~~commensurate with their administration costs. The fee may~~
 7 ~~not include the salary or travel expenses of any employee of~~
 8 ~~the state or a unit of the Montana university system.~~

9 ~~(3) All fees collected in any fiscal year and not~~
 10 ~~expended within that fiscal year must be placed in an~~
 11 ~~educational and manuals account of the earmarked revenue~~
 12 ~~fund for future use for that purpose."~~

13 Section 3. Section 80-8-201, MCA, is amended to read:
 14 "80-8-201. Registration. (1) Every pesticide
 15 distributed, sold, or offered for sale within this state or
 16 delivered for transportation or transported in intrastate
 17 commerce or between points within this state shall be
 18 registered with the department. ~~The registration shall be~~
 19 ~~renewed annually by the manufacturer, formulator, or~~
 20 ~~distributor of the pesticide. The department shall register~~
 21 ~~all approved pesticides and those registered applications~~
 22 ~~for registration shall be filed annually with the department~~
 23 ~~THE REGISTRATION SHALL BE RENEWED ANNUALLY by the~~
 24 ~~manufacturer, formulator, or distributor of the pesticide.~~
 25 ~~The department shall review the application and subject to~~

1 ~~the provisions of subsection (8) may register the pesticide~~
 2 ~~for use in the state. Pesticides so approved~~ REGISTER ALL
 3 ~~FEDERALLY APPROVED PESTICIDES, AND THOSE REGISTERED~~ are
 4 subject to registration fees and all other provisions of
 5 this chapter. All registrations of pesticides expire on
 6 December 31 following the date of issuance unless otherwise
 7 terminated. ~~Within the first 2 months of each calendar~~
 8 ~~year, the department shall prepare a list of all pesticides~~
 9 ~~registered within the state. The list must be distributed~~
 10 ~~to the department of health and environmental sciences and~~
 11 ~~the department of fish, wildlife, and parks and must be made~~
 12 ~~available to the public.~~

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

15 (a) the name and address of the applicant and the name
 16 and address of the person whose name will appear on the
 17 label, if other than the registrant;

18 (b) a complete copy of the label of the pesticide, the
 19 United States environmental protection agency registration
 20 number if the pesticide is so registered, and a statement of
 21 all claims to be made for it, including directions for use;

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

23 (d) if requested by the department, a full description
 24 of tests made and the results upon which the claims are
 25 based, ~~including all available information in the possession~~

1 ~~OF THE APPLICANT about the effects of the pesticide on~~
 2 ~~REPRESENTATIVE nontarget species.~~ In the case of renewal of
 3 registration, a statement shall be required only with
 4 respect to information which is different from that
 5 furnished when the pesticide was registered or last
 6 reregistered.

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

18 (4) The applicant shall pay an annual fee of \$15 ~~\$20~~
 19 ~~\$20~~ \$20 for each pesticide registered. A registration fee is
 20 not required to register on a federally approved
 21 experimental use permit. Fees collected shall be deposited
 22 in the state treasury to the credit of the general fund.

23 (5) The department may require the submission of the
 24 complete formula and certified analytical standards of any
 25 pesticide. If it appears to the department that the

composition of the article warrants the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of 80-8-202, it shall register the article.

(6) If it does not appear to the department that the article warrants the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with this chapter, it shall notify the applicant of the manner in which the article, labeling, or other material required to be submitted fails to comply with the chapter so as to afford the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the article. The department may suspend or cancel the registration of a pesticide whenever it does not appear that the article or its labeling comply with this chapter ~~OR WHENEVER SCIENTIFIC EVIDENCE PROVES THAT THE ARTICLE ENDANGERS MAN OR THE GENERAL ENVIRONMENT AFFORDED PROTECTION UNDER 80-9-105(1)(A).~~ When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may appeal the department's decision ~~pursue administrative remedies under the Montana Administrative Procedure Act and rules of the department.~~

(7) Registration is not required in the case of a

pesticide shipped from one plant in this state to another plant in this state by the same person.

(8) (a) The departments of health and environmental sciences, agriculture, and fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for special local needs. ~~The applicant shall pay a one-time fee of \$50 for a special local need or experimental use permit registration. Within 30 days of receipt of the list of registered pesticides provided for under subsection (1), each department may also request that any a pesticide registered by the department or being considered for registration by the department be reviewed in accordance with this subsection. THE DEPARTMENTS, IN DETERMINING WHETHER TO REQUEST SUCH REVIEW FOR A PARTICULAR CHEMICAL PRODUCT, MAY NOT REQUEST A REVIEW UNLESS THE CHEMICAL MATERIAL OR ITS BYPRODUCTS HAVE BEEN SHOWN TO~~

~~1. HAVE A HALF LEEF IN THE ENVIRONMENT GREATER THAN 7 DAYS;~~

~~2. ACCUMULATE IN VEGETATION, SOILS, OR ANIMAL ISSUES; AND~~

~~3. BE A SUSPECTED CARCINOGEN, MUTAGEN, OR TERATOGEN.~~

The departments shall utilize ~~but are not limited to~~ the same SAME requirements and standards for reviewing registrations as established by the Federal Insecticide,

1 Fungicide, and Rodenticide Act, as amended, and regulations
2 adopted thereunder. The department of agriculture shall
3 provide the departments of health and environmental sciences
4 and fish, wildlife, and parks with a complete copy of the
5 application, related correspondence, and a statement of the
6 department of agriculture's proposed action on the
7 application. The departments of health and environmental
8 sciences and fish, wildlife, and parks shall approve or
9 disapprove the application within 10 days after the receipt
10 of the application. If the departments of health and
11 environmental sciences, agriculture, and fish, wildlife, and
12 parks are in agreement with the proposed registration, the
13 department of agriculture shall issue the registration.

14 (b) The department of agriculture shall establish a
15 time and place for an interagency conference for the
16 purposes of resolving the registration of any pesticide or
17 device. If two of the departments approve the proposed
18 registration, the department of agriculture shall issue the
19 registration.

20 (c) The registrant applying for registration shall be
21 notified as to proposed changes in registration. If the
22 departments cannot resolve the proposed registration
23 following the interagency conference, the registrant may
24 request a joint administrative hearing before the
25 departments of agriculture, health and environmental

1 sciences, and fish, wildlife, and parks.

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

11 ~~(9) Pesticides registered under any federal law when~~
12 ~~canceled for sale and use in total or in part by a federal~~
13 ~~agency responsible for registration are considered canceled~~
14 ~~in total or in part for sale and use in Montana. For the~~
15 ~~purposes of bringing such pesticides into Montana for sale~~
16 ~~or use, the cancellation is effective upon announcement of~~
17 ~~the cancellation by the federal agency. Such pesticides in~~
18 ~~Montana at the time of the announcement may be sold or used~~
19 ~~until THE CANCELLATION IS EFFECTIVE ON the final date of~~
20 ~~sale or use allowed under the federal law and rules or~~
21 ~~orders of the federal agency. If the federal cancellation~~
22 ~~allows existing stock to be used past the final date of~~
23 ~~cancellation, such sale or use in this state may not exceed~~
24 ~~2 years. The department shall provide technical assistance~~
25 ~~to any person in possession of such products to insure their~~

1 ~~proper disposal, relabeling, or removal."~~

2 Section 4. Section 80-8-203, MCA, is amended to read:

3 "80-8-203. Commercial applicator. (1) It shall be
4 unlawful for any person to engage in the business of
5 applying pesticides for another without a pesticide
6 applicator's license obtained from the department of
7 agriculture. The application shall be accompanied by a fee
8 of ~~\$15 \$50 \$20 \$35~~. Applicators applying for a dealer's
9 license under this chapter shall be required to pay only a
10 ~~\$10 \$20 \$15 \$20~~ licensing fee for the dealer's license. The
11 provisions of this ~~section~~ subsection shall not apply to any
12 person employed only to operate any equipment used for the
13 application of any pesticide and in which the person has no
14 financial interest or other control over such apparatus
15 other than its day-to-day mechanical operation for the
16 purpose of applying any pesticide.

17 ~~It is the intent of the legislature that every applicator shall have his license in his~~
18 ~~possession when using pesticides and shall display the~~
19 ~~license upon request of an authorized agent of the~~
20 ~~department.~~

21 ~~(2) Public utility applicators shall be licensed~~
22 ~~in the same manner as commercial applicators, provided that~~
23 ~~public utility operators working under public utility~~
24 ~~applicators are not required to be licensed except as~~
25 ~~provided for under 80-8-205.~~

1 ~~(3) Veterinarians licensed as provided in Title~~
2 ~~37, chapter 18, part 3, shall not be required to be licensed~~
3 ~~to apply nonrestricted pesticides, provided that these~~
4 ~~veterinarians shall register with the department each year;~~
5 ~~provided further that the veterinarians shall be required to~~
6 ~~meet all other requirements and rules of the Montana~~
7 ~~Pesticides Act. The department shall consider the~~
8 ~~professional licensing requirements for veterinarians when~~
9 ~~adopting rules."~~

10 Section 5. Section 80-8-204, MCA, is amended to read:

11 "80-8-204. Application for applicator's license. (1)
12 Application for a pesticide applicator's license provided
13 for in 80-8-203 shall be made annually to the department
14 before applying pesticides in any calendar year, provided
15 that pesticide applicators applying for renewal of license
16 shall do so on or before May ~~MARCH~~ 1 of that calendar year.
17 Any applicator applying for renewal of license after May
18 ~~MARCH~~ 1 shall be assessed a ~~\$15 \$25~~ late licensing fee.

19 (2) An individual applying for a license to engage in
20 aerial application of pesticides shall certify on the
21 application that he has met all the federal aviation
22 administration and the department of commerce requirements
23 for aerial pesticide applicators."

24 Section 6. Section 80-8-207, MCA, is amended to read:

25 "80-8-207. Dealers. (1) It is unlawful for any person

to sell, offer for sale, deliver, or have delivered within this state any pesticide without first procuring a license from the department of agriculture for each calendar year or portion thereof. A separate dealer's license and fee shall be required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide fieldmen or salesmen employed directly out of the same location or outlet and under a licensed dealer shall not be required to obtain a license. The dealer shall furnish the department the names and addresses of its fieldmen and salesmen selling pesticides within the state. ~~A dealer shall have his license in his possession when selling pesticides and shall display the license upon request of an authorized agent of the department.~~

(2) The application for a license shall be accompanied by a fee of \$15 ~~\$50 \$20 \$35~~. Dealers applying for renewal of license shall do so on or before May ~~MARCH~~ 1 of that calendar year. Any dealer applying for renewal of license after May ~~MARCH~~ 1 shall be assessed a \$15 ~~\$25 \$15 \$25~~ late licensing fee.

(3) The dealer shall require the purchaser of any restricted pesticide to exhibit his license or permit issued under authority of this chapter before completing a sale.

(4) Dealers may make one application for two annual licenses if the application is accompanied by a \$15 ~~\$50 \$20~~

~~\$35~~ licensing fee for each year of the state biennium.

(5) Pharmacists licensed as provided for in 37-7-302 and 37-7-303, veterinarians licensed as provided for in 37-18-302 and 37-18-303, and certified pharmacies licensed under 37-7-321 shall not be required to be licensed to sell pesticides, provided that the certified pharmacies and veterinarians shall register with the department each year. However, the certified pharmacies and veterinarians shall be required to meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules."

Section 7. Section 80-8-209, MCA, is amended to read:

"80-8-209. Farm applicators. (1) Farm applicators shall obtain a special-use permit prior to purchasing and using any pesticide designated by the department as a restricted-use pesticide. ~~The fee for the permit is \$15.~~ The special-use permit shall be effective for 5 calendar years. The department may establish a staggered years system of issuing permits.

(2) Restricted pesticides may not be utilized by farm applicators or their employees except for the purpose of producing or protecting any agricultural commodity on property owned, leased, or rented by such applicator ~~or as~~

1 ~~provided in (6) of this section OR AS PROVIDED IN SUBSECTION~~
 2 ~~(6) OF THIS SECTION.~~

3 (3) Farm applicators shall qualify for the their first
 4 permit by either passing a graded written examination or
 5 attending a training course approved by the department and
 6 taking an ungraded written examination. The examinations and
 7 course shall require and demonstrate practical knowledge of
 8 the applicator's ability to:

9 (a) recognize common pests to be controlled and damage
 10 caused by them;

11 (b) read and understand the label and labeling
 12 information, including the common name of the pesticide(s)
 13 applied, pest(s) to be controlled, timing and methods of
 14 application, safety precautions, any preharvest or reentry
 15 restrictions, and any specific disposal procedures;

16 (c) apply pesticides in accordance with label
 17 instructions and warnings, including the ability to prepare
 18 the proper concentration of pesticides to be used under
 19 particular circumstances, taking into account such factors
 20 as area to be covered, speed at which application equipment
 21 will be driven, and the quantity dispersed in a given period
 22 of operation;

23 (d) recognize local environmental situations that must
 24 be considered during application to avoid contamination; and

25 (e) recognize poisoning symptoms and procedures to

1 follow in case of a pesticide accident.

2 (4) The department may require farm applicators to
 3 attend a mandatory training session and pass a written
 4 examination for those restricted pesticides that are
 5 extremely toxic or for which an effective antidote is not
 6 available. The department may require farm applicators
 7 handling these pesticides to maintain use records.

8 ~~(5) Farm applicators manifesting reading disabilities~~
 9 ~~may become certified to use as many as two restricted-use~~
 10 ~~pesticides by passing a specific oral examination on the~~
 11 ~~particular pesticide(s) if the applicator documents that a~~
 12 ~~certified applicator in the immediate vicinity can advise~~
 13 ~~him. The department shall require farm applicators to~~
 14 ~~requalify for renewal of the 5-year permit by obtaining 100~~
 15 ~~training credits. The department shall establish by rule a~~
 16 ~~uniform system of administering the requalification training~~
 17 ~~credits. The department may credit only training related to~~
 18 ~~the standards set forth in subsection (3).~~

19 (6) Provisions of this chapter relating to
 20 certification of farm applicators do not apply to any farm
 21 applicator applying nonrestricted pesticides on his own land
 22 or on lands of his neighbors if he:

23 (a) operates farm property and operates and maintains
 24 pesticide application equipment primarily for his own use;

25 (b) is not regularly engaged in the business of

1 applying pesticides for hire and does not publicly hold
2 himself out as a pesticide applicator;

3 (c) operates his pesticide application equipment only
4 in the vicinity of his own property and for the
5 accommodation of his immediate neighbors."

6 Section 8. Section 80-8-213, MCA, is amended to read:

7 "80-8-213. Government agencies. ~~(1)~~ All state
8 agencies, municipal corporations, or any other governmental
9 agency shall be subject to the provisions of this chapter
10 and rules adopted thereunder concerning the application or
11 sale of pesticides. Applicators and operators applying
12 pesticides and dealers selling pesticides for agencies,
13 municipal corporations, or any governmental agencies shall
14 be subject to the provisions of 80-8-203 through 80-8-208,
15 ~~and the~~

16 ~~(2) The~~ department shall issue a limited commercial
17 applicator's, ~~operator's,~~ or dealer's license ~~without a fee~~
18 ~~for an annual fee of \$50,~~ which shall be valid only when
19 ~~such applicators, operators, and dealers are~~ applicator or
20 dealer is applying or selling pesticides for such agencies,
21 provided that the jurisdictional health officer, state
22 veterinarian, their duly authorized representatives, or
23 governmental research personnel are exempt from this
24 licensing requirement when applying pesticides to
25 experimental areas.

1 ~~(3) A governmental agency shall pay the annual~~
2 ~~applicator's fee for its first four employee applicators.~~
3 ~~The agency shall pay an annual fee of \$5 for each additional~~
4 ~~employee applicator.~~

5 ~~(4) Government employees becoming certified~~
6 ~~applicators only to qualify for conducting pesticide~~
7 ~~education courses may not be charged a license fee but are~~
8 ~~limited to providing such courses. Government operators are~~
9 ~~subject to rules adopted pursuant to 80-8-205, including the~~
10 ~~license fee."~~

11 Section 9. Section 80-8-306, MCA, is amended to read:

12 "80-8-306. Penalties. (1) Any person convicted of
13 violating any of the provisions of this chapter or the rules
14 issued thereunder or who may misrepresent, impede, obstruct,
15 hinder, or otherwise prevent or attempt to prevent the
16 department or its duly authorized agent in performance of
17 its duty in connection with the provisions of this chapter
18 shall be adjudged guilty of a misdemeanor and shall be fined
19 not less than ~~\$100~~ ~~\$500~~ \$100 but not more than ~~\$500~~ ~~\$2,500~~
20 \$1,500 or imprisoned in the county jail for a term not to
21 exceed ~~6 months~~ or both.

22 (2) The department or its authorized representative is
23 hereby authorized to apply to the district court of the
24 county or any county wherein a violation is about to occur
25 or has occurred to grant a temporary or permanent injunction

1 restraining any person from violating or continuing to
 2 violate any of the provisions of this chapter or any rule
 3 promulgated under the chapter notwithstanding the existence
 4 of other remedies of law. When a person makes pesticide
 5 applications in more than one county on a commercial basis
 6 without a license or permit or operates in violation of a
 7 lawful written order of the department in more than one
 8 county, the district court of Lewis and Clark County has
 9 concurrent jurisdiction with the district court of any other
 10 county wherein a violation has occurred or is about to
 11 occur, and the department may select and proceed in the
 12 court most appropriate under the circumstances. The
 13 injunction is to be issued without bond.

14 (3) Nothing in this chapter is to be construed as
 15 requiring the department or its authorized agent to report
 16 minor violations of the chapter for prosecution or for the
 17 institution of seizure proceedings when it believes the
 18 public interest will be best served by other remedial
 19 action, by a suitable notice of warning in writing, or by a
 20 lawful written order; nor is any part of this chapter to be
 21 construed to apply to common carriers transporting shipments
 22 tendered to them by the general public.

23 (4) Any person who with intent to defraud uses or
 24 reveals information relative to formulas of products
 25 acquired under the authority of 80-8-201 shall, upon

1 conviction, be fined not more than \$500 or imprisoned for
 2 not more than 1 year, or both.

3 ~~(5) (a) Any registrant, applicator, dealer, retailer,~~
 4 ~~or other person who violates any provision~~ COMMITTS A MAJOR
 5 VIOLATION of this chapter AS DEFINED IN SUBSECTION (5)(D)
 6 may be assessed a civil penalty by the department of not
 7 more than \$1,000 for each offense. However, farm
 8 applicators possessing a permit may not be assessed a civil
 9 penalty over \$200 for the first offense. Assessment of a
 10 civil penalty may be made in conjunction with any other
 11 department WARNING, order, or administrative action
 12 authorized by this chapter.

13 ~~(b) No civil penalty may be assessed unless the person~~
 14 ~~charged was given notice and opportunity for a hearing~~
 15 ~~pursuant to the Montana Administrative Procedure Act.~~

16 ~~(c) In determining an appropriate penalty, the~~
 17 ~~department shall consider the effect on the person's ability~~
 18 ~~to continue in business, the gravity of the violation, which~~
 19 ~~occurred, the degree of care exercised by the offender, and~~
 20 ~~whether significant harm resulted to health or environment,~~
 21 ~~agricultural crops, or livestock. A CIVIL PENALTY SHALL ONLY~~
 22 ~~BE ASSESSED AGAINST A PERSON WHEN ONE OR MORE MAJOR~~
 23 ~~VIOLATIONS ARE PROVEN UNDER THE PROCEEDURES OF THIS ACT AND~~
 24 ~~THE MONTANA ADMINISTRATIVE PROCEDURE ACT. MAJOR VIOLATIONS~~
 25 INCLUDE IN DETERMINING AN APPROPRIATE PENALTY, THE

DEPARTMENT SHALL CONSIDER THE EFFECT ON THE PERSON'S ABILITY TO CONTINUE IN BUSINESS, THE GRAVITY OF THE VIOLATION WHICH OCCURRED, THE DEGREE OF CARE EXERCISED BY THE OFFENDER, AND WHETHER SIGNIFICANT HARM RESULTED TO HEALTH, ENVIRONMENT, AGRICULTURAL CROPS, OR LIVESTOCK.

(D) A MAJOR VIOLATION OF THIS CHAPTER INCLUDES:

(I) MISUSE OF A PESTICIDE WHICH RESULTS IN PROVEN HARM TO HUMAN HEALTH, THE ENVIRONMENT, OR AGRICULTURAL CROPS OR LIVESTOCK;

(II) SELLING OF A RESTRICTED PESTICIDE TO A PERSON NOT CERTIFIED OR AUTHORIZED TO PURCHASE SUCH PESTICIDES;

(III) USE OR SALE OF UNREGISTERED PESTICIDES;

(IV) FAILURE TO MAINTAIN ANY INDIVIDUAL PESTICIDE APPLICATION AND SALES RECORDS;

(V) USING OR SELLING PESTICIDES WITHOUT HAVING OBTAINED THE REQUIRED LICENSE OR PERMIT; OR

(VI) REOCCURRENCE OF ANY IDENTICAL VIOLATIONS VIOLATION OF THIS CHAPTER WITHIN THE SAME CALENDAR YEAR. The department may issue a warning or take any other appropriate action allowed by this chapter.

(E) If the department is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court.

(6) ANY PERSON AGAINST WHOM THE DEPARTMENT HAS ASSESSED A CIVIL PENALTY UNDER THIS SECTION MAY, WITHIN 30 DAYS OF THE FINAL AGENCY ACTION MAKING THE ASSESSMENT, APPEAL THE ASSESSMENT TO THE DISTRICT COURT OF THE COUNTY IN WHICH THE VIOLATION IS ALLEGED BY THE DEPARTMENT TO HAVE OCCURRED. APPEAL IS BY TRIAL DE NOVO, AND A JURY TRIAL MUST BE GRANTED IF REQUESTED. WHERE THE PROVISIONS OF THIS SUBSECTION CONFLICT WITH 2-4-702 THROUGH 2-4-704, THE PROVISIONS OF THIS SUBSECTION GOVERN."

NEW SECTION. Section 10. Earmarked--fund DEPOSIT OF FEES AND PENALTIES IN GENERAL FUND. That portion of--stt licensing--permitting--registration--and--equipment inspection--fees--collected--which--constitutes--an--increase after--October--14--1983--must--be--deposited--in--the--earmarked revenue--fund--for--the--purpose--of--supporting--a--portion--of--the costs--of--administering--this--chapter--The--administration--of--this--chapter--is--to--be--funded--from--both--the--earmarked--revenue fund--and--the--general--fund--because--of--the--mutual--benefits--to the--industry--and--the--public--as--stated--in--89-8-103--Reserve earmarked--revenue--fund--money--may--be--invested--by--the department--through--the--board--of--investments--The--income--from such--investments--must--be--credited--to--the--proper--department account--in--the--earmarked--revenue--fund ALL LICENSING, PERMIT, REGISTRATION, AND EQUIPMENT INSPECTION FEES COLLECTED UNDER PART 2 OF THIS CHAPTER AND ANY CIVIL PENALTIES COLLECTED

1 ~~UNDER 80-8-306 MUST BE DEPOSITED IN THE GENERAL FUND.~~
2 ~~NEW SECTION.~~ Section 11. Codification instruction.
3 Section 10 is intended to be codified as an integral part of
4 Title 80, chapter 8.
5 ~~NEW SECTION.~~ Section 12. Saving clause. This act does
6 not affect rights and duties that matured, penalties that
7 were incurred, or proceedings that were begun before the
8 effective date of this act.
9 ~~NEW SECTION.~~ Section 13. Severability. If a part of
10 this act is invalid, all valid parts that are severable from
11 the invalid part remain in effect. If a part of this act is
12 invalid in one or more of its applications, the part remains
13 in effect in all valid applications that are severable from
14 the invalid applications.
15 ~~SECTION 14. TERMINATION. SECTION 3 TERMINATES JULY 1,~~
16 ~~1985.~~

-End-