

1 House BILL NO. 179
 2 INTRODUCED BY Ream / Heger
 3 BY REQUEST OF THE DEPARTMENT OF
 4 HEALTH AND ENVIRONMENTAL SCIENCES
 5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROTECT THE
 7 CONFIDENTIALITY OF TRADE SECRETS RELEASED TO THE DEPARTMENT
 8 AND BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES UNDER THE
 9 MONTANA HAZARDOUS WASTE ACT; TO ALLOW THE RELEASE BY THE
 10 DEPARTMENT OR BOARD OF TRADE SECRETS UNDER CERTAIN
 11 CIRCUMSTANCES; AND AMENDING SECTION 75-10-403, MCA."
 12

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

14 Section 1. Section 75-10-403, MCA, is amended to read:
 15 "75-10-403. Definitions. Unless the context requires
 16 otherwise, in this part the following definitions apply:

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

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

22 (3) "Dispose" or "disposal" means the discharge,
 23 injection, deposit, dumping, spilling, leaking, or placing
 24 of any hazardous waste into or onto the land or water so
 25 that the hazardous waste or any constituent of it may enter

1 the environment or be emitted into the air or discharged
 2 into any waters, including groundwaters.

3 (4) "Facility" or "hazardous waste management
 4 facility" means all contiguous land and structures, other
 5 appurtenances, and improvements on the land used for
 6 treating, storing, or disposing of hazardous waste. A
 7 facility may consist of several treatment, storage, or
 8 disposal operational units.

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

11 (6) "Generator" means any person, by site, whose act
 12 or process produces hazardous waste or whose act first
 13 causes a hazardous waste to become subject to regulation
 14 under this part.

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

18 (i) cause or significantly contribute to an increase
 19 in mortality or an increase in serious irreversible or
 20 incapacitating reversible illness; or

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

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



1 (8) "Hazardous waste management" means the management
2 of the collection, source separation, storage,
3 transportation, processing, treatment, recovery, and
4 disposal of hazardous wastes.

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

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

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

17 (12) "Trade secret" includes any formula, plan,
18 pattern, process, tool, mechanism, compound, or procedure,
19 and any information which directly relates to it, that is
20 not patented, that is known only to certain individuals
21 within a commercial concern who use it to treat, store,
22 transport, manage, or dispose of hazardous waste, and that
23 gives its user a business advantage over competitors who do
24 not know or use it.

25 ~~(12)~~(13) "Transportation" means the movement of

1 hazardous wastes from the point of generation to any
2 intermediate points and finally to the point of ultimate
3 storage or disposal.

4 ~~(13)~~(14) "Transporter" means a person engaged in the
5 offsite transportation of hazardous waste by air, rail,
6 highway, or water.

7 ~~(14)~~(15) "Treatment" means a method, technique, or
8 process, including neutralization, designed to change the
9 physical, chemical, or biological character or composition
10 of any hazardous waste so as to neutralize the waste or so
11 as to render it nonhazardous, safer for transportation,
12 amenable for recovery, amenable for storage, or reduced in
13 volume."

14 NEW SECTION. Section 2. Trade secret confidentiality
15 -- procedure. (1) Any records, reports, or other information
16 furnished to or obtained by the department under this part
17 are available to the public for inspection and copying at
18 the expense of the person requesting copies. However, any
19 information that is determined to be a trade secret in
20 accordance with the procedure specified in subsection (2)
21 must be maintained as confidential by the department and the
22 board. The department and the board may use that information
23 in the administration of this part, but may not make it
24 available to the general public unless the owner or operator
25 expressly agrees or subsection (3) applies.

1 (2) In order to obtain confidentiality protection for
 2 a trade secret, the owner or operator submitting information
 3 to the department must adequately identify and mark as
 4 confidential that portion of the information claimed to be a
 5 trade secret. Within 10 days after submitting to the
 6 department the information claimed to constitute a trade
 7 secret, the owner or operator must file a declaratory
 8 judgment action in the district court for Lewis and Clark
 9 County and provide the court with supporting documentation
 10 to establish trade secrecy. The department must be served
 11 and may intervene as a party in the action. Failure to file
 12 such an action in timely fashion or to serve the department
 13 constitutes a waiver of the right to prevent public
 14 disclosure. During the pendency of any such declaratory
 15 judgment action, the department and board must maintain the
 16 information as confidential, except as provided in
 17 subsection (3).

18 (3) The department or the board may release a trade
 19 secret or information claimed to constitute a trade secret
 20 at any time:

21 (a) during an emergency involving hazardous wastes
 22 which poses an imminent and substantial danger to public
 23 health or the environment;

24 (b) as part of quantitative or qualitative statistics
 25 pertaining to the generation, storage, treatment,

1 transportation, or disposal of hazardous wastes;

2 (c) to the extent required by law in connection with
 3 any hearing or court proceeding;

4 (d) to an authorized representative of a state agency
 5 or the federal government who is concerned with implementing
 6 this chapter or the federal Resource Conservation and
 7 Recovery Act of 1976, if the owner or operator of the
 8 facility to which the information pertains is informed of
 9 the transmittal and the representative to whom the
 10 information is released commits himself to protect the
 11 confidentiality of that information; or

12 (e) to a medical doctor who has submitted an affidavit
 13 to the department that the information is necessary for
 14 patient diagnosis or treatment.

15 NEW SECTION. Section 3. Codification instruction.
 16 Section 2 is intended to be codified as an integral part of
 17 Title 75, chapter 10, part 4, and the provisions of Title
 18 75, chapter 10, part 4, apply to section 2.

19 NEW SECTION. Section 4. Saving clause. This act does
 20 not affect rights and duties that matured, penalties that
 21 were incurred, or proceedings that were begun before the
 22 effective date of this act.

23 NEW SECTION. Section 5. Extension of authority. Any
 24 existing authority of the department of health and
 25 environmental sciences to make rules on the subject of the

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1 provisions of this act is extended to the provisions of this
2 act.

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