

HOUSE BILL NO. 676

INTRODUCED BY DONALDSON, MILES, REAM

BY REQUEST OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL SCIENCES

IN THE HOUSE

February 5, 1985	Introduced and referred to Committee on Natural Resources.
February 6, 1985	Fiscal Note requested.
February 12, 1985	Fiscal Note returned.
February 25, 1985	Committee recommend bill do pass as amended. Report adopted. Statement of Intent attached. Bill printed and placed on members' desks.
February 27, 1985	Second reading, do pass. On motion, rules suspended and bill placed on third reading this day. Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 5, 1985	Introduced and referred to Committee on Public Health, Welfare and Safety.
March 25, 1985	Committee recommend bill be concurrent in as amended. Report adopted.
March 28, 1985	Second reading, concurred in.

March 30, 1985 On motion, taken from third reading and rereferred to Committee on Finance and Claims. Motion adopted.

April 5, 1985 Committee recommend bill be concurred in. Report adopted.

April 9, 1985 Second reading, concurred in.

April 11, 1985 Third reading, concurred in. Ayes, 35; Noes, 15.

Returned to House with amendments.

IN THE HOUSE

April 12, 1985 Received from Senate.

April 13, 1985 Second reading, pass consideration.

April 15, 1985 Second reading, amendments concurred in.

April 16, 1985 Third reading, amendments concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 governed by Title 82, chapter 4, part 2.

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

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

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

15 (11) "Regulated substance":

16 (a) means:

17 (i) a hazardous substance as defined in 75-10-602; or
18 (ii) petroleum, including crude oil or any fraction
19 thereof, which is liquid at standard conditions of
20 temperature and pressure (60 degrees F and 14.7 pounds per
21 square inch absolute);

22 (b) does not include a substance regulated as a
23 hazardous waste under this part.

24 ~~(11)~~(12) "Storage" means the actual or intended
25 containment of wastes, either on a temporary basis or for a

1 period of years.

2 ~~(12)~~(13) "Transportation" means the movement of
3 hazardous wastes from the point of generation to any
4 intermediate points and finally to the point of ultimate
5 storage or disposal.

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

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

16 (16) "Underground storage tank":

17 (a) means any one or combination of tanks (including
18 connected underground pipes) used to contain a regulated
19 substance, the volume of which (including the volume of the
20 connected underground pipes) is 10% or more beneath the
21 surface of the ground.

22 (b) does not include:

23 (i) a septic tank;

24 (ii) a pipeline facility (including gathering lines)
25 regulated under:

1 (A) the Natural Gas Pipeline Safety Act of 1968 (49
2 U.S.C. 1671, et seq.);

3 (B) the Hazardous Liquid Pipeline Safety Act of 1979
4 (49 U.S.C. 2001, et seq.); or

5 (C) state law comparable to the provisions of law
6 referred to in subsection (16)(b)(ii)(A) or (16)(b)(ii)(B),
7 if the facility is intrastate;

8 (iii) a surface impoundment, pit, pond, or lagoon;

9 (iv) a storm water or wastewater collection system;

10 (v) a flow-through process tank;

11 (vi) a liquid trap or associated gathering lines
12 directly related to oil or gas production and gathering
13 operations;

14 (vii) a storage tank situated in an underground area,
15 such as a basement, cellar, mine, draft, shaft, or tunnel,
16 if the storage tank is situated upon or above the surface of
17 the floor; or

18 (viii) any pipe connected to a tank described in
19 subsections (16)(b)(i) through (16)(b)(vii)."

20 Section 2. Section 75-10-405, MCA, is amended to read:

21 "75-10-405. Administrative rules. (1) The department
22 may adopt, amend, or repeal rules governing hazardous waste,
23 including but not limited to the following:

24 (1)(a) identification and classification of those
25 hazardous wastes subject to regulation and those that are

1 not;

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

4 (3)(c) requirements for siting, design, operation,
5 maintenance, monitoring, inspection, closure, postclosure,
6 and reclamation of hazardous waste management facilities;

7 (4)(d) requirements for the issuance, denial, renewal,
8 modification, and revocation of permits for hazardous waste
9 management facilities;

10 (5)(e) requirements for manifests and the manifest
11 system for tracking hazardous waste and for reporting and
12 recordkeeping by generators, transporters, and owners and
13 operators of hazardous waste management facilities;

14 (6)(f) requirements for training of facility personnel
15 and for financial assurance of facility owners and
16 operators;

17 (7)(g) requirements for registration of generators and
18 transporters;

19 (8)(h) a schedule of fees for hazardous waste
20 management facility permits and registration of hazardous
21 waste generators; and

22 (9)(i) other rules which are necessary to obtain and
23 maintain authorization under the federal program, except
24 that the

25 (2) The department may not adopt rules under this part

1 that are more restrictive than those promulgated by the
2 federal government under the Resource Conservation and
3 Recovery Act of 1976, as amended, except that the department
4 may adopt requirements for the prevention of leakage from
5 underground storage tanks, including:

6 (a) reporting by owners and operators;

7 (b) financial responsibility;

8 (c) release detection, prevention, and correction; and

9 (d) standards for design, construction, and
10 installation."

11 Section 3. Section 75-10-409, MCA, is amended to read:

12 "75-10-409. Compliance monitoring and reporting --
13 underground storage tank leak report. (1) The department
14 may, as a condition of a permit, require the owner or
15 operator of a facility to install equipment, collect and
16 analyze samples, and maintain records in order to monitor
17 and demonstrate compliance with this part, rules adopted
18 under this part, any order of the board or department, and
19 permit conditions.

20 (2) The department may require the owner or operator
21 of a facility to submit reports on such compliance
22 monitoring activities, including notice to the department of
23 any noncompliance with permit conditions, rules adopted
24 under this part, the provisions of this part, or any orders
25 of the department or board.

1 (3) If an owner or operator of an underground storage
2 tank discovers or is provided with evidence that the tank
3 may have leaked, he must immediately notify the department
4 that a leak may exist."

5 NEW SECTION. Section 4. 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 5. 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 NEW SECTION. Section 6. Extension of authority. Any
16 existing authority of the department of health and
17 environmental sciences to make rules on the subject of the
18 provisions of this act is extended to the provisions of this
19 act.

20 NEW SECTION. Section 7. Effective date. This act is
21 effective on passage and approval.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN 345-85

Form BD-15

In compliance with a written request received February 6, 19 85, there is hereby submitted a Fiscal Note for House Bill 676 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 676 allows the Department of Health and Environmental Sciences to adopt rules setting requirements for underground storage tanks.

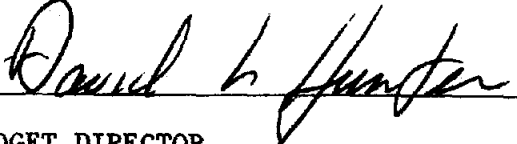
ASSUMPTION:

1. 10,000 underground tanks.
2. First year devoted to program development, rule adoption, notification and education. Second year field investigations and enforcement activity.
3. If federal fund became available, the agency will revert non-matching general funds.

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY 86</u>	<u>FY 87</u>
FTE	2.00	3.00
Personal Services	\$ 42,199	\$ 67,398
Operating Expenses	22,791	72,038
Equipment	<u>2,016</u>	<u>5,809</u>
Total	\$ 67,006	\$145,245

<u>Funding:</u>	<u>FY 86</u>	<u>FY 87</u>
General Fund	\$ 16,752	\$ 36,311
Federal Fund	50,254	108,934


BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 12, 1985

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APPROVED BY COMM. ON
NATURAL RESOURCES

1 STATEMENT OF INTENT

2 HOUSE BILL 676

3 House Natural Resources Committee

4
5 A statement of intent is required for this bill because
6 it delegates rulemaking authority to the department of
7 health and environmental sciences (DHES). House Bill 676
8 adds petroleum products and certain hazardous substances
9 stored in underground tanks as a new category of materials
10 which may be regulated under the Montana Hazardous Waste Act
11 (MHWHA).

12 The DHES has been increasingly involved in the cleanup
13 of ground water problems caused by leaking underground
14 tanks. At the national level, congress amended the federal
15 Resource Conservation and Recovery Act of 1976 (RCRA) in
16 November 1984 to include regulation of underground storage
17 tanks and required the environmental protection agency (EPA)
18 to develop a regulatory program for tanks. Since the DHES
19 now administers the existing RCRA program in Montana, it is
20 likely that the state (through DHES) will want to assume the
21 RCRA program for underground tanks as well. Moreover, in the
22 event that the EPA does not adopt a program adequate for
23 Montana or fails to develop a program in a timely fashion,
24 the DHES should have the authority to establish the state's
25 own program to meet the needs of Montana. House Bill 676

1 will grant the DHES the authority to assume the EPA tank
2 program to be developed under RCRA or to establish a state
3 program independent of RCRA.

4 Whether DHES follows the federal RCRA program or
5 develops its own state program, it is the intent of the
6 legislature that administrative rules that DHES may adopt
7 for underground storage tanks need not be equivalent to the
8 comparable federal regulations to be developed by the EPA
9 under RCRA. Rather, in view of the growing number and
10 severity of environmental problems related to underground
11 storage tanks in Montana, the legislature intends to grant
12 DHES the authority to establish a regulatory program for
13 underground tanks whether or not it may include elements
14 more stringent than any federal requirements and whether or
15 not the EPA has established a tank program under RCRA.

16 The legislature intends that the rules developed by
17 DHES include requirements for:

- 18 (1) the design, construction, and installation of
19 underground tanks in a manner that will prevent tank
20 leakage;
- 21 (2) reporting by tank owners and operators;
- 22 (3) leak prevention and detection;
- 23 (4) corrective actions by tank owners and operators if
24 tank leakage does occur; and
- 25 (5) financial responsibility of tank owners and

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1 operators for corrective action and compensation to third
2 parties for damages resulting from release of regulated
3 substances from underground tanks.

1 HOUSE BILL NO. 676
 2 INTRODUCED BY DONALDSON, MILES, REAM
 3 BY REQUEST OF THE DEPARTMENT OF HEALTH
 4 AND ENVIRONMENTAL SCIENCES
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA
 7 HAZARDOUS WASTE ACT TO ALLOW THE DEPARTMENT OF HEALTH AND
 8 ENVIRONMENTAL SCIENCES TO ADOPT RULES SETTING REQUIREMENTS
 9 FOR UNDERGROUND STORAGE TANKS CONTAINING PETROLEUM OR OTHER
 10 HAZARDOUS SUBSTANCES; REQUIRING TANK OWNERS OR OPERATORS TO
 11 REPORT LEAKS; AMENDING SECTIONS 75-10-403, 75-10-405, AND
 12 75-10-409, AND 75-10-532, MCA; AND PROVIDING AN IMMEDIATE
 13 EFFECTIVE DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 75-10-403, MCA, is amended to read:

17 "75-10-403. Definitions. Unless the context requires
18 otherwise, in this part the following definitions apply:

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

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

24 (3) "Dispose" or "disposal" means the discharge,
25 injection, deposit, dumping, spilling, leaking, or placing

1 of any hazardous waste into or onto the land or water so
2 that the hazardous waste or any constituent of it may enter
3 the environment or be emitted into the air or discharged
4 into any waters, including groundwaters.

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

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

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

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

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

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

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

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

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

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

16 (11) "Regulated substance":

17 (a) means:

18 (i) a hazardous substance as defined in 75-10-602; or

19 (ii) petroleum, including crude oil or any fraction
20 thereof, which is liquid at standard conditions of
21 temperature and pressure (60 degrees F and 14.7 pounds per
22 square inch absolute);

23 (b) does not include a substance regulated as a
24 hazardous waste under this part.

25 ~~(11)~~(12) "Storage" means the actual or intended

1 containment of wastes, either on a temporary basis or for a
2 period of years.

3 ~~(12)~~(13) "Transportation" means the movement of
4 hazardous wastes from the point of generation to any
5 intermediate points and finally to the point of ultimate
6 storage or disposal.

7 ~~(13)~~(14) "Transporter" means a person engaged in the
8 offsite transportation of hazardous waste by air, rail,
9 highway, or water.

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

17 (16) "Underground storage tank":

18 (a) means, EXCEPT AS PROVIDED IN SUBSECTIONS

19 (16)(B)(I) THROUGH (16)(B)(VIII):

20 (I) any one or combination of tanks (including
21 connected underground pipes) used to contain a regulated
22 substance, the volume of which (including the volume of the
23 connected underground pipes) is 10% or more beneath the
24 surface of the ground; AND

25 (II) ANY UNDERGROUND PIPES USED TO CONTAIN OR TRANSPORT

1 A REGULATED SUBSTANCE AND CONNECTED TO A STORAGE TANK,
 2 WHETHER THE STORAGE TANK IS ENTIRELY ABOVE GROUND, PARTIALLY
 3 ABOVE GROUND, OR ENTIRELY UNDERGROUND.

4 (b) does not include:

5 (i) a septic tank;

6 (ii) a pipeline facility (including gathering lines)
 7 regulated under:

8 (A) the Natural Gas Pipeline Safety Act of 1968 (49
 9 U.S.C. 1671, et seq.);

10 (B) the Hazardous Liquid Pipeline Safety Act of 1979
 11 (49 U.S.C. 2001, et seq.); or

12 (C) state law comparable to the provisions of law
 13 referred to in subsection (16)(b)(ii)(A) or (16)(b)(ii)(B),
 14 if the facility is intrastate;

15 (iii) a surface impoundment, pit, pond, or lagoon;

16 (iv) a storm water or wastewater collection system;

17 (v) a flow-through process tank;

18 (vi) a liquid trap or associated gathering lines
 19 directly related to oil or gas production and gathering
 20 operations;

21 (vii) a storage tank situated in an underground area,
 22 such as a basement, cellar, mine, draft, shaft, or tunnel,
 23 if the storage tank is situated upon or above the surface of
 24 the floor; or

25 (viii) any pipe connected to a tank described in

1 subsections (16)(b)(i) through (16)(b)(vii)."

2 Section 2. Section 75-10-405, MCA, is amended to read:

3 "75-10-405. Administrative rules. (1) The department
 4 may adopt, amend, or repeal rules governing hazardous waste,
 5 including but not limited to the following:

6 (1)(a) identification and classification of those
 7 hazardous wastes subject to regulation and those that are
 8 not;

9 (2)(b) requirements for the proper treatment, storage,
 10 transportation, and disposal of hazardous waste;

11 (3)(c) requirements for siting, design, operation,
 12 maintenance, monitoring, inspection, closure, postclosure,
 13 and reclamation of hazardous waste management facilities;

14 (4)(d) requirements for the issuance, denial, renewal,
 15 modification, and revocation of permits for hazardous waste
 16 management facilities;

17 (5)(e) requirements for manifests and the manifest
 18 system for tracking hazardous waste and for reporting and
 19 recordkeeping by generators, transporters, and owners and
 20 operators of hazardous waste management facilities;

21 (6)(f) requirements for training of facility personnel
 22 and for financial assurance of facility owners and
 23 operators;

24 (7)(g) requirements for registration of generators and
 25 transporters;

1 †8†(h) a schedule of fees for hazardous waste
 2 management facility permits and registration of hazardous
 3 waste generators; and

4 †9†(i) other rules which are necessary to obtain and
 5 maintain authorization under the federal program, except
 6 that the

7 (2) The department may not adopt rules under this part
 8 that are more restrictive than those promulgated by the
 9 federal government under the Resource Conservation and
 10 Recovery Act of 1976, as amended, except that the department
 11 may adopt requirements for the prevention of leakage from
 12 underground storage tanks, including:

- 13 (a) reporting by owners and operators;
- 14 (b) financial responsibility;
- 15 (c) release detection, prevention, and correction; and
- 16 (d) standards for design, construction, and
 17 installation."

18 Section 3. Section 75-10-409, MCA, is amended to read:

19 "75-10-409. Compliance monitoring and reporting --
 20 underground storage tank leak report. (1) The department
 21 may, as a condition of a permit, require the owner or
 22 operator of a facility to install equipment, collect and
 23 analyze samples, and maintain records in order to monitor
 24 and demonstrate compliance with this part, rules adopted
 25 under this part, any order of the board or department, and

1 permit conditions.

2 (2) The department may require the owner or operator
 3 of a facility to submit reports on such compliance
 4 monitoring activities, including notice to the department of
 5 any noncompliance with permit conditions, rules adopted
 6 under this part, the provisions of this part, or any orders
 7 of the department or board.

8 (3) If an owner or operator of an underground storage
 9 tank discovers or is provided with evidence that the tank
 10 may have leaked, he must immediately notify the department
 11 that a leak may exist."

12 SECTION 4. SECTION 75-10-532, MCA, IS AMENDED TO READ:

13 "75-10-532. Disposition of moneys collected. All
 14 moneys received from the sale of the junk vehicles or from
 15 recycling of the material and all motor vehicle wrecking
 16 facility license fees and fees collected as motor vehicle
 17 disposal fees shall be deposited with the state treasurer to
 18 be utilized for:

19 (1) the control, collection, recycling, and disposal
 20 of junk vehicles and component parts; and

21 (2) implementation by the department of health and
 22 environmental sciences during the 1987 biennium of the
 23 federal Comprehensive Environmental Response, Compensation,
 24 and Liability Act of 1980 in accordance with 75-10-601
 25 through 75-10-604, and the Montana Hazardous Waste Act in

1 accordance with 75-10-401 through 75-10-421, up to an amount
2 not exceeding \$58,690; and

3 ~~(2)~~(3) implementation by the department of health and
4 environmental sciences during the 1985 biennium of the
5 federal Comprehensive Environmental Response, Compensation,
6 and Liability Act of 1980 in accordance with Title 75,
7 chapter 10, part 6, up to an amount not exceeding \$220,000."

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

12 NEW SECTION. Section 6. Severability. If a part of
13 this act is invalid, all valid parts that are severable from
14 the invalid part remain in effect. If a part of this act is
15 invalid in one or more of its applications, the part remains
16 in effect in all valid applications that are severable from
17 the invalid applications.

18 NEW SECTION. Section 7. Extension of authority. Any
19 existing authority of the department of health and
20 environmental sciences to make rules on the subject of the
21 provisions of this act is extended to the provisions of this
22 act.

23 NEW SECTION. Section 8. Effective date. This act is
24 effective on passage and approval.

-End-

STATEMENT OF INTENT

HOUSE BILL 676

House Natural Resources Committee

1 A statement of intent is required for this bill because
 2 it delegates rulemaking authority to the department of
 3 health and environmental sciences (DHES). House Bill 676
 4 adds petroleum products and certain hazardous substances
 5 stored in underground tanks as a new category of materials
 6 which may be regulated under the Montana Hazardous Waste Act
 7 (MHWA).

8 The DHES has been increasingly involved in the cleanup
 9 of ground water problems caused by leaking underground
 10 tanks. At the national level, congress amended the federal
 11 Resource Conservation and Recovery Act of 1976 (RCRA) in
 12 November 1984 to include regulation of underground storage
 13 tanks and required the environmental protection agency (EPA)
 14 to develop a regulatory program for tanks. Since the DHES
 15 now administers the existing RCRA program in Montana, it is
 16 likely that the state (through DHES) will want to assume the
 17 RCRA program for underground tanks as well. Moreover, in the
 18 event that the EPA does not adopt a program adequate for
 19 Montana or fails to develop a program in a timely fashion,
 20 the DHES should have the authority to establish the state's
 21 own program to meet the needs of Montana. House Bill 676

1 will grant the DHES the authority to assume the EPA tank
 2 program to be developed under RCRA or to establish a state
 3 program independent of RCRA.

4 Whether DHES follows the federal RCRA program or
 5 develops its own state program, it is the intent of the
 6 legislature that administrative rules that DHES may adopt
 7 for underground storage tanks need not be equivalent to the
 8 comparable federal regulations to be developed by the EPA
 9 under RCRA. Rather, in view of the growing number and
 10 severity of environmental problems related to underground
 11 storage tanks in Montana, the legislature intends to grant
 12 DHES the authority to establish a regulatory program for
 13 underground tanks whether or not it may include elements
 14 more stringent than any federal requirements and whether or
 15 not the EPA has established a tank program under RCRA.

16 The legislature intends that the rules developed by
 17 DHES include requirements for:

- 18 (1) the design, construction, and installation of
- 19 underground tanks in a manner that will prevent tank
- 20 leakage;
- 21 (2) reporting by tank owners and operators;
- 22 (3) leak prevention and detection;
- 23 (4) corrective actions by tank owners and operators if
- 24 tank leakage does occur; and
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1 operators for corrective action and compensation to third
2 parties for damages resulting from release of regulated
3 substances from underground tanks.

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2 INTRODUCED BY DONALDSON, MILES, REAM
 3 BY REQUEST OF THE DEPARTMENT OF HEALTH
 4 AND ENVIRONMENTAL SCIENCES

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 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA
 7 HAZARDOUS WASTE ACT TO ALLOW THE DEPARTMENT OF HEALTH AND
 8 ENVIRONMENTAL SCIENCES TO ADOPT RULES SETTING REQUIREMENTS
 9 FOR UNDERGROUND STORAGE TANKS CONTAINING PETROLEUM OR OTHER
 10 HAZARDOUS SUBSTANCES; REQUIRING TANK OWNERS OR OPERATORS TO
 11 REPORT LEAKS; AMENDING SECTIONS 75-10-403, 75-10-405, AND
 12 75-10-409, AND 75-10-532, MCA; AND PROVIDING AN IMMEDIATE
 13 EFFECTIVE DATE."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 75-10-403, MCA, is amended to read:

17 "75-10-403. Definitions. Unless the context requires
 18 otherwise, in this part the following definitions apply:

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

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

24 (3) "Dispose" or "disposal" means the discharge,
 25 injection, deposit, dumping, spilling, leaking, or placing

1 of any hazardous waste into or onto the land or water so
 2 that the hazardous waste or any constituent of it may enter
 3 the environment or be emitted into the air or discharged
 4 into any waters, including groundwaters.

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

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

13 (6) "Generator" means any person, by site, whose act
 14 or process produces hazardous waste or whose act first
 15 causes a hazardous waste to become subject to regulation
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17 (7) (a) "Hazardous waste" means a waste or combination
 18 of wastes that, because of its quantity, concentration, or
 19 physical, chemical, or infectious characteristics, may:

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

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

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

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

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

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

16 (11) "Regulated substance":

17 (a) means:

18 (i) a hazardous substance as defined in 75-10-602; or

19 (ii) petroleum, including crude oil or any fraction

20 thereof, which is liquid at standard conditions of

21 temperature and pressure (60 degrees F and 14.7 pounds per

22 square inch absolute);

23 (b) does not include a substance regulated as a

24 hazardous waste under this part.

25 ~~(12)~~ (12) "Storage" means the actual or intended

1 containment of wastes, either on a temporary basis or for a
2 period of years.

3 ~~(13)~~ (13) "Transportation" means the movement of
4 hazardous wastes from the point of generation to any
5 intermediate points and finally to the point of ultimate
6 storage or disposal.

7 ~~(14)~~ (14) "Transporter" means a person engaged in the
8 offsite transportation of hazardous waste by air, rail,
9 highway, or water.

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

17 (16) "Underground storage tank":

18 (a) means, EXCEPT AS PROVIDED IN SUBSECTIONS

19 (16)(B)(I) THROUGH (16)(B)(VIII):

20 (I) any one or combination of tanks (including

21 connected underground pipes) used to contain a regulated

22 substance, the volume of which (including the volume of the

23 connected underground pipes) is 10% or more beneath the

24 surface of the ground; AND

25 (II) ANY UNDERGROUND PIPES USED TO CONTAIN OR TRANSPORT

1 A REGULATED SUBSTANCE AND CONNECTED TO A STORAGE TANK,
 2 WHETHER THE STORAGE TANK IS ENTIRELY ABOVE GROUND, PARTIALLY
 3 ABOVE GROUND, OR ENTIRELY UNDERGROUND.

4 (b) does not include:

5 (i) a septic tank;

6 (ii) a pipeline facility (including gathering lines)
 7 regulated under:

8 (A) the Natural Gas Pipeline Safety Act of 1968 (49
 9 U.S.C. 1671, et seq.);

10 (B) the Hazardous Liquid Pipeline Safety Act of 1979
 11 (49 U.S.C. 2001, et seq.); or

12 (C) state law comparable to the provisions of law
 13 referred to in subsection (16)(b)(ii)(A) or (16)(b)(ii)(B),
 14 if the facility is intrastate;

15 (iii) a surface impoundment, pit, pond, or lagoon;

16 (iv) a storm water or wastewater collection system;

17 (v) a flow-through process tank;

18 (vi) a liquid trap or associated gathering lines
 19 directly related to oil or gas production and gathering
 20 operations;

21 (vii) a storage tank situated in an underground area,
 22 such as a basement, cellar, mine, draft, shaft, or tunnel,
 23 if the storage tank is situated upon or above the surface of
 24 the floor; or

25 (viii) any pipe connected to a tank described in

1 subsections (16)(b)(i) through (16)(b)(vii)."

2 Section 2. Section 75-10-405, MCA, is amended to read:

3 "75-10-405. Administrative rules. (1) The department
 4 may adopt, amend, or repeal rules governing hazardous waste,
 5 including but not limited to the following:

6 ~~(1)~~(a) identification and classification of those
 7 hazardous wastes subject to regulation and those that are
 8 not;

9 ~~(2)~~(b) requirements for the proper treatment, storage,
 10 transportation, and disposal of hazardous waste;

11 ~~(3)~~(c) requirements for siting, design, operation,
 12 maintenance, monitoring, inspection, closure, postclosure,
 13 and reclamation of hazardous waste management facilities;

14 ~~(4)~~(d) requirements for the issuance, denial, renewal,
 15 modification, and revocation of permits for hazardous waste
 16 management facilities;

17 ~~(5)~~(e) requirements for manifests and the manifest
 18 system for tracking hazardous waste and for reporting and
 19 recordkeeping by generators, transporters, and owners and
 20 operators of hazardous waste management facilities;

21 ~~(6)~~(f) requirements for training of facility personnel
 22 and for financial assurance of facility owners and
 23 operators;

24 ~~(7)~~(g) requirements for registration of generators and
 25 transporters;

1 ~~(8)(h)~~ a schedule of fees for hazardous waste
 2 management facility permits and registration of hazardous
 3 waste generators; and

4 ~~(9)(i)~~ other rules which are necessary to obtain and
 5 maintain authorization under the federal program, except
 6 that-the

7 (2) The department may not adopt rules under this part
 8 that are more restrictive than those promulgated by the
 9 federal government under the Resource Conservation and
 10 Recovery Act of 1976, as amended, except that the department
 11 may adopt requirements for the prevention of leakage from
 12 underground storage tanks, including:

- 13 (a) reporting by owners and operators;
- 14 (b) financial responsibility;
- 15 (c) release detection, prevention, and correction; and
- 16 (d) standards for design, construction, and
 17 installation."

18 Section 3. Section 75-10-409, MCA, is amended to read:

19 "75-10-409. Compliance monitoring and reporting --
 20 underground storage tank leak report. (1) The department
 21 may, as a condition of a permit, require the owner or
 22 operator of a facility to install equipment, collect and
 23 analyze samples, and maintain records in order to monitor
 24 and demonstrate compliance with this part, rules adopted
 25 under this part, any order of the board or department, and

1 permit conditions.

2 (2) The department may require the owner or operator
 3 of a facility to submit reports on such compliance
 4 monitoring activities, including notice to the department of
 5 any noncompliance with permit conditions, rules adopted
 6 under this part, the provisions of this part, or any orders
 7 of the department or board.

8 (3) If an owner or operator of an underground storage
 9 tank discovers or is provided with evidence that the tank
 10 may have leaked, he must immediately notify the department
 11 that a leak may exist."

12 SECTION 4. SECTION 75-10-532, MCA, IS AMENDED TO READ:

13 "75-10-532. Disposition of moneys collected. All
 14 moneys received from the sale of the junk vehicles or from
 15 recycling of the material and all motor vehicle wrecking
 16 facility license fees and fees collected as motor vehicle
 17 disposal fees shall be deposited with the state treasurer to
 18 be utilized for:

19 (1) the control, collection, recycling, and disposal
 20 of junk vehicles and component parts; and

21 (2) implementation by the department of health and
 22 environmental sciences during the 1987 biennium of the
 23 federal Comprehensive Environmental Response, Compensation,
 24 and Liability Act of 1980 in accordance with 75-10-601
 25 through 75-10-604, and the Montana Hazardous Waste Act in

1 accordance with 75-10-401 through 75-10-421, up to an amount
2 not exceeding \$58,690; and

3 ~~(2)~~(3) implementation by the department of health and
4 environmental sciences during the 1985 biennium of the
5 federal Comprehensive Environmental Response, Compensation,
6 and Liability Act of 1980 in accordance with Title 75,
7 chapter 10, part 6, up to an amount not exceeding \$220,000."

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

12 NEW SECTION. Section 6. Severability. If a part of
13 this act is invalid, all valid parts that are severable from
14 the invalid part remain in effect. If a part of this act is
15 invalid in one or more of its applications, the part remains
16 in effect in all valid applications that are severable from
17 the invalid applications.

18 NEW SECTION. Section 7. Extension of authority. Any
19 existing authority of the department of health and
20 environmental sciences to make rules on the subject of the
21 provisions of this act is extended to the provisions of this
22 act.

23 NEW SECTION. Section 8. Effective date. This act is
24 effective on passage and approval.

-End-

SENATE

STANDING COMMITTEE REPORT

MARCH 25, 1985

MR. PRESIDENT

We, your committee on PUBLIC HEALTH, WELARE AND SAFETY

having had under consideration HOUSE BILL No. 676

THIRD reading copy (BLUE) color

REGULATION OF UNDERGROUND STORAGE TANKS

DONALDSON (TOWE)

Respectfully report as follows: That HOUSE BILL No. 676

be amended as follows:

- 1. page 9, line 9. Following: "affect" Strike: "rights and duties that matured,"
2. Page 9, line 10. Following: "incurred" Strike: ", "

XXXXXX

XXXXXXXXXX

AND AS AMENDED BE CONCURRED IN

Judy Jacobson SENATOR JUDY JACOBSON Chairman.

1 STATEMENT OF INTENT

2 HOUSE BILL 676

3 House Natural Resources Committee

4
5 A statement of intent is required for this bill because
6 it delegates rulemaking authority to the department of
7 health and environmental sciences (DHES). House Bill 676
8 adds petroleum products and certain hazardous substances
9 stored in underground tanks as a new category of materials
10 which may be regulated under the Montana Hazardous Waste Act
11 (MHWHA).

12 The DHES has been increasingly involved in the cleanup
13 of ground water problems caused by leaking underground
14 tanks. At the national level, congress amended the federal
15 Resource Conservation and Recovery Act of 1976 (RCRA) in
16 November 1984 to include regulation of underground storage
17 tanks and required the environmental protection agency (EPA)
18 to develop a regulatory program for tanks. Since the DHES
19 now administers the existing RCRA program in Montana, it is
20 likely that the state (through DHES) will want to assume the
21 RCRA program for underground tanks as well. Moreover, in the
22 event that the EPA does not adopt a program adequate for
23 Montana or fails to develop a program in a timely fashion,
24 the DHES should have the authority to establish the state's
25 own program to meet the needs of Montana. House Bill 676

1 will grant the DHES the authority to assume the EPA tank
2 program to be developed under RCRA or to establish a state
3 program independent of RCRA.

4 Whether DHES follows the federal RCRA program or
5 develops its own state program, it is the intent of the
6 legislature that administrative rules that DHES may adopt
7 for underground storage tanks need not be equivalent to the
8 comparable federal regulations to be developed by the EPA
9 under RCRA. Rather, in view of the growing number and
10 severity of environmental problems related to underground
11 storage tanks in Montana, the legislature intends to grant
12 DHES the authority to establish a regulatory program for
13 underground tanks whether or not it may include elements
14 more stringent than any federal requirements and whether or
15 not the EPA has established a tank program under RCRA.

16 The legislature intends that the rules developed by
17 DHES include requirements for:

- 18 (1) the design, construction, and installation of
19 underground tanks in a manner that will prevent tank
20 leakage;
21 (2) reporting by tank owners and operators;
22 (3) leak prevention and detection;
23 (4) corrective actions by tank owners and operators if
24 tank leakage does occur; and
25 (5) financial responsibility of tank owners and

HB 0676/si

1 operators for corrective action and compensation to third
2 parties for damages resulting from release of regulated
3 substances from underground tanks.

1 HOUSE BILL NO. 676

2 INTRODUCED BY DONALDSON, MILES, REAM
 3 BY REQUEST OF THE DEPARTMENT OF HEALTH
 4 AND ENVIRONMENTAL SCIENCES

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA
 7 HAZARDOUS WASTE ACT TO ALLOW THE DEPARTMENT OF HEALTH AND
 8 ENVIRONMENTAL SCIENCES TO ADOPT RULES SETTING REQUIREMENTS
 9 FOR UNDERGROUND STORAGE TANKS CONTAINING PETROLEUM OR OTHER
 10 HAZARDOUS SUBSTANCES; REQUIRING TANK OWNERS OR OPERATORS TO
 11 REPORT LEAKS; AMENDING SECTIONS 75-10-403, 75-10-405, AND
 12 75-10-409, AND 75-10-532, MCA; AND PROVIDING AN IMMEDIATE
 13 EFFECTIVE DATE."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 75-10-403, MCA, is amended to read:

17 "75-10-403. Definitions. Unless the context requires
 18 otherwise, in this part the following definitions apply:

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

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

24 (3) "Dispose" or "disposal" means the discharge,
 25 injection, deposit, dumping, spilling, leaking, or placing

1 of any hazardous waste into or onto the land or water so
 2 that the hazardous waste or any constituent of it may enter
 3 the environment or be emitted into the air or discharged
 4 into any waters, including groundwaters.

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

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

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

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

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

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

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

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

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

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

16 (11) "Regulated substance":

17 (a) means:

18 (i) a hazardous substance as defined in 75-10-602; or

19 (ii) petroleum, including crude oil or any fraction
20 thereof, which is liquid at standard conditions of
21 temperature and pressure (60 degrees F and 14.7 pounds per
22 square inch absolute);

23 (b) does not include a substance regulated as a
24 hazardous waste under this part.

25 ~~(11)~~(12) "Storage" means the actual or intended

1 containment of wastes, either on a temporary basis or for a
2 period of years.

3 ~~(12)~~(13) "Transportation" means the movement of
4 hazardous wastes from the point of generation to any
5 intermediate points and finally to the point of ultimate
6 storage or disposal.

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8 offsite transportation of hazardous waste by air, rail,
9 highway, or water.

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11 process, including neutralization, designed to change the
12 physical, chemical, or biological character or composition
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1 A REGULATED SUBSTANCE AND CONNECTED TO A STORAGE TANK,
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