

SENATE BILL NO. 345

INTRODUCED BY NEUMAN, COBB, SCHYE, MILLER

IN THE SENATE

February 7, 1985	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
February 8, 1985	Fiscal Note requested.
February 13, 1985	Fiscal Note returned.
February 19, 1985	Committee recommend bill do pass. Report adopted. Statement of Intent attached.
February 20, 1985	Bill printed and placed on members' desks.
February 21, 1985	Second reading, do pass.
February 22, 1985	Considered correctly engrossed.
February 23, 1985	Third reading, passed. Ayes, 49; Noes, 0. Transmitted to House.

IN THE HOUSE

February 27, 1985	Introduced and referred to Committee on Business and Labor.
March 12, 1985	Committee recommend bill be concurrent in. Report adopted.
March 15, 1985	Second reading, concurred in as amended.
March 18, 1985	Third reading, concurred in. Returned to Senate with amendments.

IN THE SENATE

March 18, 1985

Received from House.

March 21, 1985

Second reading, amendments
concurrent in.

March 23, 1985

Third reading, amendments
concurrent in. Ayes, 49; Noes, 0.

Sent to enrolling.

Reported correctly enrolled.

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INTRODUCED BY *Senate* BILL NO. *345*
Neuman Cobb Lehigh Mills

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE "ANHYDROUS AMMONIA FACILITIES SAFETY ACT"; REQUIRING THE DEPARTMENT OF AGRICULTURE TO ADOPT RULES REGULATING ANHYDROUS AMMONIA FACILITIES; ALLOWING AN INCREASE IN ANHYDROUS AMMONIA INSPECTION FEES FOR ADMINISTRATION AND ENFORCEMENT; AND AMENDING SECTIONS 80-10-207 AND 80-10-303, MCA."

WHEREAS, commercial fertilizer, primarily anhydrous ammonia, is a necessary enhancement to agricultural production in Montana; and

WHEREAS, there is continuing and growing demand for anhydrous ammonia in Montana and new anhydrous ammonia facilities will be constructed and operated in this state; and

WHEREAS, there is no central, statewide coordination of a safety program and location standards for commercial anhydrous ammonia facilities; and

WHEREAS, the State of Montana does not have an existing safety code for anhydrous ammonia storage, manufacturing, and distribution facilities; and

WHEREAS, the public interest in health and safety requires that such facilities be properly located and

1 operated, according to acceptable and defined industry
2 standards.

3 THEREFORE, the Legislature finds it necessary and
4 appropriate to enact legislation providing that the Montana
5 Department of Agriculture act as the coordinator of a
6 comprehensive safety program for commercial anhydrous
7 ammonia facilities.

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 NEW SECTION. Section 1. Short title. [Sections 1
11 through 7] shall be known and may be cited as the "Anhydrous
12 Ammonia Facilities Safety Act".

13 NEW SECTION. Section 2. Definitions. As used in
14 [sections 1 through 7], the following definitions apply:

15 (1) "Anhydrous ammonia" means a compound formed by a
16 combination of two gaseous elements, nitrogen and hydrogen,
17 in the proportion of one part nitrogen to three parts
18 hydrogen by volume, which compound is in either gaseous or
19 liquid form and is used primarily as fertilizer.

20 (2) "Anhydrous ammonia facility" or "facility" means
21 any building, tank, or system of equipment used for
22 processing, storing, or distributing anhydrous ammonia and
23 includes all appurtenances to such building, tank, or
24 system.

25 NEW SECTION. Section 3. Rulemaking authority and

1 requirements. (1) The department shall adopt rules for the
 2 design, construction, repair, alteration, location,
 3 installation, and operation of anhydrous ammonia facilities.
 4 Such rules must be in substantial conformity with nationally
 5 recognized safety standards for the storage and handling of
 6 anhydrous ammonia. The department may adopt additional rules
 7 necessary for the protection and safety of persons employed
 8 in anhydrous ammonia facilities, persons using anhydrous
 9 ammonia, and the public.

10 (2) The rules must include a provision under which new
 11 or existing facilities may apply for a temporary or
 12 permanent variance from any requirement of the rules. The
 13 rules must provide criteria for granting or denying a
 14 variance request and must provide for written notice and
 15 public hearing on any variance request.

16 (3) The department shall coordinate its rulemaking
 17 activities with other executive branch agencies and
 18 departments by providing them with timely information on the
 19 adoption of the rules, inviting and encouraging their
 20 participation, giving due weight and consideration to their
 21 comments and testimony, and coordinating interdepartmental
 22 meetings on matters pertaining to the adoption of the rules.

23 NEW SECTION. Section 4. Preexisting facilities. Any
 24 facility in operation prior to the adoption of rules under
 25 [section 3] that is not in compliance with the rules must be

1 allowed to continue in operation unless the department,
 2 after inspection and written notice to the owner or
 3 operator, makes a determination that the facility presents a
 4 safety hazard to employees, other persons using the
 5 facility, or the public.

6 NEW SECTION. Section 5. Variance. A person who owns
 7 or controls a facility may request in writing from the
 8 department a variance, which is an exemption or partial
 9 exemption from any rule governing the design, construction,
 10 repair, alteration, location, installation, or operation of
 11 a facility.

12 NEW SECTION. Section 6. Enforcement. [Sections 1
 13 through 7] must be enforced as provided in 80-10-303.

14 NEW SECTION. Section 7. Funding. Administration and
 15 enforcement of the provisions of [sections 1 through 7] and
 16 the rules adopted under [section 3] must be funded through
 17 expenditures of the anhydrous ammonia account established
 18 under 80-10-207(5).

19 Section 8. Section 80-10-207, MCA, is amended to read:
 20 "80-10-207. Fees. (1) There shall be paid to the
 21 department fees on all commercial fertilizer distributed in
 22 this state, except specialty fertilizers sold in packages of
 23 10 pounds or less, and unmanipulated animal and vegetable
 24 manures, provided that sales to manufacturers or exchanges
 25 between them are exempt. The fees are:

1 (a) inspection of fertilizers other than anhydrous
 2 ammonia, 20 cents per ton. The department may by rule after
 3 hearing adjust the inspection fee not to exceed a maximum of
 4 25 cents per ton to maintain adequate funding for the
 5 administration of this part. Any change in fee becomes
 6 effective on the first day of a reporting period. All
 7 registrants shall be given notice of any change in fees
 8 before the effective date.

9 (b) inspection of anhydrous ammonia, 20 cents per ton.
 10 The department may by rule after hearing adjust the
 11 anhydrous ammonia inspection fee not to exceed a maximum of
 12 65 cents per ton to maintain adequate funding for the
 13 administration and enforcement of [sections 1 through 7].
 14 Any change in fee becomes effective on the first day of a
 15 reporting period. All registrants and manufacturers of
 16 anhydrous ammonia shall be given notice of any change in
 17 fees before the effective date of the fee adjustment.

18 (b)(c) assessment, the fee prescribed in 80-10-103.
 19 The assessment fee shall be used to fund educational and
 20 experimental programs as provided in 80-10-103 through
 21 80-10-106.

22 (2) There shall be paid to the department on all soil
 23 amendments distributed in this state an inspection fee of 10
 24 cents per ton subject to the following provisions:

25 (a) sales to manufacturers or exchanges between them

1 are exempt; and

2 (b) when less than 50 tons of registered soil
 3 amendment is sold per 6-month period, there shall be paid to
 4 the department a fee of \$5 per soil amendment per 6-month
 5 period in lieu of the 10 cents per ton fee. Inspection fees
 6 shall be used by the department for administration of this
 7 part.

8 (3) (a) Every registrant and licensee who distributes
 9 a soil amendment or commercial fertilizer, except specialty
 10 fertilizer in packages of 10 pounds or less and
 11 unmanipulated manures, to an unlicensed or unregistered
 12 person in this state shall file with the department on
 13 forms furnished or approved by the department a semiannual
 14 statement for the periods ending June 30 and December 31
 15 setting forth the number of net tons of each commercial
 16 fertilizer and/or soil amendment distributed in this state
 17 during the 6-month period. The report is due on or before
 18 the 30th day of the month following the close of each
 19 period. The registrant or licensee shall pay the proper
 20 fees, as set forth in subsection (1) of this section, at
 21 that time.

22 (b) If the tonnage report is not filed and the payment
 23 of fees is not made within 30 days after the end of the
 24 period a collection fee amounting to 10% of the amount due
 25 but not less than \$10 shall be assessed against the

1 registrant or licensee, and the amount of fees due shall
2 constitute a debt and become the basis of a judgment against
3 the registrant or licensee.

4 (4) All Except as provided in subsection (5), all fees
5 collected for licenses, registration, and inspection and
6 moneys collected as penalties shall be deposited in the
7 state treasury to the credit of the state special revenue
8 fund for the purpose of administering this chapter,
9 including the cost of equipment and facilities and the cost
10 of inspecting, analyzing, and examining commercial
11 fertilizer and soil amendments manufactured or distributed
12 in this state. Reserve funds may be invested by the
13 department with interest credited to the state special
14 revenue fund.

15 (5) All fees collected under subsection (1)(b) shall
16 be deposited in the state treasury to the credit of the
17 state special revenue fund, anhydrous ammonia account, for
18 the administration and enforcement of [sections 1 through 7]
19 and the rules adopted thereunder."

20 Section 9. Section 80-10-303, MCA, is amended to read:

21 "80-10-303. Violations -- enforcement proceedings --
22 judicial review. (1) If it appears from the examination of
23 any commercial fertilizer or from the inspection of any
24 anhydrous ammonia facility that this chapter or the rules
25 adopted under this chapter have been violated, the

1 department shall give notice of the violations to the
2 registrant, licensee, distributor, or possessor from whom
3 the sample was taken. A person notified shall be given an
4 opportunity to be heard under rules of the department. If it
5 appears after a hearing, either in the presence or absence
6 of the person notified, that this chapter or rules issued
7 under this chapter have been violated, the department may
8 certify the facts to the proper prosecuting attorney.

9 (2) A person who violates this chapter or the rules
10 adopted under this chapter or who obstructs, prevents, or
11 attempts to prevent the department from performing its duty
12 under this chapter is guilty of a misdemeanor and shall be
13 fined not less than \$300 or more than \$500 for the first
14 violation and not less than \$300 or more than \$1,000 for a
15 subsequent violation. In all prosecutions under this chapter
16 involving the composition of a lot of commercial fertilizer,
17 a certified copy of the official analysis of the department
18 is prima facie evidence of the composition.

19 (3) Nothing in this chapter requires the department to
20 report for prosecution or for the beginning of seizure
21 proceedings minor violations of this chapter when it
22 believes that the public interest will be best served by a
23 suitable notice of warning in writing.

24 (4) A prosecuting attorney to whom a violation is
25 reported shall prosecute the violator in a court of

1 competent jurisdiction without delay.

2 (5) The department may apply for and the court may
3 grant a temporary or permanent injunction restraining any
4 person from violating or continuing to violate any of the
5 provisions of this chapter or any rule adopted under the
6 chapter notwithstanding the existence of other remedies at
7 law. The injunction shall be issued without bond.

8 (6) If a person adversely affected by an act, order,
9 or ruling made by the department under this chapter is not
10 entitled to a hearing before the department to determine his
11 rights, he may within 45 days sue in the district court of
12 any county where the alleged violation giving rise to the
13 department's act, order, or ruling occurred, for new trial
14 of the issues bearing upon the act, order, or ruling. After
15 the trial the court may issue and enforce those orders,
16 judgments, or decrees it considers proper, just, and
17 equitable."

18 NEW SECTION. Section 10. Extension of authority. Any
19 existing authority of the department of agriculture to make
20 rules on the subject of the provisions of this act is
21 extended to the provisions of this act.

22 NEW SECTION. Section 11. Codification instruction.
23 Sections 1 through 7 are intended to be codified as an
24 integral part of Title 80, chapter 10.

-End-

STATE OF MONTANA

FISCAL NOTE

REQUEST NO. FNN 378-85Form BD-15

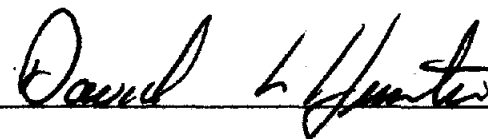
In compliance with a written request received February 8, 19 85, there is hereby submitted a Fiscal Note for Senate Bill #345 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating "anhydrous Ammonia Facilities Safety Act"; requiring Department of Agriculture to adopt rules regulating Anhydrous Ammonia Facilities; allowing an increase in inspection fees for administrative and enforcement and amending Sections 80-10-207 & 80-10-307 MCA.

ASSUMPTIONS:

1. The Department will be required to adopt rules for operation of anhydrous ammonia facility safety.
2. The Department will hold two (2) hearings annually on rule notices and variance requests.
3. Approximately 80 site inspections twice a year will be required.
4. Annual training classes will be conducted.
5. The inspection and training requirements will require 1.50 FTE and operational costs.
6. Anticipate 65,000 tons sold annually based on record of sales @ \$.60 a ton (includes current \$.20 tonnage tax).
7. Effective date of act, October 1, 1985.
8. The current .20 cents per ton charge will transfer to the anhydrous ammonia account on October 1, 1985.



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 13, 1985

FISCAL IMPACT:

	<u>FY 1986</u>		<u>FY 1987</u>	
	<u>Current</u>	<u>Proposed</u>	<u>Current</u>	<u>Proposed</u>
Revenue:	-0-	\$39,000	-0-	\$39,000
Expenditures:				
Personal Services	-0-	\$31,345	-0-	\$32,644
Operations	-0-	\$ 6,100	-0-	\$ 5,590
Equipment	-0-	\$ 610	-0-	-0-
Indirect	-0-	\$ 559	-0-	\$ 582
	-0-	\$38,614	-0-	\$38,816

AFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

None.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The proposed legislation will reduce the feed & fertilizer state special revenue account by .20 cents per ton or \$13,000 annually. The feed & fertilizer account currently funds a portion of operational costs in the diagnostic laboratory.

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

None.

APPROVED BY COMMITTEE
ON AGRICULTURE LIVESTOCK
AND IRRIGATION

1 STATEMENT OF INTENT

2 SENATE BILL 345

3 Senate Agriculture, Livestock and Irrigation Committee

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5 It is the intent of the legislature that the department
6 of agriculture adopt rules to establish enforceable
7 standards for the safe storage and handling of anhydrous
8 ammonia. In adopting these rules, the department shall
9 demonstrate strong consideration of the safety standards for
10 the storage and handling of anhydrous ammonia published by
11 the American national standards institute, a private,
12 nationally recognized institute with expertise in matters
13 pertaining to industrial safety and design standards. It is
14 the intent of the legislature that the department of
15 agriculture adopt other rules necessary to administer the
16 provisions of this act.

SECOND READING
SB 345

1 SENATE BILL NO. 345

2 INTRODUCED BY NEUMAN, COBB, SCHYE, MILLER

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19 a safety program and location standards for commercial
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 25 between them are exempt. The fees are:

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 2 ammonia, 20 cents per ton. The department may by rule after
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 4 25 cents per ton to maintain adequate funding for the
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 6 effective on the first day of a reporting period. All
 7 registrants shall be given notice of any change in fees
 8 before the effective date.

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 10 The department may by rule after hearing adjust the
 11 anhydrous ammonia inspection fee not to exceed a maximum of
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 13 administration and enforcement of [sections 1 through 7].
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 23 amendments distributed in this state an inspection fee of 10
 24 cents per ton subject to the following provisions:

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 3 amendment is sold per 6-month period, there shall be paid to
 4 the department a fee of \$5 per soil amendment per 6-month
 5 period in lieu of the 10 cents per ton fee. Inspection fees
 6 shall be used by the department for administration of this
 7 part.

8 (3) (a) Every registrant and licensee who distributes
 9 a soil amendment or commercial fertilizer, except specialty
 10 fertilizer in packages of 10 pounds or less and
 11 unmanipulated manures, to an unlicensed or unregistered
 12 person in this state shall file with the department on
 13 forms furnished or approved by the department a semiannual
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 20 fees, as set forth in subsection (1) of this section, at
 21 that time.

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 23 of fees is not made within 30 days after the end of the
 24 period a collection fee amounting to 10% of the amount due
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1 registrant or licensee, and the amount of fees due shall
2 constitute a debt and become the basis of a judgment against
3 the registrant or licensee.

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5 collected for licenses, registration, and inspection and
6 moneys collected as penalties shall be deposited in the
7 state treasury to the credit of the state special revenue
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9 including the cost of equipment and facilities and the cost
10 of inspecting, analyzing, and examining commercial
11 fertilizer and soil amendments manufactured or distributed
12 in this state. Reserve funds may be invested by the
13 department with interest credited to the state special
14 revenue fund.

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23 any commercial fertilizer or from the inspection of any
24 anhydrous ammonia facility that this chapter or the rules
25 adopted under this chapter have been violated, the

1 department shall give notice of the violations to the
2 registrant, licensee, distributor, or possessor from whom
3 the sample was taken. A person notified shall be given an
4 opportunity to be heard under rules of the department. If it
5 appears after a hearing, either in the presence or absence
6 of the person notified, that this chapter or rules issued
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10 adopted under this chapter or who obstructs, prevents, or
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15 subsequent violation. In all prosecutions under this chapter
16 involving the composition of a lot of commercial fertilizer,
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25 reported shall prosecute the violator in a court of

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3 grant a temporary or permanent injunction restraining any
4 person from violating or continuing to violate any of the
5 provisions of this chapter or any rule adopted under the
6 chapter notwithstanding the existence of other remedies at
7 law. The injunction shall be issued without bond.

8 (6) If a person adversely affected by an act, order,
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10 entitled to a hearing before the department to determine his
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24 integral part of Title 80, chapter 10.

-End-

1 **STATEMENT OF INTENT**

2 **SENATE BILL 345**

3 **Senate Agriculture, Livestock and Irrigation Committee**

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It is the intent of the legislature that the department of agriculture adopt rules to establish enforceable standards for the safe storage and handling of anhydrous ammonia. In adopting these rules, the department shall demonstrate strong consideration of the safety standards for the storage and handling of anhydrous ammonia published by the American national standards institute, a private, nationally recognized institute with expertise in matters pertaining to industrial safety and design standards. It is the intent of the legislature that the department of agriculture adopt other rules necessary to administer the provisions of this act.

THIRD READING
SB 345



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operated, according to acceptable and defined industry standards.

THEREFORE, the Legislature finds it necessary and appropriate to enact legislation providing that the Montana Department of Agriculture act as the coordinator of a comprehensive safety program for commercial anhydrous ammonia facilities.

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 3 installation, and operation of anhydrous ammonia facilities.
 4 Such rules must be in substantial conformity with nationally
 5 recognized safety standards for the storage and handling of
 6 anhydrous ammonia. The department may adopt additional rules
 7 necessary for the protection and safety of persons employed
 8 in anhydrous ammonia facilities, persons using anhydrous
 9 ammonia, and the public.

10 (2) The rules must include a provision under which new
 11 or existing facilities may apply for a temporary or
 12 permanent variance from any requirement of the rules. The
 13 rules must provide criteria for granting or denying a
 14 variance request and must provide for written notice and
 15 public hearing on any variance request.

16 (3) The department shall coordinate its rulemaking
 17 activities with other executive branch agencies and
 18 departments by providing them with timely information on the
 19 adoption of the rules, inviting and encouraging their
 20 participation, giving due weight and consideration to their
 21 comments and testimony, and coordinating interdepartmental
 22 meetings on matters pertaining to the adoption of the rules.

23 NEW SECTION. Section 4. Preexisting facilities. Any
 24 facility in operation prior to the adoption of rules under
 25 [section 3] that is not in compliance with the rules must be

1 allowed to continue in operation unless the department,
 2 after inspection and written notice to the owner or
 3 operator, makes a determination that the facility presents a
 4 safety hazard to employees, other persons using the
 5 facility, or the public.

6 NEW SECTION. Section 5. Variance. A person who owns
 7 or controls a facility may request in writing from the
 8 department a variance, which is an exemption or partial
 9 exemption from any rule governing the design, construction,
 10 repair, alteration, location, installation, or operation of
 11 a facility.

12 NEW SECTION. Section 6. Enforcement. [Sections 1
 13 through 7] must be enforced as provided in 80-10-303.

14 NEW SECTION. Section 7. Funding. Administration and
 15 enforcement of the provisions of [sections 1 through 7] and
 16 the rules adopted under [section 3] must be funded through
 17 expenditures of the anhydrous ammonia account established
 18 under 80-10-207(5).

19 Section 8. Section 80-10-207, MCA, is amended to read:

20 "80-10-207. Fees. (1) There shall be paid to the
 21 department fees on all commercial fertilizer distributed in
 22 this state, except specialty fertilizers sold in packages of
 23 10 pounds or less, and unmanipulated animal and vegetable
 24 manures, provided that sales to manufacturers or exchanges
 25 between them are exempt. The fees are:

1 (a) inspection of fertilizers other than anhydrous
 2 ammonia, 20 cents per ton. The department may by rule after
 3 hearing adjust the inspection fee not to exceed a maximum of
 4 25 cents per ton to maintain adequate funding for the
 5 administration of this part. Any change in fee becomes
 6 effective on the first day of a reporting period. All
 7 registrants shall be given notice of any change in fees
 8 before the effective date.

9 (b) inspection of anhydrous ammonia, 20 cents per ton.
 10 The department may by rule after hearing adjust the
 11 anhydrous ammonia inspection fee not to exceed a maximum of
 12 65 cents per ton to maintain adequate funding for the
 13 administration and enforcement of [sections 1 through 7].
 14 Any change in fee becomes effective on the first day of a
 15 reporting period. All registrants and manufacturers of
 16 anhydrous ammonia shall be given notice of any change in
 17 fees before the effective date of the fee adjustment.

18 (b)(c) assessment, the fee prescribed in 80-10-103.
 19 The assessment fee shall be used to fund educational and
 20 experimental programs as provided in 80-10-103 through
 21 80-10-106.

22 (2) There shall be paid to the department on all soil
 23 amendments distributed in this state an inspection fee of 10
 24 cents per ton subject to the following provisions:

25 (a) sales to manufacturers or exchanges between them

1 are exempt; and

2 (b) when less than 50 tons of registered soil
 3 amendment is sold per 6-month period, there shall be paid to
 4 the department a fee of \$5 per soil amendment per 6-month
 5 period in lieu of the 10 cents per ton fee. Inspection fees
 6 shall be used by the department for administration of this
 7 part.

8 (3) (a) Every registrant and licensee who distributes
 9 a soil amendment or commercial fertilizer, except specialty
 10 fertilizer in packages of 10 pounds or less and
 11 unmanipulated manures, to an unlicensed or unregistered
 12 person in this state shall file with the department on
 13 forms furnished or approved by the department a semiannual
 14 statement for the periods ending June 30 and December 31
 15 setting forth the number of net tons of each commercial
 16 fertilizer and/or soil amendment distributed in this state
 17 during the 6-month period. The report is due on or before
 18 the 30th day of the month following the close of each
 19 period. The registrant or licensee shall pay the proper
 20 fees, as set forth in subsection (1) of this section, at
 21 that time.

22 (b) If the tonnage report is not filed and the payment
 23 of fees is not made within 30 days after the end of the
 24 period a collection fee amounting to 10% of the amount due
 25 but not less than \$10 shall be assessed against the

1 registrant or licensee, and the amount of fees due shall
2 constitute a debt and become the basis of a judgment against
3 the registrant or licensee.

4 (4) All Except as provided in subsection (5), all fees
5 collected for licenses, registration, and inspection and
6 moneys collected as penalties shall be deposited in the
7 state treasury to the credit of the state special revenue
8 fund for the purpose of administering this chapter,
9 including the cost of equipment and facilities and the cost
10 of inspecting, analyzing, and examining commercial
11 fertilizer and soil amendments manufactured or distributed
12 in this state. Reserve funds may be invested by the
13 department with interest credited to the state special
14 revenue fund.

15 (5) All fees collected under subsection (1)(b) shall
16 be deposited in the state treasury to the credit of the
17 state special revenue fund, anhydrous ammonia account, for
18 the administration and enforcement of [sections 1 through 7]
19 and the rules adopted thereunder."

20 Section 9. Section 80-10-303, MCA, is amended to read:

21 "80-10-303. Violations -- enforcement proceedings --
22 judicial review. (1) If it appears from the examination of
23 any commercial fertilizer or from the inspection of any
24 anhydrous ammonia facility that this chapter or the rules
25 adopted under this chapter have been "violated", the

1 department shall give notice of the violations to the
2 registrant, licensee, distributor, or possessor from whom
3 the sample was taken. A person notified shall be given an
4 opportunity to be heard under rules of the department. If it
5 appears after a hearing, either in the presence or absence
6 of the person notified, that this chapter or rules issued
7 under this chapter have been violated, the department may
8 certify the facts to the proper prosecuting attorney.

9 (2) A person who violates this chapter or the rules
10 adopted under this chapter or who obstructs, prevents, or
11 attempts to prevent the department from performing its duty
12 under this chapter is guilty of a misdemeanor and shall be
13 fined not less than \$300 or more than \$500 for the first
14 violation and not less than \$300 or more than \$1,000 for a
15 subsequent violation. In all prosecutions under this chapter
16 involving the composition of a lot of commercial fertilizer,
17 a certified copy of the official analysis of the department
18 is prima facie evidence of the composition.

19 (3) Nothing in this chapter requires the department to
20 report for prosecution or for the beginning of seizure
21 proceedings minor violations of this chapter when it
22 believes that the public interest will be best served by a
23 suitable notice of warning in writing.

24 (4) A prosecuting attorney to whom a violation is
25 reported shall prosecute the violator in a court of

1 competent jurisdiction without delay.

2 (5) The department may apply for and the court may
3 grant a temporary or permanent injunction restraining any
4 person from violating or continuing to violate any of the
5 provisions of this chapter or any rule adopted under the
6 chapter notwithstanding the existence of other remedies at
7 law. The injunction shall be issued without bond.

8 (6) If a person adversely affected by an act, order,
9 or ruling made by the department under this chapter is not
10 entitled to a hearing before the department to determine his
11 rights, he may within 45 days sue in the district court of
12 any county where the alleged violation giving rise to the
13 department's act, order, or ruling occurred, for new trial
14 of the issues bearing upon the act, order, or ruling. After
15 the trial the court may issue and enforce those orders,
16 judgments, or decrees it considers proper, just, and
17 equitable."

18 NEW SECTION. Section 10. Extension of authority. Any
19 existing authority of the department of agriculture to make
20 rules on the subject of the provisions of this act is
21 extended to the provisions of this act.

22 NEW SECTION. Section 11. Codification instruction.
23 Sections 1 through 7 are intended to be codified as an
24 integral part of Title 80, chapter 10.

-End-

COMMITTEE OF THE WHOLE AMENDMENT

3141010P.CW

HOUSE

3-14-85
DATE

10:10
TIME

MR. CHAIRMAN: I MOVE TO AMEND Senate Bill No. 345

third reading copy (blue) as follows:
Color

- 1. Page 3, line 6.
Following: "."
Insert: "The rules shall require the owner to place his name and phone number on his anhydrous ammonia tank or tanks."

ADOPT
REJECT

James M. Schultz
Rep. Schultz

1 STATEMENT OF INTENT

2 SENATE BILL 345

3 Senate Agriculture, Livestock and Irrigation Committee

4
5 It is the intent of the legislature that the department
6 of agriculture adopt rules to establish enforceable
7 standards for the safe storage and handling of anhydrous
8 ammonia. In adopting these rules, the department shall
9 demonstrate strong consideration of the safety standards for
10 the storage and handling of anhydrous ammonia published by
11 the American national standards institute, a private,
12 nationally recognized institute with expertise in matters
13 pertaining to industrial safety and design standards. It is
14 the intent of the legislature that the department of
15 agriculture adopt other rules necessary to administer the
16 provisions of this act.

1 SENATE BILL NO. 345

2 INTRODUCED BY NEUMAN, COBB, SCHYE, MILLER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE "ANHYDROUS
5 AMMONIA FACILITIES SAFETY ACT"; REQUIRING THE DEPARTMENT OF
6 AGRICULTURE TO ADOPT RULES REGULATING ANHYDROUS AMMONIA
7 FACILITIES; ALLOWING AN INCREASE IN ANHYDROUS AMMONIA
8 INSPECTION FEES FOR ADMINISTRATION AND ENFORCEMENT; AND
9 AMENDING SECTIONS 80-10-207 AND 80-10-303, MCA."

10
11 WHEREAS, commercial fertilizer, primarily anhydrous
12 ammonia, is a necessary enhancement to agricultural
13 production in Montana; and

14 WHEREAS, there is continuing and growing demand for
15 anhydrous ammonia in Montana and new anhydrous ammonia
16 facilities will be constructed and operated in this state;
17 and

18 WHEREAS, there is no central, statewide coordination of
19 a safety program and location standards for commercial
20 anhydrous ammonia facilities; and

21 WHEREAS, the State of Montana does not have an existing
22 safety code for anhydrous ammonia storage, manufacturing,
23 and distribution facilities; and

24 WHEREAS, the public interest in health and safety
25 requires that such facilities be properly located and

1 operated, according to acceptable and defined industry
2 standards.

3 THEREFORE, the Legislature finds it necessary and
4 appropriate to enact legislation providing that the Montana
5 Department of Agriculture act as the coordinator of a
6 comprehensive safety program for commercial anhydrous
7 ammonia facilities.

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 NEW SECTION. Section 1. Short title. [Sections 1
11 through 7] shall be known and may be cited as the "Anhydrous
12 Ammonia Facilities Safety Act".

13 NEW SECTION. Section 2. Definitions. As used in
14 [sections 1 through 7], the following definitions apply:

15 (1) "Anhydrous ammonia" means a compound formed by a
16 combination of two gaseous elements, nitrogen and hydrogen,
17 in the proportion of one part nitrogen to three parts
18 hydrogen by volume, which compound is in either gaseous or
19 liquid form and is used primarily as fertilizer.

20 (2) "Anhydrous ammonia facility" or "facility" means
21 any building, tank, or system of equipment used for
22 processing, storing, or distributing anhydrous ammonia and
23 includes all appurtenances to such building, tank, or
24 system.

25 NEW SECTION. Section 3. Rulemaking authority and

1 requirements. (1) The department shall adopt rules for the
 2 design, construction, repair, alteration, location,
 3 installation, and operation of anhydrous ammonia facilities.
 4 Such rules must be in substantial conformity with nationally
 5 recognized safety standards for the storage and handling of
 6 anhydrous ammonia. THE RULES SHALL REQUIRE THE OWNER TO
 7 PLACE HIS NAME AND PHONE NUMBER ON HIS ANHYDROUS AMMONIA
 8 TANK OR TANKS. The department may adopt additional rules
 9 necessary for the protection and safety of persons employed
 10 in anhydrous ammonia facilities, persons using anhydrous
 11 ammonia, and the public.

12 (2) The rules must include a provision under which new
 13 or existing facilities may apply for a temporary or
 14 permanent variance from any requirement of the rules. The
 15 rules must provide criteria for granting or denying a
 16 variance request and must provide for written notice and
 17 public hearing on any variance request.

18 (3) The department shall coordinate its rulemaking
 19 activities with other executive branch agencies and
 20 departments by providing them with timely information on the
 21 adoption of the rules, inviting and encouraging their
 22 participation, giving due weight and consideration to their
 23 comments and testimony, and coordinating interdepartmental
 24 meetings on matters pertaining to the adoption of the rules.

25 NEW SECTION. Section 4. Preexisting facilities. Any

1 facility in operation prior to the adoption of rules under
 2 [section 3] that is not in compliance with the rules must be
 3 allowed to continue in operation unless the department,
 4 after inspection and written notice to the owner or
 5 operator, makes a determination that the facility presents a
 6 safety hazard to employees, other persons using the
 7 facility, or the public.

8 NEW SECTION. Section 5. Variance. A person who owns
 9 or controls a facility may request in writing from the
 10 department a variance, which is an exemption or partial
 11 exemption from any rule governing the design, construction,
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 19 expenditures of the anhydrous ammonia account established
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2 between them are exempt. The fees are:

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5 hearing adjust the inspection fee not to exceed a maximum of
6 25 cents per ton to maintain adequate funding for the
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8 effective on the first day of a reporting period. All
9 registrants shall be given notice of any change in fees
10 before the effective date.

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13 anhydrous ammonia inspection fee not to exceed a maximum of
14 65 cents per ton to maintain adequate funding for the
15 administration and enforcement of [sections 1 through 7].
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17 reporting period. All registrants and manufacturers of
18 anhydrous ammonia shall be given notice of any change in
19 fees before the effective date of the fee adjustment.

20 ~~(b)~~(c) assessment, the fee prescribed in 80-10-103.
21 The assessment fee shall be used to fund educational and
22 experimental programs as provided in 80-10-103 through
23 80-10-106.

24 (2) There shall be paid to the department on all soil
25 amendments distributed in this state an inspection fee of 10

1 cents per ton subject to the following provisions:

2 (a) sales to manufacturers or exchanges between them
3 are exempt; and

4 (b) when less than 50 tons of registered soil
5 amendment is sold per 6-month period, there shall be paid to
6 the department a fee of \$5 per soil amendment per 6-month
7 period in lieu of the 10 cents per ton fee. Inspection fees
8 shall be used by the department for administration of this
9 part.

10 (3) (a) Every registrant and licensee who distributes
11 a soil amendment or commercial fertilizer, except specialty
12 fertilizer in packages of 10 pounds or less and
13 unmanipulated manures, to an unlicensed or unregistered
14 person in this state shall file with the department on
15 forms furnished or approved by the department a semiannual
16 statement for the periods ending June 30 and December 31
17 setting forth the number of net tons of each commercial
18 fertilizer and/or soil amendment distributed in this state
19 during the 6-month period. The report is due on or before
20 the 30th day of the month following the close of each
21 period. The registrant or licensee shall pay the proper
22 fees, as set forth in subsection (1) of this section, at
23 that time.

24 (b) If the tonnage report is not filed and the payment
25 of fees is not made within 30 days after the end of the

1 period a collection fee amounting to 10% of the amount due
 2 but not less than \$10 shall be assessed against the
 3 registrant or licensee, and the amount of fees due shall
 4 constitute a debt and become the basis of a judgment against
 5 the registrant or licensee.

6 (4) All Except as provided in subsection (5), all fees
 7 collected for licenses, registration, and inspection and
 8 moneys collected as penalties shall be deposited in the
 9 state treasury to the credit of the state special revenue
 10 fund for the purpose of administering this chapter,
 11 including the cost of equipment and facilities and the cost
 12 of inspecting, analyzing, and examining commercial
 13 fertilizer and soil amendments manufactured or distributed
 14 in this state. Reserve funds may be invested by the
 15 department with interest credited to the state special
 16 revenue fund.

17 (5) All fees collected under subsection (1)(b) shall
 18 be deposited in the state treasury to the credit of the
 19 state special revenue fund, anhydrous ammonia account, for
 20 the administration and enforcement of [sections 1 through 7]
 21 and the rules adopted thereunder."

22 Section 9. Section 80-10-303, MCA, is amended to read:
 23 "80-10-303. Violations -- enforcement proceedings --
 24 judicial review. (1) If it appears from the examination of
 25 any commercial fertilizer or from the inspection of any

1 anhydrous ammonia facility that this chapter or the rules
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 3 department shall give notice of the violations to the
 4 registrant, licensee, distributor, or possessor from whom
 5 the sample was taken. A person notified shall be given an
 6 opportunity to be heard under rules of the department. If it
 7 appears after a hearing, either in the presence or absence
 8 of the person notified, that this chapter or rules issued
 9 under this chapter have been violated, the department may
 10 certify the facts to the proper prosecuting attorney.

11 (2) A person who violates this chapter or the rules
 12 adopted under this chapter or who obstructs, prevents, or
 13 attempts to prevent the department from performing its duty
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 15 fined not less than \$300 or more than \$500 for the first
 16 violation and not less than \$300 or more than \$1,000 for a
 17 subsequent violation. In all prosecutions under this chapter
 18 involving the composition of a lot of commercial fertilizer,
 19 a certified copy of the official analysis of the department
 20 is prima facie evidence of the composition.

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 22 report for prosecution or for the beginning of seizure
 23 proceedings minor violations of this chapter when it
 24 believes that the public interest will be best served by a
 25 suitable notice of warning in writing.

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3 competent jurisdiction without delay.

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5 grant a temporary or permanent injunction restraining any
6 person from violating or continuing to violate any of the
7 provisions of this chapter or any rule adopted under the
8 chapter notwithstanding the existence of other remedies at
9 law. The injunction shall be issued without bond.

10 (6) If a person adversely affected by an act, order,
11 or ruling made by the department under this chapter is not
12 entitled to a hearing before the department to determine his
13 rights, he may within 45 days sue in the district court of
14 any county where the alleged violation giving rise to the
15 department's act, order, or ruling occurred, for new trial
16 of the issues bearing upon the act, order, or ruling. After
17 the trial the court may issue and enforce those orders,
18 judgments, or decrees it considers proper, just, and
19 equitable."

20 NEW SECTION. Section 10. Extension of authority. Any
21 existing authority of the department of agriculture to make
22 rules on the subject of the provisions of this act is
23 extended to the provisions of this act.

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25 Sections 1 through 7 are intended to be codified as an

1 integral part of Title 80, chapter 10.

-End-