

HB 416 INTRODUCED BY DONALDSON
CLARIFYING AND EXPANDING UNDERGROUND TANK
ENFORCEMENT AUTHORITY
BY REQUEST OF DEPARTMENT OF HEALTH &
ENVIRONMENTAL SCIENCES

1/23	INTRODUCED	
1/23	REFERRED TO NATURAL RESOURCES	
2/02	HEARING	
2/16	COMMITTEE REPORT--BILL PASSED AS AMENDED	
2/18	2ND READING PASSED	75 16
2/19	3RD READING PASSED	78 17
	TRANSMITTED TO SENATE	
2/21	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY	
3/18	HEARING	
3/23	COMMITTEE REPORT--BILL CONCURRED	
3/27	2ND READING NOT CONCURRED	18 30
3/27	2ND READING INDEFINITELY POSTPONED	27 21

1 House BILL NO. 416
 2 INTRODUCED BY _____
 3 BY REQUEST OF THE DEPARTMENT OF HEALTH AND
 4 ENVIRONMENTAL SCIENCES

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY AND EXPAND
 7 THE SCOPE OF ENFORCEMENT AUTHORITY IN THE ADMINISTRATION OF
 8 THE UNDERGROUND STORAGE TANK PROGRAM; AMENDING SECTIONS
 9 75-10-402, 75-10-403, 75-10-405, 75-10-410, 75-10-411,
 10 75-10-415, 75-10-416, AND 75-10-420, MCA; AND PROVIDING AN
 11 IMMEDIATE EFFECTIVE DATE."

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

14 Section 1. Section 75-10-402, MCA, is amended to read:
 15 "75-10-402. Findings and purpose. (1) The legislature
 16 finds that the safe and proper management of hazardous
 17 wastes, the permitting of hazardous waste facilities, and
 18 the siting of such facilities are environmental issues that
 19 should properly be addressed and controlled by the state
 20 rather than by the federal government.

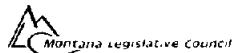
21 (2) It is the purpose of this part and it is the
 22 policy of this state to protect the public health and
 23 safety, the health of living organisms, and the environment
 24 from the effects of the improper, inadequate, or unsound
 25 management of hazardous wastes; to establish a program of

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

8 (3) The legislature finds that petroleum products and
 9 hazardous substances stored in underground storage tanks are
 10 a category of materials that are regulated under the federal
 11 Resource Conservation and Recovery Act of 1976, as amended
 12 in 1984, and that should be regulated under the Montana
 13 Hazardous Waste Act. It is a purpose of this part to
 14 authorize the department to adopt, administer, and enforce
 15 an underground storage tank program that is equal to or more
 16 stringent than the federally implemented program under the
 17 Resource Conservation and Recovery Act of 1976, as amended.
 18 In enforcing laws and regulations governing underground
 19 storage tanks, the department may use all appropriate
 20 authority provided for in 75-10-413 through 75-10-418."

21 Section 2. Section 75-10-403, MCA, is amended to read:
 22 "75-10-403. Definitions. Unless the context requires
 23 otherwise, in this part the following definitions apply:

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



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

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

11 (4) "Facility" or "hazardous waste management
12 facility" means all contiguous land and structures, other
13 appurtenances, and improvements on the land used for
14 treating, storing, or disposing of hazardous waste. A
15 facility may consist of several treatment, storage, or
16 disposal operational units.

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

19 (6) "Generator" means any person, by site, whose act
20 or process produces hazardous waste or whose act first
21 causes a hazardous waste to become subject to regulation
22 under this part.

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

1 (i) cause or significantly contribute to an increase
2 in mortality or an increase in serious irreversible or
3 incapacitating reversible illness; or

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

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

9 (8) "Hazardous waste management" means the management
10 of the collection, source separation, storage,
11 transportation, processing, treatment, recovery, and
12 disposal of hazardous wastes.

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

17 (10) "Person" means the United States, an individual,
18 firm, trust, estate, partnership, company, association,
19 corporation, city, town, local governmental entity, or any
20 other governmental or private entity, whether organized for
21 profit or not.

22 (11) "Regulated substance":

23 (a) means:

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

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

1 thereof, which is liquid at standard conditions of
2 temperature and pressure (60 degrees F and 14.7 pounds per
3 square inch absolute);

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

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

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

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

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

22 (16) "Underground storage tank":

23 (a) means, except as provided in subsections
24 (16)(b)(i) through (16)(b)(viii):

25 (i) any one or combination of tanks ~~(including~~

1 ~~connected--underground--pipes}~~ used to contain a regulated
2 substance, the volume of which ~~(including-the-volume-of--the~~
3 ~~connected--underground--pipes}~~ is 10% or more beneath the
4 surface of the ground; and or

5 (ii) any underground pipes used to contain or transport
6 a regulated substance and connected to a storage tank,
7 whether the storage tank is entirely above ground, partially
8 above ground, or entirely underground;

9 (b) does not include:

10 (i) a septic tank;

11 (ii) a pipeline facility (including gathering lines)
12 regulated under:

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

15 (B) the Hazardous Liquid Pipeline Safety Act of 1979
16 (49 U.S.C. 2001, et seq.); or

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

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

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

22 (v) a flow-through process tank;

23 (vi) a liquid trap or associated gathering lines
24 directly related to oil or gas production and gathering
25 operations;

1 (vii) a storage tank situated in an underground area,
2 such as a basement, cellar, mine, draft, shaft, or tunnel,
3 if the storage tank is situated upon or above the surface of
4 the floor; or

5 (viii) any pipe connected to a tank described in
6 subsections (16)(b)(i) through ~~(16)(b)(vii)~~ (16)(b)(vi)."

7 Section 3. Section 75-10-405, MCA, is amended to read:

8 "75-10-405. Administrative rules. (1) The department
9 may adopt ~~amend, or repeat~~ rules governing hazardous waste,
10 including but not limited to the following:

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

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

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

19 (d) requirements for the issuance, denial, renewal,
20 modification, and revocation of permits for hazardous waste
21 management facilities;

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

1 (f) requirements for training of facility personnel
2 and for financial assurance of facility owners and
3 operators;

4 (g) requirements for registration of generators and
5 transporters;

6 (h) a schedule of fees for hazardous waste management
7 facility permits and registration of hazardous waste
8 generators;

9 (i) a schedule of fees to defray a portion of the
10 costs of establishing, operating, and maintaining any state
11 hazardous waste management facility authorized by 75-10-412;
12 and

13 (j) other rules which are necessary to obtain and
14 maintain authorization under the federal program.

15 (2) The department may adopt rules for the prevention
16 of leakage from underground storage tanks, including but not
17 limited to the following:

18 (a) reporting by owners and operators;

19 (b) financial responsibility;

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

21 (d) standards for design, construction, and
22 installation; and

23 (e) development of a schedule of fees to defray state
24 or local costs of establishing and implementing an
25 underground storage tank program.

1 ~~(2)~~(3) The department may not adopt rules under this
2 part that are more restrictive than those promulgated by the
3 federal government under the Resource Conservation and
4 Recovery Act of 1976, as amended, except that the department
5 may:

6 (a) require the registration of transporters not
7 otherwise required to register with the state of Montana
8 pursuant to the federal Resource Conservation and Recovery
9 Act of 1976, as amended;

10 (b) require generators and facilities to report on an
11 annual rather than on a biennial basis; and

12 (c) adopt more stringent requirements for the
13 prevention of leakage from underground storage tanks,
14 including:

15 ~~(i) reporting by owners and operators;~~

16 ~~(ii) financial responsibility;~~

17 ~~(iii) release detection, prevention, and correction;~~

18 and

19 ~~(iv) standards for design, construction, and~~
20 ~~installation."~~

21 Section 4. Section 75-10-410, MCA, is amended to read:

22 "75-10-410. Inspections -- sampling. (1) An employee
23 or agent of the department, at any reasonable time and upon
24 presentation of credentials, may enter upon and inspect any
25 property, premises, or place at which regulated substances

1 are or have been stored or at which hazardous wastes are or
2 have been generated, stored, treated, disposed of, or loaded
3 for transportation or any property, premises, or place at
4 which records pertinent to such regulated substances or
5 hazardous waste activities are maintained. The employee or
6 agent of the department may have access to and may copy any
7 records relating to such regulated substances or hazardous
8 wastes for the purposes of developing rules under this part
9 or enforcing the provisions of this part, rules adopted
10 under this part, or a permit or an order issued under this
11 part.

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

1 Section 5. Section 75-10-411, MCA, is amended to read:

2 "75-10-411. Hazardous Regulated substance and
3 hazardous waste site inventory. (1) The department is
4 authorized to conduct an inventory of sites and locations in
5 the state where regulated substances or hazardous wastes
6 have been stored or disposed of at any time.

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

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

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

24 (5) For the purposes of carrying out this section, the
25 department may exercise the powers set forth in 75-10-410."

1 Section 6. Section 75-10-415, MCA, is amended to read:

2 "75-10-415. Imminent hazard. Upon receipt of evidence
3 that the handling, storage, treatment, transportation, or
4 disposal of any regulated substance or hazardous waste may
5 present an imminent and substantial danger to public health
6 or the environment, the department may commence legal
7 proceedings to immediately restrain or enjoin any person
8 contributing to such handling, storage, treatment,
9 transportation, or disposal from engaging in such activities
10 or take such other action as may be necessary."

11 Section 7. Section 75-10-416, MCA, is amended to read:

12 "75-10-416. Cleanup orders. The department may issue a
13 cleanup order to any person who has discharged, deposited,
14 or spilled any regulated substance or hazardous waste into
15 or onto any land or water in an unlawful or unapproved
16 manner or who has discharged, deposited, or spilled any
17 material or substance into or onto any land or water so as
18 to result in unlawful or unapproved disposal of a regulated
19 substance or hazardous waste disposal. The order shall
20 direct the person to clean up and remove the regulated
21 substance or waste, treat it so as to render it
22 nonhazardous, or to take such other actions as may be
23 considered reasonable by the department."

24 Section 8. Section 75-10-420, MCA, is amended to read:

25 "75-10-420. Venue for legal proceedings. All legal

1 proceedings affecting a hazardous waste management
2 ~~facilities~~ facility in the state ~~shall~~ must be brought in
3 the county in which the facility is located. All legal
4 proceedings affecting the disposal of a regulated substance
5 must be brought in the county in which the disposal occurred
6 or in the first judicial district, Lewis and Clark County,
7 whichever the department considers appropriate."

8 NEW SECTION. Section 9. Extension of authority. Any
9 existing authority of the department of health and
10 environmental sciences to make rules on the subject of the
11 provisions of this act is extended to the provisions of this
12 act.

13 NEW SECTION. Section 10. Saving clause. This act does
14 not affect rights and duties that matured, penalties that
15 were incurred, or proceedings that were begun before the
16 effective date of this act.

17 NEW SECTION. Section 11. Severability. If a part of
18 this act is invalid, all valid parts that are severable from
19 the invalid part remain in effect. If a part of this act is
20 invalid in one or more of its applications, the part remains
21 in effect in all valid applications that are severable from
22 the invalid applications.

23 NEW SECTION. Section 12. Effective date. This act is
24 effective on passage and approval.

-End-

APPROVED BY COMM. ON
NATURAL RESOURCES

1 STATEMENT OF INTENT

2 HOUSE BILL 416

3 House Natural Resources Committee

4

5 It is the intent of the legislature that the
6 enforcement and inspection authority of the department of
7 health and environmental sciences under the Montana
8 Hazardous Waste Act also applies to the class of regulated
9 substances addressed by the underground storage tank
10 program.

11 It is the intent of the legislature that the department
12 of health and environmental sciences has the authority to
13 adopt rules setting forth a schedule of fees if necessary to
14 defray state or local costs of implementing the underground
15 storage tank program. This authority is necessary to allow
16 the department to develop alternative ways of funding the
17 underground storage tank program in the event that the
18 contribution of federal funds is no longer sufficient to
19 support the program.

20 It is further the intent of the legislature that the
21 department of health and environmental sciences continues to
22 have the authority to adopt rules for the prevention of
23 leakage from underground storage tanks that meet the needs
24 of Montana.

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3 BY REQUEST OF THE DEPARTMENT OF HEALTH AND
4 ENVIRONMENTAL SCIENCES
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7 THE SCOPE OF ENFORCEMENT AUTHORITY IN THE ADMINISTRATION OF
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22 policy of this state to protect the public health and
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3 safe and adequate management of hazardous wastes within this
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5 and enforce a hazardous waste program pursuant to the
6 federal Resource Conservation and Recovery Act of 1976 (42
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9 hazardous substances stored in underground storage tanks are
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12 in 1984, and that should be regulated under the Montana
13 Hazardous Waste Act. It is a purpose of this part to
14 authorize the department to adopt, administer, and enforce
15 an underground storage tank program that is equal to or more
16 stringent than the federally implemented program under the
17 Resource Conservation and Recovery Act of 1976, as amended
18 INDEPENDENT OF THE FEDERAL PROGRAM IN ORDER TO MEET THE
19 NEEDS OF MONTANA. In enforcing laws and regulations
20 governing underground storage tanks, the department may use
21 all appropriate authority provided for in 75-10-413 through
22 75-10-418."

23 Section 2. Section 75-10-403, MCA, is amended to read:

24 "75-10-403. Definitions. Unless the context requires
25 otherwise, in this part the following definitions apply:

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2 environmental sciences provided for in 2-15-2104.

3 (2) "Department" means the department of health and
4 environmental sciences provided for in Title 2, chapter 15,
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7 injection, deposit, dumping, spilling, leaking, or placing
8 of any regulated substance or hazardous waste into or onto
9 the land or water so that the regulated substance, the
10 hazardous waste, or any constituent of ~~it~~ the hazardous
11 waste may enter the environment or be emitted into the air
12 or discharged into any waters, including groundwaters.

13 (4) "Facility" or "hazardous waste management
14 facility" means all contiguous land and structures, other
15 appurtenances, and improvements on the land used for
16 treating, storing, or disposing of hazardous waste. A
17 facility may consist of several treatment, storage, or
18 disposal operational units.

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

21 (6) "Generator" means any person, by site, whose act
22 or process produces hazardous waste or whose act first
23 causes a hazardous waste to become subject to regulation
24 under this part.

25 (7) (a) "Hazardous waste" means a waste or combination

1 of wastes that, because of its quantity, concentration, or
2 physical, chemical, or infectious characteristics, may:

3 (i) cause or significantly contribute to an increase
4 in mortality or an increase in serious irreversible or
5 incapacitating reversible illness; or

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

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

11 (8) "Hazardous waste management" means the management
12 of the collection, source separation, storage,
13 transportation, processing, treatment, recovery, and
14 disposal of hazardous wastes.

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

19 (10) "Person" means the United States, an individual,
20 firm, trust, estate, partnership, company, association,
21 corporation, city, town, local governmental entity, or any
22 other governmental or private entity, whether organized for
23 profit or not.

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

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

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

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

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

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

24 (16) "Underground storage tank":

25 (a) means, except as provided in subsections

1 (16)(b)(i) through (16)(b)(viii):

2 (i) any one or combination of tanks ~~(including~~
 3 ~~connected--underground--pipes)~~ used to contain a regulated
 4 substance, the volume of which ~~(including-the-volume-of--the~~
 5 ~~connected--underground--pipes)~~ is 10% or more beneath the
 6 surface of the ground; and or

7 (ii) any underground pipes used to contain or transport
 8 a regulated substance and connected to a storage tank,
 9 whether the storage tank is entirely above ground, partially
 10 above ground, or entirely underground;

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12 (i) a septic tank;

13 (ii) a pipeline facility (including gathering lines)
 14 regulated under:

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

17 (B) the Hazardous Liquid Pipeline Safety Act of 1979
 18 (49 U.S.C. 2001, et seq.); or

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

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

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24 (v) a flow-through process tank;

25 (vi) a liquid trap or associated gathering lines

1 directly related to oil or gas production and gathering
2 operations;

3 (vii) a storage tank situated in an underground area,
4 such as a basement, cellar, mine, draft, shaft, or tunnel,
5 if the storage tank is situated upon or above the surface of
6 the floor; or

7 (viii) any pipe connected to a tank described in
8 subsections (16)(b)(i) through ~~(16)(b)(vii)~~ (16)(b)(vi)."

9 Section 3. Section 75-10-405, MCA, is amended to read:

10 "75-10-405. Administrative rules. (1) The department
11 may adopt, ~~amend, or repeat~~ rules governing hazardous waste,
12 including but not limited to the following:

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

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

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

21 (d) requirements for the issuance, denial, renewal,
22 modification, and revocation of permits for hazardous waste
23 management facilities;

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

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

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

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

8 (h) a schedule of fees for hazardous waste management
9 facility permits and registration of hazardous waste
10 generators;

11 (i) a schedule of fees to defray a portion of the
12 costs of establishing, operating, and maintaining any state
13 hazardous waste management facility authorized by 75-10-412;
14 and

15 (j) other rules which are necessary to obtain and
16 maintain authorization under the federal program.

17 (2) The department may adopt rules for the prevention
18 of leakage from underground storage tanks, including but not
19 limited to the following:

20 (a) reporting by owners and operators;

21 (b) financial responsibility;

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

23 (d) standards for design, construction, and
24 installation; and

25 (e) development of a schedule of fees to defray state

1 or local costs of establishing and implementing an
 2 underground storage tank program.

3 ~~(2)~~(3) The department may not adopt rules under this
 4 part that are more restrictive than those promulgated by the
 5 federal government under the Resource Conservation and
 6 Recovery Act of 1976, as amended, except that the department
 7 may:

8 (a) require the registration of transporters not
 9 otherwise required to register with the state of Montana
 10 pursuant to the federal Resource Conservation and Recovery
 11 Act of 1976, as amended;

12 (b) require generators and facilities to report on an
 13 annual rather than on a biennial basis; and

14 (c) adopt more---stringent requirements---for---the
 15 prevention--of--leakage--from--underground--storage---tanks,
 16 APPROPRIATE STANDARDS OF COMPLIANCE FOR UNDERGROUND STORAGE
 17 TANKS THAT MAY VARY FROM FEDERAL STANDARDS, including:

- 18 ~~(i)---reporting-by-owners-and-operators;~~
- 19 ~~(ii)---financial-responsibility;~~
- 20 ~~(iii)---release-detection,--prevention,--and--correction;~~
- 21 ~~and~~
- 22 ~~(iv)---standards---for---design,---construction,---and~~
 23 ~~installation;"~~

24 Section 4. Section 75-10-410, MCA, is amended to read:
 25 "75-10-410. Inspections -- sampling. (1) An employee

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

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

1 portion retained. If any analysis is made of such samples, a
2 copy of the results of such analysis must be furnished to
3 the owner, operator, or agent in charge."

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8 the state where regulated substances or hazardous wastes
9 have been stored or disposed of at any time.

10 (2) If the department determines that the presence of
11 a hazardous waste or the release of the waste or any waste
12 constituent or any regulated substance at any such site may
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14 environment, it may issue an order requiring the owner or
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16 monitoring, testing, analysis, and reporting with respect to
17 the site in order to ascertain the nature and extent of the
18 hazard.

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

23 (4) If the department determines that no owner or
24 operator is able to conduct monitoring, testing, and
25 analysis in a satisfactory manner, the department may

1 conduct such activities.

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3 department may exercise the powers set forth in 75-10-410."

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7 disposal of any regulated substance or hazardous waste may
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9 or the environment, the department may commence legal
10 proceedings to immediately restrain or enjoin any person
11 contributing to such handling, storage, treatment,
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13 or take such other action as may be necessary."

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19 manner or who has discharged, deposited, or spilled any
20 material or substance into or onto any land or water so as
21 to result in unlawful or unapproved disposal of a regulated
22 substance or hazardous waste ~~disposal~~. The order shall
23 direct the person to clean up and remove the regulated
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2 Section 8. Section 75-10-420, MCA, is amended to read:

3 "75-10-420. Venue for legal proceedings. All legal
 4 proceedings affecting a hazardous waste management
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 6 the county in which the facility is located. All legal
 7 proceedings affecting the disposal of a regulated substance
 8 must be brought in the county in which the disposal occurred
 9 or in the first judicial district, Lewis and Clark County,
 10 whichever the department considers appropriate."

11 NEW SECTION. Section 9. Extension of authority. Any
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 13 environmental sciences to make rules on the subject of the
 14 provisions of this act is extended to the provisions of this
 15 act.

16 NEW SECTION. Section 10. Saving clause. This act does
 17 not affect rights and duties that matured, penalties that
 18 were incurred, or proceedings that were begun before the
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20 NEW SECTION. Section 11. Severability. If a part of
 21 this act is invalid, all valid parts that are severable from
 22 the invalid part remain in effect. If a part of this act is
 23 invalid in one or more of its applications, the part remains
 24 in effect in all valid applications that are severable from
 25 the invalid applications.

1 NEW SECTION. Section 12. Effective date. This act is
 2 effective on passage and approval.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 416

3 House Natural Resources Committee
4

5 It is the intent of the legislature that the
6 enforcement and inspection authority of the department of
7 health and environmental sciences under the Montana
8 Hazardous Waste Act also applies to the class of regulated
9 substances addressed by the underground storage tank
10 program.

11 It is the intent of the legislature that the department
12 of health and environmental sciences has the authority to
13 adopt rules setting forth a schedule of fees if necessary to
14 defray state or local costs of implementing the underground
15 storage tank program. This authority is necessary to allow
16 the department to develop alternative ways of funding the
17 underground storage tank program in the event that the
18 contribution of federal funds is no longer sufficient to
19 support the program.

20 It is further the intent of the legislature that the
21 department of health and environmental sciences continues to
22 have the authority to adopt rules for the prevention of
23 leakage from underground storage tanks that meet the needs
24 of Montana.

1 HOUSE BILL NO. 416

2 INTRODUCED BY DONALDSON

3 BY REQUEST OF THE DEPARTMENT OF HEALTH AND
4 ENVIRONMENTAL SCIENCES
56 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY AND EXPAND
7 THE SCOPE OF ENFORCEMENT AUTHORITY IN THE ADMINISTRATION OF
8 THE UNDERGROUND STORAGE TANK PROGRAM; AMENDING SECTIONS
9 75-10-402, 75-10-403, 75-10-405, 75-10-410, 75-10-411,
10 75-10-415, 75-10-416, AND 75-10-420, MCA; AND PROVIDING AN
11 IMMEDIATE EFFECTIVE DATE."
12

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

14 Section 1. Section 75-10-402, MCA, is amended to read:

15 "75-10-402. Findings and purpose. (1) The legislature
16 finds that the safe and proper management of hazardous
17 wastes, the permitting of hazardous waste facilities, and
18 the siting of such facilities are environmental issues that
19 should properly be addressed and controlled by the state
20 rather than by the federal government.21 (2) It is the purpose of this part and it is the
22 policy of this state to protect the public health and
23 safety, the health of living organisms, and the environment
24 from the effects of the improper, inadequate, or unsound
25 management of hazardous wastes; to establish a program of1 regulation over the generation, storage, transportation,
2 treatment, and disposal of hazardous wastes; to assure the
3 safe and adequate management of hazardous wastes within this
4 state; and to authorize the department to adopt, administer,
5 and enforce a hazardous waste program pursuant to the
6 federal Resource Conservation and Recovery Act of 1976 (42
7 U.S.C. 6901 - 6987), as amended.8 (3) The legislature finds that petroleum products and
9 hazardous substances stored in underground storage tanks are
10 a category of materials that are regulated under the federal
11 Resource Conservation and Recovery Act of 1976, as amended
12 in 1984, and that should be regulated under the Montana
13 Hazardous Waste Act. It is a purpose of this part to
14 authorize the department to adopt, administer, and enforce
15 an underground storage tank program that is equal to or more
16 stringent than the federally implemented program under the
17 Resource Conservation and Recovery Act of 1976, as amended
18 INDEPENDENT OF THE FEDERAL PROGRAM IN ORDER TO MEET THE
19 NEEDS OF MONTANA. In enforcing laws and regulations
20 governing underground storage tanks, the department may use
21 all appropriate authority provided for in 75-10-413 through
22 75-10-418."

23 Section 2. Section 75-10-403, MCA, is amended to read:

24 "75-10-403. Definitions. Unless the context requires
25 otherwise, in this part the following definitions apply:

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

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

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

13 (4) "Facility" or "hazardous waste management
14 facility" means all contiguous land and structures, other
15 appurtenances, and improvements on the land used for
16 treating, storing, or disposing of hazardous waste. A
17 facility may consist of several treatment, storage, or
18 disposal operational units.

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

21 (6) "Generator" means any person, by site, whose act
22 or process produces hazardous waste or whose act first
23 causes a hazardous waste to become subject to regulation
24 under this part.

25 (7) (a) "Hazardous waste" means a waste or combination

1 of wastes that, because of its quantity, concentration, or
2 physical, chemical, or infectious characteristics, may:

3 (i) cause or significantly contribute to an increase
4 in mortality or an increase in serious irreversible or
5 incapacitating reversible illness; or

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

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

11 (8) "Hazardous waste management" means the management
12 of the collection, source separation, storage,
13 transportation, processing, treatment, recovery, and
14 disposal of hazardous wastes.

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

19 (10) "Person" means the United States, an individual,
20 firm, trust, estate, partnership, company, association,
21 corporation, city, town, local governmental entity, or any
22 other governmental or private entity, whether organized for
23 profit or not.

24 (11) "Regulated substance":

25 (a) means:

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

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

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

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

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

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

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

24 (16) "Underground storage tank":

25 (a) means, except as provided in subsections

1 (16)(b)(i) through (16)(b)(viii):

2 (i) any one or combination of tanks ~~(including~~
3 ~~connected--underground--pipes)~~ used to contain a regulated
4 substance, the volume of which ~~(including-the-volume-of--the~~
5 ~~connected--underground--pipes)~~ is 10% or more beneath the
6 surface of the ground; and or

7 (ii) any underground pipes used to contain or transport
8 a regulated substance and connected to a storage tank,
9 whether the storage tank is entirely above ground, partially
10 above ground, or entirely underground;

11 (b) does not include:

12 (i) a septic tank;

13 (ii) a pipeline facility (including gathering lines)
14 regulated under:

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

17 (B) the Hazardous Liquid Pipeline Safety Act of 1979
18 (49 U.S.C. 2001, et seq.); or

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

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

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

24 (v) a flow-through process tank;

25 (vi) a liquid trap or associated gathering lines

1 directly related to oil or gas production and gathering
2 operations;

3 (vii) a storage tank situated in an underground area,
4 such as a basement, cellar, mine, draft, shaft, or tunnel,
5 if the storage tank is situated upon or above the surface of
6 the floor; or

7 (viii) any pipe connected to a tank described in
8 subsections (16)(b)(i) through ~~(16)(b)(vii)~~ (16)(b)(vi)."

9 Section 3. Section 75-10-405, MCA, is amended to read:

10 "75-10-405. Administrative rules. (1) The department
11 may adopt ~~amend~~ ~~or~~ ~~repeat~~ rules governing hazardous waste,
12 including but not limited to the following:

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

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

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

21 (d) requirements for the issuance, denial, renewal,
22 modification, and revocation of permits for hazardous waste
23 management facilities;

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

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

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

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

8 (h) a schedule of fees for hazardous waste management
9 facility permits and registration of hazardous waste
10 generators;

11 (i) a schedule of fees to defray a portion of the
12 costs of establishing, operating, and maintaining any state
13 hazardous waste management facility authorized by 75-10-412;
14 and

15 (j) other rules which are necessary to obtain and
16 maintain authorization under the federal program.

17 (2) The department may adopt rules for the prevention
18 of leakage from underground storage tanks, including but not
19 limited to the following:

20 (a) reporting by owners and operators;

21 (b) financial responsibility;

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

23 (d) standards for design, construction, and
24 installation; and

25 (e) development of a schedule of fees to defray state

1 or local costs of establishing and implementing an
 2 underground storage tank program.

3 ~~(2)~~(3) The department may not adopt rules under this
 4 part that are more restrictive than those promulgated by the
 5 federal government under the Resource Conservation and
 6 Recovery Act of 1976, as amended, except that the department
 7 may:

8 (a) require the registration of transporters not
 9 otherwise required to register with the state of Montana
 10 pursuant to the federal Resource Conservation and Recovery
 11 Act of 1976, as amended;

12 (b) require generators and facilities to report on an
 13 annual rather than on a biennial basis; and

14 (c) adopt more---stringent requirements---for---the
 15 prevention--of--leakage--from--underground--storage---tanks,
 16 APPROPRIATE STANDARDS OF COMPLIANCE FOR UNDERGROUND STORAGE
 17 TANKS THAT MAY VARY FROM FEDERAL STANDARDS, including:

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- 22 ~~(iv)---standards---for---design,---construction,---and~~
 23 ~~installation."~~

24 Section 4. Section 75-10-410, MCA, is amended to read:
 25 "75-10-410. Inspections -- sampling. (1) An employee

1 or agent of the department, at any reasonable time and upon
 2 presentation of credentials, may enter upon and inspect any
 3 property, premises, or place at which regulated substances
 4 are or have been stored or at which hazardous wastes are or
 5 have been generated, stored, treated, disposed of, or loaded
 6 for transportation or any property, premises, or place at
 7 which records pertinent to such regulated substances or
 8 hazardous waste activities are maintained. The employee or
 9 agent of the department may have access to and may copy any
 10 records relating to such regulated substances or hazardous
 11 wastes for the purposes of developing rules under this part
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