

HOUSE BILL 538

Introduced by Harper

2/02	Introduced
2/20	Referred to Natural Resources
	Died in Committee

1 HOUSE BILL NO. 538
 2 INTRODUCED BY [Signature]
 3 BY REQUEST OF THE DEPARTMENT OF
 4 HEALTH AND ENVIRONMENTAL SCIENCES
 5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 7 MONTANA HAZARDOUS WASTE ACT; TO APPLY CERTAIN PROVISIONS
 8 SPECIFICALLY TO UNDERGROUND STORAGE TANKS AND REGULATED
 9 SUBSTANCES; TO CREATE AN UNDERGROUND STORAGE TANK SPECIAL
 10 REVENUE ACCOUNT; AMENDING SECTIONS 75-10-401 THROUGH
 11 75-10-403, 75-10-405, 75-10-410, 75-10-411, 75-10-415,
 12 75-10-416, AND 75-10-420, MCA; AND PROVIDING AN IMMEDIATE
 13 EFFECTIVE DATE."
 14

15 STATEMENT OF INTENT

16 It is the intent of the legislature that the department
 17 of health and environmental sciences adopt rules setting
 18 forth corrective action requirements for releases from
 19 underground storage tanks and standards for tank closures.
 20

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

22 **Section 1.** Section 75-10-401, MCA, is amended to read:

23 "75-10-401. Short title. This part shall be known and
 24 may be cited as the "Montana Hazardous Waste and Underground
 25 Storage Tank Act."
 26

1 **Section 2.** Section 75-10-402, MCA, is amended to read:

2 "75-10-402. Findings and purpose. (1) The legislature
 3 finds that the safe and proper management of hazardous
 4 wastes, the permitting of hazardous waste facilities, and
 5 the siting of such facilities are environmental issues that
 6 should properly be addressed and controlled by the state
 7 rather than by the federal government.

8 (2) It is the purpose of this part and it is the
 9 policy of this state to protect the public health and
 10 safety, the health of living organisms, and the environment
 11 from the effects of the improper, inadequate, or unsound
 12 management of hazardous wastes; to establish a program of
 13 regulation over the generation, storage, transportation,
 14 treatment, and disposal of hazardous wastes; to assure the
 15 safe and adequate management of hazardous wastes within this
 16 state; and to authorize the department to adopt, administer,
 17 and enforce a hazardous waste program pursuant to the
 18 federal Resource Conservation and Recovery Act of 1976 (42
 19 U.S.C. 6901 - 6987), as amended.

20 (3) The legislature also finds that petroleum products
 21 and hazardous substances stored in underground tanks are a
 22 separate category of substances that are regulated under the
 23 federal Resource Conservation and Recovery Act of 1976, as
 24 amended, and must be addressed and controlled properly by
 25 the state under the Montana Hazardous Waste and Underground

Storage Tank Act. It is the purpose of this part to authorize the department to establish, administer, and enforce an underground storage tank leak prevention program for these regulated substances. The department may use the authority provided in 75-10-413 through 75-10-417 and other appropriate authority provided by law to remedy violations of underground storage tank requirements established under this part."

Section 3. Section 75-10-403, MCA, is amended to read:

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

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

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

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

(4) "Facility" or "hazardous waste management

facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

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

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

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

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

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

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

(8) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and

disposal of hazardous wastes.

(9) "Hazardous waste transfer facility" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10 days or less during the normal course of transportation up to but not including the point of ultimate treatment, storage, or disposal.

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

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

(12) "Regulated substance":

(a) means:

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

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

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

(13) "Storage" means the actual or intended containment of regulated substances, hazardous wastes, or both, either on a temporary basis or for a period of years.

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

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

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

(17) "Underground storage tank":

(a) means, except as provided in subsections (17)(b)(i) through (17)(b)(viii):

(i) any one or combination of tanks ~~{including connected--underground--pipes}~~ used to contain a regulated substance, the volume of which ~~{including the volume of--the connected--underground--pipes}~~ is 10% or more beneath the

1 surface of the ground; and

2 (ii) any underground pipes used to contain or transport

3 a regulated substance and connected to a storage tank,

4 whether the storage tank is entirely above ground, partially

5 above ground, or entirely underground;

6 (b) does not include:

7 (i) a septic tank;

8 (ii) a pipeline facility (including gathering lines)

9 regulated under:

10 (A) the Natural Gas Pipeline Safety Act of 1968 (49

11 U.S.C. 1671, et seq.);

12 (B) the Hazardous Liquid Pipeline Safety Act of 1979

13 (49 U.S.C. 2001, et seq.); or

14 (C) state law comparable to the provisions of law

15 referred to in subsection (17)(b)(ii)(A) or (17)(b)(ii)(B),

16 if the facility is intrastate;

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

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

19 (v) a flow-through process tank;

20 (vi) a liquid trap or associated gathering lines

21 directly related to oil or gas production and gathering

22 operations;

23 (vii) a storage tank situated in an underground area,

24 such as a basement, cellar, mine, draft, shaft, or tunnel,

25 if the storage tank is situated upon or above the surface of

1 the floor; or

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

3 subsections (17)(b)(i) through (17)(b)(vii)(vi)."

4 **Section 4.** Section 75-10-405, MCA, is amended to read:

5 **"75-10-405. Administrative rules.** (1) The department

6 may adopt, amend, or repeal rules governing hazardous waste,

7 including but not limited to the following:

8 (a) identification and classification of those

9 hazardous wastes subject to regulation and those that are

10 not;

11 (b) requirements for the proper treatment, storage,

12 transportation, and disposal of hazardous waste;

13 (c) requirements for siting, design, operation,

14 maintenance, monitoring, inspection, closure, postclosure,

15 and reclamation of hazardous waste management facilities;

16 (d) requirements for the issuance, denial, renewal,

17 modification, and revocation of permits for hazardous waste

18 management facilities;

19 (e) requirements for corrective action within and

20 outside of facility boundaries and for financial assurance

21 of that corrective action;

22 (f) 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 (g) requirements for training of facility personnel
 2 and for financial assurance of facility owners and operators
 3 and for liability of guarantors providing financial
 4 assurance;
 5 (h) requirements for registration of generators and
 6 transporters;
 7 (i) a schedule of fees for hazardous waste management
 8 facility permits and registration of hazardous waste
 9 generators;
 10 (j) a schedule of fees to defray a portion of the
 11 costs of establishing, operating, and maintaining any state
 12 hazardous waste management facility authorized by 75-10-412;
 13 (k) requirements for availability to the public of
 14 information obtained by the department regarding facilities
 15 and sites used for the treatment, storage, and disposal of
 16 hazardous wastes; and
 17 (1) other rules which are necessary to obtain and
 18 maintain authorization under the federal program.
 19 (2) The department may not adopt rules under this part
 20 that are more restrictive than those promulgated by the
 21 federal government under the Resource Conservation and
 22 Recovery Act of 1976, as amended, except that the
 23 department:
 24 (a) may require the registration of transporters not
 25 otherwise required to register with the state of Montana

1 pursuant to the federal Resource Conservation and Recovery
 2 Act of 1976, as amended;
 3 (b) may require generators and facilities to report on
 4 an annual rather than on a biennial basis; and
 5 (c) may adopt requirements for the prevention and
 6 correction of leakage from underground storage tanks,
 7 including:
 8 (i) reporting by owners and operators;
 9 (ii) financial responsibility;
 10 (iii) release detection, prevention, and correction
 11 corrective action; and
 12 (iv) standards for design, construction, and
 13 installation, and closure;
 14 (d) may adopt regulatory requirements for hazardous
 15 waste transfer facilities; and
 16 (e) shall require the owner or manager of any proposed
 17 commercial facility for the storage, collection, or transfer
 18 of hazardous waste to conduct a public hearing, as provided
 19 for in 75-10-441."
 20 **Section 5.** Section 75-10-410, MCA, is amended to read:
 21 "75-10-410. Inspections -- sampling. (1) (a) An
 22 employee or agent of the department, at any reasonable time
 23 and upon presentation of credentials, may enter upon and
 24 inspect any property, premises, or place at which:
 25 (i) regulated substances are or have been stored in

1 underground storage tanks;

2 (ii) hazardous wastes are or have been generated,
3 stored, treated, disposed of, or loaded for transportation;
4 or any property, premises, or place at which

5 (iii) records pertinent to such the regulated
6 substances or hazardous waste activities are maintained.

7 (b) The employee or agent of the department may have
8 access to and may copy any records relating to such the
9 regulated substances or hazardous wastes for the purposes of
10 developing rules under this part or enforcing the provisions
11 of this part, rules adopted under this part, or a permit or
12 an order issued under this part.

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

1 the owner, operator, or agent in charge."

2 **Section 6.** Section 75-10-411, MCA, is amended to read:

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

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

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

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

25 (5) For the purposes of carrying out this section, the

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

Section 7. Section 75-10-415, MCA, is amended to read:

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

Section 8. Section 75-10-416, MCA, is amended to read:

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

Section 9. Section 75-10-420, MCA, is amended to read:

"75-10-420. **Venue for legal proceedings actions.** All legal proceedings actions affecting hazardous waste management facilities in the state ~~shall~~ must be brought in the county in which the facility is located. All legal actions affecting underground storage tanks or the disposal of regulated substances must be brought in the county where the underground storage tank is located or in the first judicial district, Lewis and Clark County, whichever the department considers appropriate."

NEW SECTION. Section 10. Underground storage tank special revenue account. (1) There is an underground storage tank account within the state special revenue fund established in 17-2-102. Corrective action costs, damages, and penalties recovered under section 9003 of the federal Resource Conservation and Recovery Act of 1976, as amended, must be paid into the account.

(2) Appropriations may be made from the underground storage tank account for the following purposes only:

(a) state and local government costs of implementing the underground storage tank leak prevention program; or

(b) state and local government costs relating to the investigation of leaking underground storage tanks.

NEW SECTION. Section 11. Extension of authority. Any existing authority to make rules on the subject of the

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

3 NEW SECTION. **Section 12.** Codification instruction.
4 [Section 10] is intended to be codified as an integral part
5 of Title 75, chapter 10, part 4, and the provisions of Title
6 75, chapter 10, part 4, apply to [section 10].

7 NEW SECTION. **Section 13.** Saving clause. [This act]
8 does not affect rights and duties that matured, penalties
9 that were incurred, or proceedings that were begun before
10 [the effective date of this act].

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

17 NEW SECTION. **Section 15.** Effective date. [This act]
18 is effective on passage and approval.

-End-