

HOUSE BILL NO. 757

INTRODUCED BY GIACOMETTO, WEEDING, BECK, O'KEEFE,
MARKS, HARPER, DEMARS, THOFT

IN THE HOUSE

MARCH 2, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
MARCH 3, 1989	FIRST READING.
MARCH 20, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
MARCH 21, 1989	PRINTING REPORT.
MARCH 29, 1989	SECOND READING, DO PASS AS AMENDED.
MARCH 30, 1989	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 97; NOES, 2.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 31, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
APRIL 11, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 12, 1989	SECOND READING, CONCURRED IN.
APRIL 13, 1989	THIRD READING, CONCURRED IN. AYES, 47; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

APRIL 14, 1989	RECEIVED FROM SENATE.
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SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *HOUSE* BILL NO. 757
 2 INTRODUCED BY *James W. ...*
 3 *Mark ...*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH AN
 5 AGRICULTURAL CHEMICAL GROUND WATER PROTECTION PROGRAM TO BE
 6 ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE AND THE
 7 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; TO REQUIRE
 8 ESTABLISHMENT OF AGRICULTURAL CHEMICAL GROUND WATER QUALITY
 9 STANDARDS; TO PROVIDE FOR GROUND WATER MONITORING AND
 10 AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLANS; TO
 11 PROVIDE FOR ENFORCEMENT AUTHORITY, COMPLIANCE ORDERS, AND
 12 PENALTIES; TO DIRECT THE DEPARTMENT OF HEALTH AND
 13 ENVIRONMENTAL SCIENCES TO AMEND CERTAIN RULES IMPLEMENTING
 14 THE WATER QUALITY ACT; TO ESTABLISH ADDITIONAL FEES FOR
 15 REGISTRATION OF PESTICIDES AND FERTILIZERS; TO CREATE
 16 AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACCOUNTS;
 17 AMENDING SECTIONS 75-5-105, 75-5-301, 80-8-105, 80-8-107,
 18 AND 80-8-305, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

20 STATEMENT OF INTENT

21 A statement of intent is required for this bill in
 22 order to provide guidance to the department of agriculture
 23 and the department of health and environmental sciences
 24 concerning the administration of the provisions of the bill
 25 and the adoption of rules.

1 Because the departments share responsibility for
 2 certain duties established by the bill, the departments
 3 shall coordinate their rulemaking efforts and whenever
 4 possible adopt identical rules for the areas of shared
 5 responsibility, including:

6 (1) ground water monitoring as authorized by [sections
 7 10 and 11];

8 (2) field and laboratory operational quality
 9 assurance, quality control, and confirmatory procedures as
 10 authorized by [sections 7, 10, and 11];

11 (3) maintenance of confidentiality of certain data as
 12 required by [section 8]; and

13 (4) administrative civil penalties as authorized by
 14 [section 22].

15 In adopting rules pertaining to quality assurance,
 16 quality control, and confirmatory procedures, the
 17 departments shall include the following:

18 (1) confirmation of analytical results by two
 19 different analytical methodologies if two methodologies
 20 exist; and

21 (2) either resampling and analysis within 30 days of
 22 original sampling and analysis or splitting and analysis of
 23 samples by two or more laboratories approved by the
 24 department of agriculture and the department of health and
 25 environmental sciences.

1 A monitoring program implemented by the department of
2 agriculture or the department of health and environmental
3 sciences must be designed to enable the departments to make
4 the following determinations, as applicable, whether:

5 (1) the agricultural chemical has entered ground water
6 as a direct result of use according to its label or as a
7 result of misuse;

8 (2) the agricultural chemical has a reasonable
9 probability of entering ground water due to migration
10 through soil;

11 (3) the level of the agricultural chemical in the
12 ground water or its rate of migration through soil is
13 increasing or decreasing with respect to standards and
14 interim numerical standards required by [section 9];

15 (4) the predictive procedures and data used to
16 establish the monitoring program are reliable; and

17 (5) the ground water has beneficial human or
18 environmental uses based on its classification.

19 The department of agriculture or the department of
20 health and environmental sciences shall give priority to
21 developing monitoring programs for agricultural chemicals
22 that the departments identify as likely to enter or as
23 having entered ground water based on predictive procedures
24 that provide a high degree of scientific certainty and that
25 are appropriate to the geographical areas where the

1 agricultural chemicals are used.

2 If the department of health and environmental sciences
3 finds it necessary to issue compliance orders to a person to
4 clean up ground water that has been impaired by use of
5 agricultural chemicals in violation of Title 75, chapter 5
6 or 6, it may, based on technical feasibility and economic
7 considerations, order the ground water to be cleaned up to a
8 level that is lower than the applicable standard or interim
9 numerical standard if the following findings are made:

10 (1) the agricultural chemical can be confined to
11 either the source, a specific property boundary, or the
12 defined areal extent of the agricultural chemical plume;

13 (2) the ground water will not be used for drinking
14 purposes or no health risks will exist at a level of cleanup
15 that is lower than the applicable standard or interim
16 numerical standard;

17 (3) the agricultural chemical will not cause other
18 ground water impairment; and

19 (4) the responsible party has agreed to comply with an
20 existing agricultural chemical ground water management plan
21 or a plan under development but not finalized by rule at the
22 time of the determination by the department of health and
23 environmental sciences.

24 The board of health and environmental sciences is
25 responsible for adoption of certain ground water quality

standards for agricultural chemicals as required by [section 9]. The board shall adopt appropriate rules as necessary to comply with the special requirements and considerations that apply to the adoption of these standards as specified in [section 9], including acquisition of current and scientifically valid data from the United States environmental protection agency (EPA) and other sources and communications with EPA concerning the content and status of promulgated federal standards, nonpromulgated federal standards, and other relevant EPA regulations and materials.

In adopting rules to regulate the adoption of interim numerical standards, the board shall include the following criteria:

(1) use of any significant new and relevant technical information;

(2) reliance on valid scientific methodologies, protocols, and procedures;

(3) priority consideration of information and evidence that has been subjected to peer review, has resulted from more than one study, and is consistent with other credible medical or toxicological evidence; and

(4) consultation with the department of agriculture and EPA regarding any assessments or conclusions EPA may have made relative to available toxicological information on the agricultural chemical in question.

The department of health and environmental sciences and the department of agriculture shall cooperatively ensure appropriate and timely notice to affected parties, including the registrant of an agricultural chemical, concerning the adoption of standards and interim numerical standards.

The department of agriculture is responsible for the development of agricultural chemical ground water management plans. The department shall adopt appropriate rules to ensure compliance with the requirements of [section 12], including procedures for the development of the plans, communication with sources of information needed for the plans, communication with citizens who may be affected by the plans, and criteria for ensuring that the content of the plans meets the objectives of preventing ground water impairment, minimizing the presence of agricultural chemicals in ground water, and protecting present and future beneficial uses of ground water as specified in [section 12]. The department of agriculture shall also adopt rules specifying procedures for obtaining comments on agricultural chemical ground water management plans from the department of health and environmental sciences, for adoption of completed plans, and for making modifications to adopted plans.

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

NEW SECTION. Section 1. Short title. [Sections 1 through 24] may be cited as the "Montana Agricultural Chemical Ground Water Protection Act".

NEW SECTION. Section 2. Definitions. Unless the context requires otherwise, in [sections 1 through 24] the following definitions apply:

(1) "Agricultural chemical" means any of the following:

(a) a pesticide as defined in 80-8-102;

(b) an isomer, degradation, or metabolic product of a pesticide; or

(c) a commercial fertilizer as defined in 80-10-101.

(2) "Best management plans" and "best management practices" mean activities, procedures, and practices established by the department of agriculture, in consultation with the Montana state university extension service, to prevent or remedy the introduction of agricultural chemicals into ground water to the extent technically and economically practical.

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

(4) "Confirmatory procedure" means a process for verifying the detection of agricultural chemicals in water, soil, and other related media.

(5) "EPA" means the United States environmental

protection agency.

(6) "Ground water" means any water of the state occupying the voids within a geologic formation and within the zone of saturation capable of yielding sufficient quantities of water to a well for beneficial use.

(7) "Ground water impairment" means the alteration of the physical, chemical, or biological properties of ground water by an agricultural chemical, whether from discharge, use, or introduction, that prevents or is likely to prevent the present or future beneficial use of the ground water as expressed by the ground water's classification.

(8) "Interim numerical standard" means a health-based number that expresses the concentration of an agricultural chemical allowed in ground water and that is adopted by a rule of the board pursuant to [section 9(5) or (6)].

(9) "Margin of safety" means numerical margins that are applied to the no observable effect level in an agricultural chemical toxicology study and that are used by the EPA to extrapolate data obtained from studies of animals to humans, including sensitive individuals.

(10) "No observable effect level" means the highest dose level of an agricultural chemical to which a laboratory animal is exposed, per unit of body weight, at which no effect is observed, as established by EPA's pesticide registration process.

1 (11) "Nonpoint source" means a diffuse source of
2 agricultural chemicals resulting from activities of man over
3 a relatively large area, the effects of which must normally
4 be addressed or controlled by a management or conservation
5 practice.

6 (12) "Nonpromulgated federal standard" means a health
7 advisory, suggested no observable effect level, suggested
8 maximum contaminant level, or suggested ground water residue
9 guidance level that is published but not promulgated by
10 regulation by EPA and that is a suggested measure of the
11 health risk represented by the concentration of an
12 agricultural chemical in water.

13 (13) "Numerical risk assessment" means a scientific
14 procedure used to measure the statistical probability of
15 human health risk associated with exposure to an
16 agricultural chemical.

17 (14) "Oncogenic potential" means the potential of an
18 agricultural chemical to cause tumors in laboratory animals
19 and the extrapolation of that potential to humans through
20 use of statistical models and other evidence.

21 (15) "Person" means any individual, group, firm,
22 cooperative, corporation, association, partnership,
23 political subdivision, state or federal government agency,
24 or other organization or entity.

25 (16) "Point of standards application" means the

1 specific location in an aquifer where ground water quality
2 and quantity are sampled, measured, evaluated, or otherwise
3 used by either the department or the department of health
4 and environmental sciences to implement the provisions of
5 [sections 1 through 24].

6 (17) "Point source" means a point source as defined in
7 75-5-103, including but not limited to chemical mixing,
8 loading, and storage sites and sites of agricultural
9 chemical spills.

10 (18) "Promulgated federal standard" means an
11 agricultural chemical maximum contaminant level as
12 established under the federal Safe Drinking Water Act, a
13 national primary drinking water standard, or an interim
14 drinking water regulation or other EPA regulation based on
15 federal law.

16 (19) "Registrant" means a person as defined in 80-8-102
17 and 80-10-101.

18 (20) "Standard" means the numerical value expressing
19 the concentration of an agricultural chemical in ground
20 water that presents a human health risk over a lifetime of
21 consumption and that is adopted by a rule of the board as
22 required by [section 9].

23 (21) "Use" means any act of handling or release of an
24 agricultural chemical or exposure of man or the environment
25 to an agricultural chemical, including but not limited to

1 application, mixing, loading, storage, disposal, or
2 transportation.

3 NEW SECTION. **Section 3. Policy.** It is the public
4 policy of this state to:

5 (1) protect ground water and the environment from
6 impairment or degradation due to the use of agricultural
7 chemicals;

8 (2) allow for the proper and correct use of
9 agricultural chemicals that are valuable and necessary for
10 agricultural production and disease control;

11 (3) provide for the management of agricultural
12 chemicals to prevent, minimize, and mitigate their presence
13 in ground water, considering the use of the ground water,
14 and to provide special protection to high priority and
15 highly susceptible ground water; and

16 (4) provide for education and training of agricultural
17 chemical applicators and the general public on ground water
18 protection and agricultural chemical use.

19 NEW SECTION. **Section 4. Administration.** (1) The
20 department and the department of health and environmental
21 sciences shall administer [sections 1 through 24].

22 (2) The department of health and environmental
23 sciences is responsible for the establishment and
24 enforcement of agricultural chemical ground water standards
25 and interim numerical standards as authorized by [section

1 9], ground water monitoring as authorized by [sections 10
2 and 11], providing comments to the department during the
3 development of agricultural chemical ground water management
4 plans, conducting research as set forth in [section 7], and
5 related responsibilities set forth in Title 75, chapter 5.

6 (3) The department is responsible for the preparation,
7 implementation, and enforcement of agricultural chemical
8 ground water management plans as authorized by [sections 12
9 and 16 through 24], public education as authorized by
10 [section 6], ground water monitoring as authorized by
11 [sections 10 and 11], other duties related to promoting
12 research as set forth in [section 7], and related
13 responsibilities set forth in Title 80, chapters 8 and 10.

14 (4) [Sections 1 through 24] do not limit the
15 department's responsibility to enforce agricultural chemical
16 label directions and prohibitions.

17 (5) The administration of [sections 1 through 24],
18 including rulemaking and hearing functions authorized by
19 [sections 1 through 24], must be conducted in accordance
20 with the Montana Administrative Procedure Act, Title 2,
21 chapter 4.

22 NEW SECTION. **Section 5. Rulemaking.** (1) The board
23 shall adopt rules for the administration of [sections 1
24 through 24] for which the board and the department of health
25 and environmental sciences have responsibility. These rules

1 must include but are not limited to:

2 (a) standards and interim numerical standards for
3 agricultural chemicals in ground water as authorized by
4 [section 9];

5 (b) procedures for ground water monitoring as
6 authorized by [sections 10 and 11];

7 (c) field and laboratory operational quality
8 assurance, quality control, and confirmatory procedures as
9 authorized by [sections 7, 10, and 11], which may include,
10 through adoption by reference, procedures that have been
11 established or approved by EPA for quality assurance and
12 quality control;

13 (d) standards for maintaining the confidentiality of
14 data and information declared confidential by EPA and the
15 confidentiality of chemical registrant data and information
16 protected from disclosure by federal or state law as
17 required by [section 8]; and

18 (e) administrative civil penalties as authorized by
19 [section 22].

20 (2) The department shall adopt rules necessary to
21 carry out its responsibilities under [sections 1 through
22 24]. These rules must include but are not limited to:

23 (a) procedures for ground water monitoring as
24 authorized by [sections 10 and 11];

25 (b) the content and procedures for development of

1 agricultural chemical ground water management plans,
2 including the content of best management practices and best
3 management plans, procedures for obtaining comments from the
4 department of health and environmental sciences on the
5 plans, and the adoption of completed plans and plan
6 modifications as authorized by [section 12];

7 (c) standards for maintaining the confidentiality of
8 data and information declared confidential by EPA and of
9 chemical registrant data and information protected from
10 disclosure by federal or state law as required by [section
11 8];

12 (d) field and laboratory operational quality
13 assurance, quality control, and confirmatory procedures as
14 authorized by [sections 7, 10, and 11], which may include,
15 through adoption by reference, procedures that have been
16 established or approved by EPA for quality assurance and
17 quality control;

18 (e) emergency procedures as authorized by [section
19 20];

20 (f) procedures for issuance of compliance orders as
21 authorized by [section 18]; and

22 (g) procedures for the assessment of administrative
23 civil penalties as authorized by [section 22].

24 NEW SECTION. Section 6. Educational programs. (1) The
25 department, in cooperation with the Montana state university

extension service, shall develop and conduct appropriate educational programs to promote the policy specified in [section 3]. The department and the Montana state university extension service may charge a fee for the educational programs commensurate with the costs of program development and administration.

(2) All fees collected by the department pursuant to this section must be deposited in the state special revenue fund. The department may spend the funds for the purposes set forth in this section.

(3) All fees collected by the Montana state university extension service must be deposited in a special account identified for this purpose. The extension service may spend the funds for the purposes set forth in this section.

NEW SECTION. Section 7. Research. The department or the department of health and environmental sciences may promote, for the purposes described in [section 3], cooperative ground water research programs with units of the university system and associated agricultural experiment stations, the bureau of mines and geology, and other appropriate agencies, organizations, and individuals.

NEW SECTION. Section 8. Confidentiality. (1) The department and the department of health and environmental sciences shall maintain the confidentiality of data declared confidential by EPA and chemical registrant data and

information protected from disclosure by federal or state law.

(2) The department of health and environmental sciences shall comply with the requirements of 75-5-105 and the department shall comply with the requirements of 80-8-107 and 80-10-210, except as otherwise provided by this section.

NEW SECTION. Section 9. Ground water standards. (1) The board shall adopt standards and, as applicable, interim numerical standards for agricultural chemicals in ground water. The standards must be the same as any promulgated or nonpromulgated federal standard established by EPA, although the board may determine, pursuant to the requirements of subsection (7), that an interim numerical standard different from either a promulgated or nonpromulgated federal standard is justified. Except as provided in subsection (7), if more than one nonpromulgated federal standard exists for an agricultural chemical, the board must adopt the most recently established nonpromulgated federal standard.

(2) The board is not required to adopt a standard or interim numerical standard for every agricultural chemical registered in the state. The only standards and interim numerical standards required are for those agricultural chemicals:

(a) that are addressed by promulgated and

1 nonpromulgated federal standards;

2 (b) the presence of which has been verified in ground
3 water as provided in [section 10]; or

4 (c) that the department and the department of health
5 and environmental sciences predict may appear in ground
6 water, in accordance with the procedures and determinations
7 specified in [sections 10 and 11].

8 (3) Before either the department or the department of
9 health and environmental sciences provides monitoring
10 results or before either may order a person to conduct
11 monitoring and prior to the department taking an enforcement
12 action under [sections 1 through 24] or the department of
13 health and environmental sciences taking an enforcement
14 action under Title 75, chapter 5, the board must have
15 established a standard or interim numerical standard for the
16 agricultural chemical in question, except in emergency
17 situations as specified in [section 20] and 75-5-621, as
18 applicable.

19 (4) The department may not develop and implement an
20 agricultural chemical ground water management plan for a
21 particular agricultural chemical in accordance with [section
22 12] until a standard or interim numerical standard for that
23 chemical has been established by the board or until EPA
24 requires the development of an agricultural chemical ground
25 water management plan.

1 (5) If no promulgated federal standard has been
2 adopted and no nonpromulgated federal standard has been
3 published for an agricultural chemical for which the board
4 is required to establish a standard or interim numerical
5 standard as specified in subsections (2)(b) and (2)(c), the
6 department of health and environmental sciences shall
7 request EPA to establish a promulgated or nonpromulgated
8 federal standard. If the department of health and
9 environmental sciences determines that EPA cannot comply
10 with the request within 60 days, the board shall adopt an
11 interim numerical standard, provided that the board shall
12 review the interim numerical standard whenever EPA adopts a
13 promulgated federal standard or publishes a nonpromulgated
14 federal standard for the agricultural chemical in question.

15 (6) The board may adopt an interim numerical standard
16 that is different from either a promulgated or
17 nonpromulgated federal standard, if there is significant new
18 and relevant technical information available that is
19 scientifically valid and that has not been considered by
20 EPA. The board shall review the interim numerical standard
21 when EPA revises the promulgated or nonpromulgated federal
22 standard for the agricultural chemical in question.

23 (7) In addition to criteria the board considers
24 pursuant to rules adopted under [section 5] for the adoption
25 of standards, the board shall base any interim numerical

standard it adopts under either subsection (5) or (6) on:

(a) a person weighing 70 kilograms and drinking 2 liters of water per day over a lifetime; and

(b) EPA's conclusions regarding the no observable effect level, including the margin of safety identified by EPA when scientific data indicates oncogenic potential for the agricultural chemical and EPA has determined that a numerical risk assessment is not justified, is inappropriate, or does not serve as the primary toxicological basis for regulation.

(8) Nothing in this section may interfere with the board's responsibility to adopt rules and standards under Title 75, chapter 6.

NEW SECTION. Section 10. Monitoring programs. (1) The department or the department of health and environmental sciences may conduct monitoring programs to determine:

(a) whether residues of agricultural chemicals are present in ground water; and

(b) the likelihood of an agricultural chemical entering ground water, if either department determines that sufficient valid scientific data is available to reasonably predict the behavior of a particular agricultural chemical in the soil and ground water.

(2) The department and the department of health and environmental sciences shall evaluate all information

relating to this section that is received from any person based upon standard procedures, protocols, and confirmatory procedures established by rules. Information found to be insufficient based on the adopted procedures and protocols, including analytical results, may be used only for informational purposes.

NEW SECTION. Section 11. Evaluation and use of monitoring results. (1) When providing preliminary monitoring results to ground water users or confirmed monitoring results to the users or the public, the departments shall also provide the applicable standard or interim numerical standard.

(2) When monitoring results reveal the presence of an agricultural chemical in ground water:

(a) the department of health and environmental sciences is the lead department for determining health risks; and

(b) the department is the lead department for determining compliance with agricultural chemical ground water management plans authorized by [section 12] and with agricultural chemical registration, use, and labeling requirements and conditions pursuant to Title 80, chapters 8 and 10.

(3) The department and the department of health and environmental sciences shall cooperatively evaluate the

1 results of monitoring programs authorized by [section 10] to
2 determine, as applicable:

3 (a) whether the presence of an agricultural chemical
4 in ground water meets or exceeds:

5 (i) an established standard or interim numerical
6 standard at a point of standards application; or

7 (ii) any requirements associated with the
8 classification of the ground water;

9 (b) whether the conditions required by a specific
10 agricultural chemical ground water management plan as set
11 forth in [section 12] are appropriate or have been violated;

12 (c) the geographical or hydrogeological extent of the
13 agricultural chemical in the ground water; and

14 (d) whether there is a definite trend of increased
15 presence of the agricultural chemical in ground water based
16 on the percentage of change in concentrations measured at a
17 single monitoring site or at different monitoring sites over
18 a reasonable period of time.

19 (4) Based on the results of monitoring, the department
20 and the department of health and environmental sciences
21 shall implement appropriate actions specified in [sections 1
22 through 24] to mitigate any existing impacts of an
23 agricultural chemical found in ground water and to prevent
24 future impacts of an agricultural chemical that may be found
25 in ground water, in relation to human health, agriculture,

1 and the environment.

2 (5) The department may not undertake compliance and
3 enforcement actions authorized by [sections 1 through 24]
4 and the department of health and environmental sciences may
5 not undertake compliance and enforcement actions authorized
6 by Title 75, chapter 5, unless there is sufficient evidence
7 collected through:

8 (a) monitoring at a point of standards application or
9 through other investigations that reveal that a person using
10 an agricultural chemical or introducing or discharging the
11 chemical into ground water has violated a provision of
12 [section 17] or Title 75, chapter 5; or

13 (b) monitoring that reveals a significant probability
14 for an agricultural chemical to enter ground water.

15 (6) Any actions taken by the departments in accordance
16 with subsections (4) and (5) must be consistent with the
17 priority accorded to and the beneficial use of the ground
18 water as expressed by its classification. The type and
19 complexity of the departments' actions may be more
20 comprehensive in situations involving higher ground water
21 classifications. Actions involving the lowest ground water
22 classification may be limited to minimizing further impact
23 unless the departments jointly determine that the lowest
24 classified ground water will impair or is likely to impair
25 other state waters that have a higher classification.

NEW SECTION. Section 12. Agricultural chemical ground water management plans. (1) The department may develop and implement a general state agricultural chemical ground water management plan. This plan may include general program elements set forth in [sections 1 through 24] and best management plans and best management practices.

(2) Except as provided in subsection (10), the department shall develop and implement agricultural chemical ground water management plans specific to particular agricultural chemicals and to a defined geographical area. Within available resources, the department shall prioritize preparation of specific agricultural chemical ground water management plans based on the following criteria:

(a) when the level of an agricultural chemical found in ground water is at 50% of the standard or interim numerical standard at a point of standards application and is scientifically validated;

(b) when a definite trend of increased presence of the agricultural chemical in ground water at a point of standards application is scientifically validated;

(c) when EPA proposes to suspend or cancel registration of an agricultural chemical, prohibits or restricts the chemical's sale or use in the state, or otherwise initiates action against a chemical because of ground water concerns and when EPA's action, restriction, or

prohibition will be implemented unless the state develops an adequate management plan; or

(d) when agricultural chemicals that possess or are suspected of possessing properties that indicate potential to migrate to ground water are being applied on areas underlaid by ground water that is vulnerable to impairment.

(3) The department may identify and designate persons using an agricultural chemical that is addressed by a specific agricultural chemical ground water management plan in the geographical area that is addressed by the plan. Designated persons shall comply with the plan.

(4) In developing general and specific agricultural chemical ground water management plans, the department shall consider the current and potential beneficial use of the ground water included in or affected by the plans as expressed by the classification of the ground water. If the ground water has not been classified, the department shall consider it to be included in the classification representing the highest quality of ground water until such time as the ground water is classified by the board, and the department may proceed to develop an agricultural chemical ground water management plan as required by subsection (2).

(5) The department may request the board to classify certain ground water and may collect the data and information required by the board to classify the ground

1 water. If adequate technical data and financial resources
2 are available as determined by the board, the board shall
3 classify ground water at locations as requested by the
4 department.

5 (6) A specific agricultural chemical ground water
6 management plan must include:

7 (a) requirements to prevent ground water impairment
8 that are based on ground water use, value, and vulnerability
9 and that address all applicable aspects of agricultural
10 chemical use; and

11 (b) requirements to prevent or minimize further
12 presence of the agricultural chemical in the ground water
13 and to provide protection for the present and future
14 beneficial use of the ground water.

15 (7) A specific agricultural chemical ground water
16 management plan may include but is not limited to the
17 following elements:

18 (a) identification of geographical areas where an
19 agricultural chemical may be used;

20 (b) ground water, soil, meteorological, and geological
21 characteristics;

22 (c) best management plans and best management
23 practices;

24 (d) identification of high priority ground water;

25 (e) certification, licensing, training, and education

1 requirements for persons using agricultural chemicals;

2 (f) identification of setback areas around water wells
3 where certain activities may be restricted;

4 (g) agricultural chemical application rates and timing
5 and related use criteria;

6 (h) alternative pest management techniques, including
7 integrated pest management;

8 (i) other requirements for pesticides, as set forth in
9 Title 80, chapter 8, and related rules and for fertilizers,
10 as set forth in Title 80, chapter 10, and related rules; and

11 (j) EPA requirements.

12 (8) When developing and implementing a specific
13 agricultural chemical ground water management plan, the
14 department shall consider the beneficial uses of the
15 agricultural chemical and shall consult with the Montana
16 state university extension service.

17 (9) Within available resources, the department shall
18 contact users of an agricultural chemical and user groups
19 that will be subject to a general or specific agricultural
20 chemical ground water management plan to request their
21 recommendations concerning the development of the plan.

22 (10) The department is not required to develop or
23 implement a commercial fertilizer ground water management
24 plan until EPA implements a program to protect ground water
25 from fertilizers. Prior to the department implementing an

agricultural chemical ground water management plan for a commercial fertilizer, the department and the department of health and environmental sciences shall determine the source of the nitrate or other component of fertilizer present in ground water. If the source is not from the use of a commercial fertilizer, the department may not implement this section.

(11) The department shall adopt specific agricultural chemical ground water management plans through rulemaking, provided that the department may implement emergency plans as set forth in 80-8-105(4) or as authorized by the Montana Administrative Procedure Act. Prior to rulemaking, the department shall provide to the department of health and environmental sciences a copy of each proposed specific agricultural chemical ground water management plan. A 30-day period must be provided for the department of health and environmental sciences to prepare comments on the plan.

(12) The department shall review agricultural chemical ground water management plans periodically to determine if the requirements contained in the plans need to be modified based on new scientific data and information. Plan modifications must be accomplished by rulemaking.

NEW SECTION. Section 13. Department of health and environmental sciences to amend rules. The department of health and environmental sciences shall amend Rules

16.20.603, 16.20.1011, and 16.20.1012, Administrative Rules of Montana, to define reasonable land, soil, and water conservation practices to include point and nonpoint source agricultural operations involving the use of agricultural chemicals that are conducted in compliance with specific agricultural chemical ground water management plans prepared pursuant to [section 12] and to exclude those agricultural operations from Montana ground water pollution control system permit requirements.

NEW SECTION. Section 14. Agricultural chemical ground water protection accounts -- acceptance and expenditure of gifts, grants, and funds. (1) There is a department of agriculture agricultural chemical ground water protection special revenue account and a department of health and environmental sciences agricultural chemical ground water protection special revenue account within the state special revenue fund established by 17-2-102.

(2) Both accounts named in subsection (1) may receive funds from any source as gifts, grants, cost-share funds, or other funds designated for agricultural chemical ground water protection purposes.

(3) The department and the department of health and environmental sciences may individually or jointly spend funds received by their respective accounts for the purposes authorized by [sections 1 through 24].

1 NEW SECTION. Section 15. Special funding. (1) A fee
2 of \$15 is assessed for the registration of pesticides in
3 addition to the fee imposed by 80-8-201(4).

4 (2) A fee of \$10 is assessed for the registration of
5 fertilizers in addition to the fee imposed by 80-10-201(1).
6 The additional fee must be used for the ground water
7 protection responsibilities of the department relating to
8 fertilizers. Revenues collected from this fee must be
9 credited to the commercial fertilizer account within the
10 state special revenue fund for the administration of
11 [sections 1 through 24].

12 NEW SECTION. Section 16. Authority to investigate and
13 inspect. Authorized representatives of the department,
14 consistent with the responsibilities set forth in [sections
15 1 through 24] and upon presentation of department-issued
16 credentials, may at reasonable times or under emergency
17 conditions enter upon any public or private property to:

18 (1) investigate conditions relating to compliance with
19 agricultural chemical labels, agricultural chemical ground
20 water management plans, monitoring requirements, or ground
21 water protection requirements and to investigate violations
22 of plans or compliance orders;

23 (2) gain access to and copy any records required by
24 the department in the administration of [sections 1 through
25 24];

1 (3) establish and inspect monitoring equipment; and

2 (4) sample ground water, including drinking water
3 supply sources such as wells and similar structures.

4 NEW SECTION. Section 17. Prohibited activity. It is
5 unlawful for a person to:

6 (1) cause ground water impairment or to place or cause
7 to be placed any agricultural chemical where it is likely to
8 cause ground water impairment, except when the use of an
9 agricultural chemical was:

10 (a) in accordance with label directions, including
11 precautions listed with those directions; or

12 (b) in compliance with a specific agricultural
13 chemical ground water management plan;

14 (2) violate any provision of a specific agricultural
15 chemical ground water management plan;

16 (3) violate any lawful order issued pursuant to
17 [sections 1 through 24]; or

18 (4) violate any provision of [sections 1 through 24].

19 NEW SECTION. Section 18. Compliance orders. (1) In
20 furtherance of [section 17], the department may issue a
21 compliance order to any person violating a standard, an
22 interim numerical standard, or any other requirement
23 established pursuant to [sections 1 through 24]. The
24 department shall coordinate its proposed actions pursuant to
25 this section with proposed actions of the department of

1 health and environmental sciences pursuant to 75-5-613, if
 2 any. Issuance of a compliance order under [sections 1
 3 through 24] precludes the department from taking other
 4 enforcement actions for the same violation under Title 80,
 5 chapter 8 or 10.

6 (2) The department may issue a compliance order to any
 7 person, including the person's employees, agents, and
 8 subcontractors, whether or not the person is subject to a
 9 specific management plan, to require the cleanup of any
 10 agricultural chemical that the person has accidentally or
 11 purposely dumped, spilled, or misused or unlawfully used
 12 that has a significant probability of entering ground water.

13 (3) When issuing a compliance order, the department
 14 may require a person who has violated a provision of
 15 [section 17] to conduct monitoring to assist in determining
 16 the presence or level of concentration of an agricultural
 17 chemical in ground water and the effectiveness of cleanup
 18 efforts. The department shall specify criteria in the
 19 compliance order for determining the duration of monitoring.

20 (4) A compliance order must specify the requirement
 21 violated and must set a time for compliance. In establishing
 22 a time for compliance, the department shall take into
 23 account the seriousness of the violation and any good-faith
 24 efforts that the person has made to comply with the
 25 requirement that has been violated. A compliance order

1 issued under this section must be served either personally
 2 by a person qualified to perform service under the Montana
 3 Rules of Civil Procedure or by certified mail.

4 (5) A person may provide information to the
 5 department, including data concerning the person's economic
 6 situation. The department shall consider this information in
 7 determining the amount of the person's financial obligation
 8 for cleanup under this section.

9 NEW SECTION. **Section 19.** Injunctions authorized. The
 10 department may commence a civil action seeking appropriate
 11 relief, including a permanent or temporary injunction,
 12 pursuant to 80-8-306 or 80-10-303, as applicable, for a
 13 violation that is subject to a compliance order under
 14 [section 18].

15 NEW SECTION. **Section 20.** Emergencies. Notwithstanding
 16 any other provisions of [sections 1 through 24], if the
 17 department finds that an emergency exists that requires
 18 immediate action to protect ground water from agricultural
 19 chemicals or to prevent use of ground water impaired or
 20 likely to be impaired by agricultural chemicals, the
 21 department may, without notice or hearing, issue necessary
 22 orders or adopt rules to protect public health, welfare, and
 23 safety. The duration of an emergency order or rule is
 24 limited to the emergency provisions of the Montana
 25 Administrative Procedure Act as specified in 2-4-303.

NEW SECTION. Section 21. Violators subject to penalties. (1) A person found to be in violation of [sections 1 through 24] or a rule established pursuant to [sections 1 through 24] is subject to the penalty provisions of [sections 22 through 24].

(2) For the purpose of this section, the term "person" means, in addition to the definition in [section 2], any responsible corporate officer.

(3) Nothing in [sections 1 through 24] may be construed as requiring the department or an authorized agent of the department to report minor violations of [sections 1 through 24] for prosecution when the department or a duly authorized agent believes that the public interest will be best served by other remedial action, by a suitable notice of warning in writing, or by a lawful written order.

(4) Action under [sections 22 through 24] does not bar the department from enforcement of [sections 1 through 24] or of rules or orders issued under [sections 1 through 24] by injunction or other appropriate remedy.

(5) The department and the department of health and environmental sciences may not both subject a violator to the penalties authorized by [sections 22 through 24] and penalties authorized by Title 75, chapter 5, for the same violation.

NEW SECTION. Section 22. Administrative civil

penalty. (1) A person who commits a violation of [sections 1 through 24] may be assessed an administrative civil penalty by either the department or the department of health and environmental sciences, consistent with their respective responsibilities, of not more than \$1,000 for each offense. Farm applicators possessing a pesticide permit or using a fertilizer may not be assessed an administrative civil penalty of more than \$500 for the first offense. Assessment of a civil penalty may be made in conjunction with any other warning, order, or administrative action authorized by [sections 1 through 24] or Title 75, chapter 5, that is issued or undertaken by either the department or the department of health and environmental sciences.

(2) No administrative civil penalty may be assessed unless the person charged is given notice and opportunity for a hearing pursuant to Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

(3) In determining an appropriate administrative civil penalty, the responsible department shall consider the effect on the person's ability to continue in business, the gravity of the violation that occurred, the degree of care exercised by the offender, and whether significant harm resulted to public health, agricultural crops, livestock, or the environment.

(4) If the responsible department is unable to collect

the administrative civil penalty or if a person fails to pay all or a set portion of the administrative civil penalty as determined by the responsible department, the department may seek to recover the amount in the appropriate district court.

(5) A person against whom the department or the department of health and environmental sciences has assessed an administrative civil penalty may, within 30 days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged to have occurred. A jury trial must be granted when demanded under Rule 38 of the Montana Rules of Civil Procedure.

NEW SECTION. Section 23. Judicial civil penalty. A person who commits a violation as specified in [section 17] shall be subject to a judicial civil penalty not to exceed \$10,000. Each occurrence constitutes a separate violation.

NEW SECTION. Section 24. Criminal penalties. (1) A person who intentionally commits a violation as specified in [section 17] is guilty of an offense and subject to a fine not to exceed \$25,000 for each day the violation continues or imprisonment for not more than 1 year, or both. Following an initial conviction under this section, a subsequent conviction subjects a person to a fine of not more than \$50,000 for each day the violation continues or imprisonment

for not more than 2 years, or both.

(2) Except as otherwise provided in [sections 1 through 24], a person convicted of violating any of the provisions of [sections 1 through 24] or rules issued under [sections 1 through 24] or who misrepresents, impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the department from performance of its duties in connection with the provisions of [sections 1 through 24] is guilty of a misdemeanor and shall be fined not less than \$100 but not more than \$1,500.

(3) A person who knowingly makes any false statement, representation, or certification in any record, report, or other document filed or required to be maintained under [sections 1 through 24] or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under [sections 1 through 24] shall, upon conviction, be punished by a fine of not more than \$5,000 or by imprisonment for not more than 6 months, or both.

(4) A person who with intent to defraud uses or reveals confidential information and data provided under [sections 1 through 24] or rules issued under [sections 1 through 24] shall, upon conviction, be fined not more than \$5,000 or imprisoned for not more than 1 year, or both.

Section 25. Section 75-5-105, MCA, is amended to read:

1 **"75-5-105. Confidentiality of records. Any Except as**
 2 **provided in [section 8], any** information concerning sources
 3 of pollution which is furnished to the board or department
 4 or which is obtained by either of them is a matter of public
 5 record and open to public use. However, any information
 6 unique to the owner or operator of a source of pollution
 7 which would, if disclosed, reveal methods or processes
 8 entitled to protection as trade secrets shall be maintained
 9 as confidential if so determined by a court of competent
 10 jurisdiction. The owner or operator shall file a
 11 declaratory judgment action to establish the existence of a
 12 trade secret if he wishes such information to enjoy
 13 confidential status. The department shall be served in any
 14 such action and may intervene as a party therein. Any
 15 information not intended to be public when submitted to the
 16 board or department shall be submitted in writing and
 17 clearly marked as confidential. The data describing physical
 18 and chemical characteristics of a waste discharged to state
 19 waters shall not be considered confidential. The board may
 20 use any information in compiling or publishing analyses or
 21 summaries relating to water pollution if such analyses or
 22 summaries do not identify any owner or operator of a source
 23 of pollution or reveal any information which is otherwise
 24 made confidential by this section."

25 **Section 26.** Section 75-5-301, MCA, is amended to read:

1 **"75-5-301. Classification and standards for state**
 2 **waters. The Consistent with the provisions of [section 9],**
 3 **the board shall:**

4 (1) establish and modify the classification of all
 5 waters in accordance with their present and future most
 6 beneficial uses;

7 (2) formulate standards of water purity and
 8 classification of water according to its most beneficial
 9 uses, giving consideration to the economics of waste
 10 treatment and prevention;

11 (3) review, from time to time at intervals of not more
 12 than 3 years, established classifications of waters and
 13 standards of water purity and classification."

14 **Section 27.** Section 80-8-105, MCA, is amended to read:

15 **"80-8-105. Rules.** (1) The department may adopt by
 16 reference without a public hearing regulations adopted under
 17 the Federal Insecticide, Fungicide, and Rodenticide Act, as
 18 amended. The department may, after a public hearing, adopt
 19 all rules necessary to carry out this chapter.

20 (2) The rules may prescribe methods of:

21 (a) registration, suspension or cancellation of
 22 registration, application, use or restricting use,
 23 prohibiting use, offering or exposing for sale of any
 24 pesticide;

25 (b) determining whether pesticides are highly toxic to

1 man;

2 (c) determining standards of coloring or discoloring

3 for pesticides and subjecting pesticides to the requirements

4 of 80-8-202;

5 (d) licensing commercial applicators, operators, and

6 dealers, establishing methods of recordkeeping for

7 applicators, operators, and dealers, and providing for the

8 review of the records by the department's authorized agent

9 and the submission of the records to the department upon

10 written request;

11 (e) issuing farm applicator special-use permits and

12 the maintenance and submission of records by farm

13 applicators issued special-use permits;

14 (f) collection, examination, and standard deviation

15 from guarantee analysis and umpire analysis of pesticides

16 and devices;

17 (g) operating and maintaining equipment used by

18 applicators;

19 (h) developing examinations which shall be held

20 periodically throughout the state;

21 (i) establishing the form and content of all

22 applications for licenses and permits;

23 (j) designating pesticides that may be sold at retail

24 for home, yard, garden, and lawn use. The department may

25 also limit retail sale of pesticides, up to a specific

1 number of pounds or gallons and concentration which would be

2 sublethal to humans and animals if small amounts of it were

3 accidentally swallowed, inhaled, sprayed, or dusted on the

4 skin.

5 (k) revoking licenses and permits;

6 (l) registering or controlling any spray adjuvant,

7 such as a wetting agent, spreading agent, deposit builder,

8 adhesive, emulsifying agent, deflocculating agent, water

9 modifier, or similar agent with or without toxic properties

10 of its own intended to be used with any other pesticide as

11 an aid to the application or effect of that other pesticide,

12 whether or not distributed in a package or container

13 separate from that of a pesticide with which it is to be

14 used;

15 (m) registering pesticide-fertilizer and other

16 chemical blends or, instead of registration, establishing

17 licensing, inspection, and fees for blending plants;

18 (n) establishing registration procedures for devices,

19 with a fee not to exceed \$5 per type of device, specifying

20 classes of devices to be registered and providing for

21 additional requirements;

22 (o) imposing conditions for renewal of dealer,

23 applicator, and operator licenses and permits, including

24 requalification training;

25 (p) establishing procedures for implementing and

administering the civil penalties under 80-8-306; and

(q) establishing fees for training courses and materials.

(3) (a) Whenever Consistent with the provisions of [sections 1 through 24], whenever the department finds that those rules are necessary to carry out the purposes and intent of this chapter, the rules may relate to the time, place, manner, and method of registration, suspension or cancellation of registration, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time, and shall encompass all reasonable factors which the department considers necessary to prevent damage or injury to:

(i) persons, animals, crops, or pollinating insects from the effect of drift or careless application;

(ii) the environment;

(iii) plants, including forage plants;

(iv) wildlife;

(v) fish and other aquatic life.

(b) In issuing the rules, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government.

(4) If the department finds that an emergency exists

which requires immediate action with regard to the registration, use, or application of pesticides, the department may, without notice or hearing, issue necessary orders or rules to protect the public health, welfare, and safety. An order or rule issued under this subsection is effective for the period prescribed by the Montana Administrative Procedure Act. If the department determines that the emergency order or rule should remain in effect, a public hearing under 80-8-106 shall be held within the above period to determine whether the order or rule should be adopted by the department.

(5) All rules and orders issued by the department shall be in writing, shall be entered in full in books to be kept by the department for that purpose, shall be indexed, and shall be public records open for inspection at all times during reasonable office hours. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the department shall include and be based upon written findings of fact. A copy of any rule or order certified by the department shall be received in evidence in all courts of this state with the same effect as the original."

Section 28. Section 80-8-107, MCA, is amended to read:

"80-8-107. Public information. The Except as provided in [sections 1 through 24], the department as it deems

proper may, alone or in cooperation with other state or federal agencies, publish information regarding aspects of the use and application sections or registration sections of this chapter. This information cannot disclose operations of selling, production, or use of pesticides by any person."

Section 29. Section 80-8-305, MCA, is amended to read:

"80-8-305. General violations. (1) It Consistent with the provisions of [sections 1 through 24], it is unlawful for any person:

(a) to discard any pesticide or pesticide container in such a manner as to cause injury to humans, domestic animals, or wildlife, or to pollute any waterway in a way harmful to any wildlife therein or to the environment;

(b) to handle, transport, store, display, or distribute pesticides or pesticide containers in such a manner as to endanger man or the environment or to endanger food or any other products that may be transported, stored, displayed, or distributed with such pesticides;

(c) to handle, apply, or attempt to apply any registered pesticide for which he does not have an appropriate, complete, or legible label at hand; or

(d) to apply or attempt to apply any registered pesticide in a manner inconsistent with the label, as defined in 80-8-102.

(2) It is unlawful for any person to manufacture,

formulate, or store any registered pesticide or component or byproduct thereof in such a manner that the pesticide or any component or byproduct cannot be contained or confined within the boundaries of the lands owned by or under the appropriate control of the person involved. Odor is specifically exempted from the provisions of this subsection."

NEW SECTION. **Section 30. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 31. Codification instruction.** [Sections 1 through 24] are intended to be codified as an integral part of Title 80, and the provisions of Title 80 apply to [sections 1 through 24].

NEW SECTION. **Section 32. Effective date.** [This act] is effective January 1, 1990.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB757, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

HB757 would establish an agricultural chemical groundwater protection program to be administered by the Department of Agriculture and the Department of Health and Environmental Sciences in cooperation with other agencies.


ASSUMPTIONS:

1. There are and will continue to be approximately 4,989 pesticide products registered in the state and the \$15 per product fee assessed in the proposed law would generate \$74,835 per year.
2. There are and will continue to be approximately 1,200 fertilizer products registered in the state and the \$10 per product fee assessed in the proposed law would generate \$12,000 per year. This will remain in the account during the 1991 biennium until EPA implements a program pursuant to proposed law Section 12(10).
3. The primary task in the 1991 biennium will be development of cooperative programs which meet the requirements of EPA, including a general pesticide plan and at least one specific plan.
4. DHES and the Board of Health will adopt by reference EPA approved procedures for groundwater monitoring, field and laboratory operational quality assurance, quality control and confirmatory procedures. Implementation by existing staff is anticipated. The department will receive \$14,967 or 20% of the proposed pesticide fees collected towards the costs for analysis of groundwater samples and for the department's cooperative role in the program.
5. The Dept. of Agriculture and the Montana Agricultural Experiment Station-Cooperative Extension Service (MAES-CES) will cooperatively upgrade the pesticide and fertilizer education programs for applicators and farmers. MAES-CES will utilize existing staff and resources to implement most of the program and receive \$14,967 each year of the proposed pesticide fees collected towards these costs. In addition, there is increased extension service authority for workshop fees in the amount of \$8,000 in FY90 and \$15,000 in FY91.
6. The Dept. of Agriculture and the Montana Bureau of Mines and Geology (MBMG) will cooperatively prioritize collection of necessary data on selected aquifers for submission to DHES for classification of the groundwater. The proposed Dept. of Agriculture expenditures include under operating expenses \$14,967 in FY90 and \$8,000 in FY91 to contract with the MBMG for this purpose and it is further assumed that MBMG will utilize existing staff and resources for any additional costs beyond this revenue generated by the proposed fees.
7. The balance of the anticipated available fee revenue would be utilized by the Dept. of Agriculture for purposes of the bill including the addition of a lab technician grade 10 to be phased in at 0.24 FTE in FY90 (effective 4/1/90) and 1.00 FTE in FY91 and future years, plus operating expenses and start-up equipment in FY90. It is anticipated that there will be approximately 100 more pesticide



DATE 3/10/89

RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING



LEO GIACOMETTO, PRIMARY SPONSOR

DATE 16 Mar 89

Fiscal Note for HB757, as introduced

HB 757

groundwater samples analyzed per year by the Dept. of Agriculture. In addition, there is \$8,000 of authority for workshop expenses and revenues in FY90 and \$15,000 in FY91 included in the Dept. of Agriculture operating expenses.

FISCAL IMPACT:

Expenditures:

Dept. of Agriculture:	Current Law	FY90 Proposed Law	Difference	Current Law	FY91 Proposed Law	Difference
Personal Services	\$ -0-	\$ 5,111	\$ 5,111	\$ -0-	\$ 20,189	\$ 20,189
Operating Expenses	-0-	37,750	37,750	-0-	39,712	39,712
Equipment	-0-	10,040	10,040	-0-	-0-	-0-
DoA Subtotal	\$ -0-	\$ 52,901	\$ 52,901	\$ -0-	\$ 52,901	\$ 52,901
DHES:						
Operating Expenses	\$ -0-	\$ 14,967	\$ 14,967	\$ -0-	\$ 14,967	\$ 14,967
MAES-CES:						
Operating Expenses	\$ -0-	\$ 22,967	\$ 22,967	\$ -0-	\$ 29,967	\$ 29,967
Total Expenditures	\$ -0-	\$ 90,835	\$ 90,835	\$ -0-	\$104,835	\$104,835

Funding:

State Special Revenue

GW Pesticide Registration	\$ -0-	\$ 74,835	\$ 74,835	\$ -0-	\$ 74,835	\$ 74,835
Workshop Fees	-0-	16,000	16,000	-0-	30,000	30,000
Total Funding	\$ -0-	\$ 90,835	\$ 90,835	\$ -0-	\$104,835	\$104,835

Revenues:

State Special Revenue

GW Pesti. Registration	\$ -0-	\$ 74,835	\$ 74,835	\$ -0-	\$ 74,835	\$ 74,835
GW Fertilizer Registr.	-0-	12,000	12,000	-0-	12,000	12,000
Workshop Fees	-0-	16,000	16,000	-0-	30,000	30,000
Total Revenues	\$ -0-	\$102,835	\$102,835	\$ -0-	\$116,835	\$116,835

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

In the event groundwater contamination due to agricultural chemicals is found, management plans requiring higher levels of funding may be required in future years.

HB 757

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 757

INTRODUCED BY GIACOMETTO, WEEDING, BECK, O'KEEFE,
MARKS, HARPER, DEMARS, THOFT

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH AN
AGRICULTURAL CHEMICAL GROUND WATER PROTECTION PROGRAM TO BE
ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE AND THE
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; TO REQUIRE
ESTABLISHMENT OF AGRICULTURAL CHEMICAL GROUND WATER QUALITY
STANDARDS; TO PROVIDE FOR GROUND WATER MONITORING AND
AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLANS; TO
PROVIDE FOR ENFORCEMENT AUTHORITY, COMPLIANCE ORDERS, AND
PENALTIES; TO DIRECT THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL SCIENCES TO AMEND CERTAIN RULES IMPLEMENTING
THE WATER QUALITY ACT; TO ESTABLISH ADDITIONAL FEES FOR
REGISTRATION OF PESTICIDES AND FERTILIZERS; TO CREATE
AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACCOUNTS;
AMENDING SECTIONS 75-5-105, 75-5-301, 80-8-105, 80-8-107,
AND 80-8-305, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill in
order to provide guidance to the department of agriculture
and the department of health and environmental sciences
concerning the administration of the provisions of the bill

and the adoption of rules.

Because the departments share responsibility for
certain duties established by the bill, the departments
shall coordinate their rulemaking efforts and whenever
possible adopt identical rules for the areas of shared
responsibility, including:

(1) ground water monitoring as authorized by [sections
10 and 11];

(2) field and laboratory operational quality
assurance, quality control, and confirmatory procedures as
authorized by [sections 7, 10, and 11];

(3) maintenance of confidentiality of certain data as
required by [section 8]; and

(4) administrative civil penalties as authorized by
[section 22].

~~In adopting rules pertaining to quality assurance,~~
~~quality control, and confirmatory procedures, the~~
~~departments shall include the following:~~

~~(1) confirmation of analytical results by two~~
~~different analytical methodologies if two methodologies~~
~~exist; and~~

~~(2) either resampling and analysis within 30 days of~~
~~original sampling and analysis or splitting and analysis of~~
~~samples by two or more laboratories approved by the~~
~~department of agriculture and the department of health and~~

1 environmental sciences;

2 A monitoring program implemented by the department of
3 agriculture or the department of health and environmental
4 sciences must be designed to enable the departments to make
5 the following determinations, as applicable, whether:

6 (1) the agricultural chemical has entered ground water
7 as a direct result of use according to its label or as a
8 result of misuse;

9 (2) the agricultural chemical has a reasonable
10 probability of entering ground water due to migration
11 through soil;

12 (3) the level of the agricultural chemical in the
13 ground water or its rate of migration through soil is
14 increasing or decreasing with respect to standards and
15 interim numerical standards required by {section 9};

16 (4) the predictive procedures and data used to
17 establish the monitoring program are reliable; and

18 (5) the ground water has beneficial human or
19 environmental uses based on its classification;

20 The department of agriculture or the department of
21 health and environmental sciences shall give priority to
22 developing monitoring programs for agricultural chemicals
23 that the departments identify as likely to enter or as
24 having entered ground water based on predictive procedures
25 that provide a high degree of scientific certainty and that

1 are appropriate to the geographical areas where the
2 agricultural chemicals are used;

3 If the department of health and environmental sciences
4 finds it necessary to issue compliance orders to a person to
5 clean up ground water that has been impaired by use of
6 agricultural chemicals in violation of Title 75, chapter 5
7 or 6, it may, based on technical feasibility and economic
8 considerations, order the ground water to be cleaned up to a
9 level that is lower than the applicable standard or interim
10 numerical standard if the following findings are made:

11 (1) the agricultural chemical can be confined to
12 either the source, a specific property boundary, or the
13 defined area extent of the agricultural chemical plume;

14 (2) the ground water will not be used for drinking
15 purposes or no health risks will exist at a level of cleanup
16 that is lower than the applicable standard or interim
17 numerical standard;

18 (3) the agricultural chemical will not cause other
19 ground water impairment; and

20 (4) the responsible party has agreed to comply with an
21 existing agricultural chemical ground water management plan
22 or a plan under development but not finalized by rule at the
23 time of the determination by the department of health and
24 environmental sciences;

25 The board of health and environmental sciences is

1 responsible for adoption of certain ground water quality
 2 standards for agricultural chemicals as required by [section
 3 9]. The board shall adopt appropriate rules as necessary to
 4 comply with the special requirements and considerations that
 5 apply to the adoption of these standards as specified in
 6 [section 9], including acquisition of current and
 7 scientifically valid data from the United States
 8 environmental protection agency (EPA) and other sources and
 9 communications with EPA concerning the content and status of
 10 promulgated federal standards, nonpromulgated federal
 11 standards, and other relevant EPA regulations and materials.

12 ~~In--adopting--rules-to-regulate-the-adoption-of-interim~~
 13 ~~numerical-standards,-the-board-shall-include--the--following~~
 14 ~~criteria:~~

15 ~~{1}--use--of-any-significant-new-and-relevant-technical~~
 16 ~~information;~~

17 ~~{2}--reliance--on---valid---scientific---methodologies,~~
 18 ~~protocols,-and-procedures;~~

19 ~~{3}--priority-consideration-of-information-and-evidence~~
 20 ~~that--has--been--subjected-to-peer-review,-has-resulted-from~~
 21 ~~more-than-one-study,-and-is-consistent-with--other--credible~~
 22 ~~medical-or-toxicological-evidence;-and~~

23 ~~{4}--consultation--with--the--department-of-agriculture~~
 24 ~~and-EPA-regarding-any-assessments--or--conclusions--EPA--may~~
 25 ~~have-made-relative-to-available-toxicological-information-on~~

1 ~~the-agricultural-chemical-in-question-~~

2 ~~The-department-of-health-and-environmental-sciences-and~~
 3 ~~the--department--of--agriculture--shall-cooperatively-ensure~~
 4 ~~appropriate-and-timely-notice-to-affected-parties,-including~~
 5 ~~the-registrant-of-an-agricultural-chemical,-concerning--the~~
 6 ~~adoption-of-standards-and-interim-numerical-standards-~~

7 The department of agriculture is responsible for the
 8 development of agricultural chemical ground water management
 9 plans. The department shall adopt appropriate rules to
 10 ensure compliance with the requirements of [section 12],
 11 including procedures for the development of the plans,
 12 communication with sources of information needed for the
 13 plans, communication with citizens who may be affected by
 14 the plans, and criteria for ensuring that the content of the
 15 plans meets the objectives of preventing ground water
 16 impairment, minimizing the presence of agricultural
 17 chemicals in ground water, and protecting present and future
 18 beneficial uses of ground water as specified in [section
 19 12]. The department of agriculture shall also adopt rules
 20 specifying procedures for obtaining comments on agricultural
 21 chemical ground water management plans from the department
 22 of health and environmental sciences, for adoption of
 23 completed plans, and for making modifications to adopted
 24 plans.
 25

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

NEW SECTION. **Section 1.** Short title. [Sections 1 through 24] may be cited as the "Montana Agricultural Chemical Ground Water Protection Act".

NEW SECTION. **Section 2.** Definitions. Unless the context requires otherwise, in [sections 1 through 24] the following definitions apply:

(1) "Agricultural chemical" means any of the following:

(a) a pesticide as defined in 80-8-102;

(b) an isomer, degradation, or metabolic product of a pesticide; or

(c) a commercial fertilizer as defined in 80-10-101.

(2) "Best management plans" and "best management practices" mean activities, procedures, and practices established by the department of agriculture, in consultation with the Montana state university extension service, to prevent or remedy the introduction of agricultural chemicals into ground water to the extent technically and economically practical.

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

(4) "Confirmatory procedure" means a process for verifying the detection of agricultural chemicals in water, soil, and other related media.

(5) "EPA" means the United States environmental protection agency.

(6) "Ground water" means any water of the state occupying the voids within a geologic formation and within the zone of saturation capable of yielding sufficient quantities of water to a well for beneficial use.

~~{7}--"Ground-water-impairment"--means-the-alteration--of the--physical,--chemical,--or-biological-properties-of-ground water-by-an-agricultural-chemical,--whether--from--discharge, use,--or-introduction,--that-prevents-or-is-likely-to-prevent the-present-or-future-beneficial-use-of-the-ground-water--as expressed-by-the-ground-water's-classification.~~

~~{8}{7}~~ (7) "Interim numerical standard" means a health-based number that expresses the concentration of an agricultural chemical allowed in ground water and that is adopted by a rule of the board pursuant to [section 9(5) or (6)].

~~{9}{8}~~ (8) "Margin of safety" means numerical margins that are applied to the no observable effect level in an agricultural chemical toxicology study and that are used by the EPA to extrapolate data obtained from studies of animals to humans, including sensitive individuals.

~~{10}{9}~~ (9) "No observable effect level" means the highest dose level of an agricultural chemical to which a laboratory animal is exposed, per unit of body weight, at which no

effect is observed, as established by EPA's pesticide registration process.

~~(11)~~(10) "Nonpoint source" means a diffuse source of agricultural chemicals resulting from activities of man over a relatively large area, the effects of which must normally be addressed or controlled by a management or conservation practice.

~~(12)~~(11) "Nonpromulgated federal standard" means a health advisory, OR A suggested no observable-effect ADVERSE RESPONSE level,--suggested--maximum--contaminant--level,--or suggested--ground--water--residue--guidance--level that is published but not promulgated by regulation by EPA and that is a suggested measure of the health risk represented by the concentration of an agricultural chemical in water.

~~(13)~~(12) "Numerical risk assessment" means a scientific procedure used to measure the statistical probability of human health risk associated with exposure to an agricultural chemical.

~~(14)~~(13) "Oncogenic potential" means the potential of an agricultural chemical to cause tumors in laboratory animals and the extrapolation of that potential to humans through use of statistical models and other evidence.

~~(15)~~(14) "Person" means any individual, group, firm, cooperative, corporation, association, partnership, political subdivision, state or federal government agency,

or other organization or entity.

~~(16)~~(15) "Point of standards application" means the specific location in an ~~aquifer~~ AQUIFER where ground water quality and quantity are sampled, measured, evaluated, or otherwise used by either the department or the department of health and environmental sciences to implement the provisions of [sections 1 through 24].

~~(17)~~(16) "Point source" means a point source as defined in 75-5-103, including but not limited to chemical mixing, loading, and storage sites and sites of agricultural chemical spills.

~~(18)~~(17) "Promulgated federal standard" means an agricultural chemical maximum contaminant level as established under the federal Safe Drinking Water Act, a national primary drinking water standard, or an interim drinking water regulation or other EPA regulation based on federal law.

~~(19)~~(18) "Registrant" means a person as defined in 80-8-102 and 80-10-101.

~~(20)~~(19) "Standard" means the numerical value expressing the concentration of an agricultural chemical in ground water that, WHEN EXCEEDED, presents a POTENTIAL human health risk over a lifetime of consumption and that is adopted by a rule of the board as required by [section 9].

~~(21)~~(20) "Use" means any act of handling or release of

an agricultural chemical or exposure of man or the environment to an agricultural chemical, including but not limited to application, mixing, loading, storage, disposal, or transportation.

NEW SECTION. Section 3. Policy. It is the public policy of this state to:

(1) protect ground water and the environment from impairment or degradation due to the use of agricultural chemicals;

(2) allow for the proper and correct use of agricultural chemicals ~~that are valuable and necessary for agricultural production and disease control~~;

(3) provide for the management of agricultural chemicals to prevent, minimize, and mitigate their presence in ground water, ~~considering the use of the ground water, and to provide special protection to high priority and highly susceptible ground water~~; and

(4) provide for education and training of agricultural chemical applicators and the general public on ground water protection, and agricultural chemical use, AND THE USE OF ALTERNATIVE AGRICULTURAL METHODS.

NEW SECTION. Section 4. Administration. (1) The department and the department of health and environmental sciences shall administer [sections 1 through 24].

(2) The department of health and environmental

sciences is responsible for the establishment and enforcement of agricultural chemical ground water standards and interim numerical standards as authorized by [section 9], ground water monitoring as authorized by [sections 10 and 11], providing comments to the department during the development of agricultural chemical ground water management plans, ~~conducting~~ PROMOTING research as set forth in [section 7], and related responsibilities set forth in Title 75, chapter 5.

(3) The department is responsible for the preparation, implementation, and enforcement of agricultural chemical ground water management plans as authorized by [sections 12 and 16 through 24], public education as authorized by [section 6], ground water monitoring as authorized by [sections 10 and 11], other duties related to promoting research as set forth in [section 7], and related responsibilities set forth in Title 80, chapters 8 and 10.

(4) [Sections 1 through 24] do not limit the department's responsibility to enforce agricultural chemical label directions and prohibitions.

(5) The administration of [sections 1 through 24], including rulemaking and hearing functions authorized by [sections 1 through 24], must be conducted in accordance with the Montana Administrative Procedure Act, Title 2, chapter 4.

1 **NEW SECTION. Section 5. Rulemaking.** (1) The board
 2 shall adopt rules for the administration of [sections 1
 3 through 24] for which the board and the department of health
 4 and environmental sciences have responsibility. These rules
 5 must include but are not limited to:

6 (a) standards and interim numerical standards for
 7 agricultural chemicals in ground water as authorized by
 8 [section 9];

9 (b) procedures for ground water monitoring as
 10 authorized by [sections 10 and 11];

11 (c) field and laboratory operational quality
 12 assurance, quality control, and confirmatory procedures as
 13 authorized by [sections 7, 10, and 11], which may include,
 14 through adoption by reference, procedures that have been
 15 established or approved by EPA for quality assurance and
 16 quality control;

17 (d) standards for maintaining the confidentiality of
 18 data and information declared confidential by EPA and the
 19 confidentiality of chemical registrant data and information
 20 protected from disclosure by federal or state law as
 21 required by [section 8]; and

22 (e) administrative civil penalties as authorized by
 23 [section 22].

24 (2) The department shall adopt rules necessary to
 25 carry out its responsibilities under [sections 1 through

24]. These rules must include but are not limited to:

2 (a) procedures for ground water monitoring as
 3 authorized by [sections 10 and 11];

4 (b) the content and procedures for development of
 5 agricultural chemical ground water management plans,
 6 including the content of best management practices and best
 7 management plans, procedures for obtaining comments from the
 8 department of health and environmental sciences on the
 9 plans, and the adoption of completed plans and plan
 10 modifications as authorized by [section 12];

11 (c) standards for maintaining the confidentiality of
 12 data and information declared confidential by EPA and of
 13 chemical registrant data and information protected from
 14 disclosure by federal or state law as required by [section
 15 8];

16 (d) field and laboratory operational quality
 17 assurance, quality control, and confirmatory procedures as
 18 authorized by [sections 7, 10, and 11], which may include,
 19 through adoption by reference, procedures that have been
 20 established or approved by EPA for quality assurance and
 21 quality control;

22 (e) emergency procedures as authorized by [section
 23 20];

24 (f) procedures for issuance of compliance orders as
 25 authorized by [section 18]; and

(g) procedures for the assessment of administrative civil penalties as authorized by [section 22].

NEW SECTION. Section 6. Educational programs. (1) The department, in cooperation with the Montana state university extension service, shall develop and conduct appropriate educational programs to promote the policy specified in [section 3]. The department and the Montana state university extension service may charge a fee for the educational programs commensurate with the costs of program development and administration.

(2) All fees collected by the department pursuant to this section must be deposited in the state special revenue fund. The department may spend the funds for the purposes set forth in this section.

(3) All fees collected by the Montana state university extension service must be deposited in a special account identified for this purpose. The extension service may spend the funds for the purposes set forth in this section.

NEW SECTION. Section 7. Research. The department or the department of health and environmental sciences may SHALL promote, for the purposes described in [section 3], cooperative ground water research programs with units of the university system and associated agricultural experiment stations, the bureau of mines and geology, and other appropriate agencies, organizations, and individuals.

NEW SECTION. Section 8. Confidentiality. (1) The department and the department of health and environmental sciences shall maintain the confidentiality of data declared confidential by EPA and chemical registrant data and information protected from disclosure by federal or state law.

(2) The department of health and environmental sciences shall comply with the requirements of 75-5-105 and the department shall comply with the requirements of 80-8-107 and 80-10-210, except as otherwise provided by this section.

NEW SECTION. Section 9. Ground water standards. (1) The board shall adopt standards and, as applicable, interim numerical standards for agricultural chemicals in ground water. The standards must be the same as any promulgated or nonpromulgated federal standard established by EPA, although the board may determine, pursuant to the requirements of subsection {7} (4), that an interim numerical standard different from either a promulgated or nonpromulgated federal standard is justified. PROMULGATED FEDERAL STANDARDS MUST RECEIVE PREFERENCE. Except as provided in subsection--{7} SUBSECTIONS (3) AND (4), if more than one nonpromulgated federal standard exists for an agricultural chemical, the board must adopt the most recently established nonpromulgated federal standard.

(2) The board is not required to adopt a standard or interim numerical standard for every agricultural chemical registered in the state. The only standards and interim numerical standards required are for those agricultural chemicals:

(a) that are addressed by promulgated and nonpromulgated federal standards;

(b) the presence of which has been verified in ground water as provided in [section 10]; or

(c) that the department and the department of health and environmental sciences predict may appear in ground water, in accordance with the procedures and determinations specified in [sections 10 and 11].

~~{3}--Before-either-the-department-or-the-department--of health---and---environmental--sciences--provides--monitoring results-or-before-either--may--order--a--person--to--conduct monitoring-and-prior-to-the-department-taking-an-enforcement action--under--{sections--1-through-24}-or-the-department-of health-and--environmental--sciences--taking--an--enforcement action--under--Title--75,--chapter--5,--the--board-must-have established-a-standard-or-interim-numerical-standard-for-the agricultural--chemical--in--question,--except--in--emergency situations--as--specified--in--{section-20}-and-75-5-621,--as applicable.~~

~~{4}--The-department-may-not-develop--and--implement--an~~

~~agricultural--chemical--ground--water--management-plan-for-a particular-agricultural-chemical-in-accordance-with-{section 12}-until-a-standard-or-interim-numerical-standard-for--that chemical--has--been--established--by--the-board-or-until-EPA requires-the-development-of-an-agricultural-chemical--ground water-management-plan.~~

~~{5}{3}~~ If no promulgated federal standard has been adopted and OR no nonpromulgated federal standard has been published for an agricultural chemical for which the board is required to establish a standard or interim numerical standard as specified in subsections (2)(b) and (2)(c), the department of health and environmental sciences shall request EPA to establish a promulgated or nonpromulgated federal standard. If the department of health and environmental sciences determines that EPA cannot comply with the request within 60 15 days, the board shall adopt an interim numerical standard, provided that the board shall review the interim numerical standard whenever EPA adopts a promulgated federal standard or publishes a nonpromulgated federal standard for the agricultural chemical in question.

~~{6}{4}~~ The board may adopt an interim numerical standard that is different from either a promulgated or nonpromulgated federal standard, if there is significant new and relevant technical information available that is scientifically valid and--that--has-not-been-considered-by

1 EPA. The board shall review the interim numerical standard
2 when EPA ESTABLISHES OR revises the promulgated or
3 nonpromulgated federal standard for the agricultural
4 chemical in question.

5 ~~{7}(5) In--addition--to--criteria--the-board-considers~~
6 ~~pursuant-to-rules-adopted-under-{section-5}-for-the-adoption~~
7 ~~of--standards;--the~~ THE board shall base CONSIDER THE
8 FOLLOWING IN ADOPTING any interim numerical standard it
9 adopts under either subsection ~~{5}-or-{6}-on~~ (3) OR (4):

10 (a) EFFECTS ON a person weighing 70 kilograms and
11 drinking 2 liters of water per day over a lifetime; and

12 (b) EPA's conclusions regarding the no observable
13 effect level, including the margin of safety identified by
14 EPA when scientific data indicates oncogenic potential for
15 the agricultural chemical and EPA has determined that a
16 numerical risk assessment is not justified, is
17 inappropriate, or does not serve as the primary
18 toxicological basis for regulation.

19 ~~{8}(6)~~ Nothing in this section may interfere with the
20 board's responsibility to adopt rules and standards under
21 Title 75, chapter 6.

22 NEW SECTION. Section 10. Monitoring programs. (1) The
23 department or the department of health and environmental
24 sciences may SHALL conduct monitoring programs to determine:

25 (a) whether residues of agricultural chemicals are

1 present in ground water; and

2 (b) the likelihood of an agricultural chemical
3 entering TO ENTER ground water, if either department
4 determines that sufficient valid scientific data is
5 available to reasonably predict the behavior of a particular
6 agricultural chemical in the soil ~~and-ground-water~~.

7 (2) ANY PERSON WHO RECEIVES A CHEMICAL ANALYSIS
8 INDICATING THE PRESENCE OF AN AGRICULTURAL CHEMICAL IN
9 GROUND WATER SHALL NOTIFY THE DEPARTMENT OF HEALTH AND
10 ENVIRONMENTAL SCIENCES.

11 ~~{2}(3)~~ The department and the department of health and
12 environmental sciences shall evaluate all information
13 relating to this section that is received from any person
14 based upon standard procedures, protocols, and confirmatory
15 procedures established by rules. Information found to be
16 insufficient based on the adopted procedures and protocols,
17 including analytical results, may be used only for
18 informational purposes.

19 NEW SECTION. Section 11. Evaluation and use of
20 monitoring results. (1) When providing preliminary
21 monitoring results ~~to--ground--water--users~~ or confirmed
22 monitoring results to the GROUND WATER users or the public,
23 the departments shall also provide the ANY applicable
24 standard or interim numerical standard.

25 (2) When monitoring results reveal the presence of an

1 agricultural chemical in ground water:

2 (a) the department of health and environmental
3 sciences is the lead department for determining health
4 risks; and

5 (b) the department is the lead department for
6 determining compliance with agricultural chemical ground
7 water management plans authorized by [section 12] and with
8 agricultural chemical registration, use, and labeling
9 requirements and conditions pursuant to Title 80, chapters 8
10 and 10.

11 (3) The department and the department of health and
12 environmental sciences shall cooperatively evaluate the
13 results of monitoring programs authorized by [section 10] to
14 determine, as applicable:

15 ~~{a}--whether--the--presence-of-an-agricultural-chemical~~
16 ~~in-ground-water-meets-or-exceeds;~~

17 ~~{i}--an--established--standard--or--interim--numerical~~
18 ~~standard-at-a-point-of-standards-application; or~~

19 ~~{ii}--any----requirements-----associated----with----the~~
20 ~~classification-of-the-ground-water;~~

21 ~~{b}--whether-the--conditions--required--by--a--specific~~
22 ~~agricultural--chemical--ground--water-management-plan-as-set~~
23 ~~forth-in-[section-12]-are-appropriate-or-have-been-violated;~~

24 ~~{c}--the-geographical-or-hydrogeological-extent-of--the~~
25 ~~agricultural-chemical-in-the-ground-water;-and~~

1 ~~{d}--whether--there--is--a--definite-trend-of-increased~~
2 ~~presence-of-the-agricultural-chemical-in-ground-water--based~~
3 ~~on--the-percentage-of-change-in-concentrations-measured-at-a~~
4 ~~single-monitoring-site-or-at-different-monitoring-sites-over~~
5 ~~a-reasonable-period-of-time.~~

6 (4) Based on the results of monitoring, the department
7 and the department of health and environmental sciences
8 shall implement appropriate actions specified in [sections 1
9 through 24] to mitigate any existing impacts of an
10 agricultural chemical found in ground water and to prevent
11 future impacts of an agricultural chemical that may be found
12 in ground water, in relation to human health, agriculture,
13 and the environment.

14 (5) The department may not undertake compliance and
15 enforcement actions authorized by [sections 1 through 24]
16 and the department of health and environmental sciences may
17 not undertake compliance and enforcement actions authorized
18 by Title 75, chapter 5, unless there is sufficient evidence
19 collected through:

20 (a) monitoring at a point of standards application or
21 through;

22 (B) other investigations that reveal that a person
23 using an agricultural chemical or introducing or discharging
24 the chemical into ground water has violated a provision of
25 [section 17] or Title 75, chapter 5; or

~~{b}{C}~~ monitoring that reveals a significant probability for an agricultural chemical to enter ground water.

~~{6}--Any-actions-taken-by-the-departments-in-accordance with-subsections-{4}-and-{5}-must-be-consistent-with-the priority--accorded--to--and-the-beneficial-use-of-the-ground water-as-expressed-by--its--classification.---The--type--and complexity---of---the---departments'-actions--may--be--more comprehensive-in-situations-involving--higher--ground--water classifications.---Actions-involving-the-lowest-ground-water classification-may-be-limited-to-minimizing--further--impact unless--the--departments--jointly--determine-that-the-lowest classified-ground-water-will-impair-or-is-likely--to--impair other-state-waters-that-have-a-higher-classification.~~

NEW SECTION. Section 12. Agricultural chemical ground water management plans. (1) The department may SHALL develop and implement a general state agricultural chemical ground water management plan TO ACHIEVE THE POLICIES OF [SECTION 3]. This plan may MUST include general program elements set forth in [sections 1 through 24] and best management plans and best management practices. PRIOR TO PUBLICATION OF THE PLAN, THE DEPARTMENT SHALL PROVIDE A 30-DAY PERIOD FOR THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO PREPARE AND SUBMIT COMMENTS ON THE PLAN.

(2) Except as provided in subsection ~~{10}~~ (11), the

department shall develop and implement agricultural chemical ground water management plans specific to particular agricultural chemicals and to a defined geographical area. Within available resources, the department shall prioritize preparation of specific agricultural chemical ground water management plans based on the following criteria:

(a) when the level of an agricultural chemical found in ground water is at 50% of the standard or interim numerical standard at a point of standards application and is scientifically validated;

(b) when a definite trend of increased presence of the agricultural chemical in ground water at a point of standards application is scientifically validated;

(C) WHEN AGRICULTURAL CHEMICALS HAVE BEEN DETERMINED TO HAVE MIGRATED INTO THE GROUND WATER FROM THE POINT OF DETECTION;

~~{c}{D}~~ when EPA proposes to suspend or cancel registration of an agricultural chemical, prohibits or restricts the chemical's sale or use in the state, or otherwise initiates action against a chemical because of ground water concerns and when EPA's action, restriction, or prohibition will be implemented unless the state develops an adequate management plan; or

~~{d}{E}~~ when agricultural chemicals that possess or are suspected of possessing properties that indicate potential

to migrate to ground water are being applied on areas underlaid by ground water that is vulnerable to impairment.

(3) ANY PERSON USING AN AGRICULTURAL CHEMICAL THAT IS ADDRESSED BY A SPECIFIC AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLAN IN THE GEOGRAPHICAL REGION THAT IS ADDRESSED BY THE PLAN SHALL COMPLY WITH THE PLAN. The department may SPECIFICALLY identify and designate persons ~~using--an agricultural--chemical--that--is--addressed--by--a--specific agricultural--chemical--ground--water--management--plan--in--the geographical--area--that--is--addressed--by--the--plan.~~ Designated persons ~~shall comply with the plan.~~ WHO ARE UNDER THE PLAN AND MAY INFORM ANY PERSON ABOUT THE PLAN.

(4) THE DEPARTMENT SHALL PRIORITIZE PREPARATION OF SPECIFIC AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLANS IN CONSIDERATION OF THE SPECIFIC CIRCUMSTANCES OF EACH AREA AND WITHIN AVAILABLE RESOURCES.

~~(4)(5)~~ In developing general and specific agricultural chemical ground water management plans, the department shall consider the current and potential beneficial use of the ground water included in or affected by the plans as ~~expressed--by--the--classification--of--the--ground--water.~~ If the ground water has not been classified, the department shall consider it to be included in the classification representing the highest quality of ground water until such time as the ground water is classified by the board, and the

department may proceed to develop an agricultural chemical ground water management plan as required by subsection (2).

~~(5)(6)~~ The department may request the board DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES to classify certain ground water and may collect the data and information required by the board DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES to classify the ground water. If adequate technical data and financial resources are available as determined by the board DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES, the board DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES shall classify ground water at locations as requested by the department.

~~(6)(7)~~ A specific agricultural chemical ground water management plan must include:

(a) requirements to prevent ground water impairment that are based on ground water use, value, and vulnerability and that address all applicable aspects of agricultural chemical use; and

(b) requirements to prevent or minimize further presence of the agricultural chemical in the ground water and to provide protection for the present and future beneficial use of the ground water.

~~(7)(8)~~ A specific agricultural chemical ground water management plan may include but is not limited to the following elements:

1 (a) identification of geographical areas where an
 2 agricultural chemical may be used;
 3 (b) ground water, soil, meteorological, and geological
 4 characteristics;
 5 (c) best management plans and best management
 6 practices;
 7 (d) identification of high priority ground water;
 8 (e) certification, licensing, training, and education
 9 requirements for persons using agricultural chemicals;
 10 (f) identification of setback areas around water wells
 11 where certain activities may be restricted;
 12 (g) agricultural chemical application rates and timing
 13 and related use criteria;
 14 (h) alternative pest management techniques, including
 15 integrated pest management;
 16 (i) other requirements for pesticides, as set forth in
 17 Title 80, chapter 8, and related rules and for fertilizers,
 18 as set forth in Title 80, chapter 10, and related rules; and
 19 (j) EPA requirements; AND
 20 (K) ALTERNATIVE SOIL FERTILITY PRACTICES.
 21 ~~{8}~~(9) When developing and implementing a specific
 22 agricultural chemical ground water management plan, the
 23 department shall consider the ~~beneficial-uses~~ BENEFITS OF
 24 APPROPRIATE USE of the agricultural chemical and shall
 25 consult with the Montana state university extension service.

1 ~~{9}~~(10) Within available resources, the department
 2 shall contact users of an agricultural chemical and user
 3 groups that will be subject to a general or specific
 4 agricultural chemical ground water management plan to
 5 request their recommendations concerning the development of
 6 the plan.
 7 ~~{10}~~(11) The department ~~is-not-required-to~~ MAY develop
 8 or AND implement a commercial fertilizer ground water
 9 management plan ~~until-EPA-implements-a-program-to-protect~~
 10 ~~ground-water-from-fertilizers-Prior-to-the-department~~
 11 ~~implementing-an-agricultural-chemical-ground-water~~
 12 ~~management-plan-for-a-commercial-fertilizer-the-department~~
 13 ~~and-the-department-of-health-and-environmental-sciences~~
 14 ~~shall-determine-the-source-of-the-nitrate-or-other-component~~
 15 ~~of-fertilizer-present-in-ground-water-If-the-source-is-not~~
 16 ~~from-the-use-of-a-commercial-fertilizer-the-department-may~~
 17 ~~not-implement-this-section~~ IF THE DEPARTMENT AND THE
 18 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES DETERMINE
 19 THAT RESIDUES FROM COMMERCIAL FERTILIZER ARE PRESENT IN THE
 20 GROUND WATER.
 21 ~~{11}~~(12) The department shall adopt specific
 22 agricultural chemical ground water management plans through
 23 rulemaking, provided that the department may implement
 24 emergency plans as set forth in 80-8-105(4) or as authorized
 25 by the Montana Administrative Procedure Act. Prior to

rulemaking, the department shall provide to the department of health and environmental sciences a copy of each proposed specific agricultural chemical ground water management plan. A 30-day period must be provided for the department of health and environmental sciences to prepare comments on the plan.

~~†12†~~(13) The department shall review agricultural chemical ground water management plans periodically to determine if the requirements contained in the plans need to be modified based on new scientific data and information. Plan modifications must be accomplished by rulemaking.

(14) A PERSON WHO SELLS AGRICULTURAL LAND THAT IS SUBJECT TO THE PROVISIONS OF A SPECIFIC AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLAN SHALL PROVIDE THE BUYER WITH WRITTEN NOTICE ABOUT HIS OBLIGATIONS UNDER THE PLAN AND SHALL FORWARD A COPY OF THE NOTICE TO THE DEPARTMENT. THE DEPARTMENT IS NOT RESPONSIBLE FOR ENFORCEMENT OF THIS SUBSECTION.

NEW SECTION. Section 13. Department of health and environmental sciences to amend rules. The department of health and environmental sciences shall amend Rules 16.20.603, 16.20.1003, 16.20.1011, and 16.20.1012, Administrative Rules of Montana, to define A SPECIFIC AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLAN PREPARED PURSUANT TO [SECTION 12] AS reasonable land, soil, and water

conservation practices ~~to--include~~ FOR point and nonpoint source agricultural operations involving the use of agricultural chemicals ~~that--are--conducted--in--compliance--with specific--agricultural--chemical--ground--water--management--plans prepared--pursuant--to--{section--12}~~ and to exclude those agricultural operations from Montana ground water pollution control system permit requirements.

NEW SECTION. Section 14. Agricultural chemical ground water protection accounts -- acceptance and expenditure of gifts, grants, and funds. (1) There is a department of agriculture agricultural chemical ground water protection special revenue account and a department of health and environmental sciences agricultural chemical ground water protection special revenue account within the state special revenue fund established by 17-2-102.

(2) Both accounts named in subsection (1) may receive funds from any source as gifts, grants, cost-share funds, or other funds designated for agricultural chemical ground water protection purposes.

(3) The department and the department of health and environmental sciences may individually or jointly spend funds received by their respective accounts for the purposes authorized by [sections 1 through 24].

NEW SECTION. Section 15. Special funding. (1) A fee of \$15 is assessed for the registration of pesticides in

1 addition to the fee imposed by 80-8-201(4).

2 (2) A fee of \$10 is assessed for the registration of
3 fertilizers in addition to the fee imposed by 80-10-201(1).
4 The additional fee must be used for the ground water
5 protection responsibilities of the department relating to
6 fertilizers. Revenues collected from this fee must be
7 credited to the commercial fertilizer account within the
8 state special revenue fund for the administration of
9 [sections 1 through 24].

10 NEW SECTION. Section 16. Authority to investigate and
11 inspect. Authorized representatives of the department,
12 consistent with the responsibilities set forth in [sections
13 1 through 24] and upon presentation of department-issued
14 credentials, may at reasonable times or under emergency
15 conditions enter upon any public or private property to:

16 (1) investigate conditions relating to compliance with
17 agricultural chemical labels, agricultural chemical ground
18 water management plans, monitoring requirements, or ground
19 water protection requirements and to investigate violations
20 of plans or compliance orders;

21 (2) gain access to and copy any records required by
22 the department in the administration of [sections 1 through
23 24];

24 (3) establish and inspect monitoring equipment; and

25 (4) sample ground water, including drinking water

1 supply sources such as wells and similar structures.

2 NEW SECTION. Section 17. Prohibited activity. It is
3 unlawful for a person to:

4 ~~{1}--cause-ground-water-impairment-or-to-place-or-cause~~
5 ~~to-be-placed-any-agricultural-chemical-where-it-is-likely-to~~
6 ~~cause-ground-water-impairment,--except-when-the-use-of-an~~
7 ~~agricultural-chemical-was-~~

8 ~~{a}--in-accordance-with-label-directions,--including~~
9 ~~precautions-listed-with-those-directions,--or~~

10 ~~{b}--in-compliance-with-a-specific-agricultural~~
11 ~~chemical-ground-water-management-plan;~~

12 ~~{2}(1)~~ violate any provision of a specific
13 agricultural chemical ground water management plan;

14 ~~{3}(2)~~ violate any lawful order issued pursuant to
15 [sections 1 through 24]; or

16 ~~{4}(3)~~ violate any provision of [sections 1 through
17 24].

18 NEW SECTION. Section 18. Compliance orders. (1) In
19 furtherance of [section 17], the department may issue a
20 compliance order to any person violating a standard, an
21 interim numerical standard, or any other requirement
22 established pursuant to [sections 1 through 24]. The
23 department shall coordinate its proposed actions pursuant to
24 this section with proposed actions of the department of
25 health and environmental sciences pursuant to 75-5-613, if

any. Issuance of a compliance order under [sections 1 through 24] precludes the department from taking other enforcement actions for the same violation under Title 80, chapter 8 or 10.

(2) The department may issue a compliance order to any person, including the person's employees, agents, and subcontractors, whether or not the person is subject to a specific management plan, to require the cleanup of any agricultural chemical that the person has accidentally or purposely dumped, spilled, or misused or unlawfully used that has a significant probability of entering ground water.

(3) When issuing a compliance order, the department may require a person who has violated a provision of [section 17] to conduct monitoring to assist in determining the presence or level of concentration of an agricultural chemical in ground water and the effectiveness of cleanup efforts. The department shall specify criteria in the compliance order for determining the duration of monitoring.

(4) A compliance order must specify the requirement violated and must set a time for compliance. In establishing a time for compliance, the department shall take into account the seriousness of the violation and any good-faith efforts that the person has made to comply with the requirement that has been violated. A compliance order issued under this section must be served either personally

by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail.

~~(5) A person may provide information to the department, including data concerning the person's economic situation. The department shall consider this information in determining the amount of the person's financial obligation for cleanup under this section.~~

NEW SECTION. **Section 19.** Injunctions authorized. The department may commence a civil action seeking appropriate relief, including a permanent or temporary injunction, pursuant to 80-8-306 or 80-10-303, as applicable, for a violation that is subject to a compliance order under [section 18].

NEW SECTION. **Section 20.** Emergencies. Notwithstanding any other provisions of [sections 1 through 24], if the department finds that an emergency exists that requires immediate action to protect ground water from agricultural chemicals or to prevent use of ground water impaired or likely to be impaired by agricultural chemicals, the department may, without notice or hearing, issue necessary orders or adopt rules to protect public health, welfare, and safety. The duration of an emergency order or rule is limited to the emergency provisions of the Montana Administrative Procedure Act as specified in 2-4-303.

NEW SECTION. **Section 21.** Violators subject to

1 penalties. (1) A person found to be in violation of
2 [sections 1 through 24] or a rule established pursuant to
3 [sections 1 through 24] is subject to the penalty provisions
4 of [sections 22 through 24].

5 (2) For the purpose of this section, the term "person"
6 means, in addition to the definition in [section 2], any
7 responsible corporate officer.

8 (3) Nothing in [sections 1 through 24] may be
9 construed as requiring the department or an authorized agent
10 of the department to report minor violations of [sections 1
11 through 24] for prosecution when the department or a duly
12 authorized agent believes that the public interest will be
13 best served by other remedial action, by a suitable notice
14 of warning in writing, or by a lawful written order.

15 (4) Action under [sections 22 through 24] does not bar
16 the department from enforcement of [sections 1 through 24]
17 or of rules or orders issued under [sections 1 through 24]
18 by injunction or other appropriate remedy.

19 (5) The department and the department of health and
20 environmental sciences ~~may not both subject a violator~~ SHALL
21 COORDINATE ACTIONS WHEN A VIOLATOR IS SUBJECT to the
22 penalties authorized by [sections 22 through 24] and
23 penalties authorized by Title 75, chapter 5, for the same
24 violation.

25 NEW SECTION. **Section 22.** Administrative civil

1 penalty. (1) A person who commits a violation of [sections 1
2 through 24] may be assessed an administrative civil penalty
3 by either the department or the department of health and
4 environmental sciences, consistent with their respective
5 responsibilities, of not more than \$1,000 for each offense.
6 Farm applicators possessing a pesticide permit or using a
7 fertilizer may not be assessed an administrative civil
8 penalty of more than \$500 for the first offense. Assessment
9 of a civil penalty may be made in conjunction with any other
10 warning, order, or administrative action authorized by
11 [sections 1 through 24] or Title 75, chapter 5, that is
12 issued or undertaken by either the department or the
13 department of health and environmental sciences.

14 (2) No administrative civil penalty may be assessed
15 unless the person charged is given notice and opportunity
16 for a hearing pursuant to Title 2, chapter 4, part 6, of the
17 Montana Administrative Procedure Act.

18 (3) In determining an appropriate administrative civil
19 penalty, the responsible department shall consider the
20 effect on the person's ability to continue in business, the
21 gravity of the violation that occurred, the degree of care
22 exercised by the offender, and whether significant harm
23 resulted to public health, agricultural crops, livestock, or
24 the environment.

25 (4) If the responsible department is unable to collect

the administrative civil penalty or if a person fails to pay all or a set portion of the administrative civil penalty as determined by the responsible department, the department may seek to recover the amount in the appropriate district court.

(5) A person against whom the department or the department of health and environmental sciences has assessed an administrative civil penalty may, within 30 days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged to have occurred. A jury trial must be granted when demanded under Rule 38 of the Montana Rules of Civil Procedure.

NEW SECTION. Section 23. Judicial civil penalty. A person who commits a violation as specified in [section 17] shall be subject to a judicial civil penalty not to exceed \$10,000. Each occurrence constitutes a separate violation.

NEW SECTION. Section 24. Criminal penalties. (1) A person who intentionally commits a violation as specified in [section 17] is guilty of an offense and subject to a fine not to exceed \$25,000 for each day the violation continues or imprisonment for not more than 1 year, or both. Following an initial conviction under this section, a subsequent conviction subjects a person to a fine of not more than \$50,000 for each day the violation continues or imprisonment

for not more than 2 years, or both.

(2) Except as otherwise provided in [sections 1 through 24], a person convicted of violating any of the provisions of [sections 1 through 24] or rules issued under [sections 1 through 24] or who misrepresents, impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the department from performance of its duties in connection with the provisions of [sections 1 through 24] is guilty of a misdemeanor and shall be fined not less than \$100 but not more than \$1,500.

(3) A person who knowingly makes any false statement, representation, or certification in any record, report, or other document filed or required to be maintained under [sections 1 through 24] or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under [sections 1 through 24] shall, upon conviction, be punished by a fine of not more than \$5,000 or by imprisonment for not more than 6 months, or both.

(4) A person who with intent to defraud uses or reveals confidential information and data provided under [sections 1 through 24] or rules issued under [sections 1 through 24] shall, upon conviction, be fined not more than \$5,000 or imprisoned for not more than 1 year, or both.

Section 25. Section 75-5-105, MCA, is amended to read:

1 **"75-5-105. Confidentiality of records. Any Except as**
 2 **provided in [section 8], any information concerning sources**
 3 **of pollution which is furnished to the board or department**
 4 **or which is obtained by either of them is a matter of public**
 5 **record and open to public use. However, any information**
 6 **unique to the owner or operator of a source of pollution**
 7 **which would, if disclosed, reveal methods or processes**
 8 **entitled to protection as trade secrets shall be maintained**
 9 **as confidential if so determined by a court of competent**
 10 **jurisdiction. The owner or operator shall file a**
 11 **declaratory judgment action to establish the existence of a**
 12 **trade secret if he wishes such information to enjoy**
 13 **confidential status. The department shall be served in any**
 14 **such action and may intervene as a party therein. Any**
 15 **information not intended to be public when submitted to the**
 16 **board or department shall be submitted in writing and**
 17 **clearly marked as confidential. The data describing physical**
 18 **and chemical characteristics of a waste discharged to state**
 19 **waters shall not be considered confidential. The board may**
 20 **use any information in compiling or publishing analyses or**
 21 **summaries relating to water pollution if such analyses or**
 22 **summaries do not identify any owner or operator of a source**
 23 **of pollution or reveal any information which is otherwise**
 24 **made confidential by this section."**

25 **Section 26. Section 75-5-301, MCA, is amended to read:**

1 **"75-5-301. Classification and standards for state**
 2 **waters. The Consistent with the provisions of [section 9],**
 3 **the board shall:**

4 (1) establish and modify the classification of all
 5 waters in accordance with their present and future most
 6 beneficial uses;

7 (2) formulate standards of water purity and
 8 classification of water according to its most beneficial
 9 uses, giving consideration to the economics of waste
 10 treatment and prevention;

11 (3) review, from time to time at intervals of not more
 12 than 3 years, established classifications of waters and
 13 standards of water purity and classification."

14 **Section 27. Section 80-8-105, MCA, is amended to read:**

15 **"80-8-105. Rules. (1) The department may adopt by**
 16 **reference without a public hearing regulations adopted under**
 17 **the Federal Insecticide, Fungicide, and Rodenticide Act, as**
 18 **amended. The department may, after a public hearing, adopt**
 19 **all rules necessary to carry out this chapter.**

20 (2) The rules may prescribe methods of:

21 (a) registration, suspension or cancellation of
 22 registration, application, use or restricting use,
 23 prohibiting use, offering or exposing for sale of any
 24 pesticide;

25 (b) determining whether pesticides are highly toxic to

1 man;

2 (c) determining standards of coloring or discoloring
3 for pesticides and subjecting pesticides to the requirements
4 of 80-8-202;

5 (d) licensing commercial applicators, operators, and
6 dealers, establishing methods of recordkeeping for
7 applicators, operators, and dealers, and providing for the
8 review of the records by the department's authorized agent
9 and the submission of the records to the department upon
10 written request;

11 (e) issuing farm applicator special-use permits and
12 the maintenance and submission of records by farm
13 applicators issued special-use permits;

14 (f) collection, examination, and standard deviation
15 from guarantee analysis and umpire analysis of pesticides
16 and devices;

17 (g) operating and maintaining equipment used by
18 applicators;

19 (h) developing examinations which shall be held
20 periodically throughout the state;

21 (i) establishing the form and content of all
22 applications for licenses and permits;

23 (j) designating pesticides that may be sold at retail
24 for home, yard, garden, and lawn use. The department may
25 also limit retail sale of pesticides, up to a specific

1 number of pounds or gallons and concentration which would be
2 sublethal to humans and animals if small amounts of it were
3 accidentally swallowed, inhaled, sprayed, or dusted on the
4 skin.

5 (k) revoking licenses and permits;

6 (l) registering or controlling any spray adjuvant,
7 such as a wetting agent, spreading agent, deposit builder,
8 adhesive, emulsifying agent, deflocculating agent, water
9 modifier, or similar agent with or without toxic properties
10 of its own intended to be used with any other pesticide as
11 an aid to the application or effect of that other pesticide,
12 whether or not distributed in a package or container
13 separate from that of a pesticide with which it is to be
14 used;

15 (m) registering pesticide-fertilizer and other
16 chemical blends or, instead of registration, establishing
17 licensing, inspection, and fees for blending plants;

18 (n) establishing registration procedures for devices,
19 with a fee not to exceed \$5 per type of device, specifying
20 classes of devices to be registered and providing for
21 additional requirements;

22 (o) imposing conditions for renewal of dealer,
23 applicator, and operator licenses and permits, including
24 requalification training;

25 (p) establishing procedures for implementing and

1 administering the civil penalties under 80-8-306; and
 2 (q) establishing fees for training courses and
 3 materials.
 4 (3) (a) Whenever Consistent with the provisions of
 5 [sections 1 through 24], whenever the department finds that
 6 those rules are necessary to carry out the purposes and
 7 intent of this chapter, the rules may relate to the time,
 8 place, manner, and method of registration, suspension or
 9 cancellation of registration, application, or selling of the
 10 pesticides, may restrict or prohibit use of pesticides in
 11 the state or in designated areas during specified periods of
 12 time, and shall encompass all reasonable factors which the
 13 department considers necessary to prevent damage or injury
 14 to:
 15 (i) persons, animals, crops, or pollinating insects
 16 from the effect of drift or careless application;
 17 (ii) the environment;
 18 (iii) plants, including forage plants;
 19 (iv) wildlife;
 20 (v) fish and other aquatic life.
 21 (b) In issuing the rules, the department shall give
 22 consideration to pertinent research findings and
 23 recommendations of other agencies of this state or of the
 24 federal government.
 25 (4) If the department finds that an emergency exists

1 which requires immediate action with regard to the
 2 registration, use, or application of pesticides, the
 3 department may, without notice or hearing, issue necessary
 4 orders or rules to protect the public health, welfare, and
 5 safety. An order or rule issued under this subsection is
 6 effective for the period prescribed by the Montana
 7 Administrative Procedure Act. If the department determines
 8 that the emergency order or rule should remain in effect, a
 9 public hearing under 80-8-106 shall be held within the above
 10 period to determine whether the order or rule should be
 11 adopted by the department.

12 (5) All rules and orders issued by the department
 13 shall be in writing, shall be entered in full in books to be
 14 kept by the department for that purpose, shall be indexed,
 15 and shall be public records open for inspection at all times
 16 during reasonable office hours. Except for orders
 17 establishing or changing rules of practice and procedure,
 18 all orders made and published by the department shall
 19 include and be based upon written findings of fact. A copy
 20 of any rule or order certified by the department shall be
 21 received in evidence in all courts of this state with the
 22 same effect as the original."

23 **Section 28.** Section 80-8-107, MCA, is amended to read:
 24 ***80-8-107. Public information.** The Except as provided
 25 in [sections 1 through 24], the department as it deems

proper may, alone or in cooperation with other state or federal agencies, publish information regarding aspects of the use and application sections or registration sections of this chapter. This information cannot disclose operations of selling, production, or use of pesticides by any person."

Section 29. Section 80-8-305, MCA, is amended to read:

"80-8-305. General violations. (1) It is consistent with the provisions of [sections 1 through 24], it is unlawful for any person:

(a) to discard any pesticide or pesticide container in such a manner as to cause injury to humans, domestic animals, or wildlife, or to pollute any waterway in a way harmful to any wildlife therein or to the environment;

(b) to handle, transport, store, display, or distribute pesticides or pesticide containers in such a manner as to endanger man or the environment or to endanger food or any other products that may be transported, stored, displayed, or distributed with such pesticides;

(c) to handle, apply, or attempt to apply any registered pesticide for which he does not have an appropriate, complete, or legible label at hand; or

(d) to apply or attempt to apply any registered pesticide in a manner inconsistent with the label, as defined in 80-8-102.

(2) It is unlawful for any person to manufacture,

formulate, or store any registered pesticide or component or byproduct thereof in such a manner that the pesticide or any component or byproduct cannot be contained or confined within the boundaries of the lands owned by or under the appropriate control of the person involved. Odor is specifically exempted from the provisions of this subsection."

NEW SECTION. Section 30. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 31. Codification instruction. [Sections 1 through 24] are intended to be codified as an integral part of Title 80, and the provisions of Title 80 apply to [sections 1 through 24].

NEW SECTION. Section 32. Effective date. [This act] is effective January 1, 1990.

-End-

1 HOUSE BILL NO. 757

2 INTRODUCED BY GIACOMETTO, WEEDING, BECK, O'KEEFE,
3 MARKS, HARPER, DEMARS, THOFT
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH AN
6 AGRICULTURAL CHEMICAL GROUND WATER PROTECTION PROGRAM TO BE
7 ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE AND THE
8 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; TO REQUIRE
9 ESTABLISHMENT OF AGRICULTURAL CHEMICAL GROUND WATER QUALITY
10 STANDARDS; TO PROVIDE FOR GROUND WATER MONITORING AND
11 AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLANS; TO
12 PROVIDE FOR ENFORCEMENT AUTHORITY, COMPLIANCE ORDERS, AND
13 PENALTIES; TO DIRECT THE DEPARTMENT OF HEALTH AND
14 ENVIRONMENTAL SCIENCES TO AMEND CERTAIN RULES IMPLEMENTING
15 THE WATER QUALITY ACT; TO ESTABLISH ADDITIONAL FEES FOR
16 REGISTRATION OF PESTICIDES AND FERTILIZERS; TO CREATE
17 AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACCOUNTS;
18 AMENDING SECTIONS 75-5-105, 75-5-301, 80-8-105, 80-8-107,
19 AND 80-8-305, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

21 STATEMENT OF INTENT

22 A statement of intent is required for this bill in
23 order to provide guidance to the department of agriculture
24 and the department of health and environmental sciences
25 concerning the administration of the provisions of the bill

1 and the adoption of rules.

2 Because the departments share responsibility for
3 certain duties established by the bill, the departments
4 shall coordinate their rulemaking efforts and whenever
5 possible adopt identical rules for the areas of shared
6 responsibility, including:

7 (1) ground water monitoring as authorized by [sections
8 10 and 11];

9 (2) field and laboratory operational quality
10 assurance, quality control, and confirmatory procedures as
11 authorized by [sections 7, 10, and 11];

12 (3) maintenance of confidentiality of certain data as
13 required by [section 8]; and

14 (4) administrative civil penalties as authorized by
15 [section 22].

16 ~~in adopting rules pertaining to quality assurance,~~
17 ~~quality control, and confirmatory procedures, the~~
18 ~~departments shall include the following:~~

19 ~~(1) confirmation of analytical results by two~~
20 ~~different analytical methodologies if two methodologies~~
21 ~~exist; and~~

22 ~~(2) either resampling and analysis within 30 days of~~
23 ~~original sampling and analysis or splitting and analysis of~~
24 ~~samples by two or more laboratories approved by the~~
25 ~~department of agriculture and the department of health and~~

1 environmental sciences;

2 A--monitoring--program--implemented--by--the--department--of
3 agriculture--or--the--department--of--health--and--environmental
4 sciences--must--be--designed--to--enable--the--departments--to--make
5 the--following--determinations,--as--applicable,--whether:

6 {1}--the--agricultural--chemical--has--entered--ground--water
7 as--a--direct--result--of--use--according--to--its--label--or--as--a
8 result--of--misuse;

9 {2}--the--agricultural--chemical--has--a--reasonable
10 probability--of--entering--ground--water--due--to--migration
11 through--soil;

12 {3}--the--level--of--the--agricultural--chemical--in--the
13 ground--water--or--its--rate--of--migration--through--soil--is
14 increasing--or--decreasing--with--respect--to--standards--and
15 interim--numerical--standards--required--by--{section-9};

16 {4}--the--predictive--procedures--and--data--used--to
17 establish--the--monitoring--program--are--reliable;--and

18 {5}--the--ground--water--has--beneficial--human--or
19 environmental--uses--based--on--its--classification;

20 The--department--of--agriculture--or--the--department--of
21 health--and--environmental--sciences--shall--give--priority--to
22 developing--monitoring--programs--for--agricultural--chemicals
23 that--the--departments--identify--as--likely--to--enter--or--as
24 having--entered--ground--water--based--on--predictive--procedures
25 that--provide--a--high--degree--of--scientific--certainty--and--that

1 are--appropriate--to--the--geographical--areas--where--the
2 agricultural--chemicals--are--used;

3 if--the--department--of--health--and--environmental--sciences
4 finds--it--necessary--to--issue--compliance--orders--to--a--person--to
5 clean-up--ground--water--that--has--been--impaired--by--use--of
6 agricultural--chemicals--in--violation--of--Title--75,--chapter--5
7 or--6,--it--may,--based--on--technical--feasibility--and--economic
8 considerations,--order--the--ground--water--to--be--cleaned-up--to--a
9 level--that--is--lower--than--the--applicable--standard--or--interim
10 numerical--standard--if--the--following--findings--are--made:

11 {1}--the--agricultural--chemical--can--be--confined--to
12 either--the--source,--a--specific--property--boundary,--or--the
13 defined--area--extent--of--the--agricultural--chemical--plume;

14 {2}--the--ground--water--will--not--be--used--for--drinking
15 purposes--or--no--health--risks--will--exist--at--a--level--of--cleanup
16 that--is--lower--than--the--applicable--standard--or--interim
17 numerical--standard;

18 {3}--the--agricultural--chemical--will--not--cause--other
19 ground--water--impairment;--and

20 {4}--the--responsible--party--has--agreed--to--comply--with--an
21 existing--agricultural--chemical--ground--water--management--plan
22 or--a--plan--under--development--but--not--finalized--by--rule--at--the
23 time--of--the--determination--by--the--department--of--health--and
24 environmental--sciences;

25 The board of health and environmental sciences is

1 responsible for adoption of certain ground water quality
 2 standards for agricultural chemicals as required by [section
 3 9]. The board shall adopt appropriate rules as necessary to
 4 comply with the special requirements and considerations that
 5 apply to the adoption of these standards as specified in
 6 [section 9], including acquisition of current and
 7 scientifically valid data from the United States
 8 environmental protection agency (EPA) and other sources and
 9 communications with EPA concerning the content and status of
 10 promulgated federal standards, nonpromulgated federal
 11 standards, and other relevant EPA regulations and materials.

12 ~~In--adopting--rules--to--regulate--the--adoption--of--interim~~
 13 ~~numerical--standards,--the--board--shall--include--the--following~~
 14 ~~criteria:~~

15 ~~{1}--use--of--any--significant--new--and--relevant--technical~~
 16 ~~information;~~

17 ~~{2}--reliance--on--valid--scientific--methodologies,~~
 18 ~~protocols,--and--procedures;~~

19 ~~{3}--priority--consideration--of--information--and--evidence~~
 20 ~~that--has--been--subjected--to--peer--review,--has--resulted--from~~
 21 ~~more--than--one--study,--and--is--consistent--with--other--credible~~
 22 ~~medical--or--toxicological--evidence,--and~~

23 ~~{4}--consultation--with--the--department--of--agriculture~~
 24 ~~and--EPA--regarding--any--assessments--or--conclusions--EPA--may~~
 25 ~~have--made--relative--to--available--toxicological--information--on~~

1 ~~the--agricultural--chemical--in--question,~~

2 ~~The--department--of--health--and--environmental--sciences--and~~
 3 ~~the--department--of--agriculture--shall--cooperatively--ensure~~
 4 ~~appropriate--and--timely--notice--to--affected--parties,--including~~
 5 ~~the--registrant--of--an--agricultural--chemical,--concerning--the~~
 6 ~~adoption--of--standards--and--interim--numerical--standards;~~

7 The department of agriculture is responsible for the
 8 development of agricultural chemical ground water management
 9 plans. The department shall adopt appropriate rules to
 10 ensure compliance with the requirements of [section 12],
 11 including procedures for the development of the plans,
 12 communication with sources of information needed for the
 13 plans, communication with citizens who may be affected by
 14 the plans, and criteria for ensuring that the content of the
 15 plans meets the objectives of preventing ground water
 16 impairment, minimizing the presence of agricultural
 17 chemicals in ground water, and protecting present and future
 18 beneficial uses of ground water as specified in [section
 19 12]. The department of agriculture shall also adopt rules
 20 specifying procedures for obtaining comments on agricultural
 21 chemical ground water management plans from the department
 22 of health and environmental sciences, for adoption of
 23 completed plans, and for making modifications to adopted
 24 plans.
 25

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

NEW SECTION. Section 1. Short title. [Sections 1 through 24] may be cited as the "Montana Agricultural Chemical Ground Water Protection Act".

NEW SECTION. Section 2. Definitions. Unless the context requires otherwise, in [sections 1 through 24] the following definitions apply:

(1) "Agricultural chemical" means any of the following:

(a) a pesticide as defined in 80-8-102;
(b) an isomer, degradation, or metabolic product of a pesticide; or

(c) a commercial fertilizer as defined in 80-10-101.

(2) "AQUIFER" MEANS A WATER-BEARING, SUBSURFACE FORMATION CAPABLE OF YIELDING SUFFICIENT QUANTITIES OF WATER TO A WELL FOR A BENEFICIAL USE.

(3) (3) "Best management plans" and "best management practices" mean activities, procedures, and practices established by the department of agriculture, in consultation with the Montana state university extension service, to prevent or remedy the introduction of agricultural chemicals into ground water to the extent technically and economically practical.

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

(4) (5) "Confirmatory procedure" means a process for verifying the detection of agricultural chemicals in water, soil, and other related media.

(5) (6) "EPA" means the United States environmental protection agency.

(6) (7) "Ground water" means any water of the state occupying the voids within a geologic formation and within the zone of saturation capable--of--yielding--sufficient quantities-of-water-to-a-well-for-beneficial-use.

(7) --"Ground--water--impairment"--means--the--alteration--of the--physical,--chemical,--or--biological--properties--of--ground water--by--an--agricultural--chemical,--whether--from--discharge, use,--or--introduction,--that--prevents--or--is--likely--to--prevent the--present--or--future--beneficial--use--of--the--ground--water--as expressed--by--the--ground--water's--classification.

(8) (7) (8) "Interim numerical standard" means a health-based number that expresses the concentration of an agricultural chemical allowed in ground water and that is adopted by a rule of the board pursuant to (section 9(5) 9(3) or (6) (4)).

(9) (8) (9) "Margin of safety" means numerical margins that are applied to the no observable effect level in an agricultural chemical toxicology study and that are used by the EPA to extrapolate data obtained from studies of animals to humans, including sensitive individuals.

1 ~~{10}{9}(10)~~ "No observable effect level" means the
 2 highest dose level of an agricultural chemical to which a
 3 laboratory animal is exposed, per unit of body weight, at
 4 which no effect is observed, as established by EPA's
 5 pesticide registration process.

6 ~~{11}{10}(11)~~ "Nonpoint source" means a diffuse source
 7 of agricultural chemicals resulting from activities of man
 8 over a relatively large area, the effects of which must
 9 normally be addressed or controlled by a management or
 10 conservation practice.

11 ~~{12}{11}(12)~~ "Nonpromulgated federal standard" means a
 12 health advisory, OR A suggested no observable-effect ADVERSE
 13 RESPONSE level, ~~--suggested--maximum--contaminant--level,--or~~
 14 ~~suggested--ground--water--residue--guidance--level~~ that is
 15 published but not promulgated by regulation by EPA and that
 16 is a suggested measure of the health risk represented by the
 17 concentration of an agricultural chemical in water.

18 ~~{13}{12}(13)~~ "Numerical risk assessment" means a
 19 scientific procedure used to measure the statistical
 20 probability of human health risk associated with exposure to
 21 an agricultural chemical.

22 ~~{14}{13}(14)~~ "Oncogenic potential" means the potential
 23 of an agricultural chemical to cause tumors in laboratory
 24 animals and the extrapolation of that potential to humans
 25 through use of statistical models and other evidence.

1 ~~{15}{14}(15)~~ "Person" means any individual, group,
 2 firm, cooperative, corporation, association, partnership,
 3 political subdivision, state or federal government agency,
 4 or other organization or entity.

5 ~~{16}{15}(16)~~ "Point of standards application" means the
 6 specific location in an ~~acquirer~~ AQUIFER where ground water
 7 quality and quantity are sampled, measured, evaluated, or
 8 otherwise used by either the department or the department of
 9 health and environmental sciences to implement the
 10 provisions of [sections 1 through 24].

11 ~~{17}{16}(17)~~ "Point source" means a point source as
 12 defined in 75-5-103, including but not limited to chemical
 13 mixing, loading, and storage sites and sites of agricultural
 14 chemical spills.

15 ~~{18}{17}(18)~~ "Promulgated federal standard" means an
 16 agricultural chemical maximum contaminant level as
 17 established under the federal Safe Drinking Water Act, a
 18 national primary drinking water standard, or an interim
 19 drinking water regulation or other EPA regulation based on
 20 federal law.

21 ~~{19}{18}(19)~~ "Registrant" means a person as defined in
 22 80-8-102 and 80-10-101.

23 ~~{20}{19}(20)~~ "Standard" means the numerical value
 24 expressing the concentration of an agricultural chemical in
 25 ground water that, WHEN EXCEEDED, presents a POTENTIAL human

1 health risk over a lifetime of consumption and that is
2 adopted by a rule of the board as required by [section 9].

3 ~~(21)~~~~(20)~~(21) "Use" means any act of handling or release
4 of an agricultural chemical or exposure of man or the
5 environment to an agricultural chemical, including but not
6 limited to application, mixing, loading, storage, disposal,
7 or transportation.

8 NEW SECTION. Section 3. Policy. It is the public
9 policy of this state to:

10 (1) protect ground water and the environment from
11 impairment or degradation due to the use of agricultural
12 chemicals;

13 (2) allow for the proper and correct use of
14 agricultural chemicals ~~that are valuable and necessary for~~
15 ~~agricultural production and disease control;~~

16 (3) provide for the management of agricultural
17 chemicals to prevent, minimize, and mitigate their presence
18 in ground water, ~~considering the use of the ground water,~~
19 ~~and to provide special protection to high priority and~~
20 ~~highly susceptible ground water; and~~

21 (4) provide for education and training of agricultural
22 chemical applicators and the general public on ground water
23 protection, and agricultural chemical use, AND THE USE OF
24 ALTERNATIVE AGRICULTURAL METHODS.

25 NEW SECTION. Section 4. Administration. (1) The

1 department and the department of health and environmental
2 sciences shall administer [sections 1 through 24].

3 (2) The department of health and environmental
4 sciences is responsible for the establishment and
5 enforcement of agricultural chemical ground water standards
6 and interim numerical standards as authorized by [section
7 9], ground water monitoring as authorized by [sections 10
8 and 11], providing comments to the department during the
9 development of agricultural chemical ground water management
10 plans, ~~conducting~~ PROMOTING research as set forth in
11 [section 7], and related responsibilities set forth in Title
12 75, chapter 5.

13 (3) The department is responsible for the preparation,
14 implementation, and enforcement of agricultural chemical
15 ground water management plans as authorized by [sections 12
16 and 16 through 24], public education as authorized by
17 [section 6], ground water monitoring as authorized by
18 [sections 10 and 11], other duties related to promoting
19 research as set forth in [section 7], and related
20 responsibilities set forth in Title 80, chapters 8 and 10.

21 (4) [Sections 1 through 24] do not limit the
22 department's responsibility to enforce agricultural chemical
23 label directions and prohibitions.

24 (5) The administration of [sections 1 through 24],
25 including rulemaking and hearing functions authorized by

1 [sections 1 through 24], must be conducted in accordance
2 with the Montana Administrative Procedure Act, Title 2,
3 chapter 4.

4 **NEW SECTION. Section 5. Rulemaking.** (1) The board
5 shall adopt rules for the administration of [sections 1
6 through 24] for which the board and the department of health
7 and environmental sciences have responsibility. These rules
8 must include but are not limited to:

9 (a) standards and interim numerical standards for
10 agricultural chemicals in ground water as authorized by
11 [section 9];

12 (b) procedures for ground water monitoring as
13 authorized by [sections 10 and 11];

14 (c) field and laboratory operational quality
15 assurance, quality control, and confirmatory procedures as
16 authorized by [sections 7, 10, and 11], which may include,
17 through adoption by reference, procedures that have been
18 established or approved by EPA for quality assurance and
19 quality control;

20 (d) standards for maintaining the confidentiality of
21 data and information declared confidential by EPA and the
22 confidentiality of chemical registrant data and information
23 protected from disclosure by federal or state law as
24 required by [section 8]; and

25 (e) administrative civil penalties as authorized by

1 [section 22].

2 (2) The department shall adopt rules necessary to
3 carry out its responsibilities under [sections 1 through
4 24]. These rules must include but are not limited to:

5 (a) procedures for ground water monitoring as
6 authorized by [sections 10 and 11];

7 (b) the content and procedures for development of
8 agricultural chemical ground water management plans,
9 including the content of best management practices and best
10 management plans, procedures for obtaining comments from the
11 department of health and environmental sciences on the
12 plans, and the adoption of completed plans and plan
13 modifications as authorized by [section 12];

14 (c) standards for maintaining the confidentiality of
15 data and information declared confidential by EPA and of
16 chemical registrant data and information protected from
17 disclosure by federal or state law as required by [section
18 8];

19 (d) field and laboratory operational quality
20 assurance, quality control, and confirmatory procedures as
21 authorized by [sections 7, 10, and 11], which may include,
22 through adoption by reference, procedures that have been
23 established or approved by EPA for quality assurance and
24 quality control;

25 (e) emergency procedures as authorized by [section

1 20];

2 (f) procedures for issuance of compliance orders as
3 authorized by [section 18]; and

4 (g) procedures for the assessment of administrative
5 civil penalties as authorized by [section 22].

6 NEW SECTION. Section 6. Educational programs. (1) The
7 department, in cooperation with the Montana state university
8 extension service, shall develop and conduct appropriate
9 educational programs to promote the policy specified in
10 [section 3]. The department and the Montana state
11 university extension service may charge a fee for the
12 educational programs commensurate with the costs of program
13 development and administration.

14 (2) All fees collected by the department pursuant to
15 this section must be deposited in the state special revenue
16 fund. The department may spend the funds for the purposes
17 set forth in this section.

18 (3) All fees collected by the Montana state university
19 extension service must be deposited in a special account
20 identified for this purpose. The extension service may spend
21 the funds for the purposes set forth in this section.

22 NEW SECTION. Section 7. Research. The department or
23 the department of health and environmental sciences may
24 SHALL promote, for the purposes described in [section 3],
25 cooperative ground water research programs with units of the

1 university system and associated agricultural experiment
2 stations, the bureau of mines and geology, and other
3 appropriate agencies, organizations, and individuals.

4 NEW SECTION. Section 8. Confidentiality. (1) The
5 department and the department of health and environmental
6 sciences shall maintain the confidentiality of data declared
7 confidential by EPA and chemical registrant data and
8 information protected from disclosure by federal or state
9 law.

10 (2) The department of health and environmental
11 sciences shall comply with the requirements of 75-5-105 and
12 the department shall comply with the requirements of
13 80-8-107 and 80-10-210, except as otherwise provided by this
14 section.

15 NEW SECTION. Section 9. Ground water standards. (1)
16 The board shall adopt standards and, as applicable, interim
17 numerical standards for agricultural chemicals in ground
18 water. The standards must be the same as any promulgated or
19 nonpromulgated federal standard established by EPA, although
20 the board may determine, pursuant to the requirements of
21 subsection {7} (4), that an interim numerical standard
22 different from either a promulgated or nonpromulgated
23 federal standard is justified. PROMULGATED FEDERAL
24 STANDARDS MUST RECEIVE PREFERENCE. Except as provided in
25 subsection-{7} SUBSECTIONS (3) AND (4), if more than one

1 nonpromulgated federal standard exists for an agricultural
2 chemical, the board must adopt the most recently established
3 nonpromulgated federal standard.

4 (2) The board is not required to adopt a standard or
5 interim numerical standard for every agricultural chemical
6 * registered in the state. The only standards and interim
7 numerical standards required are for those agricultural
8 chemicals:

9 (a) that are addressed by promulgated and
10 nonpromulgated federal standards;

11 (b) the presence of which has been verified in ground
12 water as provided in [section 10]; or

13 (c) that the department and the department of health
14 and environmental sciences predict may appear in ground
15 water, in accordance with the procedures and determinations
16 specified in [sections 10 and 11].

17 ~~{3}--Before--either--the--department--or--the--department--of~~
18 ~~health--and--environmental--sciences---provides---monitoring~~
19 ~~results--or--before--either--may--order--a--person--to--conduct~~
20 ~~monitoring--and--prior--to--the--department--taking--an--enforcement~~
21 ~~action--under--{sections--1--through--24}--or--the--department--of~~
22 ~~health--and--environmental--sciences--taking--an--enforcement~~
23 ~~action--under--Title--757--chapter--5--the--board--must--have~~
24 ~~established--a--standard--or--interim--numerical--standard--for--the~~
25 ~~agricultural--chemical--in--question--except--in--emergency~~

1 ~~situations--as--specified--in--{section--20}--and--75-5-621,--as~~
2 ~~applicable:~~

3 ~~{4}--The--department--may--not--develop--and--implement--an~~
4 ~~agricultural--chemical--ground--water--management--plan--for--a~~
5 ~~particular--agricultural--chemical--in--accordance--with--{section~~
6 ~~12}--until--a--standard--or--interim--numerical--standard--for--that~~
7 ~~chemical--has--been--established--by--the--board--or--until--EPA~~
8 ~~requires--the--development--of--an--agricultural--chemical--ground~~
9 ~~water--management--plan;~~

10 ~~{5}{3}~~ If no promulgated federal standard has been
11 adopted and OR no nonpromulgated federal standard has been
12 published for an agricultural chemical for which the board
13 is required to establish a standard or interim numerical
14 standard as specified in subsections (2)(b) and (2)(c), the
15 department of health and environmental sciences shall
16 request EPA to establish a promulgated or nonpromulgated
17 federal standard. If the department of health and
18 environmental sciences determines that EPA cannot comply
19 with the request within 60 15 days, the board shall adopt an
20 interim numerical standard, provided that the board shall
21 review the interim numerical standard whenever EPA adopts a
22 promulgated federal standard or publishes a nonpromulgated
23 federal standard for the agricultural chemical in question.

24 ~~{6}{4}~~ The board may adopt an interim numerical
25 standard that is different from either a promulgated or

1 nonpromulgated federal standard, if there is significant new
2 and relevant technical information available that is
3 scientifically valid ~~and that has not been considered by~~
4 EPA. The board shall review the interim numerical standard
5 when EPA ESTABLISHES OR revises the promulgated or
6 nonpromulgated federal standard for the agricultural
7 chemical in question.

8 ~~{7}{5} In addition to criteria the board considers~~
9 ~~pursuant to rules adopted under {section 5} for the adoption~~
10 ~~of standards, the~~ THE board shall ~~base~~ CONSIDER THE
11 FOLLOWING IN ADOPTING any interim numerical standard ~~it~~
12 adopts under either subsection ~~{5} or {6}~~ {3} OR {4}:

13 (a) EFFECTS ON a person weighing 70 kilograms and
14 drinking 2 liters of water per day over a lifetime; and

15 (b) EPA's conclusions regarding the no observable
16 effect level, including the margin of safety identified by
17 EPA when scientific data indicates oncogenic potential for
18 the agricultural chemical and EPA has determined that a
19 numerical risk assessment is not justified, is
20 inappropriate, or does not serve as the primary
21 toxicological basis for regulation.

22 ~~{8}{6}~~ Nothing in this section may interfere with the
23 board's responsibility to adopt rules and standards under
24 Title 75, chapter 6.

25 NEW SECTION. Section 10. Monitoring programs. (1) The

1 department or the department of health and environmental
2 sciences may SHALL conduct monitoring programs to determine:

3 (a) whether residues of agricultural chemicals are
4 present in ground water; and

5 (b) the likelihood of an agricultural chemical
6 entering TO ENTER ground water, if either department
7 determines that sufficient valid scientific data is
8 available to reasonably predict the behavior of a particular
9 agricultural chemical in the soil and ground water.

10 {2} ANY PERSON WHO RECEIVES A CHEMICAL ANALYSIS
11 INDICATING THE PRESENCE OF AN AGRICULTURAL CHEMICAL IN
12 GROUND WATER SHALL NOTIFY THE DEPARTMENT OF HEALTH AND
13 ENVIRONMENTAL SCIENCES.

14 ~~{2}{3}~~ The department and the department of health and
15 environmental sciences shall evaluate all information
16 relating to this section that is received from any person
17 based upon standard procedures, protocols, and confirmatory
18 procedures established by rules. Information found to be
19 insufficient based on the adopted procedures and protocols,
20 including analytical results, may be used only for
21 informational purposes.

22 NEW SECTION. Section 11. Evaluation and use of
23 monitoring results. (1) When providing preliminary
24 monitoring results ~~to ground water users~~ or confirmed
25 monitoring results to the GROUND WATER users or the public,

1 the departments shall also provide the ANY applicable
2 standard or interim numerical standard.

3 (2) When monitoring results reveal the presence of an
4 agricultural chemical in ground water:

5 (a) the department of health and environmental
6 sciences is the lead department for determining health
7 risks; and

8 (b) the department is the lead department for
9 determining compliance with agricultural chemical ground
10 water management plans authorized by [section 12] and with
11 agricultural chemical registration, use, and labeling
12 requirements and conditions pursuant to Title 80, chapters 8
13 and 10.

14 (3) The department and the department of health and
15 environmental sciences shall cooperatively evaluate the
16 results of monitoring programs authorized by [section 10] to
17 determine, as applicable:

18 (a) whether the presence of an agricultural chemical
19 in ground water meets or exceeds:

20 (i) an established standard or interim numerical
21 standard at a point of standards application; or

22 (ii) any requirements associated with the
23 classification of the ground water;

24 (b) whether the conditions required by a specific
25 agricultural chemical ground water management plan as set

1 forth in [section 12] are appropriate or have been violated;

2 (c) the geographical or hydrogeological extent of the
3 agricultural chemical in the ground water; and

4 (d) whether there is a definite trend of increased
5 presence of the agricultural chemical in ground water based
6 on the percentage of change in concentrations measured at a
7 single monitoring site or at different monitoring sites over
8 a reasonable period of time.

9 (4) Based on the results of monitoring, the department
10 and the department of health and environmental sciences
11 shall implement appropriate actions specified in [sections 1
12 through 24] to mitigate any existing impacts of an
13 agricultural chemical found in ground water and to prevent
14 future impacts of an agricultural chemical that may be found
15 in ground water, in relation to human health, agriculture,
16 and the environment.

17 (5) The department may not undertake compliance and
18 enforcement actions authorized by [sections 1 through 24]
19 and the department of health and environmental sciences may
20 not undertake compliance and enforcement actions authorized
21 by Title 75, chapter 5, unless there is sufficient evidence
22 collected through:

23 (a) monitoring at a point of standards application or
24 through THAT REVEALS THAT A PERSON USING AN AGRICULTURAL
25 CHEMICAL OR INTRODUCING OR DISCHARGING THE CHEMICAL INTO

1 GROUND WATER HAS VIOLATED A PROVISION OF [SECTION 17] OR
 2 TITLE 75, CHAPTER 5; OR

3 [B] other investigations that reveal that a person
 4 using an agricultural chemical or introducing or discharging
 5 the chemical into ground water has violated a provision of
 6 [section 17] or Title 75, chapter 5; or

7 {b}{C} monitoring that reveals a significant
 8 probability for an agricultural chemical to enter ground
 9 water.

10 ~~{6}--Any actions taken by the departments in accordance~~
 11 ~~with subsections {4} and {5} must be consistent with the~~
 12 ~~priority accorded to and the beneficial use of the ground~~
 13 ~~water as expressed by its classification. The type and~~
 14 ~~complexity of the departments' actions may be more~~
 15 ~~comprehensive in situations involving higher ground water~~
 16 ~~classifications. Actions involving the lowest ground water~~
 17 ~~classification may be limited to minimizing further impact~~
 18 ~~unless the departments jointly determine that the lowest~~
 19 ~~classified ground water will impair or is likely to impair~~
 20 ~~other state waters that have a higher classification.~~

21 NEW SECTION. Section 12. Agricultural chemical ground
 22 water management plans. (1) The department may SHALL develop
 23 and implement a general state agricultural chemical ground
 24 water management plan TO ACHIEVE THE POLICIES OF [SECTION
 25 3]. This plan may MUST include general program elements set

1 forth in [sections 1 through 24] and best management plans
 2 and best management practices. PRIOR TO PUBLICATION OF THE
 3 PLAN, THE DEPARTMENT SHALL PROVIDE A 30-DAY PERIOD FOR THE
 4 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO PREPARE
 5 AND SUBMIT COMMENTS ON THE PLAN.

6 (2) Except as provided in subsection ~~{10}~~ (11), the
 7 department shall develop and implement agricultural chemical
 8 ground water management plans specific to particular
 9 agricultural chemicals and to a defined geographical area.
 10 ~~Within available resources, the department shall prioritize~~
 11 ~~preparation of specific agricultural chemical ground water~~
 12 ~~management plans based on the following criteria:~~

13 (a) when the level of an agricultural chemical found
 14 in ground water is at 50% of the standard or interim
 15 numerical standard at a point of standards application and
 16 is scientifically validated;

17 (b) when a definite trend of increased presence of the
 18 agricultural chemical in ground water at a point of
 19 standards application is scientifically validated;

20 (C) WHEN AGRICULTURAL CHEMICALS HAVE BEEN DETERMINED
 21 TO HAVE MIGRATED INTO IN THE GROUND WATER FROM THE POINT OF
 22 DETECTION;

23 ~~{c}{D}~~ when EPA proposes to suspend or cancel
 24 registration of an agricultural chemical, prohibits or
 25 restricts the chemical's sale or use in the state, or

otherwise initiates action against a chemical because of ground water concerns and when EPA's action, restriction, or prohibition will be implemented unless the state develops an adequate management plan; or

(d)(E) when agricultural chemicals that possess or are suspected of possessing properties that indicate potential to migrate to ground water are being applied on areas underlaid by ground water that is vulnerable to impairment.

(3) ANY PERSON USING AN AGRICULTURAL CHEMICAL THAT IS ADDRESSED BY A SPECIFIC AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLAN IN THE GEOGRAPHICAL REGION THAT IS ADDRESSED BY THE PLAN SHALL COMPLY WITH THE PLAN. The department may SPECIFICALLY identify and designate persons using--an agricultural--chemical--that--is--addressed--by--a--specific agricultural--chemical--ground-water-management--plan--in--the geographical--area--that--is--addressed--by--the--plan--Designated persons--shall--comply--with--the--plan-- WHO ARE UNDER THE PLAN AND MAY INFORM ANY PERSON ABOUT THE PLAN.

(4) THE DEPARTMENT SHALL PRIORITIZE PREPARATION OF SPECIFIC AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLANS IN CONSIDERATION OF THE SPECIFIC CIRCUMSTANCES OF EACH AREA AND WITHIN AVAILABLE RESOURCES.

(4)(5) In developing general and specific agricultural chemical ground water management plans, the department shall consider the current and potential beneficial use of the

ground water included in or affected by the plans as expressed--by-the-classification-of-the-ground-water. If the ground water has not been classified, the department shall consider it to be included in the classification representing the highest quality of ground water until such time as the ground water is classified by the board DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES, and the department may proceed to develop an agricultural chemical ground water management plan as required by subsection (2).

(5)(6) The department may request the board DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES to classify certain ground water and may collect the data and information required by the board DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES to classify the ground water. If adequate technical data and financial resources are available as determined by the board DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES, the board DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES shall classify ground water at locations as requested by the department.

(6)(7) A specific agricultural chemical ground water management plan must include:

(a) requirements to prevent ground water impairment that are based on ground water use, value, and vulnerability and that address all applicable aspects of agricultural chemical use; and

1 (b) requirements to prevent or minimize further
2 presence of the agricultural chemical in the ground water
3 and to provide protection for the present and future
4 beneficial use of the ground water.

5 ~~(7)~~(8) A specific agricultural chemical ground water
6 management plan may include but is not limited to the
7 following elements:

8 (a) identification of geographical areas where an
9 agricultural chemical may be used;

10 (b) ground water, soil, meteorological, and geological
11 characteristics;

12 (c) best management plans and best management
13 practices;

14 (d) identification of high priority ground water;

15 (e) certification, licensing, training, and education
16 requirements for persons using agricultural chemicals;

17 (f) identification of setback areas around water wells
18 where certain activities may be restricted;

19 (g) agricultural chemical application rates and timing
20 and related use criteria;

21 (h) alternative pest management techniques, including
22 integrated pest management;

23 (i) other requirements for pesticides, as set forth in
24 Title 80, chapter 8, and related rules and for fertilizers,
25 as set forth in Title 80, chapter 10, and related rules; and

1 (j) EPA requirements; AND

2 (K) ALTERNATIVE SOIL FERTILITY PRACTICES.

3 ~~(8)~~(9) When developing and implementing a specific
4 agricultural chemical ground water management plan, the
5 department shall consider the ~~beneficial-uses~~ BENEFITS OF
6 APPROPRIATE USE of the agricultural chemical and shall
7 consult with the Montana state university extension service.

8 ~~(9)~~(10) Within available resources, the department
9 shall contact users of an agricultural chemical and user
10 groups that will be subject to a general or specific
11 agricultural chemical ground water management plan to
12 request their recommendations concerning the development of
13 the plan.

14 ~~(10)~~(11) The department ~~is-not-required-to~~ MAY develop
15 or AND implement a commercial fertilizer ground water
16 management plan ~~until-EPA-implements-a-program-to-protect~~
17 ~~ground-water-from-fertilizers--Prior-to-the-department~~
18 ~~implementing--an--agricultural--chemical--ground--water~~
19 ~~management-plan-for-a-commercial-fertilizer--the-department~~
20 ~~and-the-department-of-health-and-environmental-sciences~~
21 ~~shall-determine-the-source-of-the-nitrate-or-other-component~~
22 ~~of-fertilizer-present-in-ground-water--if-the-source-is-not~~
23 ~~from-the-use-of-a-commercial-fertilizer--the-department-may~~
24 ~~not-implement-this-section~~ IF THE DEPARTMENT AND THE
25 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES DETERMINE

1 THAT RESIDUES FROM COMMERCIAL FERTILIZER ARE PRESENT IN THE
 2 GROUND WATER OR WHEN EPA IMPLEMENTS A PROGRAM TO PROTECT
 3 GROUND WATER FROM FERTILIZERS.

4 ~~{11}~~(12) The department shall adopt specific
 5 agricultural chemical ground water management plans through
 6 rulemaking, provided that the department may implement
 7 emergency plans as set forth in 80-8-105(4) or as authorized
 8 by the Montana Administrative Procedure Act. Prior to
 9 rulemaking, the department shall provide to the department
 10 of health and environmental sciences a copy of each proposed
 11 specific agricultural chemical ground water management plan.
 12 A 30-day period must be provided for the department of
 13 health and environmental sciences to prepare comments on the
 14 plan.

15 ~~{12}~~(13) The department shall review agricultural
 16 chemical ground water management plans periodically to
 17 determine if the requirements contained in the plans need to
 18 be modified based on new scientific data and information.
 19 Plan modifications must be accomplished by rulemaking.

20 (14) A PERSON WHO SELLS AGRICULTURAL LAND THAT IS
 21 SUBJECT TO THE PROVISIONS OF A SPECIFIC AGRICULTURAL
 22 CHEMICAL GROUND WATER MANAGEMENT PLAN SHALL PROVIDE THE
 23 BUYER WITH WRITTEN NOTICE ABOUT HIS OBLIGATIONS UNDER THE
 24 PLAN AND SHALL FORWARD A COPY OF THE NOTICE TO THE
 25 DEPARTMENT. THE DEPARTMENT IS NOT RESPONSIBLE FOR

1 ENFORCEMENT OF THIS SUBSECTION.

2 NEW SECTION. Section 13. Department of health and
 3 environmental sciences to amend rules. The department of
 4 health and environmental sciences shall amend Rules
 5 16.20.603, 16.20.1003, 16.20.1011, and 16.20.1012,
 6 Administrative Rules of Montana, to define A SPECIFIC
 7 AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLAN PREPARED
 8 PURSUANT TO [SECTION 12] AS reasonable land, soil, and water
 9 conservation practices ~~to include~~ FOR point and nonpoint
 10 source agricultural operations involving the use of
 11 agricultural chemicals ~~that are conducted in compliance with~~
 12 ~~specific agricultural chemical ground water management plans~~
 13 ~~prepared pursuant to--{section--12}~~ and to exclude those
 14 agricultural operations from Montana ground water pollution
 15 control system permit requirements.

16 NEW SECTION. Section 14. Agricultural chemical ground
 17 water protection accounts -- acceptance and expenditure of
 18 gifts, grants, and funds. (1) There is a department of
 19 agriculture agricultural chemical ground water protection
 20 special revenue account and a department of health and
 21 environmental sciences agricultural chemical ground water
 22 protection special revenue account within the state special
 23 revenue fund established by 17-2-102.

24 (2) Both accounts named in subsection (1) may receive
 25 funds from any source as gifts, grants, cost-share funds, or

1 other funds designated for agricultural chemical ground
2 water protection purposes.

3 (3) The department and the department of health and
4 environmental sciences may individually or jointly spend
5 funds received by their respective accounts for the purposes
6 authorized by [sections 1 through 24].

7 NEW SECTION. Section 15. Special funding. (1) A fee
8 of \$15 is assessed for the registration of pesticides in
9 addition to the fee imposed by 80-8-201(4).

10 (2) A fee of \$10 is assessed for the registration of
11 fertilizers in addition to the fee imposed by 80-10-201(1).
12 The additional fee must be used for the ground water
13 protection responsibilities of the department relating to
14 fertilizers. Revenues collected from this fee must be
15 credited to the commercial fertilizer account within the
16 state special revenue fund for the administration of
17 [sections 1 through 24].

18 NEW SECTION. Section 16. Authority to investigate and
19 inspect. Authorized representatives of the department,
20 consistent with the responsibilities set forth in [sections
21 1 through 24] and upon presentation of department-issued
22 credentials, may at reasonable times or under emergency
23 conditions enter upon any public or private property to:

24 (1) investigate conditions relating to compliance with
25 agricultural chemical labels, agricultural chemical ground

1 water management plans, monitoring requirements, or ground
2 water protection requirements and to investigate violations
3 of plans or compliance orders;

4 (2) gain access to and copy any records required by
5 the department in the administration of [sections 1 through
6 24];

7 (3) establish and inspect monitoring equipment; and

8 (4) sample ground water, including drinking water
9 supply sources such as wells and similar structures.

10 NEW SECTION. Section 17. Prohibited activity. It is
11 unlawful for a person to:

12 ~~{1}--cause-ground-water-impairment-or-to-place-or-cause~~
13 ~~to-be-placed-any-agricultural-chemical-where-it-is-likely-to~~
14 ~~cause-ground-water-impairment;--except-when--the--use--of--an~~
15 ~~agricultural-chemical-was;~~

16 ~~{a}--in--accordance--with--label--directions;--including~~
17 ~~precautions-listed-with-those-directions;--or~~

18 ~~{b}--in--compliance--with---a---specific---agricultural~~
19 ~~chemical-ground-water-management-plan;~~

20 ~~{2}{1}~~ violate any provision of a specific
21 agricultural chemical ground water management plan;

22 ~~{3}{2}~~ violate any lawful order issued pursuant to
23 [sections 1 through 24]; or

24 ~~{4}{3}~~ violate any provision of [sections 1 through
25 24].

NEW SECTION. Section 18. Compliance orders. (1) In furtherance of [section 17], the department may issue a compliance order to any person violating a standard, an interim numerical standard, or any other requirement established pursuant to [sections 1 through 24]. The department shall coordinate its proposed actions pursuant to this section with proposed actions of the department of health and environmental sciences pursuant to 75-5-613, if any. Issuance of a compliance order under [sections 1 through 24] precludes the department from taking other enforcement actions for the same violation under Title 80, chapter 8 or 10.

(2) The department may issue a compliance order to any person, including the person's employees, agents, and subcontractors, whether or not the person is subject to a specific management plan, to require the cleanup of any agricultural chemical that the person has accidentally or purposely dumped, spilled, or misused or unlawfully used that has a significant probability of entering ground water.

(3) When issuing a compliance order, the department may require a person who has violated a provision of [section 17] to conduct monitoring to assist in determining the presence or level of concentration of an agricultural chemical in ground water and the effectiveness of cleanup efforts. The department shall specify criteria in the

compliance order for determining the duration of monitoring.

(4) A compliance order must specify the requirement violated and must set a time for compliance. In establishing a time for compliance, the department shall take into account the seriousness of the violation and any good-faith efforts that the person has made to comply with the requirement that has been violated. A compliance order issued under this section must be served either personally by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail.

~~(5) A person may provide information to the department, including data concerning the person's economic situation. The department shall consider this information in determining the amount of the person's financial obligation for cleanup under this section.~~

NEW SECTION. Section 19. Injunctions authorized. The department may commence a civil action seeking appropriate relief, including a permanent or temporary injunction, pursuant to 80-8-306 or 80-10-303, as applicable, for a violation that is subject to a compliance order under [section 18].

NEW SECTION. Section 20. Emergencies. Notwithstanding any other provisions of [sections 1 through 24], if the department finds that an emergency exists that requires immediate action to protect ground water from agricultural

1 chemicals or to prevent use of ground water impaired or
 2 likely to be impaired by agricultural chemicals, the
 3 department may, without notice or hearing, issue necessary
 4 orders or adopt rules to protect public health, welfare, and
 5 safety. The duration of an emergency order or rule is
 6 limited to the emergency provisions of the Montana
 7 Administrative Procedure Act as specified in 2-4-303.

8 NEW SECTION. Section 21. violators subject to
 9 penalties. (1) A person found to be in violation of
 10 [sections 1 through 24] or a rule established pursuant to
 11 [sections 1 through 24] is subject to the penalty provisions
 12 of [sections 22 through 24].

13 (2) For the purpose of this section, the term "person"
 14 means, in addition to the definition in [section 2], any
 15 responsible corporate officer.

16 (3) Nothing in [sections 1 through 24] may be
 17 construed as requiring the department or an authorized agent
 18 of the department to report minor violations of [sections 1
 19 through 24] for prosecution when the department or a duly
 20 authorized agent believes that the public interest will be
 21 best served by other remedial action, by a suitable notice
 22 of warning in writing, or by a lawful written order.

23 (4) Action under [sections 22 through 24] does not bar
 24 the department from enforcement of [sections 1 through 24]
 25 or of rules or orders issued under [sections 1 through 24]

1 by injunction or other appropriate remedy.

2 (5) The department and the department of health and
 3 environmental sciences ~~may-not-both-subject-a-violator~~ SHALL
 4 COORDINATE ACTIONS WHEN A VIOLATOR IS SUBJECT to the
 5 penalties authorized by [sections 22 through 24] and
 6 penalties authorized by Title 75, chapter 5, for the same
 7 violation.

8 NEW SECTION. Section 22. Administrative civil
 9 penalty. (1) A person who commits a violation of [sections 1
 10 through 24] may be assessed an administrative civil penalty
 11 by either the department or the department of health and
 12 environmental sciences, consistent with their respective
 13 responsibilities, of not more than \$1,000 for each offense.
 14 Farm applicators possessing a pesticide permit or using a
 15 fertilizer may not be assessed an administrative civil
 16 penalty of more than \$500 for the first offense. Assessment
 17 of a civil penalty may be made in conjunction with any other
 18 warning, order, or administrative action authorized by
 19 [sections 1 through 24] or Title 75, chapter 5, that is
 20 issued or undertaken by either the department or the
 21 department of health and environmental sciences.

22 (2) No administrative civil penalty may be assessed
 23 unless the person charged is given notice and opportunity
 24 for a hearing pursuant to Title 2, chapter 4, part 6, of the
 25 Montana Administrative Procedure Act.

(3) In determining an appropriate administrative civil penalty, the responsible department shall consider the effect on the person's ability to continue in business, the gravity of the violation that occurred, the degree of care exercised by the offender, and whether significant harm resulted to public health, agricultural crops, livestock, or the environment.

(4) If the responsible department is unable to collect the administrative civil penalty or if a person fails to pay all or a set portion of the administrative civil penalty as determined by the responsible department, the department may seek to recover the amount in the appropriate district court.

(5) A person against whom the department or the department of health and environmental sciences has assessed an administrative civil penalty may, within 30 days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged to have occurred. A jury trial must be granted when demanded under Rule 38 of the Montana Rules of Civil Procedure.

NEW SECTION. Section 23. Judicial civil penalty. A person who commits a violation as specified in [section 17] shall be subject to a judicial civil penalty not to exceed \$10,000. Each occurrence constitutes a separate violation.

NEW SECTION. Section 24. Criminal penalties. (1) A person who intentionally commits a violation as specified in [section 17] is guilty of an offense and subject to a fine not to exceed \$25,000 for each day the violation continues or imprisonment for not more than 1 year, or both. Following an initial conviction under this section, a subsequent conviction subjects a person to a fine of not more than \$50,000 for each day the violation continues or imprisonment for not more than 2 years, or both.

(2) Except as otherwise provided in [sections 1 through 24], a person convicted of violating any of the provisions of [sections 1 through 24] or rules issued under [sections 1 through 24] or who misrepresents, impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the department from performance of its duties in connection with the provisions of [sections 1 through 24] is guilty of a misdemeanor and shall be fined not less than \$100 but not more than \$1,500.

(3) A person who knowingly makes any false statement, representation, or certification in any record, report, or other document filed or required to be maintained under [sections 1 through 24] or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under [sections 1 through 24] shall, upon conviction, be punished by a fine of not more

1 than \$5,000 or by imprisonment for not more than 6 months,
2 or both.

3 (4) A person who with intent to defraud uses or
4 reveals confidential information and data provided under
5 [sections 1 through 24] or rules issued under [sections 1
6 through 24] shall, upon conviction, be fined not more than
7 \$5,000 or imprisoned for not more than 1 year, or both.

8 **Section 25.** Section 75-5-105, MCA, is amended to read:

9 "75-5-105. Confidentiality of records. Any Except as
10 provided in [section 8], any information concerning sources
11 of pollution which is furnished to the board or department
12 or which is obtained by either of them is a matter of public
13 record and open to public use. However, any information
14 unique to the owner or operator of a source of pollution
15 which would, if disclosed, reveal methods or processes
16 entitled to protection as trade secrets shall be maintained
17 as confidential if so determined by a court of competent
18 jurisdiction. The owner or operator shall file a
19 declaratory judgment action to establish the existence of a
20 trade secret if he wishes such information to enjoy
21 confidential status. The department shall be served in any
22 such action and may intervene as a party therein. Any
23 information not intended to be public when submitted to the
24 board or department shall be submitted in writing and
25 clearly marked as confidential. The data describing physical

1 and chemical characteristics of a waste discharged to state
2 waters shall not be considered confidential. The board may
3 use any information in compiling or publishing analyses or
4 summaries relating to water pollution if such analyses or
5 summaries do not identify any owner or operator of a source
6 of pollution or reveal any information which is otherwise
7 made confidential by this section."

8 **Section 26.** Section 75-5-301, MCA, is amended to read:

9 "75-5-301. Classification and standards for state
10 waters. The Consistent with the provisions of [section 9],
11 the board shall:

12 (1) establish and modify the classification of all
13 waters in accordance with their present and future most
14 beneficial uses;

15 (2) formulate standards of water purity and
16 classification of water according to its most beneficial
17 uses, giving consideration to the economics of waste
18 treatment and prevention;

19 (3) review, from time to time at intervals of not more
20 than 3 years, established classifications of waters and
21 standards of water purity and classification."

22 **Section 27.** Section 80-8-105, MCA, is amended to read:

23 "80-8-105. Rules. (1) The department may adopt by
24 reference without a public hearing regulations adopted under
25 the Federal Insecticide, Fungicide, and Rodenticide Act, as

1 amended. The department may, after a public hearing, adopt
2 all rules necessary to carry out this chapter.

3 (2) The rules may prescribe methods of:

4 (a) registration, suspension or cancellation of
5 registration, application, use or restricting use,
6 prohibiting use, offering or exposing for sale of any
7 pesticide;

8 (b) determining whether pesticides are highly toxic to
9 man;

10 (c) determining standards of coloring or discoloring
11 for pesticides and subjecting pesticides to the requirements
12 of 80-8-202;

13 (d) licensing commercial applicators, operators, and
14 dealers, establishing methods of recordkeeping for
15 applicators, operators, and dealers, and providing for the
16 review of the records by the department's authorized agent
17 and the submission of the records to the department upon
18 written request;

19 (e) issuing farm applicator special-use permits and
20 the maintenance and submission of records by farm
21 applicators issued special-use permits;

22 (f) collection, examination, and standard deviation
23 from guarantee analysis and umpire analysis of pesticides
24 and devices;

25 (g) operating and maintaining equipment used by

1 applicators;

2 (h) developing examinations which shall be held
3 periodically throughout the state;

4 (i) establishing the form and content of all
5 applications for licenses and permits;

6 (j) designating pesticides that may be sold at retail
7 for home, yard, garden, and lawn use. The department may
8 also limit retail sale of pesticides, up to a specific
9 number of pounds or gallons and concentration which would be
10 sublethal to humans and animals if small amounts of it were
11 accidentally swallowed, inhaled, sprayed, or dusted on the
12 skin.

13 (k) revoking licenses and permits;

14 (l) registering or controlling any spray adjuvant,
15 such as a wetting agent, spreading agent, deposit builder,
16 adhesive, emulsifying agent, deflocculating agent, water
17 modifier, or similar agent with or without toxic properties
18 of its own intended to be used with any other pesticide as
19 an aid to the application or effect of that other pesticide,
20 whether or not distributed in a package or container
21 separate from that of a pesticide with which it is to be
22 used;

23 (m) registering pesticide-fertilizer and other
24 chemical blends or, instead of registration, establishing
25 licensing, inspection, and fees for blending plants;

1 (n) establishing registration procedures for devices,
 2 with a fee not to exceed \$5 per type of device, specifying
 3 classes of devices to be registered and providing for
 4 additional requirements;
 5 (o) imposing conditions for renewal of dealer,
 6 applicator, and operator licenses and permits, including
 7 regualification training;
 8 (p) establishing procedures for implementing and
 9 administering the civil penalties under 80-8-306; and
 10 (q) establishing fees for training courses and
 11 materials.
 12 (3) (a) Whenever Consistent with the provisions of
 13 [sections 1 through 24], whenever the department finds that
 14 those rules are necessary to carry out the purposes and
 15 intent of this chapter, the rules may relate to the time,
 16 place, manner, and method of registration, suspension or
 17 cancellation of registration, application, or selling of the
 18 pesticides, may restrict or prohibit use of pesticides in
 19 the state or in designated areas during specified periods of
 20 time, and shall encompass all reasonable factors which the
 21 department considers necessary to prevent damage or injury
 22 to:
 23 (i) persons, animals, crops, or pollinating insects
 24 from the effect of drift or careless application;
 25 (ii) the environment;

1 (iii) plants, including forage plants;
 2 (iv) wildlife;
 3 (v) fish and other aquatic life.
 4 (b) In issuing the rules, the department shall give
 5 consideration to pertinent research findings and
 6 recommendations of other agencies of this state or of the
 7 federal government.
 8 (4) If the department finds that an emergency exists
 9 which requires immediate action with regard to the
 10 registration, use, or application of pesticides, the
 11 department may, without notice or hearing, issue necessary
 12 orders or rules to protect the public health, welfare, and
 13 safety. An order or rule issued under this subsection is
 14 effective for the period prescribed by the Montana
 15 Administrative Procedure Act. If the department determines
 16 that the emergency order or rule should remain in effect, a
 17 public hearing under 80-8-106 shall be held within the above
 18 period to determine whether the order or rule should be
 19 adopted by the department.
 20 (5) All rules and orders issued by the department
 21 shall be in writing, shall be entered in full in books to be
 22 kept by the department for that purpose, shall be indexed,
 23 and shall be public records open for inspection at all times
 24 during reasonable office hours. Except for orders
 25 establishing or changing rules of practice and procedure,

all orders made and published by the department shall include and be based upon written findings of fact. A copy of any rule or order certified by the department shall be received in evidence in all courts of this state with the same effect as the original."

Section 28. Section 80-8-107, MCA, is amended to read:

"80-8-107. Public information. The Except as provided in [sections 1 through 24], the department as it deems proper may, alone or in cooperation with other state or federal agencies, publish information regarding aspects of the use and application sections or registration sections of this chapter. This information cannot disclose operations of selling, production, or use of pesticides by any person."

Section 29. Section 80-8-305, MCA, is amended to read:

"80-8-305. General violations. (1) It is consistent with the provisions of [sections 1 through 24], it is unlawful for any person:

(a) to discard any pesticide or pesticide container in such a manner as to cause injury to humans, domestic animals, or wildlife, or to pollute any waterway in a way harmful to any wildlife therein or to the environment;

(b) to handle, transport, store, display, or distribute pesticides or pesticide containers in such a manner as to endanger man or the environment or to endanger food or any other products that may be transported, stored,

displayed, or distributed with such pesticides;

(c) to handle, apply, or attempt to apply any registered pesticide for which he does not have an appropriate, complete, or legible label at hand; or

(d) to apply or attempt to apply any registered pesticide in a manner inconsistent with the label, as defined in 80-8-102.

(2) It is unlawful for any person to manufacture, formulate, or store any registered pesticide or component or byproduct thereof in such a manner that the pesticide or any component or byproduct cannot be contained or confined within the boundaries of the lands owned by or under the appropriate control of the person involved. Odor is specifically exempted from the provisions of this subsection."

NEW SECTION. Section 30. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 31. Codification instruction. [Sections 1 through 24] are intended to be codified as an integral part of Title 80, and the provisions of Title 80 apply to [sections 1 through 24].

HB 0757/03

- 1 NEW SECTION. **Section 32.** **Effective date.** [This act]
- 2 is effective January 1, 1990.

-End-

1 HOUSE BILL NO. 757

2 INTRODUCED BY GIACOMETTO, WEEDING, BECK, O'KEEFE,
3 MARKS, HARPER, DEMARS, THOFT
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH AN
6 AGRICULTURAL CHEMICAL GROUND WATER PROTECTION PROGRAM TO BE
7 ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE AND THE
8 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; TO REQUIRE
9 ESTABLISHMENT OF AGRICULTURAL CHEMICAL GROUND WATER QUALITY
10 STANDARDS; TO PROVIDE FOR GROUND WATER MONITORING AND
11 AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLANS; TO
12 PROVIDE FOR ENFORCEMENT AUTHORITY, COMPLIANCE ORDERS, AND
13 PENALTIES; TO DIRECT THE DEPARTMENT OF HEALTH AND
14 ENVIRONMENTAL SCIENCES TO AMEND CERTAIN RULES IMPLEMENTING
15 THE WATER QUALITY ACT; TO ESTABLISH ADDITIONAL FEES FOR
16 REGISTRATION OF PESTICIDES AND FERTILIZERS; TO CREATE
17 AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACCOUNTS;
18 AMENDING SECTIONS 75-5-105, 75-5-301, 80-8-105, 80-8-107,
19 AND 80-8-305, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."
20

21 STATEMENT OF INTENT

22 A statement of intent is required for this bill in
23 order to provide guidance to the department of agriculture
24 and the department of health and environmental sciences
25 concerning the administration of the provisions of the bill

THERE IS NO CHANGE IN HB 757/03 AND WILL
NOT BE REPRINTED. PLEASE REFER TO THIRD
READING COPY (BLUE) FOR COMPLETE TEXT.