

SENATE BILL NO. 321  
INTRODUCED BY BECK, HARPER

IN THE SENATE

FEBRUARY 2, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 15, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
	STATEMENT OF INTENT ADOPTED.
FEBRUARY 16, 1989	PRINTING REPORT.
FEBRUARY 17, 1989	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 18, 1989	ENGROSSING REPORT.
FEBRUARY 20, 1989	THIRD READING, PASSED. AYES, 44; NOES, 6.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 19, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
FEBRUARY 21, 1989	FIRST READING.
MARCH 14, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 15, 1989	SECOND READING, CONCURRED IN.
MARCH 22, 1989	THIRD READING, CONCURRED IN. AYES, 92; NOES, 4.
	RETURNED TO SENATE.

MARCH 22, 1989

IN THE SENATE

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

16 (2) It is the purpose of this part and it is the  
17 policy of this state to protect the public health and  
18 safety, the health of living organisms, and the environment  
19 from the effects of the improper, inadequate, or unsound  
20 management of hazardous wastes; to establish a program of  
21 regulation over the generation, storage, transportation,  
22 treatment, and disposal of hazardous wastes; to assure the  
23 safe and adequate management of hazardous wastes within this  
24 state; and to authorize the department to adopt, administer,  
25 and enforce a hazardous waste program pursuant to the

federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 - 6987), as amended.

(3) The legislature also finds that petroleum products and hazardous substances stored in underground tanks are a separate category of substances that are regulated under the federal Resource Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by the state under the Montana Hazardous Waste and Underground Storage Tank Act. It is the purpose of this part to authorize the department to establish, administer, and enforce an underground storage tank leak prevention program for these regulated substances. The department may use the authority provided in 75-10-413 through 75-10-417 and other appropriate authority provided by law to remedy violations of underground storage tank requirements established under this part."

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

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

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

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

(3) "Dispose" or "disposal" means the discharge,

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

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

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

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

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

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

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

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

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

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

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

22 (11) "Person" means the United States, an individual,  
23 firm, trust, estate, partnership, company, association,  
24 corporation, city, town, local governmental entity, or any  
25 other governmental or private entity, whether organized for

1 profit or not.

2 (12) "Regulated substance":

3 (a) means:

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

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

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

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

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

21 (16) "Treatment" means a method, technique, or process,  
22 including neutralization, designed to change the physical,  
23 chemical, or biological character or composition of any  
24 hazardous waste so as to neutralize the waste or so as to  
25 render it nonhazardous, safer for transportation, amenable

1 for recovery, amenable for storage, or reduced in volume.

2 (17) "Underground storage tank":

3 (a) means, except as provided in subsections

4 (17)(b)(i) through (17)(b)(viii):

5 (i) any one or combination of tanks ~~{including~~

6 ~~connected-underground-pipes}~~ used to contain a regulated

7 substance, the volume of which ~~{including-the-volume-of-the~~

8 ~~connected-underground-pipes}~~ is 10% or more beneath the

9 surface of the ground; and

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

11 a regulated substance and connected to a storage tank,

12 whether the storage tank is entirely above ground, partially

13 above ground, or entirely underground;

14 (b) does not include:

15 (i) a septic tank;

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

17 regulated under:

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

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

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

21 (49 U.S.C. 2001, et seq.); or

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

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

24 if the facility is intrastate;

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

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

2 (v) a flow-through process tank;

3 (vi) a liquid trap or associated gathering lines

4 directly related to oil or gas production and gathering

5 operations;

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

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

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

9 the floor; or

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

11 subsections (17)(b)(i) through (17)(b)~~{viii}~~(vi)."

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

13 **"75-10-405. Administrative rules.** (1) The department

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

15 including but not limited to the following:

16 (a) identification and classification of those

17 hazardous wastes subject to regulation and those that are

18 not;

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

20 transportation, and disposal of hazardous waste;

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

22 maintenance, monitoring, inspection, closure, postclosure,

23 and reclamation of hazardous waste management facilities;

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

25 modification, and revocation of permits for hazardous waste

1 management facilities;

2 (e) requirements for corrective action within and  
3 outside of facility boundaries and for financial assurance  
4 of that corrective action;

5 (f) requirements for manifests and the manifest system  
6 for tracking hazardous waste and for reporting and  
7 recordkeeping by generators, transporters, and owners and  
8 operators of hazardous waste management facilities;

9 (g) requirements for training of facility personnel  
10 and for financial assurance of facility owners and operators  
11 and for liability of guarantors providing financial  
12 assurance;

13 (h) requirements for registration of generators and  
14 transporters;

15 (i) a schedule of fees for hazardous waste management  
16 facility permits and registration of hazardous waste  
17 generators;

18 (j) a schedule of fees to defray a portion of the  
19 costs of establishing, operating, and maintaining any state  
20 hazardous waste management facility authorized by 75-10-412;

21 (k) requirements for availability to the public of  
22 information obtained by the department regarding facilities  
23 and sites used for the treatment, storage, and disposal of  
24 hazardous wastes; and

25 (l) other rules which are necessary to obtain and

1 maintain authorization under the federal program.

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

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

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

13 (c) may adopt requirements for the prevention and  
14 correction of leakage from underground storage tanks,  
15 including:

16 (i) reporting by owners and operators;

17 (ii) financial responsibility;

18 (iii) release detection, prevention, and correction  
19 corrective action; and

20 (iv) standards for design, construction, and  
21 installation, and closure;

22 (v) development of a schedule of fees for tank  
23 notification and permits to defray state and local costs of  
24 implementing an underground storage tank program; and

25 (vi) delegation of authority and funds to local agents

1 for inspections and implementation;

2 (d) may adopt regulatory requirements for hazardous  
3 waste transfer facilities; and

4 (e) shall require the owner or manager of any proposed  
5 commercial facility for the storage, collection, or transfer  
6 of hazardous waste to conduct a public hearing, as provided  
7 for in 75-10-441."

8 **Section 5.** Section 75-10-410, MCA, is amended to read:

9 "75-10-410. Inspections -- sampling. (1) (a) An  
10 employee or agent of the department, at any reasonable time  
11 and upon presentation of credentials, may enter upon and  
12 inspect any property, premises, or place at which:

13 (i) regulated substances are or have been stored in  
14 underground storage tanks;

15 (ii) hazardous wastes are or have been generated,  
16 stored, treated, disposed of, or loaded for transportation;  
17 ~~or any property, premises, or place at which~~

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

20 (b) The employee or agent of the department may have  
21 access to and may copy any records relating to such the  
22 regulated substances or hazardous wastes for the purposes of  
23 developing rules under this part or enforcing the provisions  
24 of this part, rules adopted under this part, or a permit or  
25 an order issued under this part.

1 (2) In the course of an inspection under this section,  
2 the employee or agent of the department may take samples of  
3 any substances or wastes, including samples from any soil or  
4 groundwater or from any vehicle in which wastes are  
5 transported, or samples of any containers or labeling for  
6 such the substances or wastes. If the employee or agent of  
7 the department takes a sample of any hazardous waste or  
8 suspected hazardous waste, he shall, prior to leaving the  
9 premises, give to the owner, operator, or agent in charge a  
10 receipt describing the sample taken and, if requested, a  
11 portion of each such sample equal in volume or weight to the  
12 portion retained. If any analysis is made of such samples, a  
13 copy of the results of such analysis must be furnished to  
14 the owner, operator, or agent in charge."

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

16 "75-10-411. Hazardous Regulated substance and  
17 hazardous waste site inventory. (1) The department is  
18 authorized to conduct an inventory of sites and locations in  
19 the state where regulated substances or hazardous wastes  
20 have been stored or disposed of at any time.

21 (2) If the department determines that the presence of  
22 a regulated substance or hazardous waste or the release of  
23 the regulated substance or waste or any waste constituent at  
24 ~~any such site~~ may present a substantial hazard to public  
25 health or the environment, it may issue an order requiring



the owner or operator of the facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the site in order to ascertain the nature and extent of the hazard.

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

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

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

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

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

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

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

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

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

**NEW SECTION. Section 10.** Underground storage tank special revenue account. (1) There is an underground storage

1 tank account within the state special revenue fund  
2 established in 17-2-102. There must be paid into the  
3 account:

4 (a) revenues from underground storage tank permit and  
5 notification fees; and

6 (b) corrective action costs, damages, and penalties  
7 recovered under section 9003 of the federal Resource  
8 Conservation and Recovery Act of 1976, as amended.

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

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

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

15 NEW SECTION. Section 11. Extension of authority. Any  
16 existing authority to make rules on the subject of the  
17 provisions of [this act] is extended to the provisions of  
18 [this act].

19 NEW SECTION. Section 12. Codification instruction.  
20 [Section 10] is intended to be codified as an integral part  
21 of Title 75, chapter 10, part 4, and the provisions of Title  
22 75, chapter 10, part 4, apply to [section 10].

23 NEW SECTION. Section 13. Saving clause. [This act]  
24 does not affect rights and duties that matured, penalties  
25 that were incurred, or proceedings that were begun before

1 [the effective date of this act].

2 NEW SECTION. Section 14. Severability. If a part of  
3 [this act] is invalid, all valid parts that are severable  
4 from the invalid part remain in effect. If a part of [this  
5 act] is invalid in one or more of its applications, the part  
6 remains in effect in all valid applications that are  
7 severable from the invalid applications.

8 NEW SECTION. Section 15. Effective date. [This act]  
9 is effective on passage and approval.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB321, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act entitled, "An act to generally revise the Montana Hazardous Waste act; to apply certain provisions specifically to underground storage tanks and regulated substances; to authorize notification and permit fees; to create an underground storage tank special revenue account; amending Sections 75-10-401 through 75-10-403, 75-10-405, 75-10-410, 75-10-411, 75-10-415, 75-10-416, and 75-10-420, MCA; and providing an immediate effective date."

ASSUMPTIONS:

1. "Annual" tank permit fees of \$50.00 each on 10,000 tanks out of a known population of 18,000 (small farm and heating oil tanks mostly exempted) less an initial 20% non-compliance rate.
2. It will take an additional 4.0 FTE to implement this legislation. These 4.0 FTE will be funded with the proposed fee funds.

FISCAL IMPACT:

	FY90			FY91		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Revenues:	\$ -0-	\$400,000	\$ 400,000	\$ -0-	\$400,000	\$ 400,000
Expenditures:	\$ -0-	\$400,000	\$ 400,000	\$ -0-	\$400,000	\$ 400,000
Net Effect:	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-

Fund Impact:

Legislation establishes a new underground storage tank special revenue fund for implementation of state and local UST programs. State program staff to operate where local jurisdictions are unable or unwilling to participate. New fund provides previously unavailable program funding. Revenue deposits are to the new special revenue fund. UST program expenditures are defrayed by same fund.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Provide funds to local health or fire agencies to conduct tank facility inspections of installations, leak detection methods, inventory record review, tank testing and compliance monitoring. Leak prevention requirements must be enforced with routine education and compliance inspections. Funds available for local assistance are estimated to be \$205,087 in FY90 and \$262,604 in FY91 based upon the \$50 fee in assumption #1.



DATE 2/10/89

RAY SHACKLEFORD, BUDGET DIRECTOR  
OFFICE OF BUDGET AND PROGRAM PLANNING



TOM BECK, PRIMARY SPONSOR

Fiscal Note for SB321, as introduced**SB 321**

APPROVED BY COMM. ON  
NATURAL RESOURCES

## SENATE BILL NO. 321

INTRODUCED BY BECK, HARPER

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

## STATEMENT OF INTENT

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

It is the intent of the legislature that the department have the authority to develop and implement a schedule of fees to be collected for underground storage tank notifications and permits. The fees should be set at a level to defray state and local costs of implementing an underground storage tank program.

It is the intent of the legislature that the department be able to delegate authority and funds to local agents for

inspections and for other duties related to the underground storage tank program.

IT IS THE INTENT OF THE LEGISLATURE THAT THE UNDERGROUND STORAGE TANK PROGRAM BE IMPLEMENTED IN A MANNER CONSISTENT WITH RULES ADOPTED BY THE STATE FIRE MARSHAL AS THEY RELATE TO UNDERGROUND STORAGE TANKS; THAT THE PROGRAM NOT DUPLICATE INSPECTIONS AND EXISTING REGULATORY EFFORTS CONDUCTED UNDER THE UNIFORM FIRE CODE; AND THAT THE DEPARTMENT AND LOCAL HEALTH AND FIRE OFFICIALS WORK TOGETHER COOPERATIVELY IN IMPLEMENTING A PROGRAM FOR THE PREVENTION OF LEAKAGE FROM UNDERGROUND STORAGE TANKS.

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

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

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

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

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

(2) It is the purpose of this part and it is the

1 policy of this state to protect the public health and  
 2 safety, the health of living organisms, and the environment  
 3 from the effects of the improper, inadequate, or unsound  
 4 management of hazardous wastes; to establish a program of  
 5 regulation over the generation, storage, transportation,  
 6 treatment, and disposal of hazardous wastes; to assure the  
 7 safe and adequate management of hazardous wastes within this  
 8 state; and to authorize the department to adopt, administer,  
 9 and enforce a hazardous waste program pursuant to the  
 10 federal Resource Conservation and Recovery Act of 1976 (42  
 11 U.S.C. 6901 - 6987), as amended.

12 (3) The legislature also finds that petroleum products  
 13 and hazardous substances stored in underground tanks are a  
 14 separate category of substances that are regulated under the  
 15 federal Resource Conservation and Recovery Act of 1976, as  
 16 amended, and must be addressed and controlled properly by  
 17 the state under the Montana Hazardous Waste and Underground  
 18 Storage Tank Act. It is the purpose of this part to  
 19 authorize the department to establish, administer, and  
 20 enforce an underground storage tank leak prevention program  
 21 for these regulated substances. The department may use the  
 22 authority provided in 75-10-413 through 75-10-417 and other  
 23 appropriate authority provided by law to remedy violations  
 24 of underground storage tank requirements established under  
 25 this part."

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

2 "75-10-403. **Definitions.** Unless the context requires  
 3 otherwise, in this part the following definitions apply:

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

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

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

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

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

25 (6) "Generator" means any person, by site, whose act

1 or process produces hazardous waste or whose act first  
2 causes a hazardous waste to become subject to regulation  
3 under this part.

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

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

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

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

15 (8) "Hazardous waste management" means the management  
16 of the collection, source separation, storage,  
17 transportation, processing, treatment, recovery, and  
18 disposal of hazardous wastes.

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

1 treatment, storage, or disposal.

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

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

11 (12) "Regulated substance":  
12

12 (a) means:

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

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

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

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

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

1 disposal.

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

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

11 (17) "Underground storage tank":

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

14 (i) any one or combination of tanks ~~{including~~  
15 ~~connected--underground--pipes}~~ used to contain a regulated  
16 substance, the volume of which ~~{including-the-volume-of--the~~  
17 ~~connected--underground--pipes}~~ is 10% or more beneath the  
18 surface of the ground; and

19 (ii) any underground pipes used to contain or transport  
20 a regulated substance and connected to a storage tank,  
21 whether the storage tank is entirely above ground, partially  
22 above ground, or entirely underground;

23 (b) does not include:

24 (i) a septic tank;

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

1 regulated under:

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

4 (B) the Hazardous Liquid Pipeline Safety Act of 1979  
5 (49 U.S.C. 2001, et seq.); or

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

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

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

11 (v) a flow-through process tank;

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

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

19 (viii) any pipe connected to a tank described in  
20 subsections (17)(b)(i) through (17)(b)(~~vii~~)(vi)."

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

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

25 (a) identification and classification of those

1 hazardous wastes subject to regulation and those that are  
2 not;

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

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

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

11 (e) requirements for corrective action within and  
12 outside of facility boundaries and for financial assurance  
13 of that corrective action;

14 (f) requirements for manifests and the manifest system  
15 for tracking hazardous waste and for reporting and  
16 recordkeeping by generators, transporters, and owners and  
17 operators of hazardous waste management facilities;

18 (g) requirements for training of facility personnel  
19 and for financial assurance of facility owners and operators  
20 and for liability of guarantors providing financial  
21 assurance;

22 (h) requirements for registration of generators and  
23 transporters;

24 (i) a schedule of fees for hazardous waste management  
25 facility permits and registration of hazardous waste

1 generators;

2 (j) a schedule of fees to defray a portion of the  
3 costs of establishing, operating, and maintaining any state  
4 hazardous waste management facility authorized by 75-10-412;

5 (k) requirements for availability to the public of  
6 information obtained by the department regarding facilities  
7 and sites used for the treatment, storage, and disposal of  
8 hazardous wastes; and

9 (l) other rules which are necessary to obtain and  
10 maintain authorization under the federal program.

11 (2) The department may not adopt rules under this part  
12 that are more restrictive than those promulgated by the  
13 federal government under the Resource Conservation and  
14 Recovery Act of 1976, as amended, except that the  
15 department:

16 (a) may require the registration of transporters not  
17 otherwise required to register with the state of Montana  
18 pursuant to the federal Resource Conservation and Recovery  
19 Act of 1976, as amended;

20 (b) may require generators and facilities to report on  
21 an annual rather than on a biennial basis; and

22 (c) may adopt requirements for the prevention and  
23 correction of leakage from underground storage tanks,  
24 including:

25 (i) reporting by owners and operators;



1 (ii) financial responsibility;  
 2 (iii) release detection, prevention, and ~~correction~~  
 3 corrective action; and  
 4 (iv) standards for design, construction, and  
 5 installation, and closure;  
 6 (v) development of a schedule of fees NOT TO EXCEED  
 7 \$50 PER TANK for tank notification and permits to defray  
 8 state and local costs of implementing an underground storage  
 9 tank program; and  
 10 (vi) delegation of authority and funds to local agents  
 11 for inspections and implementation. THE DELEGATION OF  
 12 AUTHORITY TO LOCAL AGENTS MUST COMPLEMENT AND MAY NOT  
 13 DUPLICATE EXISTING AUTHORITY FOR IMPLEMENTATION OF RULES  
 14 ADOPTED BY THE STATE FIRE MARSHAL THAT RELATE TO UNDERGROUND  
 15 STORAGE TANKS.  
 16 (d) may adopt regulatory requirements for hazardous  
 17 waste transfer facilities; and  
 18 (e) shall require the owner or manager of any proposed  
 19 commercial facility for the storage, collection, or transfer  
 20 of hazardous waste to conduct a public hearing, as provided  
 21 for in 75-10-441."

22 **Section 5.** Section 75-10-410, MCA, is amended to read:

23 **"75-10-410. Inspections -- sampling. (1) (a)** An  
 24 employee or agent of the department, at any reasonable time  
 25 and upon presentation of credentials, may enter upon and

1 inspect any property, premises, or place at which:  
 2 (i) regulated substances are or have been stored in  
 3 underground storage tanks IF THE DEPARTMENT HAS REASON TO  
 4 SUSPECT THAT THE TANKS ARE NOT IN COMPLIANCE WITH THE  
 5 PROVISIONS OF THIS PART OR RULES ADOPTED UNDER THIS PART;  
 6 (ii) hazardous wastes are or have been generated,  
 7 stored, treated, disposed of, or loaded for transportation;  
 8 or ~~any property, premises, or place at which~~  
 9 (iii) records pertinent to ~~such the regulated~~  
 10 substances or hazardous waste activities are maintained.  
 11 (b) The employee or agent of the department may have  
 12 access to and may copy any records relating to ~~such the~~  
 13 regulated substances or hazardous wastes for the purposes of  
 14 developing rules under this part or enforcing the provisions  
 15 of this part, rules adopted under this part, or a permit or  
 16 an order issued under this part.  
 17 (2) In the course of an inspection under this section,  
 18 the employee or agent of the department may take samples of  
 19 any substances or wastes, including samples from any soil or  
 20 groundwater or from any vehicle in which wastes are  
 21 transported, or samples of any containers or labeling for  
 22 ~~such the substances or wastes~~. If the employee or agent of  
 23 the department takes a sample of any hazardous waste or  
 24 suspected hazardous waste, he shall, prior to leaving the  
 25 premises, give to the owner, operator, or agent in charge a

1 receipt describing the sample taken and, if requested, a  
2 portion of each such sample equal in volume or weight to the  
3 portion retained. If any analysis is made of such samples, a  
4 copy of the results of such analysis must be furnished to  
5 the owner, operator, or agent in charge."

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

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

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

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

25 (4) If the department determines that no owner or

1 operator is able to conduct monitoring, testing, and  
2 analysis in a satisfactory manner, the department may  
3 conduct such activities.

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

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

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

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

17 "**75-10-416. Cleanup orders.** The department may issue a  
18 cleanup order to any person who has discharged, deposited,  
19 or spilled any regulated substance or hazardous waste into  
20 or onto any land or water in an unlawful or unapproved  
21 manner or who has discharged, deposited, or spilled any  
22 material or substance into or onto any land or water so as  
23 to result in unlawful or unapproved disposal of a regulated  
24 substance or hazardous waste ~~disposal~~. The order shall  
25 direct the person to clean up and remove the regulated

1 substance or hazardous waste, treat it the regulated  
 2 substance or hazardous waste so as to render it  
 3 nonhazardous, or to take such other actions as may be  
 4 considered reasonable by the department."

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

6 "75-10-420. Venue for legal proceedings actions. All  
 7 legal proceedings actions affecting hazardous waste  
 8 management facilities in the state ~~shall~~ must be brought in  
 9 the county in which the facility is located. All legal  
 10 actions affecting underground storage tanks or the disposal  
 11 of regulated substances must be brought in the county where  
 12 the underground storage tank is located or, IF MUTUALLY  
 13 AGREED UPON BY THE AFFECTED PARTIES, in the first judicial  
 14 district, Lewis and Clark County, ~~whichever the department~~  
 15 considers appropriate."

16 **NEW SECTION. Section 10.** Underground storage tank  
 17 special revenue account. (1) There is an underground storage  
 18 tank account within the state special revenue fund  
 19 established in 17-2-102. There must be paid into the  
 20 account:

21 (a) revenues from underground storage tank permit and  
 22 notification fees; and

23 (b) corrective action costs, damages, and penalties  
 24 recovered under section 9003 of the federal Resource  
 25 Conservation and Recovery Act of 1976, as amended.

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

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

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

7 **NEW SECTION. Section 11.** Extension of authority. Any  
 8 existing authority to make rules on the subject of the  
 9 provisions of [this act] is extended to the provisions of  
 10 [this act].

11 **NEW SECTION. Section 12.** Codification instruction.  
 12 [Section 10] is intended to be codified as an integral part  
 13 of Title 75, chapter 10, part 4, and the provisions of Title  
 14 75, chapter 10, part 4, apply to [section 10].

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

19 **NEW SECTION. Section 14.** Severability. If a part of  
 20 [this act] is invalid, all valid parts that are severable  
 21 from the invalid part remain in effect. If a part of [this  
 22 act] is invalid in one or more of its applications, the part  
 23 remains in effect in all valid applications that are  
 24 severable from the invalid applications.

25 **NEW SECTION. Section 15.** Effective date. [This act]

SB 0321/02

1 is effective on passage and approval.

-End-

## SENATE BILL NO. 321

INTRODUCED BY BECK, HARPER

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

## STATEMENT OF INTENT

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

It is the intent of the legislature that the department have the authority to develop and implement a schedule of fees to be collected for underground storage tank notifications and permits. The fees should be set at a level to defray state and local costs of implementing an underground storage tank program.

It is the intent of the legislature that the department be able to delegate authority and funds to local agents for

inspections and for other duties related to the underground storage tank program.

IT IS THE INTENT OF THE LEGISLATURE THAT THE UNDERGROUND STORAGE TANK PROGRAM BE IMPLEMENTED IN A MANNER CONSISTENT WITH RULES ADOPTED BY THE STATE FIRE MARSHAL AS THEY RELATE TO UNDERGROUND STORAGE TANKS; THAT THE PROGRAM NOT DUPLICATE INSPECTIONS AND EXISTING REGULATORY EFFORTS CONDUCTED UNDER THE UNIFORM FIRE CODE; AND THAT THE DEPARTMENT AND LOCAL HEALTH AND FIRE OFFICIALS WORK TOGETHER COOPERATIVELY IN IMPLEMENTING A PROGRAM FOR THE PREVENTION OF LEAKAGE FROM UNDERGROUND STORAGE TANKS.

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

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

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

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

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

(2) It is the purpose of this part and it is the

1 policy of this state to protect the public health and  
 2 safety, the health of living organisms, and the environment  
 3 from the effects of the improper, inadequate, or unsound  
 4 management of hazardous wastes; to establish a program of  
 5 regulation over the generation, storage, transportation,  
 6 treatment, and disposal of hazardous wastes; to assure the  
 7 safe and adequate management of hazardous wastes within this  
 8 state; and to authorize the department to adopt, administer,  
 9 and enforce a hazardous waste program pursuant to the  
 10 federal Resource Conservation and Recovery Act of 1976 (42  
 11 U.S.C. 6901 - 6987), as amended.

12 (3) The legislature also finds that petroleum products  
 13 and hazardous substances stored in underground tanks are a  
 14 separate category of substances that are regulated under the  
 15 federal Resource Conservation and Recovery Act of 1976, as  
 16 amended, and must be addressed and controlled properly by  
 17 the state under the Montana Hazardous Waste and Underground  
 18 Storage Tank Act. It is the purpose of this part to  
 19 authorize the department to establish, administer, and  
 20 enforce an underground storage tank leak prevention program  
 21 for these regulated substances. The department may use the  
 22 authority provided in 75-10-413 through 75-10-417 and other  
 23 appropriate authority provided by law to remedy violations  
 24 of underground storage tank requirements established under  
 25 this part."

1 **Section 3.** Section 75-10-403, MCA, is amended to read:  
 2 **"75-10-403. Definitions.** Unless the context requires  
 3 otherwise, in this part the following definitions apply:  
 4 (1) "Board" means the board of health and  
 5 environmental sciences provided for in 2-15-2104.  
 6 (2) "Department" means the department of health and  
 7 environmental sciences provided for in Title 2, chapter 15,  
 8 part 21.  
 9 (3) "Dispose" or "disposal" means the discharge,  
 10 injection, deposit, dumping, spilling, leaking, or placing  
 11 of any regulated substance or hazardous waste into or onto  
 12 the land or water so that the regulated substance, hazardous  
 13 waste, or any constituent of it the regulated substance or  
 14 hazardous waste may enter the environment or be emitted into  
 15 the air or discharged into any waters, including  
 16 groundwaters.  
 17 (4) "Facility" or "hazardous waste management  
 18 facility" means all contiguous land and structures, other  
 19 appurtenances, and improvements on the land used for  
 20 treating, storing, or disposing of hazardous waste. A  
 21 facility may consist of several treatment, storage, or  
 22 disposal operational units.  
 23 (5) "Generation" means the act or process of producing  
 24 waste material.  
 25 (6) "Generator" means any person, by site, whose act

1 or process produces hazardous waste or whose act first  
2 causes a hazardous waste to become subject to regulation  
3 under this part.

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

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

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

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

15 (8) "Hazardous waste management" means the management  
16 of the collection, source separation, storage,  
17 transportation, processing, treatment, recovery, and  
18 disposal of hazardous wastes.

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

1 treatment, storage, or disposal.

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

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

11 (12) "Regulated substance":

12 (a) means:

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

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

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

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

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

1 disposal.

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

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

11 (17) "Underground storage tank":

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

14 (i) any one or combination of tanks ~~{including~~  
15 ~~connected--underground--pipes}~~ used to contain a regulated  
16 substance, the volume of which ~~{including-the-volume-of--the~~  
17 ~~connected--underground--pipes}~~ is 10% or more beneath the  
18 surface of the ground; and

19 (ii) any underground pipes used to contain or transport  
20 a regulated substance and connected to a storage tank,  
21 whether the storage tank is entirely above ground, partially  
22 above ground, or entirely underground;

23 (b) does not include:

24 (i) a septic tank;

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

1 regulated under:

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

4 (B) the Hazardous Liquid Pipeline Safety Act of 1979  
5 (49 U.S.C. 2001, et seq.); or

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

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

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

11 (v) a flow-through process tank;

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

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

19 (viii) any pipe connected to a tank described in  
20 subsections (17)(b)(i) through (17)(b)~~{vii}~~(vi)."

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12 outside of facility boundaries and for financial assurance  
13 of that corrective action;

14 (f) requirements for manifests and the manifest system  
15 for tracking hazardous waste and for reporting and  
16 recordkeeping by generators, transporters, and owners and  
17 operators of hazardous waste management facilities;

18 (g) requirements for training of facility personnel  
19 and for financial assurance of facility owners and operators  
20 and for liability of guarantors providing financial  
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3 costs of establishing, operating, and maintaining any state  
4 hazardous waste management facility authorized by 75-10-412;

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6 information obtained by the department regarding facilities  
7 and sites used for the treatment, storage, and disposal of  
8 hazardous wastes; and

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10 maintain authorization under the federal program.

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12 that are more restrictive than those promulgated by the  
13 federal government under the Resource Conservation and  
14 Recovery Act of 1976, as amended, except that the  
15 department:

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17 otherwise required to register with the state of Montana  
18 pursuant to the federal Resource Conservation and Recovery  
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21 an annual rather than on a biennial basis; and

22 (c) may adopt requirements for the prevention and  
23 correction of leakage from underground storage tanks,  
24 including:

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(iv) standards for design, construction, and installation, and closure;

(v) development of a schedule of fees, NOT TO EXCEED \$50 PER-TANK FOR A TANK OVER 1,100 GALLONS AND NOT TO EXCEED \$20 FOR A TANK 1,100 GALLONS OR LESS, PER TANK for tank notification and permits to defray state and local costs of implementing an underground storage tank program; and

(vi) delegation of authority and funds to local agents for inspections and implementation. THE DELEGATION OF AUTHORITY TO LOCAL AGENTS MUST COMPLEMENT AND MAY NOT DUPLICATE EXISTING AUTHORITY FOR IMPLEMENTATION OF RULES ADOPTED BY THE STATE FIRE MARSHAL THAT RELATE TO UNDERGROUND STORAGE TANKS.

(d) may adopt regulatory requirements for hazardous waste transfer facilities; and

(e) shall require the owner or manager of any proposed commercial facility for the storage, collection, or transfer of hazardous waste to conduct a public hearing, as provided for in '75-10-441."

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

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1 Conservation and Recovery Act of 1976, as amended.

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

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

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

8 **NEW SECTION. Section 11.** Extension of authority. Any  
 9 existing authority to make rules on the subject of the  
 10 provisions of [this act] is extended to the provisions of  
 11 [this act].

12 **NEW SECTION. Section 12.** Codification instruction.  
 13 [Section 10] is intended to be codified as an integral part  
 14 of Title 75, chapter 10, part 4, and the provisions of Title  
 15 75, chapter 10, part 4, apply to [section 10].

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

20 **NEW SECTION. Section 14.** Severability. If a part of  
 21 [this act] is invalid, all valid parts that are severable  
 22 from the invalid part remain in effect. If a part of [this  
 23 act] is invalid in one or more of its applications, the part  
 24 remains in effect in all valid applications that are  
 25 severable from the invalid applications.

SB 0321/03

- 1        NEW SECTION.   **Section 15.**   effective date.   [This   act]
- 2        is effective on passage and approval.

-End-

## SENATE BILL NO. 321

INTRODUCED BY BECK, HARPER

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

## STATEMENT OF INTENT

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

It is the intent of the legislature that the department have the authority to develop and implement a schedule of fees to be collected for underground storage tank notifications and permits. The fees should be set at a level to defray state and local costs of implementing an underground storage tank program.

It is the intent of the legislature that the department be able to delegate authority and funds to local agents for

inspections and for other duties related to the underground storage tank program.

IT IS THE INTENT OF THE LEGISLATURE THAT THE UNDERGROUND STORAGE TANK PROGRAM BE IMPLEMENTED IN A MANNER CONSISTENT WITH RULES ADOPTED BY THE STATE FIRE MARSHAL AS THEY RELATE TO UNDERGROUND STORAGE TANKS; THAT THE PROGRAM NOT DUPLICATE INSPECTIONS AND EXISTING REGULATORY EFFORTS CONDUCTED UNDER THE UNIFORM FIRE CODE; AND THAT THE DEPARTMENT AND LOCAL HEALTH AND FIRE OFFICIALS WORK TOGETHER COOPERATIVELY IN IMPLEMENTING A PROGRAM FOR THE PREVENTION OF LEAKAGE FROM UNDERGROUND STORAGE TANKS.

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

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

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

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

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

(2) It is the purpose of this part and it is the

1 policy of this state to protect the public health and  
 2 safety, the health of living organisms, and the environment  
 3 from the effects of the improper, inadequate, or unsound  
 4 management of hazardous wastes; to establish a program of  
 5 regulation over the generation, storage, transportation,  
 6 treatment, and disposal of hazardous wastes; to assure the  
 7 safe and adequate management of hazardous wastes within this  
 8 state; and to authorize the department to adopt, administer,  
 9 and enforce a hazardous waste program pursuant to the  
 10 federal Resource Conservation and Recovery Act of 1976 (42  
 11 U.S.C. 6901 - 6987), as amended.

12 (3) The legislature also finds that petroleum products  
 13 and hazardous substances stored in underground tanks are a  
 14 separate category of substances that are regulated under the  
 15 federal Resource Conservation and Recovery Act of 1976, as  
 16 amended, and must be addressed and controlled properly by  
 17 the state under the Montana Hazardous Waste and Underground  
 18 Storage Tank Act. It is the purpose of this part to  
 19 authorize the department to establish, administer, and  
 20 enforce an underground storage tank leak prevention program  
 21 for these regulated substances. The department may use the  
 22 authority provided in 75-10-413 through 75-10-417 and other  
 23 appropriate authority provided by law to remedy violations  
 24 of underground storage tank requirements established under  
 25 this part."

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

2 "75-10-403. Definitions. Unless the context requires  
 3 otherwise, in this part the following definitions apply:

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

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

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

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

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

25 (6) "Generator" means any person, by site, whose act

1 or process produces hazardous waste or whose act first  
2 causes a hazardous waste to become subject to regulation  
3 under this part.

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

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

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

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

15 (8) "Hazardous waste management" means the management  
16 of the collection, source separation, storage,  
17 transportation, processing, treatment, recovery, and  
18 disposal of hazardous wastes.

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

1 treatment, storage, or disposal.

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

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

11 (12) "Regulated substance":  
12

13 (a) means:

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

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

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

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

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



1 disposal.

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

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

11 (17) "Underground storage tank":

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

14 (i) any one or combination of tanks ~~including~~  
15 ~~connected--underground--pipes~~ used to contain a regulated  
16 substance, the volume of which ~~including the volume of the~~  
17 ~~connected--underground--pipes~~ is 10% or more beneath the  
18 surface of the ground; and

19 (ii) any underground pipes used to contain or transport  
20 a regulated substance and connected to a storage tank,  
21 whether the storage tank is entirely above ground, partially  
22 above ground, or entirely underground;

23 (b) does not include:

24 (i) a septic tank;

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

1 regulated under:

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

4 (B) the Hazardous Liquid Pipeline Safety Act of 1979  
5 (49 U.S.C. 2001, et seq.); or

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

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

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

11 (v) a flow-through process tank;

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

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

19 (viii) any pipe connected to a tank described in  
20 subsections (17)(b)(i) through (17)(b)(vii)(vi)."

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

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

25 (a) identification and classification of those

1 hazardous wastes subject to regulation and those that are  
2 not;

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

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

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

11 (e) requirements for corrective action within and  
12 outside of facility boundaries and for financial assurance  
13 of that corrective action;

14 (f) requirements for manifests and the manifest system  
15 for tracking hazardous waste and for reporting and  
16 recordkeeping by generators, transporters, and owners and  
17 operators of hazardous waste management facilities;

18 (g) requirements for training of facility personnel  
19 and for financial assurance of facility owners and operators  
20 and for liability of guarantors providing financial  
21 assurance;

22 (h) requirements for registration of generators and  
23 transporters;

24 (i) a schedule of fees for hazardous waste management  
25 facility permits and registration of hazardous waste

1 generators;

2 (j) a schedule of fees to defray a portion of the  
3 costs of establishing, operating, and maintaining any state  
4 hazardous waste management facility authorized by 75-10-412;

5 (k) requirements for availability to the public of  
6 information obtained by the department regarding facilities  
7 and sites used for the treatment, storage, and disposal of  
8 hazardous wastes; and

9 (l) other rules which are necessary to obtain and  
10 maintain authorization under the federal program.

11 (2) The department may not adopt rules under this part  
12 that are more restrictive than those promulgated by the  
13 federal government under the Resource Conservation and  
14 Recovery Act of 1976, as amended, except that the  
15 department:

16 (a) may require the registration of transporters not  
17 otherwise required to register with the state of Montana  
18 pursuant to the federal Resource Conservation and Recovery  
19 Act of 1976, as amended;

20 (b) may require generators and facilities to report on  
21 an annual rather than on a biennial basis; and

22 (c) may adopt requirements for the prevention and  
23 correction of leakage from underground storage tanks,  
24 including:

25 (i) reporting by owners and operators;

1 (ii) financial responsibility;  
 2 (iii) release detection, prevention, and correction  
 3 corrective action; and  
 4 (iv) standards for design, construction, and  
 5 installation, and closure;  
 6 (v) development of a schedule of fees, NOT TO EXCEED  
 7 \$50 PER-TANK FOR A TANK OVER 1,100 GALLONS AND NOT TO EXCEED  
 8 \$20 FOR A TANK 1,100 GALLONS OR LESS, PER TANK for tank  
 9 notification and permits to defray state and local costs of  
 10 implementing an underground storage tank program; and  
 11 (vi) delegation of authority and funds to local agents  
 12 for inspections and implementation. THE DELEGATION OF  
 13 AUTHORITY TO LOCAL AGENTS MUST COMPLEMENT AND MAY NOT  
 14 DUPLICATE EXISTING AUTHORITY FOR IMPLEMENTATION OF RULES  
 15 ADOPTED BY THE STATE FIRE MARSHAL THAT RELATE TO UNDERGROUND  
 16 STORAGE TANKS.  
 17 (d) may adopt regulatory requirements for hazardous  
 18 waste transfer facilities; and  
 19 (e) shall require the owner or manager of any proposed  
 20 commercial facility for the storage, collection, or transfer  
 21 of hazardous waste to conduct a public hearing, as provided  
 22 for in 75-10-441."  
 23 **Section 5:** Section 75-10-410, MCA, is amended to read:  
 24 "75-10-410. Inspections -- sampling. (1) (a) An  
 25 employee or agent of the department, at any reasonable time

1 and upon presentation of credentials, may enter upon and  
 2 inspect any property, premises, or place at which:  
 3 (i) regulated substances are or have been stored in  
 4 underground storage tanks IF THE DEPARTMENT HAS REASON TO  
 5 SUSPECT THAT THE TANKS ARE NOT IN COMPLIANCE WITH THE  
 6 PROVISIONS OF THIS PART OR RULES ADOPTED UNDER THIS PART;  
 7 (ii) hazardous wastes are or have been generated,  
 8 stored, treated, disposed of, or loaded for transportation;  
 9 or any-property,-premises,-or-place-at-which  
 10 (iii) records pertinent to such the regulated  
 11 substances or hazardous waste activities are maintained.  
 12 (b) The employee or agent of the department may have  
 13 access to and may copy any records relating to such the  
 14 regulated substances or hazardous wastes for the purposes of  
 15 developing rules under this part or enforcing the provisions  
 16 of this part, rules adopted under this part, or a permit or  
 17 an order issued under this part.  
 18 (2) In the course of an inspection under this section,  
 19 the employee or agent of the department may take samples of  
 20 any substances or wastes, including samples from any soil or  
 21 groundwater or from any vehicle in which wastes are  
 22 transported, or samples of any containers or labeling for  
 23 such the substances or wastes. If the employee or agent of  
 24 the department takes a sample of any hazardous waste or  
 25 suspected hazardous waste, he shall, prior to leaving the

1 premises, give to the owner, operator, or agent in charge a  
2 receipt describing the sample taken and, if requested, a  
3 portion of each such sample equal in volume or weight to the  
4 portion retained. If any analysis is made of such samples, a  
5 copy of the results of such analysis must be furnished to  
6 the owner, operator, or agent in charge."

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

8 "75-10-411. Hazardous Regulated substance and  
9 hazardous waste site inventory. (1) The department is  
10 authorized to conduct an inventory of sites and locations in  
11 the state where regulated substances or hazardous wastes  
12 have been stored or disposed of at any time.

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

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

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

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

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

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

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

18 "75-10-416. Cleanup orders. The department may issue a  
19 cleanup order to any person who has discharged, deposited,  
20 or spilled any regulated substance or hazardous waste into  
21 or onto any land or water in an unlawful or unapproved  
22 manner or who has discharged, deposited, or spilled any  
23 material or substance into or onto any land or water so as  
24 to result in unlawful or unapproved disposal of a regulated  
25 substance or hazardous waste disposal. The order shall

1 direct the person to clean up and remove the regulated  
 2 substance or hazardous waste, treat it the regulated  
 3 substance or hazardous waste so as to render it  
 4 nonhazardous, or to take such other actions as may be  
 5 considered reasonable by the department."

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

7 "75-10-420. Venue for legal proceedings actions. All  
 8 legal proceedings actions affecting hazardous waste  
 9 management facilities in the state ~~shall~~ must be brought in  
 10 the county in which the facility is located. All legal  
 11 actions affecting underground storage tanks or the disposal  
 12 of regulated substances must be brought in the county where  
 13 the underground storage tank is located or, IF MUTUALLY  
 14 AGREED UPON BY THE AFFECTED PARTIES, in the first judicial  
 15 district, Lewis and Clark County, whichever--the--department  
 16 considers appropriate."

17 **NEW SECTION. Section 10.** Underground storage tank  
 18 special revenue account. (1) There is an underground storage  
 19 tank account within the state special revenue fund  
 20 established in 17-2-102. There must be paid into the  
 21 account:

- 22 (a) revenues from underground storage tank permit and  
 23 notification fees; and  
 24 (b) corrective action costs, damages, and penalties  
 25 recovered under section 9003 of the federal Resource

1 Conservation and Recovery Act of 1976, as amended.

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

- 4 (a) state and local government costs of implementing  
 5 the underground storage tank leak prevention program; or  
 6 (b) state and local government costs relating to the  
 7 investigation of leaking underground storage tanks.

8 **NEW SECTION. Section 11.** Extension of authority. Any  
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 11 [this act].

12 **NEW SECTION. Section 12.** Codification instruction.  
 13 [Section 10] is intended to be codified as an integral part  
 14 of Title 75, chapter 10, part 4, and the provisions of Title  
 15 75, chapter 10, part 4, apply to [section 10].

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 18 that were incurred, or proceedings that were begun before  
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20 **NEW SECTION. Section 14.** Severability. If a part of  
 21 [this act] is invalid, all valid parts that are severable  
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 25 severable from the invalid applications.

SB 0321/03

- 1        NEW SECTION.   **Section 15.**   **Effective date.**   [This act]
- 2        is effective on passage and approval.

-End-