

SENATE BILL NO. 371

INTRODUCED BY HAGER

BY REQUEST OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL SCIENCES

IN THE SENATE

FEBRUARY 8, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 17, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 18, 1989	PRINTING REPORT.
FEBRUARY 20, 1989	SECOND READING, DO PASS AS AMENDED.
	ENGROSSING REPORT.
FEBRUARY 21, 1989	THIRD READING, PASSED. AYES, 48; NOES, 2.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 21, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 13, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 15, 1989	SECOND READING, CONCURRED IN.
MARCH 16, 1989	THIRD READING, CONCURRED IN. AYES, 95; NOES, 1.
	RETURNED TO SENATE.

IN THE SENATE

MARCH 17, 1989

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Amended* BILL NO. 371
2 INTRODUCED BY Jager

3 BY REQUEST OF THE DEPARTMENT OF HEALTH AND
4 ENVIRONMENTAL SCIENCES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
7 MONTANA HAZARDOUS WASTE ACT; PROVIDING FOR OFF-SITE
8 CORRECTIVE ACTION; AUGMENTING INVESTIGATIVE AND ENFORCEMENT
9 AUTHORITY; INCREASING CRIMINAL PENALTIES; CONFORMING THE ACT
10 TO CERTAIN OF THE 1984 AMENDMENTS TO THE FEDERAL RESOURCE
11 CONSERVATION AND RECOVERY ACT; AMENDING SECTIONS 75-10-402,
12 75-10-404, 75-10-406, 75-10-411, 75-10-413, 75-10-415,
13 75-10-417, AND 75-10-418, MCA; AND PROVIDING AN IMMEDIATE
14 EFFECTIVE DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

18 "75-10-402. Findings and purpose. (1) The legislature
19 finds that the safe and proper management of hazardous
20 wastes, the permitting of hazardous waste facilities, and
21 the siting of such facilities are matters for statewide
22 regulation and are environmental issues that should properly
23 be addressed and controlled by the state rather than by the
24 federal government.

25 (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 **Section 2.** Section 75-10-404, MCA, is amended to read:

13 "75-10-404. Powers of department. (1) The department
14 may:

15 (a) administer and enforce the provisions of this
16 part, rules implementing this part, and orders and permits
17 issued pursuant to this part;

18 (b) conduct and publish studies on hazardous wastes
19 and hazardous waste management;

20 (c) initiate, conduct, and support research,
21 demonstration projects, and investigation, as its resources
22 may allow, and coordinate state agency research programs
23 pertaining to hazardous waste management;

24 (d) accept and administer grants from the federal
25 government and from other sources, public and private; and

(e) abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling or disposal of any hazardous waste or regulated substance.

(2) The department shall integrate all provisions of this part with other laws administered by the department to avoid unnecessary duplication. Furthermore, the department shall coordinate its activities under this part with the program administered by the department of agriculture under the Montana Pesticides Act, the programs administered by the department of state lands related to mining and mine reclamation, the program administered by the department of public service regulation related to hazardous material transportation, and provisions of the Montana Major Facility Siting Act administered by the department of natural resources and conservation. Such The integration and coordination shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part and the other laws referred to in this section."

Section 3. Section 75-10-406, MCA, is amended to read:

"75-10-406. **Permits.** (1) ~~No~~ A person may not construct or operate a hazardous waste management facility without first obtaining a permit from the department for such the facility, except that the department may, by rule, prescribe

conditions under which specified hazardous wastes or specified quantities of hazardous waste may be disposed of at solid waste disposal sites licensed by the department pursuant to Title 75, chapter 10, part 2.

(2) Any person who wishes to construct or operate a hazardous waste management facility shall apply to the department for a permit on forms provided by the department. An application must contain, at a minimum, the name and business address of the applicant, the location of the proposed facility, a plan of operation and maintenance, and a description of pertinent site characteristics.

(3) A permit may be issued for a period specified by the department and ~~shall be~~ is subject to renewal by the department upon a showing that the facility has been operated in accordance with the terms of the permit and the rules applicable to ~~such the~~ the facility and in compliance with the provisions of this part and any applicable order of the board or department.

(4) Any permit issued is subject to revocation by the department for failure of the permittee to comply with the terms and conditions of the permit, the department rules, an order of the board or the department, or the provisions of this part. Any person who is denied a permit by the department or who has ~~such a~~ a permit revoked or modified shall be afforded an opportunity for a hearing before the

1 board upon written application made within 30 days after
2 service of notice of such denial, revocation, or
3 modification by mail. Service by mail is complete upon
4 mailing.

5 (5) Notwithstanding any other provisions of this part,
6 the department may, in the event of an imminent and
7 substantial danger to public health or the environment,
8 issue a temporary emergency permit to any person for
9 treatment, storage, or disposal of hazardous waste or to any
10 facility to handle hazardous waste not covered by the
11 existing facility permit. ~~Such-emergency~~ Emergency permits
12 may be oral or written, may not exceed 90 days in duration,
13 and may be terminated by the department at any time prior to
14 90 days.

15 (6) The department may, as it considers appropriate,
16 grant permits by rule to classes or categories of hazardous
17 waste management facilities where the facility owner or
18 operator is already licensed or permitted by the department
19 pursuant to other state environmental statutes or where an
20 interim period exists until final administrative disposition
21 of a permit application is made.

22 (7) In permits issued under this section, the
23 department shall require corrective action for all releases
24 of hazardous waste or constituents at a treatment, storage,
25 or disposal facility, including corrective action for

1 releases that extend beyond the facility boundaries if
2 necessary to protect public health or the environment. A
3 permit must contain a schedule of compliance for corrective
4 action and requirements for assurance of financial
5 responsibility for completion of the corrective action.

6 (8) Each permit issued by the department to a person
7 owning or operating a facility must contain the terms and
8 conditions the department considers necessary to protect
9 human health and the environment."

10 **Section 4.** Section 75-10-411, MCA, is amended to read:

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

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

24 (3) An order issued under subsection (2) must require
25 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 the owner or operator or other responsible party is not 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 5. Section 75-10-413, MCA, is amended to read:

"75-10-413. **Administrative enforcement.** (1) When the department believes that a violation of this part, a rule adopted under this part, or a permit provision has occurred, it may serve written notice of the violation by certified mail on the alleged violator or his agent. The notice must specify the provision of this part, the rule, or the permit provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either

affirm or modify the department's order previously issued. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds no violation has occurred, it shall rescind the department's order.

(3) Instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator and any other person having information regarding the alleged violation or its resulting, actual, or potential impacts on public health and welfare or the environment to appear before the board, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-10-414, 75-10-417, or 75-10-418.

(4) (a) The alleged violator and any other person having relevant information may be required to appear before the department, by subpoena or subpoena duces tecum, to provide information regarding an alleged or potential violation or its actual or potential impact on public health or the environment.

(b) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any

witness to testify as to any material matter with regard to which he may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.

(4)(5) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means."

Section 6. 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 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 (including any past or present generator, past or present transporter, and past or present owner or operator of a treatment, storage, or disposal

facility) who has contributed to or who is contributing to such handling, storage, treatment, transportation, or disposal from engaging in such activities or order the person to take other action as may be necessary, or both. The department may also or take such-other appropriate action as may be necessary under this section, including issuing orders necessary or appropriate to protect public health and the environment."

Section 7. Section 75-10-417, MCA, is amended to read:

"75-10-417. Civil penalties. (1) Any person who violates any provision of this part, a rule adopted under this part, an order of the department or the board, or a permit is subject to a civil penalty not to exceed \$10,000 per violation. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or permits by injunction or other appropriate remedy; or

(b) action under 75-10-418.

(4) Money collected under this section shall be deposited in the state general fund."

Section 8. Section 75-10-418, MCA, is amended to read:

"75-10-418. Criminal penalties. (1) Any A person who is guilty of an offense under this section if he knowingly:

(a) transports any hazardous waste to an unpermitted facility; who

(b) treats, stores, or disposes of hazardous waste subject to regulation under this part or the rules adopted under this part without a permit or contrary to a permit condition;

(c) omits material information or who makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed or maintained, as required by the provisions of this part or rules made under this part or used for compliance with provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste; is subject to a fine not to exceed \$10,000 for each violation or imprisonment not to exceed 6 months, or both. A person convicted for a violation of this section after a first conviction under this section is subject to a fine not to exceed \$20,000 for each violation or imprisonment not to exceed 1 year, or both

(d) generates, stores, treats, transports, disposes of, or otherwise handles any hazardous waste regulated under this part or rules adopted under this part and knowingly fails to take corrective action or destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed in compliance with the provisions of this part, an order issued under this part, or rules adopted under this part; or

(e) transports or causes to be transported without a manifest any hazardous waste required to be accompanied by a manifest.

(2) A person who is guilty of an offense under subsection (1) is subject to a fine of not less than \$5,000 nor more than \$25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation constitutes a separate violation.

(3) A person who knowingly violates any requirement of this part or any rule, permit condition, or order issued pursuant to this part (except those violations specified in subsection (1)) regarding any hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to \$5,000 per violation or subject to imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate violation.

1 (4) Upon a second conviction for a violation of this
 2 section, the minimum and maximum penalties specified in this
 3 section must be doubled.

4 ~~(2)~~(5) Action under this section does not bar
 5 enforcement of this part, rules made under this part, orders
 6 of the department or the board, or permits by injunction or
 7 other appropriate remedy.

8 ~~(3)~~(6) Money collected under this section, except
 9 money collected in a justice's court, ~~shall~~ must be
 10 deposited in the state general fund."

11 NEW SECTION. Section 9. Unlawful disposal. It is
 12 unlawful to dispose of hazardous waste, as defined in this
 13 part or by rule, without a permit or, if no permit is
 14 required under this part or rules adopted under this part,
 15 by any other means not authorized by law.

16 NEW SECTION. Section 10. Extension of authority. Any
 17 existing authority to make rules on the subject of the
 18 provisions of [this act] is extended to the provisions of
 19 [this act].

20 NEW SECTION. Section 11. Codification instruction.
 21 [Section 9] is intended to be codified as an integral part
 22 of Title 75, chapter 10, part 4, and the provisions of Title
 23 75, chapter 10, part 4, apply to [section 9].

24 NEW SECTION. Section 12. Saving clause. [This act]
 25 does not affect rights and duties that matured, penalties

1 that were incurred, or proceedings that were begun before
 2 [the effective date of this act].

3 NEW SECTION. Section 13. Severability. If a part of
 4 [this act] is invalid, all valid parts that are severable
 5 from the invalid part remain in effect. If a part of [this
 6 act] is invalid in one or more of its applications, the part
 7 remains in effect in all valid applications that are
 8 severable from the invalid applications.

9 NEW SECTION. Section 14. Effective date. [This act]
 10 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 SB371, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act entitled, "An act to generally revise the Montana Hazardouse Waste Act; providing for off-site corrective action; augmenting investigative and enforcement authority; increasing criminal penalties; conforming the act to certain of the 1984 amendments to the Federal Resource Conservation and Recovery Act; amending Sections 75-10-402, 75-10-404, 75-10-406, 75-10-411, 75-10-413, 75-10-415, 75-10-417, and 75-10-418, MCA; and providing an immediate effective date."

ASSUMPTIONS:

No fiscal impact anticipated.

FISCAL IMPACT:

There is no fiscal impact anticipated.

Ray Shackleford

DATE

2/11/89

RAY/SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

Tom Hager

DATE

2-13-89

TOM HAGER, PRIMARY SPONSOR

Fiscal Note for SB371, as introduced

SB 371

APPROVED BY COMM. ON
NATURAL RESOURCES

SENATE BILL NO. 371

INTRODUCED BY HAGER

BY REQUEST OF THE DEPARTMENT OF HEALTH AND

ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE MONTANA HAZARDOUS WASTE ACT; PROVIDING FOR OFF-SITE CORRECTIVE ACTION; AUGMENTING INVESTIGATIVE AND ENFORCEMENT AUTHORITY; INCREASING CRIMINAL PENALTIES; CONFORMING THE ACT TO CERTAIN OF THE 1984 AMENDMENTS TO THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT; AMENDING SECTIONS 75-10-402, 75-10-404, 75-10-406, 75-10-411, 75-10-413, 75-10-415, 75-10-417, AND 75-10-418, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. 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 matters for statewide regulation and 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

policy of this state to protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous wastes; to establish a program of regulation over the generation, storage, transportation, treatment, and disposal of hazardous wastes; to assure the safe and adequate management of hazardous wastes within this state; and to authorize the department to adopt, administer, 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."

Section 2. Section 75-10-404, MCA, is amended to read:

"75-10-404. Powers of department. (1) The department may:

(a) administer and enforce the provisions of this part, rules implementing this part, and orders and permits issued pursuant to this part;

(b) conduct and publish studies on hazardous wastes and hazardous waste management;

(c) initiate, conduct, and support research, demonstration projects, and investigation, as its resources may allow, and coordinate state agency research programs pertaining to hazardous waste management;

(d) accept and administer grants from the federal government and from other sources, public and private; and

(e) abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling or disposal of any hazardous waste or regulated substance.

(2) The department shall integrate all provisions of this part with other laws administered by the department to avoid unnecessary duplication. Furthermore, the department shall coordinate its activities under this part with the program administered by the department of agriculture under the Montana Pesticides Act, the programs administered by the department of state lands related to mining and mine reclamation, the program administered by the department of public service regulation related to hazardous material transportation, and provisions of the Montana Major Facility Siting Act administered by the department of natural resources and conservation. Such The integration and coordination shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part and the other laws referred to in this section."

Section 3. Section 75-10-406, MCA, is amended to read:

"75-10-406. Permits. (1) No A person may not construct or operate a hazardous waste management facility without first obtaining a permit from the department for such the facility, except that the department may, by rule, prescribe

conditions under which specified hazardous wastes or specified quantities of hazardous waste may be disposed of at solid waste disposal sites licensed by the department pursuant to Title 75, chapter 10, part 2.

(2) Any person who wishes to construct or operate a hazardous waste management facility shall apply to the department for a permit on forms provided by the department. An application must contain, at a minimum, the name and business address of the applicant, the location of the proposed facility, a plan of operation and maintenance, and a description of pertinent site characteristics.

(3) A permit may be issued for a period specified by the department and ~~shall be~~ is subject to renewal by the department upon a showing that the facility has been operated in accordance with the terms of the permit and the rules applicable to such the facility and in compliance with the provisions of this part and any applicable order of the board or department.

(4) Any permit issued is subject to revocation by the department for failure of the permittee to comply with the terms and conditions of the permit, the department rules, an order of the board or the department, or the provisions of this part. Any person who is denied a permit by the department or who has such a permit revoked or modified shall be afforded an opportunity for a hearing before the

1 board upon written application made within 30 days after
2 service of notice of such denial, revocation, or
3 modification by mail. Service by mail is complete upon
4 mailing.

5 (5) Notwithstanding any other provisions of this part,
6 the department may, in the event of an imminent and
7 substantial danger to public health or the environment,
8 issue a temporary emergency permit to any person for
9 treatment, storage, or disposal of hazardous waste or to any
10 facility to handle hazardous waste not covered by the
11 existing facility permit. Such-emergency Emergency permits
12 may be oral or written, may not exceed 90 days in duration,
13 and may be terminated by the department at any time prior to
14 90 days.

15 (6) The department may, as it considers appropriate,
16 grant permits by rule to classes or categories of hazardous
17 waste management facilities where the facility owner or
18 operator is already licensed or permitted by the department
19 pursuant to other state environmental statutes or where an
20 interim period exists until final administrative disposition
21 of a permit application is made.

22 (7) In permits issued under this section, the
23 department shall require corrective action for all releases
24 of hazardous waste or constituents at a treatment, storage,
25 or disposal facility, including corrective action for

1 releases that extend beyond the facility boundaries if
2 necessary to protect public health or the environment. A
3 permit must contain a schedule of compliance for corrective
4 action and requirements for assurance of financial
5 responsibility for completion of the corrective action.

6 (8) Each permit issued by the department to a person
7 owning or operating a facility must contain the terms and
8 conditions the department considers necessary to protect
9 human health and the environment."

10 **Section 4.** Section 75-10-411, MCA, is amended to read:

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

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

24 (3) An order issued under subsection (2) must require
25 that the person to whom the order is issued submit to the

1 department within 30 days a proposal for carrying out the
2 required monitoring, testing, analysis, and reporting.

3 (4) If the department determines that no the owner or
4 operator or other responsible party is not able to conduct
5 monitoring, testing, and analysis in a satisfactory manner,
6 the department may conduct such activities.

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

9 **Section 5.** Section 75-10-413, MCA, is amended to read:

10 "75-10-413. Administrative enforcement. (1) When the
11 department believes that a violation of this part, a rule
12 adopted under this part, or a permit provision has occurred,
13 it may serve written notice of the violation by certified
14 mail on the alleged violator or his agent. The notice must
15 specify the provision of this part, the rule, or the permit
16 provision alleged to be violated and the facts alleged to
17 constitute a violation and may include an order to take
18 necessary corrective action within a reasonable period of
19 time stated in the order. The order becomes final unless,
20 within 30 days after the notice is served, the person named
21 requests in writing a hearing before the board. On receipt
22 of the request, the board shall schedule a hearing. Service
23 by mail is complete on the date of mailing.

24 (2) If, after a hearing held under subsection (1), the
25 board finds that a violation has occurred, it shall either

1 affirm or modify the department's order previously issued.
2 An order issued by the department or by the board may
3 prescribe the date by which the violation must cease and may
4 prescribe time limits for particular action. If, after
5 hearing, the board finds no violation has occurred, it shall
6 rescind the department's order.

7 (3) Instead of issuing an order pursuant to subsection
8 (1), the department may either:

9 (a) require the alleged violator and-any-other-person
10 having-information-regarding-the-alleged--violation--or--its
11 resulting,--actual,--or-potential--impacts--on--public-health-and
12 welfare--or--the--environment to appear before the board OR
13 DEPARTMENT, by subpoena or subpoena duces tecum, for a
14 hearing at a time and place specified in the notice and TO
15 answer the charges complained of OR TO PROVIDE INFORMATION
16 REGARDING THE ALLEGED VIOLATION OR ITS ACTUAL OR POTENTIAL
17 IMPACT ON PUBLIC HEALTH AND WELFARE OR THE ENVIRONMENT; or

18 (b) initiate action under 75-10-414, 75-10-417, or
19 75-10-418.

20 (4) (a)-The-alleged--violation--and--any--other--person
21 having-relevant-information-may-be-required-to-appear-before
22 the--department,--by--subpoena--or--subpoena-duces-tecum,--to
23 provide--information--regarding--an--alleged--or--potential
24 violation-or-its-actual-or-potential-impact-on-public-health
25 or-the-environment.

1 (b) In the case of disobedience of any subpoena issued
 2 and served under this section or of the refusal of any
 3 witness to testify as to any material matter with regard to
 4 which he may be interrogated in a hearing or investigation
 5 before the board or the department, the board or department
 6 may apply to any district court in the state for an order to
 7 compel compliance with the subpoena or the giving of
 8 testimony. The court shall hear the matter as expeditiously
 9 as possible. If the disobedience or refusal is found to be
 10 unjustified, the court shall enter an order requiring
 11 compliance. Disobedience of the order is punishable by
 12 contempt of court in the same manner and by the same
 13 procedures as is provided for like conduct committed in the
 14 course of civil actions in district court.

15 (4)(5) This section does not prevent the board or
 16 department from making efforts to obtain voluntary
 17 compliance through warning, conference, or any other
 18 appropriate means."

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

20 **"75-10-415. Imminent hazard.** Upon receipt of evidence
 21 that the handling, storage, treatment, transportation, or
 22 disposal of any hazardous waste may present an imminent and
 23 substantial danger to public health or the environment, the
 24 department may commence legal proceedings to immediately
 25 restrain or enjoin any person (including any past or present

1 generator, past or present transporter, and past or present
 2 owner or operator of a treatment, storage, or disposal
 3 facility) who has contributed to or who is contributing to
 4 such handling, storage, treatment, transportation, or
 5 disposal from engaging in such activities or order the
 6 person to take other action as may be necessary, or both.
 7 The department may also or take such other appropriate
 8 action as may be necessary under this section, including
 9 issuing orders necessary or appropriate to protect public
 10 health and the environment."

11 **Section 7.** Section 75-10-417, MCA, is amended to read:

12 **"75-10-417. Civil penalties.** (1) Any person who
 13 violates any provision of this part, a rule adopted under
 14 this part, an order of the department or the board, or a
 15 permit is subject to a civil penalty not to exceed \$10,000
 16 per violation. Each day of violation constitutes a separate
 17 violation.

18 (2) The department may institute and maintain in the
 19 name of the state any enforcement proceedings under this
 20 section. Upon request of the department, the attorney
 21 general or the county attorney of the county of violation
 22 shall petition the district court to impose, assess, and
 23 recover the civil penalty.

24 (3) Action under this section does not bar:

25 (a) enforcement of this part, rules adopted under this

part, orders of the department or the board, or permits by injunction or other appropriate remedy; or

(b) action under 75-10-418.

(4) Money collected under this section shall be deposited in the state general fund."

Section 8. Section 75-10-418, MCA, is amended to read:

"75-10-418. Criminal penalties. (1) Any A person who is guilty of an offense under this section if he knowingly:

(a) transports any hazardous waste to an unpermitted facility; who

(b) treats, stores, or disposes of hazardous waste subject to regulation under this part or the rules adopted under this part without a permit or contrary to a MATERIAL permit condition;

(c) omits material information or who makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed or, maintained, as-required-by-the-provisions-of-this-part or-rules-made-under-this-part or used for compliance with provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste; is-subject-to a--fine--not--to--exceed--\$10,000--for--each--violation--or imprisonment--not--to--exceed--6--months,--or--both--A-person convicted-for-a-violation-of--this--section--after--a--first conviction--under--this--section-is-subject-to-a-fine-not-to

~~exceed--\$20,000-for-each-violation--or--imprisonment--not--to exceed-1-year,--or--both~~

(d) generates, stores, treats, transports, disposes of, or otherwise handles any hazardous waste regulated under this part or rules adopted under this part and knowingly fails to take corrective action or destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed in compliance with the provisions of this part, an order issued under this part, or rules adopted under this part; or

(e) transports or causes to be transported without a manifest any hazardous waste required to be accompanied by a manifest.

(2) A person who is guilty of an offense under subsection (1) is subject to a fine of not-less-than-\$5,000 nor NO more than \$25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation constitutes a separate violation.

(3) A person who knowingly violates any requirement of this part or any rule, MATERIAL permit condition, or order issued pursuant to this part (except those violations specified in subsection (1)) regarding any hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to \$5,000 per violation or subject

1 to imprisonment not to exceed 6 months, or both. Each day
 2 of violation constitutes a separate violation.

3 (4) Upon a second conviction for a violation of this
 4 section, the minimum-and maximum penalties specified in this
 5 section must be doubled.

6 (2)(5) Action under this section does not bar
 7 enforcement of this part, rules made under this part, orders
 8 of the department or the board, or permits by injunction or
 9 other appropriate remedy.

10 (3)(6) Money collected under this section, except
 11 money collected in a justice's court, ~~shall~~ must be
 12 deposited in the state general fund."

13 NEW SECTION. Section 9. Unlawful disposal. It is
 14 unlawful to dispose of hazardous waste, as defined in this
 15 part or by rule, without a permit or, if no permit is
 16 required under this part or rules adopted under this part,
 17 by any other means not authorized by law.

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

22 NEW SECTION. Section 11. Codification instruction.
 23 [Section 9] is intended to be codified as an integral part
 24 of Title 75, chapter 10, part 4, and the provisions of Title
 25 75, chapter 10, part 4, apply to [section 9].

1 NEW SECTION. Section 12. Saving clause. [This act]
 2 does not affect rights and duties that matured, penalties
 3 that were incurred, or proceedings that were begun before
 4 [the effective date of this act].

5 NEW SECTION. Section 13. Severability. If a part of
 6 [this act] is invalid, all valid parts that are severable
 7 from the invalid part remain in effect. If a part of [this
 8 act] is invalid in one or more of its applications, the part
 9 remains in effect in all valid applications that are
 10 severable from the invalid applications.

11 NEW SECTION. Section 14. Effective date. [This act]
 12 is effective on passage and approval.

-End-

SENATE BILL NO. 371

INTRODUCED BY HAGER

BY REQUEST OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
MONTANA HAZARDOUS WASTE ACT; PROVIDING FOR OFF-SITE
CORRECTIVE ACTION; AUGMENTING INVESTIGATIVE AND ENFORCEMENT
AUTHORITY; INCREASING CRIMINAL PENALTIES; CONFORMING THE ACT
TO CERTAIN OF THE 1984 AMENDMENTS TO THE FEDERAL RESOURCE
CONSERVATION AND RECOVERY ACT; AMENDING SECTIONS 75-10-402,
75-10-404, 75-10-406, 75-10-411, 75-10-413, 75-10-415,
75-10-417, AND 75-10-418, MCA; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE."

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

Section 1. 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 matters for statewide
regulation and 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

policy of this state to protect the public health and
safety, the health of living organisms, and the environment
from the effects of the improper, inadequate, or unsound
management of hazardous wastes; to establish a program of
regulation over the generation, storage, transportation,
treatment, and disposal of hazardous wastes; to assure the
safe and adequate management of hazardous wastes within this
state; and to authorize the department to adopt, administer,
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."

Section 2. Section 75-10-404, MCA, is amended to read:

"75-10-404. Powers of department. (1) The department
may:

(a) administer and enforce the provisions of this
part, rules implementing this part, and orders and permits
issued pursuant to this part;

(b) conduct and publish studies on hazardous wastes
and hazardous waste management;

(c) initiate, conduct, and support research,
demonstration projects, and investigation, as its resources
may allow, and coordinate state agency research programs
pertaining to hazardous waste management;

(d) accept and administer grants from the federal
government and from other sources, public and private; and

1 (e) abate public nuisances that affect the public
 2 health and welfare or the environment and that arise from or
 3 in connection with the past or present handling or disposal
 4 of any hazardous waste or regulated substance.

5 (2) The department shall integrate all provisions of
 6 this part with other laws administered by the department to
 7 avoid unnecessary duplication. Furthermore, the department
 8 shall coordinate its activities under this part with the
 9 program administered by the department of agriculture under
 10 the Montana Pesticides Act, the programs administered by the
 11 department of state lands related to mining and mine
 12 reclamation, the program administered by the department of
 13 public service regulation related to hazardous material
 14 transportation, and provisions of the Montana Major Facility
 15 Siting Act administered by the department of natural
 16 resources and conservation. ~~Such~~ The integration and
 17 coordination shall be effected only to the extent that it
 18 can be done in a manner consistent with the goals and
 19 policies of this part and the other laws referred to in this
 20 section."

21 **Section 3.** Section 75-10-406, MCA, is amended to read:

22 ***75-10-406. Permits.** (1) ~~No~~ A person may ~~not~~ construct
 23 or operate a hazardous waste management facility without
 24 first obtaining a permit from the department for ~~such~~ the
 25 facility, except that the department may, by rule, prescribe

1 conditions under which specified hazardous wastes or
 2 specified quantities of hazardous waste may be disposed of
 3 at solid waste disposal sites licensed by the department
 4 pursuant to Title 75, chapter 10, part 2.

5 (2) Any person who wishes to construct or operate a
 6 hazardous waste management facility shall apply to the
 7 department for a permit on forms provided by the department.
 8 An application must contain, at a minimum, the name and
 9 business address of the applicant, the location of the
 10 proposed facility, a plan of operation and maintenance, and
 11 a description of pertinent site characteristics.

12 (3) A permit may be issued for a period specified by
 13 the department and ~~shall be~~ is subject to renewal by the
 14 department upon a showing that the facility has been
 15 operated in accordance with the terms of the permit and the
 16 rules applicable to ~~such~~ the facility and in compliance with
 17 the provisions of this part and any applicable order of the
 18 board or department.

19 (4) Any permit issued is subject to revocation by the
 20 department for failure of the permittee to comply with the
 21 terms and conditions of the permit, the department rules, an
 22 order of the board or the department, or the provisions of
 23 this part. Any person who is denied a permit by the
 24 department or who has ~~such~~ a permit revoked or modified
 25 shall be afforded an opportunity for a hearing before the

1 board upon written application made within 30 days after
2 service of notice of such denial, revocation, or
3 modification by mail. Service by mail is complete upon
4 mailing.

5 (5) Notwithstanding any other provisions of this part,
6 the department may, in the event of an imminent and
7 substantial danger to public health or the environment,
8 issue a temporary emergency permit to any person for
9 treatment, storage, or disposal of hazardous waste or to any
10 facility to handle hazardous waste not covered by the
11 existing facility permit. ~~Such-emergency~~ Emergency permits
12 may be oral or written, may not exceed 90 days in duration,
13 and may be terminated by the department at any time prior to
14 90 days.

15 (6) The department may, as it considers appropriate,
16 grant permits by rule to classes or categories of hazardous
17 waste management facilities where the facility owner or
18 operator is already licensed or permitted by the department
19 pursuant to other state environmental statutes or where an
20 interim period exists until final administrative disposition
21 of a permit application is made.

22 (7) In permits issued under this section, the
23 department shall require corrective action for all releases
24 of hazardous waste or constituents at a treatment, storage,
25 or disposal facility, including corrective action for

1 releases that extend beyond the facility boundaries if
2 necessary to protect public health or the environment. A
3 permit must contain a schedule of compliance for corrective
4 action and requirements for assurance of financial
5 responsibility for completion of the corrective action.

6 (8) Each permit issued by the department to a person
7 owning or operating a facility must contain the terms and
8 conditions the department considers necessary to protect
9 human health and the environment."

10 **Section 4.** Section 75-10-411, MCA, is amended to read:

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

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

24 (3) IN THE CASE OF ANY FACILITY OR SITE NOT IN
25 OPERATION AT THE TIME A DETERMINATION IS MADE UNDER

1 SUBSECTION (2) WITH RESPECT TO THE FACILITY OR SITE, IF THE
 2 DEPARTMENT FINDS THAT THE OWNER OF SUCH FACILITY OR SITE
 3 COULD NOT REASONABLY BE EXPECTED TO HAVE ACTUAL KNOWLEDGE OF
 4 THE PRESENCE OF HAZARDOUS WASTE AT SUCH FACILITY OR SITE AND
 5 OF ITS POTENTIAL FOR RELEASE, IT MAY ISSUE AN ORDER
 6 REQUIRING THE MOST RECENT PREVIOUS OWNER OR OPERATOR OF THE
 7 FACILITY OR SITE WHO COULD REASONABLY BE EXPECTED TO HAVE
 8 SUCH ACTUAL KNOWLEDGE TO CARRY OUT THE ACTIONS REFERRED TO
 9 IN SUBSECTION (2).

10 {3}(4) An order issued under subsection (2) OR (3)
 11 must require that the person to whom the order is issued
 12 submit to the department within 30 days a proposal for
 13 carrying out the required monitoring, testing, analysis, and
 14 reporting.

15 {4}(5) If the department determines that no the owner
 16 or operator ~~or--other--responsible--party~~ REFERRED TO IN
 17 SUBSECTION (2) OR (3) is not able to conduct monitoring,
 18 testing, and analysis in a satisfactory manner, the
 19 department may conduct such activities.

20 {5}(6) For the purposes of carrying out this section,
 21 the department may exercise the powers set forth in
 22 75-10-410."

23 **Section 5.** Section 75-10-413, MCA, is amended to read:

24 "75-10-413. Administrative enforcement. (1) When the
 25 department believes that a violation of this part, a rule

1 adopted under this part, or a permit provision has occurred,
 2 it may serve written notice of the violation by certified
 3 mail on the alleged violator or his agent. The notice must
 4 specify the provision of this part, the rule, or the permit
 5 provision alleged to be violated and the facts alleged to
 6 constitute a violation and may include an order to take
 7 necessary corrective action within a reasonable period of
 8 time stated in the order. The order becomes final unless,
 9 within 30 days after the notice is served, the person named
 10 requests in writing a hearing before the board. On receipt
 11 of the request, the board shall schedule a hearing. Service
 12 by mail is complete on the date of mailing.

13 (2) If, after a hearing held under subsection (1), the
 14 board finds that a violation has occurred, it shall either
 15 affirm or modify the department's order previously issued.
 16 An order issued by the department or by the board may
 17 prescribe the date by which the violation must cease and may
 18 prescribe time limits for particular action. If, after
 19 hearing, the board finds no violation has occurred, it shall
 20 rescind the department's order.

21 (3) Instead of issuing an order pursuant to subsection
 22 (1), the department may either:

23 (a) require the alleged violator ~~and any other person~~
 24 ~~having information regarding the alleged violation or its~~
 25 ~~resulting, actual, or potential impacts on public health and~~

welfare--or--the--environment to appear before the board OR DEPARTMENT, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice and TO answer the charges complained of OR TO PROVIDE INFORMATION REGARDING THE ALLEGED VIOLATION OR ITS ACTUAL OR POTENTIAL IMPACT ON PUBLIC HEALTH AND WELFARE OR THE ENVIRONMENT; or

(b) initiate action under 75-10-414, 75-10-417, or 75-10-418.

~~(4) (a) The alleged violator and any other person having relevant information may be required to appear before the department, by subpoena or subpoena duces tecum, to provide information regarding an alleged or potential violation or its actual or potential impact on public health or the environment.~~

~~(b) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by~~

contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.

~~(4)(5)~~ This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means."

Section 6. 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 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 (including any past or present generator, past or present transporter, and past or present owner or operator of a treatment, storage, or disposal facility) who has contributed to or who is contributing to such handling, storage, treatment, transportation, or disposal from engaging in such activities or order the person to take other action as may be necessary, or both. The department may also or take such--other appropriate action as may be necessary under this section, including issuing orders necessary or appropriate to protect public health and the environment."

Section 7. Section 75-10-417, MCA, is amended to read:

"75-10-417. Civil penalties. (1) Any person who violates any provision of this part, a rule adopted under this part, an order of the department or the board, or a permit is subject to a civil penalty not to exceed \$10,000 per violation. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or permits by injunction or other appropriate remedy; or

(b) action under 75-10-418.

(4) Money collected under this section shall be deposited in the state general fund."

Section 8. Section 75-10-418, MCA, is amended to read:

"75-10-418. Criminal penalties. (1) Any A person who is guilty of an offense under this section if he knowingly:

(a) transports any hazardous waste to an unpermitted facility; who

(b) treats, stores, or disposes of hazardous waste

subject to regulation under this part or the rules adopted under this part without a permit or contrary to a MATERIAL permit condition;

(c) omits material information or who makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed or, maintained, as required by the provisions of this part or rules made under this part or used for compliance with provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste; is subject to a fine not to exceed \$10,000 for each violation or imprisonment not to exceed 6 months, or both. A person convicted for a violation of this section after a first conviction under this section is subject to a fine not to exceed \$20,000 for each violation or imprisonment not to exceed 1 year, or both

(d) generates, stores, treats, transports, disposes of, or otherwise handles any hazardous waste regulated under this part or rules adopted under this part and knowingly fails to take corrective action or destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed in compliance with the provisions of this part, an order issued under this part, or rules adopted under this part; or

1 (e) transports or causes to be transported without a
 2 manifest any hazardous waste required to be accompanied by a
 3 manifest.

4 (2) A person who is guilty of an offense under
 5 subsection (1) is subject to a fine of ~~not less than \$5,000~~
 6 nor NO more than \$25,000 per violation or imprisonment for a
 7 period not to exceed 3 years, or both. Each day of violation
 8 constitutes a separate violation.

9 (3) A person who knowingly violates any requirement of
 10 this part or any rule, OR MATERIAL permit condition, or
 11 order issued pursuant to this part (except those violations
 12 specified in subsection (1)) regarding any hazardous waste
 13 that is subject to regulation is guilty of an offense and
 14 subject to a fine of up to \$5,000 per violation or subject
 15 to imprisonment not to exceed 6 months, or both. Each day
 16 of violation constitutes a separate violation.

17 (4) Upon a second conviction for a violation of this
 18 section, the minimum and maximum penalties specified in this
 19 section must be doubled.

20 (5) Action under this section does not bar
 21 enforcement of this part, rules made under this part, orders
 22 of the department or the board, or permits by injunction or
 23 other appropriate remedy.

24 (6) Money collected under this section, except
 25 money collected in a justice's court, shall must be

1 deposited in the state general fund."

2 NEW SECTION. Section 9. Unlawful disposal. It is
 3 unlawful to dispose of hazardous waste, as defined in this
 4 part or by rule, without a permit or, if no permit is
 5 required under this part or rules adopted under this part,
 6 by any other means not authorized by law.

7 NEW SECTION. Section 10. 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 11. Codification instruction.
 12 [Section 9] 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 9].

15 NEW SECTION. Section 12. 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 13. 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 14. Effective date. [This act]

SB 0371/03

1 is effective on passage and approval.

-End-

1 SENATE BILL NO. 371

2 INTRODUCED BY HAGER

3 BY REQUEST OF THE DEPARTMENT OF HEALTH AND
4 ENVIRONMENTAL SCIENCES5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
7 MONTANA HAZARDOUS WASTE ACT; PROVIDING FOR OFF-SITE
8 CORRECTIVE ACTION; AUGMENTING INVESTIGATIVE AND ENFORCEMENT
9 AUTHORITY; INCREASING CRIMINAL PENALTIES; CONFORMING THE ACT
10 TO CERTAIN OF THE 1984 AMENDMENTS TO THE FEDERAL RESOURCE
11 CONSERVATION AND RECOVERY ACT; AMENDING SECTIONS 75-10-402,
12 75-10-404, 75-10-406, 75-10-411, 75-10-413, 75-10-415,
13 75-10-417, AND 75-10-418, MCA; AND PROVIDING AN IMMEDIATE
14 EFFECTIVE DATE."15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

18 "75-10-402. Findings and purpose. (1) The legislature
19 finds that the safe and proper management of hazardous
20 wastes, the permitting of hazardous waste facilities, and
21 the siting of such facilities are matters for statewide
22 regulation and are environmental issues that should properly
23 be addressed and controlled by the state rather than by the
24 federal government.

25 (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 Section 2. Section 75-10-404, MCA, is amended to read:

13 "75-10-404. Powers of department. (1) The department
14 may:15 (a) administer and enforce the provisions of this
16 part, rules implementing this part, and orders and permits
17 issued pursuant to this part;18 (b) conduct and publish studies on hazardous wastes
19 and hazardous waste management;20 (c) initiate, conduct, and support research,
21 demonstration projects, and investigation, as its resources
22 may allow, and coordinate state agency research programs
23 pertaining to hazardous waste management;24 (d) accept and administer grants from the federal
25 government and from other sources, public and private; and

(e) abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling or disposal of any hazardous waste or regulated substance.

(2) The department shall integrate all provisions of this part with other laws administered by the department to avoid unnecessary duplication. Furthermore, the department shall coordinate its activities under this part with the program administered by the department of agriculture under the Montana Pesticides Act, the programs administered by the department of state lands related to mining and mine reclamation, the program administered by the department of public service regulation related to hazardous material transportation, and provisions of the Montana Major Facility Siting Act administered by the department of natural resources and conservation. ~~Such~~ The integration and coordination shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part and the other laws referred to in this section."

Section 3. Section 75-10-406, MCA, is amended to read:

"75-10-406. Permits. (1) ~~No~~ A person may ~~not~~ construct or operate a hazardous waste management facility without first obtaining a permit from the department for ~~such~~ the facility, except that the department may, by rule, prescribe

conditions under which specified hazardous wastes or specified quantities of hazardous waste may be disposed of at solid waste disposal sites licensed by the department pursuant to Title 75, chapter 10, part 2.

(2) Any person who wishes to construct or operate a hazardous waste management facility shall apply to the department for a permit on forms provided by the department. An application must contain, at a minimum, the name and business address of the applicant, the location of the proposed facility, a plan of operation and maintenance, and a description of pertinent site characteristics.

(3) A permit may be issued for a period specified by the department and ~~shall be~~ is subject to renewal by the department upon a showing that the facility has been operated in accordance with the terms of the permit and the rules applicable to ~~such~~ the facility and in compliance with the provisions of this part and any applicable order of the board or department.

(4) Any permit issued is subject to revocation by the department for failure of the permittee to comply with the terms and conditions of the permit, the department rules, an order of the board or the department, or the provisions of this part. Any person who is denied a permit by the department or who has ~~such~~ a permit revoked or modified shall be afforded an opportunity for a hearing before the

1 board upon written application made within 30 days after
2 service of notice of such denial, revocation, or
3 modification by mail. Service by mail is complete upon
4 mailing.

5 (5) Notwithstanding any other provisions of this part,
6 the department may, in the event of an imminent and
7 substantial danger to public health or the environment,
8 issue a temporary emergency permit to any person for
9 treatment, storage, or disposal of hazardous waste or to any
10 facility to handle hazardous waste not covered by the
11 existing facility permit. Such-emergency Emergency permits
12 may be oral or written, may not exceed 90 days in duration,
13 and may be terminated by the department at any time prior to
14 90 days.

15 (6) The department may, as it considers appropriate,
16 grant permits by rule to classes or categories of hazardous
17 waste management facilities where the facility owner or
18 operator is already licensed or permitted by the department
19 pursuant to other state environmental statutes or where an
20 interim period exists until final administrative disposition
21 of a permit application is made.

22 (7) In permits issued under this section, the
23 department shall require corrective action for all releases
24 of hazardous waste or constituents at a treatment, storage,
25 or disposal facility, including corrective action for

1 releases that extend beyond the facility boundaries if
2 necessary to protect public health or the environment. A
3 permit must contain a schedule of compliance for corrective
4 action and requirements for assurance of financial
5 responsibility for completion of the corrective action.

6 (8) Each permit issued by the department to a person
7 owning or operating a facility must contain the terms and
8 conditions the department considers necessary to protect
9 human health and the environment."

10 **Section 4.** Section 75-10-411, MCA, is amended to read:

11 ***75-10-411. Hazardous waste site inventory.** (1) The
12 department is authorized to conduct an inventory of sites
13 and locations in the state where hazardous wastes have been
14 stored or disposed of at any time.

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

24 (3) IN THE CASE OF ANY FACILITY OR SITE NOT IN
25 OPERATION AT THE TIME A DETERMINATION IS MADE UNDER

1 SUBSECTION (2) WITH RESPECT TO THE FACILITY OR SITE, IF THE
 2 DEPARTMENT FINDS THAT THE OWNER OF SUCH FACILITY OR SITE
 3 COULD NOT REASONABLY BE EXPECTED TO HAVE ACTUAL KNOWLEDGE OF
 4 THE PRESENCE OF HAZARDOUS WASTE AT SUCH FACILITY OR SITE AND
 5 OF ITS POTENTIAL FOR RELEASE, IT MAY ISSUE AN ORDER
 6 REQUIRING THE MOST RECENT PREVIOUS OWNER OR OPERATOR OF THE
 7 FACILITY OR SITE WHO COULD REASONABLY BE EXPECTED TO HAVE
 8 SUCH ACTUAL KNOWLEDGE TO CARRY OUT THE ACTIONS REFERRED TO
 9 IN SUBSECTION (2).

10 †3†(4) An order issued under subsection (2) OR (3)
 11 must require that the person to whom the order is issued
 12 submit to the department within 30 days a proposal for
 13 carrying out the required monitoring, testing, analysis, and
 14 reporting.

15 †4†(5) If the department determines that no the owner
 16 or operator ~~or--other--responsible--party~~ REFERRED TO IN
 17 SUBSECTION (2) OR (3) is not able to conduct monitoring,
 18 testing, and analysis in a satisfactory manner, the
 19 department may conduct such activities.

20 †5†(6) For the purposes of carrying out this section,
 21 the department may exercise the powers set forth in
 22 75-10-410."

23 **Section 5.** Section 75-10-413, MCA, is amended to read:

24 "75-10-413. Administrative enforcement. (1) When the
 25 department believes that a violation of this part, a rule

1 adopted under this part, or a permit provision has occurred,
 2 it may serve written notice of the violation by certified
 3 mail on the alleged violator or his agent. The notice must
 4 specify the provision of this part, the rule, or the permit
 5 provision alleged to be violated and the facts alleged to
 6 constitute a violation and may include an order to take
 7 necessary corrective action within a reasonable period of
 8 time stated in the order. The order becomes final unless,
 9 within 30 days after the notice is served, the person named
 10 requests in writing a hearing before the board. On receipt
 11 of the request, the board shall schedule a hearing. Service
 12 by mail is complete on the date of mailing.

13 (2) If, after a hearing held under subsection (1), the
 14 board finds that a violation has occurred, it shall either
 15 affirm or modify the department's order previously issued.
 16 An order issued by the department or by the board may
 17 prescribe the date by which the violation must cease and may
 18 prescribe time limits for particular action. If, after
 19 hearing, the board finds no violation has occurred, it shall
 20 rescind the department's order.

21 (3) Instead of issuing an order pursuant to subsection
 22 (1), the department may either:

23 (a) require the alleged violator ~~and any other person~~
 24 ~~having information regarding the alleged violation or its~~
 25 ~~resulting, actual, or potential impacts on public health and~~

welfare--or--the--environment to appear before the board OR DEPARTMENT, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice and TO answer the charges complained of OR TO PROVIDE INFORMATION REGARDING THE ALLEGED VIOLATION OR ITS ACTUAL OR POTENTIAL IMPACT ON PUBLIC HEALTH AND WELFARE OR THE ENVIRONMENT; or

(b) initiate action under 75-10-414, 75-10-417, or 75-10-418.

(4) ~~(a)-The-alleged--violator--and--any--other--person having-relevant-information-may-be-required-to-appear-before the--department,--by--subpoena--or--subpoena-duces-tecum--to provide--information--regarding--an--alleged--or---potential violation-or-its-actual-or-potential-impact-on-public-health or-the-environment.~~

(b) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by

contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.

{4}{5} This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means."

Section 6. 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 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 (including any past or present generator, past or present transporter, and past or present owner or operator of a treatment, storage, or disposal facility) who has contributed to or who is contributing to such handling, storage, treatment, transportation, or disposal from engaging in such activities or order the person to take other action as may be necessary, or both. The department may also ~~er~~ take such--other appropriate action as may be necessary under this section, including issuing orders necessary or appropriate to protect public health and the environment."

Section 7. Section 75-10-417, MCA, is amended to read:

"75-10-417. Civil penalties. (1) Any person who violates any provision of this part, a rule adopted under this part, an order of the department or the board, or a permit is subject to a civil penalty not to exceed \$10,000 per violation. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or permits by injunction or other appropriate remedy; or

(b) action under 75-10-418.

(4) Money collected under this section shall be deposited in the state general fund."

Section 8. Section 75-10-418, MCA, is amended to read:

"75-10-418. Criminal penalties. (1) Any A person who is guilty of an offense under this section if he knowingly:

(a) transports any hazardous waste to an unpermitted facility; who

(b) treats, stores, or disposes of hazardous waste

subject to regulation under this part or the rules adopted under this part without a permit or contrary to a MATERIAL permit condition;

(c) omits material information or who makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed or, maintained, as required by the provisions of this part or rules made under this part or used for compliance with provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste; is subject to a fine not to exceed \$10,000 for each violation or imprisonment not to exceed 6 months, or both. A person convicted for a violation of this section after a first conviction under this section is subject to a fine not to exceed \$20,000 for each violation or imprisonment not to exceed 1 year, or both

(d) generates, stores, treats, transports, disposes of, or otherwise handles any hazardous waste regulated under this part or rules adopted under this part and knowingly fails to take corrective action or destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed in compliance with the provisions of this part, an order issued under this part, or rules adopted under this part; or

(e) transports or causes to be transported without a manifest any hazardous waste required to be accompanied by a manifest.

(2) A person who is guilty of an offense under subsection (1) is subject to a fine of ~~not-less-than--\$5,000~~ not more than \$25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation constitutes a separate violation.

(3) A person who knowingly violates any requirement of this part or any rule ~~OR MATERIAL permit condition, or order issued pursuant to this part (except those violations specified in subsection (1)) regarding any hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to \$5,000 per violation or subject to imprisonment not to exceed 6 months, or both.~~ Each day of violation constitutes a separate violation.

(4) Upon a second conviction for a violation of this section, the ~~minimum and maximum penalties specified in this section must be doubled.~~

(5) Action under this section does not bar enforcement of this part, rules made under this part, orders of the department or the board, or permits by injunction or other appropriate remedy.

(6) Money collected under this section, except money collected in a justice's court, ~~shall~~ must be

deposited in the state general fund."

NEW SECTION. Section 9. Unlawful disposal. It is unlawful to dispose of hazardous waste, as defined in this part or by rule, without a permit or, if no permit is required under this part or rules adopted under this part, by any other means not authorized by law.

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

NEW SECTION. Section 11. Codification instruction. [Section 9] is intended to be codified as an integral part of Title 75, chapter 10, part 4, and the provisions of Title 75, chapter 10, part 4, apply to [section 9].

NEW SECTION. Section 12. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 13. 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 14. Effective date. [This act]

SB 0371/03

1 is effective on passage and approval.

-End-