

HOUSE BILL NO. 417

INTRODUCED BY TUNBY, HARPER, FAGG, WELDON  
BY REQUEST OF THE DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL SCIENCES

IN THE HOUSE

FEBRUARY 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 12, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 13, 1993	PRINTING REPORT.
FEBRUARY 15, 1993	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 16, 1993	ENGROSSING REPORT.
FEBRUARY 17, 1993	THIRD READING, PASSED. AYES, 68; NOES, 31.
FEBRUARY 18, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 16, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 17, 1993	SECOND READING, NOT CONCURRED IN.
MARCH 18, 1993	SECOND READING, CONCURRED IN.
MARCH 19, 1993	THIRD READING, CONCURRED IN. AYES, 27; NOES, 23.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 20, 1993	RECEIVED FROM SENATE.
	SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 417  
2 INTRODUCED BY Donny Fagan Jagg Wilson  
3 BY REQUEST OF THE DEPARTMENT OF  
4 HEALTH AND ENVIRONMENTAL SCIENCES  
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
7 ASSESSMENT OF ADMINISTRATIVE PENALTIES UNDER THE MONTANA  
8 HAZARDOUS WASTE AND UNDERGROUND STORAGE TANK ACT; PROVIDING  
9 RULEMAKING AUTHORITY TO ADOPT AN ADMINISTRATIVE PENALTY  
10 SCHEDULE AND A SYSTEM FOR ASSESSMENT OF ADMINISTRATIVE  
11 PENALTIES, NOTICE, AND APPEALS; PROVIDING FOR PENALTY FUNDS  
12 TO BE PAID INTO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL  
13 SCIENCES' UNDERGROUND STORAGE TANK SPECIAL REVENUE ACCOUNT  
14 AND FOR APPROPRIATIONS FROM THAT ACCOUNT FOR THE PURPOSE OF  
15 SUPPORTING THE DEPARTMENT'S ADMINISTRATIVE PENALTY PROGRAM;  
16 AMENDING SECTIONS 75-10-405, 75-10-413, 75-10-417, AND  
17 75-10-447, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE  
18 AND AN APPLICABILITY DATE."  
19

20 STATEMENT OF INTENT

21 A statement of intent is required for this bill because  
22 the bill gives the department of health and environmental  
23 sciences authority to adopt administrative rules. The  
24 legislature intends that the administrative penalties  
25 provided by this bill be used to encourage compliance with

1 the Montana underground storage tank laws and rules by  
2 allowing more timely and efficient processing of enforcement  
3 actions without the need for seeking a higher penalty  
4 through district court. To promote these goals, the  
5 department should develop rules that provide for a range of  
6 penalties for specific violations, the form for notice of  
7 violation, an expedited appeal, and a penalty mitigation  
8 process. In doing so, the department shall ensure that its  
9 rules and penalty schedule are consistent with the criteria  
10 set forth in [section 4]. The department shall ensure that  
11 the rules, the penalty schedule, and a statement of the  
12 department's enforcement policy are disseminated to the  
13 regulated community.  
14

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

16 Section 1. Section 75-10-405, MCA, is amended to read:

17 "75-10-405. Administrative rules. (1) The department  
18 may adopt, amend, or repeal rules governing hazardous waste,  
19 including but not limited to the following:

20 (a) identification and classification of those  
21 hazardous wastes subject to regulation and those that are  
22 not;

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

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

1 maintenance, monitoring, inspection, closure, postclosure,  
2 and reclamation of hazardous waste management facilities;

3 (d) requirements for the issuance, denial, renewal,  
4 modification, and revocation of permits for hazardous waste  
5 management facilities;

6 (e) requirements for corrective action within and  
7 outside of facility boundaries and for financial assurance  
8 of that corrective action;

9 (f) requirements for manifests and the manifest system  
10 for tracking hazardous waste and for reporting and  
11 recordkeeping by generators, transporters, and owners and  
12 operators of hazardous waste management facilities;

13 (g) requirements for training of facility personnel and  
14 for financial assurance of facility owners and operators and  
15 for liability of guarantors providing financial assurance;

16 (h) requirements for registration of generators and  
17 transporters;

18 (i) a schedule of fees for hazardous waste management  
19 facility permits and registration of hazardous waste  
20 generators;

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

24 (k) requirements for availability to the public of  
25 information obtained by the department regarding facilities

1 and sites used for the treatment, storage, and disposal of  
2 hazardous wastes; and

3 (1) other rules which are necessary to obtain and  
4 maintain authorization under the federal program.

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

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

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

16 (c) may adopt requirements for the prevention and  
17 correction of leakage from underground storage tanks,  
18 including:

19 (i) reporting by owners and operators;

20 (ii) financial responsibility;

21 (iii) release detection, prevention, and corrective  
22 action;

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

25 (v) development of a schedule of fees, not to exceed

1 \$50 for a tank over 1,100 gallons and not to exceed \$20 for  
 2 a tank 1,100 gallons or less, per tank, for tank  
 3 notification and permits to defray state and local costs of  
 4 implementing an underground storage tank program; and

5 (vi) a penalty schedule and a system for assessment of  
 6 administrative penalties, notice, and appeals under [section  
 7 4]; and

8 ~~{vi}~~(vii) delegation of authority and funds to local  
 9 agents for inspections and implementation. The delegation of  
 10 authority to local agents must complement and may not  
 11 duplicate existing authority for implementation of rules  
 12 adopted by the department of justice that relate to  
 13 underground storage tanks.

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

16 (e) shall require the owner or manager of any proposed  
 17 commercial facility for the storage, collection, or transfer  
 18 of hazardous waste to conduct a public hearing, as provided  
 19 for in 75-10-441; and

20 (f) may adopt rules and performance standards for  
 21 industrial furnaces and boilers that burn hazardous wastes.  
 22 The rules and performance standards:

23 (i) may be adopted if there are no federal regulations;  
 24 or

25 (ii) may be more restrictive than federal regulations."

1 **Section 2.** Section 75-10-413, MCA, is amended to read:

2 "75-10-413. **Administrative enforcement.** (1) When the  
 3 department believes that a violation of this part, a rule  
 4 adopted under this part, or a permit provision has occurred,  
 5 it may serve written notice of the violation personally or  
 6 by certified mail on the alleged violator or his the  
 7 violator's agent. The notice must specify the provision of  
 8 this part, the rule, or the permit provision alleged to be  
 9 violated and the facts alleged to constitute a violation and  
 10 may include an order to take necessary corrective action  
 11 within a reasonable period of time stated in the order. The  
 12 order becomes final unless, within 30 days after the notice  
 13 is served, the person named requests in writing a hearing  
 14 before the board. On receipt of the request, the board shall  
 15 schedule a hearing. Service by mail is complete on the date  
 16 of mailing.

17 (2) If, after a hearing held under subsection (1), the  
 18 board finds that a violation has occurred, it shall either  
 19 affirm or modify the department's order previously issued.  
 20 An order issued by the department or by the board may  
 21 prescribe the date by which the violation must cease and may  
 22 prescribe time limits for particular action. If, after  
 23 hearing, the board finds no that a violation has not  
 24 occurred, it shall rescind the department's order.

25 (3) instead In addition to or instead of issuing an

order pursuant to subsection (1), the department may either:

(a) require the alleged violator 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 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; or

(c) for underground storage tank violations, assess administrative penalties and issue corrective action orders under [section 4].

(4) 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 the witness 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.

(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 3.** Section 75-10-417, MCA, is amended to read:

"75-10-417. Civil penalties. (1) Any A 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~~ must be deposited in the state general fund, except for civil

penalties collected for underground storage tank violations,  
which must be deposited in the underground storage tank  
special revenue account established in 75-10-447."

**NEW SECTION. Section 4. Administrative penalties for**  
 underground storage tank violations -- appeals -- venue for  
 hearings. (1) A person who violates any of the underground  
 storage tank provisions of this chapter or any underground  
 storage tank rules promulgated under the authority of this  
 chapter may be assessed and ordered by the department to pay  
 an administrative penalty not to exceed \$500 per violation.  
 This limitation on administrative penalties applies only to  
 penalties assessed under this section. Each occurrence of  
 the violation and each day it remains uncorrected  
 constitutes a separate violation. The department may suspend  
 a portion of the administrative penalty assessed under this  
 section if the condition that caused the assessment of the  
 penalty is corrected within a specified time. Assessment of  
 an administrative penalty under this section may be made in  
 conjunction with any order or other administrative action  
 authorized by Title 75, chapter 11, or by this chapter.

(2) When the department assesses an administrative  
 penalty under this section, it must have written notice  
 served personally or by certified mail on the alleged  
 violator or the violator's agent. For purposes of this  
 chapter, service by mail is complete on the day of mailing.

The notice must state:

- (a) the provision alleged to be violated;
- (b) the facts alleged to constitute the violation;
- (c) the amount of the administrative penalty assessed  
 under this section;
- (d) the amount, if any, of the penalty to be suspended  
 upon correction of the condition that caused the assessment  
 of the penalty;
- (e) the nature of any corrective action the department  
 requires, whether or not a portion of the penalty is to be  
 suspended;
- (f) as applicable, the time within which the corrective  
 action is to be taken and the time within which the  
 administrative penalty is to be paid;
- (g) the right to appeal or to a hearing to mitigate the  
 penalty assessed and the time, place, and nature of any  
 hearing; and
- (h) that a formal proceeding may be waived.

(3) The department shall provide each person assessed a  
 penalty under this section an opportunity for a hearing to  
 either contest the alleged violation or request mitigation  
 of the penalty. The contested case provisions of the Montana  
 Administrative Procedure Act, provided for in Title 2,  
 chapter 4, part 6, apply to a hearing conducted under this  
 section. If a hearing is held under this section, it must be

1 held in Lewis and Clark County.

2 (4) The department shall publish a schedule of maximum  
3 and minimum penalties for specific violations. In  
4 determining appropriate penalties for violations, the  
5 department shall consider the gravity of the violations and  
6 the potential for significant harm to public health or the  
7 environment. In determining the appropriate amount of  
8 penalty, if any, to be suspended upon correction of the  
9 condition that caused the penalty assessment, the department  
10 shall consider the cooperation and the degree of care  
11 exercised by the person assessed the penalty, how  
12 expeditiously the violation was corrected, and whether  
13 significant harm resulted to the public health or the  
14 environment from the violation.

15 (5) If the department is unable to collect an  
16 administrative penalty assessed under this section or if a  
17 person fails to pay all or any portion of an administrative  
18 penalty assessed under this section, the department may take  
19 action in district court to recover the penalty amount and  
20 any additional amounts assessed or sought under Title 75,  
21 chapter 11, or this chapter.

22 (6) Action under this section does not bar action under  
23 Title 75, chapter 11, or this chapter, or any other remedy  
24 available to the department for violations of underground  
25 storage tank laws or rules promulgated under those laws.

1 (7) Administrative penalties collected under this  
2 section must be deposited in the underground storage tank  
3 special revenue account established in 75-10-477.

4 **Section 5.** Section 75-10-447, MCA, is amended to read:

5 "75-10-447. Underground storage tank special revenue  
6 account. (1) There is an underground storage tank account  
7 within the state special revenue fund established in  
8 17-2-102. There must be paid into the account:

9 (a) revenues from underground storage tank permit and  
10 notification fees; and

11 (b) corrective action costs, damages, and penalties  
12 recovered under section 9003 of the federal Resource  
13 Conservation and Recovery Act of 1976, as amended; and

14 (c) civil penalties collected for underground storage  
15 tank violations under 75-10-417 and administrative penalties  
16 collected under [section 4].

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

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

21 (b) state and local government costs relating to the  
22 investigation of leaking underground storage tanks; or

23 (c) state costs relating to the administration of the  
24 administrative penalty program."

25 **NEW SECTION. Section 6.** Codification instruction.



1 [Section 4] is intended to be codified as an integral part  
2 of Title 75, chapter 10, part 4, and the provisions of Title  
3 75, chapter 10, part 4, apply to [section 4].

4 NEW SECTION. Section 7. Applicability. [This act]  
5 applies to all department of health and environmental  
6 sciences' notices served on alleged violators pursuant to  
7 [section 4] beginning October 1, 1993, or on the date of  
8 adoption of the department's rules under  
9 75-10-405(2)(c)(vi), whichever is earlier.

10 NEW SECTION. Section 8. Effective date. [This act] is  
11 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 HB0417, as introduced.

**DESCRIPTION OF PROPOSED LEGISLATION:** An act providing for the assessment of administrative penalties under the Montana Hazardous Waste and Underground Storage Tank Act; providing rulemaking authority to adopt an administrative penalty schedule and a system for assessment of administrative penalties, notice, and appeals; providing for penalty funds to be paid into the Department of Health and Environmental Sciences Underground Storage Tank Program special revenue account and for appropriation from that account to support the Administrative Penalty Program.

**ASSUMPTIONS:**

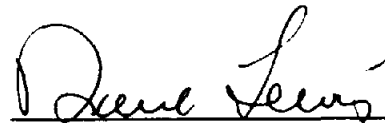
1. Existing legal, technical and support program staff will be utilized for implementing provisions of this bill. On occasion, it may be necessary for the DHES to contract for an administrative hearing officer.
2. An average of 200 underground storage tank facilities will be inspected annually. Violations which merit the assessment of administrative penalties will be discovered in approximately 10% of the inspections (20 cases). In five of the cases, administrative penalties averaging \$500 per case will be collected; in ten of the cases administrative penalties averaging \$250 per case will be collected; and in the remaining 5 cases penalties averaging \$50 per case will be collected. Total administrative penalties collected annually will be \$5,250.
3. Penalties collected will be used to offset increased operating expenses to administer the Administrative Penalties Program, issue notices, conduct mitigation hearings and respond to appeals.
4. If this bill passes, the UST Leak Prevention Program will have its state special revenue appropriation increased by \$5,250 for FY94 and \$5,250 for FY95.

**FISCAL IMPACT:****Expenditures:**

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Personal Services	369,787	369,787	0	370,128	370,128	0
Operating Expenses	202,018	207,268	5,250	201,227	206,477	5,250
Equipment	4,517	4,517	0	4,533	4,533	0
Grants	<u>312,604</u>	<u>312,604</u>	<u>0</u>	<u>312,604</u>	<u>312,604</u>	<u>0</u>
Total	888,926	894,176	5,250	888,492	893,742	5,250

**Funding:**

Installer Lic & Permit Acc.	126,647	126,647	0	159,820	159,820	0
Hazardous Waste-CERCLA	54,167	54,167	0	54,167	54,167	0
UST Leak Prevention Program	545,612	550,862	5,250	512,005	517,255	5,250
Underground Storage Tank	<u>162,500</u>	<u>162,500</u>	<u>0</u>	<u>162,500</u>	<u>162,500</u>	<u>0</u>
Total	888,926	894,176	5,250	888,492	893,742	5,250



DAVE LEWIS, BUDGET DIRECTOR  
Office of Budget and Program Planning

2-5-93

DATE



ROLPH TUNBY, PRIMARY SPONSOR  
Fiscal Note for HB0417, as introduced

2-6-93

DATE

HB 417

APPROVED BY COMM. ON  
NATURAL RESOURCES

## HOUSE BILL NO. 417

INTRODUCED BY TUNBY, HARPER, FAGG, WELDON

BY REQUEST OF THE DEPARTMENT OF

HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ASSESSMENT OF ADMINISTRATIVE PENALTIES UNDER THE MONTANA HAZARDOUS WASTE AND UNDERGROUND STORAGE TANK ACT; PROVIDING RULEMAKING AUTHORITY TO ADOPT AN ADMINISTRATIVE PENALTY SCHEDULE AND A SYSTEM FOR ASSESSMENT OF ADMINISTRATIVE PENALTIES, NOTICE, AND APPEALS; PROVIDING FOR PENALTY FUNDS TO BE PAID INTO THE ~~DEPARTMENT OF HEALTH--AND--ENVIRONMENTAL SCIENCES~~<sup>UNDERGROUND--STORAGE-TANK-SPECIAL-REVENUE-ACCOUNT</sup> STATE GENERAL FUND; AND PROVIDING FOR APPROPRIATIONS FROM THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES' UNDERGROUND STORAGE TANK SPECIAL REVENUE ACCOUNT FOR THE PURPOSE OF SUPPORTING THE DEPARTMENT'S ADMINISTRATIVE PENALTY PROGRAM; AMENDING SECTIONS 75-10-405, 75-10-413, ~~75-10-417~~, AND 75-10-447, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

## STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of health and environmental sciences authority to adopt administrative rules. The

legislature intends that the administrative penalties provided by this bill be used to encourage compliance with the Montana underground storage tank laws and rules by allowing more timely and efficient processing of enforcement actions without the need for seeking a higher penalty through district court. To promote these goals, the department should develop rules that provide for a range of penalties for specific violations, the form for notice of violation, an expedited appeal, and a penalty mitigation process. In doing so, the department shall ensure that its rules and penalty schedule are consistent with the criteria set forth in [section 4 3]. The department shall ensure that the rules, the penalty schedule, and a statement of the department's enforcement policy are disseminated to the regulated community.

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

**Section 1.** Section 75-10-405, MCA, is amended to read:

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

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

(b) requirements for the proper treatment, storage,

1 transportation, and disposal of hazardous waste;

2 (c) requirements for siting, design, operation,  
3 maintenance, monitoring, inspection, closure, postclosure,  
4 and reclamation of hazardous waste management facilities;

5 (d) requirements for the issuance, denial, renewal,  
6 modification, and revocation of permits for hazardous waste  
7 management facilities;

8 (e) requirements for corrective action within and  
9 outside of facility boundaries and for financial assurance  
10 of that corrective action;

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

15 (g) requirements for training of facility personnel and  
16 for financial assurance of facility owners and operators and  
17 for liability of guarantors providing financial assurance;

18 (h) requirements for registration of generators and  
19 transporters;

20 (i) a schedule of fees for hazardous waste management  
21 facility permits and registration of hazardous waste  
22 generators;

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

1 (k) requirements for availability to the public of  
2 information obtained by the department regarding facilities  
3 and sites used for the treatment, storage, and disposal of  
4 hazardous wastes; and

5 (1) other rules which are necessary to obtain and  
6 maintain authorization under the federal program.

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

12 (a) may require the registration of transporters not  
13 otherwise required to register with the state of Montana  
14 pursuant to the federal Resource Conservation and Recovery  
15 Act of 1976, as amended;

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

18 (c) may adopt requirements for the prevention and  
19 correction of leakage from underground storage tanks,  
20 including:

21 (i) reporting by owners and operators;

22 (ii) financial responsibility;

23 (iii) release detection, prevention, and corrective  
24 action;

25 (iv) standards for design, construction, installation,

and closure;

(v) development of a schedule of fees, not to exceed \$50 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) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals under [section 4 3]; and

~~(vi)~~(vii) 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 department of justice that relate to underground storage tanks.

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

(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; and

(f) may adopt rules and performance standards for industrial furnaces and boilers that burn hazardous wastes. The rules and performance standards:

(i) may be adopted if there are no federal regulations;

or

(ii) may be more restrictive than federal regulations."

**Section 2.** 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 personally or by certified mail on the alleged violator or his the violator's 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 that a violation has not

occurred, it shall rescind the department's order.

(3) ~~Instead~~ In addition to or instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator 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 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; or

(c) for underground storage tank violations, assess administrative penalties and issue corrective action orders under [section 4 3].

(4) 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 the witness 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.

(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 3--Section 75-10-417, MEA, is amended to read:--~~

~~"75-10-417. Civil penalties--(1)--Any A 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 must be deposited in the state general fund except for civil penalties collected for underground storage tank violations, which must be deposited in the underground storage tank special revenue account established in 75-10-447.~~

**NEW SECTION. Section 3. Administrative penalties for underground storage tank violations -- appeals -- venue for hearings.** (1) A person who violates any of the underground storage tank provisions of this chapter or any underground storage tank rules promulgated under the authority of this chapter may be assessed and ordered by the department to pay an administrative penalty not to exceed \$500 per violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each occurrence of the violation and each day it remains uncorrected constitutes a separate violation. The department may suspend a portion of the administrative penalty assessed under this section if the condition that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty under this section may be made in conjunction with any order or other administrative action authorized by Title 75, chapter 11, or by this chapter.

(2) When the department assesses an administrative penalty under this section, it must have written notice served personally or by certified mail on the alleged

violation or the violator's agent. For purposes of this chapter, service by mail is complete on the day of mailing **RECEIPT**. The notice must state:

- (a) the provision alleged to be violated;
- (b) the facts alleged to constitute the violation;
- (c) the amount of the administrative penalty assessed under this section;
- (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the assessment of the penalty;
- (e) the nature of any corrective action the department requires, whether or not a portion of the penalty is to be suspended;
- (f) as applicable, the time within which the corrective action is to be taken and the time within which the administrative penalty is to be paid;
- (g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and nature of any hearing; and
- (h) that a formal proceeding may be waived.

(3) The department shall provide each person assessed a penalty under this section an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2,

chapter 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis and Clark County.

(4) The department shall publish a schedule of maximum and minimum penalties for specific violations. In determining appropriate penalties for violations, the department shall consider the gravity of the violations and the potential for significant harm to public health or the environment. In determining the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the penalty assessment, the department shall consider the cooperation and the degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the environment from the violation.

(5) If the department is unable to collect an administrative penalty assessed under this section or if a person fails to pay all or any portion of an administrative penalty assessed under this section, the department may take action in district court to recover the penalty amount and any additional amounts assessed or sought under Title 75, chapter 11, or this chapter.

(6) Action under this section does not bar action under Title 75, chapter 11, or this chapter, or any other remedy

available to the department for violations of underground storage tank laws or rules promulgated under those laws.

(7) Administrative penalties collected under this section must be deposited in the underground--storage--tank special--revenue--account--established--in--75-10-477 STATE GENERAL FUND.

**Section 4.** Section 75-10-447, MCA, is amended to read:

"75-10-447. Underground storage tank special revenue account. (1) There is an underground storage tank account within the state special revenue fund established in 17-2-102. There must be paid into the account:

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

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

~~(c) --civil--penalties--collected--for--underground--storage tank--violations--under--75-10-417--and--administrative--penalties collected--under--{section-4}.~~

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

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

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



1     (c) state costs relating to the administration of the  
2     administrative penalty program."

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

7     **NEW SECTION. Section 6. Applicability.**     [This act]  
8     applies to all department of health and environmental  
9     sciences' notices served on alleged violators pursuant to  
10    [section 4 3] beginning October 1, 1993, or on the date of  
11    adoption of the department's rules under  
12    75-10-405(2)(c)(vi), whichever is earlier.

13    **NEW SECTION. Section 7. Effective date.** [This act] is  
14    effective on passage and approval.

-End-

## HOUSE BILL NO. 417

INTRODUCED BY TUNBY, HARPER, FAGG, WELDON

BY REQUEST OF THE DEPARTMENT OF

HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ASSESSMENT OF ADMINISTRATIVE PENALTIES UNDER THE MONTANA HAZARDOUS WASTE AND UNDERGROUND STORAGE TANK ACT; PROVIDING RULEMAKING AUTHORITY TO ADOPT AN ADMINISTRATIVE PENALTY SCHEDULE AND A SYSTEM FOR ASSESSMENT OF ADMINISTRATIVE PENALTIES, NOTICE, AND APPEALS; PROVIDING FOR PENALTY FUNDS TO BE PAID INTO THE ~~DEPARTMENT-OF-HEALTH--AND--ENVIRONMENTAL SCIENCES~~<sup>4</sup>---UNDERGROUND--STORAGE-TANK-SPECIAL-REVENUE-ACCOUNT STATE GENERAL FUND; AND PROVIDING FOR APPROPRIATIONS FROM THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES' UNDERGROUND STORAGE TANK SPECIAL REVENUE ACCOUNT FOR THE PURPOSE OF SUPPORTING THE DEPARTMENT'S ADMINISTRATIVE PENALTY PROGRAM; AMENDING SECTIONS 75-10-405, 75-10-413, ~~75-10-417~~, AND 75-10-447, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

## STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of health and environmental sciences authority to adopt administrative rules. The

legislature intends that the administrative penalties provided by this bill be used to encourage compliance with the Montana underground storage tank laws and rules by allowing more timely and efficient processing of enforcement actions without the need for seeking a higher penalty through district court. To promote these goals, the department should develop rules that provide for a range of penalties for specific violations, the form for notice of violation, an expedited appeal, and a penalty mitigation process. In doing so, the department shall ensure that its rules and penalty schedule are consistent with the criteria set forth in [section 4 3]. The department shall ensure that the rules, the penalty schedule, and a statement of the department's enforcement policy are disseminated to the regulated community.

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

**Section 1.** Section 75-10-405, MCA, is amended to read:

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

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

(b) requirements for the proper treatment, storage,

1 transportation, and disposal of hazardous waste;

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

3 maintenance, monitoring, inspection, closure, postclosure,

4 and reclamation of hazardous waste management facilities;

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

6 modification, and revocation of permits for hazardous waste

7 management facilities;

8 (e) requirements for corrective action within and

9 outside of facility boundaries and for financial assurance

10 of that corrective action;

11 (f) requirements for manifests and the manifest system

12 for tracking hazardous waste and for reporting and

13 recordkeeping by generators, transporters, and owners and

14 operators of hazardous waste management facilities;

15 (g) requirements for training of facility personnel and

16 for financial assurance of facility owners and operators and

17 for liability of guarantors providing financial assurance;

18 (h) requirements for registration of generators and

19 transporters;

20 (i) a schedule of fees for hazardous waste management

21 facility permits and registration of hazardous waste

22 generators;

23 (j) a schedule of fees to defray a portion of the costs

24 of establishing, operating, and maintaining any state

25 hazardous waste management facility authorized by 75-10-412;

1 (k) requirements for availability to the public of

2 information obtained by the department regarding facilities

3 and sites used for the treatment, storage, and disposal of

4 hazardous wastes; and

5 (1) other rules which are necessary to obtain and

6 maintain authorization under the federal program.

7 (2) The department may not adopt rules under this part

8 that are more restrictive than those promulgated by the

9 federal government under the Resource Conservation and

10 Recovery Act of 1976, as amended, except that the

11 department:

12 (a) may require the registration of transporters not

13 otherwise required to register with the state of Montana

14 pursuant to the federal Resource Conservation and Recovery

15 Act of 1976, as amended;

16 (b) may require generators and facilities to report on

17 an annual rather than on a biennial basis;

18 (c) may adopt requirements for the prevention and

19 correction of leakage from underground storage tanks,

20 including:

21 (i) reporting by owners and operators;

22 (ii) financial responsibility;

23 (iii) release detection, prevention, and corrective

24 action;

25 (iv) standards for design, construction, installation,

1 and closure;

2 (v) development of a schedule of fees, not to exceed  
3 \$50 for a tank over 1,100 gallons and not to exceed \$20 for  
4 a tank 1,100 gallons or less, per tank, for tank  
5 notification and permits to defray state and local costs of  
6 implementing an underground storage tank program; and

7 (vi) a penalty schedule and a system for assessment of  
8 administrative penalties, notice, and appeals under [section  
9 4 3]; and

10 ~~(vi)~~(vii) delegation of authority and funds to local  
11 agents 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 department of justice that relate to  
15 underground storage tanks.

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

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; and

22 (f) may adopt rules and performance standards for  
23 industrial furnaces and boilers that burn hazardous wastes.  
24 The rules and performance standards:

25 (i) may be adopted if there are no federal regulations;

1 or

2 (ii) may be more restrictive than federal regulations."

3 **Section 2.** Section 75-10-413, MCA, is amended to read:

4 "75-10-413. **Administrative enforcement.** (1) When the  
5 department believes that a violation of this part, a rule  
6 adopted under this part, or a permit provision has occurred,  
7 it may serve written notice of the violation personally or  
8 by certified mail on the alleged violator or his the  
9 violator's agent. The notice must specify the provision of  
10 this part, the rule, or the permit provision alleged to be  
11 violated and the facts alleged to constitute a violation and  
12 may include an order to take necessary corrective action  
13 within a reasonable period of time stated in the order. The  
14 order becomes final unless, within 30 days after the notice  
15 is served, the person named requests in writing a hearing  
16 before the board. On receipt of the request, the board shall  
17 schedule a hearing. Service by mail is complete on the date  
18 of mailing.

19 (2) If, after a hearing held under subsection (1), the  
20 board finds that a violation has occurred, it shall either  
21 affirm or modify the department's order previously issued.  
22 An order issued by the department or by the board may  
23 prescribe the date by which the violation must cease and may  
24 prescribe time limits for particular action. If, after  
25 hearing, the board finds no that a violation has not

occurred, it shall rescind the department's order.

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

(a) require the alleged violator 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 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; or

(c) for underground storage tank violations, assess administrative penalties and issue corrective action orders under [section 4 3].

(4) 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 the witness 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.

(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 3.** ~~Section 75-10-417, MCA, is amended to read:--~~

~~"75-10-417. Civil penalties.--(1) Any A 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 75-10-410.~~

1     ~~(4) Money collected under this section shall must be~~  
 2     ~~deposited in the state general fund, except for civil~~  
 3     ~~penalties collected for underground storage tank violations,~~  
 4     ~~which must be deposited in the underground storage tank~~  
 5     ~~special revenue account established in 75-10-447.~~"

6     **NEW SECTION. Section 3.** Administrative penalties for  
 7     underground storage tank violations -- appeals -- venue for  
 8     hearings. (1) A person who violates any of the underground  
 9     storage tank provisions of this chapter or any underground  
 10    storage tank rules promulgated under the authority of this  
 11    chapter may be assessed and ordered by the department to pay  
 12    an administrative penalty not to exceed \$500 per violation.  
 13    This limitation on administrative penalties applies only to  
 14    penalties assessed under this section. Each occurrence of  
 15    the violation and each day it remains uncorrected  
 16    constitutes a separate violation. The department may suspend  
 17    a portion of the administrative penalty assessed under this  
 18    section if the condition that caused the assessment of the  
 19    penalty is corrected within a specified time. Assessment of  
 20    an administrative penalty under this section may be made in  
 21    conjunction with any order or other administrative action  
 22    authorized by Title 75, chapter 11, or by this chapter.

23    (2) When the department assesses an administrative  
 24    penalty under this section, it must have written notice  
 25    served personally or by certified mail on the alleged

1     violator or the violator's agent. For purposes of this  
 2     chapter, service by mail is complete on the day of mailing  
 3     **RECEIPT.** The notice must state:

- 4       (a) the provision alleged to be violated;
- 5       (b) the facts alleged to constitute the violation;
- 6       (c) the amount of the administrative penalty assessed
- 7       under this section;
- 8       (d) the amount, if any, of the penalty to be suspended
- 9       upon correction of the condition that caused the assessment
- 10      of the penalty;
- 11      (e) the nature of any corrective action the department
- 12      requires, whether or not a portion of the penalty is to be
- 13      suspended;
- 14      (f) as applicable, the time within which the corrective
- 15      action is to be taken and the time within which the
- 16      administrative penalty is to be paid;
- 17      (g) the right to appeal or to a hearing to mitigate the
- 18      penalty assessed and the time, place, and nature of any
- 19      hearing; and
- 20      (h) that a formal proceeding may be waived.

21    (3) The department shall provide each person assessed a  
 22    penalty under this section an opportunity for a hearing to  
 23    either contest the alleged violation or request mitigation  
 24    of the penalty. The contested case provisions of the Montana  
 25    Administrative Procedure Act, provided for in Title 2,

chapter 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis and Clark County OR THE COUNTY WHERE THE ALLEGED VIOLATION OCCURRED. THIS SUBSECTION DOES NOT APPLY UNTIL THE DEPARTMENT GIVES WRITTEN NOTICE, SERVED PERSONALLY OR BY CERTIFIED MAIL, TO THE ALLEGED VIOLATOR OR THE VIOLATOR'S AGENT. FOR THE PURPOSES OF THIS CHAPTER, SERVICE BY MAIL IS COMPLETE ON THE DAY OF RECEIPT. THE NOTICE MUST STATE:

(A) THE PROVISION ALLEGEDLY VIOLATED;

(B) THE FACTS THAT CONSTITUTE THE ALLEGED VIOLATION;

(C) THE SPECIFIC NATURE OF ANY CORRECTIVE ACTION THE DEPARTMENT REQUIRES, ESTIMATED COSTS OF COMPLIANCE WITH THE ACTION, AND WHERE TO RECEIVE HELP TO CORRECT THE ALLEGED VIOLATION; AND

(D) A TIMETABLE THAT A REASONABLE PERSON WOULD CONSIDER APPROPRIATE FOR COMPLIANCE WITH THE ALLEGED VIOLATIONS.

(4) The department shall publish a schedule of maximum and minimum penalties for specific violations. In determining appropriate penalties for violations, the department shall consider the gravity of the violations and the potential for significant harm to public health or the environment. In determining the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the penalty assessment, the department

shall consider the cooperation and the degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the environment from the violation.

(5) If the department is unable to collect an administrative penalty assessed under this section or if a person fails to pay all or any portion of an administrative penalty assessed under this section, the department may take action in district court to recover the penalty amount and any additional amounts assessed or sought under Title 75, chapter 11, or this chapter.

(6) Action under this section does not bar action under Title 75, chapter 11, or this chapter, or any other remedy available to the department for violations of underground storage tank laws or rules promulgated under those laws.

(7) Administrative penalties collected under this section must be deposited in the ~~underground--storage--tank special--revenue--account--established--in--75-10-477~~ STATE GENERAL FUND.

**Section 4.** Section 75-10-447, MCA, is amended to read:

"75-10-447. Underground storage tank special revenue account. (1) There is an underground storage tank account within the state special revenue fund established in 17-2-102. There must be paid into the account:

1 (a) revenues from underground storage tank permit and  
2 notification fees; and AND

3 (b) corrective action costs, damages, and penalties  
4 recovered under section 9003 of the federal Resource  
5 Conservation and Recovery Act of 1976, as amended; and

6 ~~(c) civil penalties collected for underground storage~~  
7 ~~tank violations under 75-10-417 and administrative penalties~~  
8 ~~collected under [section 4].~~

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; or

15 (c) state costs relating to the administration of the  
16 administrative penalty program."

17 NEW SECTION. Section 5. Codification instruction.  
18 [Section 4 3] is intended to be codified as an integral part  
19 of Title 75, chapter 10, part 4, and the provisions of Title  
20 75, chapter 10, part 4, apply to [section 4 3].

21 NEW SECTION. Section 6. Applicability. [This act]  
22 applies to all department of health and environmental  
23 sciences' notices served on alleged violators pursuant to  
24 [section 4 3] beginning October 1, 1993, or on the date of  
25 adoption of the department's rules under

1 75-10-405(2)(c)(vi), whichever is earlier.

2 NEW SECTION. Section 7. Effective date. [This act] is  
3 effective on passage and approval.

-End-



## HOUSE BILL NO. 417

INTRODUCED BY TUNBY, HARPER, FAGG, WELDON

BY REQUEST OF THE DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ASSESSMENT OF ADMINISTRATIVE PENALTIES UNDER THE MONTANA HAZARDOUS WASTE AND UNDERGROUND STORAGE TANK ACT; PROVIDING RULEMAKING AUTHORITY TO ADOPT AN ADMINISTRATIVE PENALTY SCHEDULE AND A SYSTEM FOR ASSESSMENT OF ADMINISTRATIVE PENALTIES, NOTICE, AND APPEALS; PROVIDING FOR PENALTY FUNDS TO BE PAID INTO THE ~~DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES~~ UNDERGROUND STORAGE TANK SPECIAL REVENUE ACCOUNT STATE GENERAL FUND; AND PROVIDING FOR APPROPRIATIONS FROM THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES' UNDERGROUND STORAGE TANK SPECIAL REVENUE ACCOUNT FOR THE PURPOSE OF SUPPORTING THE DEPARTMENT'S ADMINISTRATIVE PENALTY PROGRAM; AMENDING SECTIONS 75-10-405, 75-10-413, ~~75-10-417~~, AND 75-10-447, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

## STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of health and environmental sciences authority to adopt administrative rules. The

legislature intends that the administrative penalties provided by this bill be used to encourage compliance with the Montana underground storage tank laws and rules by allowing more timely and efficient processing of enforcement actions without the need for seeking a higher penalty through district court. To promote these goals, the department should develop rules that provide for a range of penalties for specific violations, the form for notice of violation, an expedited appeal, and a penalty mitigation process. In doing so, the department shall ensure that its rules and penalty schedule are consistent with the criteria set forth in [section 4 3]. The department shall ensure that the rules, the penalty schedule, and a statement of the department's enforcement policy are disseminated to the regulated community.

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

**Section 1.** Section 75-10-405, MCA, is amended to read:

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

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

(b) requirements for the proper treatment, storage,

1 transportation, and disposal of hazardous waste;

2 (c) requirements for siting, design, operation,  
3 maintenance, monitoring, inspection, closure, postclosure,  
4 and reclamation of hazardous waste management facilities;

5 (d) requirements for the issuance, denial, renewal,  
6 modification, and revocation of permits for hazardous waste  
7 management facilities;

8 (e) requirements for corrective action within and  
9 outside of facility boundaries and for financial assurance  
10 of that corrective action;

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

15 (g) requirements for training of facility personnel and  
16 for financial assurance of facility owners and operators and  
17 for liability of guarantors providing financial assurance;

18 (h) requirements for registration of generators and  
19 transporters;

20 (i) a schedule of fees for hazardous waste management  
21 facility permits and registration of hazardous waste  
22 generators;

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

1 (k) requirements for availability to the public of  
2 information obtained by the department regarding facilities  
3 and sites used for the treatment, storage, and disposal of  
4 hazardous wastes; and

5 (1) other rules which are necessary to obtain and  
6 maintain authorization under the federal program.

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

12 (a) may require the registration of transporters not  
13 otherwise required to register with the state of Montana  
14 pursuant to the federal Resource Conservation and Recovery  
15 Act of 1976, as amended;

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

18 (c) may adopt requirements for the prevention and  
19 correction of leakage from underground storage tanks,  
20 including:

21 (i) reporting by owners and operators;

22 (ii) financial responsibility;

23 (iii) release detection, prevention, and corrective  
24 action;

25 (iv) standards for design, construction, installation,

1 and closure;

2 (v) development of a schedule of fees, not to exceed  
3 \$50 for a tank over 1,100 gallons and not to exceed \$20 for  
4 a tank 1,100 gallons or less, per tank, for tank  
5 notification and permits to defray state and local costs of  
6 implementing an underground storage tank program; and

7 (vi) a penalty schedule and a system for assessment of  
8 administrative penalties, notice, and appeals under [section  
9 4 3]; and

10 ~~(vi)~~ (vii) delegation of authority and funds to local  
11 agents 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 department of justice that relate to  
15 underground storage tanks.

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

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; and

22 (f) may adopt rules and performance standards for  
23 industrial furnaces and boilers that burn hazardous wastes.  
24 The rules and performance standards:

25 (i) may be adopted if there are no federal regulations;

1 or

2 (ii) may be more restrictive than federal regulations."

3 **Section 2.** Section 75-10-413, MCA, is amended to read:

4 "75-10-413. Administrative enforcement. (1) When the  
5 department believes that a violation of this part, a rule  
6 adopted under this part, or a permit provision has occurred,  
7 it may serve written notice of the violation personally or  
8 by certified mail on the alleged violator or his the  
9 violator's agent. The notice must specify the provision of  
10 this part, the rule, or the permit provision alleged to be  
11 violated and the facts alleged to constitute a violation and  
12 may include an order to take necessary corrective action  
13 within a reasonable period of time stated in the order. The  
14 order becomes final unless, within 30 days after the notice  
15 is served, the person named requests in writing a hearing  
16 before the board. On receipt of the request, the board shall  
17 schedule a hearing. Service by mail is complete on the date  
18 of mailing.

19 (2) If, after a hearing held under subsection (1), the  
20 board finds that a violation has occurred, it shall either  
21 affirm or modify the department's order previously issued.  
22 An order issued by the department or by the board may  
23 prescribe the date by which the violation must cease and may  
24 prescribe time limits for particular action. If, after  
25 hearing, the board finds no that a violation has not

occurred, it shall rescind the department's order.

(3) ~~Instead~~ In addition to or instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator 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 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; or

(c) for underground storage tank violations, assess administrative penalties and issue corrective action orders under [section 4 3].

(4) 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 the witness 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.

(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 3--Section 75-10-417, MEA, is amended to read:--**

**"75-10-417--Civil--penalties--(1)--Any A 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--75-10-410.**

~~{4}--Money--collected--under--this-section-shall must be deposited-in--the--state--general--fund,--except--for--civil penalties-collected-for-underground-storage-tank-violations, which--must--be--deposited--in--the-underground-storage-tank special-revenue-account-established-in-75-10-447."~~

**NEW SECTION. Section 3.** Administrative penalties for underground storage tank violations -- appeals -- venue for hearings. (1) A person who violates any of the underground storage tank provisions of this chapter or any underground storage tank rules promulgated under the authority of this chapter may be assessed and ordered by the department to pay an administrative penalty not to exceed \$500 per violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each occurrence of the violation and each day it remains uncorrected constitutes a separate violation. The department may suspend a portion of the administrative penalty assessed under this section if the condition that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty under this section may be made in conjunction with any order or other administrative action authorized by Title 75, chapter 11, or by this chapter.

(2) When the department assesses an administrative penalty under this section, it must have written notice served personally or by certified mail on the alleged

violation or the violator's agent. For purposes of this chapter, service by mail is complete on the day of mailing **RECEIPT**. The notice must state:

(a) the provision alleged to be violated;

(b) the facts alleged to constitute the violation;

(c) the amount of the administrative penalty assessed under this section;

(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the assessment of the penalty;

(e) the nature of any corrective action the department requires, whether or not a portion of the penalty is to be suspended;

(f) as applicable, the time within which the corrective action is to be taken and the time within which the administrative penalty is to be paid;

(g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and nature of any hearing; and

(h) that a formal proceeding may be waived.

(3) The department shall provide each person assessed a penalty under this section an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2,

chapter 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis and Clark County OR THE COUNTY WHERE THE ALLEGED VIOLATION OCCURRED. THIS SUBSECTION DOES NOT APPLY UNTIL THE DEPARTMENT GIVES WRITTEN NOTICE, SERVED PERSONALLY OR BY CERTIFIED MAIL, TO THE ALLEGED VIOLATOR OR THE VIOLATOR'S AGENT. FOR THE PURPOSES OF THIS CHAPTER, SERVICE BY MAIL IS COMPLETE ON THE DAY OF RECEIPT. THE NOTICE MUST STATE:

- (A) THE PROVISION ALLEGEDLY VIOLATED;
- (B) THE FACTS THAT CONSTITUTE THE ALLEGED VIOLATION;
- (C) THE SPECIFIC NATURE OF ANY CORRECTIVE ACTION THE DEPARTMENT REQUIRES, ESTIMATED COSTS OF COMPLIANCE WITH THE ACTION, AND WHERE TO RECEIVE HELP TO CORRECT THE ALLEGED VIOLATION; AND
- (D) A TIMETABLE THAT A REASONABLE PERSON WOULD CONSIDER APPROPRIATE FOR COMPLIANCE WITH THE ALLEGED VIOLATIONS.

(4) The department shall publish a schedule of maximum and minimum penalties for specific violations. In determining appropriate penalties for violations, the department shall consider the gravity of the violations and the potential for significant harm to public health or the environment. In determining the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the penalty assessment, the department

shall consider the cooperation and the degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the environment from the violation.

(5) If the department is unable to collect an administrative penalty assessed under this section or if a person fails to pay all or any portion of an administrative penalty assessed under this section, the department may take action in district court to recover the penalty amount and any additional amounts assessed or sought under Title 75, chapter 11, or this chapter.

(6) Action under this section does not bar action under Title 75, chapter 11, or this chapter, or any other remedy available to the department for violations of underground storage tank laws or rules promulgated under those laws.

(7) Administrative penalties collected under this section must be deposited in the ~~underground--storage--tank special--revenue--account--established--in--75-10-477~~ STATE GENERAL FUND.

**Section 4.** Section 75-10-447, MCA, is amended to read:

**"75-10-447. Underground storage tank special revenue account.** (1) There is an underground storage tank account within the state special revenue fund established in 17-2-102. There must be paid into the account:

1 (a) revenues from underground storage tank permit and  
2 notification fees; and AND

3 (b) corrective action costs, damages, and penalties  
4 recovered under section 9003 of the federal Resource  
5 Conservation and Recovery Act of 1976, as amended; and

6 ~~{e}--civil--penalties--collected-for-underground-storage~~  
7 ~~tank-violations-under-75-10-417-and-administrative-penalties~~  
8 ~~collected-under-{section-4}.~~

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; or

15 (c) state costs relating to the administration of the  
16 administrative penalty program."

17 NEW SECTION. Section 5. Codification instruction.  
18 [Section 4 3] is intended to be codified as an integral part  
19 of Title 75, chapter 10, part 4, and the provisions of Title  
20 75, chapter 10, part 4, apply to [section 4 3].

21 NEW SECTION. Section 6. Applicability. [This act]  
22 applies to all department of health and environmental  
23 sciences' notices served on alleged violators pursuant to  
24 [section 4 3] beginning October 1, 1993, or on the date of  
25 adoption of the department's rules under

1 75-10-405(2)(c)(vi), whichever is earlier.

2 NEW SECTION. Section 7. Effective date. [This act] is  
3 effective on passage and approval.

-End-