

HOUSE BILL NO. 419

INTRODUCED BY GRADY, SWANSON, BIANCHI  
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 19, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 22, 1993	ENGROSSING REPORT.
FEBRUARY 23, 1993	THIRD READING, PASSED. AYES, 97; NOES, 2.
FEBRUARY 24, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 29, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 31, 1993	SECOND READING, CONCURRED IN.
APRIL 1, 1993	THIRD READING, CONCURRED IN. AYES, 30; NOES, 18.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 6, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 12, 1993	THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 419  
2 INTRODUCED BY Grady Swanson Branch  
3 BY REQUEST OF THE DEPARTMENT OF HEALTH  
4 AND ENVIRONMENTAL SCIENCES

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN  
7 ADMINISTRATIVE PENALTY IN THE MONTANA HAZARDOUS WASTE AND  
8 UNDERGROUND STORAGE TANK ACT; AND AMENDING SECTION  
9 75-10-405, MCA."

10  
11 STATEMENT OF INTENT

12 A statement of intent is required for this bill in order  
13 to provide guidance to the department of health and  
14 environmental sciences in promulgating rules. The  
15 legislature intends that the administrative penalty provided  
16 in this bill encourage compliance with the Montana Hazardous  
17 Waste and Underground Storage Tank Act and rules adopted  
18 pursuant to that Act by allowing more timely and efficient  
19 processing of enforcement actions without the need to seek  
20 penalties through the district court. To promote this goal,  
21 the department may adopt rules that prescribe procedures for  
22 assessing administrative penalties for violations of Title  
23 75, chapter 10, part 4, and of rules adopted pursuant to  
24 Title 75, chapter 10, part 4. In doing so, the department  
25 shall ensure that its rules are consistent with the criteria

1 set forth in [section 2].

2  
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

5 "75-10-405. Administrative rules. (1) The department  
6 may adopt, amend, or repeal rules governing hazardous waste,  
7 including but not limited to the following:

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

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

13 (c) requirements for siting, design, operation,  
14 maintenance, monitoring, inspection, closure, postclosure,  
15 and reclamation of hazardous waste management facilities;

16 (d) requirements for the issuance, denial, renewal,  
17 modification, and revocation of permits for hazardous waste  
18 management facilities;

19 (e) requirements for corrective action within and  
20 outside of facility boundaries and for financial assurance  
21 of that corrective action;

22 (f) requirements for manifests and the manifest system  
23 for tracking hazardous waste and for reporting and  
24 recordkeeping by generators, transporters, and owners and  
25 operators of hazardous waste management facilities;

1 (g) requirements for training of facility personnel and  
2 for financial assurance of facility owners and operators and  
3 for liability of guarantors providing financial assurance;

4 (h) requirements for registration of generators and  
5 transporters;

6 (i) a schedule of fees for hazardous waste management  
7 facility permits and registration of hazardous waste  
8 generators;

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

12 (k) requirements for availability to the public of  
13 information obtained by the department regarding facilities  
14 and sites used for the treatment, storage, and disposal of  
15 hazardous wastes; and

16 (l) procedures for the assessment of administrative  
17 penalties as authorized by [section 2]; and

18 ~~++(m)~~ other rules which are necessary to obtain and  
19 maintain authorization under the federal program.

20 (2) The department may not adopt rules under this part  
21 that are more restrictive than those promulgated by the  
22 federal government under the Resource Conservation and  
23 Recovery Act of 1976, as amended, except that the  
24 department:

25 (a) may require the registration of transporters not

1 otherwise required to register with the state of Montana  
2 pursuant to the federal Resource Conservation and Recovery  
3 Act of 1976, as amended;

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

6 (c) may adopt requirements for the prevention and  
7 correction of leakage from underground storage tanks,  
8 including:

9 (i) reporting by owners and operators;

10 (ii) financial responsibility;

11 (iii) release detection, prevention, and corrective  
12 action;

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

15 (v) development of a schedule of fees, not to exceed  
16 \$50 for a tank over 1,100 gallons and not to exceed \$20 for  
17 a tank 1,100 gallons or less, per tank, for tank  
18 notification and permits to defray state and local costs of  
19 implementing an underground storage tank program; and

20 (vi) delegation of authority and funds to local agents  
21 for inspections and implementation. The delegation of  
22 authority to local agents must complement and may not  
23 duplicate existing authority for implementation of rules  
24 adopted by the department of justice that relate to  
25 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."

**NEW SECTION. Section 2. Administrative penalty. (1)**

The department may assess a person who violates a provision of this part or a rule adopted under this part an administrative penalty, not to exceed \$10,000 per violation. Each day of violation constitutes a separate violation. Assessment of an administrative penalty under this section must be made in conjunction with an order or administrative action authorized by this chapter.

(2) An administrative penalty may not be assessed under this section unless the alleged violator is given notice and opportunity for a hearing pursuant to Title 2, chapter 4, part 6.

(3) In determining the appropriate amount of an

administrative penalty, the department shall consider:

(a) the gravity and the number of violations;

(b) the degree of care exercised by the alleged violator;

(c) whether significant harm resulted to public health or the environment; and

(d) the degree of potential significant harm to public health or the environment.

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

(5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other appropriate remedy.

(6) Administrative penalties collected under this section must be deposited in the state general fund.

**NEW SECTION. Section 3. Codification instruction.**

[Section 2] 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 2].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0419, as introduced.

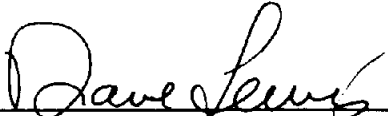
DESCRIPTION OF PROPOSED LEGISLATION: An act providing an administrative penalty in the Montana Hazardous Waste and Underground Storage Tank Act.

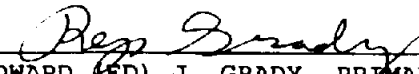
ASSUMPTIONS:

1. Existing Department of Health and Environmental Sciences program staff will be utilized for implementation of the provisions of this bill.
2. An average of 160 hazardous waste inspections will be conducted annually. Violations which merit the assessment of administrative penalties will be discovered in 10% of the inspections (16 cases). In half of those cases (8 cases) penalties collected will average \$1000 per case; penalties collected in the remainder of the cases (8 cases) will average \$3000 per case. Total administrative penalties collected annually will be \$32,000.

FISCAL IMPACT:

\$32,000 of administrative penalties collected by the hazardous waste program will be deposited in the state general fund each year.

 2-5-93  
DAVID LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

 2-6-93  
EDWARD (ED) J. GRADY, PRIMARY SPONSOR DATE

Fiscal Note for HB0419, as introduced

HB 419

APPROVED BY COMM. ON  
NATURAL RESOURCES

## HOUSE BILL NO. 419

INTRODUCED BY GRADY, SWANSON, BIANCHI

BY REQUEST OF THE DEPARTMENT OF HEALTH

AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN  
ADMINISTRATIVE PENALTY IN THE MONTANA HAZARDOUS WASTE AND  
UNDERGROUND STORAGE TANK ACT; AND AMENDING SECTION  
75-10-405, MCA."

## STATEMENT OF INTENT

A statement of intent is required for this bill in order  
to provide guidance to the department of health and  
environmental sciences in promulgating rules. The  
legislature intends that the administrative penalty provided  
in this bill encourage compliance with THE HAZARDOUS WASTE  
SECTIONS OF the Montana Hazardous Waste and Underground  
Storage Tank Act and rules adopted pursuant to THE HAZARDOUS  
WASTE SECTIONS OF that Act by allowing more timely and  
efficient processing of enforcement actions without the need  
to seek penalties through the district court. To promote  
this goal, the department may adopt rules that prescribe  
procedures for assessing administrative penalties for  
violations of Title 75, chapter 10, part 4, and of rules  
adopted pursuant to Title 75, chapter 10, part 4. In doing

so, the department shall ensure that its rules are  
consistent with the criteria set forth in [section 2].

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

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may adopt, amend, or repeal rules governing hazardous waste,  
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not;

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

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

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

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

(f) requirements for manifests and the manifest system  
for tracking hazardous waste and for reporting and  
recordkeeping by generators, transporters, and owners and

1 operators of hazardous waste management facilities;

2 (g) requirements for training of facility personnel and

3 for financial assurance of facility owners and operators and

4 for liability of guarantors providing financial assurance;

5 (h) requirements for registration of generators and

6 transporters;

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

8 facility permits and registration of hazardous waste

9 generators;

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

11 of establishing, operating, and maintaining any state

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

13 (k) requirements for availability to the public of

14 information obtained by the department regarding facilities

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

16 hazardous wastes; and

17 (l) procedures for the assessment of administrative

18 penalties as authorized by [section 2]; and

19 ~~(l)}~~(m) other rules which are necessary to obtain and

20 maintain authorization under the federal program.

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

22 that are more restrictive than those promulgated by the

23 federal government under the Resource Conservation and

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

25 department:

1 (a) may require the registration of transporters not

2 otherwise required to register with the state of Montana

3 pursuant to the federal Resource Conservation and Recovery

4 Act of 1976, as amended;

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

6 an annual rather than on a biennial basis;

7 (c) may adopt requirements for the prevention and

8 correction of leakage from underground storage tanks,

9 including:

10 (i) reporting by owners and operators;

11 (ii) financial responsibility;

12 (iii) release detection, prevention, and corrective

13 action;

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

15 and closure;

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

17 \$50 for a tank over 1,100 gallons and not to exceed \$20 for

18 a tank 1,100 gallons or less, per tank, for tank

19 notification and permits to defray state and local costs of

20 implementing an underground storage tank program; and

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

22 for inspections and implementation. The delegation of

23 authority to local agents must complement and may not

24 duplicate existing authority for implementation of rules

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1 underground storage tanks.

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

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

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

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

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

14 **NEW SECTION. Section 2. Administrative penalty.** (1)  
15 The department may assess a person who violates a HAZARDOUS  
16 WASTE provision of this part or a HAZARDOUS WASTE rule  
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19 constitutes a separate violation, BUT THE MAXIMUM PENALTY  
20 MAY NOT EXCEED \$100,000 FOR ANY RELATED SERIES OF  
21 VIOLATIONS. Assessment of an administrative penalty under  
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23 administrative action authorized by this chapter.

24 (2) An administrative penalty may not be assessed under  
25 this section unless the alleged violator is given notice and

1 opportunity for a hearing pursuant to Title 2, chapter 4,  
2 part 6.

3 (3) In determining the appropriate amount of an  
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7 violator;

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13 administrative penalty or if a person fails to pay all or  
14 any portion of the administrative penalty as determined by  
15 the department, the department may seek to recover the  
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18 75-10-413 through 75-10-418 or any other appropriate remedy.

19 (6) Administrative penalties collected under this  
20 section must be deposited in the state general fund.

21 **NEW SECTION. Section 3. Codification instruction.**  
22 [Section 2] is intended to be codified as an integral part  
23 of Title 75, chapter 10, part 4, and the provisions of Title  
24 75, chapter 10, part 4, apply to [section 2].

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

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

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**NEW SECTION. Section 2. Administrative penalty. (1)**

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(2) An administrative penalty may not be assessed under this section unless the alleged violator is given notice and

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-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 29, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 419 (third reading copy -- blue), respectfully report that House Bill No. 419 be amended as follows and as so amended be concurred in.

Signed: Don Bianchi  
Senator Don Bianchi, Chair

That such amendments read:

1. Page 6, line 1.  
Following: "hearing"  
Insert: "before the board"

-END-

SENATE

HB 419

APW Amd. Coord.  
m Sec. of Senate

Bianchi  
Senator Carrying Bill

701223SC.San

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3 (3) In determining the appropriate amount of an  
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7 violator;

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15 the department, the department may seek to recover the  
16 amount in an appropriate district court.

17 (5) Action under this section does not bar action under  
18 75-10-413 through 75-10-418 or any other appropriate remedy.

19 (6) Administrative penalties collected under this  
20 section must be deposited in the state general fund.

21 NEW SECTION. Section 3. Codification instruction.  
22 [Section 2] is intended to be codified as an integral part  
23 of Title 75, chapter 10, part 4, and the provisions of Title  
24 75, chapter 10, part 4, apply to [section 2].

-End-