

SENATE BILL NO. 334

INTRODUCED BY BECK, GROSFIELD, KOEHNKE, MCCLERNAN,
JERGESON, SCHWINDEN, REA, FOSTER, GRADY, SCHYE,
GRINDE, BIRD

IN THE SENATE

FEBRUARY 8, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 17, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 18, 1993	PRINTING REPORT.
	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
FEBRUARY 19, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
FEBRUARY 20, 1993	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 22, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 46; NOES, 2.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION.
	FIRST READING.
MARCH 18, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 29, 1993	SECOND READING, CONCURRED IN.
MARCH 31, 1993	THIRD READING, CONCURRED IN. AYES, 71; NOES, 26.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 5, 1993

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 6, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *334*
 2 INTRODUCED BY *Rep. Garfield Gehlen*
 3 *Rep. John C. ...*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING PESTICIDE
 5 APPLICATOR AND DEALER LICENSE FEES AND DESIGNATING THE
 6 REVENUE TO A WASTE PESTICIDE AND PESTICIDE CONTAINER
 7 COLLECTION, DISPOSAL, AND RECYCLING PROGRAM; INCREASING FARM
 8 PESTICIDE APPLICATOR FEES AND ALLOCATING THE REVENUE TO
 9 EDUCATIONAL AND TRAINING PROGRAMS; PROVIDING THAT THE
 10 DEPARTMENT OF AGRICULTURE MAY ESTABLISH STANDARDS FOR
 11 PESTICIDE STORAGE, PESTICIDE MIXING OR LOADING SITES, AND
 12 BULK PESTICIDE FACILITIES; ALLOWING THE USE OF CANCELED
 13 PESTICIDES UNDER CERTAIN CONDITIONS; CHANGING FARM
 14 APPLICATOR QUALIFICATION STANDARDS TO PURCHASE AND USE
 15 RESTRICTED-USE PESTICIDES; ESTABLISHING UNIFORMITY OF
 16 PESTICIDE REGULATION IN THE STATE; AMENDING SECTIONS
 17 80-8-105, 80-8-111, 80-8-201, 80-8-203, 80-8-205, 80-8-207,
 18 80-8-209, AND 80-8-213, MCA; AND PROVIDING A TERMINATION
 19 DATE."

20
 21 STATEMENT OF INTENT

22 A statement of intent is required for this bill to
 23 provide direction to the department of agriculture for
 24 adoption of rules to implement the standards and procedures
 25 needed for a waste pesticide and pesticide container

1 collection, disposal, and recycling program, including fees
 2 on the volume, type, classification, or other
 3 characteristics of a waste pesticide or waste pesticide
 4 container, to offset the cost of conducting the program. The
 5 department shall establish special collection programs for
 6 persons who desire to dispose of or recycle unwanted
 7 pesticides or pesticide containers, provided that certain
 8 specific pesticides or pesticide containers may be excluded
 9 from this program. Persons who have complied with the waste
 10 pesticide or pesticide container collection, disposal, and
 11 recycling program may not be subject to any state
 12 administrative or judicial penalty. The department, when
 13 entering into a cooperative agreement with the Montana state
 14 university extension service, shall ensure in the agreement
 15 that at least \$20 of the farm applicator fee imposed in
 16 [section 9] is dedicated to county extension service
 17 programs for conducting local farm applicator pesticide
 18 educational and training programs for use of restricted-use
 19 pesticides.

20
 21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 **Section 1.** Section 80-8-105, MCA, is amended to read:

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

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

3 (2) The rules may prescribe methods of:

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

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

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

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

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

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

25 (g) operating and maintaining equipment used by

1 applicators;

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

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

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

13 (k) revoking licenses and permits;

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

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

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

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

(p) establishing procedures for implementing and administering the civil penalties under 80-8-306; and

(q) establishing fees for training courses and materials;

(r) establishing standards and procedures for administering a waste pesticide and pesticide container collection, disposal, and recycling program;

(s) establishing special fees on waste pesticides or pesticide containers collected under the waste pesticide and pesticide container collection, disposal, and recycling program. These fees may be based upon volume, type, classification, or other characteristics of a pesticide or a pesticide container and may include a credit for pesticide applicator, dealer, or operator license or permit fees.

(t) establishing standards for pesticide storage, pesticide mixing or loading sites, and bulk pesticide facilities.

(3) (a) Consistent with the provisions of Title 80,

chapter 15, whenever the department finds that ~~those~~ rules are necessary to carry out the purposes and intent of this chapter, the rules may relate to the time, place, manner, and method of registration, suspension or cancellation of registration, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time, and ~~shall~~ must encompass all reasonable factors ~~which~~ that the department considers necessary to prevent damage or injury to:

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

(ii) the environment;

(iii) plants, including forage plants;

(iv) wildlife;

(v) fish and other aquatic life.

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

(4) If the department finds that an emergency exists which requires immediate action with regard to the registration, use, or application of pesticides, the department may, without notice or hearing, issue necessary orders or rules to protect the public health, welfare, and

1 safety. An order or rule issued under this subsection is
 2 effective for the period prescribed by the Montana
 3 Administrative Procedure Act. If the department determines
 4 that the emergency order or rule should remain in effect, a
 5 public hearing under 80-8-106 shall must be held within the
 6 above period to determine whether the order or rule should
 7 be adopted by the department.

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

20 **Section 2.** Section 80-8-111, MCA, is amended to read:

21 "80-8-111. Voluntary---waste Waste pesticide and
 22 pesticide container collection, disposal, and recycling
 23 program reporting--system----proposed-program----pesticide
 24 information. (1) The department shall establish a voluntary
 25 reporting--system--to--encourage--pesticide--applicators--and

1 other-persons--to--report: waste pesticide and pesticide
 2 container collection, disposal, and recycling program. The
 3 program must be funded by license, permit, and special fees
 4 designated for that purpose in this chapter. The department
 5 may also establish waste pesticide and pesticide container
 6 fees and accept grants, gifts, and other funds to finance
 7 this program.

8 (a)---the-types-and-volume-of-waste-pesticides--in--their
 9 possession,--and

10 (b)---the-county-where-the-waste-pesticides-are-stored,--

11 (2) The department may cooperate and contract with a
 12 person to conduct and manage the waste pesticide and
 13 pesticide container collection, disposal, and recycling
 14 program. shall-inventory--the--waste--pesticide--information
 15 reported--under--subsection--(1)--and-develop-a-proposed-waste
 16 pesticide--disposal--program--for---consideration---by---the
 17 legislature-in-1993.

18 (3) All--waste--pesticide--information--reported-to-the
 19 department--under--subsection--(1)--is---confidential,---The
 20 department--may--summarize--the--information-for-purposes-of
 21 preparing-a-waste-pesticide-inventory-report-that-is--public
 22 information,---if--a--waste-pesticide-disposal-program-is-not
 23 approved-by-the-legislature-in-1993,--the--department--shall
 24 destroy--the--waste--pesticide--information--received--under
 25 subsection---(1), (a) The department shall establish a

collection program for waste pesticides and pesticide containers. In order to participate in this program, a person shall:

(i) notify the department in advance of the type and amount of waste pesticide or pesticide containers that will be delivered for collection; and

(ii) deliver the waste pesticide or pesticide containers for collection by the department at a time and location designated by the department.

(b) A person may not be subject to an administrative or judicial penalty or action under this chapter as a result of participation in the waste pesticide or pesticide container collection, disposal, and recycling program pursuant to this section.

(4) The department may designate types of waste pesticides or pesticide containers that it will not collect for disposal and recycling under this program.

(5) The department shall provide pesticide applicators, dealers, and operators who participate in the waste pesticide and pesticide container collection, disposal, and recycling program and who are subject to a license or permit fee under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or 80-8-213 with a credit against the fees levied pursuant to 80-8-105(2)(s), provided that:

(a) the credit does not exceed the amount of the

license or permit fee paid by the applicator, dealer, or operator under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or 80-8-213; and

(b) each applicator, dealer, or operator may receive only one credit for each permit or license period."

NEW SECTION. Section 3. Deposit of waste pesticide and pesticide container collection, disposal, and recycling fees. (1) All license, permit, and special fees paid to the department to fund the waste pesticide and pesticide container collection, disposal, and recycling program and any grants or gifts accepted by the department pursuant to 80-8-111(1) must be deposited in an account in the state special revenue fund.

(2) Money in the account must be used by the department to administer the waste pesticide and pesticide container collection, disposal, and recycling program provided for in 80-8-111. Unencumbered and unexpended money remaining in the account at the end of the fiscal year may not lapse but must be carried forward for the purposes of this subsection until appropriated by subsequent legislative action.

NEW SECTION. Section 4. Uniformity of state pesticide regulation. The provisions of this chapter preempt local government ordinances that regulate or prohibit the registration, labeling, distribution, sale, handling, use, application, or disposal of pesticides or that require

notification before use of pesticides. It is not the intent of this section to preempt local responsibility for zoning, fire codes, or hazardous waste disposal.

Section 5. Section 80-8-201, MCA, is amended to read:

"80-8-201. Registration. (1) Every pesticide distributed, sold, or offered for sale within ~~this~~ the state or delivered for transportation or transported in intrastate commerce or between points within ~~this~~ the state ~~shall~~ must be registered with the department. The registration ~~shall~~ must be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all federally approved pesticides, and those registered are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

(2) The applicant for registration shall file with the department a statement including:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) a complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is so registered, and a statement of all claims to be made for it, including directions for use;

(c) the trade and chemical name of the pesticide;

(d) if requested by the department, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement ~~shall-be~~ is required only with-respect--to for information which that is different from that furnished when the pesticide was registered or last reregistered.

(3) Any A pesticide imported into ~~this~~ the state which that is subject to and has been registered under the provisions of any a federal act providing for the registration of pesticides ~~and-has-been-registered-under-the~~ provisions-of-a-federal-act-shall must be registered in the state. However, the state may restrict the sale or use and application of the pesticide by type of dealer, applicator, time, and place and may establish special registrations of pesticides as outlined in subsection (8) of this section and 80-8-105(3). The annual registration fee must also be paid, and registration information required by the department must be provided.

(4) The applicant shall pay an annual fee of \$70 for each pesticide registered. A registration fee is not required to register a federally approved experimental use permit.

(5) The department may require the submission of the complete formula and certified analytical standards of any

pesticide. If it appears to the department that the composition of the ~~article~~ pesticide warrants the proposed claims for it and if the ~~article~~ pesticide and its labeling and other material required to be submitted comply with the requirements of 80-8-202, it the department shall register the ~~article~~ pesticide.

(6) If it does not appear to the department that the ~~article~~ pesticide warrants the proposed claims for it or if the ~~article~~ pesticide and its labeling and other material required to be submitted do not comply with this chapter, it the department shall notify the applicant of the manner in which the ~~article~~ pesticide, labeling, or other material required to be submitted fails to comply with the chapter so as-to-allow to provide the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the ~~article~~ pesticide. The department may suspend or cancel the registration of a pesticide whenever it does not appear that the ~~article~~ pesticide or its labeling comply with this chapter or whenever scientific evidence proves that the ~~article~~ pesticide endangers man humans or the general environment afforded protection under 80-8-105(3)(a). When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may pursue administrative

remedies under the Montana Administrative Procedure Act and rules of the department.

(7) Registration is not required in the case of a pesticide shipped from one plant in ~~this~~ the state to another plant in ~~this~~ the state by the same person.

(8) (a) The departments of health and environmental sciences, agriculture, and fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for special local needs. The applicant shall pay a one-time fee of \$70 for a special local need or experimental-use permit registration. The departments shall utilize the same requirements and standards for reviewing registrations established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted thereunder under the act. The department of agriculture shall provide the departments of health and environmental sciences and fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the department of agriculture's proposed action on the application. The departments of health and environmental sciences and fish, wildlife, and parks shall approve or disapprove the application within 10 days after the receipt of the application. If the departments of health and environmental sciences, agriculture, and fish, wildlife, and parks are in

1 agreement with the proposed registration, the department of
2 agriculture shall issue the registration.

3 (b) The department of agriculture shall establish a
4 time and place for an interagency conference for the
5 purposes of resolving the registration of any pesticide or
6 device. If two of the departments approve the proposed
7 registration, the department of agriculture shall issue the
8 registration.

9 (c) The registrant applying for registration ~~shall~~ must
10 be notified as to proposed changes in registration. If the
11 departments cannot resolve the proposed registration
12 following the interagency conference, the registrant may
13 request a joint administrative hearing before the
14 departments of agriculture, health and environmental
15 sciences, and fish, wildlife, and parks.

16 (d) Following the interagency conference and, if
17 requested, the administrative hearing, if the proposed
18 registration of a pesticide or device has not been resolved,
19 the department of agriculture shall appoint an advisory
20 council as outlined in 80-8-108 to resolve by majority vote
21 the registration of any pesticide. The advisory council's
22 recommendations on the registration ~~shall~~ must be accepted
23 by the departments and implemented by the department of
24 agriculture.

25 (9) (a) Pesticides registered under any federal law

1 when canceled for sale and use in total or in part by a
2 federal agency responsible for registration are considered
3 canceled in total or in part for sale and use in Montana.
4 The cancellation is effective on the final date of sale or
5 use allowed under the federal law and rules or orders of the
6 federal agency. if Except as provided in subsection (9)(b),
7 if the federal cancellation allows existing stock to be used
8 past the final date of cancellation, such the sale or use in
9 this state may not exceed 2 years. The department shall
10 provide technical assistance to any person in possession of
11 such the products to insure ensure their proper disposal,
12 relabeling, or removal.

13 (b) Pesticide products canceled under the Federal
14 Insecticide, Fungicide and Rodenticide Act, 7 U.S.C.
15 136a-1(i)(5) may be sold and used according to environmental
16 protection agency labeling requirements or other
17 requirements for a period not to exceed 6 years from the
18 date that distribution from the registrant, formulator,
19 manufacturer, or distributor is terminated."

20 **Section 6.** Section 80-8-203, MCA, is amended to read:

21 "80-8-203. ~~Commercial applicator.~~ (1) It ~~shall-be~~ is
22 unlawful for any a person to engage in the business of
23 applying pesticides for another without a pesticide
24 applicator's license obtained from the department of
25 agriculture. The An application shall for a pesticide

1 applicator's license must be accompanied by a fee of \$45.
 2 ~~Applicators applying for a dealer's license under this~~
 3 ~~chapter shall be required to pay only a \$26 licensing fee~~
 4 ~~for the dealer's license.~~ The provisions of this subsection
 5 ~~shall~~ do not apply to any a person employed only to operate
 6 any equipment used for the application of any a pesticide
 7 ~~and in which~~ if the person has no financial interest or
 8 other control over ~~such apparatus~~ the equipment other than
 9 its day-to-day mechanical operation for the purpose of
 10 applying any pesticide.

11 (2) Public utility applicators ~~shall~~ must be licensed
 12 in the same manner as commercial applicators, provided that
 13 public utility operators working under public utility
 14 applicators are not required to be licensed except as
 15 provided ~~for under~~ in 80-8-205.

16 (3) ~~Veterinarians~~ A veterinarian licensed as provided
 17 in Title 37, chapter 18, part 3, ~~shall~~ is not be required to
 18 be licensed to apply nonrestricted pesticides, provided that
 19 ~~these veterinarians shall register~~ the veterinarian
 20 registers with the department each year; ~~provided further~~
 21 ~~that the veterinarians~~ The veterinarian must ~~shall be~~
 22 ~~required to~~ meet all other requirements and rules of the
 23 Montana Pesticides Act. The department shall consider the
 24 professional licensing requirements for veterinarians when
 25 adopting rules.

1 (4) An applicator is responsible for the use of any
 2 pesticide by an operator or employee under the applicator's
 3 supervision or employment.

4 (5) The department shall assess an additional annual
 5 license fee of \$30 on applicators to fund the waste
 6 pesticide and pesticide container collection, disposal, and
 7 recycling program. Fees collected under this subsection must
 8 be deposited in the state special revenue account pursuant
 9 to [section 3]."

10 **Section 7.** Section 80-8-205, MCA, is amended to read:

11 **"80-8-205. Commercial operator.** (1) The department of
 12 agriculture may establish procedures for controlling
 13 pesticide operators including necessary fees by regulation.

14 (2) The department may by rule establish a fee to be
 15 paid by commercial operators to fund the waste pesticide and
 16 pesticide container collection, disposal, and recycling
 17 program. Fees collected under this subsection must be
 18 deposited in the state special revenue account pursuant to
 19 [section 3]."

20 **Section 8.** Section 80-8-207, MCA, is amended to read:

21 **"80-8-207. Dealers.** (1) It is unlawful for any a person
 22 to sell, offer for sale, deliver, or have delivered within
 23 this the state any a pesticide without first procuring
 24 obtaining a license from the department of agriculture for
 25 each calendar year or portion thereof of a year. A separate

dealer's license and fee ~~shall--be~~ is required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide ~~fieldmen~~ field personnel or ~~salesmen~~ salespeople employed directly out of the same location or outlet and under a licensed dealer ~~shall~~ are not be required to obtain a license. The dealer shall furnish the department with the names and addresses of its ~~fieldmen~~ field personnel and ~~salesmen~~ salespeople selling pesticides within the state.

(2) The application for a license ~~shall~~ must be accompanied by a fee of \$45. Dealers applying for renewal of a license shall do so on or before March 1 of ~~that~~ the calendar year. ~~Any~~ A dealer applying for renewal of a license after March 1 ~~shall~~ must be assessed a \$25 late licensing fee.

(3) The dealer shall require the purchaser of ~~any~~ a restricted pesticide to exhibit ~~his~~ the purchaser's license or permit issued under authority of this chapter before completing a sale.

~~(4) Dealers--may--make--one--application--for--two--annual~~
~~licenses--if--the--application--is--accompanied--by--a--\$45~~
~~licensing--fee--for--each--year--of--the--state--biennium.~~ The
department shall assess an additional annual license fee of
\$30 on dealers to fund the waste pesticide and pesticide
container collection, disposal, and recycling program. Fees

collected under this subsection must be deposited in the
state special revenue account pursuant to [section 3].

(5) Pharmacists licensed as provided for in 37-7-302 and 37-7-303, veterinarians licensed as provided for in 37-18-302 and 37-18-303, and certified pharmacies licensed under 37-7-321 ~~shall~~ are not be required to be licensed to sell pesticides, provided that the certified pharmacies and veterinarians ~~shall~~ register with the department each year. However, the certified pharmacies and veterinarians ~~shall--be~~ required-to must meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules."

Section 9. Section 80-8-209, MCA, is amended to read:

"80-8-209. Farm applicators. (1) Farm applicators shall obtain a special-use permit prior to purchasing and using ~~any~~ a pesticide designated by the department as a restricted-use pesticide. The fee for the permit is ~~\$15~~ \$35. The special-use permit ~~shall--be~~ is effective for 5 calendar years. The department may establish a staggered years system of issuing permits. Revenue generated by the permit fee must be expended in the following manner:

(a) \$15 to the department to administer the permitting program;

(b) \$5 to the Montana state university extension service for the development of educational materials for farm pesticide applicators; and

(c) \$15 to the extension service of the county in which the permit applicant resides for farm pesticide applicator certification and training programs.

(2) Restricted pesticides may not be utilized by farm applicators or their employees except for the purpose of producing or protecting any an agricultural commodity on property owned, leased, or rented by such the applicator.

(3) Farm applicators shall qualify for their first permit by either passing a graded written examination or attending a training course approved by the department and taking an ungraded written examination. The examinations and course must meet the minimum certification standards and procedures established by the environmental protection agency except as otherwise provided by this chapter. shall require--and--demonstrate---practical---knowledge---of---the applicator's-ability-to-

(a)--recognize--common-pests-to-be-controlled-and-damage caused-by-them;

(b)--read--and--understand--the---label---and---labeling information,--including--the-common-name-of-the-pesticide(s) applied, pest(s)-to-be-controlled,--timing--and--methods--of application,--safety--precautions, any preharvest or reentry

restrictions, and any specific disposal procedures;

(c)--apply---pesticides---in---accordance---with---label instructions and warnings,--including--the--ability--to--prepare the--proper--concentration--of--pesticides--to-be-used-under particular circumstances,--taking--into--account--such--factors as--area-to-be-covered, speed-at-which-application-equipment will-be-driven, and the quantity dispersed in a given period of operation;

(d)--recognize-local-environmental-situations-that--must be-considered-during-application-to-avoid-contamination; and

(e)--recognize--poisoning--symptoms--and--procedures--to follow-in-case-of-a-pesticide-accident;

(4) The department may require farm applicators to attend a mandatory training session and pass a written examination for those restricted pesticides that are extremely toxic or for which an effective antidote is not available. The department may require farm applicators handling these pesticides to maintain use records.

(5) The department shall require farm applicators to requalify for renewal of the 5-year permit by attending a program--consisting--of--6--hours--of--training an approved training program. The department shall establish by rule a uniform system of administering the requalification training program. The department may credit only training related to the standards set forth in subsection (3).

1 (6) Provisions of this chapter relating to
2 certification of farm applicators do not apply to any a farm
3 applicator applying nonrestricted pesticides on his the
4 applicator's own land or on lands of his neighbors if he the
5 farm applicator:

6 (a) operates farm property and operates and maintains
7 pesticide application equipment primarily for his the
8 applicator's own use;

9 (b) is not regularly engaged in the business of
10 applying pesticides for hire and does not publicly-hold
11 himself-out--as represent to the public that the farm
12 applicator is a pesticide applicator;

13 (c) operates his pesticide application equipment only
14 in the vicinity of his the applicator's own property and for
15 the accommodation of his immediate neighbors.

16 (7) (a) The department shall assess an additional
17 annual permit fee of \$15 on farm applicators to fund the
18 waste pesticide and pesticide container collection,
19 disposal, and recycling program.

20 (b) Farm applicators must be assessed the fee at the
21 beginning of the next 5-year permit renewal period. The
22 department may assess a prorated fee for a farm applicator
23 becoming licensed within a 5-year permit renewal period.

24 (c) Fees collected under this subsection (7) must be
25 deposited in the state special revenue account pursuant to

1 [section 3]."

2 **Section 10.** Section 80-8-213, MCA, is amended to read:

3 "**80-8-213. Government agencies.** (1) All state agencies,
4 municipal corporations, or any other governmental agency
5 shall--be agencies are subject to the provisions of this
6 chapter and rules adopted thereunder under this chapter
7 concerning the application or sale of pesticides.
8 Applicators and operators applying pesticides and dealers
9 selling pesticides for agencies, municipal corporations, or
10 any governmental agencies shall--be are subject to the
11 provisions of 80-8-203 through 80-8-208.

12 (2) The department shall issue a limited commercial
13 applicator's or dealer's license for an annual fee of \$50,
14 which shall--be is valid only when such an applicator or
15 dealer is applying or selling pesticides for such-agencies a
16 state agency, municipal corporation, or any other
17 governmental agency, provided that the jurisdictional health
18 officer, state veterinarian, their duly authorized
19 representatives, or governmental research personnel are
20 exempt from this licensing requirement when applying
21 pesticides to experimental areas.

22 (3) (a) A governmental agency shall pay the--annual
23 applicator's--fee for each of its first four employee
24 applicators;

25 (i) an annual applicator's fee of \$50; and

1 (ii) an additional fee of \$25 to fund the waste
 2 pesticide and pesticide container collection, disposal, and
 3 recycling program.

4 (b) The A governmental agency shall pay an-annual-fee
 5 of-\$5 for each additional employee applicator:

6 (i) an annual applicator's fee of \$5; and

7 (ii) an additional fee of \$15 to fund the waste
 8 pesticide and pesticide container collection, disposal, and
 9 recycling program.

10 (c) Fees collected pursuant to this subsection (3) for
 11 the purpose of funding the waste pesticide and pesticide
 12 container collection, disposal, and recycling program must
 13 be deposited in the state special revenue account pursuant
 14 to [section 3].

15 (4) Government employees becoming certified applicators
 16 only to qualify for conducting pesticide education courses
 17 may not be charged a license fee but are limited to
 18 providing such the courses. Government operators are subject
 19 to rules adopted pursuant to 80-8-205, including the license
 20 fee."

21 NEW SECTION. Section 11. Severability. If a part of
 22 [this act] is invalid, all valid parts that are severable
 23 from the invalid part remain in effect. If a part of [this
 24 act] is invalid in one or more of its applications, the part
 25 remains in effect in all valid applications that are

1 severable from the invalid applications.

2 NEW SECTION. Section 12. Codification instruction.
 3 [Sections 3 and 4] are intended to be codified as an
 4 integral part of Title 80, chapter 8, and the provisions of
 5 Title 80, chapter 8, apply to [sections 3 and 4].

6 NEW SECTION. Section 13. Termination. [Sections
 7 1(2)(r) and (2)(s), 2, 3, 6(5), 7(2), 8(4), 9(7), and
 8 10(3)(a)(ii), (3)(b)(ii), and (3)(c)] terminate June 30,
 9 1999.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0334, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act increasing pesticide applicator and dealer license fees and designating the revenue to a waste pesticide and pesticide container collection, disposal, and recycling program; increasing farm pesticide applicator fees and allocating the revenue to educational and training programs; providing that the Department of Agriculture may establish standards for pesticide storage, pesticide mixing or loading sites, and bulk pesticide facilities; allowing the use of canceled pesticides under certain conditions; changing farm applicator qualification standards to purchase and use restricted-use pesticides; establishing uniformity of pesticide regulation in the state; amending existing statutes and providing a termination date.

ASSUMPTIONS:

1. The Department of Agriculture (MDA) will administer the disposal program for "waste" pesticides, pesticide containers and the funds delegated to the MSU Extension Service for the revised farmer pesticide certification programs.
2. No additional FTE are required to administer these programs.
3. The MDA will enter into a contract with an entity qualified and experienced in handling waste products through competitive bid process. Contractor will manage the program under contract conditions.
4. Any pesticides that can be recycled (used according to the label) and pesticide containers that can be recycled will result in approximate revenues of \$5,000 per year. The program will be conducted until June 30, 1999.
5. MDA will enter into a service agreement with MSU-Cooperative Extension Service (MSU-CES) to carry out the provisions EPA certification standards require farm applicators to meet the same certification standards as commercial applicators.
6. Pesticide license revenue projections are based on the number of individuals licensed in FY92.
7. Pesticide license revenues will vary each fiscal year as farm applicators are licensed for a 5 year period, dependent on licensing district.
8. FY94 and FY95 expenditures are based on executive budget data. Current pesticide license fees of \$107,000 are not used for disposal programs. These funds are used for other current level pesticide programs.
9. Under Section 2, (5) licensed and permitted applicators and dealers will receive a monetary credit equivalent to the amount paid and designated for the disposal program within a permit or license period. Estimated credit cannot be determined.

(continued on next page)

David Lewis 2-11-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Tom Beck

TOM A. BECK, PRIMARY SPONSOR DATE

Fiscal Note for SB0334, as introduced

SB 334

FISCAL IMPACT:

	FY '94			FY '95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Operating Costs	-0-	220,445	220,445	-0-	233,045	233,045
<u>Funding:</u>						
State Special Fund	-0-	220,445	220,445	-0-	233,045	233,045
<u>Revenues:</u>						
Pesticide Licenses	107,000	209,445	102,445	107,000	222,045	115,045
Special Waste Fees	-0-	43,000	43,000	-0-	43,000	43,000
Special Container Fees	-0-	70,000	70,000	-0-	70,000	70,000
Recycling Fees	-0-	5,000	5,000	-0-	5,000	5,000
	107,000	327,445	220,445	107,000	340,045	233,045

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES: Waste pesticide and pesticide container collection, disposal and recycling programs should minimize improper disposal and potential environmental problems. County extension service offices will receive \$15 every five years for each applicator residing in that county.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: The disposal program terminates June 30, 1999, unless its provisions are continued by a future legislature. The update of certification standards for farm applicators will continue and revenue, \$5 per applicator every five years, will be transferred to the MSU-CES for continuation of new pesticide information and knowledge in compliance with EPA standards.

SB334

APPROVED BY COMM. ON
NATURAL RESOURCES

SENATE BILL NO. 334

INTRODUCED BY BECK, GROSFIELD, KOEHNKE, MCCLERNAN,
JERGESON, SCHWINDEN, REA, POSTER, GRADY, SCHYE,
GRINDE, BIRD

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING PESTICIDE
APPLICATOR AND DEALER LICENSE FEES AND DESIGNATING THE
REVENUE TO A WASTE PESTICIDE AND PESTICIDE CONTAINER
COLLECTION, DISPOSAL, AND RECYCLING PROGRAM; INCREASING FARM
PESTICIDE APPLICATOR FEES AND ALLOCATING THE REVENUE TO
EDUCATIONAL AND TRAINING PROGRAMS; PROVIDING THAT THE
DEPARTMENT OF AGRICULTURE MAY ESTABLISH STANDARDS FOR
PESTICIDE STORAGE, PESTICIDE MIXING OR LOADING SITES, AND
BULK PESTICIDE FACILITIES; ALLOWING THE USE OF CANCELED
PESTICIDES UNDER CERTAIN CONDITIONS; CHANGING FARM
APPLICATOR QUALIFICATION STANDARDS TO PURCHASE AND USE
RESTRICTED-USE PESTICIDES; ESTABLISHING---UNIFORMITY---OF
PESTICIDE---REGULATION---IN--THE--STATE; AMENDING SECTIONS
80-8-105, 80-8-111, 80-8-201, 80-8-203, 80-8-205, 80-8-207,
80-8-209, AND 80-8-213, MCA; AND PROVIDING EFFECTIVE DATES
AND A TERMINATION DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill to
provide direction to the department of agriculture for

adoption of rules to implement the standards and procedures
needed for a waste pesticide and pesticide container
collection, disposal, and recycling program, including fees
on the volume, type, classification, or other
characteristics of a waste pesticide or waste pesticide
container, to offset the cost of conducting the program. The
department shall establish special collection programs for
persons who desire to dispose of or recycle unwanted
pesticides or pesticide containers, provided that certain
specific pesticides or pesticide containers may be excluded
from this program. Persons who have complied with the waste
pesticide or pesticide container collection, disposal, and
recycling program may not be subject to any state
administrative or judicial penalty. The department, when
entering into a cooperative agreement with the Montana state
university extension service, shall ensure in the agreement
that at least \$20 of the farm applicator fee imposed in
[section 9 8] is dedicated to county extension service
programs for conducting local farm applicator pesticide
educational and training programs for use of restricted-use
pesticides.

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

Section 1. Section 80-8-105, MCA, is amended to read:

"80-8-105. Rules. (1) The department may adopt by

reference without a public hearing regulations adopted under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. The department may, after a public hearing, adopt all rules necessary to carry out this chapter.

(2) The rules may prescribe methods of:

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

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

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

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

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

(f) collection, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides

and devices;

(g) operating and maintaining equipment used by applicators;

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

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

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

(k) revoking licenses and permits;

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

(m) registering pesticide-fertilizer and other chemical

blends or, instead of registration, establishing licensing, inspection, and fees for blending plants;

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

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

(p) establishing procedures for implementing and administering the civil penalties under 80-8-306; and

(q) establishing fees for training courses and materials;

(r) establishing standards and procedures for administering a waste pesticide and pesticide container collection, disposal, and recycling program;

(s) establishing special fees on waste pesticides or pesticide containers collected under the waste pesticide and pesticide container collection, disposal, and recycling program. These fees may be based upon volume, type, classification, or other characteristics of a pesticide or a pesticide container and may include a credit for pesticide applicator, dealer, or operator license or permit fees.

(t) establishing standards for pesticide storage, pesticide mixing or loading sites, and bulk pesticide

facilities.

(3) (a) Consistent with the provisions of Title 80, chapter 15, whenever the department finds that those rules are necessary to carry out the purposes and intent of this chapter, the rules may relate to the time, place, manner, and method of registration, suspension or cancellation of registration, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time, and shall must encompass all reasonable factors which that the department considers necessary to prevent damage or injury to:

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

(ii) the environment;

(iii) plants, including forage plants;

(iv) wildlife;

(v) fish and other aquatic life.

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

(4) If the department finds that an emergency exists which requires immediate action with regard to the registration, use, or application of pesticides, the

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

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

Section 2. Section 80-8-111, MCA, is amended to read:

"80-8-111. Voluntary ~~waste~~ Waste pesticide ~~and~~ pesticide container collection, disposal, and recycling ~~program reporting system~~ proposed program ~~pesticide~~

information. (1) The department shall establish a voluntary reporting system to encourage pesticide applicators and other persons to report: waste pesticide and pesticide container collection, disposal, and recycling program. The program must be funded by license, permit, and special fees designated for that purpose in this chapter. The department may also establish waste pesticide and pesticide container fees and accept grants, gifts, and other funds to finance this program.

(a) ~~the types and volume of waste pesticides in their possession; and~~

(b) ~~the county where the waste pesticides are stored;~~

(2) The department may cooperate and contract with a person to conduct and manage the waste pesticide and pesticide container collection, disposal, and recycling program. shall inventory the waste pesticide information reported under subsection (1) and develop a proposed waste pesticide disposal program for consideration by the legislature in 1993.

(3) ~~All waste pesticide information reported to the department under subsection (1) is confidential. The department may summarize the information for purposes of preparing a waste pesticide inventory report that is public information. If a waste pesticide disposal program is not approved by the legislature in 1993, the department shall~~

~~destroy--the--waste--pesticide--information--received--under~~
~~subsection---(1);~~ (a) The department shall establish a
collection program for waste pesticides and pesticide
containers. In order to participate in this program, a
person shall:

(i) notify the department in advance of the type and
amount of waste pesticide or pesticide containers that will
be delivered for collection; and

(ii) deliver the waste pesticide or pesticide containers
for collection by the department at a time and location
designated by the department.

(b) A person may not be subject to an administrative or
judicial penalty or action under this chapter as a result of
participation in the waste pesticide or pesticide container
collection, disposal, and recycling program pursuant to this
section.

(4) The department may designate types of waste
pesticides or pesticide containers that it will not collect
for disposal and recycling under this program.

(5) The department shall provide pesticide applicators,
dealers, and operators who participate in the waste
pesticide and pesticide container collection, disposal, and
recycling program and who are subject to a license or permit
fee under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or
80-8-213 with a credit against the fees levied pursuant to

80-8-105(2)(g), provided that:

(a) the credit does not exceed the amount of the
license or permit fee paid by the applicator, dealer, or
operator under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or
80-8-213; and

(b) each applicator, dealer, or operator may receive
only one credit for each permit or license period."

NEW SECTION. Section 3. Deposit of waste pesticide and
pesticide container collection, disposal, and recycling
fees. (1) All license, permit, and special fees paid to the
department to fund the waste pesticide and pesticide
container collection, disposal, and recycling program and
any grants or gifts accepted by the department pursuant to
80-8-111(1) must be deposited in an account in the state
special revenue fund.

(2) Money in the account must be used by the department
to administer the waste pesticide and pesticide container
collection, disposal, and recycling program provided for in
80-8-111. Unencumbered and unexpended money remaining in the
account at the end of the fiscal year may not lapse but must
be carried forward for the purposes of this subsection until
appropriated by subsequent legislative action.

~~NEW SECTION. Section 4. Uniformity of state pesticide~~
~~regulation. The provisions of this chapter preempt local~~
~~government ordinances that regulate or prohibit the~~

1 registration, labeling, distribution, sale, handling, use,
2 application, or disposal of pesticides or that require
3 notification before use of pesticides. It is not the intent
4 of this section to preempt local responsibility for zoning,
5 fire codes, or hazardous waste disposal.

6 Section 4. Section 80-8-201, MCA, is amended to read:

7 "80-8-201. Registration. (1) Every pesticide
8 distributed, sold, or offered for sale within this the state
9 or delivered for transportation or transported in intrastate
10 commerce or between points within this the state shall must
11 be registered with the department. The registration shall
12 must be renewed annually by the manufacturer, formulator, or
13 distributor of the pesticide. The department shall register
14 all federally approved pesticides, and those registered are
15 subject to registration fees and all other provisions of
16 this chapter. All registrations of pesticides expire on
17 December 31 following the date of issuance unless otherwise
18 terminated.

19 (2) The applicant for registration shall file with the
20 department a statement including:

21 (a) the name and address of the applicant and the name
22 and address of the person whose name will appear on the
23 label, if other than the registrant;

24 (b) a complete copy of the label of the pesticide, the
25 United States environmental protection agency registration

1 number if the pesticide is so registered, and a statement of
2 all claims to be made for it, including directions for use;

3 (c) the trade and chemical name of the pesticide;

4 (d) if requested by the department, a full description
5 of tests made and the results upon which the claims are
6 based. In the case of renewal of registration, a statement
7 shall be is required only with respect to for information
8 which that is different from that furnished when the
9 pesticide was registered or last reregistered.

10 (3) Any A pesticide imported into this the state which
11 that is subject to and has been registered under the
12 provisions of any a federal act providing for the
13 registration of pesticides and has been registered under the
14 provisions of a federal act shall must be registered in the
15 state. However, the state may restrict the sale or use and
16 application of the pesticide by type of dealer, applicator,
17 time, and place and may establish special registrations of
18 pesticides as outlined in subsection (8) of this section and
19 80-8-105(3). The annual registration fee must also be paid,
20 and registration information required by the department must
21 be provided.

22 (4) The applicant shall pay an annual fee of \$70 for
23 each pesticide registered. A registration fee is not
24 required to register a federally approved experimental use
25 permit.

1 (5) The department may require the submission of the
 2 complete formula and certified analytical standards of any
 3 pesticide. If it appears to the department that the
 4 composition of the article pesticide warrants the proposed
 5 claims for it and if the article pesticide and its labeling
 6 and other material required to be submitted comply with the
 7 requirements of 80-8-202, it the department shall register
 8 the article pesticide.

9 (6) If it does not appear to the department that the
 10 article pesticide warrants the proposed claims for it or if
 11 the article pesticide and its labeling and other material
 12 required to be submitted do not comply with this chapter, it
 13 the department shall notify the applicant of the manner in
 14 which the article pesticide, labeling, or other material
 15 required to be submitted fails to comply with the chapter so
 16 as-to-afford to provide the applicant an opportunity to make
 17 the necessary corrections. If the applicant does not make
 18 the corrections upon receipt of the notice, the department
 19 may refuse to register the article pesticide. The department
 20 may suspend or cancel the registration of a pesticide
 21 whenever it does not appear that the article pesticide or
 22 its labeling comply with this chapter or whenever scientific
 23 evidence proves that the article pesticide endangers man
 24 humans or the general environment afforded protection under
 25 80-8-105(3)(a). When an application for registration is

1 refused or the department proposes to suspend or cancel a
 2 registration, the registrant may pursue administrative
 3 remedies under the Montana Administrative Procedure Act and
 4 rules of the department.

5 (7) Registration is not required in the case of a
 6 pesticide shipped from one plant in this the state to
 7 another plant in this the state by the same person.

8 (8) (a) The departments of health and environmental
 9 sciences, agriculture, and fish, wildlife, and parks shall
 10 review all applications for registration of an
 11 experimental-use permit or a registration for special local
 12 needs. The applicant shall pay a one-time fee of \$70 for a
 13 special local need or experimental-use permit registration.
 14 The departments shall utilize the same requirements and
 15 standards for reviewing registrations established by the
 16 Federal Insecticide, Fungicide, and Rodenticide Act, as
 17 amended, and regulations adopted thereunder under the act.
 18 The department of agriculture shall provide the departments
 19 of health and environmental sciences and fish, wildlife, and
 20 parks with a complete copy of the application, related
 21 correspondence, and a statement of the department of
 22 agriculture's proposed action on the application. The
 23 departments of health and environmental sciences and fish,
 24 wildlife, and parks shall approve or disapprove the
 25 application within 10 days after the receipt of the

1 application. If the departments of health and environmental
2 sciences, agriculture, and fish, wildlife, and parks are in
3 agreement with the proposed registration, the department of
4 agriculture shall issue the registration.

5 (b) The department of agriculture shall establish a
6 time and place for an interagency conference for the
7 purposes of resolving the registration of any pesticide or
8 device. If two of the departments approve the proposed
9 registration, the department of agriculture shall issue the
10 registration.

11 (c) The registrant applying for registration shall must
12 be notified as to proposed changes in registration. If the
13 departments cannot resolve the proposed registration
14 following the interagency conference, the registrant may
15 request a joint administrative hearing before the
16 departments of agriculture, health and environmental
17 sciences, and fish, wildlife, and parks.

18 (d) Following the interagency conference and, if
19 requested, the administrative hearing, if the proposed
20 registration of a pesticide or device has not been resolved,
21 the department of agriculture shall appoint an advisory
22 council as outlined in 80-8-108 to resolve by majority vote
23 the registration of any pesticide. The advisory council's
24 recommendations on the registration shall must be accepted
25 by the departments and implemented by the department of

1 agriculture.

2 (9) (a) Pesticides registered under any federal law
3 when canceled for sale and use in total or in part by a
4 federal agency responsible for registration are considered
5 canceled in total or in part for sale and use in Montana.
6 The cancellation is effective on the final date of sale or
7 use allowed under the federal law and rules or orders of the
8 federal agency. If Except as provided in subsection (9)(b),
9 if the federal cancellation allows existing stock to be used
10 past the final date of cancellation, such the sale or use in
11 this state may not exceed 2 years. The department shall
12 provide technical assistance to any person in possession of
13 such the products to insure ensure their proper disposal,
14 relabeling, or removal.

15 (b) Pesticide products canceled under the Federal
16 Insecticide, Fungicide and Rodenticide Act, 7 U.S.C.
17 136a-1(i)(5) may be sold and used according to environmental
18 protection agency labeling requirements or other
19 requirements for a period not to exceed 6 years from the
20 date that distribution from the registrant, formulator,
21 manufacturer, or distributor is terminated."

22 Section 5. Section 80-8-203, MCA, is amended to read:

23 "80-8-203. Commercial applicator. (1) It shall-be is
24 unlawful for any a person to engage in the business of
25 applying pesticides for another without a pesticide

1 applicator's license obtained from the department of
 2 agriculture. The An application shall for a pesticide
 3 applicator's license must be accompanied by a fee of \$45.
 4 ~~Applicators applying for a dealer's license under this~~
 5 ~~chapter shall be required to pay only a \$20 licensing fee~~
 6 ~~for the dealer's license.~~ The provisions of this subsection
 7 shall do not apply to any a person employed only to operate
 8 any equipment used for the application of any a pesticide
 9 and ~~in which~~ if the person has no financial interest or
 10 other control over such apparatus the equipment other than
 11 its day-to-day mechanical operation for the purpose of
 12 applying any pesticide.

13 (2) Public utility applicators shall must be licensed
 14 in the same manner as commercial applicators, provided that
 15 public utility operators working under public utility
 16 applicators are not required to be licensed except as
 17 provided for under in 80-8-205.

18 (3) Veterinarians A veterinarian licensed as provided
 19 in Title 37, chapter 18, part 3, shall is not be required to
 20 be licensed to apply nonrestricted pesticides, provided that
 21 ~~these veterinarians shall register~~ the veterinarian
 22 registers with the department each year. ~~provided further~~
 23 ~~that the veterinarians~~ The veterinarian must shall be
 24 required to meet all other requirements and rules of the
 25 Montana Pesticides Act. The department shall consider the

1 professional licensing requirements for veterinarians when
 2 adopting rules.

3 (4) An applicator is responsible for the use of any
 4 pesticide by an operator or employee under the applicator's
 5 supervision or employment.

6 (5) The department shall assess an additional annual
 7 license fee of \$30 on applicators to fund the waste
 8 pesticide and pesticide container collection, disposal, and
 9 recycling program. Fees collected under this subsection must
 10 be deposited in the state special revenue account pursuant
 11 to [section 3]."

12 Section 6. Section 80-8-205, MCA, is amended to read:

13 "80-8-205. Commercial operator. (1) The department of
 14 agriculture may establish procedures for controlling
 15 pesticide operators including necessary fees by regulation.

16 (2) The department may by rule establish a fee to be
 17 paid by commercial operators to fund the waste pesticide and
 18 pesticide container collection, disposal, and recycling
 19 program. Fees collected under this subsection must be
 20 deposited in the state special revenue account pursuant to
 21 [section 3]."

22 Section 7. Section 80-8-207, MCA, is amended to read:

23 "80-8-207. Dealers. (1) It is unlawful for any a person
 24 to sell, offer for sale, deliver, or have delivered within
 25 this the state any a pesticide without first procuring

1 obtaining a license from the department of agriculture for
 2 each calendar year or portion thereof of a year. A separate
 3 dealer's license and fee ~~shall be~~ is required for each
 4 location or outlet from which pesticides are distributed,
 5 sold, held for sale, or offered for sale. Pesticide fieldmen
 6 field personnel or salesmen salespeople employed directly
 7 out of the same location or outlet and under a licensed
 8 dealer ~~shall~~ are not be required to obtain a license. The
 9 dealer shall furnish the department with the names and
 10 addresses of its fieldmen field personnel and salesmen
 11 salespeople selling pesticides within the state.

12 (2) The application for a license ~~shall~~ must be
 13 accompanied by a fee of \$45. Dealers applying for renewal of
 14 a license shall do so on or before March 1 of that the
 15 calendar year. Any A dealer applying for renewal of a
 16 license after March 1 ~~shall~~ must be assessed a \$25 late
 17 licensing fee.

18 (3) The dealer shall require the purchaser of any a
 19 restricted pesticide to exhibit ~~his~~ the purchaser's license
 20 or permit issued under authority of this chapter before
 21 completing a sale.

22 ~~(4) Dealers may make one application for two annual~~
 23 ~~licenses if the application is accompanied by a \$45~~
 24 ~~licensing fee for each year of the state biennium. The~~
 25 department shall assess an additional annual license fee of

1 \$30 on dealers to fund the waste pesticide and pesticide
 2 container collection, disposal, and recycling program. Fees
 3 collected under this subsection must be deposited in the
 4 state special revenue account pursuant to [section 3].

5 (5) Pharmacists licensed as provided for in 37-7-302
 6 and 37-7-303, veterinarians licensed as provided for in
 7 37-18-302 and 37-18-303, and certified pharmacies licensed
 8 under 37-7-321 ~~shall~~ are not be required to be licensed to
 9 sell pesticides, provided that the certified pharmacies and
 10 veterinarians ~~shall~~ register with the department each year.
 11 However, the certified pharmacies and veterinarians ~~shall be~~
 12 ~~required to~~ must meet all other requirements concerning the
 13 commercial sale of pesticides. The department shall take
 14 into account the professional licensing requirements of
 15 pharmacists, certified pharmacies, and veterinarians when
 16 adopting rules."

17 **Section 8.** Section 80-8-209, MCA, is amended to read:

18 "80-8-209. Farm applicators. (1) Farm applicators shall
 19 obtain a special-use permit prior to purchasing and using
 20 any a pesticide designated by the department as a
 21 restricted-use pesticide. The fee for the permit is \$15 \$35.
 22 The special-use permit ~~shall be~~ is effective for 5 calendar
 23 years. The department may establish a staggered years system
 24 of issuing permits. Revenue generated by the permit fee must
 25 be expended in the following manner:

(a) \$15 to the department to administer the permitting program;

(b) \$5 to the Montana state university extension service for the development of educational materials for farm pesticide applicators; and

(c) \$15 to the extension service of the county in which the permit applicant resides for farm pesticide applicator certification and training programs.

(2) Restricted pesticides may not be utilized by farm applicators or their employees except for the purpose of producing or protecting any an agricultural commodity on property owned, leased, or rented by such the applicator.

(3) Farm applicators shall qualify for their first permit by either passing a graded written examination or attending a training course approved by the department and taking an ungraded written examination. The examinations and course must meet the minimum certification standards and procedures established by the environmental protection agency except as otherwise provided by this chapter. ~~shall require--and--demonstrate--practical--knowledge--of--the applicator's--ability--to--~~

~~(a)--recognize--common-pests-to-be-controlled-and-damage caused-by-them;~~

~~(b)--read--and--understand--the--label--and--labeling information--including--the-common-name-of-the-pesticide(s)~~

~~applied, pest(s) to be controlled,--timing--and--methods--of application,--safety--precautions, any preharvest or reentry restrictions, and any specific disposal procedures;~~

~~(c)--apply--pesticides--in--accordance--with--label instructions and warnings, including the ability to--prepare the--proper--concentration--of--pesticides--to-be-used-under particular circumstances, taking into account--such--factors as--area-to-be-covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;~~

~~(d)--recognize local environmental situations that--must be considered during application to avoid contamination; and~~

~~(e)--recognize poisoning symptoms--and--procedures--to follow in case of a pesticide accident;~~

(4) The department may require farm applicators to attend a mandatory training session and pass a written examination for those restricted pesticides that are extremely toxic or for which an effective antidote is not available. The department may require farm applicators handling these pesticides to maintain use records.

(5) The department shall require farm applicators to requalify for renewal of the 5-year permit by attending a ~~program--consisting--of--6--hours--of--training~~ an approved training program. The department shall establish by rule a uniform system of administering the requalification training

1 program. The department may credit only training related to
2 the standards set forth in subsection (3).

3 (6) Provisions of this chapter relating to
4 certification of farm applicators do not apply to any a farm
5 applicator applying nonrestricted pesticides on his the
6 applicator's own land or on lands of his neighbors if he the
7 farm applicator:

8 (a) operates farm property and operates and maintains
9 pesticide application equipment primarily for his the
10 applicator's own use;

11 (b) is not regularly engaged in the business of
12 applying pesticides for hire and does not publicly-hold
13 himself-out--as represent to the public that the farm
14 applicator is a pesticide applicator;

15 (c) operates his pesticide application equipment only
16 in the vicinity of his the applicator's own property and for
17 the accommodation of his immediate neighbors.

18 (7) (a) The department shall assess an additional
19 annual permit fee of \$15 on farm applicators to fund the
20 waste pesticide and pesticide container collection,
21 disposal, and recycling program.

22 (b) Farm applicators must be assessed the fee at the
23 beginning of the next 5-year permit renewal period. The
24 department may assess a prorated fee for a farm applicator
25 becoming licensed within a 5-year permit renewal period.

1 (c) Fees collected under this subsection (7) must be
2 deposited in the state special revenue account pursuant to
3 [section 3]."

4 **Section 9.** Section 80-8-213, MCA, is amended to read:

5 "80-8-213. Government agencies. (1) All state agencies,
6 municipal corporations, or any other governmental agency
7 ~~shall--be~~ agencies are subject to the provisions of this
8 chapter and rules adopted thereunder under this chapter
9 concerning the application or sale of pesticides.
10 Applicators and operators applying pesticides and dealers
11 selling pesticides for agencies, municipal corporations, or
12 any governmental agencies ~~shall--be~~ are subject to the
13 provisions of 80-8-203 through 80-8-208.

14 (2) The department shall issue a limited commercial
15 applicator's or dealer's license for an annual fee of \$50,
16 which ~~shall--be~~ is valid only when such an applicator or
17 dealer is applying or selling pesticides for ~~such-agencies a~~
18 state agency, municipal corporation, or any other
19 governmental agency, provided that the jurisdictional health
20 officer, state veterinarian, their duly authorized
21 representatives, or governmental research personnel are
22 exempt from this licensing requirement when applying
23 pesticides to experimental areas.

24 (3) (a) A governmental agency shall pay the--annual
25 ~~applicator's--fee~~ for each of its first four employee

1 applicators:

2 (i) an annual applicator's fee of \$50; and
 3 (ii) an additional fee of \$25 to fund the waste
 4 pesticide and pesticide container collection, disposal, and
 5 recycling program.

6 (b) The A governmental agency shall pay an annual fee
 7 of \$5 for each additional employee applicator:

8 (i) an annual applicator's fee of \$5; and
 9 (ii) an additional fee of \$15 to fund the waste
 10 pesticide and pesticide container collection, disposal, and
 11 recycling program.

12 (C) A GOVERNMENT AGENCY MAY NOT BE REQUIRED TO PAY MORE
 13 THAN \$600 ANNUALLY FOR THE LICENSING OF EMPLOYEES AS
 14 APPLICATORS AND OPERATORS.

15 (d) Fees collected pursuant to this subsection (3)
 16 for the purpose of funding the waste pesticide and pesticide
 17 container collection, disposal, and recycling program must
 18 be deposited in the state special revenue account pursuant
 19 to [section 3].

20 (4) Government employees becoming certified applicators
 21 only to qualify for conducting pesticide education courses
 22 may not be charged a license fee but are limited to
 23 providing such the courses. Government operators are subject
 24 to rules adopted pursuant to 80-8-205, including the license
 25 fee."

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

7 NEW SECTION. Section 11. Codification instruction.
 8 {Sections 3 and 4} are [SECTION 3] IS intended to be
 9 codified as an integral part of Title 80, chapter 8, and the
 10 provisions of Title 80, chapter 8, apply to {sections 3 and
 11 4} [SECTION 3].

12 NEW SECTION. SECTION 12. EFFECTIVE DATE. [SECTION
 13 4(9)(B) AND THIS SECTION] ARE EFFECTIVE ON PASSAGE AND
 14 APPROVAL.

15 NEW SECTION. Section 13. Termination. [Sections
 16 1(2)(r) and (2)(s), 2, 3, 6(5), 7(2), 8(4), 9(7), and
 17 10(3)(a)(i), (3)(b)(i), and (3)(c) 5(5), 6(2), 7(4), 8(7),
 18 AND 9(3)(A)(II), (3)(B)(II), AND (3)(D)] terminate June 30,
 19 1999.

-End-

SENATE BILL NO. 334

INTRODUCED BY BECK, GROSFIELD, KOEHNKE, MCCLERNAN,
JERGESON, SCHWINDEN, REA, FOSTER, GRADY, SCHYE,
GRINDE, BIRD

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING PESTICIDE
APPLICATOR AND DEALER LICENSE FEES AND DESIGNATING THE
REVENUE TO A WASTE PESTICIDE AND PESTICIDE CONTAINER
COLLECTION, DISPOSAL, AND RECYCLING PROGRAM; INCREASING FARM
PESTICIDE APPLICATOR FEES AND ALLOCATING THE REVENUE TO
EDUCATIONAL AND TRAINING PROGRAMS; PROVIDING THAT THE
DEPARTMENT OF AGRICULTURE MAY ESTABLISH STANDARDS FOR
PESTICIDE STORAGE, PESTICIDE MIXING OR LOADING SITES, AND
BULK PESTICIDE FACILITIES; ALLOWING THE USE OF CANCELED
PESTICIDES UNDER CERTAIN CONDITIONS; CHANGING FARM
APPLICATOR QUALIFICATION STANDARDS TO PURCHASE AND USE
RESTRICTED-USE PESTICIDES; ESTABLISHING---UNIFORMITY---OF
PESTICIDE---REGULATION---IN---THE---STATE; AMENDING SECTIONS
80-8-105, 80-8-111, 80-8-201, 80-8-203, 80-8-205, 80-8-207,
80-8-209, AND 80-8-213, MCA; AND PROVIDING EFFECTIVE DATES
AND A TERMINATION DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill to
provide direction to the department of agriculture for

adoption of rules to implement the standards and procedures
needed for a waste pesticide and pesticide container
collection, disposal, and recycling program, including fees
on the volume, type, classification, or other
characteristics of a waste pesticide or waste pesticide
container, to offset the cost of conducting the program. The
department shall establish special collection programs for
persons who desire to dispose of or recycle unwanted
pesticides or pesticide containers, provided that certain
specific pesticides or pesticide containers may be excluded
from this program. Persons who have complied with the waste
pesticide or pesticide container collection, disposal, and
recycling program may not be subject to any state
administrative or judicial penalty. The department, when
entering into a cooperative agreement with the Montana state
university extension service, shall ensure in the agreement
that at least \$20 of the farm applicator fee imposed in
[section 9 8] is dedicated to county extension service
programs for conducting local farm applicator pesticide
educational and training programs for use of restricted-use
pesticides.

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

Section 1. Section 80-8-105, MCA, is amended to read:

"80-8-105. Rules. (1) The department may adopt by

reference without a public hearing regulations adopted under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. The department may, after a public hearing, adopt all rules necessary to carry out this chapter.

(2) The rules may prescribe methods of:

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

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

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

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

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

(f) collection, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides

and devices;

(g) operating and maintaining equipment used by applicators;

(h) developing examinations which ~~shall~~ must be held periodically throughout the state;

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

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

(k) revoking licenses and permits;

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

(m) registering pesticide-fertilizer and other chemical

blends or, instead of registration, establishing licensing, inspection, and fees for blending plants;

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

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

(p) establishing procedures for implementing and administering the civil penalties under 80-8-306; and

(q) establishing fees for training courses and materials;

(r) establishing standards and procedures for administering a waste pesticide and pesticide container collection, disposal, and recycling program;

(s) establishing special fees on waste pesticides or pesticide containers collected under the waste pesticide and pesticide container collection, disposal, and recycling program. These fees may be based upon volume, type, classification, or other characteristics of a pesticide or a pesticide container and may include a credit for pesticide applicator, dealer, or operator license or permit fees.

(t) establishing standards for pesticide storage, pesticide mixing or loading sites, and bulk pesticide

facilities.

(3) (a) Consistent with the provisions of Title 80, chapter 15, whenever the department finds that those rules are necessary to carry out the purposes and intent of this chapter, the rules may relate to the time, place, manner, and method of registration, suspension or cancellation of registration, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time, and shall must encompass all reasonable factors which that the department considers necessary to prevent damage or injury to:

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

(ii) the environment;

(iii) plants, including forage plants;

(iv) wildlife;

(v) fish and other aquatic life.

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

(4) If the department finds that an emergency exists which requires immediate action with regard to the registration, use, or application of pesticides, the

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

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

Section 2. Section 80-8-111, MCA, is amended to read:

"80-8-111. Voluntary--waste Waste pesticide and pesticide container collection, disposal, and recycling program reporting-system----proposed-program----pesticide

information. (1) The department shall establish a voluntary reporting--system--to--encourage--pesticide--applicators--and other--persons--to--report: waste pesticide and pesticide container collection, disposal, and recycling program. The program must be funded by license, permit, and special fees designated for that purpose in this chapter. The department may also establish waste pesticide and pesticide container fees and accept grants, gifts, and other funds to finance this program.

(a)--the-types-and-volume-of-waste-pesticides--in--their possession,--and

(b)--the-county-where-the-waste-pesticides-are-stored.

(2) The department may cooperate and contract with a person to conduct and manage the waste pesticide and pesticide container collection, disposal, and recycling program. shall-inventory--the--waste--pesticide--information reported--under--subsection--(1)--and-develop-a-proposed-waste pesticide--disposal--program--for---consideration---by---the legislature-in-1993,

(3) All--waste--pesticide--information--reported-to-the department--under--subsection--(1)--is---confidential,---The department--may--summarize--the--information-for-purposes-of preparing-a-waste-pesticide-inventory-report-that-is--public information,--if--a--waste-pesticide-disposal-program-is-not approved-by-the-legislature-in-1993,--the--department--shall

~~destroy--the--waste--pesticide--information--received--under~~
~~subsection---(1);~~ (a) The department shall establish a
collection program for waste pesticides and pesticide
containers. In order to participate in this program, a
person shall:

(i) notify the department in advance of the type and
amount of waste pesticide or pesticide containers that will
be delivered for collection; and

(ii) deliver the waste pesticide or pesticide containers
for collection by the department at a time and location
designated by the department.

(b) A person may not be subject to an administrative or
judicial penalty or action under this chapter as a result of
participation in the waste pesticide or pesticide container
collection, disposal, and recycling program pursuant to this
section.

(4) The department may designate types of waste
pesticides or pesticide containers that it will not collect
for disposal and recycling under this program.

(5) The department shall provide pesticide applicators,
dealers, and operators who participate in the waste
pesticide and pesticide container collection, disposal, and
recycling program and who are subject to a license or permit
fee under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or
80-8-213 with a credit against the fees levied pursuant to

80-8-105(2)(s), provided that:

(a) the credit does not exceed the amount of the
license or permit fee paid by the applicator, dealer, or
operator under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or
80-8-213; and

(b) each applicator, dealer, or operator may receive
only one credit for each permit or license period."

NEW SECTION. Section 3. Deposit of waste pesticide and
pesticide container collection, disposal, and recycling
fees. (1) All license, permit, and special fees paid to the
department to fund the waste pesticide and pesticide
container collection, disposal, and recycling program and
any grants or gifts accepted by the department pursuant to
80-8-111(1) must be deposited in an account in the state
special revenue fund.

(2) Money in the account must be used by the department
to administer the waste pesticide and pesticide container
collection, disposal, and recycling program provided for in
80-8-111. Unencumbered and unexpended money remaining in the
account at the end of the fiscal year may not lapse but must
be carried forward for the purposes of this subsection until
appropriated by subsequent legislative action.

NEW-SECTION--Section 4--Uniformity--of--state--pesticide--
regulation--The--provisions--of--this--chapter--preempt--local
government--ordinances--that--regulate--or--prohibit--the

1 registration, labeling, distribution, sale, handling, use,
2 application, or disposal of pesticides or that require
3 notification before use of pesticides; it is not the intent
4 of this section to preempt local responsibility for zoning,
5 fire codes, or hazardous waste disposal.

6 **Section 4.** Section 80-8-201, MCA, is amended to read:

7 "80-8-201. Registration. (1) Every pesticide
8 distributed, sold, or offered for sale within this the state
9 or delivered for transportation or transported in intrastate
10 commerce or between points within this the state ~~shall~~ must
11 be registered with the department. The registration ~~shall~~
12 must be renewed annually by the manufacturer, formulator, or
13 distributor of the pesticide. The department shall register
14 all federally approved pesticides, and those registered are
15 subject to registration fees and all other provisions of
16 this chapter. All registrations of pesticides expire on
17 December 31 following the date of issuance unless otherwise
18 terminated.

19 (2) The applicant for registration shall file with the
20 department a statement including:

21 (a) the name and address of the applicant and the name
22 and address of the person whose name will appear on the
23 label, if other than the registrant;

24 (b) a complete copy of the label of the pesticide, the
25 United States environmental protection agency registration

1 number if the pesticide is so registered, and a statement of
2 all claims to be made for it, including directions for use;

3 (c) the trade and chemical name of the pesticide;

4 (d) if requested by the department, a full description
5 of tests made and the results upon which the claims are
6 based. In the case of renewal of registration, a statement
7 ~~shall be~~ is required only with respect to for information
8 which that is different from that furnished when the
9 pesticide was registered or last reregistered.

10 (3) Any A pesticide imported into this the state which
11 that is subject to and has been registered under the
12 provisions of any a federal act providing for the
13 registration of pesticides ~~and has been registered under the~~
14 ~~provisions of a federal act shall~~ must be registered in the
15 state. However, the state may restrict the sale or use and
16 application of the pesticide by type of dealer, applicator,
17 time, and place and may establish special registrations of
18 pesticides as outlined in subsection (8) of this section and
19 80-8-105(3). The annual registration fee must also be paid,
20 and registration information required by the department must
21 be provided.

22 (4) The applicant shall pay an annual fee of \$70 for
23 each pesticide registered. A registration fee is not
24 required to register a federally approved experimental use
25 permit.

(5) The department may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department that the composition of the article pesticide warrants the proposed claims for it and if the article pesticide and its labeling and other material required to be submitted comply with the requirements of 80-8-202, it the department shall register the article pesticide.

(6) If it does not appear to the department that the article pesticide warrants the proposed claims for it or if the article pesticide and its labeling and other material required to be submitted do not comply with this chapter, it the department shall notify the applicant of the manner in which the article pesticide, labeling, or other material required to be submitted fails to comply with the chapter ~~so~~ as-to-allow to provide the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the article pesticide. The department may suspend or cancel the registration of a pesticide whenever it does not appear that the article pesticide or its labeling comply with this chapter or whenever scientific evidence proves that the article pesticide endangers man humans or the general environment afforded protection under 80-8-105(3)(a). When an application for registration is

refused or the department proposes to suspend or cancel a registration, the registrant may pursue administrative remedies under the Montana Administrative Procedure Act and rules of the department.

(7) Registration is not required in the case of a pesticide shipped from one plant in this the state to another plant in this the state by the same person.

(8) (a) The departments of health and environmental sciences, agriculture, and fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for special local needs. The applicant shall pay a one-time fee of \$70 for a special local need or experimental-use permit registration. The departments shall utilize the same requirements and standards for reviewing registrations established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted thereunder under the act. The department of agriculture shall provide the departments of health and environmental sciences and fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the department of agriculture's proposed action on the application. The departments of health and environmental sciences and fish, wildlife, and parks shall approve or disapprove the application within 10 days after the receipt of the

1 application. If the departments of health and environmental
2 sciences, agriculture, and fish, wildlife, and parks are in
3 agreement with the proposed registration, the department of
4 agriculture shall issue the registration.

5 (b) The department of agriculture shall establish a
6 time and place for an interagency conference for the
7 purposes of resolving the registration of any pesticide or
8 device. If two of the departments approve the proposed
9 registration, the department of agriculture shall issue the
10 registration.

11 (c) The registrant applying for registration ~~shall~~ must
12 be notified as to proposed changes in registration. If the
13 departments cannot resolve the proposed registration
14 following the interagency conference, the registrant may
15 request a joint administrative hearing before the
16 departments of agriculture, health and environmental
17 sciences, and fish, wildlife, and parks.

18 (d) Following the interagency conference and, if
19 requested, the administrative hearing, if the proposed
20 registration of a pesticide or device has not been resolved,
21 the department of agriculture shall appoint an advisory
22 council as outlined in 80-8-108 to resolve by majority vote
23 the registration of any pesticide. The advisory council's
24 recommendations on the registration ~~shall~~ must be accepted
25 by the departments and implemented by the department of

1 agriculture.

2 (9) (a) Pesticides registered under any federal law
3 when canceled for sale and use in total or in part by a
4 federal agency responsible for registration are considered
5 canceled in total or in part for sale and use in Montana.
6 The cancellation is effective on the final date of sale or
7 use allowed under the federal law and rules or orders of the
8 federal agency. If Except as provided in subsection (9)(b),
9 if the federal cancellation allows existing stock to be used
10 past the final date of cancellation, such the sale or use in
11 this state may not exceed 2 years. The department shall
12 provide technical assistance to any person in possession of
13 such the products to insure ensure their proper disposal,
14 relabeling, or removal.

15 (b) Pesticide products canceled under the Federal
16 Insecticide, Fungicide and Rodenticide Act, 7 U.S.C.
17 136a-1(i)(5) may be sold and used according to environmental
18 protection agency labeling requirements or other
19 requirements for a period not to exceed 6 years from the
20 date that distribution from the registrant, formulator,
21 manufacturer, or distributor is terminated."

22 **Section 5.** Section 80-8-203, MCA, is amended to read:

23 "80-8-203. Commercial applicator. (1) It ~~shall-be~~ is
24 unlawful for any a person to engage in the business of
25 applying pesticides for another without a pesticide

1 applicator's license obtained from the department of
 2 agriculture. ~~The~~ An application ~~shall~~ for a pesticide
 3 applicator's license must be accompanied by a fee of \$45.
 4 ~~Applicators-applying-for-a-dealer's-license-under-this~~
 5 ~~chapter-shall-be-required-to-pay-only-a-\$20-licensing-fee~~
 6 ~~for-the-dealer's-license.~~ The provisions of this subsection
 7 shall do not apply to any a person employed only to operate
 8 any equipment used for the application of any a pesticide
 9 ~~and-in-which~~ if the person has no financial interest or
 10 other control over ~~such-apparatus~~ the equipment other than
 11 its day-to-day mechanical operation for the purpose of
 12 applying any pesticide.

13 (2) Public utility applicators ~~shall~~ must be licensed
 14 in the same manner as commercial applicators, provided that
 15 public utility operators working under public utility
 16 applicators are not required to be licensed except as
 17 provided ~~for-under~~ in 80-8-205.

18 (3) ~~Veterinarians~~ A veterinarian licensed as provided
 19 in Title 37, chapter 18, part 3, ~~shall~~ is not be required to
 20 be licensed to apply nonrestricted pesticides, provided that
 21 ~~these-veterinarians-shall-register~~ the veterinarian
 22 registers with the department each year; ~~provided-further~~
 23 ~~that-the-veterinarians~~ The veterinarian must ~~shall-be~~
 24 ~~required-to~~ meet all other requirements and rules of the
 25 Montana Pesticides Act. The department shall consider the

1 professional licensing requirements for veterinarians when
 2 adopting rules.

3 (4) An applicator is responsible for the use of any
 4 pesticide by an operator or employee under the applicator's
 5 supervision or employment.

6 (5) The department shall assess an additional annual
 7 license fee of \$30 on applicators to fund the waste
 8 pesticide and pesticide container collection, disposal, and
 9 recycling program. Fees collected under this subsection must
 10 be deposited in the state special revenue account pursuant
 11 to [section 3]."

12 **Section 6.** Section 80-8-205, MCA, is amended to read:

13 **"80-8-205. Commercial operator.** (1) The department of
 14 agriculture may establish procedures for controlling
 15 pesticide operators including necessary fees by regulation.

16 (2) The department may by rule establish a fee to be
 17 paid by commercial operators to fund the waste pesticide and
 18 pesticide container collection, disposal, and recycling
 19 program. Fees collected under this subsection must be
 20 deposited in the state special revenue account pursuant to
 21 [section 3]."

22 **Section 7.** Section 80-8-207, MCA, is amended to read:

23 **"80-8-207. Dealers.** (1) It is unlawful for any a person
 24 to sell, offer for sale, deliver, or have delivered within
 25 this the state any a pesticide without first procuring

1 obtaining a license from the department of agriculture for
 2 each calendar year or portion thereof of a year. A separate
 3 dealer's license and fee ~~shall--be~~ is required for each
 4 location or outlet from which pesticides are distributed,
 5 sold, held for sale, or offered for sale. Pesticide ~~fieldmen~~
 6 field personnel or ~~salesmen~~ salespeople employed directly
 7 out of the same location or outlet and under a licensed
 8 dealer ~~shall~~ are not be required to obtain a license. The
 9 dealer shall furnish the department with the names and
 10 addresses of its ~~fieldmen~~ field personnel and ~~salesmen~~
 11 salespeople selling pesticides within the state.

12 (2) The application for a license ~~shall~~ must be
 13 accompanied by a fee of \$45. Dealers applying for renewal of
 14 a license shall do so on or before March 1 of that the
 15 calendar year. Any A dealer applying for renewal of a
 16 license after March 1 ~~shall~~ must be assessed a \$25 late
 17 licensing fee.

18 (3) The dealer shall require the purchaser of any a
 19 restricted pesticide to exhibit ~~his~~ the purchaser's license
 20 or permit issued under authority of this chapter before
 21 completing a sale.

22 (4) ~~Dealers--may--make--one--application--for--two--annual~~
 23 ~~licenses--if--the--application--is--accompanied--by--a--\$45~~
 24 ~~licensing--fee--for--each--year--of--the--state--biennium.~~ The
 25 department shall assess an additional annual license fee of

1 \$30 on dealers to fund the waste pesticide and pesticide
 2 container collection, disposal, and recycling program. Fees
 3 collected under this subsection must be deposited in the
 4 state special revenue account pursuant to [section 3].

5 (5) Pharmacists licensed as provided for in 37-7-302
 6 and 37-7-303, veterinarians licensed as provided for in
 7 37-18-302 and 37-18-303, and certified pharmacies licensed
 8 under 37-7-321 ~~shall~~ are not be required to be licensed to
 9 sell pesticides, provided that the certified pharmacies and
 10 veterinarians ~~shall~~ register with the department each year.
 11 However, the certified pharmacies and veterinarians ~~shall--be~~
 12 ~~required--to~~ must meet all other requirements concerning the
 13 commercial sale of pesticides. The department shall take
 14 into account the professional licensing requirements of
 15 pharmacists, certified pharmacies, and veterinarians when
 16 adopting rules."

17 **Section 8.** Section 80-8-209, MCA, is amended to read:

18 **"80-8-209. Farm applicators.** (1) Farm applicators shall
 19 obtain a special-use permit prior to purchasing and using
 20 any a pesticide designated by the department as a
 21 restricted-use pesticide. The fee for the permit is \$15 ~~\$35~~.
 22 The special-use permit ~~shall--be~~ is effective for 5 calendar
 23 years. The department may establish a staggered years system
 24 of issuing permits. Revenue generated by the permit fee must
 25 be expended in the following manner:

1 (a) \$15 to the department to administer the permitting
2 program;

3 (b) \$5 to the Montana state university extension
4 service for the development of educational materials for
5 farm pesticide applicators; and

6 (c) \$15 to the extension service of the county in which
7 the permit applicant resides for farm pesticide applicator
8 certification and training programs.

9 (2) Restricted pesticides may not be utilized by farm
10 applicators or their employees except for the purpose of
11 producing or protecting any an agricultural commodity on
12 property owned, leased, or rented by such the applicator.

13 (3) Farm applicators shall qualify for their first
14 permit by either passing a graded written examination or
15 attending a training course approved by the department and
16 taking an ungraded written examination. The examinations and
17 course must meet the minimum certification standards and
18 procedures established by the environmental protection
19 agency except as otherwise provided by this chapter. shall
20 require--and--demonstrate--practical--knowledge--of--the
21 applicator's-ability-to-

22 (a)--recognize--common-pests-to-be-controlled-and-damage
23 caused-by-them;

24 (b)--read--and--understand--the--label--and--labeling
25 information;--including--the-common-name-of-the-pesticide(s)

1 applied;--pest(s)--to-be-controlled;--timing--and--methods--of
2 application;--safety--precautions;--any-preharvest-or-reentry
3 restrictions;--and-any-specific-disposal-procedures;

4 (c)--apply--pesticides--in--accordance--with--label
5 instructions-and-warnings;--including-the-ability-to--prepare
6 the--proper--concentration--of--pesticides--to-be-used-under
7 particular-circumstances;--taking-into-account--such--factors
8 as--area-to-be-covered;--speed-at-which-application-equipment
9 will-be-driven;--and-the-quantity-dispersed-in-a-given-period
10 of-operation;

11 (d)--recognize-local-environmental-situations-that--must
12 be-considered-during-application-to-avoid-contamination;--and
13 (e)--recognize--poisoning--symptoms--and--procedures--to
14 follow-in-case-of-a-pesticide-accident;

15 (4) The department may require farm applicators to
16 attend a mandatory training session and pass a written
17 examination for those restricted pesticides that are
18 extremely toxic or for which an effective antidote is not
19 available. The department may require farm applicators
20 handling these pesticides to maintain use records.

21 (5) The department shall require farm applicators to
22 requalify for renewal of the 5-year permit by attending a
23 program--consisting--of--6--hours--of--training an approved
24 training program. The department shall establish by rule a
25 uniform system of administering the requalification training

1 program. The department may credit only training related to
2 the standards set forth in subsection (3).

3 (6) Provisions of this chapter relating to
4 certification of farm applicators do not apply to any a farm
5 applicator applying nonrestricted pesticides on his the
6 applicator's own land or on lands of his neighbors if he the
7 farm applicator:

8 (a) operates farm property and operates and maintains
9 pesticide application equipment primarily for his the
10 applicator's own use;

11 (b) is not regularly engaged in the business of
12 applying pesticides for hire and does not publicly-hold
13 himself-out--as represent to the public that the farm
14 applicator is a pesticide applicator;

15 (c) operates his pesticide application equipment only
16 in the vicinity of his the applicator's own property and for
17 the accommodation of his immediate neighbors.

18 (7) (a) The department shall assess an additional
19 annual permit fee of \$15 on farm applicators to fund the
20 waste pesticide and pesticide container collection,
21 disposal, and recycling program.

22 (b) Farm applicators must be assessed the fee at the
23 beginning of the next 5-year permit renewal period. The
24 department may assess a prorated fee for a farm applicator
25 becoming licensed within a 5-year permit renewal period.

1 (c) Fees collected under this subsection (7) must be
2 deposited in the state special revenue account pursuant to
3 [section 3]."

4 **Section 9.** Section 80-8-213, MCA, is amended to read:

5 "80-8-213. Government agencies. (1) All state agencies,
6 municipal corporations, or any other governmental agency
7 ~~shall--be~~ agencies are subject to the provisions of this
8 chapter and rules adopted thereunder under this chapter
9 concerning the application or sale of pesticides.
10 Applicators and operators applying pesticides and dealers
11 selling pesticides for agencies, municipal corporations, or
12 any governmental agencies ~~shall--be~~ are subject to the
13 provisions of 80-8-203 through 80-8-208.

14 (2) The department shall issue a limited commercial
15 applicator's or dealer's license for an annual fee of \$50,
16 which ~~shall--be~~ is valid only when such an applicator or
17 dealer is applying or selling pesticides for ~~such-agencies a~~
18 state agency, municipal corporation, or any other
19 governmental agency, provided that the jurisdictional health
20 officer, state veterinarian, their duly authorized
21 representatives, or governmental research personnel are
22 exempt from this licensing requirement when applying
23 pesticides to experimental areas.

24 (3) (a) A governmental agency shall pay the--annual
25 ~~applicator's--fee~~ for each of its first four employee

applicators:

(i) an annual applicator's fee of \$50; and

(ii) an additional fee of \$25 to fund the waste pesticide and pesticide container collection, disposal, and recycling program.

(b) The A governmental agency shall pay an annual fee of \$5 for each additional employee applicator:

(i) an annual applicator's fee of \$5; and

(ii) an additional fee of \$15 to fund the waste pesticide and pesticide container collection, disposal, and recycling program.

(C) A GOVERNMENT AGENCY MAY NOT BE REQUIRED TO PAY MORE THAN \$600 ANNUALLY FOR THE LICENSING OF EMPLOYEES AS APPLICATORS AND OPERATORS.

(D) Fees collected pursuant to this subsection (3) for the purpose of funding the waste pesticide and pesticide container collection, disposal, and recycling program must be deposited in the state special revenue account pursuant to [section 3].

(4) Government employees becoming certified applicators only to qualify for conducting pesticide education courses may not be charged a license fee but are limited to providing such the courses. Government operators are subject to rules adopted pursuant to 80-8-205, including the license fee."

NEW SECTION. SECTION 10. LOCAL PESTICIDE REGULATION.

(1) A UNIT OF LOCAL GOVERNMENT MAY ADOPT AN ORDINANCE TO REGULATE PESTICIDE APPLICATION THAT MAY INCLUDE NOTIFICATION, PROVIDED THAT THE ORDINANCE IS FULLY CONSISTENT WITH THE AUTHORITIES PROVIDED FOR IN TITLE 80, CHAPTER 8, AND RULES ADOPTED UNDER TITLE 80, CHAPTER 8. THE DEPARTMENT SHALL DEVELOP A POLICY FOR THE REVIEW AND APPROVAL OF LOCAL PESTICIDE ORDINANCES. A UNIT OF LOCAL GOVERNMENT SHALL SUBMIT A PROPOSED ORDINANCE TO THE DEPARTMENT FOR VERIFICATION THAT THE PROPOSED ORDINANCE IS CONSISTENT WITH THE AUTHORITIES PROVIDED FOR IN TITLE 80, CHAPTER 8. THE ORDINANCE MAY NOT BE ADOPTED UNTIL IT HAS BEEN APPROVED BY THE DEPARTMENT.

(2) A UNIT OF LOCAL GOVERNMENT MAY PETITION THE DEPARTMENT IN WRITING TO ADOPT RULES TO ADDRESS SPECIFIC LOCAL CONDITIONS, AS PROVIDED IN 80-8-105(3)(A). THE PETITION MUST DOCUMENT:

(A) THE NEED FOR A RULE, INCLUDING THE REASON THAT EXISTING RULES DO NOT ADDRESS THE PARTICULAR PESTICIDE APPLICATION;

(B) THE NEED FOR SPECIFIC LOCAL RULES; AND

(C) THAT A SITUATION EXISTS THAT THREATENS OR IS LIKELY TO THREATEN PUBLIC HEALTH OR ENVIRONMENTAL QUALITY IN THE JURISDICTION OF THE UNIT OF LOCAL GOVERNMENT.

(3) LOCAL RULES MAY BE ADMINISTERED, ENFORCED, AND

FINANCED BY A UNIT OF LOCAL GOVERNMENT:

(A) THROUGH A COOPERATIVE AGREEMENT WITH THE DEPARTMENT AS PROVIDED UNDER THIS SECTION; OR

(B) AFTER THE DEPARTMENT ADOPTS RULES AUTHORIZING A UNIT OF LOCAL GOVERNMENT TO ADMINISTER, ENFORCE, AND FINANCE AN ORDINANCE.

(4) WITHIN 30 DAYS OF RECEIVING THE PETITION, THE DEPARTMENT SHALL RESPOND TO THE UNIT OF LOCAL GOVERNMENT, STATING:

(A) WHETHER THE PETITION CONFORMS TO THE PURPOSE OF TITLE 80, CHAPTER 15, AND TO THE PROVISIONS OF THIS SECTION; AND

(B) THE PROCEDURES AND TIME PERIOD FOR THE PROMULGATION OF RULES BY THE DEPARTMENT, PROVIDED THAT THE PETITION CONFORMS TO THE PURPOSE OF TITLE 80, CHAPTER 15, AND TO THE PROVISIONS OF THIS SECTION.

(5) THE DEPARTMENT MAY ENTER INTO A COOPERATIVE AGREEMENT WITH A UNIT OF LOCAL GOVERNMENT FOR THE ADMINISTRATION AND ENFORCEMENT OF LOCAL RULES ADOPTED UNDER 80-8-105(3)(A).

(6) EXCEPT AS PROVIDED IN SUBSECTION (1), A LOCAL GOVERNMENT ORDINANCE MAY NOT REGULATE OR PROHIBIT THE REGISTRATION, LABELING, DISTRIBUTION, USE, OR SALE OF PESTICIDES. IT IS NOT THE INTENT OF THIS SUBSECTION TO PREVENT LOCAL RESPONSIBILITIES FOR ZONING, FIRE CODES, OR

DISPOSAL OF PESTICIDES PURSUANT TO TITLE 75, CHAPTER 10, PART 4.

(7) THE DEPARTMENT SHALL MAINTAIN AND, UPON REQUEST, DISTRIBUTE A REGISTER OF ORDINANCES ADOPTED BY LOCAL GOVERNING BODIES PURSUANT TO SUBSECTION (1).

NEW SECTION. Section 11. 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 12. Codification instruction. [Sections--3--and--4--are {SECTION-3}-IS [SECTIONS 3 AND 10] ARE intended to be codified as an integral part of Title 80, chapter 8, and the provisions of Title 80, chapter 8, apply to {sections-3-and-4} {SECTION-3} [SECTIONS 3 AND 10].

NEW SECTION. SECTION 13. EFFECTIVE DATE. [SECTION SECTIONS 4(9)(B) AND 10 AND THIS SECTION] ARE EFFECTIVE ON PASSAGE AND APPROVAL.

NEW SECTION. Section 14. Termination. [Sections 1(2)(r) and (2)(s), 2, 3, 6(5)(r)--7(2)(r)--8(4)(r)--9(7)(r)--and 10(3)(a)(i)(r)--(3)(b)(i)(r)--and--(3)(c) 5(5), 6(2), 7(4), 8(7), AND 9(3)(A)(II), (3)(B)(II), AND (3)(D)] terminate June 30, 1999.

-End-

HOUSE STANDING COMMITTEE REPORT

March 17, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that Senate Bill 334 (third reading copy -- blue) be concurred in as amended.

Signed: *Vern Keller*
Vern Keller, Chair

And, that such amendments read:

Carried by: Rep. Keller

1. Title, line 17.

Following: "PESTICIDES;"

Insert: "ALLOWING FOR CERTAIN LOCAL GOVERNMENT REGULATION OF
PESTICIDES;"

2. Page 10.

Following: line 7

Insert: "(6) The department shall consult affected local
governments before implementing the collection program under
this section."

3. Page 23, line 19.

Strike: "annual"

-END-

HOUSE

Committee Vote:
Yes 13, No 3.

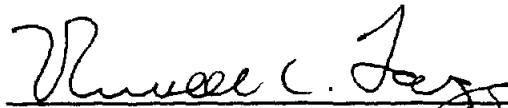
SB 334
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HOUSE STANDING COMMITTEE REPORT

March 19, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 344 (third reading copy -- blue) be concurred in as amended .

Signed: 
Russ Fagg, ~~Chair~~

And, that such amendments read:

Carried by: Rep. Brown

1. Page 1, line 25.

Strike: "THROUGH"

Insert: ", 45-5-503, 45-5-504,"

2. Page 2, lines 20 and 25.

Following: "the"

Insert: "district"

3. Page 2, line 25.

Following: "The"

Insert: "district"

4. Page 3, line 3.

Following: line 2

Insert: "NEW SECTION. Section 2. Coordination instruction. If Senate Bill No. 125 is passed and approved and if it amends 46-18-111 by:

(1) inserting in subsection (1) the words "against a victim", then the word "against" is changed to "involved";

(2) substituting in subsection (1) the words "supreme court administrator" for the words "department of commerce", then the words "supreme court administrator" are changed to "county or the state, or both,";

(3) inserting the word "district" before the word "court" near the beginning of the first sentence of subsection (2), then the word "district" is stricken."

Renumber: subsequent section

-END-

SB 344

Committee Vote:

Yes 12, No 2.

HOUSE

SENATE BILL NO. 334

INTRODUCED BY BECK, GROSFIELD, KOEHNKE, MCCLERNAN,
JERGESON, SCHWINDEN, REA, FOSTER, GRADY, SCHYE,
GRINDE, BIRD

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING PESTICIDE
APPLICATOR AND DEALER LICENSE FEES AND DESIGNATING THE
REVENUE TO A WASTE PESTICIDE AND PESTICIDE CONTAINER
COLLECTION, DISPOSAL, AND RECYCLING PROGRAM; INCREASING FARM
PESTICIDE APPLICATOR FEES AND ALLOCATING THE REVENUE TO
EDUCATIONAL AND TRAINING PROGRAMS; PROVIDING THAT THE
DEPARTMENT OF AGRICULTURE MAY ESTABLISH STANDARDS FOR
PESTICIDE STORAGE, PESTICIDE MIXING OR LOADING SITES, AND
BULK PESTICIDE FACILITIES; ALLOWING THE USE OF CANCELED
PESTICIDES UNDER CERTAIN CONDITIONS; CHANGING FARM
APPLICATOR QUALIFICATION STANDARDS TO PURCHASE AND USE
RESTRICTED-USE PESTICIDES; ALLOWING FOR CERTAIN LOCAL
GOVERNMENT REGULATION OF PESTICIDES; ESTABLISHING UNIFORMITY
OF PESTICIDE REGULATION IN THE STATE; AMENDING SECTIONS
80-8-105, 80-8-111, 80-8-201, 80-8-203, 80-8-205, 80-8-207,
80-8-209, AND 80-8-213, MCA; AND PROVIDING EFFECTIVE DATES
AND A TERMINATION DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill to

provide direction to the department of agriculture for
adoption of rules to implement the standards and procedures
needed for a waste pesticide and pesticide container
collection, disposal, and recycling program, including fees
on the volume, type, classification, or other
characteristics of a waste pesticide or waste pesticide
container, to offset the cost of conducting the program. The
department shall establish special collection programs for
persons who desire to dispose of or recycle unwanted
pesticides or pesticide containers, provided that certain
specific pesticides or pesticide containers may be excluded
from this program. Persons who have complied with the waste
pesticide or pesticide container collection, disposal, and
recycling program may not be subject to any state
administrative or judicial penalty. The department, when
entering into a cooperative agreement with the Montana state
university extension service, shall ensure in the agreement
that at least \$20 of the farm applicator fee imposed in
[section 9 8] is dedicated to county extension service
programs for conducting local farm applicator pesticide
educational and training programs for use of restricted-use
pesticides.

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

Section 1. Section 80-8-105, MCA, is amended to read:



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

6 (2) The rules may prescribe methods of:

7 (a) registration, suspension or cancellation of
8 registration, application, use or restricting use,
9 prohibiting use, offering or exposing for sale of any
10 pesticide;

11 (b) determining whether pesticides are highly toxic to
12 man humans;

13 (c) determining standards of coloring or discoloring
14 for pesticides and subjecting pesticides to the requirements
15 of 80-8-202;

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

22 (e) issuing farm applicator special-use permits and the
23 maintenance and submission of records by farm applicators
24 issued special-use permits;

25 (f) collection, examination, and standard deviation

1 from guarantee analysis and umpire analysis of pesticides
2 and devices;

3 (g) operating and maintaining equipment used by
4 applicators;

5 (h) developing examinations which ~~shall~~ must be held
6 periodically throughout the state;

7 (i) establishing the form and content of all
8 applications for licenses and permits;

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

16 (k) revoking licenses and permits;

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

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

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

8 (o) imposing conditions for renewal of dealer,
9 applicator, and operator licenses and permits, including
10 requalification training;

11 (p) establishing procedures for implementing and
12 administering the civil penalties under 80-8-306; and

13 (q) establishing fees for training courses and
14 materials;

15 (r) establishing standards and procedures for
16 administering a waste pesticide and pesticide container
17 collection, disposal, and recycling program;

18 (s) establishing special fees on waste pesticides or
19 pesticide containers collected under the waste pesticide and
20 pesticide container collection, disposal, and recycling
21 program. These fees may be based upon volume, type,
22 classification, or other characteristics of a pesticide or a
23 pesticide container and may include a credit for pesticide
24 applicator, dealer, or operator license or permit fees.

25 (t) establishing standards for pesticide storage,

1 pesticide mixing or loading sites, and bulk pesticide
2 facilities.

3 (3) (a) Consistent with the provisions of Title 80,
4 chapter 15, whenever the department finds that those rules
5 are necessary to carry out the purposes and intent of this
6 chapter, the rules may relate to the time, place, manner,
7 and method of registration, suspension or cancellation of
8 registration, application, or selling of the pesticides, may
9 restrict or prohibit use of pesticides in the state or in
10 designated areas during specified periods of time, and ~~shall~~
11 must encompass all reasonable factors which that the
12 department considers necessary to prevent damage or injury
13 to:

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

16 (ii) the environment;

17 (iii) plants, including forage plants;

18 (iv) wildlife;

19 (v) fish and other aquatic life.

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

24 (4) If the department finds that an emergency exists
25 which requires immediate action with regard to the .

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

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

23 **Section 2.** Section 80-8-111, MCA, is amended to read:

24 "80-8-111. Voluntary--waste Waste pesticide and
 25 pesticide container collection, disposal, and recycling

1 program reporting--system-----proposed-program----pesticide
 2 information. (1) The department shall establish a voluntary
 3 reporting--system--to--encourage--pesticide--applicators-and
 4 other-persons--to--report: waste pesticide and pesticide
 5 container collection, disposal, and recycling program. The
 6 program must be funded by license, permit, and special fees
 7 designated for that purpose in this chapter. The department
 8 may also establish waste pesticide and pesticide container
 9 fees and accept grants, gifts, and other funds to finance
 10 this program.

11 (a)--the-types-and-volume-of-waste-pesticides--in--their
 12 possession; and

13 (b)--the-county-where-the-waste-pesticides-are-stored.

14 (2) The department may cooperate and contract with a
 15 person to conduct and manage the waste pesticide and
 16 pesticide container collection, disposal, and recycling
 17 program. shall-inventory--the--waste--pesticide--information
 18 reported--under--subsection--(1)--and-develop-a-proposed-waste
 19 pesticide--disposal--program--for---consideration---by---the
 20 legislature-in-1993.

21 (3) All--waste--pesticide--information--reported-to-the
 22 department--under--subsection--(1)--is---confidential;---The
 23 department--may--summarize--the--information-for-purposes-of
 24 preparing-a-waste-pesticide-inventory-report-that-is--public
 25 information;--If--a--waste-pesticide-disposal-program-is-not

~~approved by the legislature in 1993, the department shall~~
~~destroy the waste pesticide information received under~~
~~subsection (1).~~ (a) The department shall establish a
 collection program for waste pesticides and pesticide
 containers. In order to participate in this program, a
 person shall:

(i) notify the department in advance of the type and
 amount of waste pesticide or pesticide containers that will
 be delivered for collection; and

(ii) deliver the waste pesticide or pesticide containers
 for collection by the department at a time and location
 designated by the department.

(b) A person may not be subject to an administrative or
 judicial penalty or action under this chapter as a result of
 participation in the waste pesticide or pesticide container
 collection, disposal, and recycling program pursuant to this
 section.

(4) The department may designate types of waste
 pesticides or pesticide containers that it will not collect
 for disposal and recycling under this program.

(5) The department shall provide pesticide applicators,
 dealers, and operators who participate in the waste
 pesticide and pesticide container collection, disposal, and
 recycling program and who are subject to a license or permit
 fee under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or

80-8-213 with a credit against the fees levied pursuant to
 80-8-105(2)(s), provided that:

(a) the credit does not exceed the amount of the
 license or permit fee paid by the applicator, dealer, or
 operator under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or
 80-8-213; and

(b) each applicator, dealer, or operator may receive
 only one credit for each permit or license period.

(6) THE DEPARTMENT SHALL CONSULT AFFECTED LOCAL
 GOVERNMENTS BEFORE IMPLEMENTING THE COLLECTION PROGRAM UNDER
 THIS SECTION."

NEW SECTION. Section 3. Deposit of waste pesticide and
 pesticide container collection, disposal, and recycling
 fees. (1) All license, permit, and special fees paid to the
 department to fund the waste pesticide and pesticide
 container collection, disposal, and recycling program and
 any grants or gifts accepted by the department pursuant to
 80-8-111(1) must be deposited in an account in the state
 special revenue fund.

(2) Money in the account must be used by the department
 to administer the waste pesticide and pesticide container
 collection, disposal, and recycling program provided for in
 80-8-111. Unencumbered and unexpended money remaining in the
 account at the end of the fiscal year may not lapse but must
 be carried forward for the purposes of this subsection until

appropriated by subsequent legislative action.

~~NEW SECTION. Section 4. Uniformity of state pesticide regulation. The provisions of this chapter preempt local government ordinances that regulate or prohibit the registration, labeling, distribution, sale, handling, use, application, or disposal of pesticides or that require notification before use of pesticides. It is not the intent of this section to preempt local responsibility for zoning, fire codes, or hazardous waste disposal.~~

Section 4. Section 80-8-201, MCA, is amended to read:

"80-8-201. Registration. (1) Every pesticide distributed, sold, or offered for sale within this the state or delivered for transportation or transported in intrastate commerce or between points within this the state shall must be registered with the department. The registration shall must be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all federally approved pesticides, and those registered are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

(2) The applicant for registration shall file with the department a statement including:

(a) the name and address of the applicant and the name

and address of the person whose name will appear on the label, if other than the registrant;

(b) a complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is so registered, and a statement of all claims to be made for it, including directions for use;

(c) the trade and chemical name of the pesticide;

(d) if requested by the department, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement ~~shall be~~ is required only with respect to for information which that is different from that furnished when the pesticide was registered or last reregistered.

(3) Any A pesticide imported into this the state which that is subject to and has been registered under the provisions of any a federal act providing for the registration of pesticides ~~and has been registered under the provisions of a federal act shall must~~ be registered in the state. However, the state may restrict the sale or use and application of the pesticide by type of dealer, applicator, time, and place and may establish special registrations of pesticides as outlined in subsection (8) of this section and 80-8-105(3). The annual registration fee must also be paid, and registration information required by the department must be provided.

(4) The applicant shall pay an annual fee of \$70 for each pesticide registered. A registration fee is not required to register a federally approved experimental use permit.

(5) The department may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department that the composition of the article pesticide warrants the proposed claims for it and if the article pesticide and its labeling and other material required to be submitted comply with the requirements of 80-8-202, it the department shall register the article pesticide.

(6) If it does not appear to the department that the article pesticide warrants the proposed claims for it or if the article pesticide and its labeling and other material required to be submitted do not comply with this chapter, it the department shall notify the applicant of the manner in which the article pesticide, labeling, or other material required to be submitted fails to comply with the chapter so as-to-allow to provide the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the article pesticide. The department may suspend or cancel the registration of a pesticide whenever it does not appear that the article pesticide or

its labeling comply with this chapter or whenever scientific evidence proves that the article pesticide endangers man humans or the general environment afforded protection under 80-8-105(3)(a). When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may pursue administrative remedies under the Montana Administrative Procedure Act and rules of the department.

(7) Registration is not required in the case of a pesticide shipped from one plant in this the state to another plant in this the state by the same person.

(8) (a) The departments of health and environmental sciences, agriculture, and fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for special local needs. The applicant shall pay a one-time fee of \$70 for a special local need or experimental-use permit registration. The departments shall utilize the same requirements and standards for reviewing registrations established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted thereunder under the act. The department of agriculture shall provide the departments of health and environmental sciences and fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the department of

1 agriculture's proposed action on the application. The
 2 departments of health and environmental sciences and fish,
 3 wildlife, and parks shall approve or disapprove the
 4 application within 10 days after the receipt of the
 5 application. If the departments of health and environmental
 6 sciences, agriculture, and fish, wildlife, and parks are in
 7 agreement with the proposed registration, the department of
 8 agriculture shall issue the registration.

9 (b) The department of agriculture shall establish a
 10 time and place for an interagency conference for the
 11 purposes of resolving the registration of any pesticide or
 12 device. If two of the departments approve the proposed
 13 registration, the department of agriculture shall issue the
 14 registration.

15 (c) The registrant applying for registration ~~shall~~ must
 16 be notified as to proposed changes in registration. If the
 17 departments cannot resolve the proposed registration
 18 following the interagency conference, the registrant may
 19 request a joint administrative hearing before the
 20 departments of agriculture, health and environmental
 21 sciences, and fish, wildlife, and parks.

22 (d) Following the interagency conference and, if
 23 requested, the administrative hearing, if the proposed
 24 registration of a pesticide or device has not been resolved,
 25 the department of agriculture shall appoint an advisory

1 council as outlined in 80-8-108 to resolve by majority vote
 2 the registration of any pesticide. The advisory council's
 3 recommendations on the registration ~~shall~~ must be accepted
 4 by the departments and implemented by the department of
 5 agriculture.

6 (9) (a) Pesticides registered under any federal law
 7 when canceled for sale and use in total or in part by a
 8 federal agency responsible for registration are considered
 9 canceled in total or in part for sale and use in Montana.
 10 The cancellation is effective on the final date of sale or
 11 use allowed under the federal law and rules or orders of the
 12 federal agency. ~~if~~ Except as provided in subsection (9)(b),
 13 if the federal cancellation allows existing stock to be used
 14 past the final date of cancellation, such the sale or use in
 15 this state may not exceed 2 years. The department shall
 16 provide technical assistance to any person in possession of
 17 such the products to insure ensure their proper disposal,
 18 relabeling, or removal.

19 (b) Pesticide products canceled under the Federal
 20 Insecticide, Fungicide and Rodenticide Act, 7 U.S.C.
 21 136a-1(i)(5) may be sold and used according to environmental
 22 protection agency labeling requirements or other
 23 requirements for a period not to exceed 6 years from the
 24 date that distribution from the registrant, formulator,
 25 manufacturer, or distributor is terminated."

Section 5. Section 80-8-203, MCA, is amended to read:

"80-8-203. Commercial applicator. (1) It ~~shall--be~~ is unlawful for any a person to engage in the business of applying pesticides for another without a pesticide applicator's license obtained from the department of agriculture. ~~The~~ An application ~~shall~~ for a pesticide applicator's license must be accompanied by a fee of \$45. ~~Applicators--applying--for--a--dealer's--license--under--this chapter--shall--be--required--to--pay--only--a--\$20--licensing--fee for--the--dealer's--license.~~ The provisions of this subsection ~~shall~~ do not apply to any a person employed only to operate any equipment used for the application of any a pesticide and in which if the person has no financial interest or other control over such apparatus the equipment other than its day-to-day mechanical operation for the purpose of applying any pesticide.

(2) Public utility applicators ~~shall~~ must be licensed in the same manner as commercial applicators, provided that public utility operators working under public utility applicators are not required to be licensed except as provided for under in 80-8-205.

(3) Veterinarians A veterinarian licensed as provided in Title 37, chapter 18, part 3, ~~shall~~ is not be required to be licensed to apply nonrestricted pesticides, provided that ~~these--veterinarians--shall--register~~ the veterinarian

registers with the department each year~~7~~, ~~provided--further that--the--veterinarians~~ The veterinarian must ~~shall--be required--to~~ meet all other requirements and rules of the Montana Pesticides Act. The department shall consider the professional licensing requirements for veterinarians when adopting rules.

(4) An applicator is responsible for the use of any pesticide by an operator or employee under the applicator's supervision or employment.

(5) The department shall assess an additional annual license fee of \$30 on applicators to fund the waste pesticide and pesticide container collection, disposal, and recycling program. Fees collected under this subsection must be deposited in the state special revenue account pursuant to [section 3]."

Section 6. Section 80-8-205, MCA, is amended to read:

"80-8-205. Commercial operator. (1) The department of agriculture may establish procedures for controlling pesticide operators including necessary fees by regulation.

(2) The department may by rule establish a fee to be paid by commercial operators to fund the waste pesticide and pesticide container collection, disposal, and recycling program. Fees collected under this subsection must be deposited in the state special revenue account pursuant to [section 3]."

Section 7. Section 80-8-207, MCA, is amended to read:

"80-8-207. Dealers. (1) It is unlawful for any a person to sell, offer for sale, deliver, or have delivered within this the state any a pesticide without first procuring obtaining a license from the department of agriculture for each calendar year or portion thereof of a year. A separate dealer's license and fee shall--be is required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide fieldmen field personnel or salesmen salespeople employed directly out of the same location or outlet and under a licensed dealer shall are not be required to obtain a license. The dealer shall furnish the department with the names and addresses of its fieldmen field personnel and salesmen salespeople selling pesticides within the state.

(2) The application for a license shall must be accompanied by a fee of \$45. Dealers applying for renewal of a license shall do so on or before March 1 of that the calendar year. Any A dealer applying for renewal of a license after March 1 shall must be assessed a \$25 late licensing fee.

(3) The dealer shall require the purchaser of any a restricted pesticide to exhibit his the purchaser's license or permit issued under authority of this chapter before completing a sale.

(4) Dealers may make one application for two annual licenses if the application is accompanied by a \$45 licensing fee for each year of the state biennium. The department shall assess an additional annual license fee of \$30 on dealers to fund the waste pesticide and pesticide container collection, disposal, and recycling program. Fees collected under this subsection must be deposited in the state special revenue account pursuant to [section 3].

(5) Pharmacists licensed as provided for in 37-7-302 and 37-7-303, veterinarians licensed as provided for in 37-18-302 and 37-18-303, and certified pharmacies licensed under 37-7-321 shall are not be required to be licensed to sell pesticides, provided that the certified pharmacies and veterinarians shall register with the department each year. However, the certified pharmacies and veterinarians shall be required to must meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules."

Section 8. Section 80-8-209, MCA, is amended to read:

"80-8-209. Farm applicators. (1) Farm applicators shall obtain a special-use permit prior to purchasing and using any a pesticide designated by the department as a restricted-use pesticide. The fee for the permit is \$15 \$35.

1 The special-use permit shall be is effective for 5 calendar
 2 years. The department may establish a staggered years system
 3 of issuing permits. Revenue generated by the permit fee must
 4 be expended in the following manner:

5 (a) \$15 to the department to administer the permitting
 6 program;

7 (b) \$5 to the Montana state university extension
 8 service for the development of educational materials for
 9 farm pesticide applicators; and

10 (c) \$15 to the extension service of the county in which
 11 the permit applicant resides for farm pesticide applicator
 12 certification and training programs.

13 (2) Restricted pesticides may not be utilized by farm
 14 applicators or their employees except for the purpose of
 15 producing or protecting any an agricultural commodity on
 16 property owned, leased, or rented by such the applicator.

17 (3) Farm applicators shall qualify for their first
 18 permit by either passing a graded written examination or
 19 attending a training course approved by the department and
 20 taking an ungraded written examination. The examinations and
 21 course must meet the minimum certification standards and
 22 procedures established by the environmental protection
 23 agency except as otherwise provided by this chapter. shall
 24 require---and---demonstrate---practical---knowledge---of---the
 25 applicator's ability to:

1 ~~(a)---recognize common pests to be controlled and damage~~
 2 ~~caused by them;~~

3 ~~(b)---read---and---understand---the---label---and---labeling~~
 4 ~~information, including the common name of the pesticide(s)~~
 5 ~~applied, pest(s) to be controlled, timing and methods of~~
 6 ~~application, safety precautions, any preharvest or reentry~~
 7 ~~restrictions, and any specific disposal procedures;~~

8 ~~(c)---apply---pesticides---in---accordance---with---label~~
 9 ~~instructions and warnings, including the ability to prepare~~
 10 ~~the proper concentration of pesticides to be used under~~
 11 ~~particular circumstances, taking into account such factors~~
 12 ~~as area to be covered, speed at which application equipment~~
 13 ~~will be driven, and the quantity dispersed in a given period~~
 14 ~~of operation;~~

15 ~~(d)---recognize local environmental situations that must~~
 16 ~~be considered during application to avoid contamination; and~~

17 ~~(e)---recognize poisoning symptoms and procedures to~~
 18 ~~follow in case of a pesticide accident;~~

19 (4) The department may require farm applicators to
 20 attend a mandatory training session and pass a written
 21 examination for those restricted pesticides that are
 22 extremely toxic or for which an effective antidote is not
 23 available. The department may require farm applicators
 24 handling these pesticides to maintain use records.

25 (5) The department shall require farm applicators to

1 requalify for renewal of the 5-year permit by attending a
 2 ~~program-consisting-of-6-hours-of-training~~ an approved
 3 training program. The department shall establish by rule a
 4 uniform system of administering the requalification training
 5 program. The department may credit only training related to
 6 the standards set forth in subsection (3).

7 (6) Provisions of this chapter relating to
 8 certification of farm applicators do not apply to any a farm
 9 applicator applying nonrestricted pesticides on his the
 10 applicator's own land or on lands of his neighbors if he the
 11 farm applicator:

12 (a) operates farm property and operates and maintains
 13 pesticide application equipment primarily for his the
 14 applicator's own use;

15 (b) is not regularly engaged in the business of
 16 applying pesticides for hire and does not ~~publicly--hold~~
 17 ~~himself--out--as~~ represent to the public that the farm
 18 applicator is a pesticide applicator;

19 (c) operates his pesticide application equipment only
 20 in the vicinity of his the applicator's own property and for
 21 the accommodation of his immediate neighbors.

22 (7) (a) The department shall assess an additional
 23 annual permit fee of \$15 on farm applicators to fund the
 24 waste pesticide and pesticide container collection,
 25 disposal, and recycling program.

1 (b) Farm applicators must be assessed the fee at the
 2 beginning of the next 5-year permit renewal period. The
 3 department may assess a prorated fee for a farm applicator
 4 becoming licensed within a 5-year permit renewal period.

5 (c) Fees collected under this subsection (7) must be
 6 deposited in the state special revenue account pursuant to
 7 [section 3]."

8 **Section 9.** Section 80-8-213, MCA, is amended to read:

9 "80-8-213. Government agencies. (1) All state agencies,
 10 municipal corporations, or any other governmental agency
 11 ~~shall-be~~ agencies are subject to the provisions of this
 12 chapter and rules adopted thereunder under this chapter
 13 concerning the application or sale of pesticides.
 14 Applicators and operators applying pesticides and dealers
 15 selling pesticides for agencies, municipal corporations, or
 16 any governmental agencies ~~shall--be~~ are subject to the
 17 provisions of 80-8-203 through 80-8-208.

18 (2) The department shall issue a limited commercial
 19 applicator's or dealer's license for an annual fee of \$50,
 20 which ~~shall-be~~ is valid only when such an applicator or
 21 dealer is applying or selling pesticides for ~~such-agencies~~ a
 22 state agency, municipal corporation, or any other
 23 governmental agency, provided that the jurisdictional health
 24 officer, state veterinarian, their duly authorized
 25 representatives, or governmental research personnel are

exempt from this licensing requirement when applying pesticides to experimental areas.

(3) (a) A governmental agency shall pay the annual applicator's fee for each of its first four employee applicators:

(i) an annual applicator's fee of \$50; and

(ii) an additional fee of \$25 to fund the waste pesticide and pesticide container collection, disposal, and recycling program.

(b) The A governmental agency shall pay an annual fee of \$5 for each additional employee applicator:

(i) an annual applicator's fee of \$5; and

(ii) an additional fee of \$15 to fund the waste pesticide and pesticide container collection, disposal, and recycling program.

(C) A GOVERNMENT AGENCY MAY NOT BE REQUIRED TO PAY MORE THAN \$600 ANNUALLY FOR THE LICENSING OF EMPLOYEES AS APPLICATORS AND OPERATORS.

(D) Fees collected pursuant to this subsection (3) for the purpose of funding the waste pesticide and pesticide container collection, disposal, and recycling program must be deposited in the state special revenue account pursuant to [section 3].

(4) Government employees becoming certified applicators only to qualify for conducting pesticide education courses

may not be charged a license fee but are limited to providing such the courses. Government operators are subject to rules adopted pursuant to 80-8-205, including the license fee."

NEW SECTION. SECTION 10. LOCAL PESTICIDE REGULATION.

(1) A UNIT OF LOCAL GOVERNMENT MAY ADOPT AN ORDINANCE TO REGULATE PESTICIDE APPLICATION THAT MAY INCLUDE NOTIFICATION, PROVIDED THAT THE ORDINANCE IS FULLY CONSISTENT WITH THE AUTHORITIES PROVIDED FOR IN TITLE 80, CHAPTER 8, AND RULES ADOPTED UNDER TITLE 80, CHAPTER 8. THE DEPARTMENT SHALL DEVELOP A POLICY FOR THE REVIEW AND APPROVAL OF LOCAL PESTICIDE ORDINANCES. A UNIT OF LOCAL GOVERNMENT SHALL SUBMIT A PROPOSED ORDINANCE TO THE DEPARTMENT FOR VERIFICATION THAT THE PROPOSED ORDINANCE IS CONSISTENT WITH THE AUTHORITIES PROVIDED FOR IN TITLE 80, CHAPTER 8. THE ORDINANCE MAY NOT BE ADOPTED UNTIL IT HAS BEEN APPROVED BY THE DEPARTMENT.

(2) A UNIT OF LOCAL GOVERNMENT MAY PETITION THE DEPARTMENT IN WRITING TO ADOPT RULES TO ADDRESS SPECIFIC LOCAL CONDITIONS, AS PROVIDED IN 80-8-105(3)(A). THE PETITION MUST DOCUMENT:

(A) THE NEED FOR A RULE, INCLUDING THE REASON THAT EXISTING RULES DO NOT ADDRESS THE PARTICULAR PESTICIDE APPLICATION;

(B) THE NEED FOR SPECIFIC LOCAL RULES; AND

(C) THAT A SITUATION EXISTS THAT THREATENS OR IS LIKELY TO THREATEN PUBLIC HEALTH OR ENVIRONMENTAL QUALITY IN THE JURISDICTION OF THE UNIT OF LOCAL GOVERNMENT.

(3) LOCAL RULES MAY BE ADMINISTERED, ENFORCED, AND FINANCED BY A UNIT OF LOCAL GOVERNMENT:

(A) THROUGH A COOPERATIVE AGREEMENT WITH THE DEPARTMENT AS PROVIDED UNDER THIS SECTION; OR

(B) AFTER THE DEPARTMENT ADOPTS RULES AUTHORIZING A UNIT OF LOCAL GOVERNMENT TO ADMINISTER, ENFORCE, AND FINANCE AN ORDINANCE.

(4) WITHIN 30 DAYS OF RECEIVING THE PETITION, THE DEPARTMENT SHALL RESPOND TO THE UNIT OF LOCAL GOVERNMENT, STATING:

(A) WHETHER THE PETITION CONFORMS TO THE PURPOSE OF TITLE 80, CHAPTER 15, AND TO THE PROVISIONS OF THIS SECTION; AND

(B) THE PROCEDURES AND TIME PERIOD FOR THE PROMULGATION OF RULES BY THE DEPARTMENT, PROVIDED THAT THE PETITION CONFORMS TO THE PURPOSE OF TITLE 80, CHAPTER 15, AND TO THE PROVISIONS OF THIS SECTION.

(5) THE DEPARTMENT MAY ENTER INTO A COOPERATIVE AGREEMENT WITH A UNIT OF LOCAL GOVERNMENT FOR THE ADMINISTRATION AND ENFORCEMENT OF LOCAL RULES ADOPTED UNDER 80-8-105(3)(A).

(6) EXCEPT AS PROVIDED IN SUBSECTION (1), A LOCAL

GOVERNMENT ORDINANCE MAY NOT REGULATE OR PROHIBIT THE REGISTRATION, LABELING, DISTRIBUTION, USE, OR SALE OF PESTICIDES. IT IS NOT THE INTENT OF THIS SUBSECTION TO PREVENT LOCAL RESPONSIBILITIES FOR ZONING, FIRE CODES, OR DISPOSAL OF PESTICIDES PURSUANT TO TITLE 75, CHAPTER 10, PART 4.

(7) THE DEPARTMENT SHALL MAINTAIN AND, UPON REQUEST, DISTRIBUTE A REGISTER OF ORDINANCES ADOPTED BY LOCAL GOVERNING BODIES PURSUANT TO SUBSECTION (1).

NEW SECTION. Section 11. 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 12. Codification instruction. ~~{Sections-3-and-4}~~ are ~~{SECTION-3}~~ ~~IS~~ [SECTIONS 3 AND 10] ARE intended to be codified as an integral part of Title 80, chapter 8, and the provisions of Title 80, chapter 8, apply to ~~{sections-3-and-4}~~ ~~{SECTION-3}~~ [SECTIONS 3 AND 10].

NEW SECTION. SECTION 13. EFFECTIVE DATE. ~~“(SECTION SECTIONS 4(9)(B) AND 10 AND THIS SECTION) ARE EFFECTIVE ON PASSAGE AND APPROVAL.~~

NEW SECTION. Section 14. Termination. [Sections 1(2)(r) and (2)(s), 2, 3, 6(5) ~~7~~--7(2) ~~7~~--8(4) ~~7~~--9(7) ~~7~~--and

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1 ~~10(3)(a)(i), (3)(b)(i), and (3)(c) 5(5), 6(2), 7(4), 8(7),~~
2 ~~AND 9(3)(A)(II), (3)(B)(II), AND (3)(D)]~~ terminate June 30,
3 1999.

-End-