

HOUSE BILL NO. 75
INTRODUCED BY WISEMAN
BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ESTABLISH AND ENFORCE STANDARDS FOR THE MANAGEMENT OF USED OIL; AMENDING SECTIONS 75-10-402, 75-10-403, 75-10-405, 75-10-410, 75-10-415, 75-10-416, 75-10-418, 75-10-422, AND 75-10-424, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the department of health and environmental sciences in promulgating rules. It is the intent of the legislature that the department of health and environmental sciences adopt rules governing the management of used oil that are consistent with the standards adopted by the U.S. environmental protection agency under section 3014 of the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6935), as amended.

In adopting administrative rules, it is the intent of the legislature that the department of health and environmental sciences provide for circumstances under which used oil qualifies as a hazardous waste under the Montana Hazardous Waste and Underground Storage Tank Act and therefore must be managed and regulated as a hazardous waste and circumstances under which used oil does not meet the definition of hazardous waste but must be managed as a regulated waste under the Montana Hazardous Waste and Underground Storage Tank Act as prescribed by federal regulations.

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

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

"75-10-402. Findings and purpose. (1) The legislature finds that the safe and proper management of hazardous wastes and used oil that is not hazardous, the permitting of hazardous waste facilities, and the siting of facilities are matters for statewide regulation and are environmental issues that should properly be addressed and controlled by the state rather than by the federal government.

(2) It is the purpose of this part and it is the policy of this state to protect the public health and

1 safety, the health of living organisms, and the environment from the effects of the improper, inadequate,
2 or unsound management of hazardous wastes and used oil that is not hazardous; to establish a program
3 of regulation over used oil that is not hazardous and the generation, storage, transportation, treatment, and
4 disposal of hazardous wastes; to assure the safe and adequate management of hazardous wastes and used
5 oil that is not hazardous within this state; and to authorize the department to adopt, administer, and enforce
6 a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976 (42
7 U.S.C. 6901 - 6987), as amended.

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

16

17 **Section 2.** Section 75-10-403, MCA, is amended to read:

18 **"75-10-403. Definitions.** Unless the context requires otherwise, in this part, the following
19 definitions apply:

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

21 (2) "Department" means the department of health and environmental sciences provided for in Title
22 2, chapter 15, part 21.

23 (3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or
24 placing of any regulated substance or hazardous waste into or onto the land or water so that the regulated
25 substance, hazardous waste, or any constituent of the regulated substance or hazardous waste may enter
26 the environment or be emitted into the air or discharged into any waters, including ground water.

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

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

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

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

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

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

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

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

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

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

23 (12) "Regulated substance":

24 (a) means:

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

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

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

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

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

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

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

9 (17) "Underground storage tank":

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

11 (i) any one or combination of tanks used to contain a regulated substance, the volume of which
12 is 10% or more beneath the surface of the ground; and

13 (ii) any underground pipes used to contain or transport a regulated substance and connected to a
14 storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely
15 underground;

16 (b) does not include:

17 (i) a septic tank;

18 (ii) a pipeline facility (including gathering lines) regulated under:

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

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

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

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

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

25 (v) a flow-through process tank;

26 (vi) a liquid trap or associated gathering lines directly related to oil or gas production and gathering
27 operations;

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

30 (viii) any pipe connected to a tank described in subsections (17)(b)(i) through (17)(b)(vi).



1 (18) "Used oil" means any oil that has been refined from crude oil or any synthetic oil, either of
2 which has been used and as a result of that use is contaminated by physical or chemical impurities."

3

4 **Section 3.** Section 75-10-405, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

23 (i) establishing a schedule of fees and procedures for the collection of fees for:

24 (ii) the filing and review of hazardous waste management facility permits as provided in 75-10-432;

25 (ii) hazardous waste management as provided in 75-10-433;

26 (iii) the reissuance and modification of hazardous waste management facility permits; and

27 (iv) the registration of hazardous waste generators;

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

30 (k) requirements for availability to the public of information obtained by the department regarding

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

2 (II) procedures for the assessment of administrative penalties as authorized by 75-10-424; and

3 (m) identification and classification of used oil that is subject to regulation and used oil that is not

4 subject to regulation;

5 (n) requirements for the proper management of used oil; and

6 ~~(m)(o) other rules which that~~ are necessary to obtain and maintain authorization under the federal

7 program.

8 (2) The department may not adopt rules under this part that are more restrictive than those

9 promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as

10 amended, except that the department:

11 (a) may require the registration of transporters not otherwise required to register with the state of

12 Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

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

14 (c) may adopt requirements for the prevention and correction of leakage from underground storage

15 tanks, including:

16 (i) reporting by owners and operators;

17 (ii) financial responsibility;

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

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

20 (v) development of a schedule of fees, not to exceed \$50 for a tank over 1,100 gallons and not

21 to exceed \$20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state

22 and local costs of implementing an underground storage tank program;

23 (vi) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals

24 under 75-10-423; and

25 (vii) delegation of authority and funds to local agents for inspections and implementation. The

26 delegation of authority to local agents must complement and may not duplicate existing authority for

27 implementation of rules adopted by the department of justice that relate to underground storage tanks.

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

29 (e) shall require the owner or manager of any proposed commercial facility for the storage,

30 collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441; and

6 **Section 4.** Section 75-10-410, MCA, is amended to read:

7 **"75-10-410. Inspections -- sampling.** (1) (a) An employee or agent of the department, at any
8 reasonable time and upon presentation of credentials, may enter upon and inspect any property, premises,
9 or place at which:

10 (i) regulated substances are or have been stored in underground storage tanks if the department
11 has reason to suspect that the tanks are not in compliance with the provisions of this part or rules adopted
12 under this part;

13 (ii) hazardous wastes are or have been generated, stored, treated, disposed of, or loaded for
14 transportation; or

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

22 (2) In the course of an inspection under this section, the employee or agent of the department may
23 take samples of any substances, used oil, or wastes, including samples from any soil or ground water or
24 from any vehicle in which used oil or wastes are transported, or samples of any containers or labeling for
25 the substances, used oil, or wastes. If the employee or agent of the department takes a sample of any used
26 oil, hazardous waste, or suspected hazardous waste, ~~he~~ the employee or agent shall, prior to leaving the
27 premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if
28 requested, a portion of each such sample equal in volume or weight to the portion retained. If any analysis
29 is made of such the samples, a copy of the results of such the analysis must be furnished to the owner,
30 operator, or agent in charge."

1 **Section 5.** Section 75-10-415, MCA, is amended to read:

2 **"75-10-415. Imminent hazard.** Upon receipt of evidence that the handling, storage, treatment,
3 transportation, or disposal of any regulated substance, used oil, or hazardous waste may present an
4 imminent and substantial danger to public health or the environment, the department may commence legal
5 proceedings to immediately restrain or enjoin any person (including any past or present generator, past or
6 present transporter, and past or present owner or operator of a treatment, storage, or disposal facility) who
7 has contributed to or who is contributing to ~~such~~ the handling, storage, treatment, transportation, or
8 disposal from engaging in ~~such~~ these activities or order the person to take other action as may be
9 necessary, or both. The department may also take appropriate action as may be necessary under this
10 section, including issuing orders necessary or appropriate to protect public health and the environment."

11

12 **Section 6.** Section 75-10-416, MCA, is amended to read:

13 **"75-10-416. Cleanup orders.** The department may issue a cleanup order to any person who has
14 discharged, deposited, or spilled any regulated substance, used oil, or hazardous waste into or onto any
15 land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any
16 material or substance into or onto any land or water so as to result in unlawful or unapproved disposal of
17 a regulated substance, used oil, or hazardous waste. The order ~~shall~~ must direct the person to clean up and
18 remove the regulated substance, used oil, or hazardous waste, to treat the regulated substance, used oil,
19 or hazardous waste so as to render it nonhazardous, or to take ~~such~~ other actions as may be considered
20 reasonable by the department."

21

22 **Section 7.** Section 75-10-418, MCA, is amended to read:

23 **"75-10-418. Criminal penalties.** (1) A person is guilty of an offense under this section if ~~he~~ the
24 person knowingly:

25 (a) transports any hazardous waste to an unpermitted facility;
26 (b) treats, stores, or disposes of hazardous waste subject to regulation under this part or the rules
27 adopted under this part without a permit or contrary to a material permit condition;
28 (c) omits material information or makes any false statement or representation in any application,
29 label, manifest, record, report, permit, or other document filed, maintained, or used for compliance with
30 provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste;

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

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

8 (2) A person who is guilty of an offense under subsection (1) is subject to a fine of not more than
9 \$25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation
10 constitutes a separate violation.

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

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

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

20 (6) Money collected under this section, except money collected in a justice's court, must be
21 deposited in the state general fund."

22

23 **Section 8.** Section 75-10-422, MCA, is amended to read:

24 **"75-10-422. Unlawful disposal.** It is unlawful to dispose of used oil or hazardous waste, as defined
25 in this part or by rule, without a permit or, if ~~no~~ a permit is not required under this part or rules adopted
26 under this part, by any other means not authorized by law."

27

28 **Section 9.** Section 75-10-424, MCA, is amended to read:

29 **"75-10-424. Administrative penalty.** (1) The department may assess a person who violates a used
30 oil or hazardous waste provision of this part, or a used oil or hazardous waste rule adopted under this part,

1 an administrative penalty, not to exceed \$10,000 per violation. Each day of violation constitutes a separate
2 violation, but the maximum penalty may not exceed \$100,000 for any related series of violations.
3 Assessment of an administrative penalty under this section must be made in conjunction with an order or
4 administrative action authorized by this chapter.

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

7 (3) In determining the appropriate amount of an administrative penalty, the department shall
8 consider:

- 9 (a) the gravity and the number of violations;
- 10 (b) the degree of care exercised by the alleged violator;
- 11 (c) whether significant harm resulted to public health or the environment; and
- 12 (d) the degree of potential significant harm to public health or the environment.

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

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

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

20

21 **NEW SECTION. Section 10. Effective date.** [This act] is effective on passage and approval.

22

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0075, as introduced

DESCRIPTION OF PROPOSED LEGISLATION: A bill to amend the Montana Hazardous Waste and Underground Storage Tank Act, 75-10-401 et.seq, MCA, to allow the Department of Health and Environmental Sciences (DHES) authority to establish and enforce standards for the management of used oil.

ASSUMPTIONS:

1. Any amount above or below what is contained in the present law base for the Hazardous Waste Program in the Executive Budget will be the fiscal impact of this bill.
2. The Hazardous Waste Program is budgeted to accommodate rule adoption, compliance evaluation, and enforcement action expenditures associated with current program implementation. The department does not anticipate that this bill will add significant workload which the existing program will not be able to absorb.
3. Existing resources will be utilized to establish and enforce standards adopted under the provisions of this bill.
4. Evaluation of compliance with the standards will be incorporated into current program inspection activities.

FISCAL IMPACT:

There is no fiscal impact to the DHES if this bill passes.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

There are no long-range fiscal effects of the proposed legislation.

 1.7.95
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1/9/95
WILLIAM WISEMAN, PRIMARY SPONSOR DATE

Fiscal Note for HB0075, as introduced

HB 15

APPROVED BY COMM. ON
NATURAL RESOURCES

STATEMENT OF INTENT

11 A statement of intent is required for this bill in order to provide guidance to the department of health
12 and environmental sciences in promulgating rules. It is the intent of the legislature that the department of
13 health and environmental sciences adopt rules governing the management of used oil that are consistent
14 with the standards adopted by the U.S. environmental protection agency under section 3014 of the federal
15 Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6935), as amended.

16 In adopting administrative rules, it is the intent of the legislature that the department of health and
17 environmental sciences provide for circumstances under which used oil qualifies as a hazardous waste
18 under the Montana Hazardous Waste and Underground Storage Tank Act and therefore must be managed
19 and regulated as a hazardous waste and circumstances under which used oil does not meet the definition
20 of hazardous waste but must be managed as a regulated waste under the Montana Hazardous Waste and
21 Underground Storage Tank Act as prescribed by federal regulations.

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

26 **"75-10-402. Findings and purpose.** (1) The legislature finds that the safe and proper management
27 of hazardous wastes and used oil that is not hazardous, the permitting of hazardous waste facilities, and
28 the siting of facilities are matters for statewide regulation and are environmental issues that should properly
29 be addressed and controlled by the state rather than by the federal government.

30 (2) It is the purpose of this part and it is the policy of this state to protect the public health and

1 safety, the health of living organisms, and the environment from the effects of the improper, inadequate,
2 or unsound management of hazardous wastes and used oil that is not hazardous; to establish a program
3 of regulation over used oil that is not hazardous and the generation, storage, transportation, treatment, and
4 disposal of hazardous wastes; to assure the safe and adequate management of hazardous wastes and used
5 oil that is not hazardous within this state; and to authorize the department to adopt, administer, and enforce
6 a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976 (42
7 U.S.C. 6901 - 6987), as amended.

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

16

17 **Section 2.** Section 75-10-403, MCA, is amended to read:

18 **"75-10-403. Definitions.** Unless the context requires otherwise, in this part, the following
19 definitions apply:

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

21 (2) "Department" means the department of health and environmental sciences provided for in Title
22 2, chapter 15, part 21.

23 (3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or
24 placing of any regulated substance or hazardous waste into or onto the land or water so that the regulated
25 substance, hazardous waste, or any constituent of the regulated substance or hazardous waste may enter
26 the environment or be emitted into the air or discharged into any waters, including ground water.

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

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

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

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

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

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

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

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

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

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

(12) "Regulated substance":

(a) means:

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

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

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

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

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

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

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

(17) "Underground storage tank":

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

(i) any one or combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground; and

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

(b) does not include:

(i) a septic tank;

(ii) a pipeline facility (including gathering lines) regulated under:

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

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

(C) state law comparable to the provisions of law referred to in subsection (17)(b)(ii)(A) or
(ii)(B) if the facility is intrastate:

(17)(b)(ii)(B), if the facility is intrastate;

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

(iv) a storm water or wastewater collection system;

(v) a flow-through process tank;

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

(vii) a storage tank situated in an underground area, such as a basement, cell or tunnel, if the storage tank is situated upon or above the surface of the floor; or

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



1 (18) "Used oil" means any oil that has been refined from crude oil or any synthetic oil, either of
2 which has been used and as a result of that use is contaminated by physical or chemical impurities."

4 **Section 3.** Section 75-10-405, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

23 (i) establishing a schedule of fees and procedures for the collection of fees for:

24 (i) the filing and review of hazardous waste management facility permits as provided in 75-10-432;

25 (ii) hazardous waste management as provided in 75-10-433;

26 (iii) the reissuance and modification of hazardous waste management facility permits; and

27 (iv) the registration of hazardous waste generators;

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

30 (k) requirements for availability to the public of information obtained by the department regarding

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

2 (I) procedures for the assessment of administrative penalties as authorized by 75-10-424; and

3 (m) identification and classification of used oil that is subject to regulation and used oil that is not

4 subject to regulation;

5 (n) requirements for the proper management of used oil; and

6 (m)(o) other rules which that are necessary to obtain and maintain authorization under the federal

7 program.

8 (2) The department may not adopt rules under this part that are more restrictive than those

9 promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as

10 amended, except that the department:

11 (a) may require the registration of transporters not otherwise required to register with the state of

12 Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

13 (b) may require HAZARDOUS WASTE generators and HAZARDOUS WASTE MANAGEMENT

14 facilities to report on an annual rather than on a biennial basis;

15 (c) may adopt requirements for the prevention and correction of leakage from underground storage

16 tanks, including:

17 (i) reporting by owners and operators;

18 (ii) financial responsibility;

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

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

21 (v) development of a schedule of fees, not to exceed \$50 for a tank over 1,100 gallons and not

22 to exceed \$20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state

23 and local costs of implementing an underground storage tank program;

24 (vi) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals

25 under 75-10-423; and

26 (vii) delegation of authority and funds to local agents for inspections and implementation. The

27 delegation of authority to local agents must complement and may not duplicate existing authority for

28 implementation of rules adopted by the department of justice that relate to underground storage tanks.

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

30 (e) shall require the owner or manager of any proposed commercial facility for the storage,

1 collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441; and
2 (f) may adopt rules and performance standards for industrial furnaces and boilers that burn
3 hazardous wastes. The rules and performance standards:
4 (i) may be adopted if there are no federal regulations; or
5 (ii) may be more restrictive than federal regulations."

6

7 **Section 4.** Section 75-10-410, MCA, is amended to read:

8 **"75-10-410. Inspections -- sampling.** (1) (a) An employee or agent of the department, at any
9 reasonable time and upon presentation of credentials, may enter upon and inspect any property, premises,
10 or place at which:

11 (i) regulated substances are or have been stored in underground storage tanks if the department
12 has reason to suspect that the tanks are not in compliance with the provisions of this part or rules adopted
13 under this part;

14 (ii) hazardous wastes are or have been generated, stored, treated, disposed of, or loaded for
15 transportation; or

16 (iii) used oil is or has been generated, stored, treated, disposed of, or loaded for transportation; or

17 (iv) records pertinent to the regulated substances, used oil, or hazardous waste activities are
18 maintained.

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

23 (2) In the course of an inspection under this section, the employee or agent of the department may
24 take samples of any substances, used oil, or wastes, including samples from any soil or ground water or
25 from any vehicle in which used oil or wastes are transported, or samples of any containers or labeling for
26 the substances, used oil, or wastes. If the employee or agent of the department takes a sample of any used
27 oil, hazardous waste, or suspected hazardous waste, he the employee or agent shall, prior to leaving the
28 premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if
29 requested, a portion of each such sample equal in volume or weight to the portion retained. If any analysis
30 is made of such the samples, a copy of the results of such the analysis must be furnished to the owner,

1 operator, or agent in charge."

2

3 **Section 5.** Section 75-10-415, MCA, is amended to read:

4 **"75-10-415. Imminent hazard.** Upon receipt of evidence that the handling, storage, treatment,
5 transportation, or disposal of any regulated substance, used oil, or hazardous waste may present an
6 imminent and substantial danger to public health or the environment, the department may commence legal
7 proceedings to immediately restrain or enjoin any person (including any past or present generator, past or
8 present transporter, and past or present owner or operator of a treatment, storage, or disposal facility) who
9 has contributed to or who is contributing to such the handling, storage, treatment, transportation, or
10 disposal from engaging in such these activities or order the person to take other action as may be
11 necessary, or both. The department may also take appropriate action as may be necessary under this
12 section, including issuing orders necessary or appropriate to protect public health and the environment."

13

14 **Section 6.** Section 75-10-416, MCA, is amended to read:

15 **"75-10-416. Cleanup orders.** The department may issue a cleanup order to any person who has
16 discharged, deposited, or spilled any regulated substance, used oil, or hazardous waste into or onto any
17 land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any
18 material or substance into or onto any land or water so as to result in unlawful or unapproved disposal of
19 a regulated substance, used oil, or hazardous waste. The order ~~shall~~ must direct the person to clean up and
20 remove the regulated substance, used oil, or hazardous waste, to treat the regulated substance, used oil,
21 or hazardous waste so as to render it nonhazardous, or to take such other actions as may be considered
22 reasonable by the department."

23

24 **Section 7.** Section 75-10-418, MCA, is amended to read:

25 **"75-10-418. Criminal penalties.** (1) A person is guilty of an offense under this section if ~~he the~~ the
26 person knowingly:

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

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

30 (c) omits material information or makes any false statement or representation in any application,

1 label, manifest, record, report, permit, or other document filed, maintained, or used for compliance with
2 provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste;

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

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

10 (2) A person who is guilty of an offense under subsection (1) is subject to a fine of not more than
11 \$25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation
12 constitutes a separate violation.

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

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

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

22 (6) Money collected under this section, except money collected in a justice's court, must be
23 deposited in the state general fund."

24

25 **Section 8.** Section 75-10-422, MCA, is amended to read:

26 **"75-10-422. Unlawful disposal.** It is unlawful to dispose of used oil or hazardous waste, as defined
27 in this part or by rule, without a permit or, if ~~no~~ a permit is not required under this part or rules adopted
28 under this part, by any other means not authorized by law."

29

30 **Section 9.** Section 75-10-424, MCA, is amended to read:

"75-10-424. **Administrative penalty.** (1) The department may assess a person who violates a used oil or hazardous waste provision of this part, or a used oil or hazardous waste rule adopted under this part, an administrative penalty, not to exceed \$10,000 per violation. Each day of violation constitutes a separate violation, but the maximum penalty may not exceed \$100,000 for any related series of violations. Assessment of an administrative penalty under this section must be made in conjunction with an order or administrative action authorized by this chapter.

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

- (a) the gravity and the number of violations;
- (b) the degree of care exercised by the alleged violator;
- (c) whether significant harm resulted to public health or the environment; and
- (d) the degree of potential significant harm to public health or the environment.

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

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

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

23 NEW SECTION **Section 10. Effective date.** [This act] is effective on passage and approval.

24 -END-

HOUSE BILL NO. 75

INTRODUCED BY WISEMAN

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND
6 ENVIRONMENTAL SCIENCES TO ESTABLISH AND ENFORCE STANDARDS FOR THE MANAGEMENT OF
7 USED OIL; AMENDING SECTIONS 75-10-402, 75-10-403, 75-10-405, 75-10-410, 75-10-415, 75-10-416,
8 75-10-418, 75-10-422, AND 75-10-424, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

11 A statement of intent is required for this bill in order to provide guidance to the department of health
12 and environmental sciences in promulgating rules. It is the intent of the legislature that the department of
13 health and environmental sciences adopt rules governing the management of used oil that are consistent
14 with the standards adopted by the U.S. environmental protection agency under section 3014 of the federal
15 Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6935), as amended.

16 In adopting administrative rules, it is the intent of the legislature that the department of health and
17 environmental sciences provide for circumstances under which used oil qualifies as a hazardous waste
18 under the Montana Hazardous Waste and Underground Storage Tank Act and therefore must be managed
19 and regulated as a hazardous waste and circumstances under which used oil does not meet the definition
20 of hazardous waste but must be managed as a regulated waste under the Montana Hazardous Waste and
21 Underground Storage Tank Act as prescribed by federal regulations.

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

26 **"75-10-402. Findings and purpose.** (1) The legislature finds that the safe and proper management
27 of hazardous wastes and used oil that is not hazardous, the permitting of hazardous waste facilities, and
28 the siting of facilities are matters for statewide regulation and are environmental issues that should properly
29 be addressed and controlled by the state rather than by the federal government.

(2) It is the purpose of this part and it is the policy of this state to protect the public health and

1 safety, the health of living organisms, and the environment from the effects of the improper, inadequate,
2 or unsound management of hazardous wastes ~~and used oil that is not hazardous~~; to establish a program
3 of regulation over ~~used oil that is not hazardous~~ and the generation, storage, transportation, treatment, and
4 disposal of hazardous wastes; to assure the safe and adequate management of hazardous wastes ~~and used~~
5 ~~oil that is not hazardous~~ within this state; and to authorize the department to adopt, administer, and enforce
6 a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976 (42
7 U.S.C. 6901 - 6987), as amended.

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

16

17 **Section 2.** Section 75-10-403, MCA, is amended to read:

18 **"75-10-403. Definitions.** Unless the context requires otherwise, in this part, the following
19 definitions apply:

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

21 (2) "Department" means the department of health and environmental sciences provided for in Title
22 2, chapter 15, part 21.

23 (3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or
24 placing of any regulated substance or hazardous waste into or onto the land or water so that the regulated
25 substance, hazardous waste, or any constituent of the regulated substance or hazardous waste may enter
26 the environment or be emitted into the air or discharged into any waters, including ground water.

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

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

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

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

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

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

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

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

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

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

23 (12) "Regulated substance":

24 (a) means:

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

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

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

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



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

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

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

9 (17) "Underground storage tank":

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

11 (i) any one or combination of tanks used to contain a regulated substance, the volume of which
12 is 10% or more beneath the surface of the ground; and

13 (ii) any underground pipes used to contain or transport a regulated substance and connected to a
14 storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely
15 underground;

16 (b) does not include:

17 (i) a septic tank;

18 (ii) a pipeline facility (including gathering lines) regulated under:

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

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

21 (C) state law comparable to the provisions of law referred to in subsection

22 (17)(b)(ii)(B), if the facility is intrastate;

23 (iii) a surface impoundment, pit

24 (iv) a storm water or wastewater collection system

25 (v) a flow-through process tank;

26 (vii) a liquid trap or associated gate

27 operations;

(viii) a storage tank situated in an underground area, such as a basement, cellars, or

29 or tunnel, if the storage tank is situated upon or above the surface of the floor, or



1 (18) "Used oil" means any oil that has been refined from crude oil or any synthetic oil, either of
2 which has been used and as a result of that use is contaminated by physical or chemical impurities."

3

4 Section 3. Section 75-10-405, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

23 (i) establishing a schedule of fees and procedures for the collection of fees for:

24 (i) the filing and review of hazardous waste management facility permits as provided in 75-10-432;

25 (ii) hazardous waste management as provided in 75-10-433;

26 (iii) the reissuance and modification of hazardous waste management facility permits; and

27 (iv) the registration of hazardous waste generators;

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

30 (k) requirements for availability to the public of information obtained by the department regarding

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

2 (l) procedures for the assessment of administrative penalties as authorized by 75-10-424; and

3 (m) identification and classification of used oil that is subject to regulation and used oil that is not

4 subject to regulation;

5 (n) requirements for the proper management of used oil; and

6 ~~(m)~~(o) other rules which that are necessary to obtain and maintain authorization under the federal

7 program.

8 (2) The department may not adopt rules under this part that are more restrictive than those

9 promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as

10 amended, except that the department:

11 (a) may require the registration of transporters not otherwise required to register with the state of

12 Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

13 (b) may require HAZARDOUS WASTE generators and HAZARDOUS WASTE MANAGEMENT

14 facilities to report on an annual rather than on a biennial basis;

15 (c) may adopt requirements for the prevention and correction of leakage from underground storage

16 tanks, including:

17 (i) reporting by owners and operators;

18 (ii) financial responsibility;

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

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

21 (v) development of a schedule of fees, not to exceed \$50 for a tank over 1,100 gallons and not

22 to exceed \$20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state

23 and local costs of implementing an underground storage tank program;

24 (vi) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals

25 under 75-10-423; and

26 (vii) delegation of authority and funds to local agents for inspections and implementation. The

27 delegation of authority to local agents must complement and may not duplicate existing authority for

28 implementation of rules adopted by the department of justice that relate to underground storage tanks.

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

30 (e) shall require the owner or manager of any proposed commercial facility for the storage,

1 collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441; and
2 (f) may adopt rules and performance standards for industrial furnaces and boilers that burn
3 hazardous wastes. The rules and performance standards:
4 (i) may be adopted if there are no federal regulations; or
5 (ii) may be more restrictive than federal regulations."

6

7 **Section 4.** Section 75-10-410, MCA, is amended to read:

8 **"75-10-410. Inspections -- sampling.** (1) (a) An employee or agent of the department, at any
9 reasonable time and upon presentation of credentials, may enter upon and inspect any property, premises,
10 or place at which:

11 (i) regulated substances are or have been stored in underground storage tanks if the department
12 has reason to suspect that the tanks are not in compliance with the provisions of this part or rules adopted
13 under this part;

14 (ii) hazardous wastes are or have been generated, stored, treated, disposed of, or loaded for
15 transportation; or

16 (iii) used oil is or has been generated, stored, treated, disposed of, or loaded for transportation; or
17 (iv) ~~records pertinent to the regulated substances, used oil, or hazardous waste activities are~~
18 maintained.

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

23 (2) In the course of an inspection under this section, the employee or agent of the department may
24 take samples of any substances, used oil, or wastes, including samples from any soil or ground water or
25 from any vehicle in which used oil or wastes are transported, or samples of any containers or labeling for
26 the substances, used oil, or wastes. If the employee or agent of the department takes a sample of any used
27 oil, hazardous waste, or suspected hazardous waste, ~~he~~ the employee or agent shall, prior to leaving the
28 premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if
29 requested, a portion of each ~~such~~ sample equal in volume or weight to the portion retained. If any analysis
30 is made of ~~such~~ the samples, a copy of the results of such the analysis must be furnished to the owner,

1 operator, or agent in charge."

2

3 **Section 5.** Section 75-10-415, MCA, is amended to read:

4 **"75-10-415. Imminent hazard.** Upon receipt of evidence that the handling, storage, treatment,
5 transportation, or disposal of any regulated substance, used oil, or hazardous waste may present an
6 imminent and substantial danger to public health or the environment, the department may commence legal
7 proceedings to immediately restrain or enjoin any person (including any past or present generator, past or
8 present transporter, and past or present owner or operator of a treatment, storage, or disposal facility) who
9 has contributed to or who is contributing to ~~such~~ the handling, storage, treatment, transportation, or
10 disposal from engaging in ~~such~~ these activities or order the person to take other action as may be
11 necessary, or both. The department may also take appropriate action as may be necessary under this
12 section, including issuing orders necessary or appropriate to protect public health and the environment."

13

14 **Section 6.** Section 75-10-416, MCA, is amended to read:

15 **"75-10-416. Cleanup orders.** The department may issue a cleanup order to any person who has
16 discharged, deposited, or spilled any regulated substance, used oil, or hazardous waste into or onto any
17 land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any
18 material or substance into or onto any land or water so as to result in unlawful or unapproved disposal of
19 a regulated substance, used oil, or hazardous waste. The order ~~shall~~ must direct the person to clean up and
20 remove the regulated substance, used oil, or hazardous waste, to treat the regulated substance, used oil,
21 or hazardous waste so as to render it nonhazardous, or to take ~~such~~ other actions as may be considered
22 reasonable by the department."

23

24 **Section 7.** Section 75-10-418, MCA, is amended to read:

25 **"75-10-418. Criminal penalties.** (1) A person is guilty of an offense under this section if ~~he~~ the
26 person knowingly:

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

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

30 (c) omits material information or makes any false statement or representation in any application,

1 label, manifest, record, report, permit, or other document filed, maintained, or used for compliance with
2 provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste;

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

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

10 (2) A person who is guilty of an offense under subsection (1) is subject to a fine of not more than
11 \$25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation
12 constitutes a separate violation.

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

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

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

22 (6) Money collected under this section, except money collected in a justice's court, must be
23 deposited in the state general fund."

24

25 **Section 8.** Section 75-10-422, MCA, is amended to read:

26 **"75-10-422. Unlawful disposal.** It is unlawful to dispose of used oil or hazardous waste, as defined
27 in this part or by rule, without a permit or, if ~~no~~ a permit is not required under this part or rules adopted
28 under this part, by any other means not authorized by law."

29

30 **Section 9.** Section 75-10-424, MCA, is amended to read:

"75-10-424. **Administrative penalty.** (1) The department may assess a person who violates a used oil or hazardous waste provision of this part, or a used oil or hazardous waste rule adopted under this part, an administrative penalty, not to exceed \$10,000 per violation. Each day of violation constitutes a separate violation, but the maximum penalty may not exceed \$100,000 for any related series of violations. Assessment of an administrative penalty under this section must be made in conjunction with an order or administrative action authorized by this chapter.

9 (3) In determining the appropriate amount of an administrative penalty, the department shall
10 consider:

- (a) the gravity and the number of violations;
- (b) the degree of care exercised by the alleged violator;
- (c) whether significant harm resulted to public health or the environment; and
- (d) the degree of potential significant harm to public health or the environment.

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

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

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

23 NEW SECTION. Section 10. Effective date. [This act] is effective on passage and approval.

-END-

1

HOUSE BILL NO. 75

2

INTRODUCED BY WISEMAN

3

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND
6 ENVIRONMENTAL SCIENCES TO ESTABLISH AND ENFORCE STANDARDS FOR THE MANAGEMENT OF
7 USED OIL; AMENDING SECTIONS 75-10-402, 75-10-403, 75-10-405, 75-10-410, 75-10-415, 75-10-416,
8 75-10-418, 75-10-422, AND 75-10-424, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

9

10

STATEMENT OF INTENT

11

12 A statement of intent is required for this bill in order to provide guidance to the department of health
13 and environmental sciences in promulgating rules. It is the intent of the legislature that the department of
14 health and environmental sciences adopt rules governing the management of used oil that are consistent
15 with the standards adopted by the U.S. environmental protection agency under section 3014 of the federal
16 Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6935), as amended.

17

18 ~~In adopting administrative rules, it is the intent of the legislature that the department of health and~~
19 ~~environmental sciences provide for circumstances under which used oil qualifies as a hazardous waste~~
20 ~~under the Montana Hazardous Waste and Underground Storage Tank Act and therefore must be managed~~
21 ~~and regulated as a hazardous waste and circumstances under which used oil does not meet the definition~~
~~of hazardous waste but must be managed as a regulated waste under the Montana Hazardous Waste and~~
~~Underground Storage Tank Act as prescribed by federal regulations.~~

22

23

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

24

25

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

26

27

"75-10-402. Findings and purpose. (1) The legislature finds that the safe and proper management
of hazardous wastes and used oil that is not hazardous, the permitting of hazardous waste facilities, and
the siting of facilities are matters for statewide regulation and are environmental issues that should properly
be addressed and controlled by the state rather than by the federal government.

28

(2) It is the purpose of this part and it is the policy of this state to protect the public health and

1 safety, the health of living organisms, and the environment from the effects of the improper, inadequate,
2 or unsound management of hazardous wastes and used oil that is not hazardous; to establish a program
3 of regulation over used oil that is not hazardous and the generation, storage, transportation, treatment, and
4 disposal of hazardous wastes; to assure the safe and adequate management of hazardous wastes and used
5 oil that is not hazardous within this state; and to authorize the department to adopt, administer, and enforce
6 a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976 (42
7 U.S.C. 6901 - 6987), as amended.

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

16

17 **Section 2.** Section 75-10-403, MCA, is amended to read:

18 **"75-10-403. Definitions.** Unless the context requires otherwise, in this part, the following
19 definitions apply:

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

21 (2) "Department" means the department of health and environmental sciences provided for in Title
22 2, chapter 15, part 21.

23 (3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or
24 placing of any regulated substance or hazardous waste into or onto the land or water so that the regulated
25 substance, hazardous waste, or any constituent of the regulated substance or hazardous waste may enter
26 the environment or be emitted into the air or discharged into any waters, including ground water.

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

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

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

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

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

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

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

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

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

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

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

(12) "Regulated substance":

(a) means:

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

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

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

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

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

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

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

9 (17) "Underground storage tank":

10 (a) means, except as provided in subsections (17)(b)(i) through (17)(b)(viii);

11 (i) any one or combination of tanks used to contain a regulated substance, the volume of which
12 is 10% or more beneath the surface of the ground; and

13 (ii) any underground pipes used to contain or transport a regulated substance and connected to a
14 storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely
15 underground;

16 (b) does not include:

17 (i) a septic tank;

18 (ii) a pipeline facility (including gathering lines) regulated under:

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

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

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

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

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

25 (v) a flow-through process tank;

26 (vi) a liquid trap or associated gathering lines directly related to oil or gas production and gathering
27 operations;

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

30 (viii) any pipe connected to a tank described in subsections (17)(b)(i) through (17)(b)(vi).

1 (18) "Used oil" means any oil that has been refined from crude oil or any synthetic oil, either of
2 which has been used and as a result of that use is contaminated by physical or chemical impurities."

3

4 **Section 3.** Section 75-10-405, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

23 (i) establishing a schedule of fees and procedures for the collection of fees for:

24 (ii) the filing and review of hazardous waste management facility permits as provided in 75-10-432;

25 (ii) hazardous waste management as provided in 75-10-433;

26 (iii) the reissuance and modification of hazardous waste management facility permits; and

27 (iv) the registration of hazardous waste generators;

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

30 (k) requirements for availability to the public of information obtained by the department regarding

1 facilities and sites used for the treatment, storage, and disposal of hazardous wastes;
2 (l) procedures for the assessment of administrative penalties as authorized by 75-10-424; and
3 (m) identification and classification of used oil that is subject to regulation and used oil that is not
4 subject to regulation;

5 (n) requirements for the proper management of used oil; and
6 (m)(o) other rules ~~which~~ that are necessary to obtain and maintain authorization under the federal
7 program.

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

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

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

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

17 (i) reporting by owners and operators;

18 (ii) financial responsibility;

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

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

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

24 (vi) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals
25 under 75-10-423; and

26 (vii) delegation of authority and funds to local agents for inspections and implementation. The
27 delegation of authority to local agents must complement and may not duplicate existing authority for
28 implementation of rules adopted by the department of justice that relate to underground storage tanks.

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

30 (e) shall require the owner or manager of any proposed commercial facility for the storage,

1 collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441; and
2 (f) may adopt rules and performance standards for industrial furnaces and boilers that burn
3 hazardous wastes. The rules and performance standards:
4 (i) may be adopted if there are no federal regulations; or
5 (ii) may be more restrictive than federal regulations."

6

7 **Section 4.** Section 75-10-410, MCA, is amended to read:

8 **"75-10-410. Inspections -- sampling.** (1) (a) An employee or agent of the department, at any
9 reasonable time and upon presentation of credentials, may enter upon and inspect any property, premises,
10 or place at which:

11 (i) regulated substances are or have been stored in underground storage tanks if the department
12 has reason to suspect that the tanks are not in compliance with the provisions of this part or rules adopted
13 under this part;

14 (ii) hazardous wastes are or have been generated, stored, treated, disposed of, or loaded for
15 transportation; or

16 (iii) used oil is or has been generated, stored, treated, disposed of, or loaded for transportation; or
17 (iv) records pertinent to the regulated substances, used oil, or hazardous waste activities are
18 maintained.

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

23 (2) In the course of an inspection under this section, the employee or agent of the department may
24 take samples of any substances, used oil, or wastes, including samples from any soil or ground water or
25 from any vehicle in which used oil or wastes are transported, or samples of any containers or labeling for
26 the substances, used oil, or wastes. If the employee or agent of the department takes a sample of any used
27 oil, hazardous waste, or suspected hazardous waste, ~~he~~ the employee or agent shall, prior to leaving the
28 premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if
29 requested, a portion of each ~~such~~ sample equal in volume or weight to the portion retained. If any analysis
30 is made of ~~such~~ the samples, a copy of the results of ~~such~~ the analysis must be furnished to the owner,

1 operator, or agent in charge."

2

3 **Section 5.** Section 75-10-415, MCA, is amended to read:

4 "75-10-415. **Imminent hazard.** Upon receipt of evidence that the handling, storage, treatment,
5 transportation, or disposal of any regulated substance, used oil, or hazardous waste may present an
6 imminent and substantial danger to public health or the environment, the department may commence legal
7 proceedings to immediately restrain or enjoin any person (including any past or present generator, past or
8 present transporter, and past or present owner or operator of a treatment, storage, or disposal facility) who
9 has contributed to or who is contributing to ~~such~~ the handling, storage, treatment, transportation, or
10 disposal from engaging in ~~such~~ these activities or order the person to take other action as may be
11 necessary, or both. The department may also take appropriate action as may be necessary under this
12 section, including issuing orders necessary or appropriate to protect public health and the environment."

13

14 **Section 6.** Section 75-10-416, MCA, is amended to read:

15 "75-10-416. **Cleanup orders.** The department may issue a cleanup order to any person who has
16 discharged, deposited, or spilled any regulated substance, used oil, or hazardous waste into or onto any
17 land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any
18 material or substance into or onto any land or water so as to result in unlawful or unapproved disposal of
19 a regulated substance, used oil, or hazardous waste. The order ~~shall~~ must direct the person to clean up and
20 remove the regulated substance, used oil, or hazardous waste, to treat the regulated substance, used oil,
21 or hazardous waste so as to render it nonhazardous, or to take ~~such~~ other actions as may be considered
22 reasonable by the department."

23

24 **Section 7.** Section 75-10-418, MCA, is amended to read:

25 "75-10-418. **Criminal penalties.** (1) A person is guilty of an offense under this section if ~~he~~ the

26 person knowingly:

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

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

30 (c) omits material information or makes any false statement or representation in any application,

1 label, manifest, record, report, permit, or other document filed, maintained, or used for compliance with
2 provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste;

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

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

10 (2) A person who is guilty of an offense under subsection (1) is subject to a fine of not more than
11 \$25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation
12 constitutes a separate violation.

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

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

22 (6) Money collected under this section, except money collected in a justice's court, must be
23 deposited in the state general fund."

24

25 **Section 8. Section 75-10-422, MCA, is amended to read:**

26 **"75-10-422. Unlawful disposal.** It is unlawful to dispose of used oil or hazardous waste, as defined
27 in this part or by rule, without a permit or, if ~~no~~ a permit is not required under this part or rules adopted
28 under this part, by any other means not authorized by law."

29

30 **Section 9.** Section 75-10-424, MCA, is amended to read:

1 **"75-10-424. Administrative penalty.** (1) The department may assess a person who violates a used
2 oil or hazardous waste provision of this part, or a used oil or hazardous waste rule adopted under this part,
3 an administrative penalty, not to exceed \$10,000 per violation. Each day of violation constitutes a separate
4 violation, but the maximum penalty may not exceed \$100,000 for any related series of violations.
5 Assessment of an administrative penalty under this section must be made in conjunction with an order or
6 administrative action authorized by this chapter.

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

9 (3) In determining the appropriate amount of an administrative penalty, the department shall
10 consider:

- 11 (a) the gravity and the number of violations;
- 12 (b) the degree of care exercised by the alleged violator;
- 13 (c) whether significant harm resulted to public health or the environment; and
- 14 (d) the degree of potential significant harm to public health or the environment.

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

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

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

23 **NEW SECTION. Section 10. Effective date.** [This act] is effective on passage and approval.

24

-END-