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House BILL NO. 212

INTRODUCED BY

Anderson

BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN PROVISIONS OF LAW REGARDING PESTICIDES AND AGRICULTURAL CHEMICALS; REVISING THE MONTANA PESTICIDES ACT REGARDING LICENSE AND PERMIT REVOCATION, INVESTIGATION AND ENFORCEMENT, THE ISSUANCE OF COMPLIANCE ORDERS, AND PENALTIES; MAKING UNIFORM THE PROCEDURES FOR CONTESTING AND APPEALING PENALTIES ASSESSED BY THE DEPARTMENT OF AGRICULTURE UNDER THE MONTANA PESTICIDES ACT; REVISING THE MONTANA AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACT BY REMOVING THE REQUIREMENT THAT CERTAIN CHEMICAL ANALYSES BE REPORTED; REMOVING THE AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ASSESS CIVIL PENALTIES UNDER THE MONTANA AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACT; REVISING THE PROCESS FOR ISSUANCE OF COMPLIANCE ORDERS; AMENDING SECTIONS 80-8-211, 80-8-304, 80-8-305, 80-8-306, 80-15-202, 80-15-403, AND 80-15-412, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 80-8-211, MCA, is amended to read:

"80-8-211. Revocation of licenses and permits. (1) The department shall establish the policy and procedures on the revocation of licenses or permits. The department may refuse to grant, or renew, or may revoke or modify a license or permit, as the case may require, when the department is satisfied that the licensee or ~~holder of a permit~~ permittee is not qualified to sell, use, or apply pesticides under the conditions in the locality in which ~~he~~ the licensee or permittee operates or has operated or that ~~he~~ the licensee or permittee has committed any of the following acts, each of which is ~~declared to be~~ considered a violation of this chapter:

- (a) made false or fraudulent claims or recommendations through any media misrepresenting the effect of materials or methods to be ~~utilized~~ used;
- (b) applied or sold unapproved or illegal materials or applied or sold a pesticide without possessing

1 a current and appropriate license or permit;

2 (c) operated in a faulty, careless, or negligent manner;

3 (d) operated faulty or unsafe equipment;

4 (e) refused or neglected to comply with the provisions of this chapter, ~~the rules adopted hereunder~~
5 under this chapter, or any lawful order of the department;

6 (f) refused or neglected to keep and maintain the records required by this chapter or to make
7 reports when and as required;

8 (g) made false or fraudulent records or reports;

9 (h) operated equipment for the commercial application of a pesticide without having a license or
10 permit;

11 (i) used fraud or misrepresentation in making an application for a license or permit or renewal of
12 a license or permit;

13 (j) used or applied a registered pesticide inconsistent with its labeling or the label or the department
14 restrictions on the use of that pesticide;

15 (k) made false or misleading statements in connection with a pest inspection of land, crops, yards,
16 or any premises in an attempt to induce any person to engage ~~his~~ the licensee's or permittee's services to
17 eliminate, control, or mitigate the alleged pest or made false or misleading statements concerning the
18 effectiveness of any pesticide or its application;

19 (l) failed to satisfy a judgment entered against the licensee or permittee as a result of a complaint
20 concerning the use of a pesticide.

21 (2) Decisions of the department relating to the issuing of licenses or permits may be appealed."
22

23 **Section 2.** Section 80-8-304, MCA, is amended to read:

24 **"80-8-304. Investigation and enforcement authority.** (1) In enforcing this chapter, the department
25 or its ~~duly~~ authorized agents, upon reasonable cause, may enter upon private and public premises and
26 property with a warrant or consent of the inhabitant or owner to inspect or investigate at reasonable times:

27 (a) equipment used for applying pesticides;

28 (b) actual or reported adverse effects caused by pesticides in humans, crops, animals, land, or
29 other property;

30 (c) records on the selling or use of pesticides and the person's stock of pesticides;

- 1 (d) handling, use, application, storage, and disposal of pesticides by any person;
 2 (e) pesticides being applied or to be applied and to sample the pesticides or agricultural
 3 commodities;
 4 (f) the use and application of a pesticide; ~~or~~
 5 (g) the environment alleged to have been exposed to pesticides and to collect and analyze
 6 environmental samples;
 7 (h) a person's compliance with pesticide worker protection standards and labeling, including
 8 handlers and workers;
 9 (i) a person's compliance with pesticide ground water and endangered species standards and
 10 labeling; or
 11 (j) a person's compliance with licensing, labeling, permitting, and certification requirements.

12 (2) The department is authorized to investigate all incidents involving the application, sale,
 13 introduction, or ~~utilization~~ use of registered pesticides or compounds capable of acting in the manner of
 14 pesticides when the incidents have a reasonable potential to adversely affect the public environment or
 15 persons ~~other than the applicator.~~

16 (3) The investigation or inspection authority provided for in this section may be exercised over
 17 persons not possessing a required license or permit ~~only upon receipt of a complaint or report of an~~
 18 ~~incident."~~

19
 20 **Section 3.** Section 80-8-305, MCA, is amended to read:

21 **"80-8-305. General violations -- compliance orders.** (1) Consistent with the provisions of Title 80,
 22 chapter 15, it is unlawful for ~~any a~~ a person:

23 (a) to discard any pesticide or pesticide container in ~~such~~ a manner ~~as to cause~~ that causes injury
 24 to humans, domestic animals, or wildlife, or to pollute any waterway in a way harmful to any wildlife
 25 ~~therein~~ in the waterway or to the environment;

26 (b) to handle, transport, store, display, or distribute pesticides or pesticide containers in ~~such~~ a
 27 manner ~~as to endanger man~~ that endangers humans or the environment or to endanger food or any other
 28 products that may be transported, stored, displayed, or distributed with ~~such~~ pesticides;

29 (c) to handle, apply, or attempt to apply any registered pesticide for which ~~he~~ the person does not
 30 have an appropriate, complete, or legible label at hand;

1 (d) to apply or attempt to apply any registered pesticide in a manner inconsistent with the label
2 labeling, as defined in 80-8-102; or

3 (e) to use any unregistered chemical or biological agent that is required to be registered as a
4 pesticide by the Montana Pesticides Act.

5 (2) It is unlawful for ~~any~~ a person to manufacture, formulate, or store any registered pesticide or
6 a component or byproduct ~~thereof~~ of a registered pesticide in ~~such~~ a manner that the pesticide, ~~or any~~
7 component, or byproduct cannot be contained or confined within the boundaries of the lands owned by
8 or under the appropriate control of the person involved. ~~Order~~ The containment or confinement of odor is
9 ~~specifically~~ exempted from the provisions of this subsection.

10 (3)(a) The department may issue a compliance order to ~~any~~ a person violating the provisions of ~~this~~
11 ~~section~~, 80-8-211, the provisions of this section, or any other requirement established pursuant to this
12 chapter. ~~The compliance order may be issued to any person, including the person's employees, agents, or~~
13 ~~subcontractors.~~

14 (b) If the department is unable to identify the person or determines that the person is insolvent,
15 the department may issue the compliance order to a person who owns, leases, or has possession or control
16 of the site at the time the order is issued.

17 (c) In determining the amount of any civil penalty issued as part of the compliance order to a person
18 who owns, leases, possesses, or controls the site, the department shall consider whether the violation
19 occurred prior to that person's acquiring an interest in the site and whether the site was used without that
20 person's knowledge or consent.

21 (d) An action under this subsection (3) does not preclude a private cause of action by any affected
22 party.

23 (4) A compliance order may require the cleanup of any pesticide that a person has accidentally or
24 purposely dumped, spilled, misused, or unlawfully used in violation of this section. The department shall
25 allow the recipient of a compliance order to spread, treat, or dispose of soils contaminated by a pesticide
26 if the person can document and prove to the satisfaction of the department that the soil will be beneficially
27 used or that the pesticide in the soil will physically, chemically, or biologically degrade and that neither the
28 beneficial use of the soil nor the degradation of the pesticide in the soil will adversely affect agriculture,
29 human health, or the environment. Prior to issuing a compliance order requiring cleanup of a pesticide, the
30 department shall consult with the department of health and environmental sciences to ensure that the

1 provisions of Title 75, chapter 10, part 4, are considered. If a pesticide or soil contaminated by a pesticide
 2 is subject to the provisions of Title 75, chapter 10, part 4, and there is no beneficial use of the soil as
 3 determined by the department, the department of health and environmental sciences is responsible for
 4 regulating the cleanup and disposal of the pesticide and the soil contaminated by the pesticide. The
 5 department may not allow a person to spread, treat, or dispose of soils contaminated by a canceled or
 6 suspended pesticide without the specific approval of the department of health and environmental sciences
 7 or the U.S. environmental protection agency, or both, as required on a case-by-case basis.

8 (5) When issuing a compliance order, the department may require a person who has violated a
 9 provision of this chapter to conduct monitoring to assist in determining the presence or level of
 10 concentration of pesticides in the environment and the effectiveness of cleanup efforts. The department
 11 shall specify criteria in the compliance order for determining the duration of monitoring.

12 (6) A compliance order must specify the requirement of this chapter that has been violated and
 13 establish a time schedule for compliance. In establishing a time schedule for compliance, the department
 14 shall take into account the seriousness of the violation and any good faith efforts that the person has made
 15 to comply with the requirement that has been violated. A compliance order issued under this section must
 16 be served either by a person qualified to perform service under the Montana Rules of Civil Procedure or by
 17 certified mail."

18
 19 **Section 4.** Section 80-8-306, MCA, is amended to read:

20 **"80-8-306. Penalties.** (1) ~~Any~~ A person convicted of violating any of the provisions of this chapter
 21 or the rules issued ~~thereunder~~ under this chapter or who ~~may misrepresent, impede, obstruct, hinder, or~~
 22 ~~otherwise prevent or attempt~~ misrepresents, prevents, or attempts to prevent the department or its ~~duly~~
 23 authorized agent in performance of its duty in connection with the provisions of this chapter ~~shall be~~
 24 ~~adjudged~~ is guilty of a misdemeanor and shall be fined not less than \$100 but not more than \$1,500.

25 (2) The department or its authorized representative ~~is hereby authorized to~~ may apply to the district
 26 court of the ~~county or any county wherein a violation is about to occur or has occurred~~ first judicial
 27 district, Lewis and Clark County, to grant a temporary or permanent injunction restraining any person from
 28 violating or continuing to violate any of the provisions of this chapter or any rule promulgated under the
 29 chapter ~~notwithstanding the existence of other remedies of law. When a person makes pesticide~~
 30 ~~applications in more than one county on a commercial basis without a license or permit or operates in~~

1 ~~violation of a lawful written order of the department in more than one county, the district court of Lewis~~
 2 ~~and Clark County has concurrent jurisdiction with the district court of any other county wherein a violation~~
 3 ~~has occurred or is about to occur, and the department may select and proceed in the court most appropriate~~
 4 ~~under the circumstances. The injunction is to be issued without bond.~~

5 (3) Nothing in this chapter ~~is to be construed as requiring~~ requires the department or its authorized
 6 agent to report minor violations of the chapter for prosecution or for the institution of seizure proceedings
 7 when it believes that the public interest will be best served by other remedial action, by a suitable notice
 8 of warning in writing, or by a lawful written order; ~~nor is any part of this. This chapter to be construed to~~
 9 does not apply to common carriers transporting shipments tendered to them by the general public.

10 (4) Any person who with intent to defraud uses or reveals information relative to formulas of
 11 products acquired under the authority of 80-8-201 shall, upon conviction, be fined not more than \$500 or
 12 be imprisoned for not more than 1 year, or both.

13 (5) (a) Any registrant, applicator, dealer, retailer, or other person who commits a major violation
 14 of this chapter as defined in subsection ~~(5)(d)~~ (5)(e), in addition to other penalties provided in this chapter,
 15 may be assessed a civil penalty by the department of not more than ~~\$1,000~~ \$2,500 for each offense.
 16 However, farm applicators possessing a permit may not be assessed a civil penalty over ~~\$200~~ \$500 for the
 17 first offense. Assessment of a civil penalty may be made in conjunction with any other department warning,
 18 order, or administrative action authorized by this chapter.

19 (b) ~~No~~ A civil penalty may not be assessed unless the person charged was given notice and
 20 opportunity for a hearing and an appeal pursuant to the Montana Administrative Procedure Act.

21 (c)(i) If after investigation the department determines that a major violation of this chapter has either
 22 affected human life, welfare, or safety or affected agricultural commodities, livestock, or the environment
 23 in a manner that cannot be appropriately addressed by the penalties assessed in subsection (5)(a), the
 24 department may seek a civil penalty, not to exceed \$25,000 for each offense, by filing a complaint in the
 25 district court of the first judicial district, Lewis and Clark County.

26 (ii) In addition to the civil penalty provided in subsection (5)(c)(i), a person who commits a major
 27 violation of this chapter that results in significant harm to human life, welfare, or safety or to agricultural
 28 commodities, livestock, or the environment is guilty of a felony and shall, upon conviction, be fined not
 29 more than \$50,000 or be imprisoned in the state prison for not more than 10 years, or both.

30 (d) In determining an appropriate penalty, the department shall consider the effect on the person's

1 ability to continue in business, the gravity of the violation ~~which~~ that occurred, the degree of care exercised
 2 by the offender, and whether significant harm resulted to human health, ~~environment,~~ agricultural ~~erops~~
 3 commodities, ~~or~~ livestock, or the environment.

4 ~~(e)~~(e) A major violation of this chapter includes:

5 (i) misuse of a pesticide ~~which~~ that results in proven harm or exposure to human health, ~~the~~
 6 ~~environment,~~ ~~or~~ agricultural ~~erops~~ commodities, ~~or~~ livestock, or the environment; As used in this
 7 subsection (i), misuse means the use, handling, or release of a pesticide by a person in a manner
 8 inconsistent with the label or labeling or in violation of department pesticide application, storage, mixing,
 9 and loading rules or pesticide and container disposal rules.

10 (ii) selling of a restricted pesticide to a person not certified or authorized to purchase ~~such~~ restricted
 11 pesticides;

12 (iii) use or sale of unregistered pesticides;

13 (iv) failure to maintain any individual pesticide application and sales records;

14 (v) using or selling pesticides without having obtained the required license or permit; ~~or~~

15 (vi) noncompliance with pesticide worker protection standards and labeling;

16 (vii) noncompliance with ground water and endangered species standards and labeling;

17 (viii) noncompliance with pesticide or pesticide container disposal, labeling, or handling requirements
 18 and standards; or

19 (ix) reoccurrence of any identical violation of this chapter within ~~the same calendar year~~ 2 years of
 20 the first violation.

21 ~~(e)~~(f) If the department is unable to collect ~~such~~ the civil penalty or if ~~any~~ a person fails to pay all
 22 or a ~~set~~ portion of the civil penalty as determined by the department, ~~it~~ the department may recover ~~such~~
 23 that amount by action in the appropriate district court.

24 ~~(6) Any person against whom the department has assessed a civil penalty under this section may,~~
 25 ~~within 30 days of the final agency action making the assessment, appeal the assessment to the district~~
 26 ~~court of the county in which the violation is alleged by the department to have occurred. Appeal is by trial~~
 27 ~~de novo, and a jury trial must be granted if requested. Where the provisions of this subsection conflict with~~
 28 ~~2-4-702 through 2-4-704, the provisions of this subsection govern."~~

29
 30 **Section 5.** Section 80-15-202, MCA, is amended to read:

1 **"80-15-202. Monitoring programs.** (1) The department or the department of health and
2 environmental sciences shall conduct monitoring programs to determine:

3 (a) whether residues of agricultural chemicals are present in ground water; and

4 (b) the likelihood of an agricultural chemical to enter ground water, if either department determines
5 that sufficient valid scientific data is available to reasonably predict the behavior of a particular agricultural
6 chemical in the soil.

7 ~~(2) Any person who receives a chemical analysis indicating the presence of an agricultural chemical
8 in ground water shall notify the department of health and environmental sciences.~~

9 ~~{3}~~ The department and the department of health and environmental sciences shall evaluate all
10 information relating to this section that is received from any person, based upon standard procedures,
11 protocols, and confirmatory procedures established by rule. Information found to be insufficient based on
12 the adopted procedures and protocols, including analytical results, may be used only for informational
13 purposes."

14

15 **Section 6.** Section 80-15-403, MCA, is amended to read:

16 **"80-15-403. Compliance orders.** (1) In furtherance of 80-15-402, the department may issue a
17 compliance order to any person violating a standard, an interim numerical standard, or any other
18 requirement established pursuant to this chapter. The department shall coordinate its proposed actions
19 pursuant to this section with proposed actions of the department of health and environmental sciences
20 pursuant to 75-5-613, if any. Issuance of a compliance order under this chapter precludes the department
21 from taking other enforcement actions for the same violation under Title 80, chapter 8 or 10.

22 ~~(2)(a) The department may issue a compliance order to any person, including the person's
23 employees, agents, and subcontractors, whether or not the person is subject to a specific management
24 plan, to require the cleanup of any agricultural chemical that the person has accidentally or purposely
25 dumped, spilled, or misused or unlawfully used that has a significant probability of entering ground water
26 who violates any requirement established pursuant to this chapter.~~

27 (b) If the department is unable to identify the person or determines that the person is insolvent,
28 the department may issue the compliance order to a person who owns, leases, or has possession or control
29 of the site at the time the order is issued.

30 (c) In determining the amount of any civil penalty issued as part of the compliance order to a person

1 who owns, leases, possesses, or controls the site, the department shall consider whether the violation
 2 occurred prior to that person's acquiring an interest in the site and whether the site was used without that
 3 person's knowledge or consent.

4 (d) An action under this subsection (2) does not preclude a private cause of action by any affected
 5 party.

6 (3) When issuing a compliance order, the department may require a person who has violated a
 7 provision of 80-15-402 to conduct monitoring to assist in determining the presence or level of concentration
 8 of an agricultural chemical in ground water and the effectiveness of cleanup efforts. The department shall
 9 specify criteria in the compliance order for determining the duration of monitoring.

10 (4) A compliance order must specify the requirement violated and must set a time for compliance.
 11 In establishing a time for compliance, the department shall take into account the seriousness of the violation
 12 and any good faith efforts that the person has made to comply with the requirement that has been violated.
 13 A compliance order issued under this section must be served either personally by a person qualified to
 14 perform service under the Montana Rules of Civil Procedure or by certified mail."

15
 16 **Section 7.** Section 80-15-412, MCA, is amended to read:

17 "**80-15-412. Administrative civil penalty.** (1) A person who commits a violation of this chapter may
 18 be assessed an administrative civil penalty by ~~either the department or the department of health and~~
 19 ~~environmental sciences, consistent with their respective responsibilities,~~ of not more than \$1,000 for each
 20 offense. Farm applicators possessing a pesticide permit or using a fertilizer may not be assessed an
 21 administrative civil penalty of more than \$500 for the first offense. Assessment of a civil penalty may be
 22 made in conjunction with any other warning, order, or administrative action authorized by this chapter or
 23 Title 75, chapter 5, that is issued or undertaken by either the department or the department of health and
 24 environmental sciences.

25 (2) ~~No~~ An administrative civil penalty may not be assessed unless the person charged is given
 26 notice and opportunity for a hearing pursuant to Title 2, chapter 4, part 6, of the Montana Administrative
 27 Procedure Act.

28 (3) In determining an appropriate administrative civil penalty, the ~~responsible~~ department shall
 29 consider the effect on the person's ability to continue in business, the gravity of the violation that occurred,
 30 the degree of care exercised by the offender, and whether significant harm resulted to public health,

1 agricultural crops, livestock, or the environment.

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

5 (5) A person against whom the department ~~or the department of health and environmental sciences~~
6 has assessed an administrative civil penalty may, within 30 days of the final agency action making the
7 assessment, appeal the assessment to the district court of the county in which the violation is alleged to
8 have occurred. A jury trial must be granted when demanded under Rule 38 of the Montana Rules of Civil
9 Procedure."

10

11 NEW SECTION. **Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
13 applications, the part remains in effect in all valid applications that are severable from the invalid
14 applications.

15

16 NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 1995.

17

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0212, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

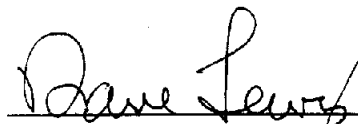
A bill amending the Montana Pesticide Act and the Agricultural Ground water Protection Act.

ASSUMPTIONS:

1. Any civil penalty fine derived under 80-8-306, MCA, must be deposited in the general fund (80-8-116 2(b), MCA).
2. The amount of increase for civil penalty fines is dependent on the number of pesticide violations and the significance of the violation(s).
3. The amendments to the act will not require additional funding. The 1997 biennium Executive Budget recommended is adequate to cover any costs for rule changes.

FISCAL IMPACT:

There will be no fiscal impact to the Department of Agriculture.

 1-20-95
LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


SHIELL ANDERSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0212, as introduced

HB 212

APPROVED BY COM ON AGRICULTURE,
LIVESTOCK & IRRIGATION

HOUSE BILL NO. 212

INTRODUCED BY ANDERSON

BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN PROVISIONS OF LAW REGARDING PESTICIDES AND AGRICULTURAL CHEMICALS; REVISING THE MONTANA PESTICIDES ACT REGARDING LICENSE AND PERMIT REVOCATION, INVESTIGATION AND ENFORCEMENT, THE ISSUANCE OF COMPLIANCE ORDERS, AND PENALTIES; MAKING UNIFORM THE PROCEDURES FOR CONTESTING AND APPEALING PENALTIES ASSESSED BY THE DEPARTMENT OF AGRICULTURE UNDER THE MONTANA PESTICIDES ACT; REVISING THE MONTANA AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACT BY REMOVING THE REQUIREMENT THAT CERTAIN CHEMICAL ANALYSES BE REPORTED; REMOVING THE AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ASSESS CIVIL PENALTIES UNDER THE MONTANA AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACT; REVISING THE PROCESS FOR ISSUANCE OF COMPLIANCE ORDERS; AMENDING SECTIONS 80-8-211, 80-8-304, 80-8-305, 80-8-306, 80-15-202, 80-15-403, AND 80-15-412, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 80-8-211, MCA, is amended to read:

"80-8-211. Revocation of licenses and permits. (1) The department shall establish the policy and procedures on the revocation of licenses or permits. The department may refuse to grant, or renew, or may revoke or modify a license or permit, as the case may require, when the department is satisfied that the licensee or ~~holder of a permit~~ permittee is not qualified to sell, use, or apply pesticides under the conditions in the locality in which ~~he~~ the licensee or permittee operates or has operated or that ~~he~~ the licensee or permittee has committed any of the following acts, each of which is ~~declared to be~~ considered a violation of this chapter:

(a) made false or fraudulent claims or recommendations through any media misrepresenting the effect of materials or methods to be ~~utilized~~ used;

(b) applied or sold unapproved or illegal materials or applied or sold a pesticide without possessing

1 a current and appropriate license or permit;

2 (c) operated in a faulty, careless, or negligent manner;

3 (d) operated faulty or unsafe equipment;

4 (e) refused or neglected to comply with the provisions of this chapter, ~~the rules adopted hereunder~~
5 under this chapter, or any lawful order of the department;

6 (f) refused or neglected to keep and maintain the records required by this chapter or to make
7 reports when and as required;

8 (g) made false or fraudulent records or reports;

9 (h) operated equipment for the commercial application of a pesticide without having a license or
10 permit;

11 (i) used fraud or misrepresentation in making an application for a license or permit or renewal of
12 a license or permit;

13 (j) used or applied a registered pesticide inconsistent with its labeling or the label or the department
14 restrictions on the use of that pesticide;

15 (k) made false or misleading statements in connection with a pest inspection of land, crops, yards,
16 or any premises in an attempt to induce any person to engage ~~his~~ the licensee's or permittee's services
17 to eliminate, control, or mitigate the alleged pest or made false or misleading statements concerning the
18 effectiveness of any pesticide or its application;

19 (l) failed to satisfy a judgment entered against the licensee or permittee as a result of a complaint
20 concerning the use of a pesticide.

21 (2) Decisions of the department relating to the issuing of licenses or permits may be appealed."
22

23 **Section 2.** Section 80-8-304, MCA, is amended to read:

24 **"80-8-304. Investigation and enforcement authority.** (1) In enforcing this chapter, the department
25 or its ~~duty~~ authorized agents, upon reasonable cause, may enter upon private and public premises and
26 property with a warrant or consent of the inhabitant or owner to inspect or investigate at reasonable times:

27 (a) equipment used for applying pesticides;

28 (b) actual or reported adverse effects caused by pesticides in humans, crops, animals, land, or
29 other property;

30 (c) records on the selling or use of pesticides and the person's stock of pesticides;

1 (d) handling, use, application, storage, and disposal of pesticides by any person;

2 (e) pesticides being applied or to be applied and to sample the pesticides or agricultural
3 commodities;

4 (f) the use and application of a pesticide; ~~or~~

5 (g) the environment alleged to have been exposed to pesticides and to collect and analyze
6 environmental samples;

7 (h) a person's compliance with pesticide worker protection standards and labeling, including
8 handlers and workers;

9 (i) a person's compliance with pesticide ground water and ENVIRONMENTAL PROTECTION
10 AGENCY endangered species standards and labeling; or

11 (j) a person's compliance with licensing, labeling, permitting, and certification requirements.

12 (2) The department is authorized to investigate all incidents involving the application, sale,
13 introduction, or ~~utilization~~ use of registered pesticides or compounds capable of acting in the manner of
14 pesticides when the incidents have a reasonable potential to adversely affect the public environment or
15 persons ~~other than the applicator.~~

16 (3) The investigation or inspection authority provided for in this section may be exercised over
17 persons not possessing a required license or permit ~~only upon receipt of a complaint or report of an~~
18 ~~incident."~~

19
20 **Section 3.** Section 80-8-305, MCA, is amended to read:

21 **"80-8-305. General violations -- compliance orders.** (1) Consistent with the provisions of Title 80,
22 chapter 15, it is unlawful for ~~any~~ a person:

23 (a) to discard any pesticide or pesticide container in ~~such~~ a manner ~~as to cause~~ that causes injury
24 to humans, domestic animals, or wildlife, or to pollute any waterway in a way harmful to any wildlife
25 ~~therein~~ in the waterway or to the environment;

26 (b) to handle, transport, store, display, or distribute pesticides or pesticide containers in ~~such~~ a
27 manner ~~as to endanger man~~ that endangers humans or the environment or to endanger food or any other
28 products that may be transported, stored, displayed, or distributed with ~~such~~ pesticides;

29 (c) to handle, apply, or attempt to apply any registered pesticide for which ~~he~~ the person does not
30 have an appropriate, complete, or legible label at hand;

1 (d) to apply or attempt to apply any registered pesticide in a manner inconsistent with the ~~label~~
2 labeling, as defined in 80-8-102; or

3 (e) to use any unregistered chemical or biological agent that is required to be registered as a
4 pesticide by the Montana Pesticides Act.

5 (2) It is unlawful for ~~any a~~ person to manufacture, formulate, or store any registered pesticide or
6 a component or byproduct thereof of a registered pesticide in ~~such~~ a manner that the pesticide, ~~or any~~
7 component, ~~or byproduct~~ cannot be contained or confined within the boundaries of the lands owned by
8 or under the appropriate control of the person involved. ~~Odor~~ The containment or confinement of odor is
9 specifically exempted from the provisions of this subsection.

10 (3)(a) The department may issue a compliance order to ~~any a~~ person violating the provisions of
11 ~~this section, 80-8-211, the provisions of this section,~~ or any other requirement established pursuant to this
12 chapter. ~~The compliance order may be issued to any person, including the person's employees, agents,~~
13 ~~or subcontractors.~~ THE COMPLIANCE ORDER MAY BE ISSUED TO ANY PERSON, INCLUDING THE
14 PERSON'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS.

15 ~~(b) If the department is unable to identify the person or determines that the person is insolvent,~~
16 ~~the department may issue the compliance order to a person who owns, leases, or has possession or control~~
17 ~~of the site at the time the order is issued.~~

18 ~~(c) In determining the amount of any civil penalty issued as part of the compliance order to a~~
19 ~~person who owns, leases, possesses, or controls the site, the department shall consider whether the~~
20 ~~violation occurred prior to that person's acquiring an interest in the site and whether the site was used~~
21 ~~without that person's knowledge or consent.~~

22 ~~(d)(B) An action under this subsection (3) does not preclude a private cause of action by any~~
23 ~~affected party~~ THE PROVISIONS OF THIS SUBSECTION (3) ARE NOT INTENDED TO VOID OR AFFECT
24 INDEMNITY OR LIABILITY AGREEMENTS BETWEEN THE PERSON WHO OWNS, LEASES, OR HAS
25 POSSESSION OR CONTROL OF THE SITE AND THE PERSON WHO SOLD THE SITE, WHO IS THE LESSOR,
26 OR WHO HAS RELINQUISHED POSSESSION OR CONTROL OF THE SITE.

27 (4) A compliance order may require the cleanup of any pesticide that a person has accidentally or
28 purposely dumped, spilled, misused, or unlawfully used in violation of this section. The department shall
29 allow the recipient of a compliance order to spread, treat, or dispose of soils contaminated by a pesticide
30 if the person can document and prove to the satisfaction of the department that the soil will be beneficially

1 used or that the pesticide in the soil will physically, chemically, or biologically degrade and that neither the
 2 beneficial use of the soil nor the degradation of the pesticide in the soil will adversely affect agriculture,
 3 human health, or the environment. Prior to issuing a compliance order requiring cleanup of a pesticide, the
 4 department shall consult with the department of health and environmental sciences to ensure that the
 5 provisions of Title 75, chapter 10, part 4, are considered. If a pesticide or soil contaminated by a pesticide
 6 is subject to the provisions of Title 75, chapter 10, part 4, and there is no beneficial use of the soil as
 7 determined by the department, the department of health and environmental sciences is responsible for
 8 regulating the cleanup and disposal of the pesticide and the soil contaminated by the pesticide. The
 9 department may not allow a person to spread, treat, or dispose of soils contaminated by a canceled or
 10 suspended pesticide without the specific approval of the department of health and environmental sciences
 11 or the U.S. environmental protection agency, or both, as required on a case-by-case basis.

12 (5) When issuing a compliance order, the department may require a person who has violated a
 13 provision of this chapter to conduct monitoring to assist in determining the presence or level of
 14 concentration of pesticides in the environment and the effectiveness of cleanup efforts. The department
 15 shall specify criteria in the compliance order for determining the duration of monitoring.

16 (6) A compliance order must specify the requirement of this chapter that has been violated and
 17 establish a time schedule for compliance. In establishing a time schedule for compliance, the department
 18 shall take into account the seriousness of the violation and any good faith efforts that the person has made
 19 to comply with the requirement that has been violated. A compliance order issued under this section must
 20 be served either by a person qualified to perform service under the Montana Rules of Civil Procedure or
 21 by certified mail."

22
 23 **Section 4.** Section 80-8-306, MCA, is amended to read:

24 **"80-8-306. Penalties.** (1) ~~Any~~ A person convicted of violating any of the provisions of this chapter
 25 or the rules issued ~~thereunder~~ under this chapter or who ~~may misrepresent, impede, obstruct, hinder, or~~
 26 ~~otherwise prevent or attempt~~ misrepresents, prevents, or attempts to prevent the department or its duly
 27 authorized agent in performance of its duty in connection with the provisions of this chapter ~~shall be~~
 28 ~~adjudged~~ is guilty of a misdemeanor and shall be fined not less than \$100 but not more than \$1,500.

29 (2) The department or its authorized representative ~~is hereby authorized to~~ may apply to the
 30 district court of the ~~county or any county wherein a violation is about to occur or has occurred~~ first judicial

1 ~~district, Lewis and Clark County,~~ COUNTY WHERE A VIOLATION IS ABOUT TO OCCUR OR HAS
 2 OCCURRED to grant a temporary or permanent injunction restraining any person from violating or
 3 continuing to violate any of the provisions of this chapter or any rule promulgated under the chapter
 4 ~~notwithstanding the existence of other remedies of law~~ NOTWITHSTANDING THE EXISTENCE OF OTHER
 5 REMEDIES OF LAW. ~~When a person makes pesticide applications in more than one county on a commercial~~
 6 ~~basis without a license or permit or operates in violation of a lawful written order of the department in~~
 7 ~~more than one county, the district court of Lewis and Clark County has concurrent jurisdiction with the~~
 8 ~~district court of any other county wherein a violation has occurred or is about to occur, and the department~~
 9 ~~may select and proceed in the court most appropriate under the circumstances.~~ WHEN A PERSON MAKES
 10 PESTICIDE APPLICATIONS IN MORE THAN ONE COUNTY ON A COMMERCIAL BASIS WITHOUT A
 11 LICENSE OR PERMIT OR OPERATES IN VIOLATION OF A LAWFUL WRITTEN ORDER OF THE
 12 DEPARTMENT IN MORE THAN ONE COUNTY, THE DISTRICT COURT OF LEWIS AND CLARK COUNTY
 13 HAS CONCURRENT JURISDICTION WITH THE DISTRICT COURT OF ANOTHER COUNTY WHERE A
 14 VIOLATION HAS OCCURRED OR IS ABOUT TO OCCUR AND THE DEPARTMENT MAY SELECT AND
 15 PROCEED IN THE COURT THAT IS MOST APPROPRIATE UNDER THE CIRCUMSTANCES. The injunction
 16 is to be issued without bond.

17 (3) Nothing in this chapter ~~is to be construed as requiring~~ requires the department or its authorized
 18 agent to report minor violations of the chapter for prosecution or for the institution of seizure proceedings
 19 when it believes that the public interest will be best served by other remedial action, by a suitable notice
 20 of warning in writing, or by a lawful written order, ~~nor is any part of this.~~ This chapter to be construed to
 21 does not apply to common carriers transporting shipments tendered to them by the general public.

22 (4) Any person who with intent to defraud uses or reveals information relative to formulas of
 23 products acquired under the authority of 80-8-201 shall, upon conviction, be fined not more than \$500
 24 or be imprisoned for not more than 1 year, or both.

25 (5) (a) Any registrant, applicator, dealer, retailer, or other person who commits a major violation
 26 of this chapter as defined in subsection ~~(5)(d)~~ (5)(e), ~~in addition to other penalties provided in this chapter,~~
 27 may be assessed a civil penalty by the department of not more than ~~\$1,000~~ \$2,500 for each offense.
 28 However, farm applicators possessing a permit may not be assessed a civil penalty over ~~\$200~~ \$500 for
 29 the first offense. Assessment of a civil penalty may be made in conjunction with any other department
 30 warning, order, or administrative action authorized by this chapter.

1 (b) ~~No~~ A civil penalty may not be assessed unless the person charged was given notice and
 2 opportunity for a hearing and an appeal pursuant to the Montana Administrative Procedure Act.

3 (c)(i) If after investigation the department determines that a major violation of this chapter has
 4 either affected SIGNIFICANTLY HARMED human life, welfare, or safety or affected agricultural
 5 commodities, livestock, or the environment in a manner that cannot be appropriately addressed by the
 6 penalties assessed in subsection (5)(a), the department may seek a civil penalty, not to exceed \$25,000
 7 for each offense, by filing a complaint in the district court of the first judicial district, Lewis and Clark
 8 County.

9 (ii) In addition to the civil penalty provided in subsection (5)(c)(i), a person who WILLFULLY
 10 commits a major violation of this chapter that results in significant harm to human life, welfare, or safety
 11 or to agricultural commodities, livestock, or the environment is guilty of a felony and shall, upon conviction,
 12 be fined not more than \$50,000 or be imprisoned in the state prison for not more than 10 years, or both.

13 (d) In determining an appropriate penalty, the department shall consider the effect on the person's
 14 ability to continue in business, the gravity of the violation ~~which~~ that occurred, the degree of care
 15 exercised by the offender, and whether significant harm resulted to human health, ~~environment,~~ agricultural
 16 erops commodities, ~~or~~ livestock, or the environment.

17 ~~(d)~~(e) A major violation of this chapter includes:

18 (i) misuse of a pesticide ~~which~~ that results in PROVEN EXPOSURE OF HUMANS, AGRICULTURAL
 19 COMMODITIES, OR LIVESTOCK OR RESULTS IN proven harm ~~or exposure~~ to human health, ~~the~~
 20 ~~environment,~~ or agricultural erops commodities, or livestock, or the environment. As used in this
 21 subsection (i), misuse means the use, handling, or release of a pesticide by a person in a manner
 22 inconsistent with the label or labeling or in violation of department pesticide application, storage, mixing,
 23 and loading rules or pesticide and container disposal rules.

24 (ii) selling of a restricted pesticide to a person not certified or authorized to purchase ~~such~~ restricted
 25 pesticides;

26 (iii) use or sale of unregistered pesticides;

27 (iv) failure to maintain any individual pesticide application and sales records;

28 (v) using or selling pesticides without having obtained the required license or permit; ~~or~~

29 (vi) noncompliance with pesticide worker protection standards and labeling;

30 (vii) noncompliance with PESTICIDE ground water and ENVIRONMENTAL PROTECTION AGENCY

1 endangered species standards and labeling;

2 (viii) noncompliance with pesticide or pesticide container disposal, labeling, or handling
3 requirements and standards; or

4 (ix) reoccurrence of any identical violation of this chapter within the same calendar year 2 years
5 of the first violation.

6 ~~(e)(f)~~ If the department is unable to collect ~~such~~ the civil penalty or if ~~any~~ a person fails to pay all
7 or a ~~set~~ portion of the civil penalty as determined by the department, ~~it~~ the department may recover ~~such~~
8 that amount by action in the appropriate district court.

9 ~~(6) Any person against whom the department has assessed a civil penalty under this section may,~~
10 ~~within 30 days of the final agency action making the assessment, appeal the assessment to the district~~
11 ~~court of the county in which the violation is alleged by the department to have occurred. Appeal is by trial~~
12 ~~de novo, and a jury trial must be granted if requested. Where the provisions of this subsection conflict with~~
13 ~~2-4-702 through 2-4-704, the provisions of this subsection govern."~~

14
15 **Section 5.** Section 80-15-202, MCA, is amended to read:

16 **"80-15-202. Monitoring programs.** (1) The department or the department of health and
17 environmental sciences shall conduct monitoring programs to determine:

18 (a) whether residues of agricultural chemicals are present in ground water; and

19 (b) the likelihood of an agricultural chemical to enter ground water, if either department determines
20 that sufficient valid scientific data is available to reasonably predict the behavior of a particular agricultural
21 chemical in the soil.

22 ~~(2) Any person who receives a chemical analysis indicating the presence of an agricultural~~
23 ~~chemical in ground water shall notify the department of health and environmental sciences.~~

24 ~~(3)~~ The department and the department of health and environmental sciences shall evaluate all
25 information relating to this section that is received from any person, based upon standard procedures,
26 protocols, and confirmatory procedures established by rule. Information found to be insufficient based on
27 the adopted procedures and protocols, including analytical results, may be used only for informational
28 purposes."

29
30 **Section 6.** Section 80-15-403, MCA, is amended to read:

1 "80-15-403. Compliance orders. (1) In furtherance of 80-15-402, the department may issue a
2 compliance order to any person violating a standard, an interim numerical standard, or any other
3 requirement established pursuant to this chapter. The department shall coordinate its proposed actions
4 pursuant to this section with proposed actions of the department of health and environmental sciences
5 pursuant to 75-5-613, if any. Issuance of a compliance order under this chapter precludes the department
6 from taking other enforcement actions for the same violation under Title 80, chapter 8 or 10.

7 ~~(2)(a) The department may issue a compliance order to any person, including the person's~~
8 ~~employees, agents, and subcontractors, whether or not the person is subject to a specific management~~
9 ~~plan, to require the cleanup of any agricultural chemical that the person has accidentally or purposely~~
10 ~~dumped, spilled, or misused or unlawfully used that has a significant probability of entering ground water~~
11 ~~who violates any requirement established pursuant to this chapter.~~

12 ~~(b) If the department is unable to identify the person or determines that the person is insolvent,~~
13 ~~the department may issue the compliance order to a person who owns, leases, or has possession or control~~
14 ~~of the site at the time the order is issued.~~

15 ~~(c) In determining the amount of any civil penalty issued as part of the compliance order to a~~
16 ~~person who owns, leases, possesses, or controls the site, the department shall consider whether the~~
17 ~~violation occurred prior to that person's acquiring an interest in the site and whether the site was used~~
18 ~~without that person's knowledge or consent.~~

19 ~~(d)(B) An action under this subsection (2) does not preclude a private cause of action by any~~
20 ~~affected party~~ THE PROVISIONS OF THIS SUBSECTION (2) ARE NOT INTENDED TO VOID OR AFFECT
21 INDEMNITY OR LIABILITY AGREEMENTS BETWEEN THE PERSON WHO OWNS, LEASES, OR HAS
22 POSSESSION OR CONTROL OF THE SITE AND THE PERSON WHO SOLD THE SITE, WHO IS THE LESSOR,
23 OR WHO HAS RELINQUISHED POSSESSION OR CONTROL OF THE SITE.

24 (3) When issuing a compliance order, the department may require a person who has violated a
25 provision of 80-15-402 to conduct monitoring to assist in determining the presence or level of
26 concentration of an agricultural chemical in ground water and the effectiveness of cleanup efforts. The
27 department shall specify criteria in the compliance order for determining the duration of monitoring.

28 (4) A compliance order must specify the requirement violated and must set a time for compliance.
29 In establishing a time for compliance, the department shall take into account the seriousness of the
30 violation and any good faith efforts that the person has made to comply with the requirement that has

1 been violated. A compliance order issued under this section must be served either personally by a person
2 qualified to perform service under the Montana Rules of Civil Procedure or by certified mail."

3
4 **Section 7.** Section 80-15-412, MCA, is amended to read:

5 **"80-15-412. Administrative civil penalty.** (1) A person who commits a violation of this chapter
6 may be assessed an administrative civil penalty by either the department ~~or the department of health and~~
7 ~~environmental sciences, consistent with their respective responsibilities,~~ of not more than \$1,000 for each
8 offense. Farm applicators possessing a pesticide permit or using a fertilizer may not be assessed an
9 administrative civil penalty of more than \$500 for the first offense. Assessment of a civil penalty may be
10 made in conjunction with any other warning, order, or administrative action authorized by this chapter or
11 Title 75, chapter 5, that is issued or undertaken by either the department or the department of health and
12 environmental sciences.

13 (2) ~~No~~ An administrative civil penalty may not be assessed unless the person charged is given
14 notice and opportunity for a hearing pursuant to Title 2, chapter 4, part 6, of the Montana Administrative
15 Procedure Act.

16 (3) In determining an appropriate administrative civil penalty, the ~~responsible~~ department shall
17 consider the effect on the person's ability to continue in business, the gravity of the violation that
18 occurred, the degree of care exercised by the offender, and whether significant harm resulted to public
19 health, agricultural crops, livestock, or the environment.

20 (4) If the ~~responsible~~ department is unable to collect the administrative civil penalty or if a person
21 fails to pay all or a set portion of the administrative civil penalty as determined by the ~~responsible~~
22 department, the department may seek to recover the amount in the appropriate district court.

23 (5) A person against whom the department ~~or the department of health and environmental~~
24 ~~sciences~~ has assessed an administrative civil penalty may, within 30 days of the final agency action
25 making the assessment, appeal the assessment to the district court of the county in which the violation
26 is alleged to have occurred. A jury trial must be granted when demanded under Rule 38 of the Montana
27 Rules of Civil Procedure."

28
29 NEW SECTION. **Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are
30 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its

1 applications, the part remains in effect in all valid applications that are severable from the invalid
2 applications.

3

4 NEW SECTION. Section 9. Effective date. [This act] is effective July 1, 1995.

5

-END-

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HOUSE BILL NO. 212
INTRODUCED BY ANDERSON
BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN PROVISIONS OF LAW REGARDING PESTICIDES AND AGRICULTURAL CHEMICALS; REVISING THE MONTANA PESTICIDES ACT REGARDING LICENSE AND PERMIT REVOCATION, INVESTIGATION AND ENFORCEMENT, THE ISSUANCE OF COMPLIANCE ORDERS, AND PENALTIES; MAKING UNIFORM THE PROCEDURES FOR CONTESTING AND APPEALING PENALTIES ASSESSED BY THE DEPARTMENT OF AGRICULTURE UNDER THE MONTANA PESTICIDES ACT; REVISING THE MONTANA AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACT BY REMOVING THE REQUIREMENT THAT CERTAIN CHEMICAL ANALYSES BE REPORTED; REMOVING THE AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ASSESS CIVIL PENALTIES UNDER THE MONTANA AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACT; REVISING THE PROCESS FOR ISSUANCE OF COMPLIANCE ORDERS; AMENDING SECTIONS 80-8-211, 80-8-304, 80-8-305, 80-8-306, 80-15-202, 80-15-403, AND 80-15-412, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

1 HOUSE BILL NO. 212

2 INTRODUCED BY ANDERSON

3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN PROVISIONS OF LAW REGARDING
6 PESTICIDES AND AGRICULTURAL CHEMICALS; REVISING THE MONTANA PESTICIDES ACT REGARDING
7 LICENSE AND PERMIT REVOCATION, INVESTIGATION AND ENFORCEMENT, THE ISSUANCE OF
8 COMPLIANCE ORDERS, AND PENALTIES; MAKING UNIFORM THE PROCEDURES FOR CONTESTING AND
9 APPEALING PENALTIES ASSESSED BY THE DEPARTMENT OF AGRICULTURE UNDER THE MONTANA
10 PESTICIDES ACT; REVISING THE MONTANA AGRICULTURAL CHEMICAL GROUND WATER PROTECTION
11 ACT BY REMOVING THE REQUIREMENT THAT CERTAIN CHEMICAL ANALYSES BE REPORTED;
12 REMOVING THE AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO
13 ASSESS CIVIL PENALTIES UNDER THE MONTANA AGRICULTURAL CHEMICAL GROUND WATER
14 PROTECTION ACT; REVISING THE PROCESS FOR ISSUANCE OF COMPLIANCE ORDERS; AMENDING
15 SECTIONS 80-8-211, 80-8-304, 80-8-305, 80-8-306, 80-15-202, 80-15-403, AND 80-15-412, MCA;
16 AND PROVIDING AN EFFECTIVE DATE."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
19

20 Section 1. Section 80-8-211, MCA, is amended to read:

21 "**80-8-211. Revocation of licenses and permits.** (1) The department shall establish the policy and
22 procedures on the revocation of licenses or permits. The department may refuse to grant, or renew, or may
23 revoke or modify a license or permit, as the case may require, when the department is satisfied that the
24 licensee or ~~holder of a permit~~ permittee is not qualified to sell, use, or apply pesticides under the conditions
25 in the locality in which ~~he~~ the licensee or permittee operates or has operated or that ~~he~~ the licensee or
26 permittee has committed any of the following acts, each of which is ~~declared to be~~ considered a violation
27 of this chapter:

28 (a) made false or fraudulent claims or recommendations through any media misrepresenting the
29 effect of materials or methods to be ~~utilized~~ used;

30 (b) applied or sold unapproved or illegal materials or applied or sold a pesticide without possessing

1 a current and appropriate license or permit;

2 (c) operated in a faulty, careless, or negligent manner;

3 (d) operated faulty or unsafe equipment;

4 (e) refused or neglected to comply with the provisions of this chapter, ~~the rules adopted hereunder~~
5 under this chapter, or any lawful order of the department;

6 (f) refused or neglected to keep and maintain the records required by this chapter or to make
7 reports when and as required;

8 (g) made false or fraudulent records or reports;

9 (h) operated equipment for the commercial application of a pesticide without having a license or
10 permit;

11 (i) used fraud or misrepresentation in making an application for a license or permit or renewal of
12 a license or permit;

13 (j) used or applied a registered pesticide inconsistent with its labeling or the label or the department
14 restrictions on the use of that pesticide;

15 (k) made false or misleading statements in connection with a pest inspection of land, crops, yards,
16 or any premises in an attempt to induce any person to engage ~~his~~ the licensee's or permittee's services
17 to eliminate, control, or mitigate the alleged pest or made false or misleading statements concerning the
18 effectiveness of any pesticide or its application;

19 (l) failed to satisfy a judgment entered against the licensee or permittee as a result of a complaint
20 concerning the use of a pesticide.

21 (2) Decisions of the department relating to the issuing of licenses or permits may be appealed."
22

23 **Section 2.** Section 80-8-304, MCA, is amended to read:

24 **"80-8-304. Investigation and enforcement authority.** (1) In enforcing this chapter, the department
25 or its ~~duly~~ authorized agents, upon reasonable cause, may enter upon private and public premises and
26 property with a warrant or consent of the inhabitant or owner to inspect or investigate at reasonable times:

27 (a) equipment used for applying pesticides;

28 (b) actual or reported adverse effects caused by pesticides in humans, crops, animals, land, or
29 other property;

30 (c) records on the selling or use of pesticides and the person's stock of pesticides;

1 (d) handling, use, application, storage, and disposal of pesticides by any person;

2 (e) pesticides being applied or to be applied and to sample the pesticides or agricultural
3 commodities;

4 (f) the use and application of a pesticide; ~~or~~

5 (g) the environment alleged to have been exposed to pesticides and to collect and analyze
6 environmental samples;

7 (h) a person's compliance with pesticide worker protection standards and labeling, including
8 handlers and workers;

9 (i) a person's compliance with pesticide ground water and ENVIRONMENTAL PROTECTION
10 AGENCY endangered species standards and labeling; or

11 (i) a person's compliance with licensing, labeling, permitting, and certification requirements.

12 (2) The department is authorized to investigate all incidents involving the application, sale,
13 introduction, or ~~utilization~~ use of registered pesticides or compounds capable of acting in the manner of
14 pesticides when the incidents have a reasonable potential to adversely affect the public environment or
15 persons ~~other than the applicator.~~

16 (3) The investigation or inspection authority provided for in this section may be exercised over
17 persons not possessing a required license or permit ~~only upon receipt of a complaint or report of an~~
18 ~~incident."~~

19
20 **Section 3.** Section 80-8-305, MCA, is amended to read:

21 **"80-8-305. General violations -- compliance orders.** (1) Consistent with the provisions of Title 80,
22 chapter 15, it is unlawful for ~~any a~~ person:

23 (a) to discard any pesticide or pesticide container in ~~such a manner as to cause~~ that causes injury
24 to humans, domestic animals, or wildlife; or to pollute any waterway in a way harmful to any wildlife
25 ~~therein in the waterway~~ or to the environment;

26 (b) to handle, transport, store, display, or distribute pesticides or pesticide containers in ~~such a~~
27 ~~manner as to endanger man~~ that endangers humans or the environment or to endanger food or any other
28 products that may be transported, stored, displayed, or distributed with ~~such~~ pesticides;

29 (c) to handle, apply, or attempt to apply any registered pesticide for which ~~he~~ the person does not
30 have an appropriate, complete, or legible label at hand;

1 (d) to apply or attempt to apply any registered pesticide in a manner inconsistent with the label
2 labeling, as defined in 80-8-102; or

3 (e) to use any unregistered chemical or biological agent that is required to be registered as a
4 pesticide by the Montana Pesticides Act.

5 (2) It is unlawful for ~~any a~~ person to manufacture, formulate, or store any registered pesticide or
6 a component or byproduct ~~thereof~~ of a registered pesticide in such a manner that the pesticide, ~~or any~~
7 component, or byproduct cannot be contained or confined within the boundaries of the lands owned by
8 or under the appropriate control of the person involved. ~~Or~~ The containment or confinement of odor is
9 ~~specifically~~ exempted from the provisions of this subsection.

10 (3)(a) The department may issue a compliance order to ~~any a~~ person violating the provisions of
11 ~~this section, 80-8-211, the provisions of this section,~~ or any other requirement established pursuant to this
12 chapter. ~~The compliance order may be issued to any person, including the person's employees, agents,~~
13 ~~or subcontractors.~~ THE COMPLIANCE ORDER MAY BE ISSUED TO ANY PERSON, INCLUDING THE
14 PERSON'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS.

15 ~~(b) If the department is unable to identify the person or determines that the person is insolvent,~~
16 ~~the department may issue the compliance order to a person who owns, leases, or has possession or control~~
17 ~~of the site at the time the order is issued.~~

18 ~~(c) In determining the amount of any civil penalty issued as part of the compliance order to a~~
19 ~~person who owns, leases, possesses, or controls the site, the department shall consider whether the~~
20 ~~violation occurred prior to that person's acquiring an interest in the site and whether the site was used~~
21 ~~without that person's knowledge or consent.~~

22 ~~(d)(B) An action under this subsection (3) does not preclude a private cause of action by any~~
23 ~~affected party~~ THE PROVISIONS OF THIS SUBSECTION (3) ARE NOT INTENDED TO VOID OR AFFECT
24 INDEMNITY OR LIABILITY AGREEMENTS BETWEEN THE PERSON WHO OWNS, LEASES, OR HAS
25 POSSESSION OR CONTROL OF THE SITE AND THE PERSON WHO SOLD THE SITE, WHO IS THE LESSOR,
26 OR WHO HAS RELINQUISHED POSSESSION OR CONTROL OF THE SITE.

27 (4) A compliance order may require the cleanup of any pesticide that a person has accidentally or
28 purposely dumped, spilled, misused, or unlawfully used in violation of this section. The department shall
29 allow the recipient of a compliance order to spread, treat, or dispose of soils contaminated by a pesticide
30 if the person can document and prove to the satisfaction of the department that the soil will be beneficially

1 used or that the pesticide in the soil will physically, chemically, or biologically degrade and that neither the
 2 beneficial use of the soil nor the degradation of the pesticide in the soil will adversely affect agriculture,
 3 human health, or the environment. Prior to issuing a compliance order requiring cleanup of a pesticide, the
 4 department shall consult with the department of health and environmental sciences to ensure that the
 5 provisions of Title 75, chapter 10, part 4, are considered. If a pesticide or soil contaminated by a pesticide
 6 is subject to the provisions of Title 75, chapter 10, part 4, and there is no beneficial use of the soil as
 7 determined by the department, the department of health and environmental sciences is responsible for
 8 regulating the cleanup and disposal of the pesticide and the soil contaminated by the pesticide. The
 9 department may not allow a person to spread, treat, or dispose of soils contaminated by a canceled or
 10 suspended pesticide without the specific approval of the department of health and environmental sciences
 11 or the U.S. environmental protection agency, or both, as required on a case-by-case basis.

12 (5) When issuing a compliance order, the department may require a person who has violated a
 13 provision of this chapter to conduct monitoring to assist in determining the presence or level of
 14 concentration of pesticides in the environment and the effectiveness of cleanup efforts. The department
 15 shall specify criteria in the compliance order for determining the duration of monitoring.

16 (6) A compliance order must specify the requirement of this chapter that has been violated and
 17 establish a time schedule for compliance. In establishing a time schedule for compliance, the department
 18 shall take into account the seriousness of the violation and any good faith efforts that the person has made
 19 to comply with the requirement that has been violated. A compliance order issued under this section must
 20 be served either by a person qualified to perform service under the Montana Rules of Civil Procedure or
 21 by certified mail."

22
 23 **Section 4.** Section 80-8-306, MCA, is amended to read:

24 "**80-8-306. Penalties.** (1) ~~Any~~ A person convicted of violating any of the provisions of this chapter
 25 or the rules issued ~~thereunder~~ under this chapter or who ~~may misrepresent, impede, obstruct, hinder, or~~
 26 ~~otherwise prevent or attempt~~ misrepresents, prevents, or attempts to prevent the department or its ~~duty~~
 27 authorized agent in performance of its duty in connection with the provisions of this chapter ~~shall be~~
 28 ~~adjudged~~ is guilty of a misdemeanor and shall be fined not less than \$100 but not more than \$1,500.

29 (2) The department or its authorized representative ~~is hereby authorized to~~ may apply to the
 30 district court of the ~~county or any county wherein a violation is about to occur or has occurred~~ first judicial

1 ~~district, Lewis and Clark County,~~ COUNTY WHERE A VIOLATION IS ABOUT TO OCCUR OR HAS
 2 OCCURRED to grant a temporary or permanent injunction restraining any person from violating or
 3 continuing to violate any of the provisions of this chapter or any rule promulgated under the chapter
 4 ~~notwithstanding the existence of other remedies of law~~ NOTWITHSTANDING THE EXISTENCE OF OTHER
 5 REMEDIES OF LAW. ~~When a person makes pesticide applications in more than one county on a commercial~~
 6 ~~basis without a license or permit or operates in violation of a lawful written order of the department in~~
 7 ~~more than one county, the district court of Lewis and Clark County has concurrent jurisdiction with the~~
 8 ~~district court of any other county wherein a violation has occurred or is about to occur, and the department~~
 9 ~~may select and proceed in the court most appropriate under the circumstances.~~ WHEN A PERSON MAKES
 10 PESTICIDE APPLICATIONS IN MORE THAN ONE COUNTY ON A COMMERCIAL BASIS WITHOUT A
 11 LICENSE OR PERMIT OR OPERATES IN VIOLATION OF A LAWFUL WRITTEN ORDER OF THE
 12 DEPARTMENT IN MORE THAN ONE COUNTY, THE DISTRICT COURT OF LEWIS AND CLARK COUNTY
 13 HAS CONCURRENT JURISDICTION WITH THE DISTRICT COURT OF ANOTHER COUNTY WHERE A
 14 VIOLATION HAS OCCURRED OR IS ABOUT TO OCCUR AND THE DEPARTMENT MAY SELECT AND
 15 PROCEED IN THE COURT THAT IS MOST APPROPRIATE UNDER THE CIRCUMSTANCES. The injunction
 16 is to be issued without bond.

17 (3) Nothing in this chapter ~~is to be construed as requiring~~ requires the department or its authorized
 18 agent to report minor violations of the chapter for prosecution or for the institution of seizure proceedings
 19 when it believes that the public interest will be best served by other remedial action, by a suitable notice
 20 of warning in writing, or by a lawful written order; ~~nor is any part of this.~~ This chapter to be construed to
 21 does not apply to common carriers transporting shipments tendered to them by the general public.

22 (4) Any person who with intent to defraud uses or reveals information relative to formulas of
 23 products acquired under the authority of 80-8-201 shall, upon conviction, be fined not more than \$500
 24 or be imprisoned for not more than 1 year, or both.

25 (5) (a) Any registrant, applicator, dealer, retailer, or other person who commits a major violation
 26 of this chapter as defined in subsection ~~(5)(d)~~ (5)(e), in addition to other penalties provided in this chapter,
 27 may be assessed a civil penalty by the department of not more than ~~\$1,000~~ \$2,500 for each offense.
 28 However, farm applicators possessing a permit may not be assessed a civil penalty over ~~\$200~~ \$500 for
 29 the first offense. Assessment of a civil penalty may be made in conjunction with any other department
 30 warning, order, or administrative action authorized by this chapter.

1 (b) ~~No~~ A civil penalty may not be assessed unless the person charged was given notice and
 2 opportunity for a hearing and an appeal pursuant to the Montana Administrative Procedure Act.

3 (c)(i) If after investigation the department determines that a major violation of this chapter has
 4 either affected SIGNIFICANTLY HARMED human life, welfare, or safety or affected agricultural
 5 commodities, livestock, or the environment in a manner that cannot be appropriately addressed by the
 6 penalties assessed in subsection (5)(a), the department may seek a civil penalty, not to exceed \$25,000
 7 for each offense, by filing a complaint in the district court of the first judicial district, Lewis and Clark
 8 County.

9 (ii) In addition to the civil penalty provided in subsection (5)(c)(i), a person who WILLFULLY
 10 commits a major violation of this chapter that results in significant harm to human life, welfare, or safety
 11 or to agricultural commodities, livestock, or the environment is guilty of a felony and shall, upon conviction,
 12 be fined not more than \$50,000 or be imprisoned in the state prison for not more than 10 years, or both.

13 (d) In determining an appropriate penalty, the department shall consider the effect on the person's
 14 ability to continue in business, the gravity of the violation ~~which~~ that occurred, the degree of care
 15 exercised by the offender, and whether significant harm resulted to human health, ~~environment,~~ agricultural
 16 ~~expos~~ commodities, or livestock, or the environment.

17 ~~(e)~~ (e) A major violation of this chapter includes:

18 (i) misuse of a pesticide ~~which~~ that results in PROVEN EXPOSURE OF HUMANS, AGRICULTURAL
 19 COMMODITIES, OR LIVESTOCK OR RESULTS IN proven harm ~~or exposure~~ to human health, ~~the~~
 20 ~~environment,~~ ~~or~~ agricultural ~~expos~~ commodities, or livestock, or the environment. As used in this
 21 subsection (i), misuse means the use, handling, or release of a pesticide by a person in a manner
 22 inconsistent with the label or labeling or in violation of department pesticide application, storage, mixing,
 23 and loading rules or pesticide and container disposal rules.

24 (ii) selling of a restricted pesticide to a person not certified or authorized to purchase ~~such~~ restricted
 25 pesticides;

26 (iii) use or sale of unregistered pesticides;

27 (iv) failure to maintain any individual pesticide application and sales records;

28 (v) using or selling pesticides without having obtained the required license or permit; ~~or~~

29 (vi) noncompliance with pesticide worker protection standards and labeling;

30 (vii) noncompliance with PESTICIDE ground water and ENVIRONMENTAL PROTECTION AGENCY

1 endangered species standards and labeling:

2 (viii) noncompliance with pesticide or pesticide container disposal, labeling, or handling
3 requirements and standards; or

4 (ix) reoccurrence of any identical violation of this chapter within ~~the same calendar year~~ 2 years
5 of the first violation.

6 ~~(e)(f)~~ If the department is unable to collect ~~such~~ the civil penalty or if ~~any~~ a person fails to pay all
7 or a ~~set~~ portion of the civil penalty as determined by the department, ~~it~~ the department may recover ~~such~~
8 that amount by action in the appropriate district court.

9 ~~(6) Any person against whom the department has assessed a civil penalty under this section may,~~
10 ~~within 30 days of the final agency action making the assessment, appeal the assessment to the district~~
11 ~~court of the county in which the violation is alleged by the department to have occurred. Appeal is by trial~~
12 ~~de novo, and a jury trial must be granted if requested. Where the provisions of this subsection conflict with~~
13 ~~2-4-702 through 2-4-704, the provisions of this subsection govern."~~

14
15 **Section 5. Section 80-15-202, MCA, is amended to read:**

16 **"80-15-202. Monitoring programs. (1) The department or the department of health and**
17 **environmental sciences shall conduct monitoring programs to determine:**

18 **(a) whether residues of agricultural chemicals are present in ground water; and**

19 **(b) the likelihood of an agricultural chemical to enter ground water, if either department determines**
20 **that sufficient valid scientific data is available to reasonably predict the behavior of a particular agricultural**
21 **chemical in the soil.**

22 ~~(2) Any person who receives a chemical analysis indicating the presence of an agricultural~~
23 ~~chemical in ground water shall notify the department of health and environmental sciences.~~

24 ~~(3) The department and the department of health and environmental sciences shall evaluate all~~
25 ~~information relating to this section that is received from any person, based upon standard procedures,~~
26 ~~protocols, and confirmatory procedures established by rule. Information found to be insufficient based on~~
27 ~~the adopted procedures and protocols, including analytical results, may be used only for informational~~
28 ~~purposes."~~

29
30 **Section 6. Section 80-15-403, MCA, is amended to read:**

1 "80-15-403. Compliance orders. (1) In furtherance of 80-15-402, the department may issue a
2 compliance order to any person violating a standard, an interim numerical standard, or any other
3 requirement established pursuant to this chapter. The department shall coordinate its proposed actions
4 pursuant to this section with proposed actions of the department of health and environmental sciences
5 pursuant to 75-5-613, if any. Issuance of a compliance order under this chapter precludes the department
6 from taking other enforcement actions for the same violation under Title 80, chapter 8 or 10.

7 (2)(a) ~~The department may issue a compliance order to any person, including the person's~~
8 ~~employees, agents, and subcontractors, whether or not the person is subject to a specific management~~
9 ~~plan, to require the cleanup of any agricultural chemical that the person has accidentally or purposely~~
10 ~~dumped, spilled, or misused or unlawfully used that has a significant probability of entering ground water~~
11 ~~who violates any requirement established pursuant to this chapter.~~

12 ~~(b) If the department is unable to identify the person or determines that the person is insolvent,~~
13 ~~the department may issue the compliance order to a person who owns, leases, or has possession or control~~
14 ~~of the site at the time the order is issued.~~

15 ~~(c) In determining the amount of any civil penalty issued as part of the compliance order to a~~
16 ~~person who owns, leases, possesses, or controls the site, the department shall consider whether the~~
17 ~~violation occurred prior to that person's acquiring an interest in the site and whether the site was used~~
18 ~~without that person's knowledge or consent.~~

19 ~~(d)(B) An action under this subsection (2) does not preclude a private cause of action by any~~
20 ~~affected party~~ THE PROVISIONS OF THIS SUBSECTION (2) ARE NOT INTENDED TO VOID OR AFFECT
21 INDEMNITY OR LIABILITY AGREEMENTS BETWEEN THE PERSON WHO OWNS, LEASES, OR HAS
22 POSSESSION OR CONTROL OF THE SITE AND THE PERSON WHO SOLD THE SITE, WHO IS THE LESSOR,
23 OR WHO HAS RELINQUISHED POSSESSION OR CONTROL OF THE SITE.

24 (3) When issuing a compliance order, the department may require a person who has violated a
25 provision of 80-15-402 to conduct monitoring to assist in determining the presence or level of
26 concentration of an agricultural chemical in ground water and the effectiveness of cleanup efforts. The
27 department shall specify criteria in the compliance order for determining the duration of monitoring.

28 (4) A compliance order must specify the requirement violated and must set a time for compliance.
29 In establishing a time for compliance, the department shall take into account the seriousness of the
30 violation and any good faith efforts that the person has made to comply with the requirement that has

1 been violated. A compliance order issued under this section must be served either personally by a person
2 qualified to perform service under the Montana Rules of Civil Procedure or by certified mail."

3
4 **Section 7.** Section 80-15-412, MCA, is amended to read:

5 **"80-15-412. Administrative civil penalty.** (1) A person who commits a violation of this chapter
6 may be assessed an administrative civil penalty by ~~either the department or the department of health and~~
7 ~~environmental sciences, consistent with their respective responsibilities,~~ of not more than \$1,000 for each
8 offense. Farm applicators possessing a pesticide permit or using a fertilizer may not be assessed an
9 administrative civil penalty of more than \$500 for the first offense. Assessment of a civil penalty may be
10 made in conjunction with any other warning, order, or administrative action authorized by this chapter or
11 Title 75, chapter 5, that is issued or undertaken by either the department or the department of health and
12 environmental sciences.

13 (2) ~~No~~ An administrative civil penalty may not be assessed unless the person charged is given
14 notice and opportunity for a hearing pursuant to Title 2, chapter 4, part 6, of the Montana Administrative
15 Procedure Act.

16 (3) In determining an appropriate administrative civil penalty, the ~~responsible~~ department shall
17 consider the effect on the person's ability to continue in business, the gravity of the violation that
18 occurred, the degree of care exercised by the offender, and whether significant harm resulted to public
19 health, agricultural crops, livestock, or the environment.

20 (4) If the ~~responsible~~ department is unable to collect the administrative civil penalty or if a person
21 fails to pay all or a set portion of the administrative civil penalty as determined by the ~~responsible~~
22 department, the department may seek to recover the amount in the appropriate district court.

23 (5) A person against whom the department ~~or the department of health and environmental~~
24 ~~sciences~~ has assessed an administrative civil penalty may, within 30 days of the final agency action
25 making the assessment, appeal the assessment to the district court of the county in which the violation
26 is alleged to have occurred. A jury trial must be granted when demanded under Rule 38 of the Montana
27 Rules of Civil Procedure."

28
29 NEW SECTION. **Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are
30 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its

1 applications, the part remains in effect in all valid applications that are severable from the invalid
2 applications.

3

4 NEW SECTION. Section 9. Effective date. [This act] is effective July 1, 1995.

5

-END-