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House BILL NO. 215
Conchita ORTZ Knox Jewellson
BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE REQUIREMENTS FOR A HAZARDOUS WASTE MANAGEMENT FACILITY PERMIT; REQUIRING A DISCLOSURE STATEMENT; ESTABLISHING CRITERIA FOR THE DENIAL OR CONDITIONING OF A PERMIT; AND AMENDING SECTION 75-10-403, MCA."

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

Section 1. Section 75-10-403, MCA, is amended to read:

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

- (1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.
- (2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.
- (3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance or hazardous waste into or onto the land or water so that the regulated substance, hazardous waste, or any constituent of the regulated substance or hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

~~(4)~~(5) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

~~(6)~~(6) "Generation" means the act or process of producing waste material.

~~(6)~~(7) "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)~~(8) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:



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

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

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

6 ~~(8)~~(9) "Hazardous waste management" means the management of the collection, source
7 separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

8 ~~(9)~~(10) "Hazardous waste transfer facility" means any land, structure, or improvement, including
9 loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary
10 storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period
11 of 10 days or less during the normal course of transportation up to but not including the point of ultimate
12 treatment, storage, or disposal.

13 ~~(10)~~(11) "Manifest" means the shipping document originated and signed by the generator and ~~which~~
14 that is used to identify the hazardous waste, its quantity, origin, and destination during its transportation.

15 ~~(11)~~(12) "Person" means the United States, an individual, firm, trust, estate, partnership, company,
16 association, corporation, city, town, local governmental entity, or any other governmental or private entity,
17 whether organized for profit or not.

18 (13) "Principal" has the meaning provided in 75-2-103.

19 ~~(12)~~(14) "Regulated substance":

20 (a) means:

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

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

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

25 ~~(13)~~(15) "Storage" means the actual or intended containment of regulated substances, hazardous
26 wastes, or both, either on a temporary basis or for a period of years.

27 ~~(14)~~(16) "Transportation" means the movement of hazardous wastes from the point of generation
28 to any intermediate points and finally to the point of ultimate storage or disposal.

29 ~~(15)~~(17) "Transporter" means a person engaged in the offsite transportation of hazardous waste
30 by air, rail, highway, or water.

1 ~~(16)~~(18) "Treatment" means a method, technique, or process, including neutralization, designed
2 to change the physical, chemical, or biological character or composition of any hazardous waste so as to
3 neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery,
4 amenable for storage, or reduced in volume.

5 ~~(17)~~(19) "Underground storage tank":

6 (a) means, except as provided in subsections ~~(17)(b)(i)~~ (19)(b)(i) through ~~(17)(b)(viii)~~ (19)(b)(viii):

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

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

12 (b) does not include:

13 (i) a septic tank;

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

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

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

17 (C) state law comparable to the provisions of law referred to in subsection ~~(17)(b)(iii)(A)~~
18 (19)(b)(ii)(A) or ~~(17)(b)(iii)(B)~~ (19)(b)(ii)(B), if the facility is intrastate;

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

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

21 (v) a flow-through process tank;

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

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

26 (viii) any pipe connected to a tank described in subsections ~~(17)(b)(i)~~ (19)(b)(i) through ~~(17)(b)(vi)~~
27 (19)(b)(vi)."

28
29 **NEW SECTION. Section 2. Disclosure statement required.** (1) A permit for a hazardous waste
30 management facility may not be issued or modified pursuant to 75-10-406 without an application under

1 this section. Before an application for the issuance or modification of a permit under 75-10-406 for a
2 hazardous waste management facility may be approved, the applicant and each principal with respect to
3 the applicant shall submit to the department a disclosure statement containing the following information:

4 (a) the name, business address, and social security number of the applicant and each principal;

5 (b) a description of any civil and administrative complaint filed within 5 years before the date of
6 the application against the applicant or a principal for the violation of an environmental protection law and
7 a statement regarding whether the complaint resulted in a civil or administrative penalty;

8 (c) a description of all judgments of criminal conviction entered against the applicant or a principal
9 for the violation of an environmental protection law within 5 years before the date of the application; and

10 (d) a description of all judgments of criminal conviction entered against the applicant or a principal
11 for the violation of an environmental protection law of another state within 5 years before the date of the
12 application. For the purposes of this subsection (d), "environmental protection law of another state" means
13 a law or administrative rule adopted pursuant to a law:

14 (i) regulating solid or hazardous waste or underground storage tanks; or

15 (ii) protecting the air or water resource.

16 (2) A disclosure statement, as required in subsection (1), must be executed under oath or
17 affirmation and is subject to the penalty for perjury. The department may verify and investigate the
18 information contained in a disclosure statement required under this section.

19 (3) A person required to file a disclosure statement under this section shall provide assistance or
20 information requested by the department that is related to the statement and shall cooperate in an inquiry
21 or investigation conducted by the department under subsection (2).

22
23 **NEW SECTION. Section 3. Denial or modification of permit -- mitigating factors.** (1) The
24 department may deny an application for the issuance or modification of a permit under 75-10-406 for a
25 hazardous waste management facility or impose additional conditions on a permit pursuant to subsection
26 (2) if within 5 years before the date of the application:

27 (a) a civil or administrative complaint for a violation of an environmental protection law has resulted
28 in the assessment of a penalty against the applicant or a principal;

29 (b) a judgment of criminal conviction of an environmental protection law has been entered against
30 the applicant or a principal;

1 (c) the applicant or a principal has a history of repeated violations of environmental protection laws;

2 or

3 (d) a judgment or criminal conviction for a violation described in [section 2(1)(d)] has been entered
4 against the applicant or a principal.

5 (2) As provided under subsection (1), the department may impose additional conditions on a permit
6 related to permit length, inspections, monitoring, recordkeeping, and reporting.

7 (3) In making the decision to deny an application or to impose conditions on a permit pursuant to
8 subsection (1), the department shall consider the following mitigating factors:

9 (a) the nature and gravity of the violation of environmental protection laws or violations described
10 in [section 2(1)(d)];

11 (b) the degree of culpability of the applicant or a principal;

12 (c) the applicant's or principal's cooperation with the state or federal agencies involved in the
13 complaints and convictions referred to in [section 2]; and

14 (d) the applicant's or principal's dissociation from other persons or entities convicted of acts
15 referred to in [section 2].

16

17 **NEW SECTION. Section 4. Codification instruction.** [Sections 2 and 3] are intended to be codified
18 as an integral part of Title 75, chapter 10, part 4, and the provisions of Title 75, chapter 10, part 4, apply
19 to [sections 2 and 3].

20

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0215, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:


An act amending the requirements for a hazardous waste management facility permit; requiring disclosure statements from permit applicants; and, establishing criteria for the denial or conditioning of a permit.

ASSUMPTIONS:

1. The Executive present law base budget serves as the starting point from which to calculate any fiscal impact resulting from this proposed legislation.
2. The applicant for a hazardous waste management facility permit, or for a modification to an existing permit, will provide the Department of Health and Environmental Science (DHES) the information necessary to determine compliance with this bill's disclosure statement requirements at the time of application.
3. The disclosure statement requirements provided for in this bill will be evaluated by the department in conjunction with other permit application information submitted by applicants.
4. The department will utilize existing resources to verify and investigate information contained in disclosure statements required by this bill.
5. The department will utilize existing resources to deny applications for the issuance or modification of hazardous waste management facility permits or to impose additional conditions on a permit employing the criteria established by this bill as part of its normal permit processing procedures.
6. No fiscal impact to Environmental Quality Council (EQC) is anticipated.

FISCAL IMPACT:

None.

 1-22-95
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

VICKI COCCHIARELLA, PRIMARY SPONSOR DATE

Fiscal Note for HB0215, as introduced

HB 215

HOUSE BILL NO. 215

INTRODUCED BY COCCHIARELLA, ORR, KNOX, WELDON
BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE REQUIREMENTS FOR A HAZARDOUS WASTE
MANAGEMENT FACILITY PERMIT; REQUIRING A DISCLOSURE STATEMENT; ESTABLISHING CRITERIA
FOR THE DENIAL OR CONDITIONING OF A PERMIT; AND AMENDING SECTION 75-10-403, MCA."

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

Section 1. Section 75-10-403, MCA, is amended to read:

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

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

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

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

(4) "Environmental protection law" means a law contained in or an administrative rule adopted
pursuant to Title 75, chapter 2, 5, 10, or 11.

~~(4)~~(5) "Facility" or "hazardous waste management facility" means all contiguous land and
structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of
hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

~~(5)~~(6) "Generation" means the act or process of producing waste material.

~~(6)~~(7) "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)~~(8) (a) "Hazardous waste" means a waste or combination of wastes that, because of its
quantity, concentration, or physical, chemical, or infectious characteristics, may:

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

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

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

6 ~~(8)(9)~~ "Hazardous waste management" means the management of the collection, source
7 separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

8 ~~(9)(10)~~ "Hazardous waste transfer facility" means any land, structure, or improvement, including
9 loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary
10 storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period
11 of 10 days or less during the normal course of transportation up to but not including the point of ultimate
12 treatment, storage, or disposal.

13 ~~(10)(11)~~ "Manifest" means the shipping document originated and signed by the generator and ~~which~~
14 that is used to identify the hazardous waste, its quantity, origin, and destination during its transportation.

15 ~~(11)(12)~~ "Person" means the United States, an individual, firm, trust, estate, partnership, company,
16 association, corporation, city, town, local governmental entity, or any other governmental or private entity,
17 whether organized for profit or not.

18 ~~(13) "Principal" has the meaning provided in 75-2-103.~~

19 ~~(12)(14)~~(13) "Regulated substance":

20 (a) means:

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

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

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

25 ~~(13)(15)~~(14) "Storage" means the actual or intended containment of regulated substances,
26 hazardous wastes, or both, either on a temporary basis or for a period of years.

27 ~~(14)(16)~~(15) "Transportation" means the movement of hazardous wastes from the point of
28 generation to any intermediate points and finally to the point of ultimate storage or disposal.

29 ~~(15)(17)~~(16) "Transporter" means a person engaged in the offsite transportation of hazardous waste
30 by air, rail, highway, or water.

1 ~~(16)(18)~~(17) "Treatment" means a method, technique, or process, including neutralization, designed
 2 to change the physical, chemical, or biological character or composition of any hazardous waste so as to
 3 neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery,
 4 amenable for storage, or reduced in volume.

5 ~~(17)(19)~~(18) "Underground storage tank":

6 (a) means, except as provided in subsections ~~(17)(b)(i)~~ ~~(19)(b)(i)~~ (18)(B)(I) through ~~(17)(b)(viii)~~
 7 ~~(19)(b)(viii)~~ (18)(B)(VIII):

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

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

13 (b) does not include:

14 (i) a septic tank;

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

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

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

18 (C) state law comparable to the provisions of law referred to in subsection ~~(17)(b)(iii)(A)~~

19 ~~(19)(b)(iii)(A)~~ (18)(B)(II)(A) or ~~(17)(b)(iii)(B)~~ ~~(19)(b)(iii)(B)~~ (18)(B)(II)(B), if the facility is intrastate;

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

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

22 (v) a flow-through process tank;

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

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

27 (viii) any pipe connected to a tank described in subsections ~~(17)(b)(i)~~ ~~(19)(b)(i)~~ (18)(B)(I) through
 28 ~~(17)(b)(vi)~~ ~~(19)(b)(vi)~~ (18)(B)(VI)."

29

30 **NEW SECTION. Section 2. Disclosure statement required. (1) A SUBJECT TO THE PROVISIONS**

1 OF SUBSECTION (4), A permit THAT IS REQUIRED for a hazardous waste management facility UNDER
 2 75-10-406 may not be issued, REISSUED, RENEWED, or modified pursuant to ~~75-10-406~~ without an
 3 application THE FILING OF A DISCLOSURE STATEMENT AS REQUIRED under this section. Before an
 4 application for the issuance, REISSUANCE, RENEWAL, or modification of a permit under 75-10-406 for a
 5 hazardous waste management facility may be approved, the applicant ~~and each principal with respect to~~
 6 ~~the applicant~~ shall submit to the department a disclosure statement containing the following information:

7 (a) the name, business address, and social security number of the applicant ~~and each principal~~;
 8 (b) a description of any civil COMPLAINT FILED and administrative ~~complaint filed~~ ENFORCEMENT
 9 ACTION TAKEN within 5 years before the date of the application against the applicant ~~or a principal~~ for the
 10 violation of an environmental protection law and a statement regarding whether the complaint OR ACTION
 11 resulted in a civil or administrative penalty;

12 (c) a description of all judgments of criminal conviction entered against the applicant ~~or a principal~~
 13 for the violation of an environmental protection law within 5 years before the date of the application; and

14 (d) a description of all judgments of criminal conviction FOR ACTIVITIES DIRECTLY ASSOCIATED
 15 WITH A HAZARDOUS WASTE MANAGEMENT FACILITY entered against the applicant ~~or a principal~~ for the
 16 violation of an environmental protection law of another state within 5 years before the date of the
 17 application. For the purposes of this subsection (d), "environmental protection law of another state" means
 18 a law or administrative rule adopted pursuant to a law:

19 (i) regulating solid or hazardous waste or underground storage tanks; or

20 (ii) protecting the air or water resource.

21 (2) A disclosure statement, as required in subsection (1), must be executed under oath or
 22 affirmation and is subject to the penalty for perjury. The department may verify and investigate the
 23 information contained in a disclosure statement required under this section.

24 (3) A person required to file a disclosure statement under this section shall provide assistance or
 25 information requested by the department that is related to the statement and shall cooperate in an inquiry
 26 or investigation conducted by the department under subsection (2).

27 (4) (A) THIS SECTION DOES NOT APPLY TO THE ISSUANCE OF A TEMPORARY EMERGENCY
 28 PERMIT UNDER 75-10-406(5) OR TO THE MODIFICATION OF A PERMIT THAT DOES NOT REFLECT A
 29 CHANGE IN THE OWNER OR OPERATOR OF THE HAZARDOUS WASTE MANAGEMENT FACILITY.

30 (B) A PERSON IS NOT REQUIRED TO COMPLY WITH THE PROVISIONS OF [SECTION 3] OR THIS

1 SECTION FOR:

2 (I) THE REISSUANCE, RENEWAL, OR MODIFICATION OF A VALID HAZARDOUS WASTE
 3 MANAGEMENT FACILITY PERMIT ISSUED PRIOR TO JANUARY 1, 1995; OR

4 (II) AN APPLICATION FOR A NEW HAZARDOUS WASTE MANAGEMENT FACILITY PERMIT FOR
 5 A FACILITY WHEN A PERMIT WAS ISSUED PRIOR TO JANUARY 1, 1995, IF THE NEW PERMIT IS NOT
 6 BECAUSE OF A CHANGE IN THE OWNER OR OPERATOR AT THAT FACILITY.

7 (5) FOR THE PURPOSES OF THIS SECTION, "APPLICANT" INCLUDES A SUBSIDIARY OR
 8 SUCCESSOR IN INTEREST WITH RESPECT TO THE APPLICANT.

9
 10 NEW SECTION. Section 3. Denial or modification of permit -- mitigating factors. (1) The
 11 department may deny an application for the issuance, REISSUANCE, RENEWAL, or modification of a permit
 12 ~~under 75-10-406~~ for a hazardous waste management facility or impose additional conditions on a permit
 13 pursuant to subsection (2) if within 5 years before the date of the application:

14 (a) a civil COMPLAINT or administrative ~~complaint~~ ENFORCEMENT ACTION for a violation of an
 15 environmental protection law has resulted in the assessment of a penalty against the applicant ~~or a~~
 16 ~~principal~~;

17 (b) a judgment of criminal conviction of an environmental protection law has been entered against
 18 the applicant ~~or a principal~~;

19 (c) the applicant ~~or a principal~~ has a history of repeated violations of environmental protection laws;
 20 or

21 (d) a judgment or criminal conviction for a violation described in [section 2(1)(d)] has been entered
 22 against the applicant ~~or a principal~~.

23 (2) As provided under subsection (1), the department may impose additional conditions on a permit
 24 related to permit length, inspections, monitoring, recordkeeping, and reporting.

25 (3) In making the decision to deny an application or to impose conditions on a permit pursuant to
 26 subsection (1), the department shall consider the following mitigating factors:

27 (a) the NUMBER, nature, and gravity of the ~~violation~~ VIOLATIONS of environmental protection laws
 28 or violations described in [section 2(1)(d)];

29 (b) the degree of culpability of the applicant ~~or a principal~~;

30 (c) the applicant's ~~or principal's~~ cooperation with the state or federal agencies involved in the

1 complaints, ENFORCEMENT ACTIONS, and convictions referred to in [section 2]; and

2 (d) the applicant's ~~or principal's~~ dissociation from other persons or entities INVOLVED IN THE
3 COMPLAINTS OR ENFORCEMENT ACTIONS OR convicted of acts referred to in [section 2].

4 (4) FOR THE PURPOSES OF THIS SECTION, "APPLICANT" INCLUDES A SUBSIDIARY OR
5 SUCCESSOR IN INTEREST WITH RESPECT TO THE APPLICANT.

6
7 NEW SECTION. Section 4. Codification instruction. [Sections 2 and 3] are intended to be codified
8 as an integral part of Title 75, chapter 10, part 4, and the provisions of Title 75, chapter 10, part 4, apply
9 to [sections 2 and 3].

10 -END-

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HOUSE BILL NO. 215
INTRODUCED BY COCCHIARELLA, ORR, KNOX, WELDON
BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE REQUIREMENTS FOR A HAZARDOUS WASTE
MANAGEMENT FACILITY PERMIT; REQUIRING A DISCLOSURE STATEMENT; ESTABLISHING CRITERIA
FOR THE DENIAL OR CONDITIONING OF A PERMIT; AND AMENDING SECTION 75-10-403, MCA."

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. 215

2 INTRODUCED BY COCCHIARELLA, ORR, KNOX, WELDON
 3 BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE REQUIREMENTS FOR A HAZARDOUS WASTE
 6 MANAGEMENT FACILITY PERMIT; REQUIRING A DISCLOSURE STATEMENT; ESTABLISHING CRITERIA
 7 FOR THE DENIAL OR CONDITIONING OF A PERMIT; AND AMENDING SECTION 75-10-403, MCA."
 8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 10

11 **Section 1.** Section 75-10-403, MCA, is amended to read:

12 **"75-10-403. Definitions.** Unless the context requires otherwise, in this part, the following
 13 definitions apply:

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

15 (2) "Department" means the department of health and environmental sciences provided for in Title
 16 2, chapter 15, part 21.

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

21 (4) "Environmental protection law" means a law contained in or an administrative rule adopted
 22 pursuant to Title 75, chapter 2, 5, 10, or 11.

23 ~~(4)(5)~~ "Facility" or "hazardous waste management facility" means all contiguous land and
 24 structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of
 25 hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

26 ~~(5)(6)~~ "Generation" means the act or process of producing waste material.

27 ~~(6)(7)~~ "Generator" means any person, by site, whose act or process produces hazardous waste
 28 or whose act first causes a hazardous waste to become subject to regulation under this part.

29 ~~(7)(8)~~ (a) "Hazardous waste" means a waste or combination of wastes that, because of its
 30 quantity, concentration, or physical, chemical, or infectious characteristics, may:

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

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

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

6 ~~(9)(9)~~ "Hazardous waste management" means the management of the collection, source
7 separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

8 ~~(9)(10)~~ "Hazardous waste transfer facility" means any land, structure, or improvement, including
9 loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary
10 storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period
11 of 10 days or less during the normal course of transportation up to but not including the point of ultimate
12 treatment, storage, or disposal.

13 ~~(10)(11)~~ "Manifest" means the shipping document originated and signed by the generator and ~~which~~
14 that is used to identify the hazardous waste, its quantity, origin, and destination during its transportation.

15 ~~(11)(12)~~ "Person" means the United States, an individual, firm, trust, estate, partnership, company,
16 association, corporation, city, town, local governmental entity, or any other governmental or private entity,
17 whether organized for profit or not.

18 ~~(13) "Principal" has the meaning provided in 75-2-103.~~

19 ~~(12)(14)(13)~~ "Regulated substance":

20 (a) means:

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

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

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

25 ~~(13)(15)(14)~~ "Storage" means the actual or intended containment of regulated substances,
26 hazardous wastes, or both, either on a temporary basis or for a period of years.

27 ~~(14)(16)(15)~~ "Transportation" means the movement of hazardous wastes from the point of
28 generation to any intermediate points and finally to the point of ultimate storage or disposal.

29 ~~(15)(17)(16)~~ "Transporter" means a person engaged in the offsite transportation of hazardous waste
30 by air, rail, highway, or water.

1 ~~(16)(18)(17)~~ "Treatment" means a method, technique, or process, including neutralization, designed
 2 to change the physical, chemical, or biological character or composition of any hazardous waste so as to
 3 neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery,
 4 amenable for storage, or reduced in volume.

5 ~~(17)(19)(18)~~ "Underground storage tank":

6 (a) means, except as provided in subsections ~~(17)(b)(i)~~ ~~(19)(b)(i)~~ (18)(B)(I) through ~~(17)(b)(viii)~~
 7 ~~(19)(b)(viii)~~ (18)(B)(VIII):

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

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

13 (b) does not include:

14 (i) a septic tank;

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

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

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

18 (C) state law comparable to the provisions of law referred to in subsection ~~(17)(b)(iii)(A)~~
 19 ~~(19)(b)(iii)(A)~~ (18)(B)(III)(A) or ~~(17)(b)(iii)(B)~~ ~~(19)(b)(iii)(B)~~ (18)(B)(III)(B), if the facility is intrastate;

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

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

22 (v) a flow-through process tank;

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

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

27 (viii) any pipe connected to a tank described in subsections ~~(17)(b)(i)~~ ~~(19)(b)(i)~~ (18)(B)(I) through
 28 ~~(17)(b)(vii)~~ ~~(19)(b)(vii)~~ (18)(B)(VI)."

29
 30 **NEW SECTION. Section 2. Disclosure statement required. (1) A SUBJECT TO THE PROVISIONS**

1 OF SUBSECTION (4), A permit THAT IS REQUIRED for a hazardous waste management facility UNDER
 2 75-10-406 may not be issued, REISSUED, RENEWED, or modified ~~pursuant to 75-10-406~~ without an
 3 ~~application~~ THE FILING OF A DISCLOSURE STATEMENT AS REQUIRED under this section. Before an
 4 application for the issuance, REISSUANCE, RENEWAL, or modification of a permit under 75-10-406 for a
 5 hazardous waste management facility may be approved, the applicant ~~and each principal with respect to~~
 6 ~~the applicant~~ shall submit to the department a disclosure statement containing the following information:

7 (a) the name, business address, and social security number of the applicant ~~and each principal~~;

8 (b) a description of any civil COMPLAINT FILED and administrative ~~complaint filed~~ ENFORCEMENT
 9 ACTION TAKEN within 5 years before the date of the application against the applicant ~~or a principal~~ for the
 10 violation of an environmental protection law and a statement regarding whether the complaint OR ACTION
 11 resulted in a civil or administrative penalty;

12 (c) a description of all judgments of criminal conviction entered against the applicant ~~or a principal~~
 13 for the violation of an environmental protection law within 5 years before the date of the application; and

14 (d) a description of all judgments of criminal conviction FOR ACTIVITIES DIRECTLY ASSOCIATED
 15 WITH A HAZARDOUS WASTE MANAGEMENT FACILITY entered against the applicant ~~or a principal~~ for the
 16 violation of an environmental protection law of another state within 5 years before the date of the
 17 application. For the purposes of this subsection (d), "environmental protection law of another state" means
 18 a law or administrative rule adopted pursuant to a law:

19 (i) regulating solid or hazardous waste or underground storage tanks; or

20 (ii) protecting the air or water resource.

21 (2) A disclosure statement, as required in subsection (1), must be executed under oath or
 22 affirmation and is subject to the penalty for perjury. The department may verify and investigate the
 23 information contained in a disclosure statement required under this section.

24 (3) A person required to file a disclosure statement under this section shall provide assistance or
 25 information requested by the department that is related to the statement and shall cooperate in an inquiry
 26 or investigation conducted by the department under subsection (2).

27 (4) (A) THIS SECTION DOES NOT APPLY TO THE ISSUANCE OF A TEMPORARY EMERGENCY
 28 PERMIT UNDER 75-10-406(5) OR TO THE MODIFICATION OF A PERMIT THAT DOES NOT REFLECT A
 29 CHANGE IN THE OWNER OR OPERATOR OF THE HAZARDOUS WASTE MANAGEMENT FACILITY.

30 (B) A PERSON IS NOT REQUIRED TO COMPLY WITH THE PROVISIONS OF [SECTION 3] OR THIS

1 SECTION FOR:

2 (I) THE REISSUANCE, RENEWAL, OR MODIFICATION OF A VALID HAZARDOUS WASTE
3 MANAGEMENT FACILITY PERMIT ISSUED PRIOR TO JANUARY 1, 1995; OR

4 (II) AN APPLICATION FOR A NEW HAZARDOUS WASTE MANAGEMENT FACILITY PERMIT FOR
5 A FACILITY WHEN A PERMIT WAS ISSUED PRIOR TO JANUARY 1, 1995, IF THE NEW PERMIT IS NOT
6 BECAUSE OF A CHANGE IN THE OWNER OR OPERATOR AT THAT FACILITY.

7 (5) FOR THE PURPOSES OF THIS SECTION, "APPLICANT" INCLUDES A SUBSIDIARY OR
8 SUCCESSOR IN INTEREST WITH RESPECT TO THE APPLICANT.

9
10 NEW SECTION. Section 3. Denial or modification of permit -- mitigating factors. (1) The
11 department may deny an application for the issuance, REISSUANCE, RENEWAL, or modification of a permit
12 ~~under 75-10-406~~ for a hazardous waste management facility or impose additional conditions on a permit
13 pursuant to subsection (2) if within 5 years before the date of the application:

14 (a) a civil COMPLAINT or administrative ~~complaint~~ ENFORCEMENT ACTION for a violation of an
15 environmental protection law has resulted in the assessment of a penalty against the applicant ~~or a~~
16 ~~principal~~;

17 (b) a judgment of criminal conviction of an environmental protection law has been entered against
18 the applicant ~~or a principal~~;

19 (c) the applicant ~~or a principal~~ has a history of repeated violations of environmental protection laws;
20 or

21 (d) a judgment or criminal conviction for a violation described in [section 2(1)(d)] has been entered
22 against the applicant ~~or a principal~~.

23 (2) As provided under subsection (1), the department may impose additional conditions on a permit
24 related to permit length, inspections, monitoring, recordkeeping, and reporting.

25 (3) In making the decision to deny an application or to impose conditions on a permit pursuant to
26 subsection (1), the department shall consider the following mitigating factors:

27 (a) the NUMBER, nature, and gravity of the violation VIOLATIONS of environmental protection laws
28 or violations described in [section 2(1)(d)];

29 (b) the degree of culpability of the applicant ~~or a principal~~;

30 (c) the applicant's ~~or principal's~~ cooperation with the state or federal agencies involved in the

1 complaints, ENFORCEMENT ACTIONS, and convictions referred to in [section 2]; and

2 (d) the applicant's ~~or principal's~~ dissociation from other persons or entities INVOLVED IN THE
3 COMPLAINTS OR ENFORCEMENT ACTIONS OR convicted of acts referred to in [section 2].

4 (4) FOR THE PURPOSES OF THIS SECTION, "APPLICANT" INCLUDES A SUBSIDIARY OR
5 SUCCESSOR IN INTEREST WITH RESPECT TO THE APPLICANT.

6

7 NEW SECTION. Section 4. Codification instruction. [Sections 2 and 3] are intended to be codified
8 as an integral part of Title 75, chapter 10, part 4, and the provisions of Title 75, chapter 10, part 4, apply
9 to [sections 2 and 3].

10

-END-