

1 HOUSE BILL NO. 152

2 INTRODUCED BY GRADY

3 BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT SEPARATING THE MONTANA HAZARDOUS WASTE AND
6 UNDERGROUND STORAGE TANK ACT INTO TWO ACTS BY TRANSFERRING THE UNDERGROUND
7 STORAGE TANK PROVISIONS INTO A SEPARATE ACT; AND AMENDING SECTIONS 75-2-216, 75-10-210,
8 75-10-401, 75-10-402, 75-10-403, 75-10-404, 75-10-405, 75-10-409, 75-10-410, 75-10-411,
9 75-10-413, 75-10-415, 75-10-416, 75-10-420, 75-10-423, 75-10-424, 75-11-203, 75-11-302, AND
10 75-11-309, MCA ."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 NEW SECTION. **Section 1. Short title.** [Sections 1 through 15] shall be known and may be cited
15 as the "Montana Underground Storage Tank Act".

16
17 NEW SECTION. **Section 2. Findings and purpose.** The legislature finds that petroleum products
18 and hazardous substances stored in underground tanks are regulated under the federal Resource
19 Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by
20 the state under [sections 1 through 15]. It is the purpose of [sections 1 through 15] to authorize the
21 department to establish, administer, and enforce an underground storage tank leak prevention program for
22 these regulated substances. The department may use the authority provided in [sections 8 through 13] and
23 other appropriate authority provided by law to remedy violations of requirements established under [sections
24 1 through 15].

25
26 NEW SECTION. **Section 3. Definitions.** Unless the context requires otherwise, in [sections 1
27 through 15], the following definitions apply:

- 28 (1) "Board" means the board of environmental review provided for in 2-15-3502.
29 (2) "Department" means the department of environmental quality provided for in 2-15-3501.
30 (3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or

1 placing of any regulated substance into or onto the land or water so that the regulated substance or any
2 constituent of the regulated substance may enter the environment or be emitted into the air or discharged
3 into any waters, including ground water.

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

7 (5) "Regulated substance":

8 (a) means:

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

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

12 (b) does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part
13 4.

14 (6) "Storage" means the actual or intended containment of regulated substances, either on a
15 temporary basis or for a period of years.

16 (7) "Underground storage tank":

17 (a) means, except as provided in subsections (7)(b)(i) through (7)(b)(xi):

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

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

23 (b) does not include:

24 (i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100
25 gallons or less, and that is used for storing motor fuel for noncommercial purposes;

26 (ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100
27 gallons or less, and that is used for storing heating oil for consumptive use on the premises where it is
28 stored;

29 (iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used
30 to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on

1 the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;

2 (iv) a septic tank;

3 (v) a pipeline facility, including gathering lines, regulated under:

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

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

6 (C) state law comparable to the provisions of law referred to in subsection (7)(b)(v)(A) or
7 (7)(b)(v)(B), if the facility is intrastate;

8 (vi) a surface impoundment, pit, pond, or lagoon;

9 (vii) a storm water or wastewater collection system;

10 (viii) a flow-through process tank;

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

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

15 (xi) any pipe connected to a tank described in subsections (7)(b)(i) through (7)(b)(ix).

16
17 **NEW SECTION. Section 4. Powers of department.** (1) The department may:

18 (a) administer and enforce the provisions of [sections 1 through 15], rules implementing [sections
19 1 through 15], and orders and permits issued pursuant to [sections 1 through 15];

20 (b) accept and administer grants from the federal government and from other sources, public and
21 private; and

22 (c) abate public nuisances that affect the public health and welfare or the environment and that
23 arise from or in connection with the past or present handling or disposal of any regulated substance.

24 (2) The department shall integrate all provisions of [sections 1 through 15] with other laws
25 administered by the department to avoid unnecessary duplication.

26
27 **NEW SECTION. Section 5. Administrative rules.** The department may adopt, amend, or repeal
28 rules for the prevention and correction of leakage from underground storage tanks, including:

29 (1) reporting by owners and operators;

30 (2) financial responsibility;

- 1 (3) release detection, prevention, and corrective action;
- 2 (4) standards for design, construction, installation, and closure;
- 3 (5) development of a schedule of fees, not to exceed \$50 for a tank over 1,100 gallons and not
- 4 to exceed \$20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state
- 5 and local costs of implementing an underground storage tank program;
- 6 (6) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals
- 7 under 75-10-423; and
- 8 (7) delegation of authority and funds to local agents for inspections and implementation. The
- 9 delegation of authority to local agents must complement and may not duplicate existing authority for
- 10 implementation of rules adopted by the department of justice that relate to underground storage tanks.

11

12 **NEW SECTION. Section 6. Underground storage tank leak report -- inspections -- sampling.** (1)

13 If an owner or operator of an underground storage tank discovers or is provided with evidence that a tank
14 may have leaked, the owner or operator shall immediately notify the department that a leak may exist.

15 (2) (a) An employee or agent of the department, at any reasonable time and upon presentation of
16 credentials, may enter upon and inspect any property, premises, or place at which:

17 (i) regulated substances are or have been stored in underground storage tanks if the department
18 has reason to suspect that the tanks are not in compliance with the provisions of [sections 1 through 15]
19 or rules adopted under [sections 1 through 15]; or

20 (ii) records pertinent to the regulated substances activities are maintained.

21 (b) .The employee or agent of the department may have access to and may copy any records
22 relating to the regulated substances for the purposes of developing rules under [sections 1 through 15] or
23 enforcing the provisions of [sections 1 through 15], rules adopted under [sections 1 through 15], or a
24 permit or an order issued under [sections 1 through 15].

25 (3) In the course of an inspection under this section, the employee or agent of the department may
26 take samples of any regulated substance or suspected regulated substance, including samples from any soil
27 or ground water. If the employee or agent of the department takes a sample of any regulated substance
28 or suspected regulated substance, the employee or agent shall, prior to leaving the premises, give to the
29 owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of
30 each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a

1 copy of the results of the analysis must be furnished to the owner, operator, or agent in charge.

2

3 NEW SECTION. Section 7. Regulated substance inventory. (1) The department is authorized to
4 conduct an inventory of sites and locations in the state where regulated substances have been stored or
5 disposed of at any time.

6 (2) If the department determines that the presence of a regulated substance or the release of the
7 regulated substance may present a substantial hazard to the public health or to the environment, it may
8 issue an order requiring the owner or operator of the site to conduct reasonable monitoring, testing,
9 analysis, and reporting with respect to the site in order to ascertain the nature and extent of the hazard.

10 (3) An order issued under subsection (2) must require that the person to whom the order is issued
11 submit to the department within 30 days a proposal for carrying out the required monitoring, testing,
12 analysis, and reporting.

13 (4) If the department determines that the owner or operator referred to in subsection (2) is not able
14 to conduct monitoring, testing, and analysis in a satisfactory manner, the department may conduct the
15 activities.

16 (5) For the purposes of carrying out this section, the department may exercise the powers set forth
17 in [section 6].

18

19 NEW SECTION. Section 8. Administrative enforcement. (1) When the department believes that
20 a violation of [sections 1 through 15] or a rule adopted under [sections 1 through 15] has occurred, it may
21 serve written notice of the violation personally or by certified mail on the alleged violator or the violator's
22 agent. The notice must specify the provision of [sections 1 through 15] or the rule alleged to be violated
23 and the facts alleged to constitute a violation and may include an order to take necessary corrective action
24 within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after
25 the notice is served, the person named requests, in writing, a hearing before the board. On receipt of the
26 request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

27 (2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it
28 shall either affirm or modify the department's order. An order issued by the department or by the board
29 may prescribe the date by which the violation must cease and may prescribe time limits for particular
30 action. If, after hearing, the board finds that a violation has not occurred, it shall rescind the department's

1 order.

2 (3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

3 (a) require the alleged violator to appear before the board or department, by subpoena or subpoena
4 duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained
5 of or to provide information regarding the alleged violation or its actual or potential impact on the public
6 health and welfare or the environment;

7 (b) initiate action under [section 9, 10, 12, or 13]; or

8 (c) assess administrative penalties and issue corrective action orders under 75-10-423.

9 (4) In the case of disobedience of any subpoena issued and served under this section or of the
10 refusal of any witness to testify as to any material matter with regard to which the witness may be
11 interrogated in a hearing or investigation before the board or the department, the board or department may
12 apply to any district court in the state for an order to compel compliance with the subpoena or the giving
13 of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is
14 found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is
15 punishable by contempt of court in the same manner and by the same procedures as is provided for like
16 conduct committed in the course of civil actions in district court.

17 (5) This section does not prevent the board or department from making efforts to obtain voluntary
18 compliance through warning, conference, or any other appropriate means.

19

20 **NEW SECTION. Section 9. Injunctions.** The department may institute and maintain, in the name
21 of the state, actions for injunctive relief as provided in Title 27, chapter 19, to:

22 (1) immediately restrain any person from engaging in any unauthorized activity that is endangering
23 or causing damage to the public health or to the environment;

24 (2) enjoin a violation of [sections 1 through 15], a rule adopted under [sections 1 through 15], or
25 an order of the department or the board; or

26 (3) require compliance with [sections 1 through 15], a rule adopted under [sections 1 through 15],
27 or an order of the department or the board.

28

29 **NEW SECTION. Section 10. Imminent hazard.** Upon receipt of evidence that the storage or disposal
30 of any regulated substance may present an imminent and substantial danger to the public health or to the

1 environment, the department may commence legal proceedings to immediately restrain or enjoin any person
2 who has contributed to or who is contributing to the storage or disposal from engaging in these activities
3 or order the person to take other action as may be necessary, or both. The department may also take
4 appropriate action as may be necessary under this section, including issuing orders necessary or appropriate
5 to protect the public health and the environment.

6
7 **NEW SECTION. Section 11. Cleanup orders.** The department may issue a cleanup order to any
8 person who has discharged, deposited, or spilled any regulated substance into or onto any land or water
9 in an unlawful or unapproved manner or who has discharged, deposited, or spilled any regulated substance
10 into or onto any land or water so as to result in unlawful or unapproved disposal of a regulated substance.
11 The order must direct the person to clean up and remove the regulated substance, to treat the regulated
12 substance, or to take other actions as may be considered reasonable by the department.

13
14 **NEW SECTION. Section 12. Civil penalties.** (1) A person who violates any provision of [sections
15 1 through 15], a rule adopted under [sections 1 through 15], or an order of the department or the board
16 is subject to a civil penalty not to exceed \$10,000 for each violation. Each day of violation constitutes a
17 separate violation.

18 (2) The department may institute and maintain in the name of the state any enforcement
19 proceedings under this section. Upon request of the department, the attorney general or the county
20 attorney of the county of violation shall petition the district court to impose, assess, and recover the civil
21 penalty.

22 (3) Action under this section does not bar enforcement of [sections 1 through 15], rules adopted
23 under [sections 1 through 15], or orders of the department or the board.

24 (4) Money collected under this section must be deposited in the state general fund.

25
26
27 **NEW SECTION. Section 13. Civil penalties.** (1) A person who violates any provision of [sections
28 1 through 15], a rule adopted under [sections 1 through 15], or an order of the department or the board
29 is subject to a civil penalty not to exceed \$10,000 for each violation. Each day of violation constitutes a
30 separate violation.

1 (2) The department may institute and maintain in the name of the state any enforcement
 2 proceedings under this section. Upon request of the department, the attorney general or the county
 3 attorney of the county of violation shall petition the district court to impose, assess, and recover the civil
 4 penalty.

5 (3) Action under this section does not bar enforcement of [sections 1 through 15], rules adopted
 6 under [sections 1 through 15], or orders of the department or the board.

7 (4) Money collected under this section must be deposited in the state special revenue fund and
 8 credited to the environmental rehabilitation and prevention account created pursuant to [section 1 or 2 of
 9 LC 823].

10
 11 **NEW SECTION.** **Section 14. Venue for legal actions.** All legal actions affecting underground
 12 storage tanks or the disposal of regulated substances must be brought in the county in which the
 13 underground storage tank is located or, if mutually agreed upon by the affected parties, in the first judicial
 14 district, Lewis and Clark County.

15
 16 **NEW SECTION.** **Section 15. Construction in event of conflict.** The provisions of [sections 1
 17 through 15] and rules promulgated pursuant to [sections 1 through 15] govern if they conflict with other
 18 provisions of Montana law or any action taken by the department under those provisions.

19
 20 **Section 16.** Section 75-2-216, MCA, is amended to read:

21 **"75-2-216. Moratorium on certain solid and hazardous waste incinerator permits.** (1) Except for
 22 remedial actions pursuant to Title 75, chapter 10, part 7, or corrective actions pursuant to ~~75-10-405(2)(c)~~
 23 ~~or 75-10-416,~~ [section 5(3) or 11], until October 1, 1993, the department may not issue a permit to a
 24 solid or hazardous waste incinerator subject to the requirements of 75-2-215.

25 (2) Notwithstanding the provisions of (1), the department shall proceed in a reasonable and timely
 26 manner in adopting rules implementing 75-2-215 and in processing air quality permit applications required
 27 under 75-2-211 for solid or hazardous waste incinerators."

28
 29 **Section 17.** Section 75-10-210, MCA, is amended to read:

30 **"75-10-210. Moratorium on certain solid waste facility permits.** (1) Except for remedial actions

1 pursuant to Title 75, chapter 10, part 7, or corrective actions pursuant to ~~75-10-405(2)(e) or 75-10-416,~~
2 or [section 5(3) or 11], ~~until October 1, 1993,~~ the department may not issue a license under 75-10-221
3 for a solid waste facility if the facility is also subject to the requirements of 75-2-215.

4 (2) Notwithstanding the provisions of (1), the department shall proceed in a reasonable and timely
5 manner in processing solid waste applications required under 75-10-221."

6
7 **Section 18.** Section 75-10-401, MCA, is amended to read:

8 "**75-10-401. Short title.** This part shall be known and may be cited as the "Montana Hazardous
9 Waste and Underground Storage Tank Act"."

10
11 **Section 19.** Section 75-10-402, MCA, is amended to read:

12 "**75-10-402. Findings and purpose.** (1) The legislature finds that the safe and proper management
13 of hazardous wastes and used oil, the permitting of hazardous waste facilities, and the siting of facilities
14 are matters for statewide regulation and are environmental issues that should properly be addressed and
15 controlled by the state rather than by the federal government.

16 (2) It is the purpose of this part and it is the policy of this state to protect the public health and
17 safety, the health of living organisms, and the environment from the effects of the improper, inadequate,
18 or unsound management of hazardous wastes and used oil; to establish a program of regulation over used
19 oil and the generation, storage, transportation, treatment, and disposal of hazardous wastes; to ~~assure~~
20 ensure the safe and adequate management of hazardous wastes and used oil within this state; and to
21 authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the
22 federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 through 6987), as amended.

23 ~~(3) The legislature also finds that petroleum products and hazardous substances stored in~~
24 ~~underground tanks are a separate category of substances that are regulated under the federal Resource~~
25 ~~Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by~~
26 ~~the state under the Montana Hazardous Waste and Underground Storage Tank Act. It is the purpose of this~~
27 ~~part to authorize the department to establish, administer, and enforce an underground storage tank leak~~
28 ~~prevention program for these regulated substances. The department may use the authority provided in~~
29 ~~75-10-413 through 75-10-417 and other appropriate authority provided by law to remedy violations of~~
30 ~~underground storage tank requirements established under this part."~~

1 **Section 20.** Section 75-10-403, MCA, is amended to read:

2 **"75-10-403. Definitions.** Unless the context requires otherwise, in this part, the following
3 definitions apply:

4 (1) "Board" means the board of environmental review provided for in 2-15-3502.

5 (2) "Department" means the department of environmental quality provided for in 2-15-3501.

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

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

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

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

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

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

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

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

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

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

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

1 treatment, storage, or disposal.

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

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

8 ~~(13) "Regulated substance":~~

9 ~~(a) means:~~

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

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

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

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

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

18 ~~(16)(15) "Transporter" means a person engaged in the offsite transportation of hazardous waste
19 by air, rail, highway, or water.~~

20 ~~(17)(16) "Treatment" means a method, technique, or process, including neutralization, designed
21 to change the physical, chemical, or biological character or composition of any hazardous waste so as to
22 neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery,
23 amenable for storage, or reduced in volume.~~

24 ~~(18) "Underground storage tank":~~

25 ~~(a) means, except as provided in subsections (18)(b)(i) through (18)(b)(xii):~~

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

28 ~~(ii) any underground pipes used to contain or transport a regulated substance and connected to a
29 storage tank, whether the storage tank is entirely aboveground, partially aboveground, or entirely
30 underground;~~

- 1 ~~(b) does not include:~~
- 2 ~~(i) a farm or residential tank that was installed as of April 27, 1996, that has a capacity of 1,100~~
3 ~~gallons or less, and that is used for storing motor fuel for noncommercial purposes;~~
- 4 ~~(ii) a farm or residential tank that was installed as of April 27, 1996, that has a capacity of 1,100~~
5 ~~gallons or less, and that is used for storing heating oil for consumptive use on the premises where it is~~
6 ~~stored;~~
- 7 ~~(iii) farm or residential underground pipes that were installed as of April 27, 1996, and that are used~~
8 ~~to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on~~
9 ~~the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;~~
- 10 ~~(iv) a septic tank;~~
- 11 ~~(v) a pipeline facility, including gathering lines, regulated under:~~
- 12 ~~(A) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;~~
- 13 ~~(B) the Hazardous Liquid Pipeline Safety Act of 1970, 49 U.S.C. 2001, et seq.; or~~
- 14 ~~(C) state law comparable to the provisions of law referred to in subsection (18)(b)(v)(A) or~~
15 ~~(18)(b)(v)(B), if the facility is intrastate;~~
- 16 ~~(vi) a surface impoundment, pit, pond, or lagoon;~~
- 17 ~~(vii) a storm water or wastewater collection system;~~
- 18 ~~(viii) a flow through process tank;~~
- 19 ~~(ix) a liquid trap or associated gathering lines directly related to oil or gas production and gathering~~
20 ~~operations;~~
- 21 ~~(x) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft,~~
22 ~~or tunnel, if the storage tank is situated upon or above the surface of the floor; or~~
- 23 ~~(xi) any pipe connected to a tank described in subsections (18)(b)(i) through (18)(b)(ix).~~
- 24 ~~(19)(17)~~ "Used oil" means any oil that has been refined from crude oil or any synthetic oil, either
25 of which has been used and as a result of that use is contaminated by physical or chemical impurities."
26

27 **Section 21.** Section 75-10-404, MCA, is amended to read:

28 **"75-10-404. Powers of department.** (1) The department may:

- 29 (a) administer and enforce the provisions of this part, rules implementing this part, and orders and
30 permits issued pursuant to this part;

1 (b) conduct and publish studies on hazardous wastes and hazardous waste management;

2 (c) initiate, conduct, and support research, demonstration projects, and investigation, as its
3 resources may allow, and coordinate state agency research programs pertaining to hazardous waste
4 management;

5 (d) accept and administer grants from the federal government and from other sources, public and
6 private; and

7 (e) abate public nuisances that affect the public health and welfare or the environment and that
8 arise from or in connection with the past or present handling or disposal of any hazardous waste or
9 ~~regulated substance.~~

10 (2) The department shall integrate all provisions of this part with other laws administered by the
11 department to avoid unnecessary duplication. Furthermore, the department shall coordinate its activities
12 under this part with the program administered by the department of agriculture under the Montana
13 Pesticides Act, the programs administered by the department of environmental quality related to mining and
14 mine reclamation, the program administered by the department of public service regulation related to
15 hazardous material transportation, and provisions of the Montana Major Facility Siting Act. The integration
16 and coordination must be effected only to the extent that it can be done in a manner consistent with the
17 goals and policies of this part and the other laws referred to in this section."

18

19 **Section 22.** Section 75-10-405, MCA, is amended to read:

20 **"75-10-405. Administrative rules.** (1) The department may, subject to the provisions of
21 75-10-107, adopt, amend, or repeal rules governing hazardous waste and used oil, including but not limited
22 to the following:

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

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

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

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

- 1 (e) requirements for corrective action within and outside facility boundaries and for financial
2 assurance of that corrective action;
- 3 (f) requirements for manifests and the manifest system for tracking hazardous waste and for
4 reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste
5 management facilities;
- 6 (g) requirements for training of facility personnel, for financial assurance of facility owners and
7 operators, and for liability of guarantors providing financial assurance;
- 8 (h) requirements for registration of generators and transporters;
- 9 (i) establishing a schedule of fees and procedures for the collection of fees for:
- 10 (i) the filing and review of hazardous waste management facility permits as provided in 75-10-432;
- 11 (ii) hazardous waste management as provided in 75-10-433;
- 12 (iii) the reissuance and modification of hazardous waste management facility permits; and
- 13 (iv) the registration of hazardous waste generators;
- 14 (j) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining
15 any state hazardous waste management facility authorized by 75-10-412;
- 16 (k) requirements for availability to the public of information obtained by the department regarding
17 facilities and sites used for the treatment, storage, and disposal of hazardous wastes;
- 18 (l) procedures for the assessment of administrative penalties as authorized by 75-10-424;
- 19 (m) identification and classification of used oil that is subject to regulation and used oil that is not
20 subject to regulation;
- 21 (n) requirements for the proper management of used oil; and
- 22 (o) other rules that are necessary to obtain and maintain authorization under the federal program.
- 23 (2) Notwithstanding the provisions of 75-10-107, the department may not adopt rules under this
24 part that are more restrictive than those promulgated by the federal government under the Resource
25 Conservation and Recovery Act of 1976, as amended, except that the department:
- 26 (a) may require the registration of transporters not otherwise required to register with the state of
27 Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;
- 28 (b) may require hazardous waste generators and hazardous waste management facilities to report
29 on an annual rather than on a biennial basis;
- 30 (c) ~~may adopt requirements for the prevention and correction of leakage from underground storage~~

1 tanks, including:

2 ~~(i) reporting by owners and operators;~~

3 ~~(ii) financial responsibility;~~

4 ~~(iii) release detection, prevention, and corrective action;~~

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

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

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

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

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

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

17 ~~(f)~~(e) may adopt rules and performance standards for industrial furnaces and boilers that burn
 18 hazardous wastes. The rules and performance standards:

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

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

21

22 **Section 23.** Section 75-10-409, MCA, is amended to read:

23 **"75-10-409. Compliance monitoring and reporting —~~underground storage tank leak report.~~** (1) The
 24 department may, as a condition of a permit, require the owner or operator of a facility to install equipment,
 25 collect and analyze samples, and maintain records in order to monitor and demonstrate compliance with
 26 this part, rules adopted under this part, any order of the board or department, and permit conditions.

27 (2) The department may require the owner or operator of a facility to submit reports on ~~such~~ the
 28 compliance monitoring activities, including notice to the department of any noncompliance with permit
 29 conditions, rules adopted under this part, the provisions of this part, or any orders of the department or
 30 board.

1 ~~(3) If an owner or operator of an underground storage tank discovers or is provided with evidence~~
 2 ~~that the tank may have leaked, he must immediately notify the department that a leak may exist."~~

3
 4 **Section 24.** Section 75-10-410, MCA, is amended to read:

5 **"75-10-410. Inspections -- sampling.** (1) (a) An employee or agent of the department, at any
 6 reasonable time and upon presentation of credentials, may enter upon and inspect any property, premises,
 7 or place at which:

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

11 ~~(ii)~~ hazardous wastes are or have been generated, stored, treated, disposed of, or loaded for
 12 transportation;

13 ~~(iii)~~(ii) used oil is or has been generated, stored, treated, disposed of, or loaded for transportation;
 14 or

15 ~~(iv)~~(iii) records pertinent to the ~~regulated substances,~~ used oil, or hazardous waste activities are
 16 maintained.

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

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

1 **Section 25.** Section 75-10-411, MCA, is amended to read:

2 "**75-10-411. ~~Regulated substance and hazardous~~ Hazardous waste site inventory.** (1) The
3 department is authorized to conduct an inventory of sites and locations in the state where ~~regulated~~
4 ~~substances or~~ hazardous wastes have been stored or disposed of at any time.

5 (2) If the department determines that the presence of a ~~regulated substance or~~ hazardous waste
6 or the release of the ~~regulated substance or~~ waste or any waste constituent may present a substantial
7 hazard to the public health or the environment, it may issue an order requiring the owner or operator of the
8 facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the site
9 in order to ascertain the nature and extent of the hazard.

10 (3) In the case of any facility or site not in operation at the time that a determination is made under
11 subsection (2) with respect to the facility or site, if the department finds that the owner of ~~such the~~ the facility
12 or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at
13 ~~such the~~ the facility or site and of its potential for release, it may issue an order requiring the most recent
14 previous owner or operator of the facility or site who could reasonably be expected to have ~~such~~ actual
15 knowledge to carry out the actions referred to in subsection (2).

16 (4) An order issued under subsection (2) or (3) must require that the person to whom the order is
17 issued submit to the department within 30 days a proposal for carrying out the required monitoring, testing,
18 analysis, and reporting.

19 (5) If the department determines that the owner or operator referred to in subsection (2) or (3) is
20 not able to conduct monitoring, testing, and analysis in a satisfactory manner, the department may conduct
21 ~~such the~~ the activities.

22 (6) For the purposes of carrying out this section, the department may exercise the powers set forth
23 in 75-10-410."

24

25 **Section 26.** Section 75-10-413, MCA, is amended to read:

26 "**75-10-413. Administrative enforcement.** (1) When the department believes that a violation of this
27 part, a rule adopted under this part, or a permit provision has occurred, it may serve written notice of the
28 violation personally or by certified mail on the alleged violator or the violator's agent. The notice must
29 specify the provision of this part, the rule, or the permit provision alleged to be violated and the facts
30 alleged to constitute a violation and may include an order to take necessary corrective action within a

1 reasonable period of time stated in the order. The order becomes final unless, within 30 days after the
 2 notice is served, the person named requests, in writing, a hearing before the board. On receipt of the
 3 request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

4 (2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it
 5 shall either affirm or modify the department's order ~~previously issued~~. An order issued by the department
 6 or by the board may prescribe the date by which the violation must cease and may prescribe time limits
 7 for particular action. If, after hearing, the board finds that a violation has not occurred, it shall rescind the
 8 department's order.

9 (3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

10 (a) require the alleged violator to appear before the board or department, by subpoena or subpoena
 11 duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained
 12 of or to provide information regarding the alleged violation or its actual or potential impact on public health
 13 and welfare or the environment; or

14 (b) initiate action under 75-10-414, 75-10-417, or 75-10-418; ~~or~~

15 ~~(c) for underground storage tank violations, assess administrative penalties and issue corrective~~
 16 ~~action orders under 75-10-423.~~

17 (4) In the case of disobedience of any subpoena issued and served under this section or of the
 18 refusal of any witness to testify as to any material matter with regard to which the witness may be
 19 interrogated in a hearing or investigation before the board or the department, the board or department may
 20 apply to any district court in the state for an order to compel compliance with the subpoena or the giving
 21 of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is
 22 found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is
 23 punishable by contempt of court in the same manner and by the same procedures as is provided for like
 24 conduct committed in the course of civil actions in district court.

25 (5) This section does not prevent the board or department from making efforts to obtain voluntary
 26 compliance through warning, conference, or any other appropriate means."

27
 28 **Section 27.** Section 75-10-415, MCA, is amended to read:

29 **"75-10-415. Imminent hazard.** Upon receipt of evidence that the handling, storage, treatment,
 30 transportation, or disposal of any ~~regulated substance~~, used oil, or hazardous waste may present an

1 imminent and substantial danger to the public health or the environment, the department may commence
 2 legal proceedings to immediately restrain or enjoin any person (including any past or present generator, past
 3 or present transporter, and past or present owner or operator of a treatment, storage, or disposal facility)
 4 who has contributed to or who is contributing to the handling, storage, treatment, transportation, or
 5 disposal from engaging in these activities or order the person to take other action as may be necessary,
 6 or both. The department may also take appropriate action as may be necessary under this section, including
 7 issuing orders necessary or appropriate to protect the public health and the environment."

8
 9 **Section 28.** Section 75-10-416, MCA, is amended to read:

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

18
 19 **Section 29.** Section 75-10-420, MCA, is amended to read:

20 **"75-10-420. Venue for legal actions.** All legal actions affecting hazardous waste management
 21 facilities in the state must be brought in the county in which the facility is located. ~~All legal actions affecting~~
 22 ~~underground storage tanks or the disposal of regulated substances must be brought in the county where~~
 23 ~~the underground storage tank is located or, if mutually agreed upon by the affected parties, in the first~~
 24 ~~judicial district, Lewis and Clark County."~~

25
 26 **Section 30.** Section 75-10-423, MCA, is amended to read:

27 **"75-10-423. Administrative penalties for ~~underground storage tank~~ violations -- appeals -- venue**
 28 **for hearings.** (1) A person who violates any of the ~~underground storage tank~~ provisions of ~~this chapter~~
 29 [sections 1 through 15] or any ~~underground storage tank~~ rules promulgated under the authority of ~~this~~
 30 ~~chapter~~ [sections 1 through 15] may be assessed and ordered by the department to pay an administrative

1 penalty not to exceed \$500 ~~per~~ for each violation. This limitation on administrative penalties applies only
2 to penalties assessed under this section. Each occurrence of the violation and each day that it remains
3 uncorrected constitutes a separate violation. The department may suspend a portion of the administrative
4 penalty assessed under this section if the condition that caused the assessment of the penalty is corrected
5 within a specified time. Assessment of an administrative penalty under this section may be made in
6 conjunction with any order or other administrative action authorized by ~~Title 75, chapter 11, or by~~ this
7 chapter.

8 (2) When the department assesses an administrative penalty under this section, it must have
9 written notice served personally or by certified mail on the alleged violator or the violator's agent. For
10 purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

11 (a) the provision alleged to be violated;

12 (b) the facts alleged to constitute the violation;

13 (c) the amount of the administrative penalty assessed under this section;

14 (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused
15 the assessment of the penalty;

16 (e) the nature of any corrective action that the department requires, whether or not a portion of
17 the penalty is to be suspended;

18 (f) as applicable, the time within which the corrective action is to be taken and the time within
19 which the administrative penalty is to be paid;

20 (g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and
21 nature of any hearing; and

22 (h) that a formal proceeding may be waived.

23 (3) The department shall provide each person assessed a penalty under this section an opportunity
24 for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case
25 provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply
26 to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis
27 and Clark County or the county ~~where~~ in which the alleged violation occurred. This subsection does not
28 apply until the department gives written notice, served personally or by certified mail, to the alleged violator
29 or the violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt.
30 The notice must state:

- 1 (a) the provision allegedly violated;
- 2 (b) the facts that constitute the alleged violation;
- 3 (c) the specific nature of any corrective action that the department requires, estimated costs of
- 4 compliance with the action, and where to receive help to correct the alleged violation; and
- 5 (d) a timetable that a reasonable person would consider appropriate for compliance with the alleged
- 6 violations.

7 (4) The department shall publish a schedule of maximum and minimum penalties for specific

8 violations. In determining appropriate penalties for violations, the department shall consider the gravity of

9 the violations and the potential for significant harm to the public health or the environment. In determining

10 the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused

11 the penalty assessment, the department shall consider the cooperation and the degree of care exercised

12 by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant

13 harm resulted to the public health or the environment from the violation.

14 (5) If the department is unable to collect an administrative penalty assessed under this section or

15 if a person fails to pay all or any portion of an administrative penalty assessed under this section, the

16 department may take action in district court to recover the penalty amount and any additional amounts

17 assessed or sought under ~~Title 75, chapter 11, or~~ this chapter.

18 (6) Action under this section does not bar action under ~~Title 75, chapter 11, or~~ this chapter, or any

19 other remedy available to the department for violations of underground storage tank laws or rules

20 promulgated under those laws.

21 (7) Administrative penalties collected under this section must be deposited in the state general

22 fund."

23

24 **Section 31.** Section 75-10-423, MCA, is amended to read:

25 **"75-10-423. Administrative penalties for ~~underground storage tank~~ violations -- appeals -- venue**

26 **for hearings.** (1) A person who violates any of the ~~underground storage tank~~ provisions of ~~this chapter~~

27 [sections 1 through 15] or any ~~underground storage tank~~ rules promulgated under the authority of ~~this~~

28 ~~chapter~~ [sections 1 through 15] may be assessed and ordered by the department to pay an administrative

29 penalty not to exceed \$500 ~~per~~ for each violation. This limitation on administrative penalties applies only

30 to penalties assessed under this section. Each occurrence of the violation and each day that it remains

1 uncorrected constitutes a separate violation. The department may suspend a portion of the administrative
2 penalty assessed under this section if the condition that caused the assessment of the penalty is corrected
3 within a specified time. Assessment of an administrative penalty under this section may be made in
4 conjunction with any order or other administrative action authorized by ~~Title 75, chapter 11, or by this~~
5 chapter.

6 (2) When the department assesses an administrative penalty under this section, it must have
7 written notice served personally or by certified mail on the alleged violator or the violator's agent. For
8 purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

9 (a) the provision alleged to be violated;

10 (b) the facts alleged to constitute the violation;

11 (c) the amount of the administrative penalty assessed under this section;

12 (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused
13 the assessment of the penalty;

14 (e) the nature of any corrective action that the department requires, whether or not a portion of
15 the penalty is to be suspended;

16 (f) as applicable, the time within which the corrective action is to be taken and the time within
17 which the administrative penalty is to be paid;

18 (g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and
19 nature of any hearing; and

20 (h) that a formal proceeding may be waived.

21 (3) The department shall provide each person assessed a penalty under this section an opportunity
22 for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case
23 provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply
24 to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis
25 and Clark County or the county ~~where~~ in which the alleged violation occurred. This subsection does not
26 apply until the department gives written notice, served personally or by certified mail, to the alleged violator
27 or the violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt.
28 The notice must state:

29 (a) the provision allegedly violated;

30 (b) the facts that constitute the alleged violation;

1 (c) the specific nature of any corrective action that the department requires, estimated costs of
2 compliance with the action, and where to receive help to correct the alleged violation; and

3 (d) a timetable that a reasonable person would consider appropriate for compliance with the alleged
4 violations.

5 (4) The department shall publish a schedule of maximum and minimum penalties for specific
6 violations. In determining appropriate penalties for violations, the department shall consider the gravity of
7 the violations and the potential for significant harm to the public health or the environment. In determining
8 the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused
9 the penalty assessment, the department shall consider the cooperation and the degree of care exercised
10 by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant
11 harm resulted to the public health or the environment from the violation.

12 (5) If the department is unable to collect an administrative penalty assessed under this section or
13 if a person fails to pay all or any portion of an administrative penalty assessed under this section, the
14 department may take action in district court to recover the penalty amount and any additional amounts
15 assessed or sought under ~~Title 75, chapter 11, or~~ this chapter.

16 (6) Action under this section does not bar action under ~~Title 75, chapter 11, or~~ this chapter, or any
17 other remedy available to the department for violations of underground storage tank laws or rules
18 promulgated under those laws.

19 (7) Administrative penalties collected under this section must be deposited in the state ~~general~~
20 special revenue fund and be credited to the environmental rehabilitation and prevention account created
21 pursuant to [section 1 or 2 of LC 823]."

22
23 **Section 32.** Section 75-10-424, MCA, is amended to read:

24 **"75-10-424. Administrative penalty.** (1) The department may assess a person who violates a ~~used~~
25 ~~oil or hazardous waste~~ provision of this part, or a ~~used oil or hazardous waste~~ rule adopted under this part,
26 an administrative penalty, not to exceed \$10,000 ~~per~~ for each violation. Each day of violation constitutes
27 a separate violation, but the maximum penalty may not exceed \$100,000 for any related series of
28 violations. Assessment of an administrative penalty under this section must be made in conjunction with
29 an order or administrative action authorized by this chapter.

30 (2) An administrative penalty may not be assessed under this section unless the alleged violator

1 is given notice and opportunity for a hearing before the board pursuant to Title 2, chapter 4, part 6.

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

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

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

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

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

15

16 **Section 33.** Section 75-11-203, MCA, is amended to read:

17 **"75-11-203. Definitions.** As used in this part, unless the context requires otherwise, the following
18 definitions apply:

- 19 (1) "Board" means the board of environmental review provided for in 2-15-3502.
- 20 (2) "Closure" or "to close" means the process of properly removing or filling in place an
21 underground storage tank that is no longer in service.
- 22 (3) "Department" means the department of environmental quality provided for in 2-15-3501.
- 23 (4) (a) "Installation" or "to install" means the placement of an underground storage tank system,
24 including excavation, tank placement, backfilling, and piping of underground portions of the underground
25 storage tank system that store or convey regulated substances. Installation includes repair or modification
26 of an underground storage tank system through such means as tank relining or the repair or replacement
27 of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installation also means
28 installation, repair, or modification of a leak detection device that is external to and not attached to the
29 underground storage tank system and the installation, repair, or modification of a cathodic protection
30 system.

1 (b) The terms do not include the process of conducting a precision (tightness) test to establish the
2 integrity of the underground storage tank system.

3 (5) "Installer" means an individual who installs or closes underground storage tank systems.

4 (6) "License" means a license issued by the department under 75-11-210 to conduct the
5 installation or closure of underground storage tank systems and the installation of leak detection devices
6 or cathodic protection systems.

7 (7) "Licensed installer" means an individual who holds a valid underground storage tank system
8 installer license.

9 (8) "Operator" means a person in control of or having responsibility for the operation, maintenance,
10 or management of an underground storage tank system.

11 (9) "Owner" means a person who owns an underground storage tank system used for the storage,
12 use, or dispensing of regulated substances.

13 (10) "Person" means an individual, firm, trust, estate, partnership, company, association,
14 corporation (whether organized for profit or not), city, town, local governmental entity, or any other
15 governmental or private entity.

16 (11) "Regulated substance" means a regulated substance as defined in ~~75-10-403~~ [section 3].

17 (12) "Underground storage tank" or "underground storage tank system" means an underground
18 storage tank, as defined in ~~75-10-403~~ [section 3], and, for purposes of this part, includes a leak detection
19 device that is external to and not attached to an underground storage tank system."
20

21 **Section 34.** Section 75-11-302, MCA, is amended to read:

22 **"75-11-302. Definitions.** Except as provided in subsections (2), (15), and (25), the following
23 definitions apply to this part:

24 (1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by
25 the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need
26 for corrective action or compensation for third-party bodily injury or property damage.

27 (2) "Aviation gasoline" means aviation gasoline as defined in 15-70-201. For the purposes of this
28 chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

29 (3) "Board" means the petroleum tank release compensation board established in 2-15-2108.

30 (4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including

1 death that results from the physical injury, sickness, or disease at any time.

2 (5) "Claim" means a written request prepared and submitted by an owner or operator or an agent
3 of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum
4 storage tank.

5 (6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal,
6 and other actions necessary to respond to a release.

7 (7) "Department" means the department of environmental quality provided for in 2-15-3501.

8 (8) "Distributor" means a person who is licensed to sell gasoline, as provided in 15-70-202, and
9 who:

10 (a) in the state of Montana, engages in the business of producing, refining, manufacturing, or
11 compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

12 (b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in
13 this state;

14 (c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in
15 this state;

16 (d) is an exporter;

17 (e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

18 (f) either blends gasoline with alcohol or blends heating oil with waste oil.

19 (9) "Double-walled tank system" means a petroleum storage tank and associated product piping
20 that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that
21 is capable of being monitored for leakage. The design and construction of these tank systems must meet
22 standards of the department and the department of justice fire prevention and investigation bureau. The
23 material used in construction must be compatible with the liquid to be stored in the system, and the system
24 must be designed to prevent the release of any stored liquid.

25 (10) "Eligible costs" means expenses reimbursable under 75-11-307.

26 (11) "Export" means to transport out of the state of Montana, by means other than in the fuel
27 supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a
28 refinery or pipeline terminal within the state of Montana.

29 (12) "Exporter" means a person who transports, by means other than in the fuel supply tank of a
30 motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline

1 terminal within the state of Montana to a destination outside the state of Montana for sale, use, or
2 consumption beyond the boundaries of the state of Montana.

3 (13) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

4 (14) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

5 (15) "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline
6 does not include JP-4 jet fuel sold to a federal defense fuel supply center.

7 (16) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No.
8 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and
9 bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used
10 in the operation of heating equipment, boilers, or furnaces.

11 (17) "Import" means to receive into a person's possession or custody first after its arrival and
12 coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil
13 shipped or transported into this state from a point of origin outside this state, other than in the fuel supply
14 tank of a motor vehicle.

15 (18) "Operator" means a person in control of or having responsibility for the daily operation of a
16 petroleum storage tank.

17 (19) (a) "Owner" means a person who holds title to, controls, or possesses an interest in a
18 petroleum storage tank.

19 (b) The term does not include a person who holds an interest in a tank solely for financial security,
20 unless through foreclosure or other related actions the holder of a security interest has taken possession
21 of the tank.

22 (20) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock
23 company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

24 (21) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid
25 at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch
26 absolute) or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than
27 a de minimis amount of another substance.

28 (22) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum
29 products and that is:

30 (a) an underground storage tank as defined in ~~75-10-403~~ section 3;

1 (b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift,
2 shaft, or tunnel;

3 (c) an above ground storage tank with a capacity less than 30,000 gallons; or

4 (d) above ground or underground pipes associated with tanks under subsections (22)(b) and
5 (22)(c), except that pipelines regulated under the following laws are excluded:

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

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

8 (iii) state law comparable to the provisions of law referred to in subsections (22)(d)(i) and (22)(d)(ii),
9 if the facility is intrastate.

10 (23) "Property damage" means:

11 (a) physical injury to tangible property, including loss of use of that property caused by the injury;

12 or

13 (b) loss of use of tangible property that is not physically injured.

14 (24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing
15 of petroleum or petroleum products from a petroleum storage tank into ground water, surface water,
16 surface soils, or subsurface soils.

17 (25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another
18 volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid
19 petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad
20 or a federal defense fuel supply center."
21

22 **Section 35.** Section 75-11-309, MCA, is amended to read:

23 **"75-11-309. Procedures for reimbursement of eligible costs.** (1) An owner or operator seeking
24 reimbursement for eligible costs and the department shall comply with the following procedures:

25 (a) If an owner or operator discovers or is provided evidence that a release may have occurred from
26 the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the
27 department of the release and conduct an initial response to the release in accordance with state and
28 federal laws and rules to protect the public health and safety and the environment.

29 (b) The owner or operator shall conduct a thorough investigation of the release, report the findings
30 to the department, and, as determined necessary by the department, prepare and submit for approval by

1 the department a corrective action plan that conforms with state, tribal (~~where~~ when applicable), and
2 federal corrective action requirements.

3 (c) (i) The department shall review the corrective action plan and forward a copy to a local
4 government office and, ~~where~~ when applicable, a tribal government office with jurisdiction over a corrective
5 action for the release. The local or tribal government office shall inform the department if it wants any
6 modification of the proposed plan.

7 (ii) Based on its own review and comments received from a local government, tribal government,
8 or other source, the department may approve the proposed corrective action plan, make or request the
9 owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or
10 operator. A plan finally approved by the department through any process provided in this subsection (1)(c)
11 is the approved corrective action plan.

12 (iii) After the department approves a corrective action plan, a local government or tribal government
13 may not impose different corrective action requirements on the owner or operator.

14 (d) The department shall notify the owner or operator and the board of its approval of a corrective
15 action plan.

16 (e) The owner or operator shall implement the approved plan. The department may oversee the
17 implementation of the plan, require reports and monitoring from the owner or operator, undertake
18 inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10,
19 ~~parts 4 and part 7, [sections 1 through 15]~~, and other applicable law and rules.

20 (f) The owner or operator shall document in the manner required by the board all expenses incurred
21 in preparing and implementing the corrective action plan. The owner or operator shall submit claims and
22 substantiating documents to the board in the form and manner required by the board. The board shall
23 forward each claim and appropriate documentation to the department. The department shall notify the
24 board of any costs that the department considers not reimbursable because of any failure to meet the
25 requirements of subsection (2). The department shall inform the owner or operator of any notification given
26 to the board.

27 (g) The owner or operator shall document, in the manner required by the board, any payments to
28 a third party for bodily injury or property damage caused by a release. The owner or operator shall submit
29 claims and substantiating documents to the board in the form and manner required by the board.

30 (h) In addition to the documentation in subsections (1)(f) and (1)(g), when the release is claimed

1 to have originated from a double-walled tank system, the owner or operator shall document, in the manner
2 required by the board, the following:

3 (i) the date that the release was discovered;

4 (ii) that the originating tank was part of a double-walled tank system as defined in 75-11-302; and

5 (iii) that the double-walled tank system was properly installed and made of materials and
6 constructed in accordance with applicable department regulations.

7 (2) The board shall review each claim received under subsections (1)(f) and (1)(g), make the
8 determination required by this subsection, inform the owner or operator of its determination, and, as
9 appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board
10 shall affirmatively determine that:

11 (a) the expenses for which reimbursement is claimed:

12 (i) are eligible costs; and

13 (ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a
14 corrective action plan approved by the department or for payments to a third party for bodily injury or
15 property damage; and

16 (b) the owner or operator:

17 (i) is eligible for reimbursement under 75-11-308; and

18 (ii) has complied with this section and any rules adopted pursuant to this section.

19 (3) If an owner or operator disagrees with a board determination under subsection (2), the owner
20 or operator may submit a written request for a hearing before the board. The hearing must be held at a
21 meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later
22 than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner
23 or operator.

24 (4) The board shall obligate money for reimbursement of eligible costs of owners and operators in
25 the order that the costs are finally approved by the board.

26 (5) (a) The board may, at the request of an owner or operator, guarantee in writing the
27 reimbursement of eligible costs that have been approved by the board but for which money is not currently
28 available from the fund for reimbursement.

29 (b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of
30 eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for

1 payment under this subsection (5)(b) does not affect the order in which money in the fund is obligated
2 under subsection (4).

3 (c) When considering a request for a guarantee of payment, the board may require pertinent
4 information or documentation from the owner or operator. The board may grant or deny, in whole or in part,
5 any request for a guarantee."

6
7 **NEW SECTION. Section 36. Codification instruction.** (1) [Sections 1 through 15] are intended to
8 be codified as an integral part of Title 75, chapter 11, and the provisions of Title 75, chapter 11, apply to
9 [sections 1 through 15].

10 (2) The code commissioner shall renumber 75-10-423 and 75-10-447 to Title 75, chapter 11.
11

12 **NEW SECTION. Section 37. Coordination instruction.** (1) If [LC 823] is passed and approved and
13 if it creates an environmental rehabilitation and prevention account in the state special revenue fund, then
14 [sections 12 and 30] are void.

15 (2) If [LC 823] is not passed and approved or if [LC 823] as passed and approved does not create
16 an environmental rehabilitation and prevention account in the state special revenue fund, then [sections 13
17 and 31] are void.
18

19 **NEW SECTION. Section 38. Saving clause.** [This act] does not affect rights and duties that
20 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
21 act].

22 (2) Rules adopted pursuant to 75-10-405 that are in effect on [the effective date of this act]
23 continue in effect until amended or repealed pursuant to 75-10-405 or [section 5].
24

-END-

HOUSE BILL NO. 152

INTRODUCED BY GRADY

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT SEPARATING THE MONTANA HAZARDOUS WASTE AND UNDERGROUND STORAGE TANK ACT INTO TWO ACTS BY TRANSFERRING THE UNDERGROUND STORAGE TANK PROVISIONS INTO A SEPARATE ACT; ~~AND AMENDING SECTIONS 75-2-216, 75-10-210, 75-10-401, 75-10-402, 75-10-403, 75-10-404, 75-10-405, 75-10-409, 75-10-410, 75-10-411, 75-10-413, 75-10-415, 75-10-416, 75-10-420, 75-10-423, 75-10-424, 75-11-203, 75-11-302, AND 75-11-309, MCA; AND REPEALING SECTION 75-10-210, MCA.~~"

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 15] shall be known and may be cited as the "Montana Underground Storage Tank Act".

NEW SECTION. **Section 2. Findings and purpose.** The legislature finds that petroleum products and hazardous substances stored in underground tanks are regulated under the federal Resource Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by the state under [sections 1 through 15]. It is the purpose of [sections 1 through 15] to authorize the department to establish, administer, and enforce an underground storage tank leak prevention program for these regulated substances. The department may use the authority provided in [sections 8 through 13] and other appropriate authority provided by law to remedy violations of requirements established under [sections 1 through 15].

NEW SECTION. **Section 3. Definitions.** Unless the context requires otherwise, in [sections 1 through 15], the following definitions apply:

- (1) "Board" means the board of environmental review provided for in 2-15-3502.
- (2) "Department" means the department of environmental quality provided for in 2-15-3501.
- (3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or

1 placing of any regulated substance into or onto the land or water so that the regulated substance or any
2 constituent of the regulated substance may enter the environment or be emitted into the air or discharged
3 into any waters, including ground water.

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

7 (5) "Regulated substance":

8 (a) means:

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

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

12 (b) does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part
13 4.

14 (6) "Storage" means the actual or intended containment of regulated substances, either on a
15 temporary basis or for a period of years.

16 (7) "Underground storage tank":

17 (a) means, except as provided in subsections (7)(b)(i) through (7)(b)(xi):

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

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

23 (b) does not include:

24 (i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100
25 gallons or less, and that is used for storing motor fuel for noncommercial purposes;

26 (ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100
27 gallons or less, and that is used for storing heating oil for consumptive use on the premises where it is
28 stored;

29 (iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used
30 to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on

1 the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;

2 (iv) a septic tank;

3 (v) a pipeline facility, including gathering lines, regulated under:

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

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

6 (C) state law comparable to the provisions of law referred to in subsection (7)(b)(v)(A) or
7 (7)(b)(v)(B), if the facility is intrastate;

8 (vi) a surface impoundment, pit, pond, or lagoon;

9 (vii) a storm water or wastewater collection system;

10 (viii) a flow-through process tank;

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

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

15 (xi) any pipe connected to a tank described in subsections (7)(b)(i) through (7)(b)(ix).

16
17 **NEW SECTION. Section 4. Powers of department.** (1) The department may:

18 (a) administer and enforce the provisions of [sections 1 through 15], rules implementing [sections
19 1 through 15], and orders and permits issued pursuant to [sections 1 through 15];

20 (b) accept and administer grants from the federal government and from other sources, public and
21 private; and

22 (c) abate public nuisances that affect the public health and welfare or the environment and that
23 arise from or in connection with the past or present handling or disposal of any regulated substance.

24 (2) The department shall integrate all provisions of [sections 1 through 15] with other laws
25 administered by the department to avoid unnecessary duplication.

26
27 **NEW SECTION. Section 5. Administrative rules.** The department may adopt, amend, or repeal
28 rules for the prevention and correction of leakage from underground storage tanks, including:

29 (1) reporting by owners and operators;

30 (2) financial responsibility;

- 1 (3) release detection, prevention, and corrective action;
- 2 (4) standards for design, construction, installation, and closure;
- 3 (5) development of a schedule of fees, not to exceed \$50 for a tank over 1,100 gallons and not
4 to exceed \$20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state
5 and local costs of implementing an underground storage tank program;
- 6 (6) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals
7 under 75-10-423; and
- 8 (7) delegation of authority and funds to local agents for inspections and implementation. The
9 delegation of authority to local agents must complement and may not duplicate existing authority for
10 implementation of rules adopted by the department of justice that relate to underground storage tanks.

11

12 **NEW SECTION. Section 6. Underground storage tank leak report -- inspections -- sampling.** (1)

13 If an owner or operator of an underground storage tank discovers or is provided with evidence that a tank
14 may have leaked, the owner or operator shall immediately notify the department that a leak may exist.

15 (2) (a) An employee or agent of the department, at any reasonable time and upon presentation of
16 credentials, may enter upon and inspect any property, premises, or place at which:

17 (i) regulated substances are or have been stored in underground storage tanks if the department
18 has reason to suspect that the tanks are not in compliance with the provisions of [sections 1 through 15]
19 or rules adopted under [sections 1 through 15]; or

20 (ii) records pertinent to the regulated substances activities are maintained.

21 (b) The employee or agent of the department may have access to and may copy any records
22 relating to the regulated substances for the purposes of developing rules under [sections 1 through 15] or
23 enforcing the provisions of [sections 1 through 15], rules adopted under [sections 1 through 15], or a
24 permit or an order issued under [sections 1 through 15].

25 (3) In the course of an inspection under this section, the employee or agent of the department may
26 take samples of any regulated substance or suspected regulated substance, including samples from any soil
27 or ground water. If the employee or agent of the department takes a sample of any regulated substance
28 or suspected regulated substance, the employee or agent shall, prior to leaving the premises, give to the
29 owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of
30 each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a

1 copy of the results of the analysis must be furnished to the owner, operator, or agent in charge.

2
3 **NEW SECTION. Section 7. Regulated substance inventory.** (1) The department is authorized to
4 conduct an inventory of sites and locations in the state where regulated substances have been stored or
5 disposed of at any time.

6 (2) If the department determines that the presence of a regulated substance or the release of the
7 regulated substance may present a substantial hazard to the public health or to the environment, it may
8 issue an order requiring the owner or operator of the site to conduct reasonable monitoring, testing,
9 analysis, and reporting with respect to the site in order to ascertain the nature and extent of the hazard.

10 (3) An order issued under subsection (2) must require that the person to whom the order is issued
11 submit to the department within 30 days a proposal for carrying out the required monitoring, testing,
12 analysis, and reporting.

13 (4) If the department determines that the owner or operator referred to in subsection (2) is not able
14 to conduct monitoring, testing, and analysis in a satisfactory manner, the department may conduct the
15 activities.

16 (5) For the purposes of carrying out this section, the department may exercise the powers set forth
17 in [section 6].

18
19 **NEW SECTION. Section 8. Administrative enforcement.** (1) When the department believes that
20 a violation of [sections 1 through 15] or a rule adopted under [sections 1 through 15] has occurred, it may
21 serve written notice of the violation personally or by certified mail on the alleged violator or the violator's
22 agent. The notice must specify the provision of [sections 1 through 15] or the rule alleged to be violated
23 and the facts alleged to constitute a violation and may include an order to take necessary corrective action
24 within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after
25 the notice is served, the person named requests, in writing, a hearing before the board. On receipt of the
26 request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

27 (2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it
28 shall either affirm or modify the department's order. An order issued by the department or by the board
29 may prescribe the date by which the violation must cease and may prescribe time limits for particular
30 action. If, after hearing, the board finds that a violation has not occurred, it shall rescind the department's

1 order.

2 (3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

3 (a) require the alleged violator to appear before the board or department, by subpoena or subpoena
4 duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained
5 of or to provide information regarding the alleged violation or its actual or potential impact on the public
6 health and welfare or the environment;

7 (b) initiate action under [section 9, 10, 12, or 13]; or

8 (c) assess administrative penalties and issue corrective action orders under 75-10-423.

9 (4) In the case of disobedience of any subpoena issued and served under this section or of the
10 refusal of any witness to testify as to any material matter with regard to which the witness may be
11 interrogated in a hearing or investigation before the board or the department, the board or department may
12 apply to any district court in the state for an order to compel compliance with the subpoena or the giving
13 of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is
14 found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is
15 punishable by contempt of court in the same manner and by the same procedures as is provided for like
16 conduct committed in the course of civil actions in district court.

17 (5) This section does not prevent the board or department from making efforts to obtain voluntary
18 compliance through warning, conference, or any other appropriate means.

19

20 **NEW SECTION. Section 9. Injunctions.** The department may institute and maintain, in the name
21 of the state, actions for injunctive relief as provided in Title 27, chapter 19, to:

22 (1) immediately restrain any person from engaging in any unauthorized activity that is endangering
23 or causing damage to the public health or to the environment;

24 (2) enjoin a violation of [sections 1 through 15], a rule adopted under [sections 1 through 15], or
25 an order of the department or the board; or

26 (3) require compliance with [sections 1 through 15], a rule adopted under [sections 1 through 15],
27 or an order of the department or the board.

28

29 **NEW SECTION. Section 10. Imminent hazard.** Upon receipt of evidence that the storage or disposal
30 of any regulated substance may present an imminent and substantial danger to the public health or to the

1 environment, the department may commence legal proceedings to immediately restrain or enjoin any person
2 who has contributed to or who is contributing to the storage or disposal from engaging in these activities
3 or order the person to take other action as may be necessary, or both. The department may also take
4 appropriate action as may be necessary under this section, including issuing orders necessary or appropriate
5 to protect the public health and the environment.

6
7 **NEW SECTION. Section 11. Cleanup orders.** The department may issue a cleanup order to any
8 person who has discharged, deposited, or spilled any regulated substance into or onto any land or water
9 in an unlawful or unapproved manner or who has discharged, deposited, or spilled any regulated substance
10 into or onto any land or water so as to result in unlawful or unapproved disposal of a regulated substance.
11 The order must direct the person to clean up and remove the regulated substance, to treat the regulated
12 substance, or to take other actions as may be considered reasonable by the department.

13
14 **NEW SECTION. Section 12. Civil penalties.** (1) A person who violates any provision of [sections
15 1 through 15], a rule adopted under [sections 1 through 15], or an order of the department or the board
16 is subject to a civil penalty not to exceed \$10,000 for each violation. Each day of violation constitutes a
17 separate violation.

18 (2) The department may institute and maintain in the name of the state any enforcement
19 proceedings under this section. Upon request of the department, the attorney general or the county
20 attorney of the county of violation shall petition the district court to impose, assess, and recover the civil
21 penalty.

22 (3) Action under this section does not bar enforcement of [sections 1 through 15], rules adopted
23 under [sections 1 through 15], or orders of the department or the board.

24 (4) Money collected under this section must be deposited in the state general fund.

25
26
27 **NEW SECTION. Section 13. Civil penalties.** (1) A person who violates any provision of [sections
28 1 through 15], a rule adopted under [sections 1 through 15], or an order of the department or the board
29 is subject to a civil penalty not to exceed \$10,000 for each violation. Each day of violation constitutes a
30 separate violation.

1 (2) The department may institute and maintain in the name of the state any enforcement
 2 proceedings under this section. Upon request of the department, the attorney general or the county
 3 attorney of the county of violation shall petition the district court to impose, assess, and recover the civil
 4 penalty.

5 (3) Action under this section does not bar enforcement of [sections 1 through 15], rules adopted
 6 under [sections 1 through 15], or orders of the department or the board.

7 (4) Money collected under this section must be deposited in the state special revenue fund and
 8 credited to the environmental rehabilitation and prevention account created pursuant to [section 1 or 2 of
 9 LC 823].

10
 11 **NEW SECTION.** **Section 14. Venue for legal actions.** All legal actions affecting underground
 12 storage tanks or the disposal of regulated substances must be brought in the county in which the
 13 underground storage tank is located or, if mutually agreed upon by the affected parties, in the first judicial
 14 district, Lewis and Clark County.

15
 16 **NEW SECTION.** **Section 15. Construction in event of conflict.** The provisions of [sections 1
 17 through 15] and rules promulgated pursuant to [sections 1 through 15] govern if they conflict with other
 18 provisions of Montana law or any action taken by the department under those provisions.

19
 20 **Section 16.** Section 75-2-216, MCA, is amended to read:

21 ~~"75-2-216. Moratorium on certain solid and hazardous waste incinerator permits. (1) Except for~~
 22 ~~remedial actions pursuant to Title 75, chapter 10, part 7, or corrective actions pursuant to 75-10-405(2)(e)~~
 23 ~~or 75-10-416, or [section 5(3) or 11], until October 1, 1993, the department may not issue a permit to a~~
 24 ~~solid or hazardous waste incinerator subject to the requirements of 75-2-216.~~

25 ~~(2) Notwithstanding the provisions of (1), the~~ **ADOPTION OF RULES FOR SOLID OR HAZARDOUS**
 26 **WASTE INCINERATOR PERMITS.** ~~THE~~ department shall proceed in a reasonable and timely manner in
 27 adopting rules implementing 75-2-215 ~~and in processing air quality permit applications required under~~
 28 ~~75-2-211 for solid or hazardous waste incinerators."~~

29
 30 ~~**Section 17.** Section 75-10-210, MCA, is amended to read:~~

1 ~~"75-10-210. Moratorium on certain solid waste facility permits. (1) Except for remedial actions~~
2 ~~pursuant to Title 75, chapter 10, part 7, or corrective actions pursuant to 75-10-405(2)(c) or 75-10-416,~~
3 ~~or [section 5(3) or 11], until October 1, 1993, the department may not issue a license under 75-10-221~~
4 ~~for a solid waste facility if the facility is also subject to the requirements of 75-2-215.~~

5 ~~(2) Notwithstanding the provisions of (1), the department shall proceed in a reasonable and timely~~
6 ~~manner in processing solid waste applications required under 75-10-221."~~

7
8 **Section 17.** Section 75-10-401, MCA, is amended to read:

9 **"75-10-401. Short title.** This part shall be known and may be cited as the "Montana Hazardous
10 ~~Waste and Underground Storage Tank Act".~~"

11
12 **Section 18.** Section 75-10-402, MCA, is amended to read:

13 **"75-10-402. Findings and purpose.** (1) The legislature finds that the safe and proper management
14 of hazardous wastes and used oil, the permitting of hazardous waste facilities, and the siting of facilities
15 are matters for statewide regulation and are environmental issues that should properly be addressed and
16 controlled by the state rather than by the federal government.

17 (2) It is the purpose of this part and it is the policy of this state to protect the public health and
18 safety, the health of living organisms, and the environment from the effects of the improper, inadequate,
19 or unsound management of hazardous wastes and used oil; to establish a program of regulation over used
20 oil and the generation, storage, transportation, treatment, and disposal of hazardous wastes; to ~~assure~~
21 ensure the safe and adequate management of hazardous wastes and used oil within this state; and to
22 authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the
23 federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 through 6987), as amended.

24 ~~(3) The legislature also finds that petroleum products and hazardous substances stored in~~
25 ~~underground tanks are a separate category of substances that are regulated under the federal Resource~~
26 ~~Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by~~
27 ~~the state under the Montana Hazardous Waste and Underground Storage Tank Act. It is the purpose of this~~
28 ~~part to authorize the department to establish, administer, and enforce an underground storage tank leak~~
29 ~~prevention program for those regulated substances. The department may use the authority provided in~~
30 ~~75-10-413 through 75-10-417 and other appropriate authority provided by law to remedy violations of~~

1 ~~underground storage tank requirements established under this part."~~

2

3 **Section 19.** Section 75-10-403, MCA, is amended to read:

4 **"75-10-403. Definitions.** Unless the context requires otherwise, in this part, the following
5 definitions apply:

6 (1) "Board" means the board of environmental review provided for in 2-15-3502.

7 (2) "Department" means the department of environmental quality provided for in 2-15-3501.

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

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

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

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

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

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

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

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

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

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

29 (10) "Hazardous waste transfer facility" means any land, structure, or improvement, including
30 loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary

1 storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period
 2 of 10 days or less during the normal course of transportation up to but not including the point of ultimate
 3 treatment, storage, or disposal.

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

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

10 ~~(13) "Regulated substance":~~

11 ~~(a) means:~~

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

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

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

16 ~~(14)~~(13) "Storage" means the actual or intended containment of ~~regulated substances~~, hazardous
 17 wastes, ~~or both~~, either on a temporary basis or for a period of years.

18 ~~(15)~~(14) "Transportation" means the movement of hazardous wastes from the point of generation
 19 to any intermediate points and finally to the point of ultimate storage or disposal.

20 ~~(16)~~(15) "Transporter" means a person engaged in the offsite transportation of hazardous waste
 21 by air, rail, highway, or water.

22 ~~(17)~~(16) "Treatment" means a method, technique, or process, including neutralization, designed
 23 to change the physical, chemical, or biological character or composition of any hazardous waste so as to
 24 neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery,
 25 amenable for storage, or reduced in volume.

26 ~~(18) "Underground storage tank":~~

27 ~~(a) means, except as provided in subsections (18)(b)(i) through (18)(b)(xii):~~

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

30 ~~(ii) any underground pipes used to contain or transport a regulated substance and connected to a~~

1 ~~storage tank, whether the storage tank is entirely aboveground, partially aboveground, or entirely~~
 2 ~~underground;~~

3 ~~(b) does not include:~~

4 ~~(i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100~~
 5 ~~gallons or less, and that is used for storing motor fuel for noncommercial purposes;~~

6 ~~(ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100~~
 7 ~~gallons or less, and that is used for storing heating oil for consumptive use on the premises where it is~~
 8 ~~stored;~~

9 ~~(iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used~~
 10 ~~to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on~~
 11 ~~the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;~~

12 ~~(iv) a septic tank;~~

13 ~~(v) a pipeline facility, including gathering lines, regulated under:~~

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

15 ~~(B) the Hazardous Liquid Pipeline Safety Act of 1970, 49 U.S.C. 2001, et seq.; or~~

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

18 ~~(vi) a surface impoundment, pit, pond, or lagoon;~~

19 ~~(vii) a storm water or wastewater collection system;~~

20 ~~(viii) a flow through process tank;~~

21 ~~(ix) a liquid trap or associated gathering lines directly related to oil or gas production and gathering~~
 22 ~~operations;~~

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

25 ~~(xi) any pipe connected to a tank described in subsections (18)(b)(i) through (18)(b)(ix).~~

26 ~~(19)(17) "Used oil" means any oil that has been refined from crude oil or any synthetic oil, either~~
 27 ~~of which has been used and as a result of that use is contaminated by physical or chemical impurities."~~

28
 29 **Section 20.** Section 75-10-404, MCA, is amended to read:

30 **"75-10-404. Powers of department.** (1) The department may:

1 (a) administer and enforce the provisions of this part, rules implementing this part, and orders and
2 permits issued pursuant to this part;

3 (b) conduct and publish studies on hazardous wastes and hazardous waste management;

4 (c) initiate, conduct, and support research, demonstration projects, and investigation, as its
5 resources may allow, and coordinate state agency research programs pertaining to hazardous waste
6 management;

7 (d) accept and administer grants from the federal government and from other sources, public and
8 private; and

9 (e) abate public nuisances that affect the public health and welfare or the environment and that
10 arise from or in connection with the past or present handling or disposal of any hazardous waste or
11 ~~regulated substance.~~

12 (2) The department shall integrate all provisions of this part with other laws administered by the
13 department to avoid unnecessary duplication. Furthermore, the department shall coordinate its activities
14 under this part with the program administered by the department of agriculture under the Montana
15 Pesticides Act, the programs administered by the department of environmental quality related to mining and
16 mine reclamation, the program administered by the department of public service regulation related to
17 hazardous material transportation, and provisions of the Montana Major Facility Siting Act. The integration
18 and coordination must be effected only to the extent that it can be done in a manner consistent with the
19 goals and policies of this part and the other laws referred to in this section."
20

21 **Section 21.** Section 75-10-405, MCA, is amended to read:

22 **"75-10-405. Administrative rules.** (1) The department may, subject to the provisions of
23 75-10-107, adopt, amend, or repeal rules governing hazardous waste and used oil, including but not limited
24 to the following:

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

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

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

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

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

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

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

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

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

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

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

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

15 (iv) the registration of hazardous waste generators;

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

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

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

21 (m) identification and classification of used oil that is subject to regulation and used oil that is not
22 subject to regulation;

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

24 (o) other rules that are necessary to obtain and maintain authorization under the federal program.

25 (2) Notwithstanding the provisions of 75-10-107, the department may not adopt rules under this
26 part that are more restrictive than those promulgated by the federal government under the Resource
27 Conservation and Recovery Act of 1976, as amended, except that the department:

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

30 (b) may require hazardous waste generators and hazardous waste management facilities to report

1 on an annual rather than on a biennial basis;

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

4 ~~(i) reporting by owners and operators;~~

5 ~~(ii) financial responsibility;~~

6 ~~(iii) release detection, prevention, and corrective action;~~

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

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

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

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

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

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

19 ~~(f)~~(e) may adopt rules and performance standards for industrial furnaces and boilers that burn
20 hazardous wastes. The rules and performance standards:

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

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

23
24 **Section 22.** Section 75-10-409, MCA, is amended to read:

25 **"75-10-409. Compliance monitoring and reporting —~~underground storage tank leak report.~~** (1) The
26 department may, as a condition of a permit, require the owner or operator of a facility to install equipment,
27 collect and analyze samples, and maintain records in order to monitor and demonstrate compliance with
28 this part, rules adopted under this part, any order of the board or department, and permit conditions.

29 (2) The department may require the owner or operator of a facility to submit reports on ~~such~~ the
30 compliance monitoring activities, including notice to the department of any noncompliance with permit

1 conditions, rules adopted under this part, the provisions of this part, or any orders of the department or
2 board.

3 ~~(3) If an owner or operator of an underground storage tank discovers or is provided with evidence~~
4 ~~that the tank may have leaked, he must immediately notify the department that a leak may exist."~~

5

6 **Section 23.** Section 75-10-410, MCA, is amended to read:

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

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

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

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

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

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

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

1 agent in charge."
2

3 **Section 24.** Section 75-10-411, MCA, is amended to read:

4 **"75-10-411. ~~Regulated substance and hazardous~~ Hazardous waste site inventory.** (1) The
5 department is authorized to conduct an inventory of sites and locations in the state where ~~regulated~~
6 ~~substances or~~ hazardous wastes have been stored or disposed of at any time.

7 (2) If the department determines that the presence of a ~~regulated substance or~~ hazardous waste
8 or the release of the ~~regulated substance or~~ waste or any waste constituent may present a substantial
9 hazard to the public health or the environment, it may issue an order requiring the owner or operator of the
10 facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the site
11 in order to ascertain the nature and extent of the hazard.

12 (3) In the case of any facility or site not in operation at the time that a determination is made under
13 subsection (2) with respect to the facility or site, if the department finds that the owner of ~~such~~ the facility
14 or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at
15 ~~such~~ the facility or site and of its potential for release, it may issue an order requiring the most recent
16 previous owner or operator of the facility or site who could reasonably be expected to have ~~such~~ actual
17 knowledge to carry out the actions referred to in subsection (2).

18 (4) An order issued under subsection (2) or (3) must require that the person to whom the order is
19 issued submit to the department within 30 days a proposal for carrying out the required monitoring, testing,
20 analysis, and reporting.

21 (5) If the department determines that the owner or operator referred to in subsection (2) or (3) is
22 not able to conduct monitoring, testing, and analysis in a satisfactory manner, the department may conduct
23 ~~such~~ the activities.

24 (6) For the purposes of carrying out this section, the department may exercise the powers set forth
25 in 75-10-410."
26

27 **Section 25.** Section 75-10-413, MCA, is amended to read:

28 **"75-10-413. Administrative enforcement.** (1) When the department believes that a violation of this
29 part, a rule adopted under this part, or a permit provision has occurred, it may serve written notice of the
30 violation personally or by certified mail on the alleged violator or the violator's agent. The notice must

1 specify the provision of this part, the rule, or the permit provision alleged to be violated and the facts
2 alleged to constitute a violation and may include an order to take necessary corrective action within a
3 reasonable period of time stated in the order. The order becomes final unless, within 30 days after the
4 notice is served, the person named requests, in writing, a hearing before the board. On receipt of the
5 request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

6 (2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it
7 shall either affirm or modify the department's order ~~previously issued~~. An order issued by the department
8 or by the board may prescribe the date by which the violation must cease and may prescribe time limits
9 for particular action. If, after hearing, the board finds that a violation has not occurred, it shall rescind the
10 department's order.

11 (3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

12 (a) require the alleged violator to appear before the board or department, by subpoena or subpoena
13 duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained
14 of or to provide information regarding the alleged violation or its actual or potential impact on public health
15 and welfare or the environment; or

16 (b) initiate action under 75-10-414, 75-10-417, or 75-10-418; ~~or~~

17 ~~(c) for underground storage tank violations, assess administrative penalties and issue corrective~~
18 ~~action orders under 75-10-423.~~

19 (4) In the case of disobedience of any subpoena issued and served under this section or of the
20 refusal of any witness to testify as to any material matter with regard to which the witness may be
21 interrogated in a hearing or investigation before the board or the department, the board or department may
22 apply to any district court in the state for an order to compel compliance with the subpoena or the giving
23 of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is
24 found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is
25 punishable by contempt of court in the same manner and by the same procedures as is provided for like
26 conduct committed in the course of civil actions in district court.

27 (5) This section does not prevent the board or department from making efforts to obtain voluntary
28 compliance through warning, conference, or any other appropriate means."

29

30 **Section 26.** Section 75-10-415, MCA, is amended to read:

1 **"75-10-415. Imminent hazard.** Upon receipt of evidence that the handling, storage, treatment,
2 transportation, or disposal of any ~~regulated substance~~, used oil, or hazardous waste may present an
3 imminent and substantial danger to the public health or the environment, the department may commence
4 legal proceedings to immediately restrain or enjoin any person (including any past or present generator, past
5 or present transporter, and past or present owner or operator of a treatment, storage, or disposal facility)
6 who has contributed to or who is contributing to the handling, storage, treatment, transportation, or
7 disposal from engaging in these activities or order the person to take other action as may be necessary,
8 or both. The department may also take appropriate action as may be necessary under this section, including
9 issuing orders necessary or appropriate to protect the public health and the environment."
10

11 **Section 27.** Section 75-10-416, MCA, is amended to read:

12 **"75-10-416. Cleanup orders.** The department may issue a cleanup order to any person who has
13 discharged, deposited, or spilled any ~~regulated substance~~, used oil, or hazardous waste into or onto any
14 land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any
15 material or substance into or onto any land or water so as to result in unlawful or unapproved disposal of
16 ~~a regulated substance~~, used oil, or hazardous waste. The order must direct the person to clean up and
17 remove the ~~regulated substance~~, used oil, or hazardous waste, to treat the ~~regulated substance~~, used oil,
18 or hazardous waste so as to render it nonhazardous, or to take other actions as may be considered
19 reasonable by the department."
20

21 **Section 28.** Section 75-10-420, MCA, is amended to read:

22 **"75-10-420. Venue for legal actions.** All legal actions affecting hazardous waste management
23 facilities in the state must be brought in the county in which the facility is located. ~~All legal actions affecting~~
24 ~~underground storage tanks or the disposal of regulated substances must be brought in the county where~~
25 ~~the underground storage tank is located or, if mutually agreed upon by the affected parties, in the first~~
26 ~~judicial district, Lewis and Clark County."~~
27

28 **Section 29.** Section 75-10-423, MCA, is amended to read:

29 **"75-10-423. Administrative penalties for ~~underground storage tank~~ violations -- appeals -- venue**
30 **for hearings.** (1) A person who violates any of the ~~underground storage tank~~ provisions of ~~this chapter~~

1 ~~[sections 1 through 15]~~ or any ~~underground storage tank~~ rules promulgated under the authority of this
2 ~~chapter [sections 1 through 15]~~ may be assessed and ordered by the department to pay an administrative
3 penalty not to exceed \$500 ~~per~~ for each violation. This limitation on administrative penalties applies only
4 to penalties assessed under this section. Each occurrence of the violation and each day that it remains
5 uncorrected constitutes a separate violation. The department may suspend a portion of the administrative
6 penalty assessed under this section if the condition that caused the assessment of the penalty is corrected
7 within a specified time. Assessment of an administrative penalty under this section may be made in
8 conjunction with any order or other administrative action authorized by ~~Title 75, chapter 11, or by this~~
9 chapter.

10 (2) When the department assesses an administrative penalty under this section, it must have
11 written notice served personally or by certified mail on the alleged violator or the violator's agent. For
12 purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

13 (a) the provision alleged to be violated;

14 (b) the facts alleged to constitute the violation;

15 (c) the amount of the administrative penalty assessed under this section;

16 (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused
17 the assessment of the penalty;

18 (e) the nature of any corrective action that the department requires, whether or not a portion of
19 the penalty is to be suspended;

20 (f) as applicable, the time within which the corrective action is to be taken and the time within
21 which the administrative penalty is to be paid;

22 (g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and
23 nature of any hearing; and

24 (h) that a formal proceeding may be waived.

25 (3) The department shall provide each person assessed a penalty under this section an opportunity
26 for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case
27 provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply
28 to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis
29 and Clark County or the county ~~where~~ in which the alleged violation occurred. This subsection does not
30 apply until the department gives written notice, served personally or by certified mail, to the alleged violator

1 or the violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt.

2 The notice must state:

3 (a) the provision allegedly violated;

4 (b) the facts that constitute the alleged violation;

5 (c) the specific nature of any corrective action that the department requires, estimated costs of
6 compliance with the action, and where to receive help to correct the alleged violation; and

7 (d) a timetable that a reasonable person would consider appropriate for compliance with the alleged
8 violations.

9 (4) The department shall publish a schedule of maximum and minimum penalties for specific
10 violations. In determining appropriate penalties for violations, the department shall consider the gravity of
11 the violations and the potential for significant harm to the public health or the environment. In determining
12 the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused
13 the penalty assessment, the department shall consider the cooperation and the degree of care exercised
14 by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant
15 harm resulted to the public health or the environment from the violation.

16 (5) If the department is unable to collect an administrative penalty assessed under this section or
17 if a person fails to pay all or any portion of an administrative penalty assessed under this section, the
18 department may take action in district court to recover the penalty amount and any additional amounts
19 assessed or sought under ~~Title 75, chapter 11, or~~ this chapter.

20 (6) Action under this section does not bar action under ~~Title 75, chapter 11, or~~ this chapter, or any
21 other remedy available to the department for violations of underground storage tank laws or rules
22 promulgated under those laws.

23 (7) Administrative penalties collected under this section must be deposited in the state general
24 fund."

25

26 **Section 30.** Section 75-10-423, MCA, is amended to read:

27 **"75-10-423. Administrative penalties for ~~underground storage tank~~ violations -- appeals -- venue**
28 **for hearings.** (1) A person who violates any of the ~~underground storage tank~~ provisions of ~~this chapter~~
29 [sections 1 through 15] or any ~~underground storage tank~~ rules promulgated under the authority of ~~this~~
30 ~~chapter~~ [sections 1 through 15] may be assessed and ordered by the department to pay an administrative

1 penalty not to exceed \$500 ~~per~~ for each violation. This limitation on administrative penalties applies only
2 to penalties assessed under this section. Each occurrence of the violation and each day that it remains
3 uncorrected constitutes a separate violation. The department may suspend a portion of the administrative
4 penalty assessed under this section if the condition that caused the assessment of the penalty is corrected
5 within a specified time. Assessment of an administrative penalty under this section may be made in
6 conjunction with any order or other administrative action authorized by ~~Title 75, chapter 11, or by this~~
7 chapter.

8 (2) When the department assesses an administrative penalty under this section, it must have
9 written notice served personally or by certified mail on the alleged violator or the violator's agent. For
10 purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

11 (a) the provision alleged to be violated;

12 (b) the facts alleged to constitute the violation;

13 (c) the amount of the administrative penalty assessed under this section;

14 (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused
15 the assessment of the penalty;

16 (e) the nature of any corrective action that the department requires, whether or not a portion of
17 the penalty is to be suspended;

18 (f) as applicable, the time within which the corrective action is to be taken and the time within
19 which the administrative penalty is to be paid;

20 (g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and
21 nature of any hearing; and

22 (h) that a formal proceeding may be waived.

23 (3) The department shall provide each person assessed a penalty under this section an opportunity
24 for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case
25 provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply
26 to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis
27 and Clark County or the county ~~where~~ in which the alleged violation occurred. This subsection does not
28 apply until the department gives written notice, served personally or by certified mail, to the alleged violator
29 or the violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt.
30 The notice must state:

1 (a) the provision allegedly violated;

2 (b) the facts that constitute the alleged violation;

3 (c) the specific nature of any corrective action that the department requires, estimated costs of
4 compliance with the action, and where to receive help to correct the alleged violation; and

5 (d) a timetable that a reasonable person would consider appropriate for compliance with the alleged
6 violations.

7 (4) The department shall publish a schedule of maximum and minimum penalties for specific
8 violations. In determining appropriate penalties for violations, the department shall consider the gravity of
9 the violations and the potential for significant harm to the public health or the environment. In determining
10 the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused
11 the penalty assessment, the department shall consider the cooperation and the degree of care exercised
12 by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant
13 harm resulted to the public health or the environment from the violation.

14 (5) If the department is unable to collect an administrative penalty assessed under this section or
15 if a person fails to pay all or any portion of an administrative penalty assessed under this section, the
16 department may take action in district court to recover the penalty amount and any additional amounts
17 assessed or sought under ~~Title 75, chapter 11,~~ of this chapter.

18 (6) Action under this section does not bar action under ~~Title 75, chapter 11,~~ or this chapter, or any
19 other remedy available to the department for violations of underground storage tank laws or rules
20 promulgated under those laws.

21 (7) Administrative penalties collected under this section must be deposited in the state ~~general~~
22 special revenue fund and be credited to the environmental rehabilitation and prevention account created
23 pursuant to [section 1 or 2 of LC 823]."

24
25 **Section 31.** Section 75-10-424, MCA, is amended to read:

26 "**75-10-424. Administrative penalty.** (1) The department may assess a person who violates a ~~used~~
27 ~~oil or hazardous waste~~ provision of this part, or a ~~used oil or hazardous waste~~ rule adopted under this part,
28 an administrative penalty, not to exceed \$10,000 ~~per~~ for each violation. Each day of violation constitutes
29 a separate violation, but the maximum penalty may not exceed \$100,000 for any related series of
30 violations. Assessment of an administrative penalty under this section must be made in conjunction with

1 an order or administrative action authorized by this chapter.

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

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

6 (a) the gravity and the number of violations;

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

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

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

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

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

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

17

18 **Section 32.** Section 75-11-203, MCA, is amended to read:

19 **"75-11-203. Definitions.** As used in this part, unless the context requires otherwise, the following
20 definitions apply:

21 (1) "Board" means the board of environmental review provided for in 2-15-3502.

22 (2) "Closure" or "to close" means the process of properly removing or filling in place an
23 underground storage tank that is no longer in service.

24 (3) "Department" means the department of environmental quality provided for in 2-15-3501.

25 (4) (a) "Installation" or "to install" means the placement of an underground storage tank system,
26 including excavation, tank placement, backfilling, and piping of underground portions of the underground
27 storage tank system that store or convey regulated substances. Installation includes repair or modification
28 of an underground storage tank system through such means as tank relining or the repair or replacement
29 of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installation also means
30 installation, repair, or modification of a leak detection device that is external to and not attached to the

1 underground storage tank system and the installation, repair, or modification of a cathodic protection
2 system.

3 (b) The terms do not include the process of conducting a precision (tightness) test to establish the
4 integrity of the underground storage tank system.

5 (5) "Installer" means an individual who installs or closes underground storage tank systems.

6 (6) "License" means a license issued by the department under 75-11-210 to conduct the
7 installation or closure of underground storage tank systems and the installation of leak detection devices
8 or cathodic protection systems.

9 (7) "Licensed installer" means an individual who holds a valid underground storage tank system
10 installer license.

11 (8) "Operator" means a person in control of or having responsibility for the operation, maintenance,
12 or management of an underground storage tank system.

13 (9) "Owner" means a person who owns an underground storage tank system used for the storage,
14 use, or dispensing of regulated substances.

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

18 (11) "Regulated substance" means a regulated substance as defined in ~~75-10-403~~ section 3.

19 (12) "Underground storage tank" or "underground storage tank system" means an underground
20 storage tank, as defined in ~~75-10-403~~ section 3, and, for purposes of this part, includes a leak detection
21 device that is external to and not attached to an underground storage tank system."
22

23 **Section 33.** Section 75-11-302, MCA, is amended to read:

24 **"75-11-302. Definitions.** Except as provided in subsections (2), (15), and (25), the following
25 definitions apply to this part:

26 (1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by
27 the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need
28 for corrective action or compensation for third-party bodily injury or property damage.

29 (2) "Aviation gasoline" means aviation gasoline as defined in 15-70-201. For the purposes of this
30 chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

- 1 (3) "Board" means the petroleum tank release compensation board established in 2-15-2108.
- 2 (4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including
3 death that results from the physical injury, sickness, or disease at any time.
- 4 (5) "Claim" means a written request prepared and submitted by an owner or operator or an agent
5 of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum
6 storage tank.
- 7 (6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal,
8 and other actions necessary to respond to a release.
- 9 (7) "Department" means the department of environmental quality provided for in 2-15-350.
- 10 (8) "Distributor" means a person who is licensed to sell gasoline, as provided in 15-70-202, and
11 who:
- 12 (a) in the state of Montana, engages in the business of producing, refining, manufacturing, or
13 compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;
- 14 (b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in
15 this state;
- 16 (c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in
17 this state;
- 18 (d) is an exporter;
- 19 (e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or
- 20 (f) either blends gasoline with alcohol or blends heating oil with waste oil.
- 21 (9) "Double-walled tank system" means a petroleum storage tank and associated product piping
22 that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that
23 is capable of being monitored for leakage. The design and construction of these tank systems must meet
24 standards of the department and the department of justice fire prevention and investigation bureau. The
25 material used in construction must be compatible with the liquid to be stored in the system, and the system
26 must be designed to prevent the release of any stored liquid.
- 27 (10) "Eligible costs" means expenses reimbursable under 75-11-307.
- 28 (11) "Export" means to transport out of the state of Montana, by means other than in the fuel
29 supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a
30 refinery or pipeline terminal within the state of Montana.

1 (12) "Exporter" means a person who transports, by means other than in the fuel supply tank of a
2 motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline
3 terminal within the state of Montana to a destination outside the state of Montana for sale, use, or
4 consumption beyond the boundaries of the state of Montana.

5 (13) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

6 (14) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

7 (15) "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline
8 does not include JP-4 jet fuel sold to a federal defense fuel supply center.

9 (16) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No.
10 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and
11 bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used
12 in the operation of heating equipment, boilers, or furnaces.

13 (17) "Import" means to receive into a person's possession or custody first after its arrival and
14 coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil
15 shipped or transported into this state from a point of origin outside this state, other than in the fuel supply
16 tank of a motor vehicle.

17 (18) "Operator" means a person in control of or having responsibility for the daily operation of a
18 petroleum storage tank.

19 (19) (a) "Owner" means a person who holds title to, controls, or possesses an interest in a
20 petroleum storage tank.

21 (b) The term does not include a person who holds an interest in a tank solely for financial security,
22 unless through foreclosure or other related actions the holder of a security interest has taken possession
23 of the tank.

24 (20) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock
25 company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

26 (21) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid
27 at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch
28 absolute) or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than
29 a de minimis amount of another substance.

30 (22) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum

1 products and that is:

2 (a) an underground storage tank as defined in ~~75-10-403~~ [section 3];

3 (b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift,
4 shaft, or tunnel;

5 (c) an above ground storage tank with a capacity less than 30,000 gallons; or

6 (d) above ground or underground pipes associated with tanks under subsections (22)(b) and
7 (22)(c), except that pipelines regulated under the following laws are excluded:

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

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

10 (iii) state law comparable to the provisions of law referred to in subsections (22)(d)(i) and (22)(d)(ii),
11 if the facility is intrastate.

12 (23) "Property damage" means:

13 (a) physical injury to tangible property, including loss of use of that property caused by the injury;

14 or

15 (b) loss of use of tangible property that is not physically injured.

16 (24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing
17 of petroleum or petroleum products from a petroleum storage tank into ground water, surface water,
18 surface soils, or subsurface soils.

19 (25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another
20 volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid
21 petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad
22 or a federal defense fuel supply center."
23

24 **Section 34.** Section 75-11-309, MCA, is amended to read:

25 **"75-11-309. Procedures for reimbursement of eligible costs.** (1) An owner or operator seeking
26 reimbursement for eligible costs and the department shall comply with the following procedures:

27 (a) If an owner or operator discovers or is provided evidence that a release may have occurred from
28 the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the
29 department of the release and conduct an initial response to the release in accordance with state and
30 federal laws and rules to protect the public health and safety and the environment.

1 (b) The owner or operator shall conduct a thorough investigation of the release, report the findings
2 to the department, and, as determined necessary by the department, prepare and submit for approval by
3 the department a corrective action plan that conforms with state, tribal (~~where~~ when applicable), and
4 federal corrective action requirements.

5 (c) (i) The department shall review the corrective action plan and forward a copy to a local
6 government office and, ~~where~~ when applicable, a tribal government office with jurisdiction over a corrective
7 action for the release. The local or tribal government office shall inform the department if it wants any
8 modification of the proposed plan.

9 (ii) Based on its own review and comments received from a local government, tribal government,
10 or other source, the department may approve the proposed corrective action plan, make or request the
11 owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or
12 operator. A plan finally approved by the department through any process provided in this subsection (1)(c)
13 is the approved corrective action plan.

14 (iii) After the department approves a corrective action plan, a local government or tribal government
15 may not impose different corrective action requirements on the owner or operator.

16 (d) The department shall notify the owner or operator and the board of its approval of a corrective
17 action plan.

18 (e) The owner or operator shall implement the approved plan. The department may oversee the
19 implementation of the plan, require reports and monitoring from the owner or operator, undertake
20 inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10,
21 ~~parts 4 and part 7, [sections 1 through 15],~~ and other applicable law and rules.

22 (f) The owner or operator shall document in the manner required by the board all expenses incurred
23 in preparing and implementing the corrective action plan. The owner or operator shall submit claims and
24 substantiating documents to the board in the form and manner required by the board. The board shall
25 forward each claim and appropriate documentation to the department. The department shall notify the
26 board of any costs that the department considers not reimbursable because of any failure to meet the
27 requirements of subsection (2). The department shall inform the owner or operator of any notification given
28 to the board.

29 (g) The owner or operator shall document, in the manner required by the board, any payments to
30 a third party for bodily injury or property damage caused by a release. The owner or operator shall submit

1 claims and substantiating documents to the board in the form and manner required by the board.

2 (h) In addition to the documentation in subsections (1)(f) and (1)(g), when the release is claimed
3 to have originated from a double-walled tank system, the owner or operator shall document, in the manner
4 required by the board, the following:

5 (i) the date that the release was discovered;

6 (ii) that the originating tank was part of a double-walled tank system as defined in 75-11-302; and

7 (iii) that the double-walled tank system was properly installed and made of materials and
8 constructed in accordance with applicable department regulations.

9 (2) The board shall review each claim received under subsections (1)(f) and (1)(g), make the
10 determination required by this subsection, inform the owner or operator of its determination, and, as
11 appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board
12 shall affirmatively determine that:

13 (a) the expenses for which reimbursement is claimed:

14 (i) are eligible costs; and

15 (ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a
16 corrective action plan approved by the department or for payments to a third party for bodily injury or
17 property damage; and

18 (b) the owner or operator:

19 (i) is eligible for reimbursement under 75-11-308; and

20 (ii) has complied with this section and any rules adopted pursuant to this section.

21 (3) If an owner or operator disagrees with a board determination under subsection (2), the owner
22 or operator may submit a written request for a hearing before the board. The hearing must be held at a
23 meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later
24 than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner
25 or operator.

26 (4) The board shall obligate money for reimbursement of eligible costs of owners and operators in
27 the order that the costs are finally approved by the board.

28 (5) (a) The board may, at the request of an owner or operator, guarantee in writing the
29 reimbursement of eligible costs that have been approved by the board but for which money is not currently
30 available from the fund for reimbursement.

1 (b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of
2 eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for
3 payment under this subsection (5)(b) does not affect the order in which money in the fund is obligated
4 under subsection (4).

5 (c) When considering a request for a guarantee of payment, the board may require pertinent
6 information or documentation from the owner or operator. The board may grant or deny, in whole or in part,
7 any request for a guarantee."
8

9 **NEW SECTION. SECTION 35. REPEALER. SECTION 75-10-210, MCA, IS REPEALED.**
10

11 **NEW SECTION. Section 36. Codification instruction.** (1) [Sections 1 through 15] are intended to
12 be codified as an integral part of Title 75, chapter 11, and the provisions of Title 75, chapter 11, apply to
13 [sections 1 through 15].

14 (2) The code commissioner shall renumber 75-10-423 and 75-10-447 to Title 75, chapter 11.
15

16 **NEW SECTION. Section 37. Coordination instruction.** (1) If [LC 823] is passed and approved and
17 if it creates an environmental rehabilitation and prevention account in the state special revenue fund, then
18 [sections 12 and ~~30~~ 29] are void.

19 (2) If [LC 823] is not passed and approved or if [LC 823] as passed and approved does not create
20 an environmental rehabilitation and prevention account in the state special revenue fund, then [sections 13
21 and ~~34~~ 30] are void.
22

23 **NEW SECTION. Section 38. Saving clause.** [This act] does not affect rights and duties that
24 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
25 act].

26 (2) Rules adopted pursuant to 75-10-405 that are in effect on [the effective date of this act]
27 continue in effect until amended or repealed pursuant to 75-10-405 or [section 5].
28

-END-

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HOUSE BILL NO. 152
INTRODUCED BY GRADY
BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT SEPARATING THE MONTANA HAZARDOUS WASTE AND UNDERGROUND STORAGE TANK ACT INTO TWO ACTS BY TRANSFERRING THE UNDERGROUND STORAGE TANK PROVISIONS INTO A SEPARATE ACT; ~~AND~~ AMENDING SECTIONS 75-2-216, ~~75-10-210~~, 75-10-401, 75-10-402, 75-10-403, 75-10-404, 75-10-405, 75-10-409, 75-10-410, 75-10-411, 75-10-413, 75-10-415, 75-10-416, 75-10-420, 75-10-423, 75-10-424, 75-11-203, 75-11-302, AND 75-11-309, MCA; AND REPEALING SECTION 75-10-210, MCA."

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.

APPROVED BY COM ON
NATURAL RESOURCES

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8 75-10-401, 75-10-402, 75-10-403, 75-10-404, 75-10-405, 75-10-409, 75-10-410, 75-10-411,
9 75-10-413, 75-10-415, 75-10-416, 75-10-420, 75-10-423, 75-10-424, 75-11-203, 75-11-302, AND
10 75-11-309, MCA; AND REPEALING SECTION 75-10-210, MCA."

11

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

13

14 NEW SECTION. **Section 1. Short title.** [Sections 1 through 15] shall be known and may be cited
15 as the "Montana Underground Storage Tank Act".

16

17 NEW SECTION. **Section 2. Findings and purpose.** The legislature finds that petroleum products
18 and hazardous substances stored in underground tanks are regulated under the federal Resource
19 Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by
20 the state under [sections 1 through 15]. It is the purpose of [sections 1 through 15] to authorize the
21 department to establish, administer, and enforce an underground storage tank leak prevention program for
22 these regulated substances. The department may use the authority provided in [sections 8 through 13] and
23 other appropriate authority provided by law to remedy violations of requirements established under [sections
24 1 through 15].

25

26 NEW SECTION. **Section 3. Definitions.** Unless the context requires otherwise, in [sections 1
27 through 15], the following definitions apply:

28

(1) "Board" means the board of environmental review provided for in 2-15-3502.

29

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

30

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or

1 placing of any regulated substance into or onto the land or water so that the regulated substance or any
2 constituent of the regulated substance may enter the environment or be emitted into the air or discharged
3 into any waters, including ground water.

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

7 (5) "Regulated substance":

8 (a) means:

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

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

12 (b) does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part
13 4.

14 (6) "Storage" means the actual or intended containment of regulated substances, either on a
15 temporary basis or for a period of years.

16 (7) "Underground storage tank":

17 (a) means, except as provided in subsections (7)(b)(i) through (7)(b)(xi):

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

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

23 (b) does not include:

24 (i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100
25 gallons or less, and that is used for storing motor fuel for noncommercial purposes;

26 (ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100
27 gallons or less, and that is used for storing heating oil for consumptive use on the premises where it is
28 stored;

29 (iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used
30 to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on

1 the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;

2 (iv) a septic tank;

3 (v) a pipeline facility, including gathering lines, regulated under:

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

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

6 (C) state law comparable to the provisions of law referred to in subsection (7)(b)(v)(A) or
7 (7)(b)(v)(B), if the facility is intrastate;

8 (vi) a surface impoundment, pit, pond, or lagoon;

9 (vii) a storm water or wastewater collection system;

10 (viii) a flow-through process tank;

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

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

15 (xi) any pipe connected to a tank described in subsections (7)(b)(i) through (7)(b)(ix).

16
17 **NEW SECTION. Section 4. Powers of department.** (1) The department may:

18 (a) administer and enforce the provisions of [sections 1 through 15], rules implementing [sections
19 1 through 15], and orders and permits issued pursuant to [sections 1 through 15];

20 (b) accept and administer grants from the federal government and from other sources, public and
21 private; and

22 (c) abate public nuisances that affect the public health and welfare or the environment and that
23 arise from or in connection with the past or present handling or disposal of any regulated substance.

24 (2) The department shall integrate all provisions of [sections 1 through 15] with other laws
25 administered by the department to avoid unnecessary duplication.

26
27 **NEW SECTION. Section 5. Administrative rules.** The department may adopt, amend, or repeal
28 rules for the prevention and correction of leakage from underground storage tanks, including:

29 (1) reporting by owners and operators;

30 (2) financial responsibility;

- 1 (3) release detection, prevention, and corrective action;
- 2 (4) standards for design, construction, installation, and closure;
- 3 (5) development of a schedule of fees, not to exceed \$50 for a tank over 1,100 gallons and not
4 to exceed \$20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state
5 and local costs of implementing an underground storage tank program;
- 6 (6) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals
7 under 75-10-423; and
- 8 (7) delegation of authority and funds to local agents for inspections and implementation. The
9 delegation of authority to local agents must complement and may not duplicate existing authority for
10 implementation of rules adopted by the department of justice that relate to underground storage tanks.

11

12 **NEW SECTION. Section 6. Underground storage tank leak report -- inspections -- sampling.** (1)

13 If an owner or operator of an underground storage tank discovers or is provided with evidence that a tank
14 may have leaked, the owner or operator shall immediately notify the department that a leak may exist.

15 (2) (a) An employee or agent of the department, at any reasonable time and upon presentation of
16 credentials, may enter upon and inspect any property, premises, or place at which:

17 (i) regulated substances are or have been stored in underground storage tanks if the department
18 has reason to suspect that the tanks are not in compliance with the provisions of [sections 1 through 15]
19 or rules adopted under [sections 1 through 15]; or

20 (ii) records pertinent to the regulated substances activities are maintained.

21 (b) The employee or agent of the department may have access to and may copy any records
22 relating to the regulated substances for the purposes of developing rules under [sections 1 through 15] or
23 enforcing the provisions of [sections 1 through 15], rules adopted under [sections 1 through 15], or a
24 permit or an order issued under [sections 1 through 15].

25 (3) In the course of an inspection under this section, the employee or agent of the department may
26 take samples of any regulated substance or suspected regulated substance, including samples from any soil
27 or ground water. If the employee or agent of the department takes a sample of any regulated substance
28 or suspected regulated substance, the employee or agent shall, prior to leaving the premises, give to the
29 owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of
30 each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a

1 copy of the results of the analysis must be furnished to the owner, operator, or agent in charge.

2

3 **NEW SECTION. Section 7. Regulated substance inventory.** (1) The department is authorized to
4 conduct an inventory of sites and locations in the state where regulated substances have been stored or
5 disposed of at any time.

6 (2) If the department determines that the presence of a regulated substance or the release of the
7 regulated substance may present a substantial hazard to the public health or to the environment, it may
8 issue an order requiring the owner or operator of the site to conduct reasonable monitoring, testing,
9 analysis, and reporting with respect to the site in order to ascertain the nature and extent of the hazard.

10 (3) An order issued under subsection (2) must require that the person to whom the order is issued
11 submit to the department within 30 days a proposal for carrying out the required monitoring, testing,
12 analysis, and reporting.

13 (4) If the department determines that the owner or operator referred to in subsection (2) is not able
14 to conduct monitoring, testing, and analysis in a satisfactory manner, the department may conduct the
15 activities.

16 (5) For the purposes of carrying out this section, the department may exercise the powers set forth
17 in [section 6].

18

19 **NEW SECTION. Section 8. Administrative enforcement.** (1) When the department believes that
20 a violation of [sections 1 through 15] or a rule adopted under [sections 1 through 15] has occurred, it may
21 serve written notice of the violation personally or by certified mail on the alleged violator or the violator's
22 agent. The notice must specify the provision of [sections 1 through 15] or the rule alleged to be violated
23 and the facts alleged to constitute a violation and may include an order to take necessary corrective action
24 within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after
25 the notice is served, the person named requests, in writing, a hearing before the board. On receipt of the
26 request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

27 (2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it
28 shall either affirm or modify the department's order. An order issued by the department or by the board
29 may prescribe the date by which the violation must cease and may prescribe time limits for particular
30 action. If, after hearing, the board finds that a violation has not occurred, it shall rescind the department's

1 order.

2 (3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

3 (a) require the alleged violator to appear before the board or department, by subpoena or subpoena
4 duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained
5 of or to provide information regarding the alleged violation or its actual or potential impact on the public
6 health and welfare or the environment;

7 (b) initiate action under [section 9, 10, 12, or 13]; or

8 (c) assess administrative penalties and issue corrective action orders under 75-10-423.

9 (4) In the case of disobedience of any subpoena issued and served under this section or of the
10 refusal of any witness to testify as to any material matter with regard to which the witness may be
11 interrogated in a hearing or investigation before the board or the department, the board or department may
12 apply to any district court in the state for an order to compel compliance with the subpoena or the giving
13 of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is
14 found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is
15 punishable by contempt of court in the same manner and by the same procedures as is provided for like
16 conduct committed in the course of civil actions in district court.

17 (5) This section does not prevent the board or department from making efforts to obtain voluntary
18 compliance through warning, conference, or any other appropriate means.

19

20 **NEW SECTION. Section 9. Injunctions.** The department may institute and maintain, in the name
21 of the state, actions for injunctive relief as provided in Title 27, chapter 19, to:

22 (1) immediately restrain any person from engaging in any unauthorized activity that is endangering
23 or causing damage to the public health or to the environment;

24 (2) enjoin a violation of [sections 1 through 15], a rule adopted under [sections 1 through 15], or
25 an order of the department or the board; or

26 (3) require compliance with [sections 1 through 15], a rule adopted under [sections 1 through 15],
27 or an order of the department or the board.

28

29 **NEW SECTION. Section 10. Imminent hazard.** Upon receipt of evidence that the storage or disposal
30 of any regulated substance may present an imminent and substantial danger to the public health or to the

1 environment, the department may commence legal proceedings to immediately restrain or enjoin any person
2 who has contributed to or who is contributing to the storage or disposal from engaging in these activities
3 or order the person to take other action as may be necessary, or both. The department may also take
4 appropriate action as may be necessary under this section, including issuing orders necessary or appropriate
5 to protect the public health and the environment.

6
7 **NEW SECTION. Section 11. Cleanup orders.** The department may issue a cleanup order to any
8 person who has discharged, deposited, or spilled any regulated substance into or onto any land or water
9 in an unlawful or unapproved manner or who has discharged, deposited, or spilled any regulated substance
10 into or onto any land or water so as to result in unlawful or unapproved disposal of a regulated substance.
11 The order must direct the person to clean up and remove the regulated substance, to treat the regulated
12 substance, or to take other actions as may be considered reasonable by the department.

13
14 **NEW SECTION. Section 12. Civil penalties.** (1) A person who violates any provision of [sections
15 1 through 15], a rule adopted under [sections 1 through 15], or an order of the department or the board
16 is subject to a civil penalty not to exceed \$10,000 for each violation. Each day of violation constitutes a
17 separate violation.

18 (2) The department may institute and maintain in the name of the state any enforcement
19 proceedings under this section. Upon request of the department, the attorney general or the county
20 attorney of the county of violation shall petition the district court to impose, assess, and recover the civil
21 penalty.

22 (3) Action under this section does not bar enforcement of [sections 1 through 15], rules adopted
23 under [sections 1 through 15], or orders of the department or the board.

24 (4) Money collected under this section must be deposited in the state general fund.

25
26
27 **NEW SECTION. Section 13. Civil penalties.** (1) A person who violates any provision of [sections
28 1 through 15], a rule adopted under [sections 1 through 15], or an order of the department or the board
29 is subject to a civil penalty not to exceed \$10,000 for each violation. Each day of violation constitutes a
30 separate violation.

1 (2) The department may institute and maintain in the name of the state any enforcement
2 proceedings under this section. Upon request of the department, the attorney general or the county
3 attorney of the county of violation shall petition the district court to impose, assess, and recover the civil
4 penalty.

5 (3) Action under this section does not bar enforcement of [sections 1 through 15], rules adopted
6 under [sections 1 through 15], or orders of the department or the board.

7 (4) Money collected under this section must be deposited in the state special revenue fund and
8 credited to the environmental rehabilitation and prevention account created pursuant to [section 1 or 2 of
9 LC 823].

10
11 **NEW SECTION.** **Section 14. Venue for legal actions.** All legal actions affecting underground
12 storage tanks or the disposal of regulated substances must be brought in the county in which the
13 underground storage tank is located or, if mutually agreed upon by the affected parties, in the first judicial
14 district, Lewis and Clark County.

15
16 **NEW SECTION.** **Section 15. Construction in event of conflict.** The provisions of [sections 1
17 through 15] and rules promulgated pursuant to [sections 1 through 15] govern if they conflict with other
18 provisions of Montana law or any action taken by the department under those provisions.

19
20 **Section 16.** Section 75-2-216, MCA, is amended to read:

21 "~~75-2-216. Moratorium on certain solid and hazardous waste incinerator permits. (1) Except for~~
22 ~~remedial actions pursuant to Title 75, chapter 10, part 7, or corrective actions pursuant to 75-10-406(2)(c)~~
23 ~~or 75-10-416, or [section 5(3) or 11], until October 1, 1993, the department may not issue a permit to a~~
24 ~~solid or hazardous waste incinerator subject to the requirements of 75-2-215.~~

25 ~~(2) Notwithstanding the provisions of (1), the~~ **ADOPTION OF RULES FOR SOLID OR HAZARDOUS**
26 **WASTE INCINERATOR PERMITS.** **THE** department shall proceed in a reasonable and timely manner in
27 adopting rules implementing 75-2-215 ~~and in processing air quality permit applications required under~~
28 ~~75-2-211 for solid or hazardous waste incinerators."~~

29
30 ~~**Section 17.** Section 75-10-210, MCA, is amended to read:~~

1 ~~"75-10-210. Moratorium on certain solid waste facility permits. (1) Except for remedial actions~~
2 ~~pursuant to Title 75, chapter 10, part 7, or corrective actions pursuant to 75-10-405(2)(c) or 75-10-416,~~
3 ~~or [section 5(3) or 11], until October 1, 1993, the department may not issue a license under 75-10-221~~
4 ~~for a solid waste facility if the facility is also subject to the requirements of 75-2-215.~~

5 ~~(2) Notwithstanding the provisions of (1), the department shall proceed in a reasonable and timely~~
6 ~~manner in processing solid waste applications required under 75-10-221."~~

7
8 **Section 17.** Section 75-10-401, MCA, is amended to read:

9 **"75-10-401. Short title.** This part shall be known and may be cited as the "Montana Hazardous
10 ~~Waste and Underground Storage Tank Act".~~"

11
12 **Section 18.** Section 75-10-402, MCA, is amended to read:

13 **"75-10-402. Findings and purpose.** (1) The legislature finds that the safe and proper management
14 of hazardous wastes and used oil, the permitting of hazardous waste facilities, and the siting of facilities
15 are matters for statewide regulation and are environmental issues that should properly be addressed and
16 controlled by the state rather than by the federal government.

17 (2) It is the purpose of this part and it is the policy of this state to protect the public health and
18 safety, the health of living organisms, and the environment from the effects of the improper, inadequate,
19 or unsound management of hazardous wastes and used oil; to establish a program of regulation over used
20 oil and the generation, storage, transportation, treatment, and disposal of hazardous wastes; to ~~assure~~
21 ensure the safe and adequate management of hazardous wastes and used oil within this state; and to
22 authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the
23 federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 through 6987), as amended.

24 ~~(3) The legislature also finds that petroleum products and hazardous substances stored in~~
25 ~~underground tanks are a separate category of substances that are regulated under the federal Resource~~
26 ~~Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by~~
27 ~~the state under the Montana Hazardous Waste and Underground Storage Tank Act. It is the purpose of this~~
28 ~~part to authorize the department to establish, administer, and enforce an underground storage tank leak~~
29 ~~prevention program for these regulated substances. The department may use the authority provided in~~
30 ~~75-10-413 through 75-10-417 and other appropriate authority provided by law to remedy violations of~~

1 ~~underground storage tank requirements established under this part."~~

2
3 **Section 19.** Section 75-10-403, MCA, is amended to read:

4 **"75-10-403. Definitions.** Unless the context requires otherwise, in this part, the following
5 definitions apply:

6 (1) "Board" means the board of environmental review provided for in 2-15-3502.

7 (2) "Department" means the department of environmental quality provided for in 2-15-3501.

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

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

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

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

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

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

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

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

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

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

29 (10) "Hazardous waste transfer facility" means any land, structure, or improvement, including
30 loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary

1 storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period
 2 of 10 days or less during the normal course of transportation up to but not including the point of ultimate
 3 treatment, storage, or disposal.

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

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

10 ~~(13) "Regulated substance":~~

11 ~~(a) means:~~

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

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

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

16 ~~(14)(13) "Storage" means the actual or intended containment of regulated substances, hazardous~~
 17 ~~wastes, or both, either on a temporary basis or for a period of years.~~

18 ~~(15)(14) "Transportation" means the movement of hazardous wastes from the point of generation~~
 19 ~~to any intermediate points and finally to the point of ultimate storage or disposal.~~

20 ~~(16)(15) "Transporter" means a person engaged in the offsite transportation of hazardous waste~~
 21 ~~by air, rail, highway, or water.~~

22 ~~(17)(16) "Treatment" means a method, technique, or process, including neutralization, designed~~
 23 ~~to change the physical, chemical, or biological character or composition of any hazardous waste so as to~~
 24 ~~neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery,~~
 25 ~~amenable for storage, or reduced in volume.~~

26 ~~(18) "Underground storage tank":~~

27 ~~(a) means, except as provided in subsections (18)(b)(i) through (18)(b)(xi):~~

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

30 ~~(ii) any underground pipes used to contain or transport a regulated substance and connected to a~~

1 ~~storage tank, whether the storage tank is entirely aboveground, partially aboveground, or entirely~~
2 ~~underground;~~

3 ~~(b) does not include:~~

4 ~~(i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100~~
5 ~~gallons or less, and that is used for storing motor fuel for noncommercial purposes;~~

6 ~~(ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100~~
7 ~~gallons or less, and that is used for storing heating oil for consumptive use on the premises where it is~~
8 ~~stored;~~

9 ~~(iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used~~
10 ~~to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on~~
11 ~~the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;~~

12 ~~(iv) a septic tank;~~

13 ~~(v) a pipeline facility, including gathering lines, regulated under:~~

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

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

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

18 ~~(vi) a surface impoundment, pit, pond, or lagoon;~~

19 ~~(vii) a storm water or wastewater collection system;~~

20 ~~(viii) a flow through process tank;~~

21 ~~(ix) a liquid trap or associated gathering lines directly related to oil or gas production and gathering~~
22 ~~operations;~~

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

25 ~~(xi) any pipe connected to a tank described in subsections (18)(b)(i) through (18)(b)(ix).~~

26 ~~(19)(17) "Used oil" means any oil that has been refined from crude oil or any synthetic oil, either~~
27 ~~of which has been used and as a result of that use is contaminated by physical or chemical impurities."~~

29 **Section 20.** Section 75-10-404, MCA, is amended to read:

30 **"75-10-404. Powers of department.** (1) The department may:

1 (a) administer and enforce the provisions of this part, rules implementing this part, and orders and
2 permits issued pursuant to this part;

3 (b) conduct and publish studies on hazardous wastes and hazardous waste management;

4 (c) initiate, conduct, and support research, demonstration projects, and investigation, as its
5 resources may allow, and coordinate state agency research programs pertaining to hazardous waste
6 management;

7 (d) accept and administer grants from the federal government and from other sources, public and
8 private; and

9 (e) abate public nuisances that affect the public health and welfare or the environment and that
10 arise from or in connection with the past or present handling or disposal of any hazardous waste or
11 regulated substance.

12 (2) The department shall integrate all provisions of this part with other laws administered by the
13 department to avoid unnecessary duplication. Furthermore, the department shall coordinate its activities
14 under this part with the program administered by the department of agriculture under the Montana
15 Pesticides Act, the programs administered by the department of environmental quality related to mining and
16 mine reclamation, the program administered by the department of public service regulation related to
17 hazardous material transportation, and provisions of the Montana Major Facility Siting Act. The integration
18 and coordination must be effected only to the extent that it can be done in a manner consistent with the
19 goals and policies of this part and the other laws referred to in this section."
20

21 **Section 21.** Section 75-10-405, MCA, is amended to read:

22 **"75-10-405. Administrative rules.** (1) The department may, subject to the provisions of
23 75-10-107, adopt, amend, or repeal rules governing hazardous waste and used oil, including but not limited
24 to the following:

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

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

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

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

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

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

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

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

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

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

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

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

15 (iv) the registration of hazardous waste generators;

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

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

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

21 (m) identification and classification of used oil that is subject to regulation and used oil that is not
22 subject to regulation;

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

24 (o) other rules that are necessary to obtain and maintain authorization under the federal program.

25 (2) Notwithstanding the provisions of 75-10-107, the department may not adopt rules under this
26 part that are more restrictive than those promulgated by the federal government under the Resource
27 Conservation and Recovery Act of 1976, as amended, except that the department:

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

30 (b) may require hazardous waste generators and hazardous waste management facilities to report

1 on an annual rather than on a biennial basis;

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

4 ~~(i) reporting by owners and operators;~~

5 ~~(ii) financial responsibility;~~

6 ~~(iii) release detection, prevention, and corrective action;~~

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

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

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

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

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

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

19 ~~(f)~~(e) may adopt rules and performance standards for industrial furnaces and boilers that burn
20 hazardous wastes. The rules and performance standards:

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

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

23

24 **Section 22.** Section 75-10-409, MCA, is amended to read:

25 **"75-10-409. Compliance monitoring and reporting —~~underground storage tank leak report.~~** (1) The
26 department may, as a condition of a permit, require the owner or operator of a facility to install equipment,
27 collect and analyze samples, and maintain records in order to monitor and demonstrate compliance with
28 this part, rules adopted under this part, any order of the board or department, and permit conditions.

29 (2) The department may require the owner or operator of a facility to submit reports on ~~such~~ the
30 compliance monitoring activities, including notice to the department of any noncompliance with permit

1 conditions, rules adopted under this part, the provisions of this part, or any orders of the department or
2 board.

3 ~~(3) If an owner or operator of an underground storage tank discovers or is provided with evidence~~
4 ~~that the tank may have leaked, he must immediately notify the department that a leak may exist."~~

5

6 **Section 23.** Section 75-10-410, MCA, is amended to read:

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

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

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

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

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

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

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

1 agent in charge."

2

3 **Section 24.** Section 75-10-411, MCA, is amended to read:

4 "**75-10-411. ~~Regulated substance and hazardous~~ Hazardous waste site inventory.** (1) The
5 department is authorized to conduct an inventory of sites and locations in the state where ~~regulated~~
6 ~~substances or~~ hazardous wastes have been stored or disposed of at any time.

7 (2) If the department determines that the presence of a ~~regulated substance or~~ hazardous waste
8 or the release of the ~~regulated substance or~~ waste or any waste constituent may present a substantial
9 hazard to the public health or the environment, it may issue an order requiring the owner or operator of the
10 facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the site
11 in order to ascertain the nature and extent of the hazard.

12 (3) In the case of any facility or site not in operation at the time that a determination is made under
13 subsection (2) with respect to the facility or site, if the department finds that the owner of ~~such~~ the facility
14 or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at
15 ~~such~~ the facility or site and of its potential for release, it may issue an order requiring the most recent
16 previous owner or operator of the facility or site who could reasonably be expected to have ~~such~~ actual
17 knowledge to carry out the actions referred to in subsection (2).

18 (4) An order issued under subsection (2) or (3) must require that the person to whom the order is
19 issued submit to the department within 30 days a proposal for carrying out the required monitoring, testing,
20 analysis, and reporting.

21 (5) If the department determines that the owner or operator referred to in subsection (2) or (3) is
22 not able to conduct monitoring, testing, and analysis in a satisfactory manner, the department may conduct
23 ~~such~~ the activities.

24 (6) For the purposes of carrying out this section, the department may exercise the powers set forth
25 in 75-10-410."

26

27 **Section 25.** Section 75-10-413, MCA, is amended to read:

28 "**75-10-413. Administrative enforcement.** (1) When the department believes that a violation of this
29 part, a rule adopted under this part, or a permit provision has occurred, it may serve written notice of the
30 violation personally or by certified mail on the alleged violator or the violator's agent. The notice must

1 specify the provision of this part, the rule, or the permit provision alleged to be violated and the facts
2 alleged to constitute a violation and may include an order to take necessary corrective action within a
3 reasonable period of time stated in the order. The order becomes final unless, within 30 days after the
4 notice is served, the person named requests, in writing, a hearing before the board. On receipt of the
5 request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

6 (2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it
7 shall either affirm or modify the department's order ~~previously issued~~. An order issued by the department
8 or by the board may prescribe the date by which the violation must cease and may prescribe time limits
9 for particular action. If, after hearing, the board finds that a violation has not occurred, it shall rescind the
10 department's order.

11 (3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

12 (a) require the alleged violator to appear before the board or department, by subpoena or subpoena
13 duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained
14 of or to provide information regarding the alleged violation or its actual or potential impact on public health
15 and welfare or the environment; or

16 (b) initiate action under 75-10-414, 75-10-417, or 75-10-418; ~~or~~

17 ~~(c) for underground storage tank violations, assess administrative penalties and issue corrective
18 action orders under 75-10-423.~~

19 (4) In the case of disobedience of any subpoena issued and served under this section or of the
20 refusal of any witness to testify as to any material matter with regard to which the witness may be
21 interrogated in a hearing or investigation before the board or the department, the board or department may
22 apply to any district court in the state for an order to compel compliance with the subpoena or the giving
23 of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is
24 found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is
25 punishable by contempt of court in the same manner and by the same procedures as is provided for like
26 conduct committed in the course of civil actions in district court.

27 (5) This section does not prevent the board or department from making efforts to obtain voluntary
28 compliance through warning, conference, or any other appropriate means."

29
30 **Section 26.** Section 75-10-415, MCA, is amended to read:

1 **"75-10-415. Imminent hazard.** Upon receipt of evidence that the handling, storage, treatment,
 2 transportation, or disposal of any ~~regulated substance~~, used oil, or hazardous waste may present an
 3 imminent and substantial danger to the public health or the environment, the department may commence
 4 legal proceedings to immediately restrain or enjoin any person (including any past or present generator, past
 5 or present transporter, and past or present owner or operator of a treatment, storage, or disposal facility)
 6 who has contributed to or who is contributing to the handling, storage, treatment, transportation, or
 7 disposal from engaging in these activities or order the person to take other action as may be necessary,
 8 or both. The department may also take appropriate action as may be necessary under this section, including
 9 issuing orders necessary or appropriate to protect the public health and the environment."

10
 11 **Section 27.** Section 75-10-416, MCA, is amended to read:

12 **"75-10-416. Cleanup orders.** The department may issue a cleanup order to any person who has
 13 discharged, deposited, or spilled any ~~regulated substance~~, used oil, or hazardous waste into or onto any
 14 land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any
 15 material or substance into or onto any land or water so as to result in unlawful or unapproved disposal of
 16 ~~a regulated substance~~, used oil, or hazardous waste. The order must direct the person to clean up and
 17 remove the ~~regulated substance~~, used oil, or hazardous waste, to treat the ~~regulated substance~~, used oil,
 18 or hazardous waste so as to render it nonhazardous, or to take other actions as may be considered
 19 reasonable by the department."

20
 21 **Section 28.** Section 75-10-420, MCA, is amended to read:

22 **"75-10-420. Venue for legal actions.** All legal actions affecting hazardous waste management
 23 facilities in the state must be brought in the county in which the facility is located. ~~All legal actions affecting~~
 24 ~~underground storage tanks or the disposal of regulated substances must be brought in the county where~~
 25 ~~the underground storage tank is located or, if mutually agreed upon by the affected parties, in the first~~
 26 ~~judicial district, Lewis and Clark County."~~

27
 28 **Section 29.** Section 75-10-423, MCA, is amended to read:

29 **"75-10-423. Administrative penalties for ~~underground storage tank~~ violations -- appeals -- venue**
 30 **for hearings.** (1) A person who violates any of the ~~underground storage tank~~ provisions of ~~this chapter~~

1 ~~[sections 1 through 15]~~ or any ~~underground storage tank~~ rules promulgated under the authority of ~~this~~
2 ~~chapter [sections 1 through 15]~~ may be assessed and ordered by the department to pay an administrative
3 penalty not to exceed \$500 ~~per~~ for each violation. This limitation on administrative penalties applies only
4 to penalties assessed under this section. Each occurrence of the violation and each day that it remains
5 uncorrected constitutes a separate violation. The department may suspend a portion of the administrative
6 penalty assessed under this section if the condition that caused the assessment of the penalty is corrected
7 within a specified time. Assessment of an administrative penalty under this section may be made in
8 conjunction with any order or other administrative action authorized by ~~Title 75, chapter 11, or by this~~
9 chapter.

10 (2) When the department assesses an administrative penalty under this section, it must have
11 written notice served personally or by certified mail on the alleged violator or the violator's agent. For
12 purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

- 13 (a) the provision alleged to be violated;
- 14 (b) the facts alleged to constitute the violation;
- 15 (c) the amount of the administrative penalty assessed under this section;
- 16 (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused
17 the assessment of the penalty;
- 18 (e) the nature of any corrective action that the department requires, whether or not a portion of
19 the penalty is to be suspended;
- 20 (f) as applicable, the time within which the corrective action is to be taken and the time within
21 which the administrative penalty is to be paid;
- 22 (g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and
23 nature of any hearing; and
- 24 (h) that a formal proceeding may be waived.

25 (3) The department shall provide each person assessed a penalty under this section an opportunity
26 for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case
27 provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply
28 to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis
29 and Clark County or the county ~~where~~ in which the alleged violation occurred. This subsection does not
30 apply until the department gives written notice, served personally or by certified mail, to the alleged violator

1 or the violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt.

2 The notice must state:

3 (a) the provision allegedly violated;

4 (b) the facts that constitute the alleged violation;

5 (c) the specific nature of any corrective action that the department requires, estimated costs of
6 compliance with the action, and where to receive help to correct the alleged violation; and

7 (d) a timetable that a reasonable person would consider appropriate for compliance with the alleged
8 violations.

9 (4) The department shall publish a schedule of maximum and minimum penalties for specific
10 violations. In determining appropriate penalties for violations, the department shall consider the gravity of
11 the violations and the potential for significant harm to the public health or the environment. In determining
12 the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused
13 the penalty assessment, the department shall consider the cooperation and the degree of care exercised
14 by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant
15 harm resulted to the public health or the environment from the violation.

16 (5) If the department is unable to collect an administrative penalty assessed under this section or
17 if a person fails to pay all or any portion of an administrative penalty assessed under this section, the
18 department may take action in district court to recover the penalty amount and any additional amounts
19 assessed or sought under ~~Title 75, chapter 11, or~~ this chapter.

20 (6) Action under this section does not bar action under ~~Title 75, chapter 11, or~~ this chapter, or any
21 other remedy available to the department for violations of underground storage tank laws or rules
22 promulgated under those laws.

23 (7) Administrative penalties collected under this section must be deposited in the state general
24 fund."

25

26 **Section 30.** Section 75-10-423, MCA, is amended to read:

27 "**75-10-423. Administrative penalties for ~~underground storage tank~~ violations -- appeals -- venue**
28 **for hearings.** (1) A person who violates any of the ~~underground storage tank~~ provisions of ~~this chapter~~
29 [sections 1 through 15] or any ~~underground storage tank~~ rules promulgated under the authority of ~~this~~
30 ~~chapter~~ [sections 1 through 15] may be assessed and ordered by the department to pay an administrative

1 penalty not to exceed \$500 ~~per~~ for each violation. This limitation on administrative penalties applies only
2 to penalties assessed under this section. Each occurrence of the violation and each day that it remains
3 uncorrected constitutes a separate violation. The department may suspend a portion of the administrative
4 penalty assessed under this section if the condition that caused the assessment of the penalty is corrected
5 within a specified time. Assessment of an administrative penalty under this section may be made in
6 conjunction with any order or other administrative action authorized by ~~Title 75, chapter 11, or by this~~
7 chapter.

8 (2) When the department assesses an administrative penalty under this section, it must have
9 written notice served personally or by certified mail on the alleged violator or the violator's agent. For
10 purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

11 (a) the provision alleged to be violated;

12 (b) the facts alleged to constitute the violation;

13 (c) the amount of the administrative penalty assessed under this section;

14 (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused
15 the assessment of the penalty;

16 (e) the nature of any corrective action that the department requires, whether or not a portion of
17 the penalty is to be suspended;

18 (f) as applicable, the time within which the corrective action is to be taken and the time within
19 which the administrative penalty is to be paid;

20 (g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and
21 nature of any hearing; and

22 (h) that a formal proceeding may be waived.

23 (3) The department shall provide each person assessed a penalty under this section an opportunity
24 for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case
25 provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply
26 to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis
27 and Clark County or the county ~~where~~ in which the alleged violation occurred. This subsection does not
28 apply until the department gives written notice, served personally or by certified mail, to the alleged violator
29 or the violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt.
30 The notice must state:

- 1 (a) the provision allegedly violated;
- 2 (b) the facts that constitute the alleged violation;
- 3 (c) the specific nature of any corrective action that the department requires, estimated costs of
- 4 compliance with the action, and where to receive help to correct the alleged violation; and
- 5 (d) a timetable that a reasonable person would consider appropriate for compliance with the alleged
- 6 violations.

7 (4) The department shall publish a schedule of maximum and minimum penalties for specific

8 violations. In determining appropriate penalties for violations, the department shall consider the gravity of

9 the violations and the potential for significant harm to the public health or the environment. In determining

10 the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused

11 the penalty assessment, the department shall consider the cooperation and the degree of care exercised

12 by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant

13 harm resulted to the public health or the environment from the violation.

14 (5) If the department is unable to collect an administrative penalty assessed under this section or

15 if a person fails to pay all or any portion of an administrative penalty assessed under this section, the

16 department may take action in district court to recover the penalty amount and any additional amounts

17 assessed or sought under ~~Title 75, chapter 11,~~ or this chapter.

18 (6) Action under this section does not bar action under ~~Title 75, chapter 11,~~ or this chapter, or any

19 other remedy available to the department for violations of underground storage tank laws or rules

20 promulgated under those laws.

21 (7) Administrative penalties collected under this section must be deposited in the state ~~general~~

22 special revenue fund and be credited to the environmental rehabilitation and prevention account created

23 pursuant to [section 1 or 2 of LC 823]."

24

25 **Section 31.** Section 75-10-424, MCA, is amended to read:

26 **"75-10-424. Administrative penalty.** (1) The department may assess a person who violates a ~~used~~

27 ~~oil or hazardous waste~~ provision of this part, or a ~~used oil or hazardous waste~~ rule adopted under this part,

28 an administrative penalty, not to exceed \$10,000 ~~per~~ for each violation. Each day of violation constitutes

29 a separate violation, but the maximum penalty may not exceed \$100,000 for any related series of

30 violations. Assessment of an administrative penalty under this section must be made in conjunction with

1 an order or administrative action authorized by this chapter.

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

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

6 (a) the gravity and the number of violations;

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

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

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

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

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

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

17

18 **Section 32.** Section 75-11-203, MCA, is amended to read:

19 **"75-11-203. Definitions.** As used in this part, unless the context requires otherwise, the following
20 definitions apply:

21 (1) "Board" means the board of environmental review provided for in 2-15-3502.

22 (2) "Closure" or "to close" means the process of properly removing or filling in place an
23 underground storage tank that is no longer in service.

24 (3) "Department" means the department of environmental quality provided for in 2-15-3501.

25 (4) (a) "Installation" or "to install" means the placement of an underground storage tank system,
26 including excavation, tank placement, backfilling, and piping of underground portions of the underground
27 storage tank system that store or convey regulated substances. Installation includes repair or modification
28 of an underground storage tank system through such means as tank relining or the repair or replacement
29 of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installation also means
30 installation, repair, or modification of a leak detection device that is external to and not attached to the

1 underground storage tank system and the installation, repair, or modification of a cathodic protection
2 system.

3 (b) The terms do not include the process of conducting a precision (tightness) test to establish the
4 integrity of the underground storage tank system.

5 (5) "Installer" means an individual who installs or closes underground storage tank systems.

6 (6) "License" means a license issued by the department under 75-11-210 to conduct the
7 installation or closure of underground storage tank systems and the installation of leak detection devices
8 or cathodic protection systems.

9 (7) "Licensed installer" means an individual who holds a valid underground storage tank system
10 installer license.

11 (8) "Operator" means a person in control of or having responsibility for the operation, maintenance,
12 or management of an underground storage tank system.

13 (9) "Owner" means a person who owns an underground storage tank system used for the storage,
14 use, or dispensing of regulated substances.

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

18 (11) "Regulated substance" means a regulated substance as defined in ~~75-10-403~~ [section 3].

19 (12) "Underground storage tank" or "underground storage tank system" means an underground
20 storage tank, as defined in ~~75-10-403~~ [section 3], and, for purposes of this part, includes a leak detection
21 device that is external to and not attached to an underground storage tank system."
22

23 **Section 33.** Section 75-11-302, MCA, is amended to read:

24 **"75-11-302. Definitions.** Except as provided in subsections (2), (15), and (25), the following
25 definitions apply to this part:

26 (1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by
27 the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need
28 for corrective action or compensation for third-party bodily injury or property damage.

29 (2) "Aviation gasoline" means aviation gasoline as defined in 15-70-201. For the purposes of this
30 chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

- 1 (3) "Board" means the petroleum tank release compensation board established in 2-15-2108.
- 2 (4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including
3 death that results from the physical injury, sickness, or disease at any time.
- 4 (5) "Claim" means a written request prepared and submitted by an owner or operator or an agent
5 of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum
6 storage tank.
- 7 (6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal,
8 and other actions necessary to respond to a release.
- 9 (7) "Department" means the department of environmental quality provided for in 2-15-3501.
- 10 (8) "Distributor" means a person who is licensed to sell gasoline, as provided in 15-70-202, and
11 who:
- 12 (a) in the state of Montana, engages in the business of producing, refining, manufacturing, or
13 compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;
- 14 (b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in
15 this state;
- 16 (c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in
17 this state;
- 18 (d) is an exporter;
- 19 (e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or
- 20 (f) either blends gasoline with alcohol or blends heating oil with waste oil.
- 21 (9) "Double-walled tank system" means a petroleum storage tank and associated product piping
22 that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that
23 is capable of being monitored for leakage. The design and construction of these tank systems must meet
24 standards of the department and the department of justice fire prevention and investigation bureau. The
25 material used in construction must be compatible with the liquid to be stored in the system, and the system
26 must be designed to prevent the release of any stored liquid.
- 27 (10) "Eligible costs" means expenses reimbursable under 75-11-307.
- 28 (11) "Export" means to transport out of the state of Montana, by means other than in the fuel
29 supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a
30 refinery or pipeline terminal within the state of Montana.

1 (12) "Exporter" means a person who transports, by means other than in the fuel supply tank of a
2 motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline
3 terminal within the state of Montana to a destination outside the state of Montana for sale, use, or
4 consumption beyond the boundaries of the state of Montana.

5 (13) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

6 (14) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

7 (15) "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline
8 does not include JP-4 jet fuel sold to a federal defense fuel supply center.

9 (16) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No.
10 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and
11 bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used
12 in the operation of heating equipment, boilers, or furnaces.

13 (17) "Import" means to receive into a person's possession or custody first after its arrival and
14 coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil
15 shipped or transported into this state from a point of origin outside this state, other than in the fuel supply
16 tank of a motor vehicle.

17 (18) "Operator" means a person in control of or having responsibility for the daily operation of a
18 petroleum storage tank.

19 (19) (a) "Owner" means a person who holds title to, controls, or possesses an interest in a
20 petroleum storage tank.

21 (b) The term does not include a person who holds an interest in a tank solely for financial security,
22 unless through foreclosure or other related actions the holder of a security interest has taken possession
23 of the tank.

24 (20) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock
25 company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

26 (21) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid
27 at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch
28 absolute) or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than
29 a de minimis amount of another substance.

30 (22) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum

1 products and that is:

2 (a) an underground storage tank as defined in ~~75-10-403~~ section 3;

3 (b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift,
4 shaft, or tunnel;

5 (c) an above ground storage tank with a capacity less than 30,000 gallons; or

6 (d) above ground or underground pipes associated with tanks under subsections (22)(b) and
7 (22)(c), except that pipelines regulated under the following laws are excluded:

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

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

10 (iii) state law comparable to the provisions of law referred to in subsections (22)(d)(i) and (22)(d)(ii),

11 if the facility is intrastate.

12 (23) "Property damage" means:

13 (a) physical injury to tangible property, including loss of use of that property caused by the injury;

14 or

15 (b) loss of use of tangible property that is not physically injured.

16 (24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing
17 of petroleum or petroleum products from a petroleum storage tank into ground water, surface water,
18 surface soils, or subsurface soils.

19 (25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another
20 volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid
21 petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad
22 or a federal defense fuel supply center."
23

24 **Section 34.** Section 75-11-309, MCA, is amended to read:

25 **"75-11-309. Procedures for reimbursement of eligible costs.** (1) An owner or operator seeking
26 reimbursement for eligible costs and the department shall comply with the following procedures:

27 (a) If an owner or operator discovers or is provided evidence that a release may have occurred from
28 the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the
29 department of the release and conduct an initial response to the release in accordance with state and
30 federal laws and rules to protect the public health and safety and the environment.

1 (b) The owner or operator shall conduct a thorough investigation of the release, report the findings
2 to the department, and, as determined necessary by the department, prepare and submit for approval by
3 the department a corrective action plan that conforms with state, tribal (~~where~~ when applicable), and
4 federal corrective action requirements.

5 (c) (i) The department shall review the corrective action plan and forward a copy to a local
6 government office and, ~~where~~ when applicable, a tribal government office with jurisdiction over a corrective
7 action for the release. The local or tribal government office shall inform the department if it wants any
8 modification of the proposed plan.

9 (ii) Based on its own review and comments received from a local government, tribal government,
10 or other source, the department may approve the proposed corrective action plan, make or request the
11 owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or
12 operator. A plan finally approved by the department through any process provided in this subsection (1)(c)
13 is the approved corrective action plan.

14 (iii) After the department approves a corrective action plan, a local government or tribal government
15 may not impose different corrective action requirements on the owner or operator.

16 (d) The department shall notify the owner or operator and the board of its approval of a corrective
17 action plan.

18 (e) The owner or operator shall implement the approved plan. The department may oversee the
19 implementation of the plan, require reports and monitoring from the owner or operator, undertake
20 inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10,
21 ~~parts 4 and part 7, [sections 1 through 15],~~ and other applicable law and rules.

22 (f) The owner or operator shall document in the manner required by the board all expenses incurred
23 in preparing and implementing the corrective action plan. The owner or operator shall submit claims and
24 substantiating documents to the board in the form and manner required by the board. The board shall
25 forward each claim and appropriate documentation to the department. The department shall notify the
26 board of any costs that the department considers not reimbursable because of any failure to meet the
27 requirements of subsection (2). The department shall inform the owner or operator of any notification given
28 to the board.

29 (g) The owner or operator shall document, in the manner required by the board, any payments to
30 a third party for bodily injury or property damage caused by a release. The owner or operator shall submit

1 claims and substantiating documents to the board in the form and manner required by the board.

2 (h) In addition to the documentation in subsections (1)(f) and (1)(g), when the release is claimed
3 to have originated from a double-walled tank system, the owner or operator shall document, in the manner
4 required by the board, the following:

5 (i) the date that the release was discovered;

6 (ii) that the originating tank was part of a double-walled tank system as defined in 75-11-302; and

7 (iii) that the double-walled tank system was properly installed and made of materials and
8 constructed in accordance with applicable department regulations.

9 (2) The board shall review each claim received under subsections (1)(f) and (1)(g), make the
10 determination required by this subsection, inform the owner or operator of its determination, and, as
11 appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board
12 shall affirmatively determine that:

13 (a) the expenses for which reimbursement is claimed:

14 (i) are eligible costs; and

15 (ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a
16 corrective action plan approved by the department or for payments to a third party for bodily injury or
17 property damage; and

18 (b) the owner or operator:

19 (i) is eligible for reimbursement under 75-11-308; and

20 (ii) has complied with this section and any rules adopted pursuant to this section.

21 (3) If an owner or operator disagrees with a board determination under subsection (2), the owner
22 or operator may submit a written request for a hearing before the board. The hearing must be held at a
23 meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later
24 than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner
25 or operator.

26 (4) The board shall obligate money for reimbursement of eligible costs of owners and operators in
27 the order that the costs are finally approved by the board.

28 (5) (a) The board may, at the request of an owner or operator, guarantee in writing the
29 reimbursement of eligible costs that have been approved by the board but for which money is not currently
30 available from the fund for reimbursement.

1 (b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of
2 eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for
3 payment under this subsection (5)(b) does not affect the order in which money in the fund is obligated
4 under subsection (4).

5 (c) When considering a request for a guarantee of payment, the board may require pertinent
6 information or documentation from the owner or operator. The board may grant or deny, in whole or in part,
7 any request for a guarantee."
8

9 **NEW SECTION. SECTION 35. REPEALER. SECTION 75-10-210, MCA, IS REPEALED.**

10
11 **NEW SECTION. Section 36. Codification instruction.** (1) [Sections 1 through 15] are intended to
12 be codified as an integral part of Title 75, chapter 11, and the provisions of Title 75, chapter 11, apply to
13 [sections 1 through 15].

14 (2) The code commissioner shall renumber 75-10-423 and 75-10-447 to Title 75, chapter 11.
15

16 **NEW SECTION. Section 37. Coordination instruction.** (1) If [LC 823] is passed and approved and
17 if it creates an environmental rehabilitation and prevention account in the state special revenue fund, then
18 [sections 12 and ~~30~~ 29] are void.

19 (2) If [LC 823] is not passed and approved or if [LC 823] as passed and approved does not create
20 an environmental rehabilitation and prevention account in the state special revenue fund, then [sections 13
21 and ~~31~~ 30] are void.
22

23 **NEW SECTION. Section 38. Saving clause.** [This act] does not affect rights and duties that
24 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
25 act].

26 (2) Rules adopted pursuant to 75-10-405 that are in effect on [the effective date of this act]
27 continue in effect until amended or repealed pursuant to 75-10-405 or [section 5].
28

-END-