

DEPARTMENT OF ENVIRONMENTAL QUALITY

HB78, introduced by C. Harris
By request of the Environmental Quality Council
Also proposed by the Department of Environment Quality
2005 Montana Legislature

FACT SHEET

REVISE PERMITTING OF UNDERGROUND STORAGE TANKS

Provisions:

- Amends §75-11-509, MCA to eliminate the requirement that prior to issuing or renewing a permit to operate an underground storage tank, the Department of Environmental Quality shall make a determination of full compliance or issue a compliance order.

Implementation:

- The Department of Environmental Quality, Waste & Underground Tank Management Bureau, Underground Storage Tank Section will administer regulatory changes associated with this legislation.

Advantages and Disadvantages:

- Full compliance without recognition of violation significance is not a reasonable standard to apply to the regulated community. This legislation would allow the department to respond with an enforcement action commensurate with severity of the violation.
- Major and Moderate Violations will still receive Compliance Orders.
- Minor Violations will be addressed through compliance assistance mechanisms before resorting to enforcement.
- Current law does not allow the department time to gather all relevant facts before initiating enforcement. Timelines are driven by the fact that a facility needs a new Operating Permit to continue business and the department can only issue one if formal enforcement is initiated. This legislation will allow the department to prepare better enforcement actions.
- Eliminates mandatory enforcement for noncompliance and allows discretion to prioritize formal enforcement for threats to human health and the environment.
- Does not eliminate or reduce regulatory compliance requirements.

DEPARTMENT CONTACT: Ed Thamke, 444-6748

TESTIMONY FOR HOUSE BILL 78

Mr. Chairman, members of the committee: My name is Ed Thamke and I am representing the Department of Environmental Quality. We are the state agency that administers Montana's Underground Storage Tank Act. The Department requested and supports this legislation.

Currently in Montana, the department may not issue or renew an Underground Storage Tank Operating Permit that is not in "full compliance" with all operation and maintenance laws and rules without taking formal enforcement action against the station owner/operator. The law does not address the significance of the violation(s). This bill, as introduced, will delete that portion of §17-56-509, Montana Code Annotated that mandates formal enforcement action to issue or renew an Operating Permit at a facility that had a documented violation during the most recent compliance inspection.

The Montana UST Program is fully delegated and authorized by the EPA to implement federal regulations promulgated under the Resource Conservation and Recovery Act (RCRA) Sub-Title I. Program approval is predicated on Montana's regulations being at least as stringent as the federal model. This legislation does not weaken regulatory compliance requirements.

There exists a category of violations that do not pose a threat to the environment nor to the integrity of the UST program. We categorize these as "minor violations." An example of a minor violation would be failure to keep Equipment Operating Manuals on site.

This Bill would provide that:

The department will be able to first consider the significance of the violation when determining permit compliance. The current law does not allow for discretion for the agency to work with the regulated community in a non-confrontational manner when appropriate; and

The department will be able to lawfully issue an Operating Permit to facilities with only minor violations without pursuing formal enforcement at that time. We will continue to track minor violations and require that they be corrected, but formal enforcement action will be postponed until after a corrective action timeframe rather than when the Operating Permit is issued; and

The department can more thoroughly evaluate whether or not a violation has occurred or been corrected before pursuing enforcement. In some cases, current law does not allow the department time to gather all relevant facts before initiating enforcement. Timelines are driven by the fact that a facility needs a new Operating Permit to continue business and the department can only issue one if formal enforcement is initiated.

Thank you for your consideration of this bill. I am available for questions from the committee.