

## Montana Code Annotated - 2007

**75-11-501. Short title.** This part shall be known and may be cited as the "Montana Underground Storage Tank Act".

**75-11-502. Intent, findings, and purpose.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Underground Storage Tank Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) 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 this part. It is the purpose of this part 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 this part and other appropriate authority provided by law to remedy violations of requirements established under this part.

**History:** En. Sec. 2, Ch. 112, L. 1997; amd. Sec. 20, Ch. 361, L. 2003.

**75-11-503. Definitions.** Unless the context requires otherwise, in this part, 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 placing of any regulated substance into or onto the land or water so that the regulated substance or any constituent of the regulated substance may enter the environment or be emitted into the air or discharged into any waters, including ground water.

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

(5) "Regulated substance":

(a) means:

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

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

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

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

(7) "Underground storage tank" or "tank":

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

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

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

ground, or entirely under ground; and

(iii) ancillary equipment designed to prevent, detect, or contain a release from an underground storage tank;

(b) does not include:

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

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

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

(iv) a septic tank;

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

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

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

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

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

(vii) a storm water or wastewater collection system;

(viii) a flow-through process tank;

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

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

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

(xii) underground pipes connected to an aboveground storage tank at a petroleum refinery that is subject to facilitywide corrective action permit provisions under [75-10-406](#) or the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended.

**History:** En. Sec. 3, Ch. 112, L. 1997; amd. Sec. 2, Ch. 156, L. 1997; amd. Sec. 2, Ch. 137, L. 2003.

**75-11-504. Powers of department.** (1) The department may:

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

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

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

(d) enter property and permanently close an underground storage tank that:

(i) was in use after November 22, 1989;

(ii) was not permanently closed before December 23, 1998, in accordance with closure requirements established by this part; and

(iii) was neither:

(A) initially installed in accordance with design requirements established pursuant to this part; nor

(B) upgraded in accordance with rules adopted pursuant to this part.

(2) The department shall integrate all provisions of this part with other laws administered by the department to avoid unnecessary duplication.

**History:** En. Sec. 4, Ch. 112, L. 1997; amd. Sec. 10, Ch. 506, L. 1999.

**75-11-505. Administrative rules.** The department may adopt, amend, or repeal rules for the prevention and correction of leakage from underground storage tanks, including:

- (1) reporting by owners and operators;
- (2) financial responsibility;
- (3) release detection, prevention, and corrective action;
- (4) procedures and standards for the issuance, nonissuance, renewal, nonrenewal, modification, revocation, suspension, and enforcement of permits authorizing the operation of underground storage tanks;
- (5) standards for design, construction, installation, and closure;
- (6) development of a schedule of annual fees, not to exceed \$108 for a tank over 1,100 gallons and not to exceed \$36 for a tank 1,100 gallons or less, for each tank, for tank registration to defray state and local costs of implementing an underground storage tank program. The department may prorate fees to cover periods not equal to 12 months in order to provide staggered scheduling of renewal dates.
- (7) a system for assessment of administrative penalties, notice, and appeals under [75-11-525](#); and
- (8) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.

**History:** En. Sec. 5, Ch. 112, L. 1997; amd. Sec. 13, Ch. 506, L. 1999; amd. Sec. 3, Ch. 137, L. 2003; amd. Sec. 1, Ch. 51, L. 2007.

**75-11-509. Inspections -- permits.** (1) The owner or operator of an active underground storage tank must have the tank inspected for compliance with this part by January 1, 2002, and at least once every 3 years thereafter by an inspector who is licensed pursuant to Title 75, chapter 11, part 2, to perform underground storage tank inspections. The inspector may not be:

- (a) the owner or operator of the tank;
  - (b) an employee of the owner or operator; or
  - (c) for the first inspection required by this subsection (1) and for a period of 3 years after the installation or modification of the tank was completed, the installer who installed or modified the tank and whose name or signature was on the permit required by [75-11-212](#).
- (2) The owner or operator of an inactive underground storage tank shall comply with requirements for testing, inspection, recordkeeping, and reporting provided in rules adopted pursuant to this part.
- (3) The department may by rule authorize temporary permits for the installation, testing, and operation of underground storage tanks. The requirements in subsection (8) for a 3-year permit term and for permit issuance only after inspection by a licensed inspector do not apply to temporary permits.
- (4) The department shall by rule provide:
- (a) requirements for the scope and timing of inspections; and
  - (b) requirements for testing, inspection, recordkeeping, and reporting for inactive tanks to ensure that these tanks do not pose a threat to public health, safety, or the environment while inactive or upon their return to active status.
- (5) The inspector shall provide the owner or operator with an inspection report that meets the requirements of rules adopted by the department to ensure compliance with this part and rules adopted pursuant to this part.
- (6) The owner or operator shall retain the original inspection report and mail a copy to the department.

(7) If the inspection report indicates violations, the owner or operator shall correct the violations and obtain a followup inspection. Followup inspection reports must be provided to the owner or operator and to the department.

(8) A person may not place a regulated substance in an underground storage tank unless the owner or operator has been issued a valid permit from the department for the tank. Permits must be issued for a term of 3 years. The department may not issue or renew a permit unless the owner or operator has filed with the department an inspection report by a licensed inspector. Prior to issuing or renewing a permit, the department shall determine, on the basis of the inspection report and other relevant information, whether the operation and maintenance of the tank were in compliance with this part and rules adopted pursuant to this part on the date of inspection.

(9) The department may determine to not issue or not renew a permit for a tank if the department finds that there has been significant noncompliance with this part or with rules, permits, or orders issued pursuant to this part. If the department proposes to not issue or not renew a permit, it must have a written notice letter served personally or by certified mail on the owner or operator informing the owner or operator of the reason for the action. The owner or operator may request a hearing before the board. The hearing request must be in writing and must be filed with the board no later than 30 days after the service of the notice letter. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

**History:** En. Sec. 12, Ch. 506, L. 1999; amd. Sec. 1, Ch. 244, L. 2001; amd. Sec. 4, Ch. 137, L. 2003; amd. Sec. 1, Ch. 20, L. 2005.

**75-11-510. Underground storage tank leak report -- inspections -- sampling.** (1) If an owner or operator of an underground storage tank discovers or is provided with evidence that a tank may have leaked, the owner or operator shall immediately notify the department that a leak may exist.

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

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

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

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

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

**History:** En. Sec. 6, Ch. 112, L. 1997.

**75-11-511. Regulated substance inventory.** (1) The department is authorized to conduct an inventory of sites and locations in the state where regulated substances have been stored or disposed of at any time.

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

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

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

(5) For the purposes of carrying out this section, the department may exercise the powers set forth in [75-11-510](#).

**History:** En. Sec. 7, Ch. 112, L. 1997.

**75-11-512. Administrative enforcement.** (1) When the department believes that a violation of this part or a rule adopted under this part has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or the rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests, in writing, a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of receipt.

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

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

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

(b) initiate action under [75-11-513](#), [75-11-514](#), or [75-11-516](#); or

(c) assess administrative penalties and issue corrective action orders under [75-11-525](#).

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

(5) If a person fails to comply with an order issued pursuant to subsection (1) or (3) within the time allowed in the order, the department may enter the property on which the underground storage tank that is in violation is located and temporarily close the tank. If the department finds that permanent closure is necessary to prevent substantial environmental harm or because the owner or operator is unlikely to comply with the order, it may permanently close the tank.

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

**History:** En. Sec. 8, Ch. 112, L. 1997; amd. Sec. 14, Ch. 506, L. 1999; amd. Sec. 2, Ch. 51, L. 2007.

**75-11-513. Injunctions.** The department may institute and maintain, in the name of the state, actions for injunctive relief as provided in Title 27, chapter 19, to:

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

(2) enjoin a violation of this part, a rule adopted under this part, or an order of the department or the board; or

(3) require compliance with this part, a rule adopted under this part, or an order of the department or the board.

**History:** En. Sec. 9, Ch. 112, L. 1997.

**75-11-514. Imminent hazard.** Upon receipt of evidence that the storage or disposal of any regulated substance may present an imminent and substantial danger to the public health or to the environment, the department may commence legal proceedings to immediately restrain or enjoin any person who has contributed to or who is contributing to the storage or disposal from engaging in these activities or order the person to take other action as may be necessary, or both. The department may also take appropriate action as may be necessary under this section, including issuing orders necessary or appropriate to protect the public health and the environment.

**History:** En. Sec. 10, Ch. 112, L. 1997.

**75-11-515. Cleanup orders.** The department may issue a cleanup order to any person who has discharged, deposited, or spilled any regulated substance into or onto any land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any regulated substance into or onto any land or water so as to result in unlawful or unapproved disposal of a regulated substance. The order must direct the person to clean up and remove the regulated substance, to treat the regulated substance, or to take other actions as may be considered reasonable by the department.

**History:** En. Sec. 11, Ch. 112, L. 1997

**75-11-516. Civil penalties.** (1) (a) A person who violates any provision of this part, a rule adopted under this part, or an order of the department or the board is subject to a civil penalty not to exceed \$10,000 for each violation. Each day of violation constitutes a separate violation.

(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in [75-1-1001](#).

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. Penalties are also recoverable in an action brought by the

department. The action must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.

(3) Action under this section does not bar enforcement of this part, rules adopted under this part, or orders of the department or the board.

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

**History:** En. Sec. 12, Ch. 112, L. 1997; amd. Sec. 20, Ch. 487, L. 2005.

**75-11-525. Administrative penalties for violations -- appeals -- venue.** (1) (a) A person who violates any of the provisions of this part or any rules promulgated under the authority of this part may be assessed and ordered by the department to pay an administrative penalty not to exceed \$500 for each violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each occurrence of the violation and each day that it remains uncorrected constitutes a separate violation. The department may suspend a portion of the administrative penalty assessed under this section if the condition that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty under this section may be made in conjunction with any order or other administrative action authorized by this chapter.

(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in [75-1-1001](#).

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

(a) the provision alleged to be violated;

(b) the facts alleged to constitute the violation;

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

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

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

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

(g) the right to appeal or to a hearing to mitigate the penalty assessed.

(3) A person assessed a penalty under this section may request a hearing before the board to either contest the alleged violation or request mitigation of the penalty. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis and Clark County or the county in which the alleged violation occurred.

(4) If the department is unable to collect an administrative penalty assessed under this section or if a person fails to pay all or any portion of an administrative penalty assessed under this section, the department may take action in district court to recover the penalty amount and any additional amounts assessed or sought under this chapter. The action must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.

(5) Action under this section does not bar action under this chapter or any other remedy available to the department for violations of underground storage tank laws or rules promulgated under those laws.

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

**History:** En. Sec. 3, Ch. 281, L. 1993; amd. Sec. 29, Ch. 112, L. 1997; Sec. , MCA 1995; reded. by Sec. 36(2), Ch. 112, L. 1997; amd. Sec. 21, Ch. 487, L. 2005; amd. Sec. 3, Ch. 51, L. 2007.