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HOUSE BILL NO. 94

INTRODUCED BY K. GILLAN, MCCARTHY, TASH, YOUNKIN, TESTER, LINDEEN, P. CLARK
BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE REQUIREMENTS TO NOTIFY POTENTIALLY LIABLE PERSONS REGARDING THE INVESTIGATION AND REMEDIATION OF IMPACTS CAUSED BY THE RELEASE OF HAZARDOUS AND DELETERIOUS SUBSTANCES; STANDARDIZING THE POSTEMERGENCY ACTION NOTIFICATION DEADLINE; LIMITING THE LIABILITY DEFENSE TO ONLY THOSE DEPARTMENT COSTS INCURRED OR ENCUMBERED PRIOR TO THE DATE OF NOTICE; AMENDING SECTIONS 75-10-711, 75-10-712, 75-10-715, AND 75-10-745, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-10-711, MCA, is amended to read:

"75-10-711. Remedial action -- orders -- penalties -- judicial proceedings. (1) The department may take remedial action whenever:

(a) there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, welfare, or safety or the environment; and

(b) ~~the appropriate remedial action will not be done properly and expeditiously by any person liable under 75-10-715(1) and each a ANY person that who is~~ NONE OF THE PERSONS WHO ARE liable or potentially liable under 75-10-715(1) and who has HAVE been given the opportunity by letter to properly and expeditiously perform the appropriate remedial action WILL PROPERLY AND EXPEDITIOUSLY PERFORM THE APPROPRIATE REMEDIAL ACTION. Any person liable under 75-10-715(1) shall take immediate action to contain, remove, and abate the release.

(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, the department may undertake remedial action in the form of any investigation, monitoring, survey, testing, or other information gathering as authorized by 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the

1 release or the threat of release and the extent and imminence of the danger to the public health, safety,
2 or welfare or the environment.

3 (3) Except as provided in 75-10-712, the department is authorized to draw upon the fund to take
4 action under subsection (1) if it has made diligent good faith efforts to determine the identity of the person
5 or persons liable for the release or threatened release and:

6 (a) is unable to determine the identity of the liable person or persons in a manner consistent with
7 the need to take timely remedial action; or

8 (b) ~~the~~ a person or persons determined by the department to be liable or potentially liable under
9 75-10-715(1) have been informed in writing of the department's determination and have been requested
10 by the department to take appropriate remedial action but are unable or unwilling to take action in a timely
11 manner; and

12 (c) the written notice ~~to each person~~ informs the person that if subsequently found liable pursuant
13 to 75-10-715(1), the person may be required to reimburse the fund for the state's remedial action costs
14 and may be subject to penalties pursuant to this part.

15 (4) Whenever the department is authorized to act pursuant to subsection (1), it may issue to any
16 person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or
17 appropriate to protect the public health, safety, or welfare or the environment.

18 (5) (a) A person who violates or fails or refuses to comply with an order issued under 75-10-707
19 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than
20 \$10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining
21 the amount of any penalty assessed, the court may take into account:

22 (i) the nature, circumstances, extent, and gravity of the noncompliance;

23 (ii) with respect to the person liable under 75-10-715(1):

24 (A) the person's ability to pay;

25 (B) any prior history of violations;

26 (C) the degree of culpability; and

27 (D) the economic benefit or savings, if any, resulting from the noncompliance; and

28 (iii) any other matters as justice may require.

29 (b) Civil penalties collected under subsection (5)(a) must be deposited into the environmental
30 quality protection fund established in 75-10-704.

1 (6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the
2 following actions:

3 (a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;

4 (b) an action to enforce an order issued under 75-10-707 or this section;

5 (c) an action to recover a civil penalty for violation of or failure to comply with an order issued
6 under 75-10-707 or this section; or

7 (d) an action by a person to whom an order has been issued to determine the validity of the order,
8 only if the person has been in compliance and continues in compliance with the order pending a decision
9 of the court.

10 (7) In considering objections raised in a judicial action regarding orders issued under this part, the
11 court shall uphold and enforce an order issued by the department unless the objecting party can
12 demonstrate, on the administrative record, that the department's decision to issue the order was arbitrary
13 and capricious or otherwise not in accordance with law.

14 (8) Instead of issuing a notification or an order under this section, the department may bring an
15 action for legal or equitable relief in the district court of the county where the release or threatened release
16 occurred or in the first judicial district as may be necessary to abate any imminent and substantial
17 endangerment to the public health, safety, or welfare or the environment resulting from the release or
18 threatened release.

19 (9) The department may take remedial action pursuant to subsection (1) at a site that is regulated
20 under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public
21 Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of
22 this part."

23

24 **Section 2.** Section 75-10-712, MCA, is amended to read:

25 **"75-10-712. Emergency action.** If the department determines that immediate response to an
26 imminent threat to public health, safety, or welfare or the environment is necessary to avoid substantial
27 injury or damage to persons, property, or resources, remedial action may be taken pursuant to
28 75-10-711(1) without the prior written notice required by 75-10-711(3). The department shall give
29 subsequent written notice to ~~the~~ a person who is liable or potentially liable ~~person liable~~ under
30 75-10-715(1) within ~~5~~ 30 days after the action is taken, describing the circumstances ~~which~~ that required

1 the action to be taken without prior notice."

2

3 **Section 3.** Section 75-10-715, MCA, is amended to read:

4 **"75-10-715. Liability -- reimbursement and penalties -- proceedings -- defenses and exclusions.**

5 (1) Except as provided in 75-10-742 through 75-10-752, notwithstanding any other provision of law, and
6 subject only to the defenses set forth in subsection (5) and the exclusions set forth in subsection (7), the
7 following persons are jointly and severally liable for a release or threatened release of a hazardous or
8 deleterious substance from a facility:

9 (a) a person who owns or operates a facility where a hazardous or deleterious substance was
10 disposed of;

11 (b) a person who at the time of disposal of a hazardous or deleterious substance owned or
12 operated a facility where the hazardous or deleterious substance was disposed of;

13 (c) a person who generated, possessed, or was otherwise responsible for a hazardous or
14 deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment
15 of the substance or arranged with a transporter for transport of the substance for disposal or treatment;
16 and

17 (d) a person who accepts or has accepted a hazardous or deleterious substance for transport to
18 a disposal or treatment facility.

19 (2) A person identified in subsection (1) is liable for the following costs:

20 (a) all remedial action costs incurred by the state; and

21 (b) damages for injury to, destruction of, or loss of natural resources caused by the release or
22 threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim
23 for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were
24 specifically identified as an irreversible and irretrievable commitment of natural resources in an approved
25 final state or federal environmental impact statement or other comparable approved final environmental
26 analysis for a project or facility that was the subject of a governmental permit or license and the project
27 or facility was being operated within the terms of its permit or license.

28 (3) If the person liable under subsection (1) fails, without sufficient cause, to comply with a
29 department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification
30 by the department pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to

1 exceed two times the amount of any costs incurred by the state pursuant to this section.

2 (4) The department may initiate civil proceedings in district court to recover remedial action costs,
3 natural resource damages, or penalties under subsections (1), (2), and (3). Proceedings to recover costs
4 and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs,
5 damages, or penalties lies in the county where the release occurred or where the person liable under
6 subsection (1) resides or has its principal place of business or in the district court of the first judicial
7 district.

8 (5) A person has a defense and is not liable under subsections (1), (2), and (3) if the person can
9 establish by a preponderance of the evidence that:

10 (a) the department failed to provide notice to the person claiming the defense ~~follow the notice~~
11 ~~provisions of~~ when required by 75-10-711 when required; Establishment of this defense only prohibits
12 the department from collecting those costs incurred OR ENCUMBERED by the department prior to providing
13 notice to the person and does not provide the person a defense to any other liability.

14 (b) the release did not emanate from any vessel, vehicle, or facility to which the person
15 contributed any hazardous or deleterious substance or over which the person had any ownership,
16 authority, or control and was not caused by any action or omission of the person;

17 (c) the release or threatened release occurred solely as a result of:

18 (i) an act or omission of a third party other than either an employee or agent of the person; or

19 (ii) an act or omission of a third party other than one whose act or omission occurs in connection
20 with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by
21 a preponderance of the evidence that the person:

22 (A) exercised due care with respect to the hazardous or deleterious substance concerned, taking
23 into consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts
24 and circumstances; and

25 (B) took precautions against foreseeable acts or omissions of a third party and the consequences
26 that could foreseeably result from those acts or omissions;

27 (d) the release or ~~threat of~~ threatened release occurred solely as the result of an act of God or an
28 act of war;

29 (e) the release or threatened release was from a facility for which a permit had been issued by the
30 department, the hazardous or deleterious substance was specifically identified in the permit, and the

1 release was within the limits allowed in the permit;

2 (f) in the case of assessment of penalties under subsection (3), factors beyond the control of the
3 person prevented the person from taking timely remedial action; or

4 (g) the person transported only household refuse, unless that person knew or reasonably should
5 have known that the hazardous or deleterious substance was present in the refuse.

6 (6) (a) For the purpose of subsection (5)(c)(ii), the term "contractual relationship" includes but is
7 not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real
8 property on which the facility is located was acquired by the person after the disposal or placement of the
9 hazardous or deleterious substance on, in, or at the facility and one or more of the following circumstances
10 is also established by the person by a preponderance of the evidence:

11 (i) At the time the person acquired the facility, the person did not know and had no reason to
12 know that a hazardous or deleterious substance that is the subject of the release or threatened release was
13 disposed of on, in, or at the facility.

14 (ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or
15 through any other involuntary transfer or acquisition or through the exercise of eminent domain authority
16 by purchase or condemnation.

17 (iii) The person acquired the facility by inheritance or bequest.

18 (b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through
19 (6)(a)(iii), the person shall establish that the person has satisfied the requirements of subsection (5)(c)(i)
20 or (5)(c)(ii).

21 (c) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the
22 person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership
23 and uses of the property consistent with good commercial or customary practice in an effort to minimize
24 liability. For purposes of assessing this inquiry, the following must be taken into account:

25 (i) any specialized knowledge or experience on the part of the person;

26 (ii) the relationship of the purchase price to the value of the property if uncontaminated;

27 (iii) commonly known or reasonably ascertainable information about the property;

28 (iv) the obviousness of the presence or the likely presence of contamination on the property; and

29 (v) the ability to detect the contamination by appropriate inspection.

30 (d) (i) Subsections (5)(b) and (5)(c) or this subsection (6) may not diminish the liability of a

1 previous owner or operator of the facility who would otherwise be liable under this part.

2 (ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual
3 knowledge of the release or threatened release of a hazardous or deleterious substance at the facility when
4 the person owned the real property and then subsequently transferred ownership of the property to
5 another person without disclosing the knowledge, the previous owner is liable under subsections (1), (2),
6 and (3) and a defense under subsection (5)(b) or (5)(c) is not available to that person.

7 (e) ~~Subsection~~ This subsection (6) does not affect the liability under this part of a person who,
8 by any act or omission, caused or contributed to the release or threatened release of a hazardous or
9 deleterious substance that is the subject of the action relating to the facility.

10 (7) A person has an exclusion and is not liable under this section if:

11 (a) the person generated or disposed of only household refuse, unless the person knew or
12 reasonably should have known that the hazardous or deleterious substance was present in the refuse;

13 (b) the person owns or operates real property where hazardous or deleterious substances have
14 come to be located solely as a result of subsurface migration in an aquifer from a source or sources outside
15 the person's property, provided that the following conditions are met:

16 (i) the owner or operator did not cause, contribute to, or exacerbate the release or threatened
17 release of any hazardous or deleterious substances through any act or omission. The failure to take
18 affirmative steps to mitigate or address contamination that has migrated from a source outside the owner's
19 or operator's property does not, in the absence of exceptional circumstances, constitute an omission by
20 the owner or operator.

21 (ii) the person who caused, contributed to, or exacerbated the release or threatened release of any
22 hazardous or deleterious substance is not and was not an agent or employee of the owner or operator and
23 is not or was not in a direct or indirect contractual relationship with the owner or operator, unless the
24 department provides a written determination that an existing or proposed contractual relationship is an
25 insufficient basis to establish liability under this section;

26 (iii) there is no other basis of liability under subsection (1) for the owner or operator for the release
27 or threatened release of a hazardous or deleterious substance; and

28 (iv) the owner or operator cooperates with the department and all persons conducting
29 department-approved remedial actions on the property, including granting access and complying with and
30 implementing all required institutional controls;

1 (c) the person owns or occupies real property of 20 acres or less for residential purposes, provided
2 that the following conditions are met:

3 (i) the person did not cause, contribute to, or exacerbate the release or threatened release of any
4 hazardous or deleterious substance through any act or omission;

5 (ii) the person uses or allows the use of the real property for residential purposes. This exclusion
6 does not apply to any person who acquires or develops real property for commercial use or any use other
7 than residential use.

8 (iii) at the time the person purchased or occupied the real property, there were no visible indications
9 of contamination on the surface of the real property;

10 (iv) the person cooperates with the department and all persons conducting department-approved
11 remedial actions on the property, including granting access and complying with and implementing all
12 required institutional controls; and

13 (v) there is no other basis of liability under subsection (1) for the owner or occupier for the release
14 or threatened release of a hazardous or deleterious substance.

15 (8) A person is liable under this section if the department provides substantial credible evidence
16 that the person fails to satisfy any element of each exclusion in subsections (7)(a) through (7)(c).

17 (9) The liability of a fiduciary under the provisions of this part for a release or a threatened release
18 of a hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed the
19 assets held in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary is
20 liable under this part independent of the person's ownership or actions taken in a fiduciary capacity.

21 (10) A person who holds indicia of ownership in a facility primarily to protect a security interest
22 is not liable under subsections (1)(a) and (1)(b) for having participated in the management of a facility
23 within the meaning of 75-10-701(15)(b) because of any one or any combination of the following:

24 (a) holding an interest in real or personal property when the interest is being held as security for
25 payment or performance of an obligation, including but not limited to a mortgage, deed of trust, lien,
26 security interest, assignment, pledge, or other right or encumbrance against real or personal property that
27 is furnished by the owner to ensure repayment of a financial obligation;

28 (b) requiring or conducting financial or environmental assessments of a facility or a portion of a
29 facility, making financing conditional upon environmental compliance, or providing environmental
30 information or reports;

1 (c) monitoring the operations conducted at a facility or providing access to a facility to the
2 department or its agents or to remedial action contractors;

3 (d) having the mere capacity or unexercised right to influence a facility's management of
4 hazardous or deleterious substances;

5 (e) giving advice, information, guidance, or direction concerning the administrative and financial
6 aspects, as opposed to day-to-day operational aspects, of a borrower's operations;

7 (f) providing general information concerning federal, state, or local laws governing the
8 transportation, storage, treatment, and disposal of hazardous or deleterious substances and concerning
9 the hiring of remedial action contractors;

10 (g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;

11 (h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or
12 undertaking other activities to protect or preserve the value of the security interest in a facility;

13 (i) extending or denying credit to a person owning or in lawful possession of a facility;

14 (j) in an emergency, requiring or undertaking activities to prevent exposure of persons to
15 hazardous or deleterious substances or to contain a release;

16 (k) requiring or conducting remedial action in response to a release or threatened release if prior
17 notice is given to the department and the department approves of the remedial action; or

18 (l) taking title to a facility by foreclosure, provided that the holder of indicia of ownership, from
19 the time the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing
20 transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise
21 divest itself of the property in a reasonably expeditious manner, using whatever commercially reasonable
22 means are relevant or appropriate with respect to the facility and taking all facts and circumstances into
23 consideration and provided that the holder does not:

24 (i) outbid or refuse a bid for fair consideration for the property or outbid or refuse a bid that would
25 effectively compensate the holder for the amount secured by the facility;

26 (ii) worsen the contamination at the facility;

27 (iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting
28 hazardous or deleterious substances; or

29 (iv) engage in conduct described in subsection (11).

30 (11) The protection from liability provided in subsections (9) and (10) is not available to a fiduciary

1 or to a person holding indicia of ownership primarily to protect a security interest if the fiduciary or person
2 through affirmative conduct:

3 (a) causes or contributes to a release of hazardous or deleterious substances from the facility;

4 (b) allows others to cause or contribute to a release of hazardous or deleterious substances; or

5 (c) in the case of a person holding indicia of ownership primarily to protect a security interest,
6 actually participates in the management of a facility by:

7 (i) exercising decisionmaking control over environmental compliance; or

8 (ii) exercising control at a level comparable to that of a manager of the enterprise with
9 responsibility for day-to-day decisionmaking either with respect to environmental compliance or
10 substantially all of the operational, as opposed to financial or administrative, aspects of the facility."

11

12 **Section 4.** Section 75-10-745, MCA, is amended to read:

13 **"75-10-745. (Temporary) Allocation of liability -- process initiation.** (1) For a facility at which the
14 department has initiated a remedial action under 75-10-711 through the issuance of a notice letter prior
15 to July 1, 1997, any person determined to be potentially liable under 75-10-715 may petition the
16 department in writing to initiate the allocation process. The right to participate in the allocation process
17 is waived if the written petition is not provided to the department prior to the completion of remedial
18 actions, except for operation and maintenance, at the facility.

19 (2) For a facility at which the department has not initiated a remedial action through the issuance
20 of a notice letter under 75-10-711, any person potentially liable under 75-10-715 who has received
21 approval of a voluntary cleanup plan under 75-10-730 through 75-10-738 may petition the department
22 in writing to initiate the allocation process. The right to participate in the allocation process is waived if
23 the written petition is not provided to the department prior to the completion of remedial actions, except
24 for operation and maintenance, at the facility.

25 (3) For a facility at which the department initiates a remedial action through the issuance of a
26 notice letter under 75-10-711 after July 1, 1997, any person potentially liable under 75-10-715 may
27 petition the department in writing within 60 days of the date of the notice letter to initiate the allocation
28 process. Any potentially liable person under 75-10-715 who does not provide a written petition to the
29 department within this timeframe waives the right to participate in the allocation process and remains liable
30 as provided in 75-10-715. The notice letter sent by the department must advise that a failure to petition

1 the department for allocation as provided in this subsection will result in a waiver of the right to participate
2 in the allocation process.

3 (4) The allocation process may be initiated and may proceed upon written petition of one or more
4 potentially liable persons.

5 (5) Prior to the initiation of discovery as provided in 75-10-747, all persons who participate in the
6 allocation process shall agree in writing that the allocator's decision is binding, subject only to the
7 provisions of 75-10-750(9) and the appeal provisions of 75-10-751.

8 (6) All liable or potentially liable persons under 75-10-715 who do not participate in the allocation
9 process under 75-10-742 through 75-10-752 remain liable as provided in 75-10-715.

10 (7) Upon receipt of a written petition under ~~subsections~~ subsection (1) or (2) or when initiating
11 actions at a facility without a prior notice letter under subsection (3), the department shall:

12 (a) conduct a good faith investigation and may use its authority in 75-10-707 to identify persons
13 who may be liable under 75-10-715; and

14 (b) issue notice letters to one or more of the persons it identifies as potentially liable under
15 75-10-715. If a person petitions the department to initiate the allocation process as provided for in
16 subsection (8), the department shall issue notice letters or nomination letters pursuant to subsection (9)
17 to the persons it identified as potentially liable under 75-10-715 who were not previously given notice.

18 (8) A person who receives a notice letter may, within 60 days from the date of the notice letter,
19 petition the department in writing to participate in an allocation process and provide the department with
20 the identity of other potentially liable persons under 75-10-715 who were not ~~noticed~~ given notice by the
21 department. When identifying additional potentially liable persons, the ~~noticed~~ person given notice shall
22 provide to the department a statement and credible evidence showing that there is a basis in law and fact
23 to determine that the identified person is potentially liable under 75-10-715.

24 (9) Within 30 days of receipt of the information provided for in subsection (8), the department
25 may issue a notice letter to an identified person whom the department determines is a potentially liable
26 person under 75-10-715 or to a person whom the department identified in subsection (7) and who was
27 not previously given notice. If the department does not issue a notice letter to an identified person, the
28 department shall issue the person a nomination letter indicating that the person has been identified as
29 potentially liable under 75-10-715. The nomination letter must state that the person has the right to
30 participate in the allocation process and that if the person does not participate and is found liable, the

1 person remains subject to liability as provided in 75-10-715. If the newly noticed or nominated person
2 chooses to participate in the allocation process, the person shall provide a written petition of the person's
3 intent to participate in the allocation process to the department within 30 days of the date of the notice
4 or nomination letter. A failure to petition the department for allocation as provided in this subsection results
5 in a waiver of the right to participate in the allocation process.

6 (10) If a person nominated under subsection (9) cannot be readily located, the department shall,
7 within 30 days of receipt of the information provided for in subsection (8), publish one notice of the
8 person's nomination, along with the information contained in a nomination letter under subsection (9), in
9 a newspaper of general circulation in the county where all or a portion of the facility is located. The notice
10 must state that the person has 30 days from the date of the notice to petition the department, in writing,
11 to participate in the allocation process. A failure to petition the department for allocation as provided in
12 this subsection results in a waiver of the right to participate in the allocation process.

13 (11) If one or more potentially liable persons petition in writing for an allocation process under
14 subsection (1), (2), or (3) and the department determines that the facility has a potential orphan share, the
15 department shall:

16 (a) publish a notice and brief description of the facility in a newspaper of general circulation in the
17 area affected and provide at least 30 days for submission of public comment on the identification of
18 potentially liable persons under 75-10-715; and

19 (b) notify interested persons and the county commissioners of each county in which all or a
20 portion of the facility is located and provide at least 30 days for submission of comments on the
21 identification of potentially liable persons under 75-10-715.

22 (12) If a nominated person participates in the allocation and the person is assigned a zero share
23 of liability by the allocator, that person's reasonable costs of participating in the allocation, including
24 attorney fees, must be borne by the person who proposed the addition of the nominated person to the
25 allocation.

26 (13) If the department anticipates that a facility may have an orphan share, the department shall
27 represent the orphan share in the allocation process. If the state is a potentially liable person under
28 75-10-715, an agency or entity other than the department shall represent the state in the allocation
29 process.

30 (14) Except as provided in subsection (15), whenever the department is involved in allocation

1 processes on five facilities, other allocation processes may be stayed before the discovery stage provided
2 in 75-10-747. Upon completion of an allocation provided in 75-10-750 or 75-10-751, execution of a
3 stipulated agreement under 75-10-750, or a default to liability as provided in 75-10-715 for one of the five
4 facilities, the department shall notify the potentially liable persons for the facility on the waiting list that
5 has the earliest date of written petition. Discovery under 75-10-747 must begin within 10 days of
6 department notification.

7 (15) A stay on the allocation process may not occur under subsection (14) if all persons
8 participating in the allocation process agree in writing that there is no orphan share and that the state is
9 not a potentially liable person under 75-10-715. The agreement is binding upon all noticed or nominated
10 persons.

11 (16) If, after initiating the process, a potentially liable person elects to discontinue participation in
12 the process, the person remains subject to liability as provided in 75-10-715. (Terminates June 30,
13 2005--sec. 30, Ch. 415, L. 1997.)"

14

15 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

16

- END -