

## 1 HOUSE BILL NO. 209

2 INTRODUCED BY C. HARRIS, BRANAE, ERICKSON, GUTSCHE, LASLOVICH, LEE

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REMEDIAL ACTION UPON RELEASE OF  
5 HAZARDOUS SUBSTANCE LAWS; AUTHORIZING THE SUBMITTAL OF CLAIMS FOR PRIVATE RESPONSE  
6 COSTS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AUTHORIZING THE DEPARTMENT TO  
7 RECOVER PRIVATE RESPONSE COSTS FROM LIABLE PARTIES AND TO REIMBURSE THE PRIVATE  
8 CLAIMANTS; PROVIDING A LIABILITY FOR PRIVATE RESPONSE COSTS; AUTHORIZING THE  
9 DEPARTMENT TO ISSUE ORDERS TO LIABLE PARTIES FOR THE REIMBURSEMENT OF PRIVATE  
10 RESPONSE COSTS; ESTABLISHING CLAIM CERTIFICATION PROCEDURES; ~~PROHIBITING THE~~  
11 ~~ACCEPTANCE OF A VOLUNTARY CLEANUP PLAN OR THE CLOSURE OF A FACILITY CLEANUP PLAN~~  
12 ~~UNTIL PRIVATE RESPONSE COSTS ARE RECOVERED~~; PROVIDING FOR A PRIVATE RIGHT OF ACTION  
13 TO RECOVER COSTS FROM LIABLE PERSONS; AMENDING SECTIONS 75-10-701, 75-10-704,  
14 75-10-711, 75-10-715, 75-10-718, 75-10-719, 75-10-720, 75-10-722, AND 75-10-724, ~~75-10-733,~~  
15 ~~AND 75-10-738~~; MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

16

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

18

19 **Section 1.** Section 75-10-701, MCA, is amended to read:20 **"75-10-701. Definitions.** As used in this part, unless the context requires otherwise, the following  
21 definitions apply:

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

23 (2) "Director" means the director of the department.

24 (3) "Environment" means any surface water, ground water, drinking water supply, land surface  
25 or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of  
26 Montana.

27 (4) (a) "Facility" means:

28 (i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer  
29 or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage  
30 container, motor vehicle, rolling stock, or aircraft; or

1 (ii) any site or area where a hazardous or deleterious substance has been deposited, stored,  
2 disposed of, placed, or otherwise come to be located.

3 (b) The term does not include any consumer product in consumer use.

4 (5) "Fiduciary" means a trustee, executor, administrator, personal representative, custodian,  
5 conservator, guardian, or receiver acting or holding property for the exclusive benefit of another person.

6 The term does not include:

7 (a) a person who has previously owned or operated the property in a nonfiduciary capacity; or

8 (b) a person acting as fiduciary with respect to a trust or other fiduciary estate that has no  
9 objectively reasonable or substantial purpose apart from avoidance of or limitation of liability under this  
10 part. For the purposes of 75-10-715(9), the term does not include the state, a state agency, or a political  
11 subdivision of the state acting as trustee of natural resources within the state of Montana.

12 (6) "Foreclosure" means acquisition of title to property through foreclosure, purchase at  
13 foreclosure sale, assignment or acquisition of title in lieu of foreclosure, repossession in the case of a lease  
14 financing transaction, or acquisition of a right to title or other agreement in full or partial settlement of a  
15 loan obligation.

16 (7) "Fund" means the environmental quality protection fund established in 75-10-704.

17 (8) "Hazardous or deleterious substance" means a substance that because of its quantity,  
18 concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial  
19 threat to public health, safety, or welfare or the environment and is:

20 (a) a substance that is defined as a hazardous substance by section 101(14) of the federal  
21 Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C.  
22 9601(14), as amended;

23 (b) a substance identified by the administrator of the United States environmental protection  
24 agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

25 (c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource  
26 Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed  
27 or identified in 40 CFR 261; or

28 (d) any petroleum product.

29 (9) "Household" means single and multiple residences, hotels and motels, bunkhouses, ranger  
30 stations, crew quarters, campgrounds, picnic grounds, day-use recreational areas, or similar structures or

1 areas.

2 (10) "Household refuse" means garbage, trash, and sanitary wastes in septic tanks that are derived  
3 from a household.

4 (11) "Institutional control" means a restriction on the use of real property that mitigates the risk  
5 posed to public health, safety, and welfare and the environment. Institutional controls include but are not  
6 limited to:

7 (a) deed restrictions;

8 (b) easements;

9 (c) reservations;

10 (d) covenants, either restrictive or affirmative; and

11 (e) other mechanisms or physical restrictions for controlling present and future land use, including  
12 controlled ground water areas, that are placed upon real property to mitigate the risk to public health,  
13 safety, and welfare and the environment.

14 (12) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking  
15 water supplies, and any other resources within the state of Montana owned, managed, held in trust, or  
16 otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

17 (13) "Orphan share" means the percentage share of remedial action costs for a facility that is  
18 attributable, under the procedures in 75-10-742 through 75-10-752, to identified but bankrupt or defunct  
19 persons who are not an affiliate of any viable person, unless affiliated by stock ownership.

20 (14) "Orphan share fund" means the fund for the orphan share account established in 75-10-743.

21 (15) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising  
22 control over the operation of a facility.

23 (b) The term does not include holding the indicia of ownership of a facility primarily to protect a  
24 security interest in the facility or other location unless the holder has participated in the management of  
25 the facility. The term does not apply to the state or a local government that acquired ownership or control  
26 through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the  
27 government acquires title by virtue of its function as sovereign, unless the state or local government has  
28 caused or contributed to the release or threatened release of a hazardous or deleterious substance from  
29 the facility. The term also does not include the owner or operator of the Milltown dam licensed under part  
30 1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been

1 released into the environment upstream of the dam and has subsequently come to be located in the  
2 reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for  
3 a release or threatened release under 75-10-715(1).

4 (16) "Person" means an individual, trust, firm, joint-stock company, joint venture, consortium,  
5 commercial entity, partnership, association, corporation, commission, state or state agency, political  
6 subdivision of the state, interstate body, or the federal government, including a federal agency.

7 (17) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities  
8 subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any  
9 other petroleum-related product or waste or fraction of the product or waste that is liquid at standard  
10 conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

11 (18) "Private response costs" means only those reasonable, noninsured, out-of-pocket expenses  
12 incurred by an individual or small business owner to replace contaminated water supplies or to prevent  
13 exposure to air contaminated by a person liable under 75-10-715; CONTAMINATED AIR;

14 ~~(18)~~(19) "Reasonably anticipated future uses" means likely future land or resource uses that take  
15 into consideration:

- 16 (a) local land and resource use regulations, ordinances, restrictions, or covenants;  
17 (b) historical and anticipated uses of the facility;  
18 (c) patterns of development in the immediate area; and  
19 (d) relevant indications of anticipated land use from the owner of the facility and local planning  
20 officials.

21 ~~(19)~~(20) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging,  
22 injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into  
23 the environment (including the abandonment or discarding of barrels, containers, and other closed  
24 receptacles containing any hazardous or deleterious substance), but excludes releases confined to the  
25 indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied  
26 in accordance with approved federal and state labels, and the use of commercial fertilizers, as defined in  
27 80-10-101(2), when applied as part of accepted agricultural practice.

28 ~~(20)~~(21) "Remedial action" includes all notification, investigation, administration, monitoring,  
29 cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action,  
30 health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or

1 threatened release.

2 ~~(21)~~(22) "Remedial action contract" means a written contract or agreement entered into by a  
3 remedial action contractor with the state, or with a potentially liable person acting pursuant to an order  
4 or request issued by the department, the United States, or any federal agency, to provide a remedial action  
5 with respect to a release or threatened release of a hazardous or deleterious substance.

6 ~~(22)~~(23) "Remedial action contractor" means:

7 (a) any person who enters into and is carrying out a remedial action contract; or

8 (b) any person who is retained or hired by a person described in subsection ~~(22)(a)~~ (23)(a) to  
9 provide services relating to a remedial action.

10 ~~(23)~~(24) "Remedial action costs" means reasonable costs that are attributable to or associated with  
11 a remedial action at a facility, including but not limited to the costs of administration, investigation, legal  
12 or enforcement activities, contracts, feasibility studies, or health studies."

13

14 **Section 2.** Section 75-10-704, MCA, is amended to read:

15 **"75-10-704. Environmental quality protection fund.** (1) There is in the state special revenue fund  
16 an environmental quality protection fund to be administered as a revolving fund by the department. The  
17 department is authorized to expend amounts from the fund necessary to carry out the purposes of this  
18 part.

19 (2) The fund may be used by the department only to carry out the provisions of this part ~~and~~ for  
20 remedial actions taken by the department, and for the reimbursement of private response costs that are  
21 recovered pursuant to this part in response to a release of hazardous or deleterious substances.

22 (3) The department shall:

23 (a) except as provided in subsection (7), establish and implement a system, including the  
24 preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human  
25 health and the environment; and

26 (b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain  
27 the participation and financial contribution of liable persons for the remedial action, to achieve remedial  
28 action, ~~and~~ to recover costs and damages incurred by the state, and to seek recovery of private response  
29 costs submitted CERTIFIED pursuant to [section 5].

30 (4) There must be deposited in the fund:

1 (a) all penalties, forfeited financial assurance, natural resource damages, ~~and~~ remedial action costs,  
2 and private response costs recovered pursuant to 75-10-715 and 75-10-722;

3 (b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed  
4 pursuant to 75-10-711(5);

5 (c) funds appropriated to the fund by the legislature;

6 (d) funds received from the interest income of the resource indemnity trust fund pursuant to  
7 15-38-202;

8 (e) funds received from the interest income of the fund; and

9 (f) funds received from settlements pursuant to 75-10-719(7).

10 (5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and  
11 additional money remains in the fund, the department shall seek additional authority to spend money from  
12 the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

13 (6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the  
14 department may apply to the governor for a grant from the environmental contingency account established  
15 pursuant to 75-1-1101.

16 (7) (a) There is established a state special revenue account for all funds donated or granted from  
17 private parties to remediate a specific release at a specific facility. There must be deposited into the  
18 account the interest income earned on the account. A person is not liable under 75-10-715 solely as a  
19 result of contributing to this account.

20 (b) Funds donated or granted for a specific project pursuant to this subsection (7) must be  
21 accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by  
22 the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds  
23 are donated.

24 (c) If the balance of the fund created in this subsection (7), as determined by the department  
25 pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from  
26 the date of the initial contribution, all donated or granted funds, including any interest on those donated  
27 or granted funds, must be returned to the grantor.

28 (d) If the balance for a specific project is determined by the department to be sufficient to  
29 remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high  
30 priority for remedial action, using the funds donated under this subsection (7).

1 (e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or  
2 actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable  
3 persons, to obtain the participation and financial contribution of liable persons for the remedial action, to  
4 achieve remedial action, and to recover costs and damages incurred by the state.

5 (f) The department shall expend the funds in a manner that maximizes the application of the funds  
6 to physically remediating the specific release.

7 (8) (a) A person may donate in-kind services to remediate a specific release at a specific facility  
8 pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as  
9 a result of the contribution of in-kind services.

10 (b) A person who donates in-kind services with respect to remediating a specific release at a  
11 specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other  
12 liability that results from the release or threatened release, including but not limited to claims for  
13 indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or  
14 damage to property, or economic loss.

15 (c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release  
16 that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or  
17 that constitutes intentional misconduct.

18 (d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release  
19 or threatened release of a hazardous or deleterious substance, the person may not avoid that liability or  
20 responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions  
21 of subsection (7) and this subsection (8).

22 (e) Any donated in-kind services that are employed as part of a remedial action pursuant to this  
23 subsection (8) must be approved by the department as appropriate remedial action."  
24

25 **Section 3.** Section 75-10-711, MCA, is amended to read:

26 **"75-10-711. Remedial action -- orders -- penalties -- judicial proceedings.** (1) The department may  
27 take remedial action whenever:

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

1 (b) the appropriate remedial action will not be done properly and expeditiously by any person liable  
2 under 75-10-715(1) and each person that is liable or potentially liable under 75-10-715(1) has been given  
3 the opportunity by letter to properly and expeditiously perform the appropriate remedial action. Any person  
4 liable under 75-10-715(1) shall take immediate action to contain, remove, and abate the release.

5 (2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to  
6 believe that a release has occurred or is about to occur, the department may undertake remedial action  
7 in the form of any investigation, monitoring, survey, testing, or other information gathering as authorized  
8 by 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the  
9 release or the threat of release and the extent and imminence of the danger to the public health, safety,  
10 or welfare or the environment.

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

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

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

19 (c) the written notice to each person informs the person OF THE NATURE OF THE KNOWN OR SUSPECTED  
20 CONTAMINATION AND that if subsequently found liable pursuant to 75-10-715(1), the person may be required  
21 to reimburse the fund for the state's remedial action costs, to reimburse any private response costs  
22 submitted CERTIFIED pursuant to [section 5], and may be subject to penalties pursuant to this part.

23 (4) Whenever the department is authorized to act pursuant to subsection (1), it may issue to any  
24 person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or  
25 appropriate to protect the public health, safety, or welfare or the environment, including orders for  
26 reimbursement of private response costs.

27 (5) (a) A person who violates or fails or refuses to comply with an order issued under 75-10-707  
28 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than  
29 \$10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining  
30 the amount of any penalty assessed, the court may take into account:

- 1 (i) the nature, circumstances, extent, and gravity of the noncompliance;
- 2 (ii) with respect to the person liable under 75-10-715(1):
- 3 (A) the person's ability to pay;
- 4 (B) any prior history of violations;
- 5 (C) the degree of culpability; and
- 6 (D) the economic benefit or savings, if any, resulting from the noncompliance; and
- 7 (iii) any other matters as justice may require.
- 8 (b) Civil penalties collected under subsection (5)(a) must be deposited into the environmental
- 9 quality protection fund established in 75-10-704.
- 10 (6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the
- 11 following actions:
- 12 (a) an action under 75-10-715 to recover remedial action costs, ~~private response costs submitted~~
- 13 CERTIFIED pursuant to [section 5], or penalties or for contribution;
- 14 (b) an action to enforce an order issued under 75-10-707 or this section;
- 15 (c) an action to recover a civil penalty for violation of or failure to comply with an order issued
- 16 under 75-10-707 or this section; ~~or~~
- 17 (d) an action by a person to whom an order has been issued to determine the validity of the order,
- 18 only if the person has been in compliance and continues in compliance with the order pending a decision
- 19 of the court; OR
- 20 (E) AN ACTION TO DETERMINE THE VALIDITY OF THE PORTION OF AN ORDER DIRECTING THE PERSON TO PAY
- 21 PRIVATE RESPONSE COSTS.
- 22 (7) In considering objections raised in a judicial action regarding orders issued under this part, the
- 23 court shall uphold and enforce an order issued by the department unless the objecting party can
- 24 demonstrate, on the administrative record, that the department's decision to issue the order was arbitrary
- 25 and capricious or otherwise not in accordance with law.
- 26 (8) Instead of issuing a notification or an order under this section, the department may bring an
- 27 action for legal or equitable relief in the district court of the county where the release or threatened release
- 28 occurred or in the first judicial district as may be necessary to abate any imminent and substantial
- 29 endangerment to the public health, safety, or welfare or the environment resulting from the release or
- 30 threatened release.

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

5

6 **Section 4.** Section 75-10-715, MCA, is amended to read:

7 **"75-10-715. Liability -- reimbursement and penalties -- proceedings -- defenses and exclusions.**

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

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

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

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

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

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

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

24 (b) all private response costs submitted CERTIFIED pursuant to [section 5]; and

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

1 or facility was being operated within the terms of its permit or license.

2 (3) If the person liable under subsection (1) fails, without sufficient cause, to comply with a  
3 department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification  
4 by the department pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to  
5 exceed two times the amount of any costs incurred by the state pursuant to this section.

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

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

14 (a) the department failed to follow the notice provisions of 75-10-711 when required;

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

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

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

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

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

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

28 (d) the release or threat of release occurred solely as the result of an act of God or an 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 NEW SECTION. Section 5. Private response costs -- submission of claims -- DEPARTMENT

13 DETERMINATIONS. (1) A person who is an individual or a small business, as defined by 33-27-103, may  
14 submit claims for private response costs to the department. The department shall include claims that  
15 ~~comply with this section~~ IT CERTIFIES PURSUANT TO SUBSECTION (2) in any complaint, OR order, or other action  
16 initiated under this part against any person liable under 75-10-715.

17 (2) ~~Claims must be certified by the department to be reasonable, actual, and necessary~~ THE  
18 DEPARTMENT SHALL CERTIFY THOSE COSTS THAT IT DETERMINES TO BE REASONABLE AND ACTUAL expenditures that  
19 were incurred by the claimant as the result of a release ~~by a person liable under 75-10-715~~ OF A HAZARDOUS  
20 OR DELETERIOUS SUBSTANCE. Examples of expenditures may include but are not limited to the following:

- 21 (a) provision of temporary potable water supplies;  
22 (b) installation and operation of water treatment equipment;  
23 (c) replacement of contaminated wells and pumps;  
24 (d) connection to a public water supply;  
25 (e) installation of impervious barriers to isolate environments;  
26 (f) provision and operation of venting or air pressure devices; and  
27 (g) any additional mandatory or preventative private response costs incurred by the individual or  
28 small business that would not have been necessary except for the release.

29 (3) FAILURE OF A PERSON TO SUBMIT A CLAIM FOR A COST PURSUANT TO SUBSECTION (1) OR A DETERMINATION  
30 BY THE DEPARTMENT NOT TO CERTIFY A COST DOES NOT BAR THE PERSON FROM FILING AN ACTION PURSUANT TO

1 75-10-724, AND EVIDENCE OF FAILURE TO SUBMIT A COST OR THE DEPARTMENT'S DETERMINATION NOT TO CERTIFY A  
 2 COST IS NOT ADMISSIBLE IN EVIDENCE IN AN ACTION BROUGHT PURSUANT TO 75-10-724. AN APPLICANT'S SOLE  
 3 JUDICIAL REMEDY UNDER THIS PART FOR REIMBURSEMENT OF A COST THAT THE DEPARTMENT DETERMINES NOT TO CERTIFY  
 4 IS CONSIDERED AN ACTION PURSUANT TO 75-10-724.

5 ~~(3)~~(4) Claims must be dated, signed by the claimant, certified that they were noninsured,  
 6 out-of-pocket expenses paid by the claimant, and specific as to the service provided and the cost of the  
 7 service obtained.

8 ~~(4)~~(5) The department may accept claims for private response costs until the date it files an action  
 9 or ISSUES AN order to recover state remedial action costs from a person liable under 75-10-715.

10 ~~(5)~~(6) ~~The department shall make diligent good faith efforts to notify persons with private~~  
 11 ~~response claims prior~~ PRIOR to filing a cost recovery action under this part, THE DEPARTMENT SHALL PUBLISH  
 12 ONCE A WEEK FOR 3 CONSECUTIVE WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY WHERE ALL OR A  
 13 PORTION OF THE RELEASE IS LOCATED A NOTICE OF THE DEADLINE FOR SUBMITTING PRIVATE RESPONSE COSTS FOR REVIEW  
 14 AND INCLUSION IN THE DEPARTMENT'S COST RECOVERY ACTION.

15

16 NEW SECTION. Section 6. Private response costs -- prohibitions. (1) A person may not file a claim  
 17 for private response costs against the orphan share under the procedures in 75-10-742 through 75-10-752  
 18 or against the orphan share fund or account established in 75-10-743.

19 (2) A person may not seek recovery of private response costs that have been paid by a third-party  
 20 provider, by an insurer, through a settlement arrangement, as the result of any action taken under  
 21 75-10-724, or by any other means.

22 (3) The department may not seek cost recovery of private response costs that have been  
 23 previously paid OR THAT WILL BE PAID by persons other than the claimant.

24 (4) The state is not financially liable for reimbursing any portion of a private response claim. A  
 25 reimbursement of private response costs by the department under 75-10-722 may only be made from  
 26 those costs recovered, if any, by the department from a person liable under 75-10-715 in an action on  
 27 behalf of the claimant. If less than full cost recovery is obtained, then reimbursements for the state's  
 28 remedial action costs, INCLUDING ATTORNEY FEES, LEGAL COSTS, AND CERTIFIED private response costs, ~~penalties,~~  
 29 ~~and legal expenses,~~ if any, must be apportioned in equal percentages. THE DEPARTMENT IS NOT REQUIRED TO  
 30 REIMBURSE MORE THAN THE AMOUNT OF THE CERTIFIED PRIVATE RESPONSE COSTS.

1           (5) A PERSON WHO IS LIABLE OR POTENTIALLY LIABLE UNDER 75-10-715 MAY NOT SUBMIT A CLAIM OR RECEIVE  
2 REIMBURSEMENT FOR PRIVATE RESPONSE COSTS UNDER [SECTION 5].

3           (6) A PERSON MAY NOT RECOVER COSTS FOR THE SAME CLAIM MORE THAN ONCE UNDER ANY PROVISION OF LAW.

4           (7) THE DEPARTMENT MAY NOT REIMBURSE MORE THAN \$25,000 IN PRIVATE RESPONSE COSTS TO EACH  
5 HOUSEHOLD OR BUSINESS AFFECTED BY THE RELEASE.

6

7           **Section 7.** Section 75-10-718, MCA, is amended to read:

8           **"75-10-718. Liability of remedial action contractor.** (1) A person who is a remedial action  
9 contractor with respect to a release or threatened release of a hazardous or deleterious substance is not  
10 liable under this part to any person for injuries, costs, damages, expenses, or other liability that results  
11 from the release or threatened release, including but not limited to claims for indemnification or  
12 contribution and claims by third parties for death, personal injury, illness, loss or damage to property, or  
13 economic loss.

14           (2) Immunity from liability, pursuant to subsection (1), does not apply in the case of a release that  
15 is caused by conduct of the remedial action contractor that is negligent or grossly negligent or that  
16 constitutes intentional misconduct.

17           (3) This section does not affect the liability of a person under a warranty under federal, state, or  
18 common law or the liability to an employee of an employer who is a remedial action contractor under any  
19 provision of law, including any provision of a law relating to workers' compensation.

20           (4) A state agency or state employee or an employee of a political subdivision who provides  
21 services relating to remedial action while acting within the scope of the entity's or individual's authority  
22 as a governmental agency or employee has the same exemption from liability as is provided to the remedial  
23 action contractor under this section.

24           (5) The defense provided by 75-10-715(5)(c) is not available to a person liable under 75-10-715(1)  
25 with respect to remedial action costs, private response costs, or damages caused by an act or omission  
26 of a remedial action contractor.

27           (6) Except as provided in subsections (4) and (5), this section does not affect the liability under  
28 this part of a person other than a remedial action contractor.

29           (7) This section does not affect the plaintiff's burden of establishing liability under this part.

30           (8) This section does not minimize the liability, lessen the standard of liability, or otherwise shield

1 from liability a potentially liable person under 75-10-715 or section 107 of CERCLA for costs or damages  
2 incurred as a result of a release or threatened release of a hazardous or deleterious substance."

3

4 **Section 8.** Section 75-10-719, MCA, is amended to read:

5 **"75-10-719. Settlement -- bar to contribution liability.** (1) A person who has resolved that  
6 person's liability to the state arising under 75-10-715 or section 107(a)(1) through (a)(4) of CERCLA, 42  
7 U.S.C. 9607(a)(1) through (a)(4), in an administrative or judicially approved settlement is not liable for  
8 claims for contribution regarding matters addressed in the settlement. The settlement does not discharge  
9 any of the other potentially liable persons unless its terms provide a discharge. The terms of the settlement  
10 may reduce the potential liability of the other potentially liable persons by the amount of the settlement.

11 (2) If the state has obtained less than complete relief from a person who has resolved that  
12 person's liability to the state in an administrative or judicially approved settlement, the state may bring an  
13 action against any other person who has not resolved that person's liability.

14 (3) A person who has resolved, in whole or in part, that person's liability to the state for the  
15 release, ~~or~~ for remedial action costs, or for private response costs in an administrative or judicially  
16 approved settlement may seek contribution from a person who is not party to a settlement referred to in  
17 subsection (1).

18 (4) Whenever practicable and in the public interest, as determined by the director of the  
19 department, the department may, as promptly as possible, reach a final settlement with a potentially liable  
20 or liable person under 75-10-715 in an administrative or civil action under 75-10-711 if the settlement  
21 involves only a minor portion of the remedial action costs or private response costs at the facility  
22 concerned and, in the judgment of the department, taking into account the toxicity of the hazardous or  
23 deleterious substances involved and the person's contribution of hazardous or deleterious substances in  
24 relation to the total volume of hazardous or deleterious substances at the facility, the conditions in any of  
25 the following subsections (4)(a) through (4)(d) are met:

26 (a) the person is one whose liability is based solely on 75-10-715(1)(c) or (1)(d) and who presents  
27 substantial credible evidence that the person contributed less than 0.002% of the total volume or less than  
28 100 gallons or 200 pounds of materials containing hazardous or deleterious substances at a facility that  
29 received hazardous or deleterious substances from multiple contributors. The department may not require  
30 the payment of remedial action costs or private response costs from this person.

1 (b) (i) the person is one whose liability is based solely on 75-10-715(1)(c) or (1)(d) and who  
2 presents substantial credible evidence that the person arranged for disposal or treatment of less than 5%  
3 of the total quantity of solid waste or hazardous or deleterious substances disposed of at a facility that  
4 received solid waste or hazardous or deleterious substances from multiple contributors.

5 (ii) For the purposes of subsection (5)(a) and this subsection (4)(b) only, the term "solid waste"  
6 means:

7 (A) all putrescible and nonputrescible wastes, including garbage, rubbish, refuse, or ashes;

8 (B) sludge from sewage treatment plants, water supply plants, or air pollution control facilities;

9 (C) construction and demolition wastes;

10 (D) dead animals, including offal;

11 (E) discarded home and industrial appliances; and

12 (F) wood products or wood byproducts and inert materials.

13 (c) (i) the person:

14 (A) is the owner of the real property on or in which the facility is located;

15 (B) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any  
16 hazardous or deleterious substance at the facility; and

17 (C) did not contribute to the release or threat of release of a hazardous or deleterious substance  
18 at the facility through any action or omission.

19 (ii) This subsection (4)(c) does not apply if the person purchased the real property with actual or  
20 constructive knowledge that the property was used for the generation, transportation, storage, treatment,  
21 or disposal of any hazardous or deleterious substance.

22 (d) the person presents substantial credible evidence that the person has a defense under  
23 75-10-715(5).

24 (5) When reaching a settlement under subsection (4)(b), (4)(c), or (4)(d), the department may  
25 require the payment of remedial action costs and private response costs not to exceed two times the  
26 person's reasonably projected liability for remedial action costs and private response costs as determined  
27 by the department. Except as provided in subsection (6), the settlement must contain a reservation of  
28 rights clause in the event that the department obtains new information showing that the settling person  
29 no longer qualifies for a settlement because:

30 (a) the solid waste or hazardous or deleterious substances contributed by the person was of a

1 greater volume or toxicity than originally estimated; or

2 (b) the settlement was reached under subsection (4)(c) and, after settlement, the department finds  
3 that the person had actual or constructive knowledge that the property was used for the generation,  
4 transportation, storage, treatment, or disposal of any hazardous or deleterious substance.

5 (6) A person who agrees to a liability settlement may avoid the reservation of rights clause under  
6 subsection (5) by paying remedial action costs and private response costs in the amount of four times the  
7 person's reasonably projected liability for remedial action costs and private response costs as determined  
8 by the department.

9 (7) All funds received as a result of settlements under this section must be paid in the following  
10 order of priority:

11 (a) to the department as reimbursement for its remedial action costs at the facility and as  
12 reimbursement for private response costs submitted CERTIFIED pursuant to [section 5];

13 (b) to liable persons as reimbursement for remedial action costs at the facility. In the event of an  
14 allocation under 75-10-742 through 75-10-752, the reimbursement must be in proportion to each liable  
15 person's share of liability as determined under the provisions of 75-10-750 or 75-10-751;

16 (c) the remainder, if any:

17 (i) to the orphan share fund provided in 75-10-743 if the facility went through the allocation  
18 process provided in 75-10-742 through 75-10-752; or

19 (ii) to the fund provided in 75-10-704 if the facility did not undergo the allocation process provided  
20 in 75-10-742 through 75-10-752.

21 (8) Any person who enters into a settlement under this section may not be subject to or assigned  
22 a share in the allocation process provided in 75-10-742 through 75-10-752.

23 (9) As part of an administrative or judicially approved settlement agreement, the department may  
24 require the liable person to provide financial assurance, in an amount determined by the department, to  
25 ensure the long-term operation and maintenance of the remedial action site. The liable person shall provide  
26 the financial assurance by any one method or combination of methods satisfactory to the department,  
27 including but not limited to insurance, guarantee, performance or other surety bond, letter of credit,  
28 qualification as a self-insurer, or other demonstration of financial capability."

29

30 **Section 9.** Section 75-10-720, MCA, is amended to read:

1           **"75-10-720. Condemnation -- creation of state lien.** (1) Whenever the department determines that  
2 property upon which a release or threatened release of a hazardous or deleterious substance has occurred  
3 may present an imminent and substantial endangerment to the public health, safety, or welfare or the  
4 environment, the department may condemn the property for public use to mitigate the threat. The taking  
5 of the property must be conducted in accordance with the procedure set forth in Title 70, chapter 30,  
6 parts 1 through 3.

7           (2) All costs, including private response costs, penalties, and natural resource damages for which  
8 a person has been judicially determined to be liable to the state pursuant to 75-10-715 constitute a lien  
9 in favor of the state upon all property and rights to the property that belong to the person.

10          (3) The lien imposed by this section arises at the time notice incorporating a description of the  
11 property subject to the remedial action and an identification of the amount of costs, including private  
12 response costs submitted ~~CERTIFIED~~ pursuant to [section 5], penalties, and natural resource damages is filed  
13 with the clerk and recorder of the county in which the real property is located. A copy of the notice must  
14 be served by certified mail upon the liable person.

15          (4) The costs, including private response costs, penalties, and natural resource damages  
16 constituting the lien may be recovered in an action in the district court for the district in which the property  
17 is located or in which the remedial action is occurring or has occurred. This section does not affect the  
18 right of the state or any person to bring an action against a person to recover all costs, including private  
19 response costs, penalties, and natural resource damages for which that person is liable under this part or  
20 any other provision of state or federal law.

21          (5) The lien must continue until the liability for the costs and damages incurred as a result of the  
22 release of a hazardous or deleterious substance is satisfied.

23          (6) If the department expends money from the fund for orphan share remedial action costs at a  
24 facility or for a facility at which a reimbursed orphan share exists, the state has a lien upon the facility for  
25 the unrecovered costs. The lien:

26           (a) may not exceed the increase in fair market value of the property attributable to the unfunded  
27 portion of the remedial action at the time of a subsequent sale or other disposition of the property;

28           (b) arises at the time costs are first incurred;

29           (i) by the department with respect to a remedial action at the facility; or

30           (ii) by an individual or small business with respect to private response costs;

1 (c) must be filed according to subsection (3); and

2 (d) continues until the earlier of satisfaction of the lien or recovery of all remedial action costs  
3 incurred at the facility and the recovery of all private response costs submitted CERTIFIED pursuant to  
4 [section 5].

5 (7) Payment of any liens under this section must be deposited in one of the two accounts from  
6 which the remedial action costs originated, including the fund established in 75-10-704 or the orphan  
7 share fund established in 75-10-743."

8

9 **Section 10.** Section 75-10-722, MCA, is amended to read:

10 **"75-10-722. Payment of state costs and penalties.** (1) The department shall keep a record of the  
11 state's remedial action costs and a record of private response costs submitted CERTIFIED pursuant to  
12 [section 5].

13 (2) Based on this record, the department may require a person liable under 75-10-715 to pay the  
14 amount of the state's remedial action costs, the private response costs, and, if applicable, penalties under  
15 75-10-715(3).

16 (3) If the state's remedial action costs, any private response costs submitted CERTIFIED pursuant  
17 to [section 5], and penalties are not paid by the liable person to the department within 60 days after  
18 receipt of notice that the costs and penalties are due, the department shall bring an action in the name of  
19 the state to recover the amount owed plus reasonable legal expenses.

20 (4) An action to recover remedial action costs and private response costs may be brought under  
21 this section at any time after any ~~remedial action~~ costs have been incurred, and the court may enter a  
22 declaratory judgment on liability for ~~remedial action~~ the costs that is binding on any subsequent action or  
23 actions to recover further remedial action costs or private response costs. The court may disallow costs  
24 or damages only if the person liable under 75-10-715 can show on the record that the costs are not  
25 reasonable and are not consistent with this part.

26 (5) An initial action brought under 75-10-715(4) or a contribution action for costs incurred under  
27 this part must be commenced within 6 years after initiation of physical onsite construction of the final  
28 permanent remedy.

29 (6) Remedial action costs, private response costs, and any penalties recovered by the state under  
30 75-10-715 must be deposited into the environmental quality protection fund established in 75-10-704.

1           (7) Within 30 days of receipt by the department, private response costs recovered by the state  
 2 must be paid to the person who submitted the claim for costs to the department pursuant to [section 5]."

3

4           **Section 11.** Section 75-10-724, MCA, is amended to read:

5           **"75-10-724. Private right of action.** (1) Any person who receives notice under 75-10-711, who  
 6 is held jointly and severally liable under 75-10-715, or who initiates a voluntary cleanup under the  
 7 provisions of 75-10-730 through 75-10-738 may bring a private right of action, including a claim for  
 8 contribution or declaratory relief, against any other person who is liable or potentially liable under  
 9 75-10-715 for the recovery of remedial action costs. In resolving contribution claims, the court shall  
 10 allocate remedial action costs among the liable persons based on the factors set out in 75-10-750.

11           (2) An individual or small business that has incurred private response costs resulting from the  
 12 action or inaction of any other person who is liable under 75-10-715 may bring a private right of action  
 13 in district court to recover those costs, including legal costs incurred in bringing the action if the action  
 14 is successful, FROM A PERSON WHO IS LIABLE UNDER 75-10-715.

15           (3) An individual or small business may not recover private response costs from both an action  
 16 taken pursuant to subsection (2) and from cost recovery efforts available elsewhere in this part.

17           (4) THE COURT IN ANY ACTION BROUGHT TO RECOVER COSTS HAS THE DISCRETION TO AWARD ATTORNEY FEES  
 18 TO THE PREVAILING OR SUBSTANTIALLY PREVAILING PARTY. "

19

20 ~~Section 12.~~ Section 75-10-733, MCA, is amended to read:

21 ~~"75-10-733. Voluntary cleanup plan and reimbursement of remedial action costs and private~~  
 22 ~~response costs.~~ (1) Any person may submit an application for the approval of a voluntary cleanup plan to  
 23 the department under the provisions of this section.

24 ~~(2) A voluntary cleanup plan must include:~~

25 ~~(a) an environmental assessment of the facility that includes the information required in~~  
 26 ~~75-10-734;~~

27 ~~(b) a remediation proposal that includes the information required in 75-10-734 and that meets the~~  
 28 ~~requirements of 75-10-721; and~~

29 ~~(c) the written consent of current owners of the facility or property to both the implementation~~  
 30 ~~of the voluntary cleanup plan and access to the facility by the applicant and its agents and the department.~~

1 ~~———— (3) The applicant shall reimburse the department for any remedial action costs that the state incurs~~  
 2 ~~in the review and oversight of a voluntary cleanup plan.~~

3 ~~———— (4) The department may not approve a voluntary cleanup plan under 76-10-736 unless the~~  
 4 ~~applicant has reimbursed all claims for private response costs submitted pursuant to [section 5].~~

5 ~~———— (4)(5) The department may approve a voluntary cleanup plan that provides for phases of~~  
 6 ~~remediation or that addresses only a portion of the facility. To the extent that the original environmental~~  
 7 ~~assessment required under 75-10-734 addresses subsequent phases of remediation, the applicant may~~  
 8 ~~rely on that assessment when submitting voluntary cleanup plans for subsequent phases of remediation."~~

9

10 ~~———— **Section 13.** Section 75-10-738, MCA, is amended to read:~~

11 ~~———— **"75-10-738. Closure.** (1) After completion of the voluntary cleanup plan, an applicant may petition~~  
 12 ~~the department for closure of the facility under 75-10-730 through 75-10-738.~~

13 ~~———— (2) Within 60 days of receipt of a petition for closure, weather permitting, the department shall~~  
 14 ~~conduct a review to determine that the releases or threatened releases addressed in the voluntary cleanup~~  
 15 ~~plan do not pose a significant threat to public health, welfare, or safety or to the environment as~~  
 16 ~~determined in accordance with 75-10-721 and that the applicant has:~~

17 ~~———— (a) implemented all appropriate remedial actions;~~

18 ~~———— (b) if necessary, provided for long-term funding for facility maintenance or monitoring; and~~

19 ~~———— (c) reimbursed the department for all remedial action costs of the voluntary cleanup; and~~

20 ~~———— (d) reimbursed all private response costs submitted pursuant to [section 5].~~

21 ~~———— (3) In the event that the petition for closure is not approved by the department, the department~~  
 22 ~~shall promptly provide the applicant with a written statement of the reasons for denial. Written notification~~  
 23 ~~that the petition is approved by the department must include the following language:~~

24 ~~———— "Based upon the information provided by [insert name(s) of applicant(s)] concerning property~~  
 25 ~~located at [insert address], it is the opinion of the Montana Department of Environmental Quality that upon~~  
 26 ~~completion of the voluntary cleanup plan, no further action is required to ensure that this facility, when~~  
 27 ~~used for [insert purposes identified], is protective of existing and proposed uses and does not pose a~~  
 28 ~~significant risk to public health, safety, or welfare or the environment at the facility with regard to releases~~  
 29 ~~or threatened releases addressed in the voluntary cleanup plan. The department reserves the right to~~  
 30 ~~conduct or require further remedial action at this facility if a new release occurs or if the department~~

1 receives new or different information than presented in the approved voluntary cleanup plan."  
2 ~~—— (4) After completion of a portion of a facility addressed in the voluntary cleanup plan, the~~  
3 ~~department shall issue a letter of completion notice to the applicant if the department determines that the~~  
4 ~~applicant has satisfied the requirements of subsection (2)."~~

5

6 NEW SECTION. **Section 12. Codification instruction.** [Sections 5 and 6] are intended to be  
7 codified as an integral part of Title 75, chapter 10, part 7, and the provisions of Title 75, chapter 10, part  
8 7, apply to [sections 5 and 6].

9

10 NEW SECTION. **Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are  
11 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
12 applications, the part remains in effect in all valid applications that are severable from the invalid  
13 applications.

14

15 NEW SECTION. **Section 14. Effective date.** [This act] is effective on passage and approval.

16

- END -