

- b. Up to 30 persons will respond to notices prior to a cost recovery action, claiming that they are an individual or small business, and that they have a private response cost claim, based on the department's experience at six facilities to date.
 - c. The DEQ project manager will spend 2 hours per claim (totaling 60 hours) investigating and certifying these initial claims to determine whether the claimant is a qualifying individual or small business and to ensure documentation is adequate to certify that the claimed private response costs are business and to ensure documentation is adequate to certify that the claimed private response costs are actual, reasonable and necessary and to assess interest.
 - d. No follow-up private response cost claims will be submitted.
 - e. To support the 0.05 FTE, operating expenses include indirect costs at 23% equaling \$388 and \$2,604 in operating expenses for supplies, telephone, travel, newspaper notices described above, etc.
- 5. No new claimants will come forward after the initial 100 are identified.
 - 6. No Rulemaking would be necessary to implement the bill with the amendments proposed.
 - 7. DEQ may be required to file and conduct cost recovery court actions to force the liable party to reimburse department costs relative to this obligation under HB057.01. It is difficult to predict the level of effort and costs associated with such an action. The department may incur significant legal costs above those currently budgeted.

FISCAL IMPACT:

	<u>FY 2005</u> <u>Difference</u>	<u>FY 2006</u> <u>Difference</u>	<u>FY 2007</u> <u>Difference</u>
FTE	0	.05	.05
<u>Expenditures:</u>			
Personal Services	0	1,687	1,687
Operating Expenses	0	2,992	2,992
TOTAL	0	\$4,679	\$4,679
<u>Funding of Expenditures:</u>			
General Fund (01)	0	\$4,679	\$4,679
TOTAL			
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>			
General Fund (01)	0	(\$4,679)	(\$4,679)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

A county or local government that is determined to be a PLP would be impacted.

LONG-RANGE IMPACTS:

This fiscal impact will continue indefinitely into the future.

TECHNICAL NOTES:

1. Section 5(5) provides that the Department may accept claims for private response costs until it files an action or issues an order to recover state remedial action costs. However Section 4 (4) states recovery of remedial action costs occurs through civil proceedings filed in district court. Section 5(1) directs the department to include claims in any complaint or order initiated under this part. The Department is not authorized to issue an order to pay state remedial action costs. Sections 5(1) and (5) need to be reconciled with Section 4.
2. Section 6(4) provides that if less than full cost recovery is obtained, reimbursement for the state's remedial action costs and certified private response costs are apportioned in equal percentages. The meaning of this provision is unclear. The direction to "apportion in equal percentages" could mean split equally by the number of claimants or it could mean the percentage of recovery is applied individually to each claim. This bill needs to define which method of distribution is to be used.
3. Section 8 amends 75-10-719, MCA, which allows DEQ to settle with persons who owe only a small portion of the state's remedial action costs by paying two or four times the person's reasonably projected liability. Section 8(5) and (6) would include private response costs in this settlement provision. This would

be problematic in settlement negotiations for private response costs unless the defendant were willing to settle the private response cost by two or four times the reasonably projected private response costs liability.

3. Section 6(1) provides that the Department cannot use orphan share monies to reimburse private response costs. However, Section 9(6)(d) creates a lien for orphan share monies expended for private response costs. These two sections need to be reconciled.
4. A cross reference is needed in Section 6(4) to 75-10-722(4) to clarify that previously the adopted method of assessing interest under CECRA is utilized to assess interest on unpaid claims.