



AN ACT REVISING THE VOLUNTARY CLEANUP AND REDEVELOPMENT ACT; REVISING PROCEDURES GOVERNING APPLICATION FOR AND REVIEW OF VOLUNTARY CLEANUP PLANS; REVISING REIMBURSEMENT AND DISCLOSURE PROVISIONS; AND AMENDING SECTIONS 75-10-733, 75-10-735, AND 75-10-736, MCA.

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

Section 1. Section 75-10-733, MCA, is amended to read:

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

(2) A voluntary cleanup plan must include:

- (a) an environmental assessment of the facility that includes the information required in 75-10-734;
- (b) a remediation proposal that includes the information required in 75-10-734 and that meets the requirements of 75-10-721; and
- (c) the written consent of current owners of the facility or property to both the implementation of the voluntary cleanup plan and access to the facility by the applicant and its agents and the department.

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

(b) If the applicant does not reimburse the department for its remedial action costs in the time required under 75-10-722, the department may discontinue the review or approval process of the voluntary cleanup plan or void its approval of the voluntary cleanup plan. The department may also take action to recover its outstanding costs.

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

submitting voluntary cleanup plans for subsequent phases of remediation."

Section 2. Section 75-10-735, MCA, is amended to read:

"75-10-735. Public participation. (1) Upon determination by the department that an application for a voluntary cleanup plan is complete pursuant to 75-10-736(1) and (2), the department shall publish a notice and brief analysis of the proposed plan in a daily newspaper of general circulation in the area affected and make the plan available to the public.

(2) The notice must provide 30 days for submission of written comments to the department regarding the plan. Upon written request by 10 or more persons, by a group composed of 10 or more members, or by a local governing body of a city, town, or county within the comment period, the department shall conduct a public meeting at or near the facility regarding the proposed voluntary cleanup plan. The meeting must be held within 45 days of the date that written notice of the department's completeness determination is provided to the applicant under ~~75-10-736(1)~~ 75-10-736(2).

(3) The department shall consider and respond to relevant written or verbal comments submitted during the comment period or at the public meeting.

(4) The department's decision on the final plan and the reasons for any significant modification of the final plan must be published in accordance with subsection (1).

(5) Compliance with this section is considered to satisfy the public participation requirements of Title 75, chapter 1."

Section 3. Section 75-10-736, MCA, is amended to read:

"75-10-736. Approval of voluntary cleanup plan -- time limits -- content of notice -- expiration of approval. (1) The department shall review for completeness, including adequacy and accuracy, in accordance with the requirements of 75-10-734, the environmental assessment component of an application for a voluntary cleanup plan and shall provide a written completeness notice to the applicant ~~within 30 days after receipt of an application for a plan that would take 24 months or less to complete and within 60 days for a plan that would take more than 24 months to complete~~ within 30 days of receipt. The completeness notice must note all deficiencies identified in the information submitted.

(2) Once the department determines that the environmental assessment component of a voluntary

cleanup plan is complete, the applicant may submit the remediation proposal component. The department shall review the remediation proposal for completeness, including adequacy and accuracy, in accordance with the requirements of 75-10-734, and shall provide a written completeness notice to the applicant within 30 days of receipt. The completeness notice must note all deficiencies identified in the information submitted.

~~(2)(3)~~ For Once the department determines that the application for a voluntary cleanup plan that is considered complete by the department pursuant to ~~subsection~~ subsections (1) and (2), the department shall provide formal written notification of approval or disapproval that the voluntary cleanup plan has been approved or disapproved no more than within 60 days for a plan that would take 24 months or less to complete and within 75 days for a plan that would take more than 24 months to complete after the department's determination that ~~an application is complete~~, unless the applicant and the department agree to an extension of the review to a date certain. The review must be limited to a review of the materials submitted by the applicant, public comments, and documents or information readily available to the department. The department shall communicate with the applicant during the review period to ensure that the applicant has the opportunity to address the public comments.

~~(3)(4)~~ (a) If the department receives five applications for review of either component of a voluntary cleanup plan in a calendar month, including applications deferred from prior months, the department may notify any additional applicants in that month that their plans must be reviewed in the order received. The ~~30-day~~ 60-day period for department completeness review of deferred applications ~~pursuant to subsection (1)~~ must begin on the first day of the subsequent month that each plan is eligible for review.

(b) The department shall discontinue accepting either component of voluntary cleanup applications when 15 applications are pending and are being reviewed by the department. The department shall establish a waiting list for applications and shall consider the applications in order of submittal.

(c) If the department has received multiple ~~cleanup~~ applications for a voluntary cleanup at the same facility, the department shall notify all of the applicants and offer them the opportunity to submit a joint application.

~~(4)(5)~~ Consistent with the provisions of 75-10-707, the department may access the facility during review of either component of the application and implementation of the voluntary cleanup plan to confirm information provided by the applicant and verify that the cleanup is being conducted consistent with the approved plan.

~~(5)(6)~~ The department shall approve a voluntary cleanup plan if the department concludes that the plan meets the requirements specified in 75-10-734 and will attain a degree of cleanup and control of hazardous or

deleterious substances that complies with the requirements of 75-10-721. Except for the period necessary for the operation and maintenance of the approved remediation proposal, the department may not approve a voluntary remediation proposal that would take longer than 60 months after department approval to complete.

~~(6)~~(7) If a voluntary cleanup plan is not approved by the department, the department shall promptly provide the applicant with a written statement of the reasons for denial. The denial may be appealed to the board of environmental review in accordance with the provisions of 75-10-732(4).

~~(7)~~(8) The approval of a voluntary cleanup plan by the department applies only to conditions at the facility that are known to the department at the time of department approval. If a voluntary remediation proposal is not initiated within 12 months and, except for the period necessary for the operation and maintenance of the approved remediation proposal, is not completed within 60 months after approval by the department, the department's approval lapses. However, the department may grant an extension of the time limit for completion of the voluntary cleanup plan.

~~(8)~~(9) If ~~reasonably unforeseeable~~ conditions are discovered during implementation of a voluntary cleanup plan that were not identified in the environmental assessment component pursuant to subsection (1), ~~substantially~~ affect the risk to public health, safety, or welfare or the environment ~~or, and~~ substantially change the scope of the approved plan, the applicant shall ~~promptly~~ notify the department within 10 days of discovery. The department may require the applicant to submit an amendment to the approved plan to address the ~~unforeseen~~ conditions or may determine that a voluntary cleanup plan is no longer appropriate pursuant to 75-10-732(3).

~~(9)~~ ~~Written notification by the department that a voluntary cleanup plan is not approved must state the basis for disapproval of the voluntary cleanup plan:~~

(10) Departmental approval is void if the applicant or the applicant's agents:

(a) ~~Failure of the applicant or the applicant's agents~~ fail to materially comply with the voluntary cleanup plan ~~approved by the department pursuant to this section renders the approval void.;~~

(b) ~~Submission of~~ submit materially misleading information by the applicant or the applicant's agents in the application or during implementation of the voluntary cleanup plan ~~renders the department approval void.;~~
or

(c) fail to report any newly discovered information to the department during the application process or implementation of the voluntary cleanup plan regarding releases or threatened releases of hazardous or deleterious substances within 10 days of discovery of that information.

(11) Within 60 days after completion of the approved remediation proposal described in the voluntary cleanup plan approved by the department, the applicant shall provide to the department a certification from a qualified environmental professional that the plan has been fully implemented, including all documentation necessary to demonstrate the successful implementation of the plan, such as confirmation sampling, if necessary.

(12) Except as provided in 75-10-738(2)(b), the department may not require financial assurance under this part for voluntary cleanup plans approved under this section.

(13) If a person who would otherwise not be a liable person under 75-10-715(1) elects to undertake an approved voluntary cleanup plan, the person may not become a liable person under 75-10-715(1) by undertaking a voluntary cleanup if the person materially complies with the voluntary cleanup plan approved by the department pursuant to this section.

(14) Immunity from liability under this section does not apply to a release that is caused by conduct that is negligent or grossly negligent or that constitutes intentional misconduct."

- END -

I hereby certify that the within bill,
HB 0153, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2009.

President of the Senate

Signed this _____ day
of _____, 2009.

HOUSE BILL NO. 153

INTRODUCED BY B. HANDS

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

AN ACT REVISING THE VOLUNTARY CLEANUP AND REDEVELOPMENT ACT; REVISING PROCEDURES GOVERNING APPLICATION FOR AND REVIEW OF VOLUNTARY CLEANUP PLANS; REVISING REIMBURSEMENT AND DISCLOSURE PROVISIONS; AND AMENDING SECTIONS 75-10-733, 75-10-735, AND 75-10-736, MCA.