

*As Amended before Tabling*  
*2-6-09*

61st Legislature

SENATE BILL NO. 147

INTRODUCED BY B. HAWKS

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; AND AMENDING SECTIONS 75-10-702, 75-10-706, 75-10-711, 75-10-714, 75-10-715, 75-10-721, 75-10-722, AND 75-10-727, MCA."

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

**Section 1.** Section 75-10-702, MCA, is amended to read:

**"75-10-702. Rulemaking authority.** (1) The department is authorized to adopt rules for the implementation of this part, including but not limited to:

(a) rules for listing and delisting facilities on a priority list, required by 75-10-704, based on the following criteria:

(i) a facility eligible for listing must have a confirmed release or substantial threat of a release of a hazardous or deleterious substance that may pose an imminent and substantial threat to public health, safety, or welfare or the environment and the department shall provide a written description of the nature and severity of the threat;

(ii) if remedial actions to address the hazardous or deleterious substances are required at the facility by another state program, the department shall explain, in writing, its rationale for listing the facility;

(iii) listing and delisting must be done through a formal process that provides for public participation, including participation of the affected or potentially liable persons in the decisionmaking process, by giving public notice and providing opportunity for at least one public meeting in the community most likely to be threatened by the facility that is proposed for listing or delisting; and

(iv) a facility must be delisted when another state program assumes jurisdiction or when further remedial actions are not necessary;

(b) rules for establishing and implementing a system for prioritizing facilities, including categories for maximum and high-priority facilities, as required by 75-10-704, for remedial action based on potential effects on human health and the environment.



1 (2) The rulemaking authority granted in subsection (1) may not invalidate the existing priorities list. Rules  
 2 promulgated pursuant to subsection (1) must provide for the reevaluation of facilities on the existing priorities list.  
 3 A decision by the department to list, delist, or establish a priority for a facility must be made in writing.

4 ~~(3) The department shall adopt, amend, or repeal rules that allow for the joint selection of remedial action~~  
 5 ~~contractors acceptable to the department and any person liable for remedial action under 75-10-715."~~

*Deleted  
by Amendment*

6 **Section 2.** Section 75-10-706, MCA, is amended to read:

7 **"75-10-706. Purpose -- intent -- notice requirements.** (1) The purposes of this part are to:

- 8 (a) protect the public health and welfare of all Montana citizens against the dangers arising from releases
- 9 of hazardous or deleterious substances;
- 10 (b) encourage private parties to clean up sites within the state at which releases of hazardous or
- 11 deleterious substances have occurred, resulting in adverse impacts on the health and welfare of the citizens of
- 12 the state and on the state's natural, environmental, and biological systems; and
- 13 (c) provide for funding to study, plan, and undertake the rehabilitation, removal, and cleanup of sites
- 14 within the state at which no voluntary action has been taken.

15 (2) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the  
 16 Montana constitution, has enacted the Comprehensive Environmental Cleanup and Responsibility Act. It is the  
 17 legislature's intent that the requirements of this part provide adequate remedies for the protection of the  
 18 environmental life support system from degradation and provide adequate remedies to prevent unreasonable  
 19 depletion and degradation of natural resources.

20 (3) A person who is not subject to an administrative or judicial order issued pursuant to this part may not  
 21 conduct or arrange for any remedial action at any the facility that is subject to an that administrative or judicial  
 22 order issued pursuant to this part without the written permission of without providing the department a written  
 23 notice of intent to conduct or arrange for remedial action at least 30 days prior to commencing the remedial  
 24 action. Remedial action performed in accordance with this part is intended to provide for the protection of the  
 25 environmental life support system from degradation and to prevent unreasonable depletion and degradation of  
 26 natural resources."

*Reason - to restore existing language  
to prevent making known  
contamination worse  
to reject proposed "stop work"  
Amendment*

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

28 **"75-10-711. Remedial action -- orders -- penalties -- judicial proceedings.** (1) The department may

Added by Amendment

1 take remedial action or require persons liable or potentially liable under 75-10-715 to take remedial action  
2 whenever:

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

5 and Reason: to ensure liable party can do work

6 (b) none of the persons who are liable or potentially liable under 75-10-715(1) and who have been given  
7 the opportunity by letter to properly and expeditiously perform the appropriate remedial action will properly and  
8 expeditiously perform the appropriate remedial action. Any person liable under 75-10-715(1) shall take immediate  
9 action to contain, remove, and abate the release.

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

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

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

20 (b) a person or persons determined by the department to be liable or potentially liable under  
21 75-10-715(1) have been informed in writing of the department's determination and have been requested by the  
22 department to take appropriate remedial action but are unable or unwilling to take action in a timely manner; and

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

26 (4) Whenever the department is authorized to act pursuant to subsection (1), it may issue to any person  
27 liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to  
28 protect the public health, safety, or welfare or the environment. The department shall require reimbursement of  
29 its remedial action costs in any order issued under this part. Costs recovered must be deposited pursuant to  
30 75-10-722(7).

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

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

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

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

8 (B) any prior history of violations;

9 (C) the degree of culpability; and

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

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

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

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

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

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

18 (c) an action to recover a civil penalty for violation of or failure to comply with an order issued under  
19 75-10-707 or this section; or

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

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

26 (8) ~~Instead of issuing a notification or an order under this section, the~~ 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 endangerment  
29 to the public health, safety, or welfare or the environment resulting from the release or threatened release.

30 (9) The department may take remedial action pursuant to subsection (1) at a site that is regulated under

1 the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law  
2 96-510, if the department determines that remedial action is necessary to carry out the purposes of this part."

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4 **Section 4.** Section 75-10-714, MCA, is amended to read:

5 **"75-10-714. Administrative penalties.** (1) In lieu of proceeding under 75-10-711(5), the department  
6 may assess penalties of not more than \$1,000 a day for each violation against a person liable under 75-10-715(1)  
7 for a release or threat of release who has failed or refused to comply with an order issued by the department  
8 pursuant to 75-10-711(4) or against a person who has failed or refused to comply with an order issued by the  
9 department pursuant to 75-10-707(5). The department also may assess this administrative penalty against a  
10 person who violates 75-10-706(3).

11 (2) In determining the amount of any penalty assessed pursuant to this section, the department shall take  
12 into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person  
13 liable under 75-10-715(1):

14 (a) the person's ability to pay;

15 (b) any prior history of violations;

16 (c) the degree of culpability;

17 (d) the economic benefit or savings, if any, resulting from the noncompliance; and

18 (e) any other matters that justice may require.

19 (3) An administrative penalty may not be collected pursuant to this section unless the person charged  
20 with the noncompliance is given notice and opportunity for a hearing with respect to the noncompliance. The  
21 hearing is before the board of environmental review. A hearing may be requested by submitting a written request  
22 stating the reason for the request within 30 days after receipt of the notice of penalty assessment.

23 (4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part  
24 6, apply to a hearing held under this section.

25 (5) Administrative penalties collected under this section must be deposited in the environmental quality  
26 protection fund established in 75-10-704."

27

28 **Section 5.** Section 75-10-715, MCA, is amended to read:

29 **"75-10-715. Liability -- reimbursement and penalties -- proceedings -- defenses and exclusions.**

30 (1) Except as provided in 70-30-323 and 75-10-742 through 75-10-751, notwithstanding any other provision of

1 law, and subject only to the defenses set forth in subsection (5) and the exclusions set forth in subsection (7),  
2 the following persons are jointly and severally liable for a release or threatened release of a hazardous or  
3 deleterious substance from a facility:

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

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

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

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

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

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

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

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

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

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

3 (a) the department failed to provide notice to the person claiming the defense when required by  
4 75-10-711. Establishment of this defense only prohibits the department from collecting those costs incurred or  
5 encumbered by the department prior to providing notice to the person and does not provide the person a defense  
6 to any other liability.

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

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

*Reason: to prevent any change in defense of innocent persons*

11 ~~(i) an act or omission of a third party other than either who is neither an employee or agent of the person;~~

12 or

13 ~~(ii) an act or omission of a third party other than nor one whose act or omission occurs in connection with~~  
14 a contractual relationship, existing directly or indirectly, with the person; if To qualify for this defense, the person

15 establishes shall also establish by a preponderance of the evidence that the person:

16 ~~(A)~~(i) exercised due care with respect to the hazardous or deleterious substance concerned, taking into  
17 consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts and  
18 circumstances; and

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

21 (d) the release or threatened release occurred solely as the result of an act of God or an act of war;

22 (e) the release or threatened release was from a facility for which a permit had been issued by the  
23 department, the hazardous or deleterious substance was specifically identified in the permit, and the release was  
24 within the limits allowed in the permit;

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

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

29 (6) (a) For the purpose of subsection ~~(5)(c)(ii)~~ (5)(c), the term "contractual relationship" includes but is  
30 not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real property

*2- stored by Amend next*

1 on which the facility is located was acquired by the person after the disposal or placement of the hazardous or  
 2 deleterious substance on, in, or at the facility and one or more of the following circumstances is also established  
 3 by the person by a preponderance of the evidence:

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

7 (ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or through  
 8 any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or  
 9 condemnation pursuant to Title 70, chapter 30.

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

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

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

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

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

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

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

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

22 (d) (i) Subsections (5)(b) and (5)(c) or this subsection (6) may not diminish the liability of a previous  
 23 owner or operator of the facility who would otherwise be liable under this part.

24 (ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge of  
 25 the release or threatened release of a hazardous or deleterious substance at the facility when the person owned  
 26 the real property and the property is then subsequently transferred, through voluntary or involuntary means,  
 27 ownership of the property to another person without disclosing disclosure of the knowledge to the transferee and  
 28 the department, the previous owner or operator is liable under subsections (1), (2), and (3) and a defense under  
 29 subsection (5)(b) or (5)(c) is not available to ~~that person~~ the previous owner or operator.

30 (e) This subsection (6) does not affect the liability under this part of a person who, by any act or

1 omission, caused or contributed to the release or threatened release of a hazardous or deleterious substance  
2 that is the subject of the action relating to the facility.

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

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

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

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

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

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

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

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

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

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

30 (iii) at the time the person purchased or occupied the real property, there were no visible indications of

- 1 contamination on the surface of the real property;
- 2 (iv) the person cooperates with the department and all persons conducting department-approved
- 3 remedial actions on the property, including granting access and complying with and implementing all required
- 4 institutional controls; and
- 5 (v) there is no other basis of liability under subsection (1) for the owner or occupier for the release or
- 6 threatened release of a hazardous or deleterious substance.
- 7 (8) A person is liable under this section if the department provides substantial credible evidence that the
- 8 person fails to satisfy any element of each exclusion in subsections (7)(a) through (7)(c).
- 9 (9) The liability of a fiduciary under the provisions of this part for a release or a threatened release of a
- 10 hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed the assets held
- 11 in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary is liable under this part
- 12 independent of the person's ownership or actions taken in a fiduciary capacity.
- 13 (10) A person who holds indicia of ownership in a facility primarily to protect a security interest is not liable
- 14 under subsections (1)(a) and (1)(b) for having participated in the management of a facility within the meaning of
- 15 75-10-701(15)(b) because of any one or any combination of the following:
- 16 (a) holding an interest in real or personal property when the interest is being held as security for payment
- 17 or performance of an obligation, including but not limited to a mortgage, deed of trust, lien, security interest,
- 18 assignment, pledge, or other right or encumbrance against real or personal property that is furnished by the
- 19 owner to ensure repayment of a financial obligation;
- 20 (b) requiring or conducting financial or environmental assessments of a facility or a portion of a facility,
- 21 making financing conditional upon environmental compliance, or providing environmental information or reports;
- 22 (c) monitoring the operations conducted at a facility or providing access to a facility to the department
- 23 or its agents or to remedial action contractors;
- 24 (d) having the mere capacity or unexercised right to influence a facility's management of hazardous or
- 25 deleterious substances;
- 26 (e) giving advice, information, guidance, or direction concerning the administrative and financial aspects,
- 27 as opposed to day-to-day operational aspects, of a borrower's operations;
- 28 (f) providing general information concerning federal, state, or local laws governing the transportation,
- 29 storage, treatment, and disposal of hazardous or deleterious substances and concerning the hiring of remedial
- 30 action contractors;

- 1 (g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;
- 2 (h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or undertaking
- 3 other activities to protect or preserve the value of the security interest in a facility;
- 4 (i) extending or denying credit to a person owning or in lawful possession of a facility;
- 5 (j) in an emergency, requiring or undertaking activities to prevent exposure of persons to hazardous or
- 6 deleterious substances or to contain a release;
- 7 (k) requiring or conducting remedial action in response to a release or threatened release if prior notice
- 8 is given to the department and the department approves of the remedial action; or
- 9 (l) taking title to a facility by foreclosure, provided that the holder of indicia of ownership, from the time
- 10 the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing transaction
- 11 (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the
- 12 property in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or
- 13 appropriate with respect to the facility and taking all facts and circumstances into consideration and provided that
- 14 the holder does not:
- 15 (i) outbid or refuse a bid for fair consideration for the property or outbid or refuse a bid that would
- 16 effectively compensate the holder for the amount secured by the facility;
- 17 (ii) worsen the contamination at the facility;
- 18 (iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting hazardous
- 19 or deleterious substances; or
- 20 (iv) engage in conduct described in subsection (11).
- 21 (11) The protection from liability provided in subsections (9) and (10) is not available to a fiduciary or to
- 22 a person holding indicia of ownership primarily to protect a security interest if the fiduciary or person through
- 23 affirmative conduct:
- 24 (a) causes or contributes to a release of hazardous or deleterious substances from the facility;
- 25 (b) allows others to cause or contribute to a release of hazardous or deleterious substances; or
- 26 (c) in the case of a person holding indicia of ownership primarily to protect a security interest, actually
- 27 participates in the management of a facility by:
- 28 (i) exercising decisionmaking control over environmental compliance; or
- 29 (ii) exercising control at a level comparable to that of a manager of the enterprise with responsibility for
- 30 day-to-day decisionmaking either with respect to environmental compliance or substantially all of the operational,

1 as opposed to financial or administrative, aspects of the facility."

2

3 **Section 6.** Section 75-10-721, MCA, is amended to read:

4 **"75-10-721. Degree of cleanup required -- permit exemption -- financial assurance.** (1) A remedial  
5 action performed under this part or a voluntary cleanup under 75-10-730 through 75-10-738 must attain a degree  
6 of cleanup of the hazardous or deleterious substance and control of a threatened release or further release of  
7 that substance that assures protection of public health, safety, and welfare and of the environment.

8 (2) In approving or carrying out remedial actions performed under this part, the department:

9 (a) except as provided in subsection (4), shall require cleanup consistent with applicable state or federal  
10 environmental requirements, criteria, or limitations;

11 (b) may consider substantive state or federal environmental requirements, criteria, or limitations that are  
12 relevant to the site conditions; and

13 (c) shall select remedial actions, considering present and reasonably anticipated future uses, giving due  
14 consideration to institutional controls, that:

15 (i) demonstrate acceptable mitigation of exposure to risks to the public health, safety, and welfare and  
16 the environment;

17 (ii) are effective and reliable in the short term and the long term;

18 (iii) are technically practicable and implementable;

19 (iv) use treatment technologies or resource recovery technologies if practicable, giving due consideration  
20 to engineering controls; and

21 (v) are cost-effective.

22 (3) In selecting remedial actions, the department shall consider the acceptability of the actions to the  
23 affected community, as indicated by community members and the local government.

24 (4) The department may select a remedial action that does not meet an applicable state environmental  
25 requirement, criteria, or limitation under any one of the following circumstances:

26 (a) The remedial action is an interim measure and will become part of a total remedial action that will  
27 attain the applicable requirement, criteria, or limitation.

28 (b) Compliance with the applicable requirement, criteria, or limitation will result in greater risk to human  
29 health and the environment than other remedial action alternatives.

30 (c) Compliance with the applicable requirement, criteria, or limitation is technically impracticable from

1 an engineering perspective.

2 (d) The remedial action will attain a standard of performance that is equivalent to that required under the  
3 otherwise applicable requirement, criteria, or limitation through use of another method or approach.

4 (e) Compliance with the requirement would not be cost-effective.

5 (5) For purposes of this section, cost-effectiveness must be determined through an analysis of  
6 incremental costs and incremental risk reduction and other benefits of alternatives considered, taking into account  
7 the total anticipated short-term and long-term costs of remedial action alternatives considered, including the total  
8 anticipated cost of operation and maintenance activities.

9 (6) The department may exempt any portion of a remedial action that is conducted entirely on site from  
10 a state or local permit that would, in the absence of the remedial action, be required if the remedial action is  
11 carried out in accordance with the standards established under this section and this part.

12 (7) The department may require financial assurance from a liable person in an amount that the  
13 department determines will ensure the long-term operation and maintenance of the remedial action site. The  
14 liable person shall provide the financial assurance by any one method or combination of methods satisfactory  
15 to the department, including but not limited to insurance, guarantee, performance or other surety bond, letter of  
16 credit, qualification as a self-insurer, or other demonstration of financial capability.

*Amended language*

17 ~~(8) If the department selects or approves a remedial action and subsequently determines that the~~  
18 ~~remedial action has failed or that additional remedial actions are required, the department is not barred from~~  
19 ~~requiring further remedial action at the facility by any person who is liable or potentially liable under 75-10-715."~~

*was incomplete and*

20  
21 **Section 7.** Section 75-10-722, MCA, is amended to read:

22 **"75-10-722. Payment of state costs and penalties.** (1) The department shall keep a record of the  
23 state's remedial action costs.

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

26 (3) If the state's remedial action costs and penalties are not paid by the liable person to the department  
27 within 60 days after receipt of notice that the costs and penalties are due, the department shall bring an action  
28 in the name of the state to recover the amount owed plus reasonable legal expenses.

29 (4) If the department provides a notice that the state's remedial action costs are due, the department  
30 shall assess and collect interest on the unpaid amount at the rate provided for in 25-9-205:



*\* Reason - limit when department can ask for more work.*

*To Consider: By Amendment, delete all of Subsection 8*

1 ~~\_\_\_\_\_ (a) after 60 days of receipt of the notice if the notice covers costs incurred during a time period that is~~  
 2 ~~one-quarter of a year or less;~~

3 ~~\_\_\_\_\_ (b) after 90 days of receipt of the notice if the notice covers costs incurred during a time period that is~~  
 4 ~~more than one-quarter of a year and less than or equal to one-half of a year; and~~

5 ~~\_\_\_\_\_ (c) after 120 days of receipt of the notice if the notice covers costs incurred during a time period that is~~  
 6 ~~more than one-half of a year. Interest begins to accrue 30 days after receipt of the notice that the costs are due.~~

7 (5) An action to recover remedial action costs and interest may be brought under this section at any time  
 8 after any remedial action costs and interest have been incurred, and the court may enter a declaratory judgment  
 9 on liability for remedial action costs and interest that is binding on any subsequent action or actions to recover  
 10 further remedial action costs and interest. The court may disallow costs or damages only if the person liable under  
 11 75-10-715 can show on the record that the costs are not reasonable and are not consistent with this part. The  
 12 court may disallow the associated interest if it determines, based on the record, that the liable person can show  
 13 that the costs are not reasonable.

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

17 (7) Remedial action costs, interest, and any penalties recovered by the state under 75-10-715 must be  
 18 deposited into the environmental quality protection fund established in 75-10-704."

19

20 **Section 8.** Section 75-10-727, MCA, is amended to read:

21 **"75-10-727. Institutional controls.** (1) An owner of real property may, with department approval, restrict  
 22 the use of the owner's real property to mitigate the risk posed to the public health, safety, and welfare and the  
 23 environment by imposing on the real property, without conveying the property or creating a dominant and servient  
 24 estate, an appropriate institutional control.

25 (2) An institutional control restricting present and future real property rights is placed on a property by  
 26 filing a written instrument evidencing the restrictions to be placed on the use of the property with the county clerk  
 27 in the county in which the property is located.

28 (3) An institutional control that restricts real property runs with the land and is binding on all successors  
 29 in interest to real property until the institutional control is removed.

30 (4) An institutional control must be removed if there is not an unacceptable risk posed to public health,

1 safety, and welfare and the environment. An owner may request department approval to remove all or a portion  
 2 of the institutional controls from the real property. The department shall review the request and provide the owner  
 3 with its decision to approve or deny the request within 120 days from the department's receipt of the request. If  
 4 the department denies the request, it shall provide the owner with a written explanation of the denial. A  
 5 department decision to deny the request may be appealed to the board of environmental review and conducted  
 6 as a contested case proceeding pursuant to Title 2, chapter 4.

7 (5) If the department or the board approves an owner's request to remove all or a portion of the  
 8 institutional controls, the owner shall file the approval with the county clerk in the county in which the real property  
 9 is located.

*Amended language*

10 (6) The department may place deed notices on real property impacted by a release or threatened release  
 11 of a hazardous or deleterious substance that may pose an unacceptable risk to public health, safety, or welfare  
 12 or the environment. The department shall rescind the deed notice if the department later determines that no  
 13 unacceptable risk continues to exist."

*(7)*

14  
 15 **NEW SECTION. Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable  
 16 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
 17 remains in effect in all valid applications that are severable from the invalid applications.

18 - END -

Page 15, line 12.

Following: "environment."

Insert: "The deed notice must be placed only to the parcel or portion of the parcel that is impacted. When the department has determined that only a portion of a parcel is impacted, the department may require the potentially liable person to survey that portion that is impacted."

Page 15, line 14.

Insert: "(7) By December 31, 2009, the department shall adopt a rule to establish procedures, standards, and criteria for placement and rescission of deed notices. The rules must provide for an opportunity for the landowner to comment before placement of the deed notice and must establish criteria to ensure that deed notices are placed on properties only when reasonably necessary to protect public health, safety, or welfare or the environment."



*Language Agreed to by:*

*MT Realtors - Glenn Eppel*  
*MT Petro. Assoc. - Dave Galt*  
*MT Mining Assoc. - Debbie Shea*  
*WETA - Don Allen*



Underlying issue

HJR 34 - EAC discussion w/ Sen. Shockley  
regarding how an innocent land purchaser  
could find out about contamination  
before purchasing property