

## 1 SENATE BILL NO. 262

2 INTRODUCED BY J. BRENDEN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
5 FROM INVESTIGATING CERTAIN ANONYMOUS REPORTS OF ENVIRONMENTAL VIOLATIONS; AMENDING  
6 SECTIONS 75-5-636, 75-6-104, 75-10-704, 75-10-707, 76-4-108, AND 82-4-356, MCA; AND PROVIDING AN  
7 IMMEDIATE EFFECTIVE DATE."

8

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

10

11 NEW SECTION. **Section 1. Anonymous report -- investigation prohibited.** (1) Except as provided  
12 in subsection (2), the department may not conduct an initial investigation into a release of a hazardous or  
13 deleterious substance under Title 75, chapter 10, part 7, or a violation under Title 75 or Title 76, chapter 4, based  
14 solely on an anonymous report received by the department. For the purposes of this part, an anonymous report  
15 includes a report to the department made by a person identified by name but requesting that the person's name  
16 not be disclosed to the public.

17 (2) The department may investigate an anonymous report in order to retain primacy of a program and  
18 to comply with the requirements of:

19 (a) 40 CFR 51.212(c)(1);

20 (b) 40 CFR 239.7(b) and (c)(4);

21 (c) 40 CFR 271.15(a), (b)(3), and (b)(4);

22 (d) 40 CFR 281.40(f); and

23 (e) 40 CFR 123.26(a), (b)(3), and (b)(4).

24

25 NEW SECTION. **Section 2. Anonymous report -- investigation prohibited.** (1) Except as provided  
26 in subsection (2), the department may not conduct an initial investigation into a violation under Title 82, chapters  
27 1 through 4, based solely on an anonymous report received by the department. For the purposes of this part, an  
28 anonymous report includes a report to the department made by a person who provides a name but requests that  
29 the person's name not be disclosed to the public.

30 (2) The department may investigate an anonymous report in order to retain primacy of a program and

1 to comply with the requirements of 30 CFR 840.15 and 30 CFR 842.12(a) and (b).

2

3 **Section 3.** Section 75-5-636, MCA, is amended to read:

4 **"75-5-636. Investigation of complaints by other parties.** A person, association, corporation, or agency  
5 of the state or federal government may notify the department of an alleged violation of this chapter. ~~Based~~ Except  
6 as provided in [section 1], based upon information submitted by the person, association, corporation, or agency,  
7 the department shall conduct an investigation to determine the validity of the complaint. If a violation is  
8 established by the department's investigation, the department shall initiate an appropriate enforcement response  
9 as described in 75-5-617. If the investigation proves the protest to have been without reasonable cause, the  
10 department may seek recovery of investigative costs from the person who made the notification."

11

12 **Section 4.** Section 75-6-104, MCA, is amended to read:

13 **"75-6-104. Duties of department.** The department shall:

14 (1) except as provided in [section 1], upon its own initiative or complaint to the department, to the mayor  
15 or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation  
16 of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering  
17 removal of the cause of pollution;

18 (2) have waters examined to determine their quality and the possibility that they may endanger public  
19 health;

20 (3) consult and advise authorities of cities and towns and persons having or about to construct systems  
21 for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the  
22 best method of ensuring its quality;

23 (4) advise persons as to the best method of treating and disposing of their drainage, sewage, or  
24 wastewater with reference to the existing and future needs of other persons and to prevent pollution;

25 (5) consult with persons engaged in or intending to engage in manufacturing or other business whose  
26 drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

27 (6) collect fees, as described in 75-6-108, for services and deposit the fees collected in the public  
28 drinking water special revenue fund established in 75-6-115;

29 (7) establish and maintain experiment stations and conduct experiments to study the best methods of  
30 treating water, drainage, wastewater, and sewage to prevent pollution, including investigation of methods used

1 in other states;

2 (8) enter on premises at reasonable times to determine sources of pollution or danger to water supply  
3 systems and whether rules and standards of the board are being obeyed;

4 (9) enforce and administer the provisions of this part;

5 (10) establish a plan for the provision of safe drinking water under emergency circumstances;

6 (11) maintain an inventory of public water supply systems and establish a program for conducting sanitary  
7 surveys; and

8 (12) enter into agreements with local boards of health whenever appropriate for the performance of  
9 surveys and inspections under the provisions of this part."

10

11 **Section 5.** Section 75-10-704, MCA, is amended to read:

12 **"75-10-704. Environmental quality protection fund.** (1) Subject to legislative fund transfers, there is  
13 in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund  
14 by the department. The department is authorized to expend amounts from the fund necessary to carry out the  
15 purposes of this part.

16 (2) The fund may be used by the department only to carry out the provisions of this part and for remedial  
17 actions taken by the department pursuant to this part in response to a release of hazardous or deleterious  
18 substances.

19 (3) The department shall:

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

23 (b) except as provided in [section 1], investigate, negotiate, and take legal action, as appropriate, to  
24 identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial  
25 action, to achieve remedial action, and to recover costs and damages incurred by the state.

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

27 (a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs  
28 recovered pursuant to 75-10-715;

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

- 1 (c) funds allocated to the fund by the legislature;
- 2 (d) proceeds from the resource indemnity and ground water assessment tax as authorized by 15-38-106;
- 3 (e) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;
- 4 (f) funds received from the interest income of the fund;
- 5 (g) funds received from settlements pursuant to 75-10-719(7); and
- 6 (h) funds received from the interest paid pursuant to 75-10-722.
- 7 (5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and
- 8 additional money remains in the fund, the department shall seek additional authority to spend money from the
- 9 fund through the budget amendment process provided for in Title 17, chapter 7, part 4.
- 10 (6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department
- 11 may apply to the governor for a grant from the environmental contingency account established pursuant to
- 12 75-1-1101.
- 13 (7) (a) There is established a state special revenue account for all funds donated or granted from private
- 14 parties to remediate a specific release at a specific facility. There must be deposited into the account the interest
- 15 income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this
- 16 account.
- 17 (b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated
- 18 in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to
- 19 remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.
- 20 (c) If the balance of the fund created in this subsection (7), as determined by the department pursuant
- 21 to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial
- 22 contribution, all donated or granted funds, including any interest on those donated or granted funds, must be
- 23 returned to the grantor.
- 24 (d) If the balance for a specific project is determined by the department to be sufficient to remediate the
- 25 facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial
- 26 action, using the funds donated under this subsection (7).
- 27 (e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions
- 28 of the department, except as provided in [section 1], to investigate, negotiate, and take legal action, as
- 29 appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for
- 30 the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

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

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

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

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

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

18 (e) Any donated in-kind services that are employed as part of a remedial action pursuant to this  
19 subsection (8) must be approved by the department as appropriate remedial action."  
20

21 **Section 6.** Section 75-10-707, MCA, is amended to read:

22 **"75-10-707. Information gathering and access.** (1) ~~The~~ Except as provided in [section 1], the  
23 department may undertake any investigative or other information-gathering action that it considers necessary or  
24 appropriate for determining the need for remedial action, choosing or taking a remedial action, or otherwise  
25 enforcing the provisions of this part.

26 (2) Any authorized officer, employee, or representative of the department may require a person who has  
27 or may have information relevant to a release or threatened release of a hazardous or deleterious substance to  
28 furnish, upon request, any information or documents relating to but not limited to the following matters:

29 (a) the identification, nature, and quantity of a hazardous or deleterious substance that has been or is  
30 being generated, treated, stored, or disposed of at or transported from a facility;

1 (b) the nature or extent of a release or threatened release of a hazardous or deleterious substance at  
2 or from a facility;

3 (c) information relating to the ability of a person to pay for or to perform a cleanup; and

4 (d) any other information relevant to the department's determination of the appropriate remedial action  
5 to be taken or to the enforcement of this part.

6 (3) For purposes of assisting the department in acquiring information relevant to the need for, the  
7 determination of, or the taking of remedial action or otherwise enforcing the provisions of this part, any authorized  
8 officer, employee, or representative of the department is authorized to:

9 (a) enter or have access at reasonable times to any facility or other place or property where:

10 (i) a hazardous or deleterious substance may be or has been generated, stored, treated, disposed of,  
11 or transported from;

12 (ii) there has been or may be a release of a hazardous or deleterious substance;

13 (iii) records or other relevant information regarding a release or threatened release is located;

14 (iv) entry is necessary to determine the need for any appropriate remedial action; or

15 (v) entry is necessary to effectuate a remedial action under this part; and

16 (b) inspect and obtain samples from the facility or other place or property referred to in subsection (3)(a)  
17 or from any location where a suspected hazardous or deleterious substance may be located. Any authorized  
18 officer, employee, or representative of the department is authorized to inspect and obtain samples of containers  
19 or labeling for suspected hazardous or deleterious substances. Each inspection must be completed with  
20 reasonable promptness. If the authorized officer, employee, or representative obtains samples, before leaving  
21 the premises that person shall give to the owner, operator, tenant, or other person in charge of the place from  
22 which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each  
23 sample. A copy of the results of any analysis made of the samples must be furnished promptly to the owner,  
24 operator, tenant, or other person in charge if that person can be located.

25 (4) The department may issue subpoenas for the attendance and testimony of witnesses and the  
26 production of relevant papers, books, or documents relating to the matters in subsections (2)(a) through (2)(d).  
27 The method for service of subpoenas and payment of witness fees and mileage is the same as that required in  
28 civil actions in the district courts of the state. In case of a refusal to obey a subpoena issued and served upon a  
29 person pursuant to this subsection, the district court for a district in which the person is found, resides, or  
30 transacts business, upon application of the department and after notice to the person, has jurisdiction to issue

1 an order requiring the person to appear and either give testimony or produce documents, or both, before a  
2 hearings officer. A failure to obey the order of the court may be punished by the court as a contempt.

3 (5) If consent is not granted regarding a request made by an authorized officer, employee, or  
4 representative under this section, the director of the department may issue an order directing compliance with  
5 the request.

6 (6) The department may commence a civil action to compel compliance with an order issued pursuant  
7 to this section.

8 (7) In any action commenced pursuant to subsection (6) when the court determines that there may be  
9 an imminent and substantial threat to public health, safety, or welfare or the environment, the court shall enjoin  
10 any activity that constitutes a failure to comply with the order and shall direct compliance with the order unless,  
11 under the circumstances of the case, the order is arbitrary and capricious or otherwise not in accordance with  
12 law.

13 (8) Persons subject to the requirements of this section may make a written claim of confidentiality for  
14 information unique to the owner or operator of a facility that would, if disclosed, reveal methods or processes  
15 entitled to protection as trade secrets. The claim of confidentiality must be clearly designated on the materials  
16 at the time they are obtained by the department. If the department accepts the characterization, it shall maintain  
17 that information as confidential. Information describing physical or chemical characteristics of hazardous or  
18 deleterious substances that have been or may be released into the environment are not considered confidential.  
19 The department has access to and may use any trade secret information in carrying out the activities of this part  
20 as may be necessary to protect the public health, safety, or welfare or the environment while maintaining the  
21 information as confidential."  
22

23 **Section 7.** Section 76-4-108, MCA, is amended to read:

24 **"76-4-108. Enforcement.** (1) ~~Except as provided in [section 1], if~~ the reviewing authority has reason  
25 to believe that a violation of this part or a rule adopted or an order issued under this part has occurred, the  
26 reviewing authority may have written notice and an order served personally or by certified mail on the alleged  
27 violator or the alleged violator's agent. The notice must state the provision alleged to be violated, the facts alleged  
28 to constitute the violation, the corrective action required by the reviewing authority, and the time within which the  
29 action is to be taken. A notice and order issued by the department under this section may also assess an  
30 administrative penalty as provided in 76-4-109. The alleged violator may, no later than 30 days after service of

1 a notice and order under this section, request a hearing before the local reviewing authority if it issued the notice  
2 of violation or the board if the department issued the notice of violation. A request for a hearing must be filed in  
3 writing with the appropriate entity and must state the reason for the request. If a request is filed, a hearing must  
4 be held within a reasonable time.

5 (2) In addition to or instead of issuing an order, the reviewing authority may initiate any other appropriate  
6 action to compel compliance with this part.

7 (3) The provisions of this part may be enforced by a reviewing authority other than the department or  
8 board only for those divisions described in 76-4-104(3). If a local reviewing authority fails to adequately enforce  
9 the provisions of this part, the department or the board may compel compliance with this part under the provisions  
10 of this section.

11 (4) When a local reviewing authority exercises the authority delegated to it by this section, the local  
12 reviewing authority is legally responsible for its actions under this part.

13 (5) If the department or a local reviewing authority determines that a violation of this part, a rule adopted  
14 under this part, or an order issued under this part has occurred, the department or the local reviewing authority  
15 may revoke its certificate of approval for the subdivision and reimpose sanitary restrictions following written notice  
16 to the alleged violator. Upon revocation of a certificate, the person aggrieved by revocation may request a  
17 hearing. A hearing request must be filed in writing within 30 days after receipt of the notice of revocation and must  
18 state the reason for the request. The hearing is before the board if the department revoked the certificate or  
19 before the local reviewing authority if the local reviewing authority revoked the certificate.

20 (6) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part  
21 6, apply to a hearing held under this section."

22

23 **Section 8.** Section 82-4-356, MCA, is amended to read:

24 **"82-4-356. Action in response to complaints related to use of explosives.** (1) An owner of an interest  
25 in real property or an individual who resides within an area subject to property damage or safety hazards related  
26 to the use of explosives by any person subject to the provisions of this part may file a complaint with the  
27 department, describing the alleged property damage or safety hazards. The complainant shall provide credible  
28 evidence to the department to substantiate allegations of property damage or safety hazards.

29 (2) Upon receipt of a complaint, the department:

30 (a) except as provided in [section 2], shall investigate the statements and charges in the complaint, using

1 all available information, including mine or exploration blasting records and other data obtained through an  
2 examination of the dwelling, structure, or site identified in the complaint;

3 (b) may conduct tests and make measurements, including reasonable efforts to replicate conditions that  
4 may have caused property damage or safety hazards, and may require the allegedly responsible person to  
5 cooperate as necessary to investigate the complaint;

6 (c) shall issue a written finding specifying the cause of any property damage or safety hazards that are  
7 validated by the investigation; and

8 (d) shall, if it determines that the preponderance of evidence indicates that property damage or safety  
9 hazards are or were caused by exploration or mining activities, order the responsible person to make changes  
10 in the use of explosives or other appropriate mitigation to alleviate property damage or safety hazards."

11  
12 **NEW SECTION. Section 9. Codification instruction.** (1) [Section 1] is intended to be codified as an  
13 integral part of Title 75, chapter 1, part 10, and the provisions of Title 75, chapter 1, part 10, apply to [section 1].

14 (2) [Section 2] is intended to be codified as an integral part of Title 82, chapter 4, part 10, and the  
15 provisions of Title 82, chapter 4, part 10, apply to [section 2].

16

17 **NEW SECTION. Section 10. Effective date.** [This act] is effective on passage and approval.

18

- END -