The Environmental Quality Council is seeking public comment on a piece of proposed draft legislation related to its ongoing oversight of the Petroleum Tank Release Fund. The proposed bill draft, LC 7010, would authorize the use of mixing zones in the remediation and closure of petroleum release sites.

Please send comments electronically to hstockwell@mt.gov (put "petro bill draft" in the subject line) or mail your comments to:

Hope Stockwell
Environmental Quality Council
P.O. Box 201704
Helena, MT 59620-1704

Comments are due August 27, 2010. The EQC will review any comments received and decide whether to proceed with LC 7010 at its September 14, 2010 meeting. The public may also testify before the Council during the meeting. The meeting agenda will be posted at least 10 days prior on the EQC's web site at leg.mt.gov/eqc.

Unofficial Draft Copy
As of: July 26, 2010 (2:49pm)

LC7010

**** Bill No. ****

Introduced By **********

By Request of the *********

A Bill for an Act entitled: "An Act authorizing the use of mixing zones in the remediation and closure of petroleum releases; granting rulemaking authority; amending sections 75-11-309, 75-11-503, and 75-11-505, MCA; and providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-309, MCA, is amended to read:

"75-11-309. Procedures for reimbursement of eligible costs. (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect the public health and safety and the environment.

(b) Except for a tank for which a permit is sought under 75-11-308(1)(b)(iii) and that is closed within 120 days of discovery of the release, following discovery of the release, the petroleum storage tank must remain in compliance with applicable

state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases.

(c) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective action requirements.

(d) (i) The department shall review the corrective action plan and forward a copy to a local government office and, when applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (1)(d) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government or tribal government may not impose different corrective action requirements on the owner or operator.

<u>(e) A corrective action plan prepared by the owner,</u>

operator, or department for any petroleum storage tank release may include the establishment of a mixing zone as defined in 75-11-503(4).

~~(e)~~(f) The department shall notify the owner or operator of its approval of a corrective action plan and shall promptly submit a copy of the approved corrective action plan to the board.

~~(f)~~(g) The owner or operator shall implement the corrective action plan or plans approved by the department until the release is resolved. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable law and rules.

~~(g)~~(h) (i) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(ii) The board shall review each claim and determine if the claims are actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan.

(iii) If the board requires additional information to determine if a claimed cost is actual, reasonable, and necessary, the board may request comment from the department and the owner or operator.

(iv) If the department determines that an owner or operator

is failing to properly implement a corrective action plan, it shall notify the board.

~~(h)~~(i) The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

~~(i)~~(j) In addition to the documentation in subsections ~~(1)(g) and~~ (1)(h) and (1)(i), when the release is claimed to have originated from a properly designed and installed double-walled tank system, the owner or operator shall document, in the manner required by the board, the following:

(i) the date that the release was discovered; and

(ii) that the originating tank was part of a properly designed and installed double-walled tank system.

(2) If an owner or operator is issued an administrative order for failure to comply with requirements imposed by or pursuant to Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, all reimbursement of claims submitted after the date of the order must be suspended. Upon a written determination by the department that the owner or operator has returned to compliance with the requirements of Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(3) The board shall review each claim received under subsections ~~(1)(g) and~~ (1)(h) and (1)(i), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant to this section. Upon a determination by the board that the owner or operator has not complied with this section or rules adopted pursuant to this section, all reimbursement of pending and future claims must be suspended. Upon a determination by the board that the owner or operator has returned to compliance with this section or rules adopted pursuant to this section, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(4) (a) If an owner or operator disagrees with a board determination under subsection (3), the owner or operator may submit a written request for a hearing before the board.

(b) A written request for a hearing must be received by the board within 120 days after notice of the board's determination is served on the owner or operator by certified mail. The notice of determination must advise the owner or operator of the 120-day time limit for submitting a written request for a hearing to the board. Not less than 50 days or more than 60 days after the board serves the notice of determination, the board shall serve on the owner or operator a second notice by certified mail advising the owner or operator of the deadline for requesting a hearing. Service by certified mail is complete on the date shown on the certified mail receipt.

(c) If a written request is received within 120 days, the hearing must be held at a meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

(d) If a written request is not received within 120 days, the determination of the board is final.

(5) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(6) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet

approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (6)(b) does not affect the order in which money in the fund is obligated under subsection (5).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee."

{*Internal References to 75-11-309:*
75-11-307 x *75-11-307 x* *75-11-312 x* *75-11-312x*
75-11-318 x *75-11-318x*}

Section 2. Section 75-11-503, MCA, is amended to read:

"**75-11-503. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

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

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance into or onto the land or water so that the regulated substance or any constituent of the regulated substance may enter the environment or be emitted into the air or discharged into any waters, including ground water.

<u>(4) "Mixing zone" means an area established in a corrective action plan for a petroleum release pursuant to 75-11-309 where water quality standards may be exceeded, subject to the</u>

conditions of [section 4] and consistent with rules adopted under 75-11-505.

~~(4)~~(5) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

~~(5)~~(6) "Regulated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part 4.

~~(6)~~(7) "Storage" means the actual or intended containment of regulated substances, either on a temporary basis or for a period of years.

~~(7)~~(8) "Underground storage tank" or "tank":

(a) means, except as provided in subsections (7)(b)(i) through (7)(b)(xi):

(i) any one or a combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground;

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or

entirely under ground; and

(iii) ancillary equipment designed to prevent, detect, or contain a release from an underground storage tank;

(b) does not include:

(i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less and that is used for storing motor fuel for noncommercial purposes;

(ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less and that is used for storing heating oil for consumptive use on the premises where it is stored;

(iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;

(iv) a septic tank;

(v) a pipeline facility, including gathering lines, regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;

(B) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; or

(C) state law comparable to the provisions of law referred to in subsection (7)(b)(v)(A) or (7)(b)(v)(B), if the facility is intrastate;

(vi) a surface impoundment, pit, pond, or lagoon;

(vii) a storm water or wastewater collection system;

(viii) a flow-through process tank;

(ix) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(x) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor;

(xi) any pipe connected to a tank described in subsections (7)(b)(i) through (7)(b)(ix); or

(xii) underground pipes connected to an aboveground storage tank at a petroleum refinery that is subject to facilitywide corrective action permit provisions under 75-10-406 or the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended."

{*Internal References to 75-11-503:*
75-11-203 x *75-11-203 x* *75-11-302 x* *75-11-308x*
75-11-308x}

Section 3. Section 75-11-505, MCA, is amended to read:

"**75-11-505. Administrative rules -- mixing zones**. (1) The department may adopt, amend, or repeal rules for the prevention and correction of leakage from underground storage tanks, including:

~~(1)~~ (a) reporting by owners and operators;

~~(2)~~ (b) financial responsibility;

~~(3)~~ (c) release detection, prevention, and corrective action;

~~(4)~~(d) procedures and standards for the issuance, nonissuance, renewal, nonrenewal, modification, revocation, suspension, and enforcement of permits authorizing the operation of underground storage tanks;

~~(5)~~(e) standards for design, construction, installation, and closure;

~~(6)~~(f) development of a schedule of annual fees, not to exceed $108 for a tank over 1,100 gallons and not to exceed $36 for a tank 1,100 gallons or less, for each tank, for tank registration to defray state and local costs of implementing an underground storage tank program. The department may prorate fees to cover periods not equal to 12 months in order to provide staggered scheduling of renewal dates.

~~(7)~~(g) a system for assessment of administrative penalties, notice, and appeals under 75-11-525; and

~~(8)~~(h) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.

(2) In accordance with [section 4], the department:

(a) shall adopt rules governing the inclusion of a mixing zone, as defined in 75-11-503, in a corrective action plan; and

(b) may incorporate by reference rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303 related to mixing zones for ground water."

{*Internal References to 75-11-505:*

NEW SECTION. **Section 4. Corrective action -- mixing zones.** (1) A corrective action plan prepared pursuant to 75-11-309 may include the use of a mixing zone, as defined in 75-11-503, in conjunction with the final remediation and resolution of a petroleum release.

(2) If a mixing zone is included in a corrective action plan it may only be established when:

(a) all reasonably accessible source material has been removed;

(b) the plume of contamination in the ground is defined;

(c) natural breakdown or attenuation is occurring within the plume; and

(d) no further corrective action is reasonably required at the site.

(3) The boundary of a mixing zone established in accordance with this section must be contained within the:

(a) boundary of the property on which the petroleum release originated unless a recorded easement on an adjoining property allows the mixing zone to extend onto the adjoining property; and

(b) unconfined aquifer.

(4) Monitoring of a mixing zone established in accordance with this section may not be required unless there is a unique, overriding site-specific, impact-related reason to require monitoring.

(5) At the down gradient boundary of a mixing zone

established in accordance with this section, the concentration of any petroleum constituent, including benzene, must meet non-significance criteria established by the department.

(6) Once a mixing zone is established in accordance with this section:

(a) the petroleum release is considered to be resolved;

(b) no further corrective action for the petroleum release is required; and

(c) the department shall issue a no further action letter to the owner or operator.

(7) A corrective action plan approved by the department pursuant to 75-11-309 prior to [the effective date of this act] may be amended to include a mixing zone in accordance with this section.

NEW SECTION. **Section 5. {standard} Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 75, chapter 11, part 5, and the provisions of Title 75, chapter 11, part 5, apply to [section 4].

NEW SECTION. **Section 6. {standard} Effective date.** [This act] is effective on passage and approval.

- END -

{Name : Hope E. Stockwell
Title : Research Analyst
Agency: LEPO
Phone : 444-1640
E-Mail: hstockwell@mt.gov}