

HOUSE BILL NO. 849
INTRODUCED BY R. RIPLEY

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE RESTORE MONTANA PROGRAM; IMPLEMENTING PROCESSES FOR REIMBURSING CLAIMS AND AWARDING GRANTS TO ENCOURAGE CLEANUP OF CONTAMINATED SITES AND TO ADDRESS IMMINENT NATURAL RESOURCE RESTORATION AND REMEDIATION NEEDS; GRANTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION RULEMAKING AUTHORITY; ALLOCATING OIL AND NATURAL GAS PRODUCTION TAX REVENUE; PROVIDING FOR A GRANT APPLICATION FEE; AMENDING SECTIONS 15-36-331, 75-10-743, 75-10-621, AND 75-10-704, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 12] may be cited as the "Restore Montana Program".

NEW SECTION. **Section 2. Purpose.** The purpose of the restore Montana program is to encourage cleanup of contaminated sites and to address imminent natural resource restoration and remediation needs for contamination that is anticipated to have adverse impacts to Montana's environment if not addressed in a timely manner.

NEW SECTION. **Section 3. Definitions.** Unless the context requires otherwise, in [sections 1 through 12], the following definitions apply:

- (1) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.
- (2) "Restoration costs" has the meaning provided for remedial action costs in 75-10-701.

NEW SECTION. **Section 4. Rulemaking authority.** The department shall adopt rules to implement the provisions of [sections 1 through 12].

NEW SECTION. **Section 5. Restore Montana account established -- uses -- promotion.** (1) There

is a restore Montana account in the state special revenue fund established in 17-2-102. The account must be administered by the department.

(2) Money in the restore Montana account is available to the department by appropriation and must be used for:

- (a) reimbursement of claims pursuant to [sections 6 through 9];
- (b) awarding of grants pursuant to [sections 10 through 12]; and
- (c) payment of the department's cost for administering [sections 1 through 12].

(3) There must be deposited in the restore Montana account:

- (a) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;

and

- (b) interest income on the account.

(4) The department shall encourage the use of the restore Montana program.

NEW SECTION. Section 6. Reimbursements of claims. (1) If the restore Montana account contains sufficient money, valid claims must be reimbursed in the order in which they were received by the department.

(2) If the restore Montana account does not contain sufficient money to reimburse claims for completed actions, a reimbursement may not be made and the restore Montana program, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the restore Montana account does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(3) Reimbursement from the restore Montana account made in accordance with the allocator's report provided for in [section 9] must be limited to actual documented restoration costs incurred after the date of an application provided for in [section 8]. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(4) A person who pays the proportional share of costs allocated to a defunct or bankrupt party has a claim against the restore Montana account and must be reimbursed as provided in [section 9].

(5) The department's costs for hiring the allocator must be paid for on the basis of the allocation percentage of those participating in the allocation.

NEW SECTION. Section 7. Eligibility -- statute of limitations. (1) Except for a site that is listed on the national priorities list pursuant to the federal Comprehensive Environmental Response, Compensation, and

Liability Act of 1980, 42 U.S.C. 9601, et seq., any site impacted by a hazardous or deleterious substance, as defined in 75-10-701, is eligible for the allocation process under [sections 6 through 9].

(2) Reimbursement of costs for natural resource damages is not permitted.

(3) Restoration costs incurred prior to June 30, 2009, or prior to approval of a plan by the department of environmental quality are not eligible for reimbursement.

(4) A liable person or potentially liable person under 75-10-715 may not file a cost recovery or contribution action against any person participating in the allocation process until the allocation process is complete. The statute of limitations on the filing of cost recovery or contribution actions is tolled from the first date of a petition for allocation until 30 days after the submittal of the allocation report, provided for in [section 9], or until 30 days following the expiration of the time period for appeal or the final decision on appeal. The allocation report may be considered but is not binding on the court in any cost recovery or contribution action.

NEW SECTION. Section 8. Allocation process -- initiation. (1) Any person or governmental entity may file an application with the department in writing to initiate the allocation process.

(2) The allocation process may be initiated and may proceed upon written application of one or more persons. The application must contain a professionally prepared report of the historical activities conducted at the site as well as the persons or entities involved in the activities. The department may require additional relevant information.

(3) All persons who participate in the allocation process shall agree in writing that the allocator's decision is binding.

(4) Upon receipt of a written application, the department shall:

(a) conduct a good faith investigation of the facts pertaining to the application and the site; and

(b) issue letters to the persons it identifies as potentially involved in the site who were not previously given notice.

(5) Within 30 days of receipt of the information provided for in subsection (2), the department may issue a letter to an identified person or to a person whom the department identified pursuant to subsection (7) and who was not previously given notice. The person shall provide a written application to participate in the allocation process to the department within 30 days of the date of the notice. A failure to petition the department for allocation as provided in this subsection results in a waiver of the right to participate in the allocation process.

(6) If a person identified under subsection (4) cannot be readily located, the department shall, within 30 days of receipt of the information, publish one notice of the person's application, along with the information

contained in an application in a newspaper of general circulation in the county where all or a portion of the site is located. The notice must state that the person has 30 days from the date of the notice to apply to the department, in writing, to participate in the allocation process. A failure to apply to the department for allocation as provided in this subsection results in a waiver of the right to participate in the allocation process.

(7) The department shall:

(a) publish a notice and brief description of the site in a newspaper of general circulation in the area affected and provide at least 30 days for submission of public comment; and

(b) notify interested persons and the county commissioners of each county in which all or a portion of the site is located and provide at least 30 days for submission of comments.

(8) The persons participating in the allocation shall select an allocator who must be approved by the department. If the persons cannot agree on the selection of an allocator, they may petition the district court to select an allocator.

NEW SECTION. Section 9. Allocating liability. (1) Upon selection, the allocator shall establish the process and schedule for determining the allocation, including the length and scope of any documents to be presented.

(2) The participating persons shall submit to the allocator and to each other a statement of position and exhibits of a factual nature. Each person's statement must identify the factors listed in subsection (4) that the person believes are relevant to allocation of liability for the site.

(3) The allocator may convene a meeting of the participating persons that the allocator believes necessary to clarify the facts and may pose additional questions, interview any person or the person's representative, and impose presumptions concerning missing information. The allocator may seek department assistance with information gathering.

(4) The allocator shall allocate each participating and nonparticipating person's share of responsibility based only on information presented or collected during the allocation process and, taking into account site characteristics, shall apportion responsibility on a percentage basis according to the following factors:

(a) the extent to which the person caused the release of the hazardous or deleterious substance;

(b) the extent to which the person's contribution to the release of a hazardous or deleterious substance can be distinguished;

(c) the amount or volume of hazardous or deleterious substance and the amount contributed by the person;

(d) the relative hazard of the hazardous or deleterious substance contributed by the person, including volatility, carcinogenicity, mobility, persistence, reactivity, and toxicity;

(e) the degree of past and present cooperation by the person with the government to prevent harm to the public health, safety, or welfare and the environment, including participation in remedial actions occurring concurrently with the allocation;

(f) what the person knew or should have known of the hazardous nature of the substance, the risk associated with that substance, and proper waste disposal practices;

(g) the circumstances of the property acquisition, including the documented price paid and discounts granted;

(h) the person's knowledge of or acquiescence to waste generation, storage, handling, treatment, or disposal;

(i) the length of time of ownership, operation, generation, or transportation;

(j) any violations of or noncompliance with health and environmental regulations, including permit violations or violations relating to public notification;

(k) the degree to which a person providing publicly owned landfill or sewer and water systems had or has a reasonable ability to control disposed materials and the person's degree of care in maintaining those services;

(l) the person's financial or economic benefit from:

(i) ownership or operation of the site;

(ii) the generation, transportation, or disposal of the hazardous or deleterious substance; and

(iii) cleanup of the site;

(m) whether the person exercised due diligence in generating, transporting, or disposing of hazardous or deleterious substances and the person's control over those activities; and

(n) other equitable factors that are appropriate.

(5) (a) Within 60 days of selection, the allocator shall submit to the department and all noticed persons a written allocation report that allocates each person's share of responsibility and that documents the rationale for the percentage of liability allocated to each person.

(b) The allocator may submit as the allocation report a written allocation agreement approved by all the parties.

(6) The allocator or the participating persons may extend the allocation proceeding by up to 30 days if agreed to by the allocator and all the participating persons.

(7) Within 30 days of the date of the allocation report, the persons who participated in the allocation and who were allocated a share of responsibility shall prepare and sign a stipulated agreement that contains:

- (a) the percentage share of responsibility for each person as determined by the allocator;
- (b) procedures for paying for the restoration prior to reimbursement;
- (c) a waiver of contribution rights under Title 75, chapter 10, part 7, against all persons who participated in the allocation and are potentially liable for the remedial action as well as a waiver of any rights to challenge any settlement that the department of environmental quality enters into with any other potentially liable person;
- (d) covenants not to sue and provisions regarding performance or adequate assurance of performance of restoration actions;
- (e) how restoration actions will be conducted;
- (f) acknowledgment of contribution protection, consistent with 75-10-719(1), regarding matters addressed in the agreement; and
- (g) provisions detailing how the persons signing the stipulated agreement should receive reimbursement for any restoration costs incurred by the persons in excess of their allocated share.

(8) A person who did not participate in the allocation but who was assigned a share of responsibility may sign the stipulated agreement prepared according to subsection (7).

(9) Any person who signs the stipulated agreement and fails to comply with the terms of the stipulated agreement shall repay any money received from the restore Montana account.

(10) If a person becomes bankrupt or defunct after the stipulated agreement is signed and before restoration is complete, that person's share of responsibility becomes subject to reallocation as a defunct or bankrupt person.

NEW SECTION. Section 10. Grants -- application fee. (1) Any department, agency, board, commission, or other division of state government or any city, county, consolidated government, other political subdivision, any tribal government, or any private entity within the state may apply, in accordance with the procedures established by the department, for a grant from the restore Montana account for a project that is consistent with the purpose described in [section 2].

(2) The department shall evaluate applications under the eligibility criteria provided in [section 11] and the evaluation criteria provided in [section 12].

(3) The department may charge a fee of \$25 for each application to defray the cost of evaluating applications.

(4) The department shall solicit and consider in its evaluation of applications the views of interested persons and public agencies.

(5) Based on its evaluation of eligible applications, the department shall award grant funds to qualified applicants to the extent funds are available and enter into grant agreements specifying the scope of work and budget for each project.

NEW SECTION. Section 11. Eligibility criteria. To be eligible for a grant, the proposed project must provide benefits in one or more of the following categories:

- (1) reclamation of land, water, or other resources adversely affected by mineral development;
- (2) mitigation of damage to public resources caused by mineral development;
- (3) research, demonstration, or technical assistance to promote the wise use of Montana minerals, including efforts to make processing more environmentally compatible;
- (4) investigation and remediation of sites where hazardous wastes or regulated substances threaten public health or the environment; or
- (5) research to assess existing or potential environmental damage resulting from mineral development.

NEW SECTION. Section 12. Evaluation criteria -- priority. The department shall consider the following criteria in evaluating eligible applications and in selecting projects to be funded:

- (1) the degree to which the project will provide benefits in its eligibility category or categories;
- (2) the degree to which the project will provide public benefits;
- (3) the degree to which the project will promote, enhance, or advance the purpose defined in [section 2];
- (4) the degree to which the project will provide for the conservation of natural resources;
- (5) the degree of need and urgency for the project;
- (6) the extent to which the project sponsor or local entity is contributing to the costs of the project or is generating additional nonstate funds;
- (7) the degree to which jobs are created for persons who need job training, receive public assistance, or are chronically unemployed; and
- (8) any other criteria that the department considers necessary to carry out the purpose described in [section 2].

Section 13. Section 15-36-331, MCA, is amended to read:

"15-36-331. Distribution of taxes. (1) (a) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalties collected under this part.

(b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under 15-36-332 and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) (a) The amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in accordance with the provisions of 15-1-501, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(b) The amount of the tax for the oil, gas, and coal natural resource account established in 90-6-1001 must be deposited in the account.

(3) (a) For each tax year, the amount of oil and natural gas production taxes determined under subsection (1)(b) is allocated to each county according to the following schedule:

	2005	2006 and succeeding tax years
Big Horn	45.04%	45.05%
Blaine	58.11%	58.39%
Carbon	48.93%	48.27%
Chouteau	57.65%	58.14%
Custer	80.9%	69.53%
Daniels	49.98%	50.81%
Dawson	50.64%	47.79%
Fallon	41.15%	41.78%
Fergus	83.52%	69.18%
Garfield	48.81%	45.96%
Glacier	64.74%	58.83%
Golden Valley	57.41%	58.37%
Hill	65.33%	64.51%
Liberty	59.73%	57.94%
McCone	52.86%	49.92%

Musselshell	51.44%	48.64%
Petroleum	54.62%	48.04%
Phillips	53.78%	54.02%
Pondera	70.89%	54.26%
Powder River	62.17%	60.9%
Prairie	39.73%	40.38%
Richland	46.72%	47.47%
Roosevelt	46.06%	45.71%
Rosebud	38.69%	39.33%
Sheridan	47.54%	47.99%
Stillwater	54.35%	53.51%
Sweet Grass	60.24%	61.24%
Teton	48.4%	46.1%
Toole	57.14%	57.61%
Valley	54.22%	51.43%
Wibaux	48.68%	49.16%
Yellowstone	48.06%	46.74%
All other counties	50.15%	50.15%

(b) The oil and natural gas production taxes allocated to each county must be deposited in the state special revenue fund and transferred to each county for distribution, as provided in 15-36-332.

(4) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as follows:

- (a) for each fiscal year through the fiscal year ending June 30, 2011, to be distributed as follows:
 - (i) 1.23% to the coal bed methane protection account established in 76-15-904;
 - (ii) 2.95% to the reclamation and development grants special revenue account established in 90-2-1104;
 - (iii) 2.95% to the ~~orphan share account~~ restore Montana account established in ~~75-10-743~~ [section 5];
 - (iv) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and
 - (v) all remaining proceeds to the state general fund;
- (b) for fiscal years beginning after June 30, 2011, to be distributed as follows:

- (i) 4.18% to the reclamation and development grants special revenue account established in 90-2-1104;
- (ii) 2.95% to the ~~orphan share account~~ restore Montana account established in ~~75-10-743~~ [section 5];
- (iii) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and
- (iv) all remaining proceeds to the state general fund."

Section 14. Section 75-10-743, MCA, is amended to read:

"75-10-743. Orphan share state special revenue account -- reimbursement of claims -- payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and, except as provided in ~~subsections~~ subsection (9) ~~through (11)~~, must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-751 and to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

- (a) all penalties assessed pursuant to 75-10-750(12);
- (b) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;
- (c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;
- ~~— (d) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;~~
- ~~(e)~~(d) unencumbered funds remaining in the abandoned mines state special revenue account;
- ~~(f)~~(e) interest income on the account;
- ~~(g)~~(f) funds received from settlements pursuant to 75-10-719(7); and
- ~~(h)~~(g) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsection (7), claims may not be submitted and remedial action costs may

not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of a petition provided for in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-751 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the department's costs incurred in defending the orphan share must be paid from the orphan share fund in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-751 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

(7) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(8) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.

~~(9) For the biennium beginning July 1, 2005, and subject to the provisions of section 3, Chapter 355, Laws of 2005, the department may transfer funds from the orphan share fund to the environmental quality protection fund established in 75-10-704, the hazardous waste/CERCLA account established in 75-10-621, or both. The total amount transferred pursuant to this subsection may not exceed \$600,000.~~

~~———— (10) (a) For the biennium beginning July 1, 2005, up to \$1.25 million may be used by the department to~~

~~pay the costs incurred by the department in contracting for evaluating the extent of contamination and formulating final remediation alternatives for releases at the Kalispell pole and timber, reliance refinery company, and Yale oil corporation facility complex. If the department spends less than \$1.25 million for those purposes, the remaining funds must be spent for remediation of the facility complex. The department may not seek recovery of the \$1.25 million from potentially liable persons:~~

~~———— (b) The money spent pursuant to subsection (10)(a) must be credited against the amount owed by the state agency in a judgment or settlement agreement for payment of the remedial action costs at the facility for which the money was spent.~~

~~———— (c) The department shall consult with the noticed potentially liable persons regarding contractor selection and determination of the scope of the work for contract tasks. The department shall also provide the noticed potentially liable persons with contract performance updates and shall consult with the noticed potentially liable persons regarding expenses and progress on contract tasks.~~

~~———— (d) The department shall contract for the compilation, assessment, and summarization of the existing data pertaining to the complex described in subsection (10)(a), for recommendations for and conducting of additional investigations and studies necessary to develop remediation alternatives, and for development and assessment of remediation alternatives:~~

~~———— (e) Unless the department is delayed by a challenge to a contracting action, multiple contractor selection processes, or other unanticipated circumstances, the activities authorized under subsection (10)(a) must meet the following schedule:~~

~~———— (i) Contracts for investigations and studies must be in place by August 31, 2005.~~

~~———— (ii) A summary of existing data must be prepared by December 31, 2005.~~

~~———— (iii) The contract or contract task order for investigations, studies, and development and evaluation of final remediation alternatives must be in place by April 30, 2006.~~

~~———— (iv) All intended field work must be completed by November 30, 2006, and to the extent that this field work indicates that followup is necessary, the followup field work must be completed as soon as possible or addressed in the report that must be submitted pursuant to subsection (10)(g).~~

~~———— (v) The contractor shall submit evaluations of the extent of contamination by October 31, 2006.~~

~~———— (vi) The contractor shall submit final remediation alternatives by July 31, 2007.~~

~~———— (f) The department shall report to the environmental quality council quarterly during calendar years 2005, 2006, and 2007 regarding the progress being made to meet the requirements of subsection (10)(e). The report must include information on expenditures:~~

~~———— (g) If investigations completed under this subsection (10) indicate the need for additional information or for pilot tests and other related remedial action process activities, the department shall prepare a report identifying the rationale and estimated costs for additional work and present it to the environmental quality council during the spring of 2007.~~

~~———— (h) The department shall provide to the environmental quality council copies of investigations and reports completed pursuant to subsection (10)(d).~~

~~(11)(9) (a) Beginning in the fiscal year that commences July 1, 2005, the~~ The department shall transfer from the orphan share account to the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 \$1.2 million in each fiscal year until the board of investments makes the certification pursuant to subsection ~~(11)(b) (9)(b)~~ (9)(b) of this section.

(b) (i) The board of investments shall monitor the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 to determine when the amount of money in the long-term or perpetual water treatment permanent trust fund will be sufficient, with future earnings, to provide a fund balance of \$19.3 million on January 1, 2018.

(ii) When the board of investments makes the determination pursuant to subsection ~~(11)(b)(i) (9)(b)(i)~~, the board of investments shall notify the department and certify to the department the amount of money, if any, that must be transferred during the fiscal year in which the board of investments makes its determination pursuant to subsection ~~(11)(b)(i) (9)(b)(i)~~ in order to provide a fund balance of \$19.3 million on January 1, 2018.

(iii) In the fiscal year that the board of investments makes its determination and notifies the department, the department shall transfer only the amount certified by the board of investments, if any, and may not make additional transfers during subsequent fiscal years."

Section 15. Section 75-10-621, MCA, is amended to read:

"75-10-621. Hazardous waste/CERCLA special revenue account. (1) There is a hazardous waste/CERCLA special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the hazardous waste/CERCLA account:

(a) revenue obtained from the interest income of the resource indemnity trust fund under the provisions of 15-38-202, together with interest accruing on that revenue;

(b) all proceeds of bonds or notes issued under 75-10-623 and all interest earned on proceeds of the bonds or notes; and

(c) revenue from penalties or damages collected under the federal Comprehensive Environmental

Response, Compensation, and Liability Act of 1980, as amended in 1986 (CERCLA).

(3) Appropriations may be made from the hazardous waste/CERCLA account only for the following purposes and subject to the following conditions:

(a) not more than one-half of the interest income received for any biennium from the resource indemnity trust fund may be appropriated on a biennial basis for:

(i) implementation of the Montana Hazardous Waste Act, including regulation of underground storage tanks and the state share to obtain matching federal funds;

(ii) implementation of Title 75, chapter 10, part 6, pertaining to state assistance to and cooperation with the federal government for remedial action under CERCLA;

(iii) expenses of the department in administering and overseeing the implementation of Title 75, chapter 10, parts 4 and 6; and

(iv) state expenses relating to investigation and remedial action for any hazardous substance defined in 75-10-602; and

(b) to the extent funds are available after the appropriations in subsection (3)(a), the department may, as appropriate, seek authorization from the legislature or, when the legislature is not in session, through the budget amendment process provided for in Title 17, chapter 7, part 4, to spend funds for:

(i) state participation in remedial action under section 104 of CERCLA;

(ii) state costs for maintenance of sites at which remedial action under CERCLA has been completed; and

(iii) the state share to obtain matching federal funds for underground storage tank corrective action.

(4) For the purposes of subsection (3)(b), the legislature finds that a need for state special revenue to obtain matching federal funds for underground storage tank corrective action or for remedial action under section 104 of CERCLA constitutes a serious unforeseen and unanticipated circumstance for the purpose of meeting the definition of "emergency" in 17-7-102. The legislature further finds that the inability of the department to match the federal funds as the funds become available would seriously impair the functions of the department in carrying out its responsibilities under Title 75, chapter 10, parts 4 and 6.

(5) There is no dollar limit to the hazardous waste/CERCLA account. Except as provided in subsection (6), unused balances remain in the account until appropriated by the legislature for the purposes specified in this section.

~~(6) (a) If funds are transferred from the orphan share fund to the hazardous waste/CERCLA account pursuant to 75-10-743(9), the department shall, subject to the limitations in subsections (6)(b) and (6)(c) of this~~

~~section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the hazardous waste/GERCLA account to the orphan share fund the unencumbered amount remaining in the hazardous waste/GERCLA account at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the hazardous waste/GERCLA account.~~

~~———(b) The total amount transferred pursuant to subsection (6)(a) may not exceed the total amount transferred to the hazardous waste/GERCLA account pursuant to 75-10-743(9).~~

~~———(c) Subsection (6)(a) does not apply to the proceeds of bonds or notes sold pursuant to 75-10-623, to interest on the proceeds of those bonds or notes, or to appropriations of those proceeds or interest."~~

Section 16. Section 75-10-704, MCA, is amended to read:

"75-10-704. Environmental quality protection fund. (1) There is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) ~~Except as provided in subsection (9), the~~ The fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

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

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

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

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

(c) funds appropriated to the fund by the legislature;

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(e) funds received from the interest income of the fund;

(f) funds received from settlements pursuant to 75-10-719(7); and

(g) funds received from the interest paid pursuant to 75-10-722.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

(d) If the balance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

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

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

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

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

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

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

~~(9) (a) If funds are transferred from the orphan share fund to the environmental quality protection fund pursuant to 75-10-743(9), the department shall, subject to the limitation in subsection (9)(b) of this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the environmental quality protection fund to the orphan share fund the unencumbered amount remaining in the environmental quality protection fund at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the environmental quality protection fund.~~

~~————(b) The total transferred pursuant to subsection (9)(a) may not exceed the total amount transferred to the environmental quality protection fund pursuant to 75-10-743(9)."~~

NEW SECTION. Section 17. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

NEW SECTION. Section 18. Codification instruction. [Sections 1 through 12] are intended to be codified as an integral part of Title 90, and the provisions of Title 90 apply to [sections 1 through 12].

NEW SECTION. Section 19. Effective date. [This act] is effective July 1, 2009.

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