

HOUSE BILL NO. 359

INTRODUCED BY FITZPATRICK, THOMAS

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT AN ADMINISTRATIVE OR JUDICIAL ORDER IS ADMISSIBLE IN A CIVIL ACTION REGARDING REMEDIAL ACTIONS RELATED TO HAZARDOUS WASTE FACILITIES; AND AMENDING SECTIONS 75-10-706 AND 75-10-711, MCA."

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

Section 1. Section 75-10-706, MCA, is amended to read:

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

(a) protect the public health and welfare of all Montana citizens against the dangers arising from releases of hazardous or deleterious substances;

(b) encourage private parties to clean up sites within the state at which releases of hazardous or deleterious substances have occurred, resulting in adverse impacts on the health and welfare of the citizens of the state and on the state's natural, environmental, and biological systems; and

(c) provide for funding to study, plan, and undertake the rehabilitation, removal, and cleanup of sites within the state at which no voluntary action has been taken.

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

~~(3) A person who is not subject to an administrative or judicial order may not conduct any remedial action at any facility that is subject to an administrative or judicial order issued pursuant to this part without the written permission of the department. Remedial action performed in accordance with this part is intended to provide for the protection of the environmental life support system from degradation and to prevent unreasonable depletion and degradation of natural resources."~~

Section 2. Section 75-10-711, MCA, is amended to read:



1 **"75-10-711. Remedial action -- orders -- penalties -- judicial proceedings.** (1) The department may
2 take remedial action 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 or the environment;
5 and

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.

29 (5) (a) A person who violates or fails or refuses to comply with an order issued under 75-10-707 or this
30 section may, in an action brought to enforce the order, be assessed a civil penalty of not more than \$10,000 for

1 each day in which a violation occurs or a failure or refusal to comply continues. In determining the amount of any
2 penalty assessed, the court may take into account:

- 3 (i) the nature, circumstances, extent, and gravity of the noncompliance;
4 (ii) with respect to the person liable under 75-10-715(1):
5 (A) the person's ability to pay;
6 (B) any prior history of violations;
7 (C) the degree of culpability; and
8 (D) the economic benefit or savings, if any, resulting from the noncompliance; and
9 (iii) any other matters as justice may require.

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

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

- 14 (a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;
15 (b) an action to enforce an order issued under 75-10-707 or this section;
16 (c) an action to recover a civil penalty for violation of or failure to comply with an order issued under
17 75-10-707 or this section; or
18 (d) an action by a person to whom an order has been issued to determine the validity of the order, only
19 if the person has been in compliance and continues in compliance with the order pending a decision of the court.

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

24 (8) Instead of issuing a notification or an order under this section, the department may bring an action
25 for legal or equitable relief in the district court of the county where the release or threatened release occurred or
26 in the first judicial district as may be necessary to abate any imminent and substantial endangerment to the public
27 health, safety, or welfare or the environment resulting from the release or threatened release.

28 (9) A person who is not subject to an administrative or judicial order may not conduct any remedial action
29 at any facility that is subject to an administrative or judicial order issued pursuant to this part without the written
30 permission of the department. If a state or federal administrative or judicial order is issued relative to a facility,

1 the order and any remedial activity conducted pursuant to the order is admissible in any civil action pertaining
2 to the facility or property adjacent to or allegedly impacted by the facility. ADMISSION OF THIS EVIDENCE DOES NOT
3 MAKE THE DEPARTMENT A NECESSARY PARTY TO THE ACTION. Remedial action performed in accordance with this part
4 is intended to provide for the protection of the environmental life support system from degradation and to prevent
5 unreasonable depletion and degradation of natural resources.

6 ~~(9)(10)~~ The department may take remedial action pursuant to subsection (1) at a site that is regulated
7 under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law
8 96-510, if the department determines that remedial action is necessary to carry out the purposes of this part."

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