

HOUSE BILL NO. 56

INTRODUCED BY J. KEANE

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING CONSENT FOR IMPLEMENTING REMEDIATION AND REVISING TIMEFRAMES FOR CLEANUP OF GROUND WATER UNDER THE VOLUNTARY CLEANUP AND REDEVELOPMENT ACT; AMENDING SECTIONS 75-10-733 AND 75-10-736, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**Section 1.** Section 75-10-733, MCA, is amended to read:

**"75-10-733. Voluntary cleanup plan and reimbursement of remedial action costs.** (1) Any person may submit an application for the approval of a voluntary cleanup plan to the department under the provisions of this section.

(2) A voluntary cleanup plan must include:

(a) an environmental assessment of the facility that includes the information required in 75-10-734;

(b) a remediation proposal that includes the information required in 75-10-734 and that meets the requirements of 75-10-721; and

(c) the written consent of current owners of the facility or property to ~~both the implementation of the voluntary cleanup plan and access to the facility by the applicant and its agents and the department~~ allow:

(i) access to the facility by the applicant and its agents and the department; and

(ii) implementation of the voluntary cleanup plan when a remediation proposal includes the information required in 75-10-734 and meets the requirements of 75-10-721.

(3) (a) The applicant shall reimburse the department for any remedial action costs that the state incurs in the review and oversight of a voluntary cleanup plan.

(b) If the applicant does not reimburse the department for its remedial action costs in the time required under 75-10-722, the department may discontinue the review or approval process of the voluntary cleanup plan or void its approval of the voluntary cleanup plan. The department may also take action to recover its outstanding costs.

1 (4) The department may approve a voluntary cleanup plan that provides for phases of remediation or  
2 that addresses only a portion of the facility. To the extent that the original environmental assessment required  
3 under 75-10-734 addresses subsequent phases of remediation, the applicant may rely on that assessment when  
4 submitting voluntary cleanup plans for subsequent phases of remediation."  
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6 **Section 2.** Section 75-10-736, MCA, is amended to read:

7 **"75-10-736. Approval of voluntary cleanup plan -- time limits -- content of notice -- expiration of**  
8 **approval.** (1) The department shall review for completeness, including adequacy and accuracy, in accordance  
9 with the requirements of 75-10-734, the environmental assessment component of a voluntary cleanup plan and  
10 shall provide a written completeness notice to the applicant within 30 days of receipt. The completeness notice  
11 must note all deficiencies identified in the information submitted.

12 (2) Once the department determines that the environmental assessment component of a voluntary  
13 cleanup plan is complete, the applicant may submit the remediation proposal component. The department shall  
14 review the remediation proposal for completeness, including adequacy and accuracy, in accordance with the  
15 requirements of 75-10-734, and shall provide a written completeness notice to the applicant within 30 days of  
16 receipt. The completeness notice must note all deficiencies identified in the information submitted.

17 (3) Once the department determines that the application for a voluntary cleanup plan is complete  
18 pursuant to subsections (1) and (2), the department shall provide formal written notification of approval or  
19 disapproval within 60 days unless the applicant and the department agree to an extension of the review to a date  
20 certain. The review must be limited to a review of the materials submitted by the applicant, public comments, and  
21 documents or information readily available to the department. The department shall communicate with the  
22 applicant during the review period to ensure that the applicant has the opportunity to address the public  
23 comments.

24 (4) (a) If the department receives five applications for review of either component of a voluntary cleanup  
25 plan in a calendar month, including applications deferred from prior months, the department may notify any  
26 additional applicants in that month that their plans must be reviewed in the order received. The 60-day period for  
27 department completeness review of deferred applications must begin on the first day of the subsequent month  
28 that each plan is eligible for review.

29 (b) The department shall discontinue accepting either component of voluntary cleanup applications when  
30 15 applications are pending and are being reviewed by the department. The department shall establish a waiting

1 list for applications and shall consider the applications in order of submittal.

2 (c) If the department has received multiple applications for a voluntary cleanup at the same facility, the  
3 department shall notify all of the applicants and offer them the opportunity to submit a joint application.

4 (5) Consistent with the provisions of 75-10-707, the department may access the facility during review  
5 of either component of the application and implementation of the voluntary cleanup plan to confirm information  
6 provided by the applicant and verify that the cleanup is being conducted consistent with the approved plan.

7 (6) (a) The department shall approve a voluntary cleanup plan if the department concludes that the plan  
8 meets the requirements specified in 75-10-734 and will attain a degree of cleanup and control of hazardous or  
9 deleterious substances that complies with the requirements of 75-10-721.

10 (b) Except for the period necessary for the operation and maintenance of the approved remediation  
11 proposal, the department may not approve a voluntary remediation proposal that would:

12 (i) take longer than 60 months after department approval to ~~complete~~ achieve the cleanup levels  
13 proposed by the applicant under 75-10-734(3)(a)(i) and approved by the department; or

14 (ii) take longer than 120 months after department approval to achieve the cleanup levels for ground water  
15 proposed by the applicant under 75-10-734(3)(a)(i) and approved by the department, including ground water  
16 standards identified as applicable or relevant state or federal environmental requirements, criteria, or limitations  
17 pursuant to 75-10-721.

18 (7) If a voluntary cleanup plan is not approved by the department, the department shall promptly provide  
19 the applicant with a written statement of the reasons for denial. The denial may be appealed to the board of  
20 environmental review in accordance with the provisions of 75-10-732(4).

21 (8) The approval of a voluntary cleanup plan by the department applies only to conditions at the facility  
22 that are known to the department at the time of department approval. If a voluntary remediation proposal is not  
23 initiated within 12 months and, except for the period necessary for the operation and maintenance of the  
24 approved remediation proposal, is not completed within 60 months after approval by the department, the  
25 department's approval lapses. However, the department may grant an extension of the time limit for completion  
26 of the voluntary cleanup plan.

27 (9) If conditions are discovered during implementation of a voluntary cleanup plan that were not identified  
28 in the environmental assessment component pursuant to subsection (1), affect the risk to public health, safety,  
29 or welfare or the environment, and change the scope of the approved plan, the applicant shall notify the  
30 department within 10 days of discovery. The department may require the applicant to submit an amendment to

1 the approved plan to address the conditions or may determine that a voluntary cleanup plan is no longer  
2 appropriate pursuant to 75-10-732(3).

3 (10) Departmental approval is void if the applicant or the applicant's agents:

4 (a) fail to materially comply with the voluntary cleanup plan;

5 (b) submit materially misleading information in the application or during implementation of the voluntary  
6 cleanup plan; or

7 (c) fail to report any newly discovered information to the department during the application process or  
8 implementation of the voluntary cleanup plan regarding releases or threatened releases of hazardous or  
9 deleterious substances within 10 days of discovery of that information.

10 (11) Within 60 days after completion of the approved remediation proposal described in the voluntary  
11 cleanup plan approved by the department, the applicant shall provide to the department a certification from a  
12 qualified environmental professional that the plan has been fully implemented, including all documentation  
13 necessary to demonstrate the successful implementation of the plan, such as confirmation sampling, if necessary.

14 (12) Except as provided in 75-10-738(2)(b), the department may not require financial assurance under  
15 this part for voluntary cleanup plans approved under this section.

16 (13) If a person who would otherwise not be a liable person under 75-10-715(1) elects to undertake an  
17 approved voluntary cleanup plan, the person may not become a liable person under 75-10-715(1) by undertaking  
18 a voluntary cleanup if the person materially complies with the voluntary cleanup plan approved by the department  
19 pursuant to this section.

20 (14) Immunity from liability under this section does not apply to a release that is caused by conduct that  
21 is negligent or grossly negligent or that constitutes intentional misconduct."

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23 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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25 NEW SECTION. **Section 4. Applicability.** [This act] applies to voluntary cleanup plans submitted to  
26 the department on or after [the effective date of this act].

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