

HOUSE BILL 344

Introduced by Quilici, et al.

1/22	Introduced
1/22	Referred to Judiciary
1/23	First Reading
2/07	Fiscal Note Requested
2/12	Fiscal Note Received
	Died in Committee

1 *House* BILL NO. *344*
 2 INTRODUCED BY *Julien Moore Lambert*
 3 *Daily*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE TERM
 5 "OWNS OR OPERATES" FOR PURPOSES OF ESTABLISHING LIABILITY
 6 FOR REMEDIAL ACTION UPON RELEASE OF A HAZARDOUS OR
 7 DELETERIOUS SUBSTANCE; AND AMENDING SECTION 75-10-701, MCA."
 8

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

10 **Section 1.** Section 75-10-701, MCA, is amended to read:

11 **"75-10-701. Definitions.** As used in this part, unless
 12 the context requires otherwise, the following definitions
 13 apply:

14 (1) "Department" means the department of health and
 15 environmental sciences provided for in Title 2, chapter 15,
 16 part 21.

17 (2) "Director" means the director of the department of
 18 health and environmental sciences.

19 (3) "Environment" means any surface water, ground
 20 water, drinking water supply, land surface or subsurface
 21 strata, or ambient air within the state of Montana or under
 22 the jurisdiction of the state of Montana.

23 (4) (a) "Facility" means:

24 (i) any building, structure, installation, equipment,
 25 pipe or pipeline (including any pipe into a sewer or

1 publicly owned treatment works), well, pit, pond, lagoon,
 2 impoundment, ditch, landfill, storage container, motor
 3 vehicle, rolling stock, or aircraft; or

4 (ii) any site or area where a hazardous or deleterious
 5 substance has been deposited, stored, disposed of, placed,
 6 or otherwise come to be located.

7 (b) The term does not include any consumer product in
 8 consumer use.

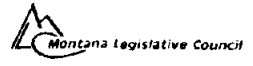
9 (5) "Fund" means the environmental quality protection
 10 fund established in 75-10-704.

11 (6) "Hazardous or deleterious substance" means a
 12 substance that because of its quantity, concentration, or
 13 physical, chemical, or infectious characteristics may pose
 14 an imminent and substantial threat to public health, safety,
 15 or welfare or the environment and is:

16 (a) a substance that is defined as a hazardous
 17 substance by section 101(14) of the federal Comprehensive
 18 Environmental Response, Compensation, and Liability Act
 19 (CERCLA), 42 U.S.C. 9601(14), as amended;

20 (b) a substance identified by the administrator of the
 21 United States environmental protection agency as a hazardous
 22 substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602,
 23 as amended;

24 (c) a substance that is defined as a hazardous waste
 25 pursuant to section 1004(5) of the Resource Conservation and



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1 Recovery Act of 1976, 42 U.S.C. 6903(5), as amended,
2 including a substance listed or identified in 40 CFR 261; or
3 (d) any petroleum product.

4 (7) "Natural resources" means land, fish, wildlife,
5 biota, air, surface water, ground water, drinking water
6 supplies, and any other such resources within the state of
7 Montana owned, managed, held in trust or otherwise
8 controlled by or appertaining to the state of Montana or a
9 political subdivision of the state.

10 (8) (a) "Owns or operates" means owning, leasing,
11 operating, managing activities at, or exercising control
12 over the operation of a facility.

13 (b) ~~The term does not include holding the indicia of~~
14 ~~ownership of a facility primarily to protect a security~~
15 ~~interest in the facility or other location unless the holder~~
16 ~~has participated in the management of the facility.~~ The term
17 does not apply to the state or a local government that
18 acquired ownership or control through bankruptcy, tax
19 delinquency, abandonment, lien foreclosure, or other
20 circumstances in which the government acquires title by
21 virtue of its function as sovereign, unless the state or
22 local government has caused or contributed to the release or
23 threatened release of a hazardous or deleterious substance
24 from the facility.

25 (c) The term does not include a person who is or has

1 been a holder of indicia of ownership primarily to protect a
2 security interest and who exercises rights as a secured
3 creditor with respect to a facility, including:

4 (i) acting as a custodian to preserve property subject
5 to the security interest, assisting the borrower to wind
6 down its affairs related to the property, or working with
7 the borrower to restructure and make more viable its
8 financing and operations;

9 (ii) selling, foreclosing upon, or otherwise causing the
10 transfer of a facility;

11 (iii) acquiring title or a right to title to a facility
12 upon default under the security interest or at or in lieu of
13 foreclosure so long as the person diligently takes steps to
14 pass legal or equitable title or the right to title and
15 preserves the facility in the interim;

16 (iv) selling off collateral from the facility; or

17 (v) taking other comparable steps.

18 (d) A person otherwise exempt under subsection (8)(c)
19 who in exercising rights as a secured creditor respecting a
20 facility engages in active onsite conduct that causes a
21 release or threatened release of a hazardous or deleterious
22 substance from a facility in circumstances that require
23 remedial action is responsible for the cost of that remedial
24 action, but only to the extent that the cost of that
25 remedial action is directly attributable to the conduct by

1 the person.

2 (e) The term also does not include the owner or
3 operator of the Milltown dam licensed under part 1 of the
4 Federal Power Act (FERC license No. 2543-004) if a hazardous
5 or deleterious substance has been released into the
6 environment upstream of the dam and has subsequently come to
7 be located in the reservoir created by such dam, unless such
8 owner or operator is a person who would otherwise be liable
9 for such release or threatened release under 75-10-715(1).

10 (9) "Person" means an individual, trust, firm, joint
11 stock company, joint venture, consortium, commercial entity,
12 partnership, association, corporation, commission, state or
13 state agency, political subdivision of the state, interstate
14 body, or the federal government, including a federal agency.

15 (10) "Petroleum product" includes gasoline, crude oil
16 (except for crude oil at production facilities subject to
17 regulation under Title 82), fuel oil, diesel oil or fuel,
18 lubricating oil, oil sludge or refuse, and any other
19 petroleum-related product or waste or fraction thereof that
20 is liquid at standard conditions of temperature and pressure
21 (60 degrees F and 14.7 pounds per square inch absolute).

22 (11) "Release" means any spilling, leaking, pumping,
23 pouring, emitting, emptying, discharging, injecting,
24 escaping, leaching, dumping, or disposing of a hazardous or
25 deleterious substance either directly into the environment

1 (including the abandonment or discarding of barrels,
2 containers, and other closed receptacles containing any
3 hazardous or deleterious substance), but excludes releases
4 confined to the indoor workplace environment, the use of
5 pesticides as defined in 80-8-102(30) when they are applied
6 in accordance with approved federal and state labels, and
7 the use of commercial fertilizers as defined in 80-10-101(2)
8 when applied as part of accepted agricultural practice.

9 (12) "Remedial action" includes all notification,
10 investigation, administration, monitoring, cleanup,
11 restoration, mitigation, abatement, removal, replacement,
12 acquisition, enforcement, legal action, health studies,
13 feasibility studies, and other actions necessary or
14 appropriate to respond to a release or threatened release.

15 (13) "Remedial action contract" means a written contract
16 or agreement entered into by a remedial action contractor
17 with the state, or with a potentially responsible party
18 acting pursuant to an order or request issued by the
19 department, the United States, or any federal agency, to
20 provide a remedial action with respect to a release or
21 threatened release of a hazardous or deleterious substance.

22 (14) "Remedial action contractor" means:

23 (a) any person who enters into and is carrying out a
24 remedial action contract; or

25 (b) any person who is retained or hired by a person

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1 described in subsection (14)(a) to provide services relating
2 to a remedial action.

3 (15) "Remedial action costs" means reasonable costs that
4 are attributable to or associated with a remedial action at
5 a facility, including but not limited to the costs of
6 administration, investigation, legal or enforcement
7 activities, contracts, feasibility studies, or health
8 studies."

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