

HOUSE BILL 380

Introduced by Daily, et al.

1/24	Introduced
1/24	Referred to Natural Resources
1/24	First Reading
1/24	Fiscal Note Requested
1/31	Fiscal Note Received
1/31	Fiscal Note Printed
2/06	Hearing
2/16	Committee Report--Bill Passed as Amended
2/20	2nd Reading Passed
2/23	3rd Reading Passed
	Transmitted to Senate
2/25	First Reading
2/25	Referred to Natural Resources
3/11	Hearing
3/27	Committee Report--Bill Not Passed
3/27	Adverse Committee Report Adopted

1 *HOUSE* BILL NO. *380*  
 2 INTRODUCED BY *Daryl Arbach*  
 3 *Memahan B. Mc Carthy*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE REMEDIAL  
 5 ACTION AND CLEANUP OF KNOWN INDUSTRIAL WASTES AND HAZARDOUS  
 6 SUBSTANCES TO PREVENT AQUIFER CONTAMINATION; TO INCREASE  
 7 CERTAIN CIVIL PENALTIES TO \$25,000 PER DAY OF VIOLATION; AND  
 8 AMENDING SECTIONS 75-5-103, 75-5-601, 75-5-605, 75-5-631,  
 9 75-10-701, 75-10-704, 75-10-711, 75-10-712, 75-10-714, AND  
 10 75-10-715, MCA."

11  
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 13 **Section 1.** Section 75-5-103, MCA, is amended to read:  
 14 "75-5-103. Definitions. Unless the context requires  
 15 otherwise, in this chapter the following definitions apply:  
 16 (1) "Sewage" means water-carried waste products from  
 17 residences, public buildings, institutions, or other  
 18 buildings, including discharge from human beings or animals,  
 19 together with ground water infiltration and surface water  
 20 present.  
 21 (2) "Industrial waste" means any waste substance from  
 22 the process of business or industry or from the development  
 23 of any natural resource, together with any sewage that may  
 24 be present.  
 25 (3) "Other wastes" means garbage, municipal refuse,

1 decayed wood, sawdust, shavings, bark, lime, sand, ashes,  
 2 offal, night soil, oil, grease, tar, heat, chemicals, dead  
 3 animals, sediment, wrecked or discarded equipment,  
 4 radioactive materials, solid waste, and all other substances  
 5 that may pollute state waters.  
 6 (4) "Contamination" means impairment of the quality of  
 7 state waters by sewage, industrial wastes, or other wastes,  
 8 creating a hazard to human health.  
 9 (5) "Pollution" means contamination or other alteration  
 10 of the physical, chemical, or biological properties of any  
 11 state waters which exceeds that permitted by Montana water  
 12 quality standards, including but not limited to standards  
 13 relating to change in temperature, taste, color, turbidity,  
 14 or odor; or the discharge, seepage, drainage, infiltration,  
 15 or flow of any liquid, gaseous, solid, radioactive, or other  
 16 substance into any state water which will or is likely to  
 17 create a nuisance or render the waters harmful, detrimental,  
 18 or injurious to public health, recreation, safety, welfare,  
 19 livestock, wild animals, birds, fish, or other wildlife. A  
 20 discharge, seepage, drainage, infiltration or flow which is  
 21 authorized under the pollution discharge permit rules of the  
 22 board is not pollution under this chapter.  
 23 (6) "Sewage system" means a device for collecting or  
 24 conducting sewage, industrial wastes, or other wastes to an  
 25 ultimate disposal point.



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1 (7) "Treatment works" means works installed for  
2 treating or holding sewage, industrial wastes, or other  
3 wastes.

4 (8) "Disposal system" means a system for disposing of  
5 sewage, industrial, or other wastes and includes sewage  
6 systems and treatment works.

7 (9) "State waters" means any body of water, irrigation  
8 system, or drainage system, either surface or underground;  
9 however, this subsection does not apply to irrigation waters  
10 where the waters are used up within the irrigation system  
11 and the waters are not returned to any other state waters.

12 (10) "Person" means the state, a political subdivision  
13 of the state, institution, firm, corporation, partnership,  
14 individual, or other entity and includes persons resident in  
15 Canada.

16 (11) "Council" means the water pollution control  
17 advisory council provided for in 2-15-2107.

18 (12) "Board" means the board of health and environmental  
19 sciences provided for in 2-15-2104.

20 (13) "Department" means the department of health and  
21 environmental sciences provided for in Title 2, chapter 15,  
22 part 21.

23 (14) "Local department of health" means the staff,  
24 including health officers, employed by a county, city,  
25 city-county, or district board of health.

1 (15) "Point source" means any discernible, confined, and  
2 discrete conveyance, including but not limited to any pipe,  
3 ditch, channel, tunnel, conduit, well, discrete fissure,  
4 container, rolling stock, or vessel or other floating craft,  
5 from which pollutants are or may be discharged.

6 (16) "Owner or operator" means any person who owns,  
7 leases, operates, controls, or supervises a point source.

8 (17) "Standard of performance" means a standard adopted  
9 by the board for the control of the discharge of pollutants  
10 which reflects the greatest degree of effluent reduction  
11 achievable through application of the best available  
12 demonstrated control technology, processes, operating  
13 methods, or other alternatives, including, where  
14 practicable, a standard permitting no discharge of  
15 pollutants.

16 (18) "Effluent standard" means any restriction or  
17 prohibition on quantities, rates, and concentrations of  
18 chemical, physical, biological, and other constituents which  
19 are discharged into state waters.

20 (19) "Aquifer" means a water-bearing, subsurface  
21 formation capable of yielding sufficient quantities of water  
22 to a well for a beneficial use."

23 **Section 2.** Section 75-5-601, MCA, is amended to read:

24 "75-5-601. Elean-up Cleanup orders. (1) The department  
25 shall issue orders to any a person to clean up any material

1 which that he or his employee, agent, or subcontractor has  
2 accidentally or purposely dumped, spilled, or otherwise  
3 deposited in or near state waters and which that may pollute  
4 them.

5 (2) The department shall give priority attention to  
6 issuance of cleanup orders in situations in which industrial  
7 waste is known to be present and is likely to cause  
8 contamination of an aquifer if action is not taken."

9 **Section 3.** Section 75-5-605, MCA, is amended to read:

10 "75-5-605. Prohibited activity. (1) It is unlawful to:

11 (a) cause pollution as defined in 75-5-103 of any state  
12 waters or to place or cause to be placed any wastes in a  
13 location where they are likely to cause pollution of any  
14 state waters;

15 (b) allow contaminants or hazardous substances, as  
16 defined in 75-10-602, that are present at a site regulated  
17 under the federal Comprehensive Environmental Response,  
18 Compensation, and Liability Act of 1980 (CERCLA), Public Law  
19 96-510, to cause pollution of an aquifer;

20 ~~(b)(c)~~ violate any provision set forth in a permit or  
21 stipulation, including but not limited to limitations and  
22 conditions contained therein;

23 ~~(e)(d)~~ violate any order issued pursuant to this  
24 chapter; or

25 ~~(d)(e)~~ violate any provision of this chapter.

1 (2) It is unlawful to carry on any of the following  
2 activities without a current permit from the department:

3 (a) construct, modify, or operate a disposal system  
4 which discharges into any state waters;

5 (b) construct or use any outlet for the discharge of  
6 sewage, industrial wastes, or other wastes into any state  
7 waters; or

8 (c) discharge sewage, industrial wastes, or other  
9 wastes into any state waters."

10 **Section 4.** Section 75-5-631, MCA, is amended to read:

11 "75-5-631. Civil penalties -- injunctions not barred.

12 (1) A person who violates this chapter or a rule, permit,  
13 effluent standard, or order issued under the provisions of  
14 this chapter ~~shall be~~ is subject to a civil penalty not to  
15 exceed \$10,000, except that a person who violates the  
16 provisions of 75-5-605(1)(b) is subject to a civil penalty  
17 not to exceed \$25,000. Each day of violation constitutes a  
18 separate violation.

19 (2) Action under this section does not bar enforcement  
20 of this chapter or of rules or orders issued under it by  
21 injunction or other appropriate remedy.

22 (3) The department shall institute and maintain any  
23 enforcement proceedings in the name of the state."

24 **Section 5.** Section 75-10-701, MCA, is amended to read:

25 "75-10-701. Definitions. As used in this part, unless

1 the context requires otherwise, the following definitions  
2 apply:

3 (1) "Aquifer" means a water-bearing, subsurface  
4 formation capable of yielding sufficient quantities of water  
5 to a well for a beneficial use.

6 (2) "Department" means the department of health and  
7 environmental sciences provided for in Title 2, chapter 15,  
8 part 21.

9 (3) "Director" means the director of the department  
10 of health and environmental sciences.

11 (4) "Environment" means any surface water, ground  
12 water, drinking water supply, land surface or subsurface  
13 strata, or ambient air within the state of Montana or under  
14 the jurisdiction of the state of Montana.

15 (5) (a) "Facility" means:

16 (i) any building, structure, installation, equipment,  
17 pipe or pipeline (including any pipe into a sewer or  
18 publicly owned treatment works), well, pit, pond, lagoon,  
19 impoundment, ditch, landfill, storage container, motor  
20 vehicle, rolling stock, or aircraft; or

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

24 (b) The term does not include any consumer product in  
25 consumer use.

1 (6) "Fund" means the environmental quality  
2 protection fund established in 75-10-704.

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

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

12 (b) a substance identified by the administrator of the  
13 United States environmental protection agency as a hazardous  
14 substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602,  
15 as amended;

16 (c) a substance that is defined as a hazardous waste  
17 pursuant to section 1004(5) of the Resource Conservation and  
18 Recovery Act of 1976, 42 U.S.C. 6903(5), as amended,  
19 including a substance listed or identified in 40 CFR 261; or

20 (d) any petroleum product.

21 (8) "Natural resources" means land, fish, wildlife,  
22 biota, air, surface water, ground water, drinking water  
23 supplies, and any other such resources within the state of  
24 Montana owned, managed, held in trust or otherwise  
25 controlled by or appertaining to the state of Montana or a

1 political subdivision of the state.

2 {8}(9) (a) "Owns or operates" means owning, leasing,  
3 operating, managing activities at, or exercising control  
4 over the operation of a facility.

5 (b) The term does not include holding the indicia of  
6 ownership of a facility primarily to protect a security  
7 interest in the facility or other location unless the holder  
8 has participated in the management of the facility. The term  
9 does not apply to the state or a local government that  
10 acquired ownership or control through bankruptcy, tax  
11 delinquency, abandonment, lien foreclosure, or other  
12 circumstances in which the government acquires title by  
13 virtue of its function as sovereign, unless the state or  
14 local government has caused or contributed to the release or  
15 threatened release of a hazardous or deleterious substance  
16 from the facility. The term also does not include the owner  
17 or operator of the Milltown dam licensed under part 1 of the  
18 Federal Power Act (FERC license No. 2543-004) if a hazardous  
19 or deleterious substance has been released into the  
20 environment upstream of the dam and has subsequently come to  
21 be located in the reservoir created by such dam, unless such  
22 owner or operator is a person who would otherwise be liable  
23 for such release or threatened release under 75-10-715(1).

24 {9}(10) "Person" means an individual, trust, firm, joint  
25 stock company, joint venture, consortium, commercial entity,

1 partnership, association, corporation, commission, state or  
2 state agency, political subdivision of the state, interstate  
3 body, or the federal government, including a federal agency.

4 {10}(11) "Petroleum product" includes gasoline, crude  
5 oil (except for crude oil at production facilities subject  
6 to regulation under Title 82), fuel oil, diesel oil or fuel,  
7 lubricating oil, oil sludge or refuse, and any other  
8 petroleum-related product or waste or fraction thereof that  
9 is liquid at standard conditions of temperature and pressure  
10 (60 degrees F and 14.7 pounds per square inch absolute).

11 {11}(12) "Release" means any spilling, leaking, pumping,  
12 pouring, emitting, emptying, discharging, injecting,  
13 escaping, leaching, dumping, or disposing of a hazardous or  
14 deleterious substance either directly into the environment  
15 (including the abandonment or discarding of barrels,  
16 containers, and other closed receptacles containing any  
17 hazardous or deleterious substance), but excludes releases  
18 confined to the indoor workplace environment, the use of  
19 pesticides as defined in 80-8-102(30) when they are applied  
20 in accordance with approved federal and state labels, and  
21 the use of commercial fertilizers as defined in 80-10-101(2)  
22 when applied as part of accepted agricultural practice.

23 {12}(13) "Remedial action" includes all notification,  
24 investigation, administration, monitoring, cleanup,  
25 restoration, mitigation, abatement, removal, replacement,

1 acquisition, enforcement, legal action, health studies,  
2 feasibility studies, and other actions necessary or  
3 appropriate to respond to a release or threatened release.

4 ~~{13}~~{14} "Remedial action contract" means a written  
5 contract or agreement entered into by a remedial action  
6 contractor with the state, or with a potentially responsible  
7 party acting pursuant to an order or request issued by the  
8 department, the United States, or any federal agency, to  
9 provide a remedial action with respect to a release or  
10 threatened release of a hazardous or deleterious substance.

11 ~~{14}~~{15} "Remedial action contractor" means:

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

14 (b) any person who is retained or hired by a person  
15 described in subsection ~~{14}~~{15}(a) to provide services  
16 relating to a remedial action.

17 ~~{15}~~{16} "Remedial action costs" means reasonable costs  
18 that are attributable to or associated with a remedial  
19 action at a facility, including but not limited to the costs  
20 of administration, investigation, legal or enforcement  
21 activities, contracts, feasibility studies, or health  
22 studies."

23 **Section 6.** Section 75-10-711, MCA, is amended to read:

24 "75-10-711. Remedial action -- orders -- penalties --  
25 judicial proceedings. (1) The department may take remedial

1 action whenever:

2 (a) there has been a release or there is a substantial  
3 threat of a release into the environment that may present an  
4 imminent and substantial endangerment to the public health,  
5 welfare, or safety of the environment; and

6 (b) the appropriate remedial action will not be done  
7 properly and expeditiously by any person liable under  
8 75-10-715(1).

9 (2) The department shall take remedial action whenever  
10 there is a substantial threat of a release of a hazardous or  
11 deleterious substance in waters moving from a site that is  
12 regulated under the federal Comprehensive Environmental  
13 Response, Compensation, and Liability Act of 1980 (CERCLA),  
14 Public Law 96-510, into an aquifer.

15 ~~{2}~~{3} Whenever the department is authorized to act  
16 pursuant to subsection (1) or (2) or has reason to believe  
17 that a release has occurred or is about to occur, the  
18 department may undertake remedial action in the form of any  
19 investigation, monitoring, survey, testing, or other  
20 information-gathering as authorized by 75-10-707 that is  
21 necessary and appropriate to identify the existence, nature,  
22 origin, and extent of the release or the threat of release  
23 and the extent and imminence of the danger to the public  
24 health, safety, or welfare of the environment.

25 ~~{3}~~{4} Any person liable under 75-10-715(1) must take

1 immediate action to contain, remove, and abate the release.  
 2 Except as provided in 75-10-712, the department is  
 3 authorized to draw upon the fund to take action under  
 4 subsection (1) or (2) if it has made diligent good faith  
 5 efforts to determine the identity of the person or persons  
 6 liable for the release or threatened release and:

7 (a) is unable to determine the identity of the liable  
 8 person or persons in a manner consistent with the need to  
 9 take timely remedial action; or

10 (b) the person or persons determined by the department  
 11 to be liable under 75-10-715(1) have been informed in  
 12 writing of the department's determination and have been  
 13 requested by the department to take appropriate remedial  
 14 action but are unable or unwilling to take action in a  
 15 timely manner; and

16 (c) the written notice to each person informs him that  
 17 if he is subsequently found liable pursuant to 75-10-715(1),  
 18 he may be required to reimburse the fund for the state's  
 19 remedial action costs and may be subject to penalties  
 20 pursuant to 75-10-715(3).

21 ~~4~~(5) Whenever the department is authorized to act  
 22 pursuant to subsection subsections (1) and (2) or has reason  
 23 to believe that a release that may pose an imminent and  
 24 substantial threat to public health, safety, or welfare or  
 25 the environment has occurred or is about to occur, it may

1 issue to any person liable under 75-10-715(1) cease and  
 2 desist, remedial, or other orders as may be necessary or  
 3 appropriate to protect public health, safety, or welfare or  
 4 the environment.

5 ~~5~~(6) A person who violates or fails or refuses to  
 6 comply with an order issued under 75-10-707 or this section  
 7 may, in an action brought to enforce the order, be assessed  
 8 a civil penalty of not more than \$10,000 for each day in  
 9 which a violation occurs or a failure or refusal to comply  
 10 continues, except that a person who violates or fails or  
 11 refuses to comply with an order issued under subsection (2)  
 12 may, in an action brought to enforce the order, be assessed  
 13 a civil penalty of not more than \$25,000 for each day in  
 14 which a violation occurs or a failure or refusal to comply  
 15 continues. In determining the amount of any penalty  
 16 assessed, the court may take into account the nature,  
 17 circumstances, extent, and gravity of the noncompliance and,  
 18 with respect to the person liable under 75-10-715(1), his  
 19 ability to pay; any prior history of such violations; the  
 20 degree of culpability; the economic benefit or savings, if  
 21 any, resulting from the noncompliance; and any other matters  
 22 as justice may require. Civil penalties collected under this  
 23 subsection must be deposited into the environmental quality  
 24 protection fund established in 75-10-704.

25 ~~6~~(7) A court has jurisdiction to review an order



1 issued under 75-10-707 or this section only in the following  
2 actions:

3 (a) an action under 75-10-715 to recover remedial  
4 action costs or penalties or for contribution;

5 (b) an action to enforce an order issued under  
6 75-10-707 or this section;

7 (c) an action to recover a civil penalty for violation  
8 of or failure to comply with an order issued under 75-10-707  
9 or this section; or

10 (d) an action by a person to whom an order has been  
11 issued to determine the validity of the order, only if the  
12 person has been in compliance and continues in compliance  
13 with the order pending decision of the court.

14 ~~(7)~~(8) In considering objections raised in a judicial  
15 action regarding orders issued under this part, the court  
16 shall uphold and enforce an order issued by the department  
17 unless the objecting party can demonstrate, on the  
18 administrative record, that the department's decision to  
19 issue the order was arbitrary and capricious or otherwise  
20 not in accordance with law.

21 ~~(8)~~(9) Instead of issuing a notification or an order  
22 under this section, the department may bring an action for  
23 legal or equitable relief in the district court of the  
24 county where the release or threatened release occurred or  
25 in the first judicial district as may be necessary to abate

1 any imminent and substantial endangerment to the public  
2 health, safety, or welfare or the environment resulting from  
3 the release or threatened release."

4 **Section 7.** Section 75-10-704, MCA, is amended to read:

5 "75-10-704. Environmental quality protection fund. (1)  
6 There is created in the state special revenue fund an  
7 environmental quality protection fund to be administered as  
8 a revolving fund by the department. The department is  
9 authorized to expend amounts from the fund necessary to  
10 carry out the purposes of this part.

11 (2) The fund may be used by the department only to  
12 carry out the provisions of this part and for remedial  
13 actions taken by the department pursuant to this part in  
14 response to a release of hazardous or deleterious  
15 substances.

16 (3) The department shall:

17 (a) establish and implement a system for prioritizing  
18 sites for remedial action based on potential effects on  
19 human health and the environment; and

20 (b) investigate, negotiate, and take legal action, as  
21 appropriate, to identify responsible parties, to obtain the  
22 participation and financial contribution of responsible  
23 parties for the remedial action, to achieve remedial action,  
24 and to recover costs and damages incurred by the state.

25 (4) There must be deposited in the fund:

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

3 (b) all administrative penalties assessed pursuant to  
4 75-10-714 and all civil penalties assessed pursuant to  
5 75-10-711~~(5)~~(6);

6 (c) funds appropriated to the fund by the legislature;  
7 and

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

10 (5) Whenever a legislative appropriation is  
11 insufficient to carry out the provisions of this part and  
12 additional money remains in the fund, the department shall  
13 seek additional authority to spend money from the fund  
14 through the budget amendment process provided for in Title  
15 17, chapter 7, part 4.

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

20 (7) The department shall submit to the legislature at  
21 the beginning of each regular session a complete financial  
22 report on the fund, including a description of all  
23 expenditures made since the preceding report."

24 **Section 8.** Section 75-10-712, MCA, is amended to read:

25 "75-10-712. Emergency action. If the department

1 determines that immediate response to an imminent threat to  
2 public health, safety, or welfare or the environment is  
3 necessary to avoid substantial injury or damage to persons,  
4 property, or resources, remedial action may be taken  
5 pursuant to 75-10-711(1) or (2) without the prior written  
6 notice required by 75-10-711~~(3)~~(4). The department shall  
7 give subsequent written notice to the person liable under  
8 75-10-715(1) within 5 days after the action is taken,  
9 describing the circumstances which required the action to be  
10 taken without prior notice."

11 **Section 9.** Section 75-10-714, MCA, is amended to read:

12 "75-10-714. Administrative penalties. (1) In lieu of  
13 proceeding under 75-10-711~~(5)~~(6), the department may assess  
14 penalties of not more than \$1,000 per day per violation  
15 against a person liable under 75-10-715(1) for a release or  
16 threat of release who has failed or refused to comply with  
17 an order issued by the department pursuant to  
18 75-10-711~~(4)~~(5) or against a person who has failed or  
19 refused to comply with an order issued by the department  
20 pursuant to 75-10-707(5).

21 (2) In determining the amount of any penalty assessed  
22 pursuant to this section, the department shall take into  
23 account the nature, circumstances, extent, and gravity of  
24 the noncompliance and, with respect to the person liable  
25 under 75-10-715(1), his ability to pay; any prior history of

1 such violations; the degree of culpability; the economic  
2 benefit or savings, if any, resulting from the  
3 noncompliance; and any other matters as justice may require.

4 (3) An administrative penalty may not be collected  
5 pursuant to this section unless the person charged with the  
6 noncompliance is given notice and opportunity for a hearing  
7 with respect to the noncompliance. The notice and  
8 opportunity for a hearing must conform to the requirements  
9 of Title 2, chapter 4, part 6.

10 (4) A person against whom a penalty is assessed under  
11 this section may obtain judicial review of the penalty as  
12 provided for in Title 2, chapter 4, part 7.

13 (5) Administrative penalties payable under this section  
14 must be deposited in the environmental quality protection  
15 fund established in 75-10-704."

16 **Section 10.** Section 75-10-715, MCA, is amended to read:

17 "75-10-715. **Liability -- reimbursement and penalties --**  
18 **proceedings -- defenses.** (1) Notwithstanding any other  
19 provision of law and subject only to the defenses set forth  
20 in subsection (5), the following persons are jointly and  
21 severally liable for a release or threatened release of a  
22 hazardous or deleterious substance from a facility:

23 (a) a person who owns or operates a facility where a  
24 hazardous or deleterious substance was disposed of;

25 (b) a person who at the time of disposal of a hazardous

1 or deleterious substance owned or operated a facility where  
2 the hazardous or deleterious substance was disposed of;

3 (c) a person who generated, possessed, or was otherwise  
4 responsible for a hazardous or deleterious substance and  
5 who, by contract, agreement, or otherwise, arranged for  
6 disposal or treatment of the substance or arranged with a  
7 transporter for transport of the substance for disposal or  
8 treatment; and

9 (d) a person who accepts or has accepted a hazardous or  
10 deleterious substance for transport to a disposal or  
11 treatment facility.

12 (2) A person identified in subsection (1) is liable for  
13 the following costs:

14 (a) all remedial action costs incurred by the state;  
15 and

16 (b) damages for injury to, destruction of, or loss of  
17 natural resources caused by the release or threatened  
18 release, including the reasonable technical and legal costs  
19 of assessing and enforcing a claim for the injury,  
20 destruction, or loss resulting from the release, unless the  
21 impaired natural resources were specifically identified as  
22 an irreversible and irretrievable commitment of natural  
23 resources in an approved final state or federal  
24 environmental impact statement or other comparable approved  
25 final environmental analysis for a project or facility that

1 was the subject of a governmental permit or license and the  
2 project or facility was being operated within the terms of  
3 its permit or license.

4 (3) If the person liable under 75-10-715(1) fails,  
5 without sufficient cause, to comply with a department order  
6 issued pursuant to 75-10-711~~(4)~~(5) or to properly provide  
7 remedial action upon notification by the department pursuant  
8 to 75-10-711~~(3)~~(4), the person may be liable for penalties  
9 in an amount not to exceed two times the amount of any costs  
10 incurred by the state pursuant to this section.

11 (4) The department may initiate civil proceedings in  
12 district court to recover remedial action costs, natural  
13 resource damages, or penalties under subsections (1) through  
14 (3). Proceedings to recover costs and penalties must be  
15 conducted in accordance with 75-10-722. Venue for any action  
16 to recover costs, damages, or penalties lies in the county  
17 where the release occurred or where the person liable under  
18 75-10-715(1) resides or has its principal place of business  
19 or in the district court of the first judicial district.

20 (5) No person is liable under subsections (1) through  
21 (3) if that person can establish by a preponderance of the  
22 evidence that:

23 (a) the department failed to follow the notice  
24 provisions of 75-10-711 when required;

25 (b) the release did not emanate from any vessel,

1 vehicle, or facility to which the person contributed any  
2 hazardous or deleterious substance or over which the person  
3 had any ownership, authority, or control and was not caused  
4 by any action or omission of the person;

5 (c) the release or threatened release occurred solely  
6 as a result of:

7 (i) an act or omission of a third party other than  
8 either an employee or agent of the person; or

9 (ii) an act or omission of a third party other than one  
10 whose act or omission occurs in connection with a  
11 contractual relationship, existing directly or indirectly,  
12 with the person, if the person establishes by a  
13 preponderance of the evidence that he:

14 (A) exercised due care with respect to the hazardous or  
15 deleterious substance concerned, taking into consideration  
16 the characteristics of the hazardous or deleterious  
17 substance in light of all relevant facts and circumstances;  
18 and

19 (B) took precautions against foreseeable acts or  
20 omissions of a third party and the consequences that could  
21 foreseeably result from those acts or omissions;

22 (d) the release or threat of release occurred solely as  
23 the result of an act of God or an act of war;

24 (e) the release or threatened release was from a  
25 facility for which a permit had been issued by the

1 department, the hazardous or deleterious substance was  
2 specifically identified in the permit, and the release was  
3 within the limits allowed in the permit;

4 (f) in the case of assessment of penalties under  
5 subsection (3), that factors beyond the control of the  
6 person prevented the person from taking timely remedial  
7 action; or

8 (g) the person accepted only household refuse (garbage,  
9 trash, or septic tank sanitary wastes generated by single or  
10 multiple residences, hotels, motels, restaurants, or similar  
11 facilities) for transport to a solid waste disposal  
12 facility, unless that person knew or reasonably should have  
13 known that the hazardous or deleterious substance was  
14 present in the refuse.

15 (6) (a) For the purpose of subsection (5)(c)(ii), the  
16 term "contractual relationship" includes but is not limited  
17 to land contracts, deeds, or other instruments transferring  
18 title or possession, unless the real property on which the  
19 facility is located was acquired by the person after the  
20 disposal or placement of the hazardous or deleterious  
21 substance on, in, or at the facility and one or more of the  
22 following circumstances is also established by the person by  
23 a preponderance of the evidence:

24 (i) At the time the person acquired the facility, the  
25 person did not know and had no reason to know that a

1 hazardous or deleterious substance that is the subject of  
2 the release or threatened release was disposed of on, in, or  
3 at the facility.

4 (ii) The person is a governmental entity that acquired  
5 the facility by escheat, lien foreclosure, or through any  
6 other involuntary transfer or acquisition or through the  
7 exercise of eminent domain authority by purchase or  
8 condemnation.

9 (iii) The person acquired the facility by inheritance or  
10 bequest.

11 (b) In addition to establishing one or more of the  
12 circumstances in subsection (6)(a)(i) through (6)(a)(iii),  
13 the person shall establish that he has satisfied the  
14 requirements of subsections (5)(c)(i) or (5)(c)(ii).

15 (c) To establish that the person had no reason to know,  
16 as provided in subsection (6)(a)(i), the person must have  
17 undertaken, at the time of acquisition, all appropriate  
18 inquiry into the previous ownership and uses of the property  
19 consistent with good commercial or customary practice in an  
20 effort to minimize liability. For purposes of assessing this  
21 inquiry, the following must be taken into account:

22 (i) any specialized knowledge or experience on the part  
23 of the person;

24 (ii) the relationship of the purchase price to the value  
25 of the property if uncontaminated;

1 (iii) commonly known or reasonably ascertainable  
2 information about the property;

3 (iv) the obviousness of the presence or the likely  
4 presence of contamination on the property; and

5 (v) the ability to detect the contamination by  
6 appropriate inspection.

7 (d) (i) Nothing in subsections (5)(b) and (5)(c) or in  
8 this subsection (6) may diminish the liability of a previous  
9 owner or operator of the facility who would otherwise be  
10 liable under this part.

11 (ii) Notwithstanding this subsection (6), if the  
12 previous owner or operator obtained actual knowledge of the  
13 release or threatened release of a hazardous or deleterious  
14 substance at the facility when the person owned the real  
15 property and then subsequently transferred ownership of the  
16 property to another person without disclosing the knowledge,  
17 the previous owner is liable under subsections (1) through  
18 (3) and no defense under subsection (5)(b) or (5)(c) is  
19 available to that person.

20 (e) Nothing in this subsection (6) affects the  
21 liability under this part of a person who, by any act or  
22 omission, caused or contributed to the release or threatened  
23 release of a hazardous or deleterious substance that is the  
24 subject of the action relating to the facility."

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0380, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


A bill requiring the Department of Health and Environmental Sciences to conduct remedial action and cleanup of known industrial wastes and hazardous substances to prevent aquifer contamination and to increase certain civil penalties to \$25,000 per day of violation.

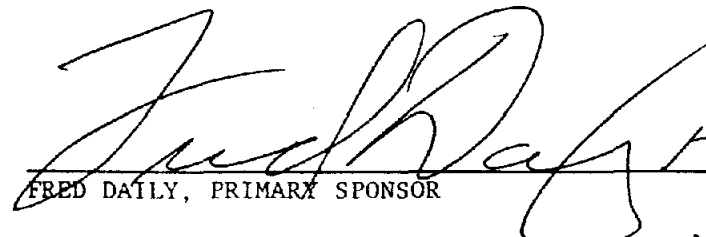
ASSUMPTIONS:

1. A preliminary assessment of HB0380 is that it would not affect the methods by which the existing act functions and that DHES would have continuing ability to require responsible parties to perform all necessary remedial actions.
2. HB0380 will not affect the state's ability to recover costs of remedial activities from responsible parties. If the state were unable to make such recoveries, the fiscal impact to the state general fund could be significant.

FISCAL IMPACT:

A preliminary assessment of HB0380 within the established timeframes for review of fiscal notes is that the proposed legislation would have no fiscal impact.

  
ROD SUNDSTED, BUDGET DIRECTOR      7-30-91  
Office of Budget and Program Planning      DATE

  
FRED DALLY, PRIMARY SPONSOR      7-31-90  
Fiscal Note for HB0380, as introduced.      DATE  
HB 380

APPROVED BY COMM. ON  
NATURAL RESOURCES

HOUSE BILL NO. 380

INTRODUCED BY DAILY, PAVLOVICH, TOOLE, QUILICI, MENAHAN,  
MCCARTHY, D. BROWN, HARRINGTON, STIMATZ, G. BECK, JACOBSON,  
DRISCOLL, PIPINICH, MANNING, LYNCH, FRITZ, T. BECK,  
COCCHIARELLA, LARSON, O'KEEFE

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE REMEDIAL  
~~ACTION--AND-CLEANUP-OF-KNOWN-INDUSTRIAL-WASTES-AND-HAZARDOUS~~  
~~SUBSTANCES IMMEDIATE ACTION TO CONTAIN, REMOVE, AND ABATE A~~  
RELEASE OF A HAZARDOUS OR DELETERIOUS SUBSTANCE AT CERTAIN  
SITES TO PREVENT AQUIFER CONTAMINATION; TO INCREASE CERTAIN  
CIVIL PENALTIES TO \$25,000 PER DAY OF VIOLATION; AND  
AMENDING SECTIONS 75-5-103, 75-5-601, 75-5-605, 75-5-631,  
75-10-701, 75-10-704, 75-10-711, 75-10-712, 75-10-714, AND  
75-10-715, MCA."

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

**Section 1.** Section 75-5-103, MCA, is amended to read:

"75-5-103. Definitions. Unless the context requires  
otherwise, in this chapter the following definitions apply:

(1) "Sewage" means water-carried waste products from  
residences, public buildings, institutions, or other  
buildings, including discharge from human beings or animals,  
together with ground water infiltration and surface water  
present.

(2) "Industrial waste" means any waste substance from  
the process of business or industry or from the development  
of any natural resource, together with any sewage that may  
be present.

(3) "Other wastes" means garbage, municipal refuse,  
decayed wood, sawdust, shavings, bark, lime, sand, ashes,  
offal, night soil, oil, grease, tar, heat, chemicals, dead  
animals, sediment, wrecked or discarded equipment,  
radioactive materials, solid waste, and all other substances  
that may pollute state waters.

(4) "Contamination" means impairment of the quality of  
state waters by sewage, industrial wastes, or other wastes,  
creating a hazard to human health.

(5) "Pollution" means contamination or other alteration  
of the physical, chemical, or biological properties of any  
state waters which exceeds that permitted by Montana water  
quality standards, including but not limited to standards  
relating to change in temperature, taste, color, turbidity,  
or odor; or the discharge, seepage, drainage, infiltration,  
or flow of any liquid, gaseous, solid, radioactive, or other  
substance into any state water which will or is likely to  
create a nuisance or render the waters harmful, detrimental,  
or injurious to public health, recreation, safety, welfare,  
livestock, wild animals, birds, fish, or other wildlife. A  
discharge, seepage, drainage, infiltration or flow which is

**SECOND READING**

HB 380





1 authorized under the pollution discharge permit rules of the  
2 board is not pollution under this chapter.

3 (6) "Sewage system" means a device for collecting or  
4 conducting sewage, industrial wastes, or other wastes to an  
5 ultimate disposal point.

6 (7) "Treatment works" means works installed for  
7 treating or holding sewage, industrial wastes, or other  
8 wastes.

9 (8) "Disposal system" means a system for disposing of  
10 sewage, industrial, or other wastes and includes sewage  
11 systems and treatment works.

12 (9) "State waters" means any body of water, irrigation  
13 system, or drainage system, either surface or underground;  
14 however, this subsection does not apply to irrigation waters  
15 where the waters are used up within the irrigation system  
16 and the waters are not returned to any other state waters.

17 (10) "Person" means the state, a political subdivision  
18 of the state, institution, firm, corporation, partnership,  
19 individual, or other entity and includes persons resident in  
20 Canada.

21 (11) "Council" means the water pollution control  
22 advisory council provided for in 2-15-2107.

23 (12) "Board" means the board of health and environmental  
24 sciences provided for in 2-15-2104.

25 (13) "Department" means the department of health and

1 environmental sciences provided for in Title 2, chapter 15,  
2 part 21.

3 (14) "Local department of health" means the staff,  
4 including health officers, employed by a county, city,  
5 city-county, or district board of health.

6 (15) "Point source" means any discernible, confined, and  
7 discrete conveyance, including but not limited to any pipe,  
8 ditch, channel, tunnel, conduit, well, discrete fissure,  
9 container, rolling stock, or vessel or other floating craft,  
10 from which pollutants are or may be discharged.

11 (16) "Owner or operator" means any person who owns,  
12 leases, operates, controls, or supervises a point source.

13 (17) "Standard of performance" means a standard adopted  
14 by the board for the control of the discharge of pollutants  
15 which reflects the greatest degree of effluent reduction  
16 achievable through application of the best available  
17 demonstrated control technology, processes, operating  
18 methods, or other alternatives, including, where  
19 practicable, a standard permitting no discharge of  
20 pollutants.

21 (18) "Effluent standard" means any restriction or  
22 prohibition on quantities, rates, and concentrations of  
23 chemical, physical, biological, and other constituents which  
24 are discharged into state waters.

25 (19) "Aquifer" means a water-bearing, subsurface

1 formation capable of yielding sufficient quantities of water  
 2 to a well for a beneficial use."

3 **Section 2.** Section 75-5-601, MCA, is amended to read:

4 "75-5-601. Clean-up Cleanup orders. (1) The department  
 5 shall issue orders to any a person to clean up any material  
 6 which that he or his employee, agent, or subcontractor has  
 7 accidentally or purposely dumped, spilled, or otherwise  
 8 deposited in or near state waters and which that may pollute  
 9 them.

10 (2) The department shall ~~give--priority--attention--to~~  
 11 ~~issuance of cleanup orders in situations in which industrial~~  
 12 ~~waste--is--known--to--be--present--and--is--likely--to--cause~~  
 13 ~~contamination--of--an--aquifer--if--action--is--not--taken~~  
 14 ESTABLISH AND IMPLEMENT A SYSTEM FOR PRIORITIZING SITES FOR  
 15 REMEDIAL ACTION BASED ON POTENTIAL EFFECTS ON HUMAN HEALTH  
 16 AND THE ENVIRONMENT."

17 **Section 3.** Section 75-5-605, MCA, is amended to read:

18 "75-5-605. **Prohibited activity.** (1) It is unlawful to:

19 (a) cause pollution as defined in 75-5-103 of any state  
 20 waters or to place or cause to be placed any wastes in a  
 21 location where they are likely to cause pollution of any  
 22 state waters;

23 (b) allow contaminants or hazardous substances, as  
 24 defined in 75-10-602, that are present TO CAUSE POLLUTION OF  
 25 AN AQUIFER:

1 (I) at a NATIONAL PRIORITY LIST site regulated under AS  
 2 DEFINED BY the federal Comprehensive Environmental Response,  
 3 Compensation, and Liability Act of 1980 (CERCLA), Public Law  
 4 96-510, to cause pollution of an aquifer; AND

5 (II) WHERE MINING HAS LEFT AN ABANDONED OPEN PIT AS  
 6 DESCRIBED IN 82-4-336(5);

7 (b)(c) violate any provision set forth in a permit or  
 8 stipulation, including but not limited to limitations and  
 9 conditions contained therein;

10 (c)(d) violate any order issued pursuant to this  
 11 chapter; or

12 (d)(e) violate any provision of this chapter.

13 (2) It is unlawful to carry on any of the following  
 14 activities without a current permit from the department:

15 (a) construct, modify, or operate a disposal system  
 16 which discharges into any state waters;

17 (b) construct or use any outlet for the discharge of  
 18 sewage, industrial wastes, or other wastes into any state  
 19 waters; or

20 (c) discharge sewage, industrial wastes, or other  
 21 wastes into any state waters."

22 **Section 4.** Section 75-5-631, MCA, is amended to read:

23 "75-5-631. **Civil penalties -- injunctions not barred.**

24 (1) A person who violates this chapter or a rule, permit,  
 25 effluent standard, or order issued under the provisions of

1 this chapter shall be is subject to a civil penalty not to  
2 exceed \$10,000, except that a person who violates the  
3 provisions of 75-5-605(1)(b) is subject to a civil penalty  
4 not to exceed \$25,000. Each day of violation constitutes a  
5 separate violation.

6 (2) Action under this section does not bar enforcement  
7 of this chapter or of rules or orders issued under it by  
8 injunction or other appropriate remedy.

9 (3) The department shall institute and maintain any  
10 enforcement proceedings in the name of the state."

11 Section 5--Section 75-10-701, MCA, is amended to read:

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

15 (1) "Aquifer" means a water bearing, subsurface  
16 formation capable of yielding sufficient quantities of water  
17 to a well for a beneficial use.

18 (2) "Department" means the department of health and  
19 environmental sciences provided for in Title 2, chapter 15,  
20 part 21.

21 (3) "Director" means the director of the department  
22 of health and environmental sciences.

23 (4) "Environment" means any surface water, ground  
24 water, drinking water supply, land surface or subsurface  
25 strata, or ambient air within the state of Montana or under

1 the jurisdiction of the state of Montana:

2 (4)(5) (a) "Facility" means:

3 (i) any building, structure, installation, equipment,  
4 pipe or pipeline (including any pipe into a sewer or  
5 publicly owned treatment works), well, pit, pond, lagoon,  
6 impoundment, ditch, landfill, storage container, motor  
7 vehicle, rolling stock, or aircraft; or

8 (ii) any site or area where a hazardous or deleterious  
9 substance has been deposited, stored, disposed of, placed,  
10 or otherwise come to be located;

11 (b) The term does not include any consumer product in  
12 consumer use.

13 (5)(6) "Fund" means the environmental quality  
14 protection fund established in 75-10-704.

15 (6)(7) "Hazardous or deleterious substance" means a  
16 substance that because of its quantity, concentration, or  
17 physical, chemical, or infectious characteristics may pose  
18 an imminent and substantial threat to public health, safety,  
19 or welfare or the environment and is:

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

24 (b) a substance identified by the administrator of the  
25 United States environmental protection agency as a hazardous

1 substance-pursuant-to-section-102-of-CERCLA,42-U.S.C.-9602,  
2 as-amended;

3 (c)--a-substance-that-is-defined-as-a-hazardous-waste  
4 pursuant-to-section-1004(5)-of-the-Resource-Conservation-and  
5 Recovery-Act-of-1976,42-U.S.C.-6903(5),as-amended,  
6 including-a-substance-listed-or-identified-in-40-CFR-261;or

7 (d)--any-petroleum-product;

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

14 (8)(9)--(a)-"Owns-or-operates"means-owning,leasing,  
15 operating,managing-activities-at,or-exercising-control  
16 over-the-operation-of-a-facility;

17 (b)--The-term-does-not-include-holding-the-indicia-of  
18 ownership-of-a-facility-primarily-to-protect-a-security  
19 interest-in-the-facility-or-other-location-unless-the-holder  
20 has-participated-in-the-management-of-the-facility-The-term  
21 does-not-apply-to-the-state-or-a-local-government-that  
22 acquired-ownership-or-control-through-bankruptcy,tax  
23 delinquency,abandonment,lien-foreclosure,or-other  
24 circumstances-in-which-the-government-acquires-title-by  
25 virtue-of-its-function-as-sovereign-unless-the-state-or

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

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

16 (10)(11)--"Petroleum-product"includes-gasoline,crude  
17 oil-(except-for-crude-oil-at-production-facilities-subject  
18 to-regulation-under-Title-02),fuel-oil,diesel-oil-or-fuel,  
19 lubricating-oil,oil-sludge-or-refuse,and-any-other  
20 petroleum-related-product-or-waste-or-fraction-thereof-that  
21 is-liquid-at-standard-conditions-of-temperature-and-pressure  
22 (60-degrees-F-and-14.7-pounds-per-square-inch-absolute);

23 (11)(12)--"Release"means-any-spilling,leaking,pumping,  
24 pouring,emitting,emptying,discharging,injecting,  
25 escaping,leaching,dumping-or-disposing-of-a-hazardous-or

1 deleterious substance either directly into the environment  
 2 (including the abandonment or discarding of barrels,  
 3 containers, and other closed receptacles containing any  
 4 hazardous or deleterious substance), but excludes releases  
 5 confined to the indoor workplace environment, the use of  
 6 pesticides as defined in 00-8-102(30) when they are applied  
 7 in accordance with approved federal and state labels, and  
 8 the use of commercial fertilizers as defined in 00-10-101(2)  
 9 when applied as part of accepted agricultural practice.

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

16 (13)(14) "Remedial action contract" means a written  
 17 contract or agreement entered into by a remedial action  
 18 contractor with the state, or with a potentially responsible  
 19 party acting pursuant to an order or request issued by the  
 20 department, the United States, or any federal agency, to  
 21 provide a remedial action with respect to a release or  
 22 threatened release of a hazardous or deleterious substance.

23 (14)(15) "Remedial action contractor" means:

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

1 (b) any person who is retained or hired by a person  
 2 described in subsection (14)(a)(15)(a) to provide services  
 3 relating to a remedial action;

4 (15)(16) "Remedial action costs" means reasonable costs  
 5 that are attributable to or associated with a remedial  
 6 action at a facility, including but not limited to the costs  
 7 of administration, investigation, legal or enforcement  
 8 activities, contracts, feasibility studies, or health  
 9 studies."

10 Section 5. Section 75-10-711, MCA, is amended to read:

11 "75-10-711. Remedial action -- orders -- penalties --  
 12 judicial proceedings. (1) The department may take remedial  
 13 action whenever:

14 (a) there has been a release or there is a substantial  
 15 threat of a release into the environment that may present an  
 16 imminent and substantial endangerment to the public health,  
 17 welfare, or safety or the environment; and

18 (b) the appropriate remedial action will not be done  
 19 properly and expeditiously by any person liable under  
 20 75-10-715(1).

21 (2) The department shall take remedial action whenever  
 22 there is a substantial threat of a release of a hazardous or  
 23 deleterious substance in waters moving from a site that is  
 24 regulated under the federal Comprehensive Environmental  
 25 Response, Compensation, and Liability Act of 1980 (CERCLA),

~~Public--Law--96-510,--into--an--aquifer.~~ REQUIRE ANY PERSON  
LIABLE UNDER 75-10-715(1) TO TAKE IMMEDIATE ACTION TO  
CONTAIN, REMOVE, AND ABATE A RELEASE OF A HAZARDOUS OR  
DELETERIOUS SUBSTANCE AT A SITE DESCRIBED IN 75-5-605(1)(B).

~~(2)(3)~~ Whenever the department is authorized to act pursuant to subsection (1) or (2) or has reason to believe that a release has occurred or is about to occur, the department may undertake remedial action in the form of any investigation, monitoring, survey, testing, or other information-gathering as authorized by 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of release and the extent and imminence of the danger to the public health, safety, or welfare or the environment.

~~(3)(4)~~ Any person liable under 75-10-715(1) must take immediate action to contain, remove, and abate the release. Except as provided in 75-10-712, the department is authorized to draw upon the fund to take action under subsection (1) or (2) if it has made diligent good faith efforts to determine the identity of the person or persons liable for the release or threatened release and:

(a) is unable to determine the identity of the liable person or persons in a manner consistent with the need to take timely remedial action; or

(b) the person or persons determined by the department

to be liable under 75-10-715(1) have been informed in writing of the department's determination and have been requested by the department to take appropriate remedial action but are unable or unwilling to take action in a timely manner; and

(c) the written notice to each person informs him that if he is subsequently found liable pursuant to 75-10-715(1), he may be required to reimburse the fund for the state's remedial action costs and may be subject to penalties pursuant to 75-10-715(3).

~~(4)(5)~~ Whenever the department is authorized to act pursuant to subsection subsections (1) and (2) or has reason to believe that a release that may pose an imminent and substantial threat to public health, safety, or welfare or the environment has occurred or is about to occur, it may issue to any person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to protect public health, safety, or welfare or the environment.

~~(5)(6)~~ A person who violates or fails or refuses to comply with an order issued under 75-10-707 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than \$10,000 for each day in which a violation occurs or a failure or refusal to comply continues, except that a person who violates or fails or

1 refuses to comply with an order issued under subsection (2)  
 2 may, in an action brought to enforce the order, be assessed  
 3 a civil penalty of not more than \$25,000 for each day in  
 4 which a violation occurs or a failure or refusal to comply  
 5 continues. In determining the amount of any penalty  
 6 assessed, the court may take into account the nature,  
 7 circumstances, extent, and gravity of the noncompliance and,  
 8 with respect to the person liable under 75-10-715(1), his  
 9 ability to pay; any prior history of such violations; the  
 10 degree of culpability; the economic benefit or savings, if  
 11 any, resulting from the noncompliance; and any other matters  
 12 as justice may require. Civil penalties collected under this  
 13 subsection must be deposited into the environmental quality  
 14 protection fund established in 75-10-704.

15 ~~(6)~~(7) A court has jurisdiction to review an order  
 16 issued under 75-10-707 or this section only in the following  
 17 actions:

18 (a) an action under 75-10-715 to recover remedial  
 19 action costs or penalties or for contribution;

20 (b) an action to enforce an order issued under  
 21 75-10-707 or this section;

22 (c) an action to recover a civil penalty for violation  
 23 of or failure to comply with an order issued under 75-10-707  
 24 or this section; or

25 (d) an action by a person to whom an order has been

1 issued to determine the validity of the order, only if the  
 2 person has been in compliance and continues in compliance  
 3 with the order pending decision of the court.

4 ~~(7)~~(8) In considering objections raised in a judicial  
 5 action regarding orders issued under this part, the court  
 6 shall uphold and enforce an order issued by the department  
 7 unless the objecting party can demonstrate, on the  
 8 administrative record, that the department's decision to  
 9 issue the order was arbitrary and capricious or otherwise  
 10 not in accordance with law.

11 ~~(8)~~(9) Instead of issuing a notification or an order  
 12 under this section, the department may bring an action for  
 13 legal or equitable relief in the district court of the  
 14 county where the release or threatened release occurred or  
 15 in the first judicial district as may be necessary to abate  
 16 any imminent and substantial endangerment to the public  
 17 health, safety, or welfare or the environment resulting from  
 18 the release or threatened release."

19 **Section 6.** Section 75-10-704, MCA, is amended to read:

20 **"75-10-704. Environmental quality protection fund.** (1)  
 21 There is created in the state special revenue fund an  
 22 environmental quality protection fund to be administered as  
 23 a revolving fund by the department. The department is  
 24 authorized to expend amounts from the fund necessary to  
 25 carry out the purposes of this part.

1 (2) The fund may be used by the department only to  
2 carry out the provisions of this part and for remedial  
3 actions taken by the department pursuant to this part in  
4 response to a release of hazardous or deleterious  
5 substances.

6 (3) The department shall:

7 (a) establish and implement a system for prioritizing  
8 sites for remedial action based on potential effects on  
9 human health and the environment; and

10 (b) investigate, negotiate, and take legal action, as  
11 appropriate, to identify responsible parties, to obtain the  
12 participation and financial contribution of responsible  
13 parties for the remedial action, to achieve remedial action,  
14 and to recover costs and damages incurred by the state.

15 (4) There must be deposited in the fund:

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

18 (b) all administrative penalties assessed pursuant to  
19 75-10-714 and all civil penalties assessed pursuant to  
20 75-10-711+5+(6);

21 (c) funds appropriated to the fund by the legislature;  
22 and

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

25 (5) Whenever a legislative appropriation is

1 insufficient to carry out the provisions of this part and  
2 additional money remains in the fund, the department shall  
3 seek additional authority to spend money from the fund  
4 through the budget amendment process provided for in Title  
5 17, chapter 7, part 4.

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

10 (7) The department shall submit to the legislature at  
11 the beginning of each regular session a complete financial  
12 report on the fund, including a description of all  
13 expenditures made since the preceding report."

14 **Section 7.** Section 75-10-712, MCA, is amended to read:

15 "75-10-712. **Emergency action.** If the department  
16 determines that immediate response to an imminent threat to  
17 public health, safety, or welfare or the environment is  
18 necessary to avoid substantial injury or damage to persons,  
19 property, or resources, remedial action may be taken  
20 pursuant to 75-10-711(1) or (2) without the prior written  
21 notice required by 75-10-711+3+(4). The department shall  
22 give subsequent written notice to the person liable under  
23 75-10-715(1) within 5 days after the action is taken,  
24 describing the circumstances which required the action to be  
25 taken without prior notice."



**Section 8.** Section 75-10-714, MCA, is amended to read:

**\*75-10-714. Administrative penalties.** (1) In lieu of proceeding under 75-10-711~~(5)~~(6), the department may assess penalties of not more than \$1,000 per day per violation against a person liable under 75-10-715(1) for a release or threat of release who has failed or refused to comply with an order issued by the department pursuant to 75-10-711~~(4)~~(5) or against a person who has failed or refused to comply with an order issued by the department pursuant to 75-10-707(5).

(2) In determining the amount of any penalty assessed pursuant to this section, the department shall take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person liable under 75-10-715(1), his ability to pay; any prior history of such violations; the degree of culpability; the economic benefit or savings, if any, resulting from the noncompliance; and any other matters as justice may require.

(3) An administrative penalty may not be collected pursuant to this section unless the person charged with the noncompliance is given notice and opportunity for a hearing with respect to the noncompliance. The notice and opportunity for a hearing must conform to the requirements of Title 2, chapter 4, part 6.

(4) A person against whom a penalty is assessed under

this section may obtain judicial review of the penalty as provided for in Title 2, chapter 4, part 7.

(5) Administrative penalties payable under this section must be deposited in the environmental quality protection fund established in 75-10-704."

**Section 9.** Section 75-10-715, MCA, is amended to read:

**\*75-10-715. Liability -- reimbursement and penalties -- proceedings -- defenses.** (1) Notwithstanding any other provision of law and subject only to the defenses set forth in subsection (5), the following persons are jointly and severally liable for a release or threatened release of a hazardous or deleterious substance from a facility:

(a) a person who owns or operates a facility where a hazardous or deleterious substance was disposed of;

(b) a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of;

(c) a person who generated, possessed, or was otherwise responsible for a hazardous or deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment of the substance or arranged with a transporter for transport of the substance for disposal or treatment; and

(d) a person who accepts or has accepted a hazardous or deleterious substance for transport to a disposal or

1 treatment facility.

2 (2) A person identified in subsection (1) is liable for  
3 the following costs:

4 (a) all remedial action costs incurred by the state;  
5 and

6 (b) damages for injury to, destruction of, or loss of  
7 natural resources caused by the release or threatened  
8 release, including the reasonable technical and legal costs  
9 of assessing and enforcing a claim for the injury,  
10 destruction, or loss resulting from the release, unless the  
11 impaired natural resources were specifically identified as  
12 an irreversible and irretrievable commitment of natural  
13 resources in an approved final state or federal  
14 environmental impact statement or other comparable approved  
15 final environmental analysis for a project or facility that  
16 was the subject of a governmental permit or license and the  
17 project or facility was being operated within the terms of  
18 its permit or license.

19 (3) If the person liable under 75-10-715(1) fails,  
20 without sufficient cause, to comply with a department order  
21 issued pursuant to 75-10-711~~(4)~~(5) or to properly provide  
22 remedial action upon notification by the department pursuant  
23 to 75-10-711~~(3)~~(4), the person may be liable for penalties  
24 in an amount not to exceed two times the amount of any costs  
25 incurred by the state pursuant to this section.

1 (4) The department may initiate civil proceedings in  
2 district court to recover remedial action costs, natural  
3 resource damages, or penalties under subsections (1) through  
4 (3). Proceedings to recover costs and penalties must be  
5 conducted in accordance with 75-10-722. Venue for any action  
6 to recover costs, damages, or penalties lies in the county  
7 where the release occurred or where the person liable under  
8 75-10-715(1) resides or has its principal place of business  
9 or in the district court of the first judicial district.

10 (5) No person is liable under subsections (1) through  
11 (3) if that person can establish by a preponderance of the  
12 evidence that:

13 (a) the department failed to follow the notice  
14 provisions of 75-10-711 when required;

15 (b) the release did not emanate from any vessel,  
16 vehicle, or facility to which the person contributed any  
17 hazardous or deleterious substance or over which the person  
18 had any ownership, authority, or control and was not caused  
19 by any action or omission of the person;

20 (c) the release or threatened release occurred solely  
21 as a result of:

22 (i) an act or omission of a third party other than  
23 either an employee or agent of the person; or

24 (ii) an act or omission of a third party other than one  
25 whose act or omission occurs in connection with a

1 contractual relationship, existing directly or indirectly,  
2 with the person, if the person establishes by a  
3 preponderance of the evidence that he:

4 (A) exercised due care with respect to the hazardous or  
5 deleterious substance concerned, taking into consideration  
6 the characteristics of the hazardous or deleterious  
7 substance in light of all relevant facts and circumstances;  
8 and

9 (B) took precautions against foreseeable acts or  
10 omissions of a third party and the consequences that could  
11 foreseeably result from those acts or omissions;

12 (d) the release or threat of release occurred solely as  
13 the result of an act of God or an act of war;

14 (e) the release or threatened release was from a  
15 facility for which a permit had been issued by the  
16 department, the hazardous or deleterious substance was  
17 specifically identified in the permit, and the release was  
18 within the limits allowed in the permit;

19 (f) in the case of assessment of penalties under  
20 subsection (3), that factors beyond the control of the  
21 person prevented the person from taking timely remedial  
22 action; or

23 (g) the person accepted only household refuse (garbage,  
24 trash, or septic tank sanitary wastes generated by single or  
25 multiple residences, hotels, motels, restaurants, or similar

1 facilities) for transport to a solid waste disposal  
2 facility, unless that person knew or reasonably should have  
3 known that the hazardous or deleterious substance was  
4 present in the refuse.

5 (6) (a) For the purpose of subsection (5)(c)(ii), the  
6 term "contractual relationship" includes but is not limited  
7 to land contracts, deeds, or other instruments transferring  
8 title or possession, unless the real property on which the  
9 facility is located was acquired by the person after the  
10 disposal or placement of the hazardous or deleterious  
11 substance on, in, or at the facility and one or more of the  
12 following circumstances is also established by the person by  
13 a preponderance of the evidence:

14 (i) At the time the person acquired the facility, the  
15 person did not know and had no reason to know that a  
16 hazardous or deleterious substance that is the subject of  
17 the release or threatened release was disposed of on, in, or  
18 at the facility.

19 (ii) The person is a governmental entity that acquired  
20 the facility by escheat, lien foreclosure, or through any  
21 other involuntary transfer or acquisition or through the  
22 exercise of eminent domain authority by purchase or  
23 condemnation.

24 (iii) The person acquired the facility by inheritance or  
25 bequest.

1 (b) In addition to establishing one or more of the  
2 circumstances in subsection (6)(a)(i) through (6)(a)(iii),  
3 the person shall establish that he has satisfied the  
4 requirements of subsections (5)(c)(i) or (5)(c)(ii).

5 (c) To establish that the person had no reason to know,  
6 as provided in subsection (6)(a)(i), the person must have  
7 undertaken, at the time of acquisition, all appropriate  
8 inquiry into the previous ownership and uses of the property  
9 consistent with good commercial or customary practice in an  
10 effort to minimize liability. For purposes of assessing this  
11 inquiry, the following must be taken into account:

12 (i) any specialized knowledge or experience on the part  
13 of the person;

14 (ii) the relationship of the purchase price to the value  
15 of the property if uncontaminated;

16 (iii) commonly known or reasonably ascertainable  
17 information about the property;

18 (iv) the obviousness of the presence or the likely  
19 presence of contamination on the property; and

20 (v) the ability to detect the contamination by  
21 appropriate inspection.

22 (d) (i) Nothing in subsections (5)(b) and (5)(c) or in  
23 this subsection (6) may diminish the liability of a previous  
24 owner or operator of the facility who would otherwise be  
25 liable under this part.

1 (ii) Notwithstanding this subsection (6), if the  
2 previous owner or operator obtained actual knowledge of the  
3 release or threatened release of a hazardous or deleterious  
4 substance at the facility when the person owned the real  
5 property and then subsequently transferred ownership of the  
6 property to another person without disclosing the knowledge,  
7 the previous owner is liable under subsections (1) through  
8 (3) and no defense under subsection (5)(b) or (5)(c) is  
9 available to that person.

10 (e) Nothing in this subsection (6) affects the  
11 liability under this part of a person who, by any act or  
12 omission, caused or contributed to the release or threatened  
13 release of a hazardous or deleterious substance that is the  
14 subject of the action relating to the facility."

-End-

## 1 HOUSE BILL NO. 380

2 INTRODUCED BY DAILY, PAVLOVICH, TOOLE, QUILICI, MENAHAN,  
3 MCCARTHY, D. BROWN, HARRINGTON, STIMATZ, G. BECK, JACOBSON,  
4 DRISCOLL, PIPINICH, MANNING, LYNCH, FRITZ, T. BECK,  
5 COCCHIARELLA, LARSON, O'KEEFE

6  
7 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE REMEDIAL  
8 ACTION--AND-CLEANUP-OF-KNOWN-INDUSTRIAL-WASTES-AND-HABARDOUS  
9 SUBSTANCES IMMEDIATE ACTION TO CONTAIN, REMOVE, AND ABATE A  
10 RELEASE OF A HAZARDOUS OR DELETERIOUS SUBSTANCE AT CERTAIN  
11 SITES TO PREVENT AQUIFER CONTAMINATION; TO INCREASE CERTAIN  
12 CIVIL PENALTIES TO \$25,000 PER DAY OF VIOLATION; AND  
13 AMENDING SECTIONS 75-5-103, 75-5-601, 75-5-605, 75-5-631,  
14 ~~75-10-703~~, 75-10-704, 75-10-711, 75-10-712, 75-10-714, AND  
15 75-10-715, MCA."

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 **Section 1.** Section 75-5-103, MCA, is amended to read:

19 "75-5-103. Definitions. Unless the context requires  
20 otherwise, in this chapter the following definitions apply:

21 (1) "Sewage" means water-carried waste products from  
22 residences, public buildings, institutions, or other  
23 buildings, including discharge from human beings or animals,  
24 together with ground water infiltration and surface water  
25 present.

There are no changes in this bill,  
and will not be reprinted. Please  
refer to yellow copy for complete  
text.

THIRD READING