

HOUSE BILL NO. 539

INTRODUCED BY DAILY, RANEY

IN THE HOUSE

FEBRUARY 1, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON NATURAL RESOURCES.

                                  FIRST READING.

FEBRUARY 21, 1991                 COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 22, 1991                 PRINTING REPORT.

FEBRUARY 23, 1991                 SECOND READING, DO PASS AS AMENDED.

FEBRUARY 25, 1991                 ENGROSSING REPORT.

FEBRUARY 26, 1991                 THIRD READING, PASSED.  
AYES, 97; NOES, 2.

                                  TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 27, 1991                 INTRODUCED AND REFERRED TO COMMITTEE  
ON NATURAL RESOURCES.

                                  FIRST READING.

MARCH 27, 1991                    COMMITTEE RECOMMEND BILL BE  
CONCURRED IN. REPORT ADOPTED.

APRIL 3, 1991                     SECOND READING, CONCURRED IN.

APRIL 4, 1991                     THIRD READING, CONCURRED IN.  
AYES, 45; NOES, 5.

                                  RETURNED TO HOUSE.

IN THE HOUSE

APRIL 4, 1991                     RECEIVED FROM SENATE.

                                  SENT TO ENROLLING.

APRIL 8, 1991                     REPORTED CORRECTLY ENROLLED.

APRIL 11, 1991                    SIGNED BY SPEAKER.

IN THE SENATE

APRIL 11, 1991

SIGNED BY PRESIDENT.

IN THE HOUSE

APRIL 11, 1991

DELIVERED TO GOVERNOR.

APRIL 16, 1991

RETURNED FROM GOVERNOR WITH  
RECOMMENDED AMENDMENTS.

APRIL 19, 1991

SECOND READING, GOVERNOR'S  
AMENDMENTS CONCURRED IN.

IN THE SENATE

APRIL 20, 1991

SECOND READING, GOVERNOR'S  
AMENDMENTS CONCURRED IN.

APRIL 22, 1991

THIRD READING, GOVERNOR'S  
AMENDMENTS CONCURRED IN.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 22, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House of* BILL NO. 539  
 2 INTRODUCED BY *Daily Raven*  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 5 STATE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY  
 6 ACT; REQUIRING APPROVAL OF A CONSENT DECREE BY THE LOCAL  
 7 GOVERNING BODY; PROVIDING FOR PERFORMANCE BONDS TO ENSURE  
 8 COMPLIANCE WITH AGREEMENTS AND TO PROVIDE FOR LONG-TERM  
 9 MAINTENANCE OF REMEDIAL ACTION SITES; REQUIRING A RESPONSE  
 10 TO WRITTEN COMMENTS OR COMMENTS RECEIVED AT A PUBLIC HEARING  
 11 ON A PROPOSED ORDER OR DECREE; CLARIFYING THAT  
 12 ADMINISTRATIVE COSTS MUST BE RECOVERED WHEN POSSIBLE; AND  
 13 AMENDING SECTIONS 75-10-704, 75-10-713, 75-10-714,  
 14 75-10-719, 75-10-721, AND 75-10-723, MCA."  
 15

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

17 **Section 1.** Section 75-10-704, MCA, is amended to read:

18 "75-10-704. Environmental quality protection fund. (1)  
 19 There is created in the state special revenue fund an  
 20 environmental quality protection fund to be administered as  
 21 a revolving fund by the department. The department is  
 22 authorized to expend amounts from the fund necessary to  
 23 carry out the purposes of this part.

24 (2) The fund may be used by the department only to  
 25 carry out the provisions of this part and for remedial

1 actions taken by the department pursuant to this part in  
 2 response to a release of hazardous or deleterious  
 3 substances.

4 (3) The department shall:  
 5 (a) establish and implement a system for prioritizing  
 6 sites for remedial action based on potential effects on  
 7 human health and the environment; and

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

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

14 (a) all penalties, forfeited performance bonds, natural  
 15 resource damages, and remedial action costs recovered  
 16 pursuant to 75-10-715;

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

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

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

24 (5) Whenever a legislative appropriation is  
 25 insufficient to carry out the provisions of this part and



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 HB 539

1 additional money remains in the fund, the department shall  
 2 seek additional authority to spend money from the fund  
 3 through the budget amendment process provided for in Title  
 4 17, chapter 7, part 4.

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

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

13 **Section 2.** Section 75-10-713, MCA, is amended to read:

14 **"75-10-713. Public notice of administrative order or**  
 15 **consent decree -- written comments -- hearing -- response.**

16 (1) Except as provided in 75-10-712, before final approval  
 17 by the director of the department of any administrative  
 18 order on consent issued pursuant to 75-10-711 or before  
 19 judicial approval of a consent decree issued pursuant to  
 20 this part, the department shall:

21 (a) publish a notice and brief description of the  
 22 proposed order or decree in a daily newspaper of general  
 23 circulation in the area affected and make copies of the  
 24 proposal available to the public;

25 (b) provide at least 30 days (or whatever additional

1 time the department may in its discretion grant upon written  
 2 request) for submission of written comments regarding the  
 3 proposed order or decree and ~~upon written request by 10 or~~  
 4 ~~more persons or by a group having 10 or more members (but~~  
 5 ~~not including a liable person);~~ conduct a public meeting  
 6 hearing at or near the facility for the purpose of receiving  
 7 verbal comment regarding the proposed order or decree; and

8 (c) consider and respond to written or verbal comments  
 9 properly submitted during the comment period or at the  
 10 public meeting hearing; and

11 (d) obtain the approval of the governing body in the  
 12 affected area.

13 (2) Upon making a final decision regarding the proposed  
 14 order or decree, the department shall publish notice, as  
 15 provided under subsection (1), and make copies of the  
 16 approved order or decree available to the public. The order  
 17 or decree must contain a concise statement of the principal  
 18 reasons for and against its adoption, incorporating in the  
 19 order or decree the reasons for overruling the  
 20 considerations urged against it. If no written or verbal  
 21 comments are received, the department may omit the statement  
 22 of reasons."

23 **Section 3.** Section 75-10-714, MCA, is amended to read:

24 **"75-10-714. Administrative penalties.** (1) In lieu of  
 25 proceeding under 75-10-711(5), the department may assess

1 penalties of not more than \$1,000 per day per violation  
 2 against a person liable under 75-10-715(1) for a release or  
 3 threat of release who has failed or refused to comply with  
 4 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  
 6 an order issued by the department pursuant to 75-10-707(5).

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

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

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

25 (5) Administrative penalties payable under this section

1 must be deposited in the environmental quality protection  
 2 fund established in 75-10-704."

3 **Section 4.** Section 75-10-719, MCA, is amended to read:

4 "75-10-719. Settlement -- bar to contribution  
 5 liability. (1) A person who has resolved his liability to  
 6 the state arising under 75-10-715 or section 107(a)(1)  
 7 through (a)(4) of CERCLA 42 U.S.C. 9607(a)(1) through  
 8 (a)(4), in an administrative or judicially approved  
 9 settlement is not liable for claims for contribution  
 10 regarding matters addressed in the settlement. The  
 11 settlement does not discharge any of the other potentially  
 12 liable persons unless its terms provide a discharge. The  
 13 terms of the settlement may reduce the potential liability  
 14 of the other potentially liable persons by the amount of the  
 15 settlement.

16 (2) If the state has obtained less than complete relief  
 17 from a person who has resolved his liability to the state in  
 18 an administrative or judicially approved settlement, the  
 19 state may bring an action against any other person who has  
 20 not resolved his liability.

21 (3) A person who has resolved, in whole or in part, his  
 22 liability to the state for the release or for remedial  
 23 action costs in an administrative or judicially approved  
 24 settlement may seek contribution from a person who is not  
 25 party to a settlement referred to in subsection (1).

1 (4) Whenever practicable and in the public interest, as  
 2 determined by the director of the department, the department  
 3 may, as promptly as possible, reach a final settlement with  
 4 a person liable under 75-10-715 in an administrative or  
 5 civil action under 75-10-711 if ~~such~~ the settlement involves  
 6 only a minor portion of the response costs at the facility  
 7 concerned and, in the judgment of the department, the  
 8 conditions in either of the following subsection (4)(a) or  
 9 (4)(b) are met:

10 (a) Both of the following are minimal in comparison to  
 11 other hazardous or deleterious substances at the facility:

12 (i) the amount of the hazardous or deleterious  
 13 substances contributed by that person to the facility;

14 (ii) the toxic or other hazardous effects of the  
 15 substances contributed by that person to the facility.

16 (b) (i) The person:

17 (A) is the owner of the real property on or in which  
 18 the facility is located;

19 (B) did not conduct or permit the generation,  
 20 transportation, storage, treatment, or disposal of any  
 21 hazardous or deleterious substance at the facility; and

22 (C) did not contribute to the release or threat of  
 23 release of a hazardous or deleterious substance at the  
 24 facility through any action or omission.

25 (ii) This subsection (4)(b) does not apply if the person

1 purchased the real property with actual or constructive  
 2 knowledge that the property was used for the generation,  
 3 transportation, storage, treatment, or disposal of any  
 4 hazardous or deleterious substance.

5 (5) As part of an administrative or judicially approved  
 6 settlement agreement, the department shall require the  
 7 posting of a bond, in an amount determined by the  
 8 department, to ensure the long-term maintenance of the  
 9 remedial action site."

10 **Section 5.** Section 75-10-721, MCA, is amended to read:

11 "75-10-721. Degree of cleanup required -- permit  
 12 exemption -- performance bond. (1) A remedial action  
 13 performed under this part must attain a degree of cleanup of  
 14 the hazardous or deleterious substance and control of a  
 15 threatened release or further release of that substance that  
 16 assures present and future protection of public health,  
 17 safety, and welfare and of the environment.

18 (2) In approving or carrying out remedial actions  
 19 performed under this part, the department:

20 (a) shall require cleanup consistent with applicable  
 21 state or federal environmental requirements, criteria, or  
 22 limitations;

23 (b) shall consider and may require cleanup consistent  
 24 with substantive state or federal environmental  
 25 requirements, criteria, or limitations that are well-suited

1 to the site conditions; and

2 (c) shall select remedial actions that, at a minimum,  
3 protect public health, safety, and welfare and the  
4 environment and that:

5 (i) use permanent solutions;

6 (ii) use alternative treatment technologies or resource  
7 recovery technologies to the maximum extent practicable; and

8 (iii) are cost-effective, taking into account the total  
9 short- and long-term costs of the actions, including the  
10 cost of operation and maintenance activities for the entire  
11 period during which the activities will be required.

12 (3) The department may exempt any portion of a remedial  
13 action that is conducted entirely on site from a state or  
14 local permit that would, in the absence of the remedial  
15 action, be required if the remedial action is carried out in  
16 accordance with the standards established under subsection  
17 (1) and this part.

18 (4) The department may require a performance bond from  
19 a liable person or a remedial action contractor in an amount  
20 that the department determines will ensure attainment of the  
21 degree of cleanup required by subsections (1) and (2)."

22 **Section 6.** Section 75-10-723, MCA, is amended to read:

23 "75-10-723. Agreements to perform remedial action. (1)  
24 To expedite effective remedial actions and minimize  
25 litigation, the department, in its discretion and whenever

1 practicable and in the public interest, may negotiate and  
2 enter into an agreement with any person, including the owner  
3 or operator of the facility from which a release emanates,  
4 to perform a remedial action if the department determines  
5 that the action will be properly done by the person. The  
6 agreement must contain a provision requiring the posting of  
7 a performance bond, as provided in 75-10-719(5), and any  
8 terms and conditions that the department in its discretion  
9 determines to be appropriate.

10 (2) Whenever the department enters into an agreement  
11 under this section for remedial action or for assessment or  
12 payment of natural resource damages, the agreement must be  
13 filed in an appropriate district court as a consent decree  
14 and must be available for public comment for at least 30  
15 days.

16 (3) A decision of the department to enter into or not  
17 enter into agreements under this section is not subject to  
18 judicial review."

19 **NEW SECTION. Section 7. Severability.** If a part of  
20 [this act] is invalid, all valid parts that are severable  
21 from the invalid part remain in effect. If a part of [this  
22 act] is invalid in one or more of its applications, the part  
23 remains in effect in all valid applications that are  
24 severable from the invalid applications."

-End-

APPROVED BY COMM. ON  
NATURAL RESOURCES

HOUSE BILL NO. 539

INTRODUCED BY DAILY, RANEY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE STATE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; ~~REQUIRING APPROVAL OF A CONSENT DECREE BY THE LOCAL GOVERNING BODY;~~ CLARIFYING THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MAY TAKE REMEDIAL ACTION AT A SITE THAT IS SUBJECT TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980; PROVIDING FOR PERFORMANCE BONDS FINANCIAL ASSURANCE TO ENSURE COMPLIANCE WITH AGREEMENTS AND TO PROVIDE FOR LONG-TERM MAINTENANCE OF REMEDIAL ACTION SITES; REQUIRING A RESPONSE TO WRITTEN COMMENTS OR COMMENTS RECEIVED AT A PUBLIC MEETING OR HEARING ON A PROPOSED WORKPLAN, ORDER, OR DECREE; ~~CLARIFYING THAT ADMINISTRATIVE COSTS MUST BE RECOVERED WHEN POSSIBLE;~~ AND AMENDING SECTIONS 75-10-704, 75-10-711, 75-10-713, 75-10-714, 75-10-719, AND 75-10-721, AND 75-10-723, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

STATEMENT OF INTENT

A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL TO PROVIDE GUIDANCE TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES CONCERNING RULEMAKING TO ESTABLISH

THE SPECIFIC TERMS AND CONDITIONS OF FINANCIAL ASSURANCE THAT A LIABLE PERSON IS REQUIRED TO PROVIDE PURSUANT TO 75-10-719 AND 75-10-721. THE DEPARTMENT SHALL CONSULT AND TO THE GREATEST EXTENT PRACTICABLE RELY UPON FINANCIAL ASSURANCE CONCEPTS AND REQUIREMENTS CONTAINED IN FEDERAL REGULATIONS THAT IMPLEMENT THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980, AS AMENDED.

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

**Section 1.** Section 75-10-704, MCA, is amended to read:

**"75-10-704. Environmental quality protection fund.** (1)

There is created in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

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

(3) The department shall:

(4) establish and implement a system for prioritizing sites for remedial action based on potential effects on



1 human health and the environment; and

2 (b) investigate, negotiate, and take legal action, as  
3 appropriate, to identify responsible parties, to obtain the  
4 participation and financial contribution of responsible  
5 parties for the remedial action, to achieve remedial action,  
6 and to recover costs and damages incurred by the state.

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

8 (a) all penalties, forfeited performance---~~bonds~~  
9 FINANCIAL ASSURANCE, natural resource damages, and remedial  
10 action costs recovered pursuant to 75-10-715;

11 (b) all administrative penalties assessed pursuant to  
12 75-10-714 and all civil penalties assessed pursuant to  
13 75-10-711(5);

14 (c) funds appropriated to the fund by the legislature;  
15 and

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

18 (5) Whenever a legislative appropriation is  
19 insufficient to carry out the provisions of this part and  
20 additional money remains in the fund, the department shall  
21 seek additional authority to spend money from the fund  
22 through the budget amendment process provided for in Title  
23 17, chapter 7, part 4.

24 (6) Whenever the amount of money in the fund is  
25 insufficient to carry out remedial action, the department

1 may apply to the governor for a grant from the environmental  
2 contingency account established pursuant to 75-1-1101.

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

7 **SECTION 2. SECTION 75-10-711, MCA, IS AMENDED TO READ:**

8 "75-10-711. Remedial action -- orders -- penalties --  
9 judicial proceedings. (1) The department may take remedial  
10 action whenever:

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

15 (b) the appropriate remedial action will not be done  
16 properly and expeditiously by any person liable under  
17 75-10-715(1).

18 (2) Whenever the department is authorized to act  
19 pursuant to subsection (1) or has reason to believe that a  
20 release has occurred or is about to occur, the department  
21 may undertake remedial action in the form of any  
22 investigation, monitoring, survey, testing, or other  
23 information-gathering as authorized by 75-10-707 that is  
24 necessary and appropriate to identify the existence, nature,  
25 origin, and extent of the release or the threat of release

1 and the extent and imminence of the danger to the public  
2 health, safety, or welfare or the environment.

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

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

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

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

24 (4) Whenever the department is authorized to act  
25 pursuant to subsection (1) or has reason to believe that a

1 release that may pose an imminent and substantial threat to  
2 public health, safety, or welfare or the environment has  
3 occurred or is about to occur, it may issue to any person  
4 liable under 75-10-715(1) cease and desist, remedial, or  
5 other orders as may be necessary or appropriate to protect  
6 public health, safety, or welfare or the environment.

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

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

25 (a) an action under 75-10-715 to recover remedial

1 action costs or penalties or for contribution;

2 (b) an action to enforce an order issued under  
3 75-10-707 or this section;

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

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

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

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

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

7 **Section 3.** Section 75-10-713, MCA, is amended to read:

8 "75-10-713. Public notice of WORKPLAN, administrative  
9 order, or consent decree -- written comments -- MEETING --  
10 hearing -- response. (1) Except as provided in 75-10-712,  
11 before ~~final approval~~ by the director of the department of  
12 SUBMITS COMMENTS TO THE U.S. ENVIRONMENTAL PROTECTION AGENCY  
13 ON A PROPOSED WORKPLAN OR APPROVES any administrative order  
14 on consent, issued pursuant to 75-10-711, or before judicial  
15 approval of a consent decree issued pursuant to this part,  
16 the department shall:

17 (a) publish a notice and brief description of the  
18 proposed WORKPLAN, order, or decree in a daily newspaper of  
19 general circulation in the area affected and make copies of  
20 the proposal available to the public;

21 (B) RECEIVE COMMENTS FROM THE COUNTY COMMISSIONERS AND  
22 GOVERNING BODIES OF CITIES, TOWNS, AND CONSOLIDATED LOCAL  
23 GOVERNMENTS IN WHOSE GEOGRAPHICAL AREA OF JURISDICTION THE  
24 PROPOSED WORKPLAN, ADMINISTRATIVE ORDER, OR CONSENT DECREE  
25 WOULD APPLY;

1       **(b)(C)** provide at least 30 days (or whatever additional  
 2 time the department may in its discretion grant upon written  
 3 request) for submission of written comments regarding the  
 4 proposed WORKPLAN, order, or decree and ~~upon written~~  
 5 ~~request by 10 or more persons or by a group having 10 or~~  
 6 ~~more members (but not including a liable person),~~ AND UPON  
 7 WRITTEN REQUEST BY 10 OR MORE PERSONS OR BY A GROUP HAVING  
 8 10 OR MORE MEMBERS (BUT NOT INCLUDING A LIABLE PERSON),  
 9 conduct a public meeting hearing MEETING at or near the  
 10 facility for the purpose of receiving verbal comment  
 11 regarding the proposed WORKPLAN, order, or decree; and

12       **(D)** AT THE REQUEST OF THE COUNTY COMMISSIONERS OR THE  
 13 GOVERNING BODY OF A CITY OR TOWN OR OF A CONSOLIDATED LOCAL  
 14 GOVERNMENT WITHIN WHOSE AREA OF JURISDICTION A REMEDIAL  
 15 ACTION SITE IS LOCATED, CONDUCT A PUBLIC HEARING; AND

16       **(c)(E)** consider and respond to RELEVANT written or  
 17 verbal comments properly submitted during the comment period  
 18 or at the public meeting MEETING OR hearing; and

19       **(d)** ~~obtain the approval of the governing body in the~~  
 20 affected area.

21       **(2)** Upon making a final decision regarding the proposed  
 22 WORKPLAN, order, or decree, the department shall publish  
 23 notice, as provided under subsection (1), and make copies of  
 24 the DEPARTMENT'S COMMENTS ON THE WORKPLAN OR THE approved  
 25 order or decree available to the public. ~~the order or decree~~

1       ~~must contain a concise statement of the principal reasons~~  
 2 ~~for and against its adoption, incorporating in the order or~~  
 3 ~~decree the reasons for overruling the considerations urged~~  
 4 ~~against it, if no written or verbal comments are received,~~  
 5 ~~the department may omit the statement of reasons. THE~~  
 6 ADMINISTRATIVE RECORD SUPPORTING THE DEPARTMENT'S COMMENTS  
 7 ON THE WORKPLAN OR THE APPROVED ORDER OR DECREE MUST CONTAIN  
 8 THE DEPARTMENT'S RESPONSE SUMMARY PREPARED PURSUANT TO  
 9 SUBSECTION (1)(E)."

10       Section 3, Section 75-10-714, MEA, is amended to read:  
 11       "75-10-714. Administrative penalties: (1) In lieu of  
 12 proceeding under 75-10-711(5), the department may assess  
 13 penalties of not more than \$1,000 per day per violation  
 14 against a person liable under 75-10-715(1) for a release or  
 15 threat of release who has failed or refused to comply with  
 16 an order issued by the department pursuant to 75-10-711(4)  
 17 or against a person who has failed or refused to comply with  
 18 an order issued by the department pursuant to 75-10-707(5);

19       (2) In determining the amount of any penalty assessed  
 20 pursuant to this section, the department shall take into  
 21 account the costs it has incurred, the nature,  
 22 circumstances, extent, and gravity of the noncompliance,  
 23 and with respect to the person liable under 75-10-715(1),  
 24 his ability to pay, any prior history of such violations,  
 25 the degree of culpability, the economic benefit or savings,

1 ~~if any, resulting from the noncompliance; and any other~~  
 2 ~~matters as justice may require.~~

3 ~~(3) An administrative penalty may not be collected~~  
 4 ~~pursuant to this section unless the person charged with the~~  
 5 ~~noncompliance is given notice and opportunity for a hearing~~  
 6 ~~with respect to the noncompliance. The notice and~~  
 7 ~~opportunity for a hearing must conform to the requirements~~  
 8 ~~of Title 27, chapter 47, part 6.~~

9 ~~(4) A person against whom a penalty is assessed under~~  
 10 ~~this section may obtain judicial review of the penalty as~~  
 11 ~~provided for in Title 27, chapter 47, part 7.~~

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

15 **Section 4.** Section 75-10-719, MCA, is amended to read:

16 **\*75-10-719. Settlement -- bar to contribution**  
 17 **liability.** (1) A person who has resolved his liability to  
 18 the state arising under 75-10-715 or section 107(a)(1)  
 19 through (a)(4) of CERCLA 42 U.S.C. 9607(a)(1) through  
 20 (a)(4), in an administrative or judicially approved  
 21 settlement is not liable for claims for contribution  
 22 regarding matters addressed in the settlement. The  
 23 settlement does not discharge any of the other potentially  
 24 liable persons unless its terms provide a discharge. The  
 25 terms of the settlement may reduce the potential liability

1 of the other potentially liable persons by the amount of the  
 2 settlement.

3 (2) If the state has obtained less than complete relief  
 4 from a person who has resolved his liability to the state in  
 5 an administrative or judicially approved settlement, the  
 6 state may bring an action against any other person who has  
 7 not resolved his liability.

8 (3) A person who has resolved, in whole or in part, his  
 9 liability to the state for the release or for remedial  
 10 action costs in an administrative or judicially approved  
 11 settlement may seek contribution from a person who is not  
 12 party to a settlement referred to in subsection (1).

13 (4) Whenever practicable and in the public interest, as  
 14 determined by the director of the department, the department  
 15 may, as promptly as possible, reach a final settlement with  
 16 a person liable under 75-10-715 in an administrative or  
 17 civil action under 75-10-711 if ~~such~~ the settlement involves  
 18 only a minor portion of the response costs at the facility  
 19 concerned and, in the judgment of the department, the  
 20 conditions in either of the following subsection (4)(a) or  
 21 (4)(b) are met:

22 (a) Both of the following are minimal in comparison to  
 23 other hazardous or deleterious substances at the facility:

24 (i) the amount of the hazardous or deleterious  
 25 substances contributed by that person to the facility;

1 (ii) the toxic or other hazardous effects of the  
2 substances contributed by that person to the facility.

3 (b) (i) The person:

4 (A) is the owner of the real property on or in which  
5 the facility is located;

6 (B) did not conduct or permit the generation,  
7 transportation, storage, treatment, or disposal of any  
8 hazardous or deleterious substance at the facility; and

9 (C) did not contribute to the release or threat of  
10 release of a hazardous or deleterious substance at the  
11 facility through any action or omission.

12 (ii) This subsection (4)(b) does not apply if the person  
13 purchased the real property with actual or constructive  
14 knowledge that the property was used for the generation,  
15 transportation, storage, treatment, or disposal of any  
16 hazardous or deleterious substance.

17 (5) As part of an administrative or judicially approved  
18 settlement agreement, the department shall MAY require the  
19 posting--of--a--bond LIABLE PERSON TO PROVIDE FINANCIAL  
20 ASSURANCE, in an amount determined by the department, to  
21 ensure the long-term OPERATION AND maintenance of the  
22 remedial action site. THE LIABLE PERSON SHALL PROVIDE THE  
23 FINANCIAL ASSURANCE BY ANY ONE METHOD OR COMBINATION OF  
24 METHODS SATISFACTORY TO THE DEPARTMENT, INCLUDING BUT NOT  
25 LIMITED TO INSURANCE, GUARANTEE, PERFORMANCE OR OTHER SURETY

1 BOND, LETTER OF CREDIT, AND QUALIFICATION AS A  
2 SELF-INSURER."

3 **Section 5.** Section 75-10-721, MCA, is amended to read:

4 "75-10-721. Degree of cleanup required -- permit  
5 exemption -- performance--bond FINANCIAL ASSURANCE. (1) A  
6 remedial action performed under this part must attain a  
7 degree of cleanup of the hazardous or deleterious substance  
8 and control of a threatened release or further release of  
9 that substance that assures present and future protection of  
10 public health, safety, and welfare and of the environment.

11 (2) In approving or carrying out remedial actions  
12 performed under this part, the department:

13 (a) shall require cleanup consistent with applicable  
14 state or federal environmental requirements, criteria, or  
15 limitations;

16 (b) shall consider and may require cleanup consistent  
17 with substantive state or federal environmental  
18 requirements, criteria, or limitations that are well-suited  
19 to the site conditions; and

20 (c) shall select remedial actions that, at a minimum,  
21 protect public health, safety, and welfare and the  
22 environment and that:

23 (i) use permanent solutions;

24 (ii) use alternative treatment technologies or resource  
25 recovery technologies to the maximum extent practicable; and

1 (iii) are cost-effective, taking into account the total  
2 short- and long-term costs of the actions, including the  
3 cost of operation and maintenance activities for the entire  
4 period during which the activities will be required.

5 (3) The department may exempt any portion of a remedial  
6 action that is conducted entirely on site from a state or  
7 local permit that would, in the absence of the remedial  
8 action, be required if the remedial action is carried out in  
9 accordance with the standards established under subsection  
10 (1) and this part.

11 (4) The department may require a performance bond  
12 FINANCIAL ASSURANCE from a liable person or a remedial  
13 action contractor in an amount that the department  
14 determines will ensure attainment of the degree of cleanup  
15 required by subsections (1) and (2); THE LONG-TERM OPERATION  
16 AND MAINTENANCE OF THE REMEDIAL ACTION SITE. THE LIABLE  
17 PERSON SHALL PROVIDE THE FINANCIAL ASSURANCE BY ANY ONE  
18 METHOD OR COMBINATION OF METHODS SATISFACTORY TO THE  
19 DEPARTMENT, INCLUDING BUT NOT LIMITED TO INSURANCE,  
20 GUARANTEE, PERFORMANCE OR OTHER SURETY BOND, LETTER OF  
21 CREDIT, AND QUALIFICATION AS A SELF-INSURER."

22 Section 6, Section 75-10-723, MCA, is amended to read:  
23 "75-10-723. Agreements to perform remedial action; (1)  
24 To expedite effective remedial actions and minimize  
25 litigation, the department, in its discretion and whenever

1 practicable and in the public interest, may negotiate and  
2 enter into an agreement with any person, including the owner  
3 or operator of the facility from which a release emanates,  
4 to perform a remedial action if the department determines  
5 that the action will be properly done by the person. The  
6 agreement must contain a provision requiring the posting of  
7 a performance bond, as provided in 75-10-719(5), and any  
8 terms and conditions that the department in its discretion  
9 determines to be appropriate.

10 (2) Whenever the department enters into an agreement  
11 under this section for remedial action or for assessment or  
12 payment of natural resource damages, the agreement must be  
13 filed in an appropriate district court as a consent decree  
14 and must be available for public comment for at least 30  
15 days.

16 (3) A decision of the department to enter into or not  
17 enter into agreements under this section is not subject to  
18 judicial review."

19 NEW SECTION. Section 6. Severability. If a part of  
20 [this act] is invalid, all valid parts that are severable  
21 from the invalid part remain in effect. If a part of [this  
22 act] is invalid in one or more of its applications, the part  
23 remains in effect in all valid applications that are  
24 severable from the invalid applications.

25 NEW SECTION. SECTION 7. RETROACTIVE APPLICABILITY.

HB 0539/02

1 [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE MEANING OF  
2 1-2-109, TO OCCURRENCES AFTER JUNE 30, 1985.

-End-



HOUSE BILL NO. 539

INTRODUCED BY DAILY, RANEY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE STATE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; ~~REQUIRING APPROVAL OF A CONSENT DECREE BY THE LOCAL GOVERNING BODY;~~ CLARIFYING THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MAY TAKE REMEDIAL ACTION AT A SITE THAT IS SUBJECT TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980; PROVIDING FOR ~~PERFORMANCE BONDS~~ FINANCIAL ASSURANCE TO ENSURE COMPLIANCE WITH AGREEMENTS AND TO PROVIDE FOR LONG-TERM MAINTENANCE OF REMEDIAL ACTION SITES; REQUIRING A RESPONSE TO WRITTEN COMMENTS OR COMMENTS RECEIVED AT A PUBLIC MEETING OR HEARING ON A PROPOSED WORKPLAN, ORDER, OR DECREE; ~~CLARIFYING THAT ADMINISTRATIVE COSTS MUST BE RECOVERED WHEN POSSIBLE;~~ AND AMENDING SECTIONS 75-10-704, 75-10-711, 75-10-713, 75-10-714, 75-10-719, AND 75-10-721, AND 75-10-723, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

STATEMENT OF INTENT

A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL TO PROVIDE GUIDANCE TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES CONCERNING RULEMAKING TO ESTABLISH

THE SPECIFIC TERMS AND CONDITIONS OF FINANCIAL ASSURANCE THAT A LIABLE PERSON IS REQUIRED TO PROVIDE PURSUANT TO 75-10-719 AND 75-10-721. THE DEPARTMENT SHALL CONSULT AND TO THE GREATEST EXTENT PRACTICABLE RELY UPON FINANCIAL ASSURANCE CONCEPTS AND REQUIREMENTS CONTAINED IN FEDERAL REGULATIONS THAT IMPLEMENT THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980, AS AMENDED.

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

**Section 1.** Section 75-10-704, MCA, is amended to read:

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

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

(3) The department shall:

(a) establish and implement a system for prioritizing sites for remedial action based on potential effects on



1 human health and the environment; and  
 2 (b) investigate, negotiate, and take legal action, as  
 3 appropriate, to identify responsible parties, to obtain the  
 4 participation and financial contribution of responsible  
 5 parties for the remedial action, to achieve remedial action,  
 6 and to recover costs and damages incurred by the state.  
 7 (4) There must be deposited in the fund:  
 8 (a) all penalties, forfeited performance---~~bonds~~  
 9 FINANCIAL ASSURANCE, natural resource damages, and remedial  
 10 action costs recovered pursuant to 75-10-715;  
 11 (b) all administrative penalties assessed pursuant to  
 12 75-10-714 and all civil penalties assessed pursuant to  
 13 75-10-711(5);  
 14 (c) funds appropriated to the fund by the legislature;  
 15 and  
 16 (d) funds received from the interest income of the  
 17 resource indemnity trust fund pursuant to 15-38-202.  
 18 (5) Whenever a legislative appropriation is  
 19 insufficient to carry out the provisions of this part and  
 20 additional money remains in the fund, the department shall  
 21 seek additional authority to spend money from the fund  
 22 through the budget amendment process provided for in Title  
 23 17, chapter 7, part 4.  
 24 (6) Whenever the amount of money in the fund is  
 25 insufficient to carry out remedial action, the department

1 may apply to the governor for a grant from the environmental  
 2 contingency account established pursuant to 75-1-1101.  
 3 (7) The department shall submit to the legislature at  
 4 the beginning of each regular session a complete financial  
 5 report on the fund, including a description of all  
 6 expenditures made since the preceding report."  
 7 **SECTION 2. SECTION 75-10-711, MCA, IS AMENDED TO READ:**  
 8 **"75-10-711. Remedial action -- orders -- penalties --**  
 9 **judicial proceedings. (1) The department may take remedial**  
 10 **action whenever:**  
 11 (a) there has been a release or there is a substantial  
 12 threat of a release into the environment that may present an  
 13 imminent and substantial endangerment to the public health,  
 14 welfare, or safety of the environment; and  
 15 (b) the appropriate remedial action will not be done  
 16 properly and expeditiously by any person liable under  
 17 75-10-715(1).  
 18 (2) Whenever the department is authorized to act  
 19 pursuant to subsection (1) or has reason to believe that a  
 20 release has occurred or is about to occur, the department  
 21 may undertake remedial action in the form of any  
 22 investigation, monitoring, survey, testing, or other  
 23 information-gathering as authorized by 75-10-707 that is  
 24 necessary and appropriate to identify the existence, nature,  
 25 origin, and extent of the release or the threat of release

1 and the extent and imminence of the danger to the public  
2 health, safety, or welfare or the environment.

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

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

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

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

24 (4) Whenever the department is authorized to act  
25 pursuant to subsection (1) or has reason to believe that a

1 release that may pose an imminent and substantial threat to  
2 public health, safety, or welfare or the environment has  
3 occurred or is about to occur, it may issue to any person  
4 liable under 75-10-715(1) cease and desist, remedial, or  
5 other orders as may be necessary or appropriate to protect  
6 public health, safety, or welfare or the environment.

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

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

25 (a) an action under 75-10-715 to recover remedial

1 action costs or penalties or for contribution;  
 2 (b) an action to enforce an order issued under  
 3 75-10-707 or this section;  
 4 (c) an action to recover a civil penalty for violation  
 5 of or failure to comply with an order issued under 75-10-707  
 6 or this section; or  
 7 (d) an action by a person to whom an order has been  
 8 issued to determine the validity of the order, only if the  
 9 person has been in compliance and continues in compliance  
 10 with the order pending decision of the court.  
 11 (7) In considering objections raised in a judicial  
 12 action regarding orders issued under this part, the court  
 13 shall uphold and enforce an order issued by the department  
 14 unless the objecting party can demonstrate, on the  
 15 administrative record, that the department's decision to  
 16 issue the order was arbitrary and capricious or otherwise  
 17 not in accordance with law.  
 18 (8) Instead of issuing a notification or an order under  
 19 this section, the department may bring an action for legal  
 20 or equitable relief in the district court of the county  
 21 where the release or threatened release occurred or in the  
 22 first judicial district as may be necessary to abate any  
 23 imminent and substantial endangerment to the public health,  
 24 safety, or welfare or the environment resulting from the  
 25 release or threatened release.

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

7 **Section 3.** Section 75-10-713, MCA, is amended to read:  
 8 **"75-10-713. Public notice of WORKPLAN, administrative**  
 9 **order, or consent decree -- written comments -- MEETING --**  
 10 **hearing -- response.** (1) Except as provided in 75-10-712,  
 11 before ~~final approval~~ by the director of the department of  
 12 **SUBMITS COMMENTS TO THE U.S. ENVIRONMENTAL PROTECTION AGENCY**  
 13 **ON A PROPOSED WORKPLAN OR APPROVES** any administrative order  
 14 on consent, issued pursuant to 75-10-711, or before judicial  
 15 approval of a consent decree issued pursuant to this part,  
 16 the department shall:  
 17 (a) publish a notice and brief description of the  
 18 proposed WORKPLAN, order, or decree in a daily newspaper of  
 19 general circulation in the area affected and make copies of  
 20 the proposal available to the public;  
 21 **(B) RECEIVE COMMENTS FROM THE COUNTY COMMISSIONERS AND**  
 22 **GOVERNING BODIES OF CITIES, TOWNS, AND CONSOLIDATED LOCAL**  
 23 **GOVERNMENTS IN WHOSE GEOGRAPHICAL AREA OF JURISDICTION THE**  
 24 **PROPOSED WORKPLAN, ADMINISTRATIVE ORDER, OR CONSENT DECREE**  
 25 **WOULD APPLY;**

1       **(b)(C)** provide at least 30 days (or whatever additional  
2 time the department may in its discretion grant upon written  
3 request) for submission of written comments regarding the  
4 proposed WORKPLAN, order, or decree and, upon written  
5 request by 10 or more persons or by a group having 10 or  
6 more members (but not including a liable person), AND UPON  
7 WRITTEN REQUEST BY 10 OR MORE PERSONS OR BY A GROUP HAVING  
8 10 OR MORE MEMBERS (BUT NOT INCLUDING A LIABLE PERSON),  
9 conduct a public meeting ~~hearing~~ MEETING at or near the  
10 facility for the purpose of receiving verbal comment  
11 regarding the proposed WORKPLAN, order, or decree; and

12       **(D)** AT THE REQUEST OF THE COUNTY COMMISSIONERS OR THE  
13 GOVERNING BODY OF A CITY OR TOWN OR OF A CONSOLIDATED LOCAL  
14 GOVERNMENT WITHIN WHOSE AREA OF JURISDICTION A REMEDIAL  
15 ACTION SITE IS LOCATED, CONDUCT A PUBLIC HEARING; AND

16       **(c)(E)** consider and respond to RELEVANT written or  
17 verbal comments properly submitted during the comment period  
18 or at the public meeting MEETING OR hearing, and

19       **(d)** obtain the approval of the governing body in the  
20 affected area.

21       **(2)** Upon making a final decision regarding the proposed  
22 WORKPLAN, order, or decree, the department shall publish  
23 notice, as provided under subsection (1), and make copies of  
24 the DEPARTMENT'S COMMENTS ON THE WORKPLAN OR THE approved  
25 order or decree available to the public. The order or decree

1       ~~must contain a concise statement of the principal reasons~~  
2 ~~for and against its adoption, incorporating in the order or~~  
3 ~~decree the reasons for overruling the considerations urged~~  
4 ~~against it, if no written or verbal comments are received,~~  
5 ~~the department may omit the statement of reasons. THE~~  
6 ADMINISTRATIVE RECORD SUPPORTING THE DEPARTMENT'S COMMENTS  
7 ON THE WORKPLAN OR THE APPROVED ORDER OR DECREE MUST CONTAIN  
8 THE DEPARTMENT'S RESPONSE SUMMARY PREPARED PURSUANT TO  
9 SUBSECTION (1)(E)."

10       Section 3, Section 75-10-714, MCA, is amended to read:  
11       "75-10-714. Administrative penalties; (1) In lieu of  
12 proceeding under 75-10-711(5), the department may assess  
13 penalties of not more than \$1,000 per day per violation  
14 against a person liable under 75-10-715(1) for a release or  
15 threat of release who has failed or refused to comply with  
16 an order issued by the department pursuant to 75-10-711(4)  
17 or against a person who has failed or refused to comply with  
18 an order issued by the department pursuant to 75-10-707(5);

19       (2) In determining the amount of any penalty assessed  
20 pursuant to this section, the department shall take into  
21 account the costs it has incurred; the nature,  
22 circumstances, extent, and gravity of the noncompliance,  
23 and, with respect to the person liable under 75-10-715(1),  
24 his ability to pay, any prior history of such violations,  
25 the degree of culpability, the economic benefit or savings,

1 ~~if any resulting from the noncompliance, and any other~~  
 2 ~~matters as justice may require.~~

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

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

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

15 **Section 4.** Section 75-10-719, MCA, is amended to read:

16 "75-10-719. Settlement -- bar to contribution  
 17 liability. (1) A person who has resolved his liability to  
 18 the state arising under 75-10-715 or section 107(a)(1)  
 19 through (a)(4) of CERCLA 42 U.S.C. 9607(a)(1) through  
 20 (a)(4), in an administrative or judicially approved  
 21 settlement is not liable for claims for contribution  
 22 regarding matters addressed in the settlement. The  
 23 settlement does not discharge any of the other potentially  
 24 liable persons unless its terms provide a discharge. The  
 25 terms of the settlement may reduce the potential liability

1 of the other potentially liable persons by the amount of the  
 2 settlement.

3 (2) If the state has obtained less than complete relief  
 4 from a person who has resolved his liability to the state in  
 5 an administrative or judicially approved settlement, the  
 6 state may bring an action against any other person who has  
 7 not resolved his liability.

8 (3) A person who has resolved, in whole or in part, his  
 9 liability to the state for the release or for remedial  
 10 action costs in an administrative or judicially approved  
 11 settlement may seek contribution from a person who is not  
 12 party to a settlement referred to in subsection (1).

13 (4) Whenever practicable and in the public interest, as  
 14 determined by the director of the department, the department  
 15 may, as promptly as possible, reach a final settlement with  
 16 a person liable under 75-10-715 in an administrative or  
 17 civil action under 75-10-711 if such the settlement involves  
 18 only a minor portion of the response costs at the facility  
 19 concerned and, in the judgment of the department, the  
 20 conditions in either of the following subsection (4)(a) or  
 21 (4)(b) are met:

22 (a) Both of the following are minimal in comparison to  
 23 other hazardous or deleterious substances at the facility:

24 (i) the amount of the hazardous or deleterious  
 25 substances contributed by that person to the facility;

1 (ii) the toxic or other hazardous effects of the  
2 substances contributed by that person to the facility.

3 (b) (i) The person:

4 (A) is the owner of the real property on or in which  
5 the facility is located;

6 (B) did not conduct or permit the generation,  
7 transportation, storage, treatment, or disposal of any  
8 hazardous or deleterious substance at the facility; and

9 (C) did not contribute to the release or threat of  
10 release of a hazardous or deleterious substance at the  
11 facility through any action or omission.

12 (ii) This subsection (4)(b) does not apply if the person  
13 purchased the real property with actual or constructive  
14 knowledge that the property was used for the generation,  
15 transportation, storage, treatment, or disposal of any  
16 hazardous or deleterious substance.

17 (5) As part of an administrative or judicially approved  
18 settlement agreement, the department shall MAY require the  
19 posting--of--a--bond LIABLE PERSON TO PROVIDE FINANCIAL  
20 ASSURANCE, in an amount determined by the department, to  
21 ensure the long-term OPERATION AND maintenance of the  
22 remedial action site. THE LIABLE PERSON SHALL PROVIDE THE  
23 FINANCIAL ASSURANCE BY ANY ONE METHOD OR COMBINATION OF  
24 METHODS SATISFACTORY TO THE DEPARTMENT, INCLUDING BUT NOT  
25 LIMITED TO INSURANCE, GUARANTEE, PERFORMANCE OR OTHER SURETY

1 BOND, LETTER OF CREDIT, AND QUALIFICATION AS A SELF-INSURER,  
2 OR OTHER DEMONSTRATION OF FINANCIAL CAPABILITY."

3 **Section 5.** Section 75-10-721, MCA, is amended to read:

4 \*75-10-721. Degree of cleanup required -- permit  
5 exemption -- performance--bond FINANCIAL ASSURANCE. (1) A  
6 remedial action performed under this part must attain a  
7 degree of cleanup of the hazardous or deleterious substance  
8 and control of a threatened release or further release of  
9 that substance that assures present and future protection of  
10 public health, safety, and welfare and of the environment.

11 (2) In approving or carrying out remedial actions  
12 performed under this part, the department:

13 (a) shall require cleanup consistent with applicable  
14 state or federal environmental requirements, criteria, or  
15 limitations;

16 (b) shall consider and may require cleanup consistent  
17 with substantive state or federal environmental  
18 requirements, criteria, or limitations that are well-suited  
19 to the site conditions; and

20 (c) shall select remedial actions that, at a minimum,  
21 protect public health, safety, and welfare and the  
22 environment and that:

23 (i) use permanent solutions;

24 (ii) use alternative treatment technologies or resource  
25 recovery technologies to the maximum extent practicable; and

1 (iii) are cost-effective, taking into account the total  
2 short- and long-term costs of the actions, including the  
3 cost of operation and maintenance activities for the entire  
4 period during which the activities will be required.

5 (3) The department may exempt any portion of a remedial  
6 action that is conducted entirely on site from a state or  
7 local permit that would, in the absence of the remedial  
8 action, be required if the remedial action is carried out in  
9 accordance with the standards established under subsection  
10 (1) and this part.

11 (4) The department may require a performance bond  
12 FINANCIAL ASSURANCE from a liable person or a remedial  
13 action contractor in an amount that the department  
14 determines will ensure attainment of the degree of cleanup  
15 required by subsections (1) and (2). THE LONG-TERM OPERATION  
16 AND MAINTENANCE OF THE REMEDIAL ACTION SITE. THE LIABLE  
17 PERSON SHALL PROVIDE THE FINANCIAL ASSURANCE BY ANY ONE  
18 METHOD OR COMBINATION OF METHODS SATISFACTORY TO THE  
19 DEPARTMENT, INCLUDING BUT NOT LIMITED TO INSURANCE,  
20 GUARANTEE, PERFORMANCE OR OTHER SURETY BOND, LETTER OF  
21 CREDIT, AND QUALIFICATION AS A SELF-INSURER, OR OTHER  
22 DEMONSTRATION OF FINANCIAL CAPABILITY."

23 Section 6:--Section 75-10-723, MCA, is amended to read:  
24 75-10-723. Agreements to perform remedial action: (1)  
25 To expedite effective remedial actions and minimize

1 litigation; the department, in its discretion and whenever  
2 practicable and in the public interest, may negotiate and  
3 enter into an agreement with any person, including the owner  
4 or operator of the facility from which a release emanates,  
5 to perform a remedial action if the department determines  
6 that the action will be properly done by the person. The  
7 agreement must contain a provision requiring the posting of  
8 a performance bond, as provided in 75-10-719(5) and any  
9 terms and conditions that the department in its discretion  
10 determines to be appropriate.

11 (2) Whenever the department enters into an agreement  
12 under this section for remedial action or for assessment or  
13 payment of natural resource damages, the agreement must be  
14 filed in an appropriate district court as a consent decree  
15 and must be available for public comment for at least 30  
16 days.

17 (3) A decision of the department to enter into or not  
18 enter into agreements under this section is not subject to  
19 judicial review."

20 **NEW SECTION. Section 6. Severability.** If a part of  
21 [this act] is invalid, all valid parts that are severable  
22 from the invalid part remain in effect. If a part of [this  
23 act] is invalid in one or more of its applications, the part  
24 remains in effect in all valid applications that are  
25 severable from the invalid applications.



HB 0539/03

1 NEW SECTION. SECTION 7. RETROACTIVE APPLICABILITY.  
2 [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE MEANING OF  
3 1-2-109, TO OCCURRENCES AFTER JUNE 30, 1985.

-End-

## 1 HOUSE BILL NO. 539

2 INTRODUCED BY DAILY, RANEY

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 5 STATE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY  
 6 ACT; ~~REQUIRING APPROVAL OF A CONSENT DECREE BY THE LOCAL~~  
 7 ~~GOVERNING BODY~~; CLARIFYING THAT THE DEPARTMENT OF HEALTH AND  
 8 ENVIRONMENTAL SCIENCES MAY TAKE REMEDIAL ACTION AT A SITE  
 9 THAT IS SUBJECT TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL  
 10 RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980; PROVIDING  
 11 FOR ~~PERFORMANCE BONDS~~ FINANCIAL ASSURANCE TO ENSURE  
 12 COMPLIANCE WITH AGREEMENTS AND TO PROVIDE FOR LONG-TERM  
 13 MAINTENANCE OF REMEDIAL ACTION SITES; REQUIRING A RESPONSE  
 14 TO WRITTEN COMMENTS OR COMMENTS RECEIVED AT A PUBLIC MEETING  
 15 OR HEARING ON A PROPOSED WORKPLAN, ORDER, OR DECREE;  
 16 ~~CLARIFYING THAT ADMINISTRATIVE COSTS MUST BE RECOVERED WHEN~~  
 17 ~~POSSIBLE~~; AND AMENDING SECTIONS 75-10-704, 75-10-711,  
 18 75-10-713, ~~75-10-714~~, 75-10-719, AND 75-10-721, AND  
 19 ~~75-10-723~~, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY  
 20 DATE."

## 21 STATEMENT OF INTENT

22  
 23 A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL TO  
 24 PROVIDE GUIDANCE TO THE DEPARTMENT OF HEALTH AND  
 25 ENVIRONMENTAL SCIENCES CONCERNING RULEMAKING TO ESTABLISH

1 THE SPECIFIC TERMS AND CONDITIONS OF FINANCIAL ASSURANCE  
 2 THAT A LIABLE PERSON IS REQUIRED TO PROVIDE PURSUANT TO  
 3 75-10-719 AND 75-10-721. THE DEPARTMENT SHALL CONSULT AND TO  
 4 THE GREATEST EXTENT PRACTICABLE RELY UPON FINANCIAL  
 5 ASSURANCE CONCEPTS AND REQUIREMENTS CONTAINED IN FEDERAL  
 6 REGULATIONS THAT IMPLEMENT THE FEDERAL COMPREHENSIVE  
 7 ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF  
 8 1980, AS AMENDED.

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

11 **Section 1.** Section 75-10-704, MCA, is amended to read:

12 **"75-10-704. Environmental quality protection fund.** (1)  
 13 There is created in the state special revenue fund an  
 14 environmental quality protection fund to be administered as  
 15 a revolving fund by the department. The department is  
 16 authorized to expend amounts from the fund necessary to  
 17 carry out the purposes of this part.

18 (2) The fund may be used by the department only to  
 19 carry out the provisions of this part and for remedial  
 20 actions taken by the department pursuant to this part in  
 21 response to a release of hazardous or deleterious  
 22 substances.

23 (3) The department shall:

24 (a) establish and implement a system for prioritizing  
 25 sites for remedial action based on potential effects on

1 human health and the environment; and

2 (b) investigate, negotiate, and take legal action, as  
3 appropriate, to identify responsible parties, to obtain the  
4 participation and financial contribution of responsible  
5 parties for the remedial action, to achieve remedial action,  
6 and to recover costs and damages incurred by the state.

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

8 (a) all penalties, forfeited performance---bonds  
9 FINANCIAL ASSURANCE, natural resource damages, and remedial  
10 action costs recovered pursuant to 75-10-715;

11 (b) all administrative penalties assessed pursuant to  
12 75-10-714 and all civil penalties assessed pursuant to  
13 75-10-711(5);

14 (c) funds appropriated to the fund by the legislature;  
15 and

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

18 (5) Whenever a legislative appropriation is  
19 insufficient to carry out the provisions of this part and  
20 additional money remains in the fund, the department shall  
21 seek additional authority to spend money from the fund  
22 through the budget amendment process provided for in Title  
23 17, chapter 7, part 4.

24 (6) Whenever the amount of money in the fund is  
25 insufficient to carry out remedial action, the department

1 may apply to the governor for a grant from the environmental  
2 contingency account established pursuant to 75-1-1101.

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

7 **SECTION 2. SECTION 75-10-711, MCA, IS AMENDED TO READ:**

8 "75-10-711. Remedial action -- orders -- penalties --  
9 judicial proceedings. (1) The department may take remedial  
10 action whenever:

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

15 (b) the appropriate remedial action will not be done  
16 properly and expeditiously by any person liable under  
17 75-10-715(1).

18 (2) Whenever the department is authorized to act  
19 pursuant to subsection (1) or has reason to believe that a  
20 release has occurred or is about to occur, the department  
21 may undertake remedial action in the form of any  
22 investigation, monitoring, survey, testing, or other  
23 information-gathering as authorized by 75-10-707 that is  
24 necessary and appropriate to identify the existence, nature,  
25 origin, and extent of the release or the threat of release

1 and the extent and imminence of the danger to the public  
2 health, safety, or welfare or the environment.

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

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

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

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

24 (4) Whenever the department is authorized to act  
25 pursuant to subsection (1) or has reason to believe that a

1 release that may pose an imminent and substantial threat to  
2 public health, safety, or welfare or the environment has  
3 occurred or is about to occur, it may issue to any person  
4 liable under 75-10-715(1) cease and desist, remedial, or  
5 other orders as may be necessary or appropriate to protect  
6 public health, safety, or welfare or the environment.

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

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

25 (a) an action under 75-10-715 to recover remedial

1 action costs or penalties or for contribution;

2 (b) an action to enforce an order issued under

3 75-10-707 or this section;

4 (c) an action to recover a civil penalty for violation

5 of or failure to comply with an order issued under 75-10-707

6 or this section; or

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

8 issued to determine the validity of the order, only if the

9 person has been in compliance and continues in compliance

10 with the order pending decision of the court.

11 (7) In considering objections raised in a judicial

12 action regarding orders issued under this part, the court

13 shall uphold and enforce an order issued by the department

14 unless the objecting party can demonstrate, on the

15 administrative record, that the department's decision to

16 issue the order was arbitrary and capricious or otherwise

17 not in accordance with law.

18 (8) Instead of issuing a notification or an order under

19 this section, the department may bring an action for legal

20 or equitable relief in the district court of the county

21 where the release or threatened release occurred or in the

22 first judicial district as may be necessary to abate any

23 imminent and substantial endangerment to the public health,

24 safety, or welfare or the environment resulting from the

25 release or threatened release.

1 (9) The department may take remedial action pursuant to

2 subsection (1) at a site that is regulated under the federal

3 Comprehensive Environmental Response, Compensation, and

4 Liability Act of 1980, Public Law 96-510, if the department

5 determines that remedial action is necessary to carry out

6 the purposes of this part."

7 **Section 3.** Section 75-10-713, MCA, is amended to read:

8 "75-10-713. Public notice of WORKPLAN, administrative

9 order, or consent decree -- written comments -- MEETING --

10 hearing -- response. (1) Except as provided in 75-10-712,

11 before ~~final approval by~~ the director of the department of

12 SUBMITS COMMENTS TO THE U.S. ENVIRONMENTAL PROTECTION AGENCY

13 ON A PROPOSED WORKPLAN OR APPROVES any administrative order

14 on consent, issued pursuant to 75-10-711, or before judicial

15 approval of a consent decree issued pursuant to this part,

16 the department shall:

17 (a) publish a notice and brief description of the

18 proposed WORKPLAN, order, or decree in a daily newspaper of

19 general circulation in the area affected and make copies of

20 the proposal available to the public;

21 (B) RECEIVE COMMENTS FROM THE COUNTY COMMISSIONERS AND

22 GOVERNING BODIES OF CITIES, TOWNS, AND CONSOLIDATED LOCAL

23 GOVERNMENTS IN WHOSE GEOGRAPHICAL AREA OF JURISDICTION THE

24 PROPOSED WORKPLAN, ADMINISTRATIVE ORDER, OR CONSENT DECREE

25 WOULD APPLY;

1       **(b)(C)** provide at least 30 days (or whatever additional  
 2 time the department may in its discretion grant upon written  
 3 request) for submission of written comments regarding the  
 4 proposed WORKPLAN, order, or decree and, ~~upon written~~  
 5 ~~request by 10 or more persons or by a group having 10 or~~  
 6 ~~more members (but not including a liable person),~~ AND UPON  
 7 WRITTEN REQUEST BY 10 OR MORE PERSONS OR BY A GROUP HAVING  
 8 10 OR MORE MEMBERS (BUT NOT INCLUDING A LIABLE PERSON),  
 9 conduct a public meeting hearing MEETING at or near the  
 10 facility for the purpose of receiving verbal comment  
 11 regarding the proposed WORKPLAN, order, or decree; and

12       **(D)** AT THE REQUEST OF THE COUNTY COMMISSIONERS OR THE  
 13 GOVERNING BODY OF A CITY OR TOWN OR OF A CONSOLIDATED LOCAL  
 14 GOVERNMENT WITHIN WHOSE AREA OF JURISDICTION A REMEDIAL  
 15 ACTION SITE IS LOCATED, CONDUCT A PUBLIC HEARING; AND

16       **(e)(E)** consider and respond to RELEVANT written or  
 17 verbal comments properly submitted during the comment period  
 18 or at the public meeting MEETING OR hearing; and

19       **(d)** ~~obtain the approval of the governing body in the~~  
 20 affected area.

21       **(2)** Upon making a final decision regarding the proposed  
 22 WORKPLAN, order, or decree, the department shall publish  
 23 notice, as provided under subsection (1), and make copies of  
 24 the DEPARTMENT'S COMMENTS ON THE WORKPLAN OR THE approved  
 25 order or decree available to the public. ~~The order or decree~~

1 ~~must contain a concise statement of the principal reasons~~  
 2 ~~for and against its adoption, incorporating in the order or~~  
 3 ~~decree the reasons for overruling the considerations urged~~  
 4 ~~against it. If no written or verbal comments are received,~~  
 5 ~~the department may omit the statement of reasons. THE~~  
 6 ADMINISTRATIVE RECORD SUPPORTING THE DEPARTMENT'S COMMENTS  
 7 ON THE WORKPLAN OR THE APPROVED ORDER OR DECREE MUST CONTAIN  
 8 THE DEPARTMENT'S RESPONSE SUMMARY PREPARED PURSUANT TO  
 9 SUBSECTION (1)(E)."

10       Section 3, Section 75-10-714, MCA, is amended to read:  
 11       "75-10-714. Administrative penalties--(1)--in lieu of  
 12 proceeding under 75-10-711(5), the department may assess  
 13 penalties of not more than \$1,000 per day per violation  
 14 against a person liable under 75-10-715(1) for a release or  
 15 threat of release who has failed or refused to comply with  
 16 an order issued by the department pursuant to 75-10-711(4)  
 17 or against a person who has failed or refused to comply with  
 18 an order issued by the department pursuant to 75-10-707(5)."

19       (2)--In determining the amount of any penalty assessed  
 20 pursuant to this section, the department shall take into  
 21 account the costs it has incurred, the nature,  
 22 circumstances, extent, and gravity of the noncompliance,  
 23 and with respect to the person liable under 75-10-715(1),  
 24 his ability to pay, any prior history of such violations,  
 25 the degree of culpability, the economic benefit or savings,

1 ~~if any, resulting from the noncompliance; and any other~~  
 2 ~~matters as justice may require.~~

3 ~~{3}--An administrative penalty may not be collected~~  
 4 ~~pursuant to this section unless the person charged with the~~  
 5 ~~noncompliance is given notice and opportunity for a hearing~~  
 6 ~~with respect to the noncompliance. The notice and~~  
 7 ~~opportunity for a hearing must conform to the requirements~~  
 8 ~~of Title 27, chapter 47, part 6.~~

9 ~~{4}--A person against whom a penalty is assessed under~~  
 10 ~~this section may obtain judicial review of the penalty as~~  
 11 ~~provided for in Title 27, chapter 47, part 7.~~

12 ~~{5}--Administrative penalties payable under this section~~  
 13 ~~must be deposited in the environmental quality protection~~  
 14 ~~fund established in 75-10-704.~~

15 **Section 4.** Section 75-10-719, MCA, is amended to read:

16 "75-10-719. Settlement -- bar to contribution  
 17 liability. (1) A person who has resolved his liability to  
 18 the state arising under 75-10-715 or section 107(a)(1)  
 19 through (a)(4) of CERCLA 42 U.S.C. 9607(a)(1) through  
 20 (a)(4), in an administrative or judicially approved  
 21 settlement is not liable for claims for contribution  
 22 regarding matters addressed in the settlement. The  
 23 settlement does not discharge any of the other potentially  
 24 liable persons unless its terms provide a discharge. The  
 25 terms of the settlement may reduce the potential liability

1 of the other potentially liable persons by the amount of the  
 2 settlement.

3 (2) If the state has obtained less than complete relief  
 4 from a person who has resolved his liability to the state in  
 5 an administrative or judicially approved settlement, the  
 6 state may bring an action against any other person who has  
 7 not resolved his liability.

8 (3) A person who has resolved, in whole or in part, his  
 9 liability to the state for the release or for remedial  
 10 action costs in an administrative or judicially approved  
 11 settlement may seek contribution from a person who is not  
 12 party to a settlement referred to in subsection (1).

13 (4) Whenever practicable and in the public interest, as  
 14 determined by the director of the department, the department  
 15 may, as promptly as possible, reach a final settlement with  
 16 a person liable under 75-10-715 in an administrative or  
 17 civil action under 75-10-711 if such the settlement involves  
 18 only a minor portion of the response costs at the facility  
 19 concerned and, in the judgment of the department, the  
 20 conditions in either of the following subsection (4)(a) or  
 21 (4)(b) are met:

22 (a) Both of the following are minimal in comparison to  
 23 other hazardous or deleterious substances at the facility:

24 (i) the amount of the hazardous or deleterious  
 25 substances contributed by that person to the facility;

1 (ii) the toxic or other hazardous effects of the  
2 substances contributed by that person to the facility.

3 (b) (i) The person:

4 (A) is the owner of the real property on or in which  
5 the facility is located;

6 (B) did not conduct or permit the generation,  
7 transportation, storage, treatment, or disposal of any  
8 hazardous or deleterious substance at the facility; and

9 (C) did not contribute to the release or threat of  
10 release of a hazardous or deleterious substance at the  
11 facility through any action or omission.

12 (ii) This subsection (4)(b) does not apply if the person  
13 purchased the real property with actual or constructive  
14 knowledge that the property was used for the generation,  
15 transportation, storage, treatment, or disposal of any  
16 hazardous or deleterious substance.

17 (5) As part of an administrative or judicially approved  
18 settlement agreement, the department shall MAY require the  
19 posting--of--a--bond LIABLE PERSON TO PROVIDE FINANCIAL  
20 ASSURANCE, in an amount determined by the department, to  
21 ensure the long-term OPERATION AND maintenance of the  
22 remedial action site. THE LIABLE PERSON SHALL PROVIDE THE  
23 FINANCIAL ASSURANCE BY ANY ONE METHOD OR COMBINATION OF  
24 METHODS SATISFACTORY TO THE DEPARTMENT, INCLUDING BUT NOT  
25 LIMITED TO INSURANCE, GUARANTEE, PERFORMANCE OR OTHER SURETY

1 BOND, LETTER OF CREDIT, AND QUALIFICATION AS A SELF-INSURER,  
2 OR OTHER DEMONSTRATION OF FINANCIAL CAPABILITY."

3 **Section 5.** Section 75-10-721, MCA, is amended to read:

4 "75-10-721. Degree of cleanup required -- permit  
5 exemption -- performance--bond FINANCIAL ASSURANCE. (1) A  
6 remedial action performed under this part must attain a  
7 degree of cleanup of the hazardous or deleterious substance  
8 and control of a threatened release or further release of  
9 that substance that assures present and future protection of  
10 public health, safety, and welfare and of the environment.

11 (2) In approving or carrying out remedial actions  
12 performed under this part, the department:

13 (a) shall require cleanup consistent with applicable  
14 state or federal environmental requirements, criteria, or  
15 limitations;

16 (b) shall consider and may require cleanup consistent  
17 with substantive state or federal environmental  
18 requirements, criteria, or limitations that are well-suited  
19 to the site conditions; and

20 (c) shall select remedial actions that, at a minimum,  
21 protect public health, safety, and welfare and the  
22 environment and that:

23 (i) use permanent solutions;

24 (ii) use alternative treatment technologies or resource  
25 recovery technologies to the maximum extent practicable; and



1 (iii) are cost-effective, taking into account the total  
2 short- and long-term costs of the actions, including the  
3 cost of operation and maintenance activities for the entire  
4 period during which the activities will be required.

5 (3) The department may exempt any portion of a remedial  
6 action that is conducted entirely on site from a state or  
7 local permit that would, in the absence of the remedial  
8 action, be required if the remedial action is carried out in  
9 accordance with the standards established under subsection  
10 (1) and this part.

11 (4) The department may require a performance bond  
12 FINANCIAL ASSURANCE from a liable person or a remedial  
13 action contractor in an amount that the department  
14 determines will ensure attainment of the degree of cleanup  
15 required by subsections (1) and (2). THE LONG-TERM OPERATION  
16 AND MAINTENANCE OF THE REMEDIAL ACTION SITE. THE LIABLE  
17 PERSON SHALL PROVIDE THE FINANCIAL ASSURANCE BY ANY ONE  
18 METHOD OR COMBINATION OF METHODS SATISFACTORY TO THE  
19 DEPARTMENT, INCLUDING BUT NOT LIMITED TO INSURANCE,  
20 GUARANTEE, PERFORMANCE OR OTHER SURETY BOND, LETTER OF  
21 CREDIT, AND QUALIFICATION AS A SELF-INSURER, OR OTHER  
22 DEMONSTRATION OF FINANCIAL CAPABILITY."

23 Section 6--Section 75-10-723, MCA, is amended to read:  
24 "75-10-723--Agreements--to perform remedial action--(1)  
25 To expedite effective remedial actions--and--minimize

1 litigation--the--department--in-its-discretion-and-when-ever  
2 practicable-and-in-the-public-interest--may--negotiate--and  
3 enter-into-an-agreement-with-any-person--including-the-owner  
4 or--operator--of-the-facility-from-which-a-release-emanates--  
5 to-perform-a-remedial-action-if--the--department--determines  
6 that--the--action--will--be-properly-done-by-the-person--The  
7 agreement-must-contain a-provision-requiring-the-posting--of  
8 a--performance--bond--as--provided-in-75-10-719(5)--and-any  
9 terms-and-conditions-that-the-department-in--its--discretion  
10 determines-to-be-appropriate.

11 (2)--Whenever--the--department--enters-into-an-agreement  
12 under-this-section-for-remedial-action-or-for-assessment--or  
13 payment--of--natural-resource-damages--the-agreement-must-be  
14 filed-in-an-appropriate-district-court-as-a--consent--decree  
15 and--must--be--available--for-public-comment-for-at-least-30  
16 days.

17 (3)--A-decision-of-the-department-to-enter-into--or--not  
18 enter--into--agreements-under-this-section-is-not-subject-to  
19 judicial-review."

20 NEW SECTION. Section 6. Severability. If a part of  
21 [this act] is invalid, all valid parts that are severable  
22 from the invalid part remain in effect. If a part of [this  
23 act] is invalid in one or more of its applications, the part  
24 remains in effect in all valid applications that are  
25 severable from the invalid applications.

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1        NEW SECTION. SECTION 7. RETROACTIVE APPLICABILITY.  
2        [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE MEANING OF  
3        1-2-109, TO OCCURRENCES AFTER JUNE 30, 1985.

-End-

GOVERNOR'S AMENDMENTS TO  
HOUSE BILL 539  
(REFERENCE COPY, AS AMENDED)  
April 16, 1991

1. Title, line 15  
Following: line 14  
Strike: "OR HEARING"  
Following: "PROPOSED"  
Strike: "WORKPLAN."
2. Page 8, line 8.  
Following: "notice of"  
Strike: "WORKPLAN."  
Insert: "remedial action,"
3. Page 8, line 9.  
Following: "decree ---"  
Strike: "written"
4. Page 8, line 10.  
Following: line 9  
Strike: "hearing ---"
5. Page 8, line 11.  
Following: "by"  
Insert: "final approval by"  
Following: "ef"  
Insert: "of"
6. Page 8, lines 12 and 13.  
Following: line 11  
Strike: "SUBMITS COMMENTS TO THE U.S. ENVIRONMENTAL  
PROTECTION AGENCY ON A PROPOSED WORKPLAN OR APPROVES"
7. Page 8, line 18.  
Following: "proposed"  
Strike: "WORKPLAN."  
Following: "order"  
Strike: "."
8. Page 8, lines 21 through 25.  
Strike: subsection (B) in its entirety  
Reletter: subsequent sections
9. Page 9, line 4.  
Following: "proposed"  
Strike: "WORKPLAN."  
Following: "order"  
Strike: "."
10. Page 9, line 6.  
Following: "person},"  
Strike: ". AND"

Gov Amend  
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11. Page 9, line 11.  
Following: "proposed"  
Strike: "WORKPLAN,"  
Following: "order"  
Strike: "└"  
Following: "and"  
Insert: "and"
12. Page 9, lines 12 through 15.  
Strike: subsection (D) in its entirety  
Reletter: subsequent section
13. Page 9, line 18.  
Following: "MEETING"  
Strike: "OR hearing"  
Following: "└and"  
Insert: "; and (d) The administrative record supporting the department's approved order or decree must contain the department's response summary prepared pursuant to subsection (1) (c)."
14. Page 9, line 21.  
Following: "(2)"  
Strike: "Upon"  
Insert: "Except as provided in 75-10-712, upon"
15. Page 9, line 22.  
Following: line 21  
Strike: "WORKPLAN,"  
Insert: "remedial action,"
16. Page 9, line 24.  
Strike: "DEPARTMENT'S COMMENTS ON THE WORKPLAN"  
Insert: "final decision on"
17. Page 10, lines 5 through 9.  
Following: "reasons"  
Strike "THE ADMINISTRATIVE RECORD SUPPORTING THE DEPARTMENT'S COMMENTS ON THE WORKPLAN OR THE APPROVED ORDER OR DECREE MUST CONTAIN THE DEPARTMENT'S RESPONSE SUMMARY PREPARED PURSUANT TO SUBSECTION (1) (E)."
18. Page 10.  
Following: line 9  
Insert: "(3) Except as provided in 75-10-712, the department shall: (a) notify the county commissioners and governing bodies of cities, towns, and consolidated local governments impacted by a proposed remedial action; and (b) at the request of the county commissioners or the governing body of a city or town or of a consolidated local government impacted by a remedial action, conduct a public meeting."

## 1 HOUSE BILL NO. 539

2 INTRODUCED BY DAILY, RANEY

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
5 STATE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY  
6 ACT; ~~REQUIRING APPROVAL OF A CONSENT DECREE BY THE LOCAL~~  
7 ~~GOVERNING BODY~~; CLARIFYING THAT THE DEPARTMENT OF HEALTH AND  
8 ENVIRONMENTAL SCIENCES MAY TAKE REMEDIAL ACTION AT A SITE  
9 THAT IS SUBJECT TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL  
10 RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980; PROVIDING  
11 FOR PERFORMANCE BOND FINANCIAL ASSURANCE TO ENSURE  
12 COMPLIANCE WITH AGREEMENTS AND TO PROVIDE FOR LONG-TERM  
13 MAINTENANCE OF REMEDIAL ACTION SITES; REQUIRING A RESPONSE  
14 TO WRITTEN COMMENTS OR COMMENTS RECEIVED AT A PUBLIC MEETING  
15 OR HEARING ON A PROPOSED WORKPLAN ORDER OR DECREE;  
16 ~~CLARIFYING THAT ADMINISTRATIVE COSTS MUST BE RECOVERED WHEN~~  
17 ~~POSSIBLE~~; ~~AND~~ AMENDING SECTIONS 75-10-704, 75-10-711,  
18 75-10-713, ~~75-10-714~~, 75-10-719, AND 75-10-721, AND  
19 ~~75-10-723~~; MCA; AND PROVIDING A RETROACTIVE APPLICABILITY  
20 DATE."

## 21 STATEMENT OF INTENT

22  
23 A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL TO  
24 PROVIDE GUIDANCE TO THE DEPARTMENT OF HEALTH AND  
25 ENVIRONMENTAL SCIENCES CONCERNING RULEMAKING TO ESTABLISH

1 THE SPECIFIC TERMS AND CONDITIONS OF FINANCIAL ASSURANCE  
2 THAT A LIABLE PERSON IS REQUIRED TO PROVIDE PURSUANT TO  
3 75-10-719 AND 75-10-721. THE DEPARTMENT SHALL CONSULT AND TO  
4 THE GREATEST EXTENT PRACTICABLE RELY UPON FINANCIAL  
5 ASSURANCE CONCEPTS AND REQUIREMENTS CONTAINED IN FEDERAL  
6 REGULATIONS THAT IMPLEMENT THE FEDERAL COMPREHENSIVE  
7 ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF  
8 1980, AS AMENDED.

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

11 **Section 1.** Section 75-10-704, MCA, is amended to read:

12 **"75-10-704. Environmental quality protection fund.** (1)  
13 There is created in the state special revenue fund an  
14 environmental quality protection fund to be administered as  
15 a revolving fund by the department. The department is  
16 authorized to expend amounts from the fund necessary to  
17 carry out the purposes of this part.

18 (2) The fund may be used by the department only to  
19 carry out the provisions of this part and for remedial  
20 actions taken by the department pursuant to this part in  
21 response to a release of hazardous or deleterious  
22 substances.

23 (3) The department shall:

24 (a) establish and implement a system for prioritizing  
25 sites for remedial action based on potential effects on

1 human health and the environment; and

2 (b) investigate, negotiate, and take legal action, as  
3 appropriate, to identify responsible parties, to obtain the  
4 participation and financial contribution of responsible  
5 parties for the remedial action, to achieve remedial action,  
6 and to recover costs and damages incurred by the state.

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

8 (a) all penalties, forfeited performance----bonds  
9 FINANCIAL ASSURANCE, natural resource damages, and remedial  
10 action costs recovered pursuant to 75-10-715;

11 (b) all administrative penalties assessed pursuant to  
12 75-10-714 and all civil penalties assessed pursuant to  
13 75-10-711(5);

14 (c) funds appropriated to the fund by the legislature;  
15 and

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

18 (5) Whenever a legislative appropriation is  
19 insufficient to carry out the provisions of this part and  
20 additional money remains in the fund, the department shall  
21 seek additional authority to spend money from the fund  
22 through the budget amendment process provided for in Title  
23 17, chapter 7, part 4.

24 (6) Whenever the amount of money in the fund is  
25 insufficient to carry out remedial action, the department

1 may apply to the governor for a grant from the environmental  
2 contingency account established pursuant to 75-1-1101.

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

7 **SECTION 2. SECTION 75-10-711, MCA, IS AMENDED TO READ:**

8 "75-10-711. Remedial action -- orders -- penalties --  
9 judicial proceedings. (1) The department may take remedial  
10 action whenever:

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

15 (b) the appropriate remedial action will not be done  
16 properly and expeditiously by any person liable under  
17 75-10-715(1).

18 (2) Whenever the department is authorized to act  
19 pursuant to subsection (1) or has reason to believe that a  
20 release has occurred or is about to occur, the department  
21 may undertake remedial action in the form of any  
22 investigation, monitoring, survey, testing, or other  
23 information-gathering as authorized by 75-10-707 that is  
24 necessary and appropriate to identify the existence, nature,  
25 origin, and extent of the release or the threat of release

1 and the extent and imminence of the danger to the public  
2 health, safety, or welfare or the environment.

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

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

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

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

24 (4) Whenever the department is authorized to act  
25 pursuant to subsection (1) or has reason to believe that a

1 release that may pose an imminent and substantial threat to  
2 public health, safety, or welfare or the environment has  
3 occurred or is about to occur, it may issue to any person  
4 liable under 75-10-715(1) cease and desist, remedial, or  
5 other orders as may be necessary or appropriate to protect  
6 public health, safety, or welfare or the environment.

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

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

25 (a) an action under 75-10-715 to recover remedial

1 action costs or penalties or for contribution;

2 (b) an action to enforce an order issued under

3 75-10-707 or this section;

4 (c) an action to recover a civil penalty for violation

5 of or failure to comply with an order issued under 75-10-707

6 or this section; or

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

8 issued to determine the validity of the order, only if the

9 person has been in compliance and continues in compliance

10 with the order pending decision of the court.

11 (7) In considering objections raised in a judicial

12 action regarding orders issued under this part, the court

13 shall uphold and enforce an order issued by the department

14 unless the objecting party can demonstrate, on the

15 administrative record, that the department's decision to

16 issue the order was arbitrary and capricious or otherwise

17 not in accordance with law.

18 (8) Instead of issuing a notification or an order under

19 this section, the department may bring an action for legal

20 or equitable relief in the district court of the county

21 where the release or threatened release occurred or in the

22 first judicial district as may be necessary to abate any

23 imminent and substantial endangerment to the public health,

24 safety, or welfare or the environment resulting from the

25 release or threatened release.

1 (9) The department may take remedial action pursuant to

2 subsection (1) at a site that is regulated under the federal

3 Comprehensive Environmental Response, Compensation, and

4 Liability Act of 1980, Public Law 96-510, if the department

5 determines that remedial action is necessary to carry out

6 the purposes of this part."

7 **Section 3.** Section 75-10-713, MCA, is amended to read:

8 **"75-10-713. Public notice of WORKPLAN REMEDIAL ACTION,**

9 **administrative order, or consent decree -- written comments**

10 **-- MEETING -- hearing---- response. (1) (A) Except as**

11 **provided in 75-10-712, before final--approval--by FINAL**

12 **APPROVAL BY the director of the department of OF SUBMITS**

13 **COMMENTS--TO--THE--U.S.--ENVIRONMENTAL-PROTECTION-AGENCY--ON-A**

14 **PROPOSED-WORKPLAN-OR-APPROVES any administrative order on**

15 **consent, issued pursuant to 75-10-711, or before judicial**

16 **approval of a consent decree issued pursuant to this part,**

17 **the department shall:**

18 **{A}(I) publish a notice and brief description of the**

19 **proposed WORKPLAN, order, or decree in a daily newspaper of**

20 **general circulation in the area affected and make copies of**

21 **the proposal available to the public;**

22 **{B}--RECEIVE-COMMENTS-FROM-THE-COUNTY-COMMISSIONERS--AND**

23 **GOVERNING--BODIES--OF--CITIES, TOWNS, AND CONSOLIDATED LOCAL**

24 **GOVERNMENTS--IN-WHOSE-GEOGRAPHICAL-AREA-OF--JURISDICTION--THE**

25 **PROPOSED--WORKPLAN,--ADMINISTRATIVE-ORDER, OR CONSENT-DECREE**



1 WOULD APPLY;  
 2 ~~(b)(e)(II)~~ provide at least 30 days (or whatever  
 3 additional time the department may in its discretion grant  
 4 upon written request) for submission of written comments  
 5 regarding the proposed WORKPLAN, order, or decree and, upon  
 6 ~~written request by 10 or more persons or by a group having~~  
 7 ~~10 or more members (but not including a liable person);~~ AND  
 8 UPON WRITTEN REQUEST BY 10 OR MORE PERSONS OR BY A GROUP  
 9 HAVING 10 OR MORE MEMBERS (BUT NOT INCLUDING A LIABLE  
 10 PERSON), conduct a public meeting hearing MEETING at or near  
 11 the facility for the purpose of receiving verbal comment  
 12 regarding the proposed WORKPLAN, order, or decree; and AND  
 13 ~~(b) AT THE REQUEST OF THE COUNTY COMMISSIONERS OR THE~~  
 14 ~~GOVERNING BODY OF A CITY OR TOWN OR OF A CONSOLIDATED LOCAL~~  
 15 ~~GOVERNMENT WITHIN WHOSE AREA OF JURISDICTION A REMEDIAL~~  
 16 ~~ACTION SITE IS LOCATED, CONDUCT A PUBLIC HEARING; AND~~  
 17 ~~(c)(B)(III)~~ consider and respond to RELEVANT written or  
 18 verbal comments properly submitted during the comment period  
 19 or at the public meeting MEETING OR hearing; and  
 20 ~~(d) obtain the approval of the governing body in the~~  
 21 ~~affected area.~~  
 22 (B) THE ADMINISTRATIVE RECORD SUPPORTING THE  
 23 DEPARTMENT'S APPROVED ORDER OR DECREE MUST CONTAIN THE  
 24 DEPARTMENT'S RESPONSE SUMMARY PREPARED PURSUANT TO  
 25 SUBSECTION (1)(A)(III).

1 (2) Upon EXCEPT AS PROVIDED IN 75-10-712, UPON making a  
 2 final decision regarding the proposed WORKPLAN, REMEDIAL  
 3 ACTION, order, or decree, the department shall publish  
 4 notice, as provided under subsection (1), and make copies of  
 5 the DEPARTMENT'S COMMENTS ON THE WORKPLAN FINAL DECISION ON  
 6 OR THE approved order or decree available to the public. The  
 7 order or decree must contain a concise statement of the  
 8 principal reasons for and against its adoption,  
 9 incorporating in the order or decree the reasons for  
 10 overruling the considerations urged against it, if no  
 11 written or verbal comments are received, the department may  
 12 omit the statement of reasons. THE ADMINISTRATIVE RECORD  
 13 SUPPORTING THE DEPARTMENT'S COMMENTS ON THE WORKPLAN OR THE  
 14 APPROVED ORDER OR DECREE MUST CONTAIN THE DEPARTMENT'S  
 15 RESPONSE SUMMARY PREPARED PURSUANT TO SUBSECTION (1)(E);  
 16 (3) EXCEPT AS PROVIDED IN 75-10-712, THE DEPARTMENT  
 17 SHALL:  
 18 (A) NOTIFY THE COUNTY COMMISSIONERS AND GOVERNING  
 19 BODIES OF CITIES, TOWNS, AND CONSOLIDATED LOCAL GOVERNMENTS  
 20 IMPACTED BY A PROPOSED REMEDIAL ACTION; AND  
 21 (B) AT THE REQUEST OF THE COUNTY COMMISSIONERS OR THE  
 22 GOVERNING BODY OF A CITY OR TOWN OR OF A CONSOLIDATED LOCAL  
 23 GOVERNMENT IMPACTED BY A REMEDIAL ACTION, CONDUCT A PUBLIC  
 24 MEETING."  
 25 Section 3--Section 75-10-714, MCA, is amended to read:

1       ~~"75-10-714--Administrative-penalties--(1)--in--lieu--of~~  
 2 ~~proceeding--under--75-10-711(5),--the--department--may--assess~~  
 3 ~~penalties--of--not--more--than--\$1,000--per--day--per--violation~~  
 4 ~~against--a--person--liable--under--75-10-715(1)--for--a--release--or~~  
 5 ~~threat--of--release--who--has--failed--or--refused--to--comply--with~~  
 6 ~~an--order--issued--by--the--department--pursuant--to--75-10-711(4)~~  
 7 ~~or--against--a--person--who--has--failed--or--refused--to--comply--with~~  
 8 ~~an--order--issued--by--the--department--pursuant--to--75-10-707(5);~~  
 9       ~~(2)--in--determining--the--amount--of--any--penalty--assessed~~  
 10 ~~pursuant--to--this--section,--the--department--shall--take--into~~  
 11 ~~account the---costs---it---has---incurred; the---nature;~~  
 12 ~~circumstances; extent; and---gravity--of--the--noncompliance;~~  
 13 ~~and; with--respect--to--the--person--liable--under--75-10-715(1);~~  
 14 ~~his--ability--to--pay; any--prior--history--of--such--violations;~~  
 15 ~~the--degree--of--culpability; the--economic--benefit--or--savings;~~  
 16 ~~if--any; resulting--from--the--noncompliance; and--any--other~~  
 17 ~~matters--as--justice--may--require;~~  
 18       ~~(3)--An--administrative--penalty--may--not--be--collected~~  
 19 ~~pursuant--to--this--section--unless--the--person--charged--with--the~~  
 20 ~~noncompliance--is--given--notice--and--opportunity--for--a--hearing~~  
 21 ~~with--respect--to--the--noncompliance.---The---notice---and~~  
 22 ~~opportunity--for--a--hearing--must--conform--to--the--requirements~~  
 23 ~~of--Title--27--chapter--47--part--6.~~  
 24       ~~(4)--A--person--against--whom--a--penalty--is--assessed--under~~  
 25 ~~this--section--may--obtain--judicial--review--of--the--penalty--as~~

1       ~~provided--for--in--Title--27--chapter--47--part--7.~~  
 2       ~~(5)--Administrative--penalties--payable--under--this--section~~  
 3 ~~must--be--deposited--in--the--environmental--quality--protection~~  
 4 ~~fund--established--in--75-10-704."~~  
 5       **Section 4.** Section 75-10-719, MCA, is amended to read:  
 6       "75-10-719. Settlement -- bar to contribution  
 7 liability. (1) A person who has resolved his liability to  
 8 the state arising under 75-10-715 or section 107(a)(1)  
 9 through (a)(4) of CERCLA 42 U.S.C. 9607(a)(1) through  
 10 (a)(4), in an administrative or judicially approved  
 11 settlement is not liable for claims for contribution  
 12 regarding matters addressed in the settlement. The  
 13 settlement does not discharge any of the other potentially  
 14 liable persons unless its terms provide a discharge. The  
 15 terms of the settlement may reduce the potential liability  
 16 of the other potentially liable persons by the amount of the  
 17 settlement.  
 18       (2) If the state has obtained less than complete relief  
 19 from a person who has resolved his liability to the state in  
 20 an administrative or judicially approved settlement, the  
 21 state may bring an action against any other person who has  
 22 not resolved his liability.  
 23       (3) A person who has resolved, in whole or in part, his  
 24 liability to the state for the release or for remedial  
 25 action costs in an administrative or judicially approved

1 settlement may seek contribution from a person who is not  
 2 party to a settlement referred to in subsection (1).

3 (4) Whenever practicable and in the public interest, as  
 4 determined by the director of the department, the department  
 5 may, as promptly as possible, reach a final settlement with  
 6 a person liable under 75-10-715 in an administrative or  
 7 civil action under 75-10-711 if such the settlement involves  
 8 only a minor portion of the response costs at the facility  
 9 concerned and, in the judgment of the department, the  
 10 conditions in either of the following subsection (4)(a) or  
 11 (4)(b) are met:

12 (a) Both of the following are minimal in comparison to  
 13 other hazardous or deleterious substances at the facility:

14 (i) the amount of the hazardous or deleterious  
 15 substances contributed by that person to the facility;

16 (ii) the toxic or other hazardous effects of the  
 17 substances contributed by that person to the facility.

18 (b) (i) The person:

19 (A) is the owner of the real property on or in which  
 20 the facility is located;

21 (B) did not conduct or permit the generation,  
 22 transportation, storage, treatment, or disposal of any  
 23 hazardous or deleterious substance at the facility; and

24 (C) did not contribute to the release or threat of  
 25 release of a hazardous or deleterious substance at the

1 facility through any action or omission.

2 (ii) This subsection (4)(b) does not apply if the person  
 3 purchased the real property with actual or constructive  
 4 knowledge that the property was used for the generation,  
 5 transportation, storage, treatment, or disposal of any  
 6 hazardous or deleterious substance.

7 (5) As part of an administrative or judicially approved  
 8 settlement agreement, the department shall MAY require the  
 9 posting--of--a--bond LIABLE PERSON TO PROVIDE FINANCIAL  
 10 ASSURANCE, in an amount determined by the department, to  
 11 ensure the long-term OPERATION AND maintenance of the  
 12 remedial action site. THE LIABLE PERSON SHALL PROVIDE THE  
 13 FINANCIAL ASSURANCE BY ANY ONE METHOD OR COMBINATION OF  
 14 METHODS SATISFACTORY TO THE DEPARTMENT, INCLUDING BUT NOT  
 15 LIMITED TO INSURANCE, GUARANTEE, PERFORMANCE OR OTHER SURETY  
 16 BOND, LETTER OF CREDIT, AND QUALIFICATION AS A SELF-INSURER,  
 17 OR OTHER DEMONSTRATION OF FINANCIAL CAPABILITY."

18 **Section 5.** Section 75-10-721, MCA, is amended to read:

19 "75-10-721. Degree of cleanup required -- permit  
 20 exemption -- performance--bond FINANCIAL ASSURANCE. (1) A  
 21 remedial action performed under this part must attain a  
 22 degree of cleanup of the hazardous or deleterious substance  
 23 and control of a threatened release or further release of  
 24 that substance that assures present and future protection of  
 25 public health, safety, and welfare and of the environment.

1 (2) In approving or carrying out remedial actions  
2 performed under this part, the department:

3 (a) shall require cleanup consistent with applicable  
4 state or federal environmental requirements, criteria, or  
5 limitations;

6 (b) shall consider and may require cleanup consistent  
7 with substantive state or federal environmental  
8 requirements, criteria, or limitations that are well-suited  
9 to the site conditions; and

10 (c) shall select remedial actions that, at a minimum,  
11 protect public health, safety, and welfare and the  
12 environment and that:

13 (i) use permanent solutions;

14 (ii) use alternative treatment technologies or resource  
15 recovery technologies to the maximum extent practicable; and

16 (iii) are cost-effective, taking into account the total  
17 short- and long-term costs of the actions, including the  
18 cost of operation and maintenance activities for the entire  
19 period during which the activities will be required.

20 (3) The department may exempt any portion of a remedial  
21 action that is conducted entirely on site from a state or  
22 local permit that would, in the absence of the remedial  
23 action, be required if the remedial action is carried out in  
24 accordance with the standards established under subsection  
25 (1) and this part.

1 ~~(4) The department may require a performance bond~~  
2 ~~FINANCIAL ASSURANCE from a liable person or a remedial~~  
3 ~~action contractor in an amount that the department~~  
4 ~~determines will ensure attainment of the degree of cleanup~~  
5 ~~required by subsections (1) and (2):~~ THE LONG-TERM OPERATION  
6 AND MAINTENANCE OF THE REMEDIAL ACTION SITE. THE LIABLE  
7 PERSON SHALL PROVIDE THE FINANCIAL ASSURANCE BY ANY ONE  
8 METHOD OR COMBINATION OF METHODS SATISFACTORY TO THE  
9 DEPARTMENT, INCLUDING BUT NOT LIMITED TO INSURANCE,  
10 GUARANTEE, PERFORMANCE OR OTHER SURETY BOND, LETTER OF  
11 CREDIT, AND QUALIFICATION AS A SELF-INSURER, OR OTHER  
12 DEMONSTRATION OF FINANCIAL CAPABILITY."

13 Section 6, Section 75-10-723, MCA, is amended to read:  
14 "75-10-723. Agreements to perform remedial action (1)  
15 To expedite effective remedial actions and minimize  
16 litigation, the department, in its discretion and whenever  
17 practicable and in the public interest, may negotiate and  
18 enter into an agreement with any person, including the owner  
19 or operator of the facility from which a release emanates,  
20 to perform a remedial action if the department determines  
21 that the action will be properly done by the person. The  
22 agreement must contain a provision requiring the posting of  
23 a performance bond, as provided in 75-10-719(5), and any  
24 terms and conditions that the department in its discretion  
25 determines to be appropriate.

1       ~~(2) Whenever the department enters into an agreement~~  
2       ~~under this section for remedial action or for assessment or~~  
3       ~~payment of natural resource damages, the agreement must be~~  
4       ~~filed in an appropriate district court as a consent decree~~  
5       ~~and must be available for public comment for at least 30~~  
6       ~~days.~~

7       ~~(3) A decision of the department to enter into or not~~  
8       ~~enter into agreements under this section is not subject to~~  
9       ~~judicial review."~~

10       NEW SECTION. Section 6. Severability. If a part of  
11       [this act] is invalid, all valid parts that are severable  
12       from the invalid part remain in effect. If a part of [this  
13       act] is invalid in one or more of its applications, the part  
14       remains in effect in all valid applications that are  
15       severable from the invalid applications.

16       NEW SECTION. SECTION 7. RETROACTIVE APPLICABILITY.  
17       [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE MEANING OF  
18       1-2-109, TO OCCURRENCES AFTER JUNE 30, 1985.

-End-