

HOUSE BILL NO. 766

INTRODUCED BY REAM, HALLIGAN, B. WILLIAMS, MOHAR,
KRUEGER, DARKO, GARCIA, ECK, REGAN, ADDY, STIMATZ,
JACOBSON, D. BROWN, KEENAN, SHAW, IVERSON, LYNCH,
HARPER, RANEY, BRADLEY, COHEN, COBB, LORY, TVEIT,
CONNELLY, FRITZ, MILES, DRISCOLL, JANET MOORE,
GRADY, KADAS, HARRINGTON, HARP

BY REQUEST OF THE GOVERNOR

IN THE HOUSE

February 11, 1985	Introduced and referred to Committee on Natural Resources.
February 23, 1985	Committee recommend bill do pass. Report adopted. Statement of Intent attached.
February 25, 1985	Bill printed and placed on members' desks.
February 26, 1985	Second reading, do pass. Considered correctly engrossed.
February 27, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 6, 1985	Introduced and referred to Committee on Public Health, Welfare and Safety.
March 29, 1985	Committee recommend bill be concurrent in as amended. Report adopted.

March 30, 1985	On motion, taken from second reading and rereferred to Committee on Finance and Claims. Motion adopted.
April 5, 1985	Committee recommend bill be concurred in as amended. Report adopted.
April 9, 1985	Second reading, concurred in as amended.
April 11, 1985	Third reading, concurred in. Ayes, 42; Noes, 8.
	Returned to House with amendments.

IN THE HOUSE

April 12, 1985	Received from Senate.
April 13, 1985	On motion, consideration passed for the day.
April 15, 1985	Second reading, amendments concurred in.
April 16, 1985	Third reading, amendments concurred in.
	Sent to enrolling.
April 17, 1985	Correctly enrolled.
April 18, 1985	Signed by President.
	Signed by Speaker.
April 22, 1985	Delivered to Governor.
April 24, 1985	Returned from Governor with recommended amendments.
	Second reading, Governor's amendments concurred in.

April 25, 1985

Third reading, Governor's
amendments concurred in.

Governor's amendments
transmitted to Senate.

IN THE SENATE

April 25, 1985

Received from House.

Second reading, Governor's
amendments concurred in.

Third reading, Governor's
amendments concurred in.

Returned to House.

IN THE HOUSE

April 25, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

1 *Marko* *Jarcia* *KRUEGER*
 2 *Ream* *HOUSE* BILL NO. *766* *Molan*
 3 *Eck* *Byrd* BY REQUEST OF THE GOVERNOR *Bradley*
 4 *Stead* *Jacobsen* *Keenan* *Haw* *Raney* *Lois*
 5 *Kadas* *Hamm* A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
 6 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO TAKE
 7 REMEDIAL ACTION TO PREVENT OR ALLEVIATE RELEASE OF HAZARDOUS
 8 OR DELETERIOUS SUBSTANCES INTO THE ENVIRONMENT; ESTABLISHING
 9 A SPECIAL FUND FOR REMEDIAL ACTION; PROVIDING FOR FUNDING OF
 10 THE SPECIAL FUND; AND PROVIDING EFFECTIVE DATES."
 11 *Moore*
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Definitions. As used in [sections 1 through
 14 7], unless the context requires otherwise, the following
 15 definitions apply:

- 16 (1) "Department" means the department of health and
 17 environmental sciences provided for in Title 2, chapter 15,
 18 part 21.
- 19 (2) "Fund" means the environmental quality protection
 20 fund established in [section 2].
- 21 (3) "Hazardous or deleterious substance" means a
 22 substance that poses an imminent and substantial threat to
 23 public health, public welfare, or the environment and that
 24 is:
 25 (a) defined as a hazardous waste pursuant to Title 75,

- 1 chapter 10, part 4;
- 2 (b) water pollution as defined in 75-5-103; or
- 3 (c) air pollution as defined in 75-2-103.
- 4 (4) "Release" means any spilling, leaking, pumping,
 5 pouring, emitting, emptying, discharging, injecting,
 6 escaping, leaching, dumping, or disposing of a hazardous or
 7 deleterious substance either directly into the environment
 8 or in a manner in which the substance can reasonably be
 9 expected to enter the environment if not contained, removed,
 10 or abated, but excludes releases confined to the indoor
 11 workplace environment.
- 12 (5) "Remedial action" includes all investigation,
 13 monitoring, cleanup, restoration, abatement, removal,
 14 replacement, and other actions necessary or appropriate to
 15 respond to a release.
- 16 Section 2. Environmental quality protection fund.
- 17 (1) There is created in the state special revenue fund an
 18 environmental quality protection fund to be administered as
 19 a revolving fund by the department. The department is
 20 authorized to expend amounts from the fund necessary to
 21 carry out the purposes of [sections 1 through 7].
- 22 (2) The fund may be used to carry out the provisions
 23 of [sections 1 through 7] and for remedial actions taken by
 24 the department pursuant to [sections 1 through 7] in
 25 response to a release of hazardous or deleterious

1 substances.

2 (3) There must be deposited in the fund:

3 (a) all department expenditures recovered pursuant to
4 [section 6]; and

5 [(b) funds received from the legacy program state
6 special revenue account established by [section 4 of the
7 Montana Legacy Act, Senate Bill No. 277] as emergency
8 requests made pursuant to [section 5(5) of the Montana
9 Legacy Act, Senate Bill No. 277].]

10 (4) As long as the amount of money in the fund is
11 sufficient to defray the costs of remedial action taken
12 pursuant to [sections 3 and 4], the department is authorized
13 to make expenditures from the fund for such remedial action
14 without prior approval from the governor. [Whenever the
15 amount of money in the fund is insufficient to carry out
16 remedial action, the department may apply to the governor
17 for a grant from the contingency fund of the legacy program
18 state special revenue account pursuant to [section 5(5)] of
19 the Montana Legacy Act.]

20 [(5) The fund is statutorily appropriated as described
21 in [section 2 of HB 12] for the purposes described in
22 subsection (2).]

23 Section 3. Remedial action. (1) The department may
24 take remedial action necessary and appropriate to protect
25 the public health, public welfare, or the environment

1 whenever it determines that:

2 (a) there has been a release or there is a substantial
3 threat of a release; and

4 (b) the appropriate remedial action will not be done
5 properly and expeditiously by the owner or operator of the
6 vessel, vehicle, or facility from which the release emanates
7 or by any other responsible party.

8 (2) Whenever the department is authorized to act
9 pursuant to subsection (1) or has reason to believe that a
10 release has occurred or is about to occur, the department
11 may undertake any investigation, monitoring, survey,
12 testing, or other information-gathering that is necessary
13 and appropriate to identify the existence, nature, origin,
14 and extent of the release or the threat of release and the
15 extent and imminence of the danger to the public health,
16 public welfare, or the environment.

17 (3) Any person responsible for the release must take
18 immediate action to contain, remove, and abate the release.
19 Except as provided in [section 4], the department is
20 authorized to draw upon the fund in order to take action
21 under subsections (1) and (2) if it has made diligent good
22 faith efforts to determine the identity of the party or
23 parties responsible for the release or threatened release
24 and:

25 (a) is unable to determine the identity of the

1 responsible party or parties in a manner consistent with the
2 need to take timely remedial action; or

3 (b) the party or parties determined by the department
4 to be responsible for the release or threatened release have
5 been informed in writing of the department's determination
6 and have been requested by the department to take
7 appropriate remedial action but are unable or unwilling to
8 take such action in a timely manner.

9 (4) The written notice to a responsible party must
10 inform the responsible party that if that party is
11 subsequently found liable pursuant to [section 6], he may be
12 required to reimburse the fund for the costs of the remedial
13 action taken by the department and may be subject to
14 punitive damages.

15 Section 4. Emergency action. If the department
16 determines that immediate response to an imminent threat to
17 public health, public welfare, or the environment is
18 necessary to avoid substantial injury or damage to persons,
19 property, or resources, remedial action may be taken
20 pursuant to [section 3(1) and (2)] without the prior written
21 notice required by [section 3(3)(b)]. In such a case, the
22 department must give subsequent written notice to the
23 responsible party within 5 days after the action is taken,
24 describing the circumstances which required the action to be
25 taken without prior notice.

1 Section 5. Actions -- general provisions. (1) No
2 action taken by any person to contain or remove a release,
3 whether the action is taken voluntarily or at the request of
4 the department or its designee, may be construed as an
5 admission of liability for the discharge.

6 (2) Actions taken by the department pursuant to
7 [sections 3 and 4] are not subject to the public bidding
8 requirements of Title 18.

9 Section 6. Reimbursement and penalties -- proceedings
10 -- defenses. (1) Subject only to the defenses set forth in
11 subsection (3), a party responsible for a release is liable
12 for:

13 (a) all costs of remedial action taken by the
14 department pursuant to [sections 1 through 7]; and

15 (b) damages for injury to, destruction of, or loss of
16 natural resources caused by the release or threatened
17 release.

18 (2) If the responsible party fails, without sufficient
19 cause, to properly provide remedial action upon notification
20 by the department pursuant to [section 3(3)(b)], the
21 responsible party may be liable for punitive damages in an
22 amount not to exceed two times the amount of any costs
23 incurred by the department pursuant to [section 6].

24 (3) The department may initiate civil proceedings in
25 district court to recover costs, damages, or penalties under

1 subsections (1) and (2). Venue for any action to recover
 2 costs, damages, or penalties lies in the county where the
 3 release occurred or where the responsible party resides or
 4 has its principal place of business or in the district court
 5 of the first judicial district.

6 (4) No party is liable under subsection (1) or (2) if
 7 that party can establish by a preponderance of the evidence
 8 that:

9 (a) the department failed to follow the notice
 10 provisions of [section 3] when required; or

11 (b) the release did not emanate from any vessel
 12 vehicle, or facility over which the party had any authority
 13 or control and was not caused by any action or omission of
 14 the party; or

15 (c) in the case of assessment of punitive damages,
 16 that factors beyond the control of the responsible party
 17 prevented the party from taking timely remedial action.

18 (5) (a) Costs of remedial action recovered pursuant to
 19 subsection (1)(a) must be deposited in the fund.

20 [(b) Damages and penalties recovered pursuant to
 21 subsections (1)(b) and (2) must be deposited in the
 22 contingency fund of the legacy program state special revenue
 23 account established by [section 5(5) of the Montana Legacy
 24 Act, Senate Bill No. 277].]

25 Section 7. Rulemaking authority. The department is

1 authorized to adopt rules for the implementation of
 2 [sections 1 through 7].

3 Section 8. Saving clause. This act does not affect
 4 rights and duties that matured, penalties that were
 5 incurred, or proceedings that were begun before the
 6 effective date of this act.

7 Section 9. Severability. If a part of this act is
 8 invalid, all valid parts that are severable from the invalid
 9 part remain in effect. If a part of this act is invalid in
 10 one or more of its applications, the part remains in effect
 11 in all valid applications that are severable from the
 12 invalid applications.

13 Section 10. Coordination instruction. (1) The
 14 bracketed language constituting section 2(5) is effective
 15 only if both this act and HB 12 are passed and approved. If
 16 both this act and HB 12 are passed and approved, a citation
 17 to section 2 of this act is added to the list of citations
 18 contained in section 2 of HB 12.

19 (2) The bracketed language in section 2(3)(b) and (4)
 20 and section 6(5)(b) is effective only if both this act and
 21 [the Montana Legacy Act, Senate Bill No. 277] are passed and
 22 approved.

23 Section 11. Effective dates. (1) Sections 1 through 6
 24 and 8 through 10 are effective July 1, 1985.

25 (2) Section 7 and this section are effective on

LC 0625/01

- 1 passage and approval, but rules adopted pursuant to section
- 2 7 may not take effect before July 1, 1985.

-End-

APPROVED BY COMM. ON
NATURAL RESOURCES

STATEMENT OF INTENT

HOUSE BILL 766

House Natural Resources Committee

This bill establishes a special fund and authorizes the department of health and environmental sciences to spend money from that fund for the purpose of taking emergency, remedial action in cases of release of hazardous or deleterious substances into the environment. Rulemaking is required for the implementation of these provisions. It is the intent of the legislature that the department be authorized to adopt rules clarifying and setting forth more detailed procedures and criteria in such areas as:

(1) definition of remedial actions to include such things as cleanup and restoration of water resources, provisions of alternate sources of supply, relocation of persons and property in imminent danger of injury or damage, and investigation and monitoring of releases of hazardous and deleterious substances;

(2) procedures for identifying responsible parties and notifying them of the department's intent to take remedial action;

(3) criteria for taking emergency actions in cases where prior notification to the responsible party is not possible;

(4) procedures for retaining consultants to perform remedial actions under the department's direction;

(5) procedures for accounting for funds expended in performing remedial actions; and

(6) procedures for coordination of remedial actions with the activities of other state or local government agencies with relevant expertise or authority.

1 HOUSE BILL NO. 766

2 INTRODUCED BY REAM, HALLIGAN, B. WILLIAMS, MOHAR,
 3 KRUEGER, DARKO, GARCIA, ECK, REGAN, ADDY, STIMATZ,
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8 BY REQUEST OF THE GOVERNOR

9
 10 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
 11 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO TAKE
 12 REMEDIAL ACTION TO PREVENT OR ALLEVIATE RELEASE OF HAZARDOUS
 13 OR DELETERIOUS SUBSTANCES INTO THE ENVIRONMENT; ESTABLISHING
 14 A SPECIAL FUND FOR REMEDIAL ACTION; PROVIDING FOR FUNDING OF
 15 THE SPECIAL FUND; AND PROVIDING EFFECTIVE DATES."

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

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 19 7], unless the context requires otherwise, the following
 20 definitions apply:

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

24 (2) "Fund" means the environmental quality protection
 25 fund established in [section 2].

1 (3) "Hazardous or deleterious substance" means a
 2 substance that poses an imminent and substantial threat to
 3 public health, public welfare, or the environment and that
 4 is:

5 (a) defined as a hazardous waste pursuant to Title 75,
 6 chapter 10, part 4;

7 (b) water pollution as defined in 75-5-103; or

8 (c) air pollution as defined in 75-2-103.

9 (4) "Release" means any spilling, leaking, pumping,
 10 pouring, emitting, emptying, discharging, injecting,
 11 escaping, leaching, dumping, or disposing of a hazardous or
 12 deleterious substance either directly into the environment
 13 or in a manner in which the substance can reasonably be
 14 expected to enter the environment if not contained, removed,
 15 or abated, but excludes releases confined to the indoor
 16 workplace environment.

17 (5) "Remedial action" includes all investigation,
 18 monitoring, cleanup, restoration, abatement, removal,
 19 replacement, and other actions necessary or appropriate to
 20 respond to a release.

21 Section 2. Environmental quality protection fund.
 22 (1) There is created in the state special revenue fund an
 23 environmental quality protection fund to be administered as
 24 a revolving fund by the department. The department is
 25 authorized to expend amounts from the fund necessary to

1 carry out the purposes of [sections 1 through 7].

2 (2) The fund may be used to carry out the provisions
3 of [sections 1 through 7] and for remedial actions taken by
4 the department pursuant to [sections 1 through 7] in
5 response to a release of hazardous or deleterious
6 substances.

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

8 (a) all department expenditures recovered pursuant to
9 [section 6]; and

10 [(b) funds received from the legacy program state
11 special revenue account established by [section 4 of the
12 Montana Legacy Act, Senate Bill No. 277] as emergency
13 requests made pursuant to [section 5(5) of the Montana
14 Legacy Act, Senate Bill No. 277].]

15 (4) As long as the amount of money in the fund is
16 sufficient to defray the costs of remedial action taken
17 pursuant to [sections 3 and 4], the department is authorized
18 to make expenditures from the fund for such remedial action
19 without prior approval from the governor. [Whenever the
20 amount of money in the fund is insufficient to carry out
21 remedial action, the department may apply to the governor
22 for a grant from the contingency fund of the legacy program
23 state special revenue account pursuant to [section 5(5)] of
24 the Montana Legacy Act.]

25 [(5) The fund is statutorily appropriated as described

1 in [section 2 of HB 12] for the purposes described in
2 subsection (2).]

3 Section 3. Remedial action. (1) The department may
4 take remedial action necessary and appropriate to protect
5 the public health, public welfare, or the environment
6 whenever it determines that:

7 (a) there has been a release or there is a substantial
8 threat of a release; and

9 (b) the appropriate remedial action will not be done
10 properly and expeditiously by the owner or operator of the
11 vessel, vehicle, or facility from which the release emanates
12 or by any other responsible party.

13 (2) Whenever the department is authorized to act
14 pursuant to subsection (1) or has reason to believe that a
15 release has occurred or is about to occur, the department
16 may undertake any investigation, monitoring, survey,
17 testing, or other information-gathering that is necessary
18 and appropriate to identify the existence, nature, origin,
19 and extent of the release or the threat of release and the
20 extent and imminence of the danger to the public health,
21 public welfare, or the environment.

22 (3) Any person responsible for the release must take
23 immediate action to contain, remove, and abate the release.
24 Except as provided in [section 4], the department is
25 authorized to draw upon the fund in order to take action

1 under subsections (1) and (2) if it has made diligent good
2 faith efforts to determine the identity of the party or
3 parties responsible for the release or threatened release
4 and:

5 (a) is unable to determine the identity of the
6 responsible party or parties in a manner consistent with the
7 need to take timely remedial action; or

8 (b) the party or parties determined by the department
9 to be responsible for the release or threatened release have
10 been informed in writing of the department's determination
11 and have been requested by the department to take
12 appropriate remedial action but are unable or unwilling to
13 take such action in a timely manner.

14 (4) The written notice to a responsible party must
15 inform the responsible party that if that party is
16 subsequently found liable pursuant to [section 6], he may be
17 required to reimburse the fund for the costs of the remedial
18 action taken by the department and may be subject to
19 punitive damages.

20 Section 4. Emergency action. If the department
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25 pursuant to [section 3(1) and (2)] without the prior written

1 notice required by [section 3(3)(b)]. In such a case, the
2 department must give subsequent written notice to the
3 responsible party within 5 days after the action is taken,
4 describing the circumstances which required the action to be
5 taken without prior notice.

6 Section 5. Actions -- general provisions. (1) No
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8 whether the action is taken voluntarily or at the request of
9 the department or its designee, may be construed as an
10 admission of liability for the discharge.

11 (2) Actions taken by the department pursuant to
12 [sections 3 and 4] are not subject to the public bidding
13 requirements of Title 18.

14 Section 6. Reimbursement and penalties -- proceedings
15 -- defenses. (1) Subject only to the defenses set forth in
16 subsection (3), a party responsible for a release is liable
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19 department pursuant to [sections 1 through 7]; and

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21 natural resources caused by the release or threatened
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23 (2) If the responsible party fails, without sufficient
24 cause, to properly provide remedial action upon notification
25 by the department pursuant to [section 3(3)(b)], the

1 responsible party may be liable for punitive damages in an
2 amount not to exceed two times the amount of any costs
3 incurred by the department pursuant to [section 6].

4 (3) The department may initiate civil proceedings in
5 district court to recover costs, damages, or penalties under
6 subsections (1) and (2). Venue for any action to recover
7 costs, damages, or penalties lies in the county where the
8 release occurred or where the responsible party resides or
9 has its principal place of business or in the district court
10 of the first judicial district.

11 (4) No party is liable under subsection (1) or (2) if
12 that party can establish by a preponderance of the evidence
13 that:

14 (a) the department failed to follow the notice
15 provisions of [section 3] when required; or

16 (b) the release did not emanate from any vessel,
17 vehicle, or facility over which the party had any authority
18 or control and was not caused by any action or omission of
19 the party; or

20 (c) in the case of assessment of punitive damages,
21 that factors beyond the control of the responsible party
22 prevented the party from taking timely remedial action.

23 (5) (a) Costs of remedial action recovered pursuant to
24 subsection (1)(a) must be deposited in the fund.

25 ((b) Damages and penalties recovered pursuant to

1 subsections (1)(b) and (2) must be deposited in the
2 contingency fund of the legacy program state special revenue
3 account established by [section 5(5) of the Montana Legacy
4 Act, Senate Bill No. 277].]

5 Section 7. Rulemaking authority. The department is
6 authorized to adopt rules for the implementation of
7 [sections 1 through 7].

8 Section 8. Saving clause. This act does not affect
9 rights and duties that matured, penalties that were
10 incurred, or proceedings that were begun before the
11 effective date of this act.

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13 invalid, all valid parts that are severable from the invalid
14 part remain in effect. If a part of this act is invalid in
15 one or more of its applications, the part remains in effect
16 in all valid applications that are severable from the
17 invalid applications.

18 Section 10. Coordination instruction. (1) The
19 bracketed language constituting section 2(5) is effective
20 only if both this act and HB 12 are passed and approved. If
21 both this act and HB 12 are passed and approved, a citation
22 to section 2 of this act is added to the list of citations
23 contained in section 2 of HB 12.

24 (2) The bracketed language in section 2(3)(b) and (4)
25 and section 6(5)(b) is effective only if both this act and

1 [the Montana Legacy Act, Senate Bill No. 277] are passed and
2 approved.

3 Section 11. Effective dates. (1) Sections 1 through 6
4 and 8 through 10 are effective July 1, 1985.

5 (2) Section 7 and this section are effective on
6 passage and approval, but rules adopted pursuant to section
7 7 may not take effect before July 1, 1985.

-End-

STATEMENT OF INTENT

HOUSE BILL 766

House Natural Resources Committee

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5 This bill establishes a special fund and authorizes the
6 department of health and environmental sciences to spend
7 money from that fund for the purpose of taking emergency,
8 remedial action in cases of release of hazardous or
9 deleterious substances into the environment. Rulemaking is
10 required for the implementation of these provisions. It is
11 the intent of the legislature that the department be
12 authorized to adopt rules clarifying and setting forth more
13 detailed procedures and criteria in such areas as:

14 (1) definition of remedial actions to include such
15 things as cleanup and restoration of water resources,
16 provisions of alternate sources of supply, relocation of
17 persons and property in imminent danger of injury or damage,
18 and investigation and monitoring of releases of hazardous
19 and deleterious substances;

20 (2) procedures for identifying responsible parties and
21 notifying them of the department's intent to take remedial
22 action;

23 (3) criteria for taking emergency actions in cases
24 where prior notification to the responsible party is not
25 possible;

1 (4) procedures for retaining consultants to perform
2 remedial actions under the department's direction;
3 (5) procedures for accounting for funds expended in
4 performing remedial actions; and
5 (6) procedures for coordination of remedial actions
6 with the activities of other state or local government
7 agencies with relevant expertise or authority.



HOUSE BILL NO. 766

INTRODUCED BY REAM, HALLIGAN, B. WILLIAMS, MOHAR, KRUEGER, DARKO, GARCIA, ECK, REGAN, ADDY, STIMATZ, JACOBSON, D. BROWN, KEENAN, SHAW, IVERSON, LYNCH, HARPER, RANEY, BRADLEY, COHEN, COBB, LORY, TVEIT, CONNELLY, FRITZ, MILES, DRISCOLL, JANET MOORE, GRADY, KADAS, HARRINGTON, HARP

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO TAKE REMEDIAL ACTION TO PREVENT OR ALLEVIATE RELEASE OF HAZARDOUS OR DELETERIOUS SUBSTANCES INTO THE ENVIRONMENT; ESTABLISHING A SPECIAL FUND FOR REMEDIAL ACTION; PROVIDING FOR FUNDING OF THE SPECIAL FUND; AND PROVIDING EFFECTIVE DATES."

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

Section 1. Definitions. As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

- (1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.
(2) "Fund" means the environmental quality protection fund established in [section 2].

(3) "Hazardous or deleterious substance" means a substance that poses an imminent and substantial threat to public health, public welfare, or the environment and that is:

- (a) defined as a hazardous waste pursuant to Title 75, chapter 10, part 4;
(b) water pollution as defined in 75-5-103; or
(c) air pollution as defined in 75-2-103.

(4) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance either directly into the environment or in a manner in which the substance can reasonably be expected to enter the environment if not contained, removed, or abated, but excludes releases confined to the indoor workplace environment.

(5) "Remedial action" includes all investigation, monitoring, cleanup, restoration, abatement, removal, replacement, and other actions necessary or appropriate to respond to a release.

Section 2. 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

1 carry out the purposes of [sections 1 through 7].

2 (2) The fund may be used to carry out the provisions
3 of [sections 1 through 7] and for remedial actions taken by
4 the department pursuant to [sections 1 through 7] in
5 response to a release of hazardous or deleterious
6 substances.

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

8 (a) all department expenditures recovered pursuant to
9 [section 6]; and

10 [(b) funds received from the legacy program state
11 special revenue account established by [section 4 of the
12 Montana Legacy Act, Senate Bill No. 277] as emergency
13 requests made pursuant to [section 5(5) of the Montana
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15 (4) As long as the amount of money in the fund is
16 sufficient to defray the costs of remedial action taken
17 pursuant to [sections 3 and 4], the department is authorized
18 to make expenditures from the fund for such remedial action
19 without prior approval from the governor. [Whenever the
20 amount of money in the fund is insufficient to carry out
21 remedial action, the department may apply to the governor
22 for a grant from the contingency fund of the legacy program
23 state special revenue account pursuant to [section 5(5)] of
24 the Montana Legacy Act.]

25 [(5) The fund is statutorily appropriated as described

1 in [section 2 of HB 12] for the purposes described in
2 subsection (2).]

3 Section 3. Remedial action. (1) The department may
4 take remedial action necessary and appropriate to protect
5 the public health, public welfare, or the environment
6 whenever it determines that:

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8 threat of a release; and

9 (b) the appropriate remedial action will not be done
10 properly and expeditiously by the owner or operator of the
11 vessel, vehicle, or facility from which the release emanates
12 or by any other responsible party.

13 (2) Whenever the department is authorized to act
14 pursuant to subsection (1) or has reason to believe that a
15 release has occurred or is about to occur, the department
16 may undertake any investigation, monitoring, survey,
17 testing, or other information-gathering that is necessary
18 and appropriate to identify the existence, nature, origin,
19 and extent of the release or the threat of release and the
20 extent and imminence of the danger to the public health,
21 public welfare, or the environment.

22 (3) Any person responsible for the release must take
23 immediate action to contain, remove, and abate the release.
24 Except as provided in [section 4], the department is
25 authorized to draw upon the fund in order to take action

1 under subsections (1) and (2) if it has made diligent good
2 faith efforts to determine the identity of the party or
3 parties responsible for the release or threatened release
4 and:

5 (a) is unable to determine the identity of the
6 responsible party or parties in a manner consistent with the
7 need to take timely remedial action; or

8 (b) the party or parties determined by the department
9 to be responsible for the release or threatened release have
10 been informed in writing of the department's determination
11 and have been requested by the department to take
12 appropriate remedial action but are unable or unwilling to
13 take such action in a timely manner.

14 (4) The written notice to a responsible party must
15 inform the responsible party that if that party is
16 subsequently found liable pursuant to [section 6], he may be
17 required to reimburse the fund for the costs of the remedial
18 action taken by the department and may be subject to
19 punitive damages.

20 Section 4. Emergency action. If the department
21 determines that immediate response to an imminent threat to
22 public health, public welfare, or the environment is
23 necessary to avoid substantial injury or damage to persons,
24 property, or resources, remedial action may be taken
25 pursuant to [section 3(1) and (2)] without the prior written

1 notice required by [section 3(3)(b)]. In such a case, the
2 department must give subsequent written notice to the
3 responsible party within 5 days after the action is taken,
4 describing the circumstances which required the action to be
5 taken without prior notice.

6 Section 5. Actions -- general provisions. (1) No
7 action taken by any person to contain or remove a release,
8 whether the action is taken voluntarily or at the request of
9 the department or its designee, may be construed as an
10 admission of liability for the discharge.

11 (2) Actions taken by the department pursuant to
12 [sections 3 and 4] are not subject to the public bidding
13 requirements of Title 18.

14 Section 6. Reimbursement and penalties -- proceedings
15 -- defenses. (1) Subject only to the defenses set forth in
16 subsection (3), a party responsible for a release is liable
17 for:

18 (a) all costs of remedial action taken by the
19 department pursuant to [sections 1 through 7]; and

20 (b) damages for injury to, destruction of, or loss of
21 natural resources caused by the release or threatened
22 release.

23 (2) If the responsible party fails, without sufficient
24 cause, to properly provide remedial action upon notification
25 by the department pursuant to [section 3(3)(b)], the

1 responsible party may be liable for punitive damages in an
2 amount not to exceed two times the amount of any costs
3 incurred by the department pursuant to [section 6].

4 (3) The department may initiate civil proceedings in
5 district court to recover costs, damages, or penalties under
6 subsections (1) and (2). Venue for any action to recover
7 costs, damages, or penalties lies in the county where the
8 release occurred or where the responsible party resides or
9 has its principal place of business or in the district court
10 of the first judicial district.

11 (4) No party is liable under subsection (1) or (2) if
12 that party can establish by a preponderance of the evidence
13 that:

14 (a) the department failed to follow the notice
15 provisions of [section 3] when required; or

16 (b) the release did not emanate from any vessel,
17 vehicle, or facility over which the party had any authority
18 or control and was not caused by any action or omission of
19 the party; or

20 (c) in the case of assessment of punitive damages,
21 that factors beyond the control of the responsible party
22 prevented the party from taking timely remedial action.

23 (5) (a) Costs of remedial action recovered pursuant to
24 subsection (1)(a) must be deposited in the fund.

25 [(b) Damages and penalties recovered pursuant to

1 subsections (1)(b) and (2) must be deposited in the
2 contingency fund of the legacy program state special revenue
3 account established by [section 5(5) of the Montana Legacy
4 Act, Senate Bill No. 277].]

5 Section 7. Rulemaking authority. The department is
6 authorized to adopt rules for the implementation of
7 [sections 1 through 7].

8 Section 8. Saving clause. This act does not affect
9 rights and duties that matured, penalties that were
10 incurred, or proceedings that were begun before the
11 effective date of this act.

12 Section 9. Severability. If a part of this act is
13 invalid, all valid parts that are severable from the invalid
14 part remain in effect. If a part of this act is invalid in
15 one or more of its applications, the part remains in effect
16 in all valid applications that are severable from the
17 invalid applications.

18 Section 10. Coordination instruction. (1) The
19 bracketed language constituting section 2(5) is effective
20 only if both this act and HB 12 are passed and approved. If
21 both this act and HB 12 are passed and approved, a citation
22 to section 2 of this act is added to the list of citations
23 contained in section 2 of HB 12.

24 (2) The bracketed language in section 2(3)(b) and (4)
25 and section 6(5)(b) is effective only if both this act and

1 [the Montana Legacy Act, Senate Bill No. 277] are passed and
2 approved.

3 Section 11. Effective dates. (1) Sections 1 through 6
4 and 8 through 10 are effective July 1, 1985.

5 (2) Section 7 and this section are effective on
6 passage and approval, but rules adopted pursuant to section
7 7 may not take effect before July 1, 1985.

-End-

SENATE STANDING COMMITTEE REPORT

MARCH 28, 19 85

MR. PRESIDENT

We, your committee on PUBLIC HEALTH, WELFARE AND SAFETY

having had under consideration HOUSE BILL No. 766

THIRD reading copy (BLUE) color

REMEDIAL ACTION FUND TO ALLEVIATE OR PREVENT WATER CONTAMINATION

REAM ~~XXXXXXXXXX~~ (HALLIGAN)

Respectfully report as follows: That HOUSE BILL No. 766

be amended as follows:

- 1. Page 2, line 3. Following: "health" Strike: ", public welfare, or the environment"
2. Page 2, lines 4 through 8. Following: "is" on line 4 Strike: remainder of line 4 through "75-2-103" on line 8 Insert: "either a petroleum product or listed as a hazardous substance under 40 CFR part 302.4 pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act"
3. Page 2, line 16. Following: "environment" Insert: ", the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers as defined in 80-10-101(2) when applied as part of accepted agricultural practice"
4. Page 6, line 16. Following: "subsection" Strike: "(3)" Insert: "(4)"

IB XXXXXX

XXXXXXXXXX AND AS AMENDED BE CONCURRED IN

Judy Jacobson SENATOR JUDY JACOBSON Chairman.

STANDING COMMITTEE REPORT
SENATE

April 4 1985

MR. PRESIDENT

We, your committee on Finance and Claims

having had under consideration House Bill No. 766

third reading copy (blue)
color

REMEDIAL ACTION FUND TO ALLEVIATE OR PREVENT WATER CONTAMINATION

REAM (Halligan)

Respectfully report as follows: That House Bill No. 766,
be amended as follows:

1. Title, line 14.
Following: "FUNDING"
Insert: "AND APPROPRIATION"

2. Page 3, line 15 through line 19.
Following: "(4)" on line 15
Strike: through "governor." on line 19.

3. Page 3, line 25 through line 2 on page 4.
Strike: line 25 on page 3 through line 2 on page 4 in their entirety

4. Page 8, following line 11.
Following: line 11
Insert: "Section 9. Appropriation. All funds received in the
environmental quality protection fund in the biennium ending June
30, 1987, are appropriated for the purposes described in subsection
(2) of section 2.
Renumber: Subsequent sections

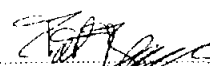
5. Page 8, line 18, through line 23.
Strike: subsection (1) in its entirety

6. Page 8, line 24.
Strike "(2)"

~~XXXXXX~~

~~DO NOT PASS~~
~~XXXXXXXXXX~~

(continued)

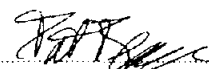

SENATOR PAT REGAN Chairman

APRIL 4 1985

7. Page 9, line 4.
Following: "through"
Strike: "10"
Insert: "11"

AND AS AMENDED
BE CONCURRED IN

KB


Senator Pat Regan

COMMITTEE OF THE WHOLE AMENDMENT

SENATE

APR 9, 1985

DATE

12:30

TIME

MR. CHAIRMAN: I MOVE TO AMEND HOUSE BILL

No. 766

third reading copy (blue) as follows:
Color

1. Page 3, line 9.
Following: "[section 6];"
Strike: "and"

2. Page 3, line 10.
Following: line 9
Insert: "(b) funds appropriated to the fund by the legislature; [and "
Strike: "[(b) "
Insert: "(c) "

3. Page 8, line 24.
Following: "2(3) "
Strike: "(b) "
Insert: "(c) "

PC3HB766.761

ADOPT

REJECT

Mark Dallyan

STATEMENT OF INTENT

HOUSE BILL 766

House Natural Resources Committee

This bill establishes a special fund and authorizes the department of health and environmental sciences to spend money from that fund for the purpose of taking emergency, remedial action in cases of release of hazardous or deleterious substances into the environment. Rulemaking is required for the implementation of these provisions. It is the intent of the legislature that the department be authorized to adopt rules clarifying and setting forth more detailed procedures and criteria in such areas as:

(1) definition of remedial actions to include such things as cleanup and restoration of water resources, provisions of alternate sources of supply, relocation of persons and property in imminent danger of injury or damage, and investigation and monitoring of releases of hazardous and deleterious substances;

(2) procedures for identifying responsible parties and notifying them of the department's intent to take remedial action;

(3) criteria for taking emergency actions in cases where prior notification to the responsible party is not possible;

(4) procedures for retaining consultants to perform remedial actions under the department's direction;

(5) procedures for accounting for funds expended in performing remedial actions; and

(6) procedures for coordination of remedial actions with the activities of other state or local government agencies with relevant expertise or authority.



HOUSE BILL NO. 766

INTRODUCED BY REAM, HALLIGAN, B. WILLIAMS, MOHAR,
 KRUEGER, DARKO, GARCIA, ECK, REGAN, ADDY, STIMATZ,
 JACOBSON, D. BROWN, KEENAN, SHAW, IVERSON, LYNCH,
 HARPER, RANEY, BRADLEY, COHEN, COBB, LORY, TVEIT,
 CONNELLY, FRITZ, MILES, DRISCOLL, JANET MOORE,
 GRADY, KADAS, HARRINGTON, HARP

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO TAKE
 REMEDIAL ACTION TO PREVENT OR ALLEVIATE RELEASE OF HAZARDOUS
 OR DELETERIOUS SUBSTANCES INTO THE ENVIRONMENT; ESTABLISHING
 A SPECIAL FUND FOR REMEDIAL ACTION; PROVIDING FOR FUNDING
AND APPROPRIATION OF THE SPECIAL FUND; AND PROVIDING
 EFFECTIVE DATES."

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

Section 1. Definitions. As used in [sections 1 through
 7], unless the context requires otherwise, the following
 definitions apply:

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

(2) "Fund" means the environmental quality protection

fund established in [section 2].

(3) "Hazardous or deleterious substance" means a
 substance that poses an imminent and substantial threat to
 public health, ~~public welfare, or the environment~~ and that
 is:

~~(a) defined as a hazardous waste pursuant to Title 75,
 chapter 107, part 4;~~

~~(b) water pollution as defined in 75-5-103; or~~

~~(c) air pollution as defined in 75-2-103~~ EITHER A
PETROLEUM PRODUCT OR LISTED AS A HAZARDOUS SUBSTANCE UNDER
 40 CFR PART 302.4 PURSUANT TO THE FEDERAL COMPREHENSIVE
 ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT.

(4) "Release" means any spilling, leaking, pumping,
 pouring, emitting, emptying, discharging, injecting,
 escaping, leaching, dumping, or disposing of a hazardous or
 deleterious substance either directly into the environment
 or in a manner in which the substance can reasonably be
 expected to enter the environment if not contained, removed,
 or abated, but excludes releases confined to the indoor
 workplace environment, THE USE OF PESTICIDES AS DEFINED IN
 80-8-102(30) WHEN THEY ARE APPLIED IN ACCORDANCE WITH
 APPROVED FEDERAL AND STATE LABELS, AND THE USE OF COMMERCIAL
 FERTILIZERS AS DEFINED IN 80-10-101(2) WHEN APPLIED AS PART
 OF ACCEPTED AGRICULTURAL PRACTICE.

(5) "Remedial action" includes all investigation,

1 monitoring, cleanup, restoration, abatement, removal,
2 replacement, and other actions necessary or appropriate to
3 respond to a release.

4 Section 2. Environmental quality protection fund.

5 (1) There is created in the state special revenue fund an
6 environmental quality protection fund to be administered as
7 a revolving fund by the department. The department is
8 authorized to expend amounts from the fund necessary to
9 carry out the purposes of [sections 1 through 7].

10 (2) The fund may be used to carry out the provisions
11 of [sections 1 through 7] and for remedial actions taken by
12 the department pursuant to [sections 1 through 7] in
13 response to a release of hazardous or deleterious
14 substances.

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

16 (a) all department expenditures recovered pursuant to
17 [section 6]; and

18 (B) FUNDS APPROPRIATED TO THE FUND BY THE LEGISLATURE;

19 (AND

20 ~~{b}~~(C) funds received from the legacy program state
21 special revenue account established by [section 4 of the
22 Montana Legacy Act, Senate Bill No. 277] as emergency
23 requests made pursuant to [section 5(5) of the Montana
24 Legacy Act, Senate Bill No. 277].]

25 (4) ~~As long as the amount of money in the fund is~~

1 ~~sufficient to defray the costs of remedial action taken~~
2 ~~pursuant to [sections 3 and 4], the department is authorized~~
3 ~~to make expenditures from the fund for such remedial action~~
4 ~~without prior approval from the governor. [Whenever the~~
5 ~~amount of money in the fund is insufficient to carry out~~
6 ~~remedial action, the department may apply to the governor~~
7 ~~for a grant from the contingency fund of the legacy program~~
8 ~~state special revenue account pursuant to [section 5(5)] of~~
9 ~~the Montana Legacy Act.]~~

10 ~~{5} The fund is statutorily appropriated as described~~
11 ~~in [section 2 of HB 12] for the purposes described in~~
12 ~~subsection {2}.~~

13 Section 3. Remedial action. (1) The department may
14 take remedial action necessary and appropriate to protect
15 the public health, public welfare, or the environment
16 whenever it determines that:

17 (a) there has been a release or there is a substantial
18 threat of a release; and

19 (b) the appropriate remedial action will not be done
20 properly and expeditiously by the owner or operator of the
21 vessel, vehicle, or facility from which the release emanates
22 or by any other responsible party.

23 (2) Whenever the department is authorized to act
24 pursuant to subsection (1) or has reason to believe that a
25 release has occurred or is about to occur, the department

1 may undertake any investigation, monitoring, survey,
 2 testing, or other information-gathering that is necessary
 3 and appropriate to identify the existence, nature, origin,
 4 and extent of the release or the threat of release and the
 5 extent and imminence of the danger to the public health,
 6 public welfare, or the environment.

7 (3) Any person responsible for the release must take
 8 immediate action to contain, remove, and abate the release.
 9 Except as provided in [section 4], the department is
 10 authorized to draw upon the fund in order to take action
 11 under subsections (1) and (2) if it has made diligent good
 12 faith efforts to determine the identity of the party or
 13 parties responsible for the release or threatened release
 14 and:

15 (a) is unable to determine the identity of the
 16 responsible party or parties in a manner consistent with the
 17 need to take timely remedial action; or

18 (b) the party or parties determined by the department
 19 to be responsible for the release or threatened release have
 20 been informed in writing of the department's determination
 21 and have been requested by the department to take
 22 appropriate remedial action but are unable or unwilling to
 23 take such action in a timely manner.

24 (4) The written notice to a responsible party must
 25 inform the responsible party that if that party is

1 subsequently found liable pursuant to [section 6], he may be
 2 required to reimburse the fund for the costs of the remedial
 3 action taken by the department and may be subject to
 4 punitive damages.

5 Section 4. Emergency action. If the department
 6 determines that immediate response to an imminent threat to
 7 public health, public welfare, or the environment is
 8 necessary to avoid substantial injury or damage to persons,
 9 property, or resources, remedial action may be taken
 10 pursuant to [section 3(1) and (2)] without the prior written
 11 notice required by [section 3(3)(b)]. In such a case, the
 12 department must give subsequent written notice to the
 13 responsible party within 5 days after the action is taken,
 14 describing the circumstances which required the action to be
 15 taken without prior notice.

16 Section 5. Actions -- general provisions. (1) No
 17 action taken by any person to contain or remove a release,
 18 whether the action is taken voluntarily or at the request of
 19 the department or its designee, may be construed as an
 20 admission of liability for the discharge.

21 (2) Actions taken by the department pursuant to
 22 [sections 3 and 4] are not subject to the public bidding
 23 requirements of Title 18.

24 Section 6. Reimbursement and penalties -- proceedings
 25 -- defenses. (1) Subject only to the defenses set forth in

1 subsection ~~(3)~~ (4), a party responsible for a release is
2 liable for:

3 (a) all costs of remedial action taken by the
4 department pursuant to [sections 1 through 7]; and

5 (b) damages for injury to, destruction of, or loss of
6 natural resources caused by the release or threatened
7 release.

8 (2) If the responsible party fails, without sufficient
9 cause, to properly provide remedial action upon notification
10 by the department pursuant to [section 3(3)(b)], the
11 responsible party may be liable for punitive damages in an
12 amount not to exceed two times the amount of any costs
13 incurred by the department pursuant to [section 6].

14 (3) The department may initiate civil proceedings in
15 district court to recover costs, damages, or penalties under
16 subsections (1) and (2). Venue for any action to recover
17 costs, damages, or penalties lies in the county where the
18 release occurred or where the responsible party resides or
19 has its principal place of business or in the district court
20 of the first judicial district.

21 (4) No party is liable under subsection (1) or (2) if
22 that party can establish by a preponderance of the evidence
23 that:

24 (a) the department failed to follow the notice
25 provisions of [section 3] when required; or

1 (b) the release did not emanate from any vessel,
2 vehicle, or facility over which the party had any authority
3 or control and was not caused by any action or omission of
4 the party; or

5 (c) in the case of assessment of punitive damages,
6 that factors beyond the control of the responsible party
7 prevented the party from taking timely remedial action.

8 (5) (a) Costs of remedial action recovered pursuant to
9 subsection (1)(a) must be deposited in the fund.

10 [(b) Damages and penalties recovered pursuant to
11 subsections (1)(b) and (2) must be deposited in the
12 contingency fund of the legacy program state special revenue
13 account established by [section 5(5) of the Montana Legacy
14 Act, Senate Bill No. 277].]

15 Section 7. Rulemaking authority. The department is
16 authorized to adopt rules for the implementation of
17 [sections 1 through 7].

18 Section 8. Saving clause. This act does not affect
19 rights and duties that matured, penalties that were
20 incurred, or proceedings that were begun before the
21 effective date of this act.

22 SECTION 9. APPROPRIATION. ALL FUNDS RECEIVED IN THE
23 ENVIRONMENTAL QUALITY PROTECTION FUND IN THE BIENNIUM ENDING
24 JUNE 30, 1987, ARE APPROPRIATED FOR THE PURPOSES DESCRIBED
25 IN SUBSECTION (2) OF SECTION 2.

1 Section 10. Severability. If a part of this act is
2 invalid, all valid parts that are severable from the invalid
3 part remain in effect. If a part of this act is invalid in
4 one or more of its applications, the part remains in effect
5 in all valid applications that are severable from the
6 invalid applications.

7 Section 11. Coordination instruction. ~~{1}---The~~
8 ~~bracketed language constituting section 2(5) is effective~~
9 ~~only if both this act and HB 12 are passed and approved, if~~
10 ~~both this act and HB 12 are passed and approved, a citation~~
11 ~~to section 2 of this act is added to the list of citations~~
12 ~~contained in section 2 of HB 12.~~

13 {2} The bracketed language in section 2(3){b}(C) and
14 (4) and section 6(5)(b) is effective only if both this act
15 and [the Montana Legacy Act, Senate Bill No. 277] are passed
16 and approved.

17 Section 12. Effective dates. (1) Sections 1 through 6
18 and 8 through ~~10~~ 11 are effective July 1, 1985.

19 (2) Section 7 and this section are effective on
20 passage and approval, but rules adopted pursuant to section
21 7 may not take effect before July 1, 1985.

-End-

GOVERNOR'S PROPOSED AMENDMENTS TO
HOUSE BILL NO. 766
REFERENCE COPY
APRIL 24, 1985

1. Page 2, line 10.
Following: " SUBSTANCE "
Strike: " UNDER " and lines 11 and 12 in their entirety
Insert: "in Volume 50, Federal Register, pages 13474 through 13513."

2. Page 3, line 24.
Following: "277]"
Strike: ". "
Insert: ". "
Following: ".]"
Insert: "[and (d) funds received from the environmental contingency account within the state special revenue fund established pursuant to [Section 4 of House Bill No. 922].]"

3. Page 4, line 10.
Following: line 9
Insert: "[(5) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account within the state special revenue fund established pursuant to [Section 4 of House Bill 922].]"

4. Page 8, line 15.
Following: line 14
Insert: "[(c) Damages and penalties recovered pursuant to subsections (1)(b) and (2) must be deposited in the environmental contingency account within the state special revenue fund established pursuant to [section 4 of House Bill No. 922].]"

5. Page 9, line 13.
Following: " ~~(2)~~ "
Insert: "(1)"

6. Page 9, line 17.
Following: line 16
Insert: "(2) The bracketed language in section 2(3)(d) and (2) (5) and section (5)(c) is effective only if both this act and [House Bill 922] are passed and approved."

STATEMENT OF INTENT

HOUSE BILL 766

House Natural Resources Committee

This bill establishes a special fund and authorizes the department of health and environmental sciences to spend money from that fund for the purpose of taking emergency, remedial action in cases of release of hazardous or deleterious substances into the environment. Rulemaking is required for the implementation of these provisions. It is the intent of the legislature that the department be authorized to adopt rules clarifying and setting forth more detailed procedures and criteria in such areas as:

- (1) definition of remedial actions to include such things as cleanup and restoration of water resources, provisions of alternate sources of supply, relocation of persons and property in imminent danger of injury or damage, and investigation and monitoring of releases of hazardous and deleterious substances;
- (2) procedures for identifying responsible parties and notifying them of the department's intent to take remedial action;
- (3) criteria for taking emergency actions in cases where prior notification to the responsible party is not possible;
- (4) procedures for retaining consultants to perform remedial actions under the department's direction;
- (5) procedures for accounting for funds expended in

performing remedial actions; and

(6) procedures for coordination of remedial actions with the activities of other state or local government agencies with relevant expertise or authority.



HOUSE BILL NO. 766

INTRODUCED BY REAM, HALLIGAN, B. WILLIAMS, MOHAR,
 KRUEGER, DARKO, GARCIA, ECK, REGAN, ADDY, STIMATZ,
 JACOBSON, D. BROWN, KEENAN, SHAW, IVERSON, LYNCH,
 HARPER, RANEY, BRADLEY, COHEN, COBB, LORY, TVEIT,
 CONNELLY, FRITZ, MILES, DRISCOLL, JANET MOORE,
 GRADY, KADAS, HARRINGTON, HARP

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO TAKE
 REMEDIAL ACTION TO PREVENT OR ALLEVIATE RELEASE OF HAZARDOUS
 OR DELETERIOUS SUBSTANCES INTO THE ENVIRONMENT; ESTABLISHING
 A SPECIAL FUND FOR REMEDIAL ACTION; PROVIDING FOR FUNDING
 AND APPROPRIATION OF THE SPECIAL FUND; AND PROVIDING
 EFFECTIVE DATES."

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

Section 1. Definitions. As used in [sections 1 through
 7], unless the context requires otherwise, the following
 definitions apply:

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

(2) "Fund" means the environmental quality protection

fund established in [section 2].

(3) "Hazardous or deleterious substance" means a
 substance that poses an imminent and substantial threat to
 public health, public welfare, or the environment and that
 is:

(a) defined as a hazardous waste pursuant to Title 75,
 chapter 10, part 4;

(b) water pollution as defined in 75-5-103; or

(c) air pollution as defined in 75-2-103 EITHER A
 PETROLEUM PRODUCT OR LISTED AS A HAZARDOUS SUBSTANCE UNDER
 40-CFR-PART-302.4 PURSUANT TO THE FEDERAL COMPREHENSIVE
 ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT IN
 VOLUME 50, FEDERAL REGISTER, PAGES 13474 THROUGH 13513.

(4) "Release" means any spilling, leaking, pumping,
 pouring, emitting, emptying, discharging, injecting,
 escaping, leaching, dumping, or disposing of a hazardous or
 deleterious substance either directly into the environment
 or in a manner in which the substance can reasonably be
 expected to enter the environment if not contained, removed,
 or abated, but excludes releases confined to the indoor
 workplace environment, THE USE OF PESTICIDES AS DEFINED IN
 80-8-102(30) WHEN THEY ARE APPLIED IN ACCORDANCE WITH
 APPROVED FEDERAL AND STATE LABELS, AND THE USE OF COMMERCIAL
 FERTILIZERS AS DEFINED IN 80-10-101(2) WHEN APPLIED AS PART
 OF ACCEPTED AGRICULTURAL PRACTICE.

1 (5) "Remedial action" includes all investigation,
2 monitoring, cleanup, restoration, abatement, removal,
3 replacement, and other actions necessary or appropriate to
4 respond to a release.

5 Section 2. Environmental quality protection fund.

6 (1) There is created in the state special revenue fund an
7 environmental quality protection fund to be administered as
8 a revolving fund by the department. The department is
9 authorized to expend amounts from the fund necessary to
10 carry out the purposes of [sections 1 through 7].

11 (2) The fund may be used to carry out the provisions
12 of [sections 1 through 7] and for remedial actions taken by
13 the department pursuant to [sections 1 through 7] in
14 response to a release of hazardous or deleterious
15 substances.

16 (3) There must be deposited in the fund:

17 (a) all department expenditures recovered pursuant to
18 [section 6]; and

19 (B) FUNDS APPROPRIATED TO THE FUND BY THE LEGISLATURE;
20 [AND

21 ~~[(b)]~~(C) funds received from the legacy program state
22 special revenue account established by [section 4 of the
23 Montana Legacy Act, Senate Bill No. 277] as emergency
24 requests made pursuant to [section 5(5) of the Montana
25 Legacy Act, Senate Bill No. 277];] [AND

1 (D) FUNDS RECEIVED FROM THE ENVIRONMENTAL CONTINGENCY
2 ACCOUNT WITHIN THE STATE SPECIAL REVENUE FUND ESTABLISHED
3 PURSUANT TO [SECTION 4 OF HOUSE BILL NO. 922].]

4 (4) ~~As long as the amount of money in the fund is~~
5 ~~sufficient to defray the costs of remedial action taken~~
6 ~~pursuant to [sections 3 and 4], the department is authorized~~
7 ~~to make expenditures from the fund for such remedial action~~
8 ~~without prior approval from the governor.~~ [Whenever the
9 amount of money in the fund is insufficient to carry out
10 remedial action, the department may apply to the governor
11 for a grant from the contingency fund of the legacy program
12 state special revenue account pursuant to [section 5(5)] of
13 the Montana Legacy Act.]

14 [(5) WHENEVER THE AMOUNT OF MONEY IN THE FUND IS
15 INSUFFICIENT TO CARRY OUT REMEDIAL ACTION, THE DEPARTMENT
16 MAY APPLY TO THE GOVERNOR FOR A GRANT FROM THE ENVIRONMENTAL
17 CONTINGENCY ACCOUNT WITHIN THE STATE SPECIAL REVENUE FUND
18 ESTABLISHED PURSUANT TO [SECTION 4 OF HOUSE BILL NO. 922].]

19 ~~[(5) The fund is statutorily appropriated as described~~
20 ~~in [section 2 of HB 12] for the purposes described in~~
21 ~~subsection (2)].~~

22 Section 3. Remedial action. (1) The department may
23 take remedial action necessary and appropriate to protect
24 the public health, public welfare, or the environment
25 whenever it determines that:

1 (a) there has been a release or there is a substantial
2 threat of a release; and

3 (b) the appropriate remedial action will not be done
4 properly and expeditiously by the owner or operator of the
5 vessel, vehicle, or facility from which the release emanates
6 or by any other responsible party.

7 (2) Whenever the department is authorized to act
8 pursuant to subsection (1) or has reason to believe that a
9 release has occurred or is about to occur, the department
10 may undertake any investigation, monitoring, survey,
11 testing, or other information-gathering that is necessary
12 and appropriate to identify the existence, nature, origin,
13 and extent of the release or the threat of release and the
14 extent and imminence of the danger to the public health,
15 public welfare, or the environment.

16 (3) Any person responsible for the release must take
17 immediate action to contain, remove, and abate the release.
18 Except as provided in [section 4], the department is
19 authorized to draw upon the fund in order to take action
20 under subsections (1) and (2) if it has made diligent good
21 faith efforts to determine the identity of the party or
22 parties responsible for the release or threatened release
23 and:

24 (a) is unable to determine the identity of the
25 responsible party or parties in a manner consistent with the

1 need to take timely remedial action; or

2 (b) the party or parties determined by the department
3 to be responsible for the release or threatened release have
4 been informed in writing of the department's determination
5 and have been requested by the department to take
6 appropriate remedial action but are unable or unwilling to
7 take such action in a timely manner.

8 (4) The written notice to a responsible party must
9 inform the responsible party that if that party is
10 subsequently found liable pursuant to [section 6], he may be
11 required to reimburse the fund for the costs of the remedial
12 action taken by the department and may be subject to
13 punitive damages.

14 Section 4. Emergency action. If the department
15 determines that immediate response to an imminent threat to
16 public health, public welfare, or the environment is
17 necessary to avoid substantial injury or damage to persons,
18 property, or resources, remedial action may be taken
19 pursuant to [section 3(1) and (2)] without the prior written
20 notice required by [section 3(3)(b)]. In such a case, the
21 department must give subsequent written notice to the
22 responsible party within 5 days after the action is taken,
23 describing the circumstances which required the action to be
24 taken without prior notice.

25 Section 5. Actions -- general provisions. (1) No

1 action taken by any person to contain or remove a release,
2 whether the action is taken voluntarily or at the request of
3 the department or its designee, may be construed as an
4 admission of liability for the discharge.

5 (2) Actions taken by the department pursuant to
6 [sections 3 and 4] are not subject to the public bidding
7 requirements of Title 18.

8 Section 6. Reimbursement and penalties -- proceedings
9 -- defenses. (1) Subject only to the defenses set forth in
10 subsection ~~{3}~~ (4), a party responsible for a release is
11 liable for:

12 (a) all costs of remedial action taken by the
13 department pursuant to [sections 1 through 7]; and

14 (b) damages for injury to, destruction of, or loss of
15 natural resources caused by the release or threatened
16 release.

17 (2) If the responsible party fails, without sufficient
18 cause, to properly provide remedial action upon notification
19 by the department pursuant to [section 3(3)(b)], the
20 responsible party may be liable for punitive damages in an
21 amount not to exceed two times the amount of any costs
22 incurred by the department pursuant to [section 6].

23 (3) The department may initiate civil proceedings in
24 district court to recover costs, damages, or penalties under
25 subsections (1) and (2). Venue for any action to recover

1 costs, damages, or penalties lies in the county where the
2 release occurred or where the responsible party resides or
3 has its principal place of business or in the district court
4 of the first judicial district.

5 (4) No party is liable under subsection (1) or (2) if
6 that party can establish by a preponderance of the evidence
7 that:

8 (a) the department failed to follow the notice
9 provisions of [section 3] when required; or

10 (b) the release did not emanate from any vessel,
11 vehicle, or facility over which the party had any authority
12 or control and was not caused by any action or omission of
13 the party; or

14 (c) in the case of assessment of punitive damages,
15 that factors beyond the control of the responsible party
16 prevented the party from taking timely remedial action.

17 (5) (a) Costs of remedial action recovered pursuant to
18 subsection (1)(a) must be deposited in the fund.

19 [(b) Damages and penalties recovered pursuant to
20 subsections (1)(b) and (2) must be deposited in the
21 contingency fund of the legacy program state special revenue
22 account established by [section 5(5) of the Montana Legacy
23 Act, Senate Bill No. 277].]

24 [(C) DAMAGES AND PENALTIES RECOVERED PURSUANT TO
25 SUBSECTIONS (1)(B) AND (2) MUST BE DEPOSITED IN THE

1 ENVIRONMENTAL CONTINGENCY ACCOUNT WITHIN THE STATE SPECIAL
 2 REVENUE FUND ESTABLISHED PURSUANT TO [SECTION 4 OF HOUSE
 3 BILL NO. 922].]

4 Section 7. Rulemaking authority. The department is
 5 authorized to adopt rules for the implementation of
 6 [sections 1 through 7].

7 Section 8. Saving clause. This act does not affect
 8 rights and duties that matured, penalties that were
 9 incurred, or proceedings that were begun before the
 10 effective date of this act.

11 SECTION 9. APPROPRIATION. ALL FUNDS RECEIVED IN THE
 12 ENVIRONMENTAL QUALITY PROTECTION FUND IN THE BIENNIUM ENDING
 13 JUNE 30, 1987, ARE APPROPRIATED FOR THE PURPOSES DESCRIBED
 14 IN SUBSECTION (2) OF SECTION 2.

15 Section 10. Severability. If a part of this act is
 16 invalid, all valid parts that are severable from the invalid
 17 part remain in effect. If a part of this act is invalid in
 18 one or more of its applications, the part remains in effect
 19 in all valid applications that are severable from the
 20 invalid applications.

21 Section 11. Coordination instruction. ~~{1}---The~~
 22 ~~bracketed--language--constituting--section-2(5)--is-effective~~
 23 ~~only-if-both-this-act-and-HB-12-are-passed-and-approved;--if~~
 24 ~~both-this-act-and-HB-12-are-passed-and-approved;--a-citation~~
 25 ~~to--section--2-of-this-act-is-added-to-the-list-of-citations~~

1 ~~contained-in-section-2-of-HB-12.~~

2 ~~{2}(1)~~ The bracketed language in section 2(3)~~(b)~~(C)
 3 and (4) and section 6(5)(b) is effective only if both this
 4 act and [the Montana Legacy Act, Senate Bill No. 277] are
 5 passed and approved.

6 (2) THE BRACKETED LANGUAGE IN SECTION 2(3)(D) AND (5)
 7 AND SECTION 6(5)(C) IS EFFECTIVE ONLY IF BOTH THIS ACT AND
 8 [HOUSE BILL NO. 922] ARE PASSED AND APPROVED.

9 Section 12. Effective dates. (1) Sections 1 through 6
 10 and 8 through ~~10~~ 11 are effective July 1, 1985.

11 (2) Section 7 and this section are effective on
 12 passage and approval, but rules adopted pursuant to section
 13 7 may not take effect before July 1, 1985.

-End-