

SENATE BILL NO. 385

INTRODUCED BY HARP, D. BROWN

BY REQUEST OF THE DEPARTMENT OF HEALTH AND  
ENVIRONMENTAL SCIENCES

IN THE SENATE

FEBRUARY 10, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 16, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 17, 1989	PRINTING REPORT.
FEBRUARY 18, 1989	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 20, 1989	ENGROSSING REPORT.
FEBRUARY 21, 1989	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 21, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 11, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 15, 1989	PASSED CONSIDERATION FOR THE DAY.
MARCH 16, 1989	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 20, 1989	THIRD READING, CONCURRED IN. AYES, 94; NOES, 3.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

RECEIVED FROM HOUSE.

APRIL 11, 1989

SECOND READING, AMENDMENTS NOT  
CONCURRED IN.

APRIL 12, 1989

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 13, 1989

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 14, 1989

FREE CONFERENCE COMMITTEE REPORTED.

APRIL 15, 1989

SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

APRIL 18, 1989

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 18, 1989

FREE CONFERENCE COMMITTEE  
REPORT ADOPTED.

IN THE SENATE

APRIL 19, 1989

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *385*  
2 INTRODUCED BY *HART Dave Brown*  
3 BY REQUEST OF THE DEPARTMENT OF HEALTH AND  
4 ENVIRONMENTAL SCIENCES

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
7 LAWS RELATING TO REMEDIAL ACTION UPON THE RELEASE OF A  
8 HAZARDOUS SUBSTANCE TO INCLUDE CERTAIN PROVISIONS PARALLEL  
9 TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE,  
10 COMPENSATION, AND LIABILITY ACT (FEDERAL SUPERFUND);  
11 REDEFINING "HAZARDOUS OR DELETERIOUS SUBSTANCE"; ADDING  
12 LIMITED IMMUNITY FOR REMEDIAL ACTION CONTRACTORS; AUGMENTING  
13 INVESTIGATIVE AND ENFORCEMENT AUTHORITY; PROVIDING FOR  
14 PUBLIC NOTICE AND COMMENT ON ADMINISTRATIVE ORDERS AND  
15 CONSENT DECREES; CLARIFYING AND ADDING DEFENSES TO  
16 LIABILITY; GRANTING CONDEMNATION AUTHORITY FOR CONTAMINATED  
17 SITES; AMENDING SECTIONS 75-10-701, 75-10-704, 75-10-711,  
18 75-10-712, AND 75-10-715, MCA; PROVIDING AN IMMEDIATE  
19 EFFECTIVE DATE; AND PROVIDING RETROACTIVE APPLICABILITY TO  
20 CERTAIN REMEDIAL ACTION COSTS."

21  
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 NEW SECTION. **Section 1.** Short title. This part may be  
24 cited as the "Comprehensive Environmental Cleanup and  
25 Responsibility Act".

1 **Section 2.** Section 75-10-701, MCA, is amended to read:

2 "75-10-701. **Definitions.** As used in this part, unless  
3 the context requires otherwise, the following definitions  
4 apply:

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

8 (2) "Environment" means any surface water, ground  
9 water, drinking water supply, land surface or subsurface  
10 strata, or ambient air within the state of Montana or under  
11 the jurisdiction of the state of Montana.

12 (3) (a) "Facility" means:

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

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

21 (b) The term does not include any consumer product in  
22 consumer use.

23 (2)(4) "Fund" means the environmental quality  
24 protection fund established in 75-10-704.

25 (3)(5) "Hazardous or deleterious substance" means a

substance that poses because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health and that is either a petroleum product or listed as a hazardous substance in volume 507 of the Federal Register, pages 13474 through 13513, safety, or welfare or the environment, including:

(a) all substances that are defined as hazardous substances by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14), as amended;

(b) all substances identified by the administrator of the United States environmental protection agency as hazardous substances pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

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

(d) any petroleum product.

(6) "Natural resources" includes but is not limited to land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other resource within the state or owned, managed, held in trust or

otherwise controlled by or pertaining to the state of Montana or a political subdivision of the state.

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

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

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

(9) "Petroleum product" includes gasoline, crude oil, fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or

fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

{4}(10) "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}(11) "Remedial action" includes all notification, investigation, administration, monitoring, cleanup, restoration, abatement, removal, replacement, enforcement, legal action, health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or threatened release.

(12) "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially responsible party acting pursuant to an order or request issued by the

department, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.

(13) "Remedial action contractor" means:

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

(b) any person who is retained or hired by a person described in subsection (13)(a) to provide services relating to a remedial action.

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

**Section 3.** 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 only be used to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a

1 release of hazardous or deleterious substances. Fund-uses  
2 must--include--the--conduct--of--the--hazardous--waste--site  
3 remedial--action--program,--which--is--a--program--of--remedial  
4 action-at-sites:

5 {a}--where-a-release-has-occurred; and  
6 {b}--where-the--U.S.--environmental--protection--agency  
7 has,--under--the--provisions--of--the--federal--Comprehensive  
8 Environmental--Response,--Compensation,--and--Liability--Act--of  
9 1980--{CERCLA},--as--amended,--conducted--a--hazard--ranking--study  
10 and--judged--the--site--not--eligible--for--inclusion--on--the  
11 national--priority--list--or--where--the--U.S.--environmental  
12 protection--agency--has--no--authority--or--no--plan--to--assess--the  
13 site--under--CERCLA:

14 (3) The-department's-program-for-remedial-action-under  
15 subsection---{2}---must--include To maintain an adequate  
16 revolving fund, the department shall:

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

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

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

2 (a) all penalties, damages, and department  
3 expenditures remedial action costs recovered pursuant to  
4 75-10-715;

5 (b) all administrative penalties assessed pursuant to  
6 [section 8] and all civil penalties assessed pursuant to  
7 75-10-711(5);

8 {b}(c) funds appropriated to the fund by the  
9 legislature; and

10 {c}(d) funds received from the interest income of the  
11 resource indemnity trust fund pursuant to 15-38-202.

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

16 NEW SECTION. Section 4. Information gathering and  
17 access. (1) The department may undertake any investigative  
18 or other information-gathering action that it considers  
19 necessary or appropriate for determining the need for  
20 remedial action, choosing or taking a remedial action, or  
21 otherwise enforcing the provisions of this part.

22 (2) Any officer, employee, or representative of the  
23 department may require a person who has or may have  
24 information relevant to a release or threatened release of a  
25 hazardous or deleterious substance to furnish, upon request,

1 any information or documents relating to but not limited to  
2 the following matters:

3 (a) the identification, nature, and quantity of a  
4 hazardous or deleterious substance that has been or is being  
5 generated, treated, stored, or disposed of at or transported  
6 from a facility;

7 (b) the nature or extent of a release or threatened  
8 release of a hazardous or deleterious substance at or from a  
9 facility;

10 (c) information relating to the ability of a person to  
11 pay for or to perform a cleanup; and

12 (d) any other information relevant to the department's  
13 determination of the appropriate remedial action to be taken  
14 or to the enforcement of this part.

15 (3) For purposes of assisting the department in  
16 acquiring information relevant to the need for, the  
17 determination of, or the taking of remedial action or  
18 otherwise enforcing the provisions of this part, any duly  
19 authorized officer, employee, or representative of the  
20 department is authorized to:

21 (a) enter or have access at reasonable times to any  
22 facility or other place or property where:

23 (i) a hazardous or deleterious substance may be or has  
24 been generated, stored, treated, disposed of, or transported  
25 from;

1 (ii) there has been or may be a release of a hazardous  
2 or deleterious substance;

3 (iii) records or other relevant information regarding a  
4 release or threatened release is located;

5 (iv) entry is necessary to determine the need for any  
6 appropriate remedial action; or

7 (v) entry is necessary to effectuate a remedial action  
8 under this part; and

9 (b) inspect and obtain samples from the facility or  
10 other place or property referred to in subsection (3)(a) or  
11 from any location where a suspected hazardous or deleterious  
12 substance may be located. Any officer, employee, or  
13 representative of the department is authorized to inspect  
14 and obtain samples of containers or labeling for suspected  
15 hazardous or deleterious substances. If the officer,  
16 employee, or representative obtains samples, before leaving  
17 the premises he shall give to the owner, operator, tenant,  
18 or other person in charge of the place from which the  
19 samples were obtained a receipt describing the sample  
20 obtained and, if requested, a portion of each sample.

21 (4) The department may issue subpoenas for the  
22 attendance and testimony of witnesses and the production of  
23 relevant papers, books, or documents in connection with the  
24 information-gathering authority conferred pursuant to this  
25 section. The method for service of subpoenas and payment of

1 witness fees and mileage is the same as that required in  
2 civil actions in the district courts of the state. In case  
3 of a refusal to obey a subpoena issued and served upon a  
4 person pursuant to this subsection, the district court for a  
5 district in which the person is found, resides, or transacts  
6 business, upon application of the department and after  
7 notice to the person, has jurisdiction to issue an order  
8 requiring the person to appear and either give testimony or  
9 produce documents, or both, before a hearing officer. A  
10 failure to obey the order of the court may be punished by  
11 the court as a contempt.

12 (5) If consent is not granted regarding a request made  
13 by an officer, employee, or representative under this  
14 section, the director of the department may issue an order  
15 directing compliance with the request.

16 (6) The department may commence a civil action to  
17 compel compliance with an order issued pursuant to this  
18 section.

19 (7) In any action commenced pursuant to subsection  
20 (6), the court shall enjoin any activity that constitutes a  
21 failure to comply with the order and shall direct compliance  
22 with the order unless, under the circumstances of the case,  
23 the order is arbitrary and capricious or otherwise not in  
24 accordance with law.

25 (8) Persons subject to the requirements of this

1 section may make a written claim of confidentiality for  
2 information unique to the owner or operator of a facility  
3 that would, if disclosed, reveal methods or processes  
4 entitled to protection as trade secrets. The claim of  
5 confidentiality must be clearly designated on the materials  
6 at the time they are obtained by the department. If the  
7 department accepts the characterization, it shall maintain  
8 that information as confidential. Information describing  
9 physical or chemical characteristics of hazardous or  
10 deleterious substances that have been or may be released  
11 into the environment are not considered confidential. The  
12 department has access to and may use any trade secret  
13 information in carrying out the activities of this part as  
14 may be necessary to protect the public health, safety, or  
15 welfare or the environment while maintaining the information  
16 as confidential.

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

18 **\*75-10-711. Remedial action -- orders -- penalties --**  
19 **judicial proceedings.** (1) The department may take remedial  
20 **action necessary--and--appropriate--to--protect--the--public**  
21 **health;--public--welfare;--or--the--environment** whenever it  
22 **determines that:**

23 (a) there has been a release or there is a substantial  
24 threat of a release into the environment that may present an  
25 imminent and substantial endangerment to the public health,



1 welfare, or safety or the environment; and

2 (b) the appropriate remedial action will not be done  
3 properly and expeditiously ~~by the owner or operator of the~~  
4 ~~vessel, vehicle, or facility from which the release emanates~~  
5 ~~or by any other responsible party by any person liable under~~  
6 75-10-715(1).

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 remedial action in the form of any  
11 investigation, monitoring, survey, testing, or other  
12 information-gathering as authorized by [section 4] that is  
13 necessary and appropriate to identify the existence, nature,  
14 origin, and extent of the release or the threat of release  
15 and the extent and imminence of the danger to the public  
16 health, public safety, or welfare or the environment. The  
17 department is authorized to draw upon the fund to take the  
18 remedial action.

19 (3) Any person ~~responsible for the release liable~~  
20 under 75-10-715(1) must take immediate action to contain,  
21 remove, and abate the release. Except as provided in  
22 75-10-712, the department is authorized to draw upon the  
23 fund ~~in order to take action under subsections~~ subsection  
24 (1) and (2) if it has made diligent good faith efforts to  
25 determine the identity of the party person or parties

1 responsible persons liable for the release or threatened  
2 release and:

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

7 (b) the party person or parties persons determined by  
8 the department to be ~~responsible for the release or~~  
9 ~~threatened release~~ liable under 75-10-715(1) have been  
10 informed in writing of the department's determination and  
11 have been requested by the department to take appropriate  
12 remedial action but are unable or unwilling to take ~~such~~  
13 action in a timely manner; and

14 ~~(4) The (c) the~~ written notice to ~~a responsible party~~  
15 ~~must inform the responsible party~~ each person informs him  
16 that if ~~that party~~ he is subsequently found liable pursuant  
17 to 75-10-715(1), he may be required to reimburse the fund  
18 for the ~~costs of the state's~~ remedial action ~~taken by the~~  
19 department costs and may be subject to ~~punitive damages~~  
20 penalties pursuant to 75-10-715(3).

21 (4) Whenever the department is authorized to act  
22 pursuant to subsection (1) or has reason to believe that a  
23 release has occurred or is about to occur, it may issue to  
24 any person liable under 75-10-715(1) cease and desist,  
25 remedial, or other orders as may be necessary or

1 appropriate to protect public health, safety, or welfare or  
2 the environment.

3 (5) A person who violates or fails or refuses to  
4 comply with an order issued under [section 4] or this  
5 section may, in an action brought to enforce the order, be  
6 assessed a civil penalty of not more than \$10,000 for each  
7 day in which a violation occurs or a failure or refusal to  
8 comply continues. Civil penalties collected under this  
9 subsection must be deposited into the environmental quality  
10 protection fund established in 75-10-704.

11 (6) A court has jurisdiction to review an order issued  
12 under [section 4] or this section only in the following  
13 actions:

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

16 (b) an action to enforce an order issued under  
17 [section 4] or this section; or

18 (c) an action to recover a civil penalty for violation  
19 of or failure to comply with an order issued under [section  
20 4] or this section.

21 (7) In considering objections raised in a judicial  
22 action regarding orders issued under this part, the court  
23 shall uphold and enforce an order issued by the department  
24 unless the objecting party can demonstrate, on the  
25 administrative record, that the department's decision to

1 issue the order was arbitrary and capricious or otherwise  
2 not in accordance with law.

3 (8) Instead of issuing a notification or an order  
4 under this section, the department may bring an action for  
5 legal or equitable relief in the district court of the  
6 county where the release or threatened release occurred or  
7 in the first judicial district as may be necessary to abate  
8 any imminent and substantial endangerment to the public  
9 health, safety, or welfare or the environment resulting from  
10 the release or threatened release."

11 **Section 6.** Section 75-10-712, MCA, is amended to read:

12 **"75-10-712. Emergency action.** If the department  
13 determines that immediate response to an imminent threat to  
14 public health, ~~public~~ safety, or welfare, or the environment  
15 is necessary to avoid substantial injury or damage to  
16 persons, property, or resources, remedial action may be  
17 taken pursuant to 75-10-711(1) ~~and--(2)~~ without the prior  
18 written notice required by 75-10-711(3)~~(b)~~. ~~In such a case,~~  
19 ~~the~~ The department ~~must~~ shall give subsequent written notice  
20 to the ~~responsible-party~~ person ~~liable under 75-10-715(1)~~  
21 within 5 days after the action is taken, describing the  
22 circumstances which required the action to be taken without  
23 prior notice."

24 **NEW SECTION. Section 7. Liability of remedial action**  
25 **contractor.** (1) A person who is a remedial action contractor

1 with respect to a release or threatened release of a  
2 hazardous or deleterious substance is not liable under this  
3 part to any person for injuries, costs, damages, expenses,  
4 or other liability that results from the release or  
5 threatened release, including but not limited to claims for  
6 indemnification or contribution and claims by third parties  
7 for death, personal injury, illness, loss or damage to  
8 property, or economic loss.

9 (2) Immunity from liability, pursuant to subsection  
10 (1), does not apply in the case of a release that is caused  
11 by conduct of the remedial action contractor that is  
12 negligent or grossly negligent or that constitutes  
13 intentional misconduct.

14 (3) This section does not affect the liability of a  
15 person under a warranty under federal, state, or common law  
16 or the liability to an employee of an employer who is a  
17 remedial action contractor under any provision of law,  
18 including any provision of a law relating to workers'  
19 compensation.

20 (4) A state agency, state employee, or an employee of  
21 a political subdivision who provides services relating to  
22 remedial action while acting within the scope of its or his  
23 authority as a governmental agency or employee has the same  
24 exemption from liability as is provided to the remedial  
25 action contractor under this section.

1 (5) The defense provided by 75-10-715(5)(c) is not  
2 available to a person liable under 75-10-715(1) with respect  
3 to remedial action costs or damages caused by an act or  
4 omission of a remedial action contractor.

5 (6) Except as provided in subsections (4) and (5),  
6 this section does not affect the liability under this part  
7 of a person other than a remedial action contractor.

8 (7) This section does not affect the plaintiff's  
9 burden of establishing liability under this part.

10 (8) This section does not minimize the liability,  
11 lessen the standard of liability, or otherwise shield from  
12 liability a potentially responsible party under 75-10-715 or  
13 section 107 of CERCLA for costs or damages incurred as a  
14 result of a release or threatened release of a hazardous or  
15 deleterious substance.

16 NEW SECTION. **Section 8. Administrative penalties.** (1)  
17 In lieu of proceeding under 75-10-711(5), the department may  
18 assess penalties of not more than \$1,000 per day per  
19 violation against a person liable under 75-10-715(1) for a  
20 release or threat of release who has failed or refused to  
21 comply with an order issued by the department pursuant to  
22 75-10-711(4) or against a person who has failed or refused  
23 to comply with an order issued by the department pursuant to  
24 [section 4(5)].

25 (2) In determining the amount of any penalty assessed

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

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

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

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

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

**\*75-10-715. Reimbursement Liability -- reimbursement and penalties -- proceedings -- defenses.** (1) Subject Notwithstanding any other provision of law and subject only to the defenses set forth in subsection (4) (5), a party responsible for a release is liable for the following

persons are jointly and severally liable for a release or threatened release of a hazardous or deleterious substance from a facility:

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

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

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

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

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

(a) all costs of remedial action taken costs incurred by the department pursuant to this part state; and

(b) damages for injury to, destruction of, or loss of natural resources caused by the release or threatened release, including the reasonable technical and legal costs

1 of assessing and enforcing a claim for the injury,  
 2 destruction, or loss resulting from the release, unless the  
 3 impaired natural resources were specifically identified as  
 4 an irreversible and irretrievable commitment of natural  
 5 resources in an approved final state or federal  
 6 environmental impact statement or other comparable approved  
 7 final environmental analysis for a project or facility that  
 8 was the subject of a governmental permit, approval, or  
 9 license and the project or facility was being operated  
 10 within the terms of its permit, approval, or license.

11 {2}{3} If the responsible-party person liable under  
 12 75-10-715(1) fails, without sufficient cause, to comply with  
 13 a department order issued pursuant to 75-10-711(4) or to  
 14 properly provide remedial action upon notification by the  
 15 department pursuant to 75-10-711(3){b}, the responsible  
 16 party person may be liable for punitive-damages penalties in  
 17 an amount not to exceed two times the amount of any costs  
 18 incurred by the department state pursuant to this section.

19 {3}{4} The department may initiate civil proceedings  
 20 in district court to recover remedial action costs, natural  
 21 resource damages, or penalties under subsections (1) and  
 22 {2} through (3). Proceedings to recover costs and penalties  
 23 must be conducted in accordance with [section 13]. Venue for  
 24 any action to recover costs, damages, or penalties lies in  
 25 the county where the release occurred or where the

1 responsible-party person liable under 75-10-715(1) resides  
 2 or has its principal place of business or in the district  
 3 court of the first judicial district.

4 {4}{5} No party person is liable under subsection  
 5 subsections (1) or {2} through (3) if that party person can  
 6 establish by a preponderance of the evidence that:

7 (a) the department failed to follow the notice  
 8 provisions of 75-10-711 when required; or

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

14 (c) the release or threatened release occurred solely  
 15 as a result of:

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

18 (ii) an act or omission of a third party other than one  
 19 whose act or omission occurs in connection with a  
 20 contractual relationship, existing directly or indirectly,  
 21 with the person, if the person establishes by a  
 22 preponderance of the evidence that he:

23 (A) exercised due care with respect to the hazardous  
 24 or deleterious substance concerned, taking into  
 25 consideration the characteristics of the hazardous or

deleterious substance in light of all relevant facts and circumstances; and

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

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

(e) the release or threatened release was from a facility for which a permit had been issued or an approval granted by the department, the hazardous or deleterious substance was specifically identified in the permit or approval, and the release was within the limits allowed in the permit or approval;

(f) in the case of assessment of punitive damages penalties under subsection (3), that factors beyond the control of the responsible party person prevented the party person from taking timely remedial action; or

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

(6) (a) For the purpose of subsection (5)(c)(ii), the

term "contractual relationship" includes but is not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real property on which the facility is located was acquired by the person after the disposal or placement of the hazardous or deleterious substance on, in, or at the facility and one or more of the following circumstances is also established by the person by a preponderance of the evidence:

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

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

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

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

(c) To establish that the person had no reason to

1 know, as provided in subsection (6)(a)(i), the person must  
 2 have undertaken, at the time of acquisition, all appropriate  
 3 inquiry into the previous ownership and uses of the property  
 4 consistent with good commercial or customary practice in an  
 5 effort to minimize liability. For purposes of assessing this  
 6 inquiry, the following must be taken into account:

7 (i) any specialized knowledge or experience on the  
 8 part of the person;

9 (ii) the relationship of the purchase price to the  
 10 value of the property if uncontaminated;

11 (iii) commonly known or reasonably ascertainable  
 12 information about the property;

13 (iv) the obviousness of the presence or the likely  
 14 presence of contamination on the property; and

15 (v) the ability to detect the contamination by  
 16 appropriate inspection.

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

21 (ii) Notwithstanding this subsection (6), if the  
 22 previous owner or operator obtained actual knowledge of the  
 23 release or threatened release of a hazardous or deleterious  
 24 substance at the facility when the person owned the real  
 25 property and then subsequently transferred ownership of the

1 property to another person without disclosing the knowledge,  
 2 the previous owner is liable under subsections (1) through  
 3 (3) and no defense under subsection (5)(b) or (5)(c) is  
 4 available to that person.

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

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

22 (2) If the state has obtained less than complete  
 23 relief from a person who has resolved his liability to the  
 24 state in an administrative or judicially approved  
 25 settlement, the state may bring an action against any other

1 person who has not resolved his liability.

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

7 NEW SECTION. Section 11. Condemnation -- creation of  
8 state lien. (1) Whenever the department determines that  
9 property upon which a release or threatened release of a  
10 hazardous or deleterious substance has occurred may present  
11 an imminent and substantial endangerment to the public  
12 health, safety, or welfare or the environment, the  
13 department may condemn the property for public use to  
14 mitigate the threat. The taking of the property must be  
15 conducted in accordance with the procedure set forth in  
16 Title 70, chapter 30, parts 1 through 3.

17 (2) All costs, penalties, and natural resource damages  
18 for which a person has been judicially determined to be  
19 liable to the state pursuant to 75-10-715 constitute a lien  
20 in favor of the state upon all property and rights to the  
21 property that belong to the person.

22 (3) The lien imposed by this section arises at the  
23 time notice incorporating a description of the property  
24 subject to the remedial action and an identification of the  
25 amount of costs, penalties, and natural resource damages is

1 duly filed with the clerk and recorder of the county in  
2 which the real property is located. A copy of the notice  
3 must be served by certified mail upon the liable person.

4 (4) The costs, penalties, and natural resource damages  
5 constituting the lien may be recovered in an action in the  
6 district court for the district in which the property is  
7 located or in which the remedial action is occurring or has  
8 occurred. This section does not affect the right of the  
9 state to bring an action against a person to recover all  
10 costs, penalties, and natural resource damages for which  
11 that person is liable under this part or any other provision  
12 of state or federal law.

13 (5) The lien must continue until the liability for the  
14 costs and damages incurred as a result of the release of a  
15 hazardous or deleterious substance is satisfied.

16 NEW SECTION. Section 12. Degree of cleanup required  
17 -- permit exemption. (1) A remedial action performed under  
18 this part must attain a degree of cleanup of the hazardous  
19 or deleterious substance and control of a threatened release  
20 or further release of that substance that assures present  
21 and future protection of public health, safety, and welfare  
22 and of the environment.

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

25 (a) shall require cleanup consistent with applicable



1 state or federal environmental requirements, criteria, or  
2 limitations;

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

7 (c) shall select remedial actions that, at a minimum,  
8 protect public health, safety, and welfare and the  
9 environment and that:

10 (i) use permanent solutions;

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

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

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

23 NEW SECTION. **Section 13.** Payment of state costs and  
24 penalties. (1) The department shall keep a record of the  
25 state's remedial action costs.

1 (2) Based on this record, the department shall require  
2 a person liable under 75-10-715 to pay the amount of the  
3 state's remedial action costs and, if applicable, penalties  
4 under 75-10-715(3).

5 (3) If the state's remedial action costs and penalties  
6 are not paid by the liable person to the department within  
7 60 days after receipt of notice that the costs and penalties  
8 are due, the department shall bring an action in the name of  
9 the state to recover the amount owed plus reasonable legal  
10 expenses. The department's certification of the state's  
11 remedial action costs is prima facie evidence that the costs  
12 are reasonable and are consistent with this part.

13 (4) An action to recover remedial action costs may be  
14 brought under this section at any time after any remedial  
15 action costs have been incurred, and the court may enter a  
16 declaratory judgment on liability for remedial action costs  
17 that is binding on any subsequent action or actions to  
18 recover further remedial action costs.

19 (5) An initial action for recovery of remedial action  
20 costs must be commenced within 6 years after initiation of  
21 physical on-site construction of the remedial action.

22 (6) Remedial action costs and any penalties recovered  
23 by the state under 75-10-715 must be deposited into the  
24 environmental quality protection fund established in  
25 75-10-704.

**NEW SECTION. Section 14.** Public notice of administrative order or consent decree. (1) Except as provided in 75-10-712, before approval of any administrative order or consent decree issued pursuant to this part, the department shall:

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

(b) provide at least 30 days (or whatever additional time the department may in its discretion grant upon written request) for submission of written comments regarding the proposed order or decree and, upon written request by 10 or more persons or by a group having 10 or more members (but not including a liable person), conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding the proposed order or decree; and

(c) consider written or verbal comments properly submitted during the comment period or at the public meeting.

(2) Upon making a final decision regarding the proposed order or decree, the department shall publish notice, as provided under subsection (1), and make copies of the approved order or decree available to the public.

**NEW SECTION. Section 15.** Agreements to perform

remedial action. (1) To expedite effective remedial actions and minimize litigation, the department, in its discretion and whenever practicable and in the public interest, may enter into an agreement with any person, including the owner or operator of the facility from which a release emanates, to perform a remedial action if the department determines that the action will be properly done by the person. The agreement must contain terms and conditions that the department in its discretion determines to be appropriate.

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

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

**NEW SECTION. Section 16.** Liability apportionment and contribution. (1) Any person held jointly and severally liable under 75-10-715 has the right at trial to have the trier of fact apportion liability among the parties as provided in this section. The burden is on each liable person to show how his liability should be apportioned. In apportioning the liability of any person under this section,

the trier of fact shall consider the following:

(a) the extent to which the person's contribution to the release of a hazardous or deleterious substance can be distinguished;

(b) the amount of hazardous or deleterious substance involved;

(c) the degree of toxicity of the hazardous or deleterious substance involved;

(d) the degree of involvement of and care exercised by the person in manufacturing, treating, transporting, and disposing of the hazardous or deleterious substance;

(e) the degree of cooperation by the person with federal, state, or local officials to prevent any harm to the public health, safety, or welfare or the environment; and

(f) knowledge by the person of the hazardous nature of the substance.

(2) If a person is held jointly and severally liable under 75-10-715 and establishes a proportionate share of the aggregate liability, the person has the right of contribution from any other liable person. If for any reason all or part of the contribution from a person liable for contribution cannot be obtained, each of the other persons against whom recovery is allowed is liable to contribute a proportional part of the unpaid portion of the

noncontributing person's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing person.

**NEW SECTION. Section 17. Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

**NEW SECTION. Section 18. Codification instruction.** [Sections 1, 4, 7, 8, and 10 through 16] are intended to be codified as an integral part of Title 75, chapter 10, part 7, and the provisions of Title 75, chapter 10, part 7, apply to [sections 1, 4, 7, 8, and 10 through 16].

**NEW SECTION. Section 19. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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

**NEW SECTION. Section 21. Retroactive applicability.** [Section 9] applies retroactively, within the meaning of 1-2-109, to all remedial action costs incurred before [the

LC 0854/01

- 1 effective date of this act].
- 2 NEW SECTION. **Section 22.** Effective date. {This act]
- 3 is effective on passage and approval.

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

SENATE BILL NO. 385

INTRODUCED BY HARP, D. BROWN

BY REQUEST OF THE DEPARTMENT OF HEALTH AND  
ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO REMEDIAL ACTION UPON THE RELEASE OF A HAZARDOUS SUBSTANCE TO INCLUDE CERTAIN PROVISIONS PARALLEL TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (FEDERAL SUPERFUND); REDEFINING "HAZARDOUS OR DELETERIOUS SUBSTANCE"; ADDING LIMITED IMMUNITY FOR REMEDIAL ACTION CONTRACTORS; AUGMENTING INVESTIGATIVE AND ENFORCEMENT AUTHORITY; PROVIDING FOR PUBLIC NOTICE AND COMMENT ON ADMINISTRATIVE ORDERS AND CONSENT DECREES; CLARIFYING AND ADDING DEFENSES TO LIABILITY; GRANTING CONDEMNATION AUTHORITY FOR CONTAMINATED SITES; AMENDING SECTIONS 75-10-701, 75-10-704, 75-10-711, 75-10-712, AND 75-10-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE;--AND-PROVIDING-RETROACTIVE-APPLICABILITY-TO CERTAIN-REMEDIAL-ACTION-COSTS."

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

NEW SECTION. Section 1. Short title. This part may be cited as the "Comprehensive Environmental Cleanup and Responsibility Act".

NEW SECTION. SECTION 2. PURPOSE. THE PURPOSES OF THIS PART ARE TO:

(1) PROTECT THE PUBLIC HEALTH AND WELFARE OF ALL MONTANA CITIZENS AGAINST THE DANGERS ARISING FROM RELEASES OF HAZARDOUS OR DELETERIOUS SUBSTANCES;

(2) ENCOURAGE PRIVATE PARTIES TO CLEAN UP SITES WITHIN THE STATE AT WHICH RELEASES OF HAZARDOUS OR DELETERIOUS SUBSTANCES HAVE OCCURRED, RESULTING IN ADVERSE IMPACTS ON THE HEALTH AND WELFARE OF THE CITIZENS OF THE STATE AND ON THE STATE'S NATURAL, ENVIRONMENTAL, AND BIOLOGICAL SYSTEMS; AND

(3) PROVIDE FOR FUNDING TO STUDY, PLAN, AND UNDERTAKE THE REHABILITATION, REMOVAL, AND CLEANUP OF SITES WITHIN THE STATE AT WHICH NO VOLUNTARY ACTION HAS BEEN TAKEN.

**Section 3.** Section 75-10-701, MCA, is amended to read:

"75-10-701. Definitions. As used in this part, 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) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.

1       (3) (a) "Facility" means:

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

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

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

12       {2}(4) "Fund" means the environmental quality  
13 protection fund established in 75-10-704.

14       {3}(5) "Hazardous or deleterious substance" means a  
15 substance that poses because of its quantity, concentration,  
16 or physical, chemical, or infectious characteristics may  
17 pose an imminent and substantial threat to public health and  
18 ~~that--is-either-a-petroleum-product-or-listed-as-a-hazardous~~  
19 ~~substance--in--volume--50,--Federal--Register,--pages--13474~~  
20 ~~through--13513, safety, or welfare or the environment,~~  
21 including:

22       (a) all substances that are defined as hazardous  
23 substances by section 101(14) of the federal Comprehensive  
24 Environmental Response, Compensation, and Liability Act  
25 (CERCLA), 42 U.S.C. 9601(14), as amended;

1       (b) all substances identified by the administrator of  
2 the United States environmental protection agency as  
3 hazardous substances pursuant to section 102 of CERCLA, 42  
4 U.S.C. 9602, as amended;

5       (c) all substances that are defined as a hazardous  
6 waste pursuant to section 1004(5) of the Resource  
7 Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as  
8 amended, including all substances listed or identified in 40  
9 CFR 261; and

10       (d) any petroleum product.

11       (6) "Natural resources" includes-but-is-not-limited-to  
12 MEANS land, fish, wildlife, biota, air, surface water,  
13 ground water, drinking water supplies, and any other  
14 resource SUCH RESOURCES within the state OF MONTANA or  
15 owned, managed, held in trust or otherwise controlled by or  
16 pertaining APPERTAINING to the state of Montana or a  
17 political subdivision of the state.

18       (7) (a) "Owns or operates" means owning, leasing,  
19 operating, managing activities at, or exercising control  
20 over the operation of a facility.

21       (b) The term does not include holding the indicia of  
22 ownership of a facility primarily to protect a security  
23 interest in the facility or other location unless the holder  
24 has participated in the management of the facility. The term  
25 does not apply to the state or a local government that

acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility.

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

(9) "Petroleum product" includes gasoline, crude oil, fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(10) "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.

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

(12) "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially responsible party acting pursuant to an order or request issued by the department, THE UNITED STATES, OR ANY FEDERAL AGENCY, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.

(13) "Remedial action contractor" means:

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

(b) any person who is retained or hired by a person described in subsection (13)(a) to provide services relating to a remedial action.

(14) "Remedial action costs" means reasonable costs

1 that are attributable to or associated with a remedial  
 2 action at a facility, including but not limited to the costs  
 3 of administration, investigation, legal or enforcement  
 4 activities, contracts, feasibility studies, or health  
 5 studies."

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

7 **"75-10-704. Environmental quality protection fund. (1)**

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

13 (2) The fund may only be used to carry out the  
 14 provisions of this part and for remedial actions taken by  
 15 the department pursuant to this part in response to a  
 16 release of hazardous or deleterious substances. Fund-uses  
 17 ~~must--include--the--conduct--of--the--hazardous--waste--site~~  
 18 ~~remedial--action--program--which--is--a--program--of--remedial~~  
 19 ~~action-at-sites:~~

20 ~~(a)--where-a-release-has-occurred--and~~

21 ~~(b)--where-the--U.S.--environmental--protection--agency~~  
 22 ~~has--under--the--provisions--of--the--federal--Comprehensive~~  
 23 ~~Environmental--Response--Compensation--and--Liability--Act--of~~  
 24 ~~1980--(CERCLA)--as-amended--conducted-a-hazard-ranking-study~~  
 25 ~~and-judged-the--site--not--eligible--for--inclusion--on--the~~

1 ~~national--priority--list--or--where--the--U.S.--environmental~~  
 2 ~~protection-agency-has-no-authority-or-no-plan-to-assess--the~~  
 3 ~~site-under-CERCLA:~~

4 (3) ~~The department's program for remedial action under~~  
 5 ~~subsection--(2)--must--include~~ To--maintain--an--adequate  
 6 ~~revolving fund,~~ the THE department shall:

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

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

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

17 (a) all penalties, NATURAL RESOURCE damages, and  
 18 ~~department--expenditures~~ remedial action costs recovered  
 19 pursuant to 75-10-715;

20 (b) all administrative penalties assessed pursuant to  
 21 [section 8 9] and all civil penalties assessed pursuant to  
 22 75-10-711(5);

23 ~~(b)(c)~~ funds appropriated to the fund by the  
 24 legislature; and

25 ~~(c)(d)~~ funds received from the interest income of the



1 resource indemnity trust fund pursuant to 15-38-202.

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

6 NEW SECTION. Section 5. Information gathering and  
7 access. (1) The department may undertake any investigative  
8 or other information-gathering action that it considers  
9 necessary or appropriate for determining the need for  
10 remedial action, choosing or taking a remedial action, or  
11 otherwise enforcing the provisions of this part.

12 (2) Any AUTHORIZED officer, employee, or  
13 representative of the department may require a person who  
14 has or may have information relevant to a release or  
15 threatened release of a hazardous or deleterious substance  
16 to furnish, upon request, any information or documents  
17 relating to but not limited to the following matters:

18 (a) the identification, nature, and quantity of a  
19 hazardous or deleterious substance that has been or is being  
20 generated, treated, stored, or disposed of at or transported  
21 from a facility;

22 (b) the nature or extent of a release or threatened  
23 release of a hazardous or deleterious substance at or from a  
24 facility;

25 (c) information relating to the ability of a person to

1 pay for or to perform a cleanup; and

2 (d) any other information relevant to the department's  
3 determination of the appropriate remedial action to be taken  
4 or to the enforcement of this part.

5 (3) For purposes of assisting the department in  
6 acquiring information relevant to the need for, the  
7 determination of, or the taking of remedial action or  
8 otherwise enforcing the provisions of this part, any duly  
9 authorized officer, employee, or representative of the  
10 department is authorized to:

11 (a) enter or have access at reasonable times to any  
12 facility or other place or property where:

13 (i) a hazardous or deleterious substance may be or has  
14 been generated, stored, treated, disposed of, or transported  
15 from;

16 (ii) there has been or may be a release of a hazardous  
17 or deleterious substance;

18 (iii) records or other relevant information regarding a  
19 release or threatened release is located;

20 (iv) entry is necessary to determine the need for any  
21 appropriate remedial action; or

22 (v) entry is necessary to effectuate a remedial action  
23 under this part; and

24 (b) inspect and obtain samples from the facility or  
25 other place or property referred to in subsection (3)(a) or

1 from any location where a suspected hazardous or deleterious  
2 substance may be located. Any AUTHORIZED officer, employee,  
3 or representative of the department is authorized to inspect  
4 and obtain samples of containers or labeling for suspected  
5 hazardous or deleterious substances. If the AUTHORIZED  
6 officer, employee, or representative obtains samples, before  
7 leaving the premises he shall give to the owner, operator,  
8 tenant, or other person in charge of the place from which  
9 the samples were obtained a receipt describing the sample  
10 obtained and, if requested, a portion of each sample.

11 (4) The department may issue subpoenas for the  
12 attendance and testimony of witnesses and the production of  
13 relevant papers, books, or documents in connection with the  
14 information-gathering authority conferred pursuant to this  
15 section. The method for service of subpoenas and payment of  
16 witness fees and mileage is the same as that required in  
17 civil actions in the district courts of the state. In case  
18 of a refusal to obey a subpoena issued and served upon a  
19 person pursuant to this subsection, the district court for a  
20 district in which the person is found, resides, or transacts  
21 business, upon application of the department and after  
22 notice to the person, has jurisdiction to issue an order  
23 requiring the person to appear and either give testimony or  
24 produce documents, or both, before a hearing officer. A  
25 failure to obey the order of the court may be punished by

1 the court as a contempt.

2 (5) If consent is not granted regarding a request made  
3 by an AUTHORIZED officer, employee, or representative under  
4 this section, the director of the department may issue an  
5 order directing compliance with the request.

6 (6) The department may commence a civil action to  
7 compel compliance with an order issued pursuant to this  
8 section.

9 (7) In any action commenced pursuant to subsection (6)  
10 WHEN THE COURT DETERMINES THAT THERE MAY BE AN IMMINENT AND  
11 SUBSTANTIAL THREAT TO PUBLIC HEALTH, SAFETY, OR WELFARE OR  
12 THE ENVIRONMENT, the court shall enjoin any activity that  
13 constitutes a failure to comply with the order and shall  
14 direct compliance with the order unless, under the  
15 circumstances of the case, the order is arbitrary and  
16 capricious or otherwise not in accordance with law.

17 (8) Persons subject to the requirements of this  
18 section may make a written claim of confidentiality for  
19 information unique to the owner or operator of a facility  
20 that would, if disclosed, reveal methods or processes  
21 entitled to protection as trade secrets. The claim of  
22 confidentiality must be clearly designated on the materials  
23 at the time they are obtained by the department. If the  
24 department accepts the characterization, it shall maintain  
25 that information as confidential. Information describing

physical or chemical characteristics of hazardous or deleterious substances that have been or may be released into the environment are not considered confidential. The department has access to and may use any trade secret information in carrying out the activities of this part as may be necessary to protect the public health, safety, or welfare or the environment while maintaining the information as confidential.

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

"75-10-711. Remedial action -- orders -- penalties -- judicial proceedings. (1) The department may take remedial action necessary--and--appropriate--to--protect--the--public health;--public--welfare;--or--the--environment whenever it determines--that:

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

(b) the appropriate remedial action will not be done properly and expeditiously by ~~the owner or operator of the vessel, vehicle, or facility from which the release emanates or by any other responsible party~~ by any person liable under 75-10-715(1).

(2) Whenever the department ~~is--authorized--to--act pursuant--to--subsection--(1)~~ or has reason to believe that a

release has occurred or is about to occur, the department may undertake remedial action in the form of any investigation, monitoring, survey, testing, or other information-gathering as authorized by [section 4 5] that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of release and the extent and imminence of the danger to the public health, public safety, or welfare; or the environment. ~~The department is authorized to draw upon the fund to--take--the remedial action.~~

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

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

(b) the party person or parties persons determined by the department to be ~~responsible--for--the--release--or~~

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

6 (4)--The (c) the written notice to a-responsible-party  
 7 must-inform-the-responsible-party each person informs him  
 8 that if that-party he is subsequently found liable pursuant  
 9 to 75-10-715(1), he may be required to reimburse the fund  
 10 for the costs--of-the state's remedial action taken-by-the  
 11 department costs and may be subject to punitive--damages  
 12 penalties pursuant to 75-10-715(3).

13 (4) Whenever the department is authorized to act  
 14 pursuant to subsection (1) or has reason to believe that a  
 15 release THAT MAY POSE AN IMMINENT AND SUBSTANTIAL THREAT TO  
 16 PUBLIC HEALTH, SAFETY, OR WELFARE OR THE ENVIRONMENT has  
 17 occurred or is about to occur, it may issue to any person  
 18 liable under 75-10-715(1) cease and desist, remedial, or  
 19 other orders as may be necessary or appropriate to protect  
 20 public health, safety, or welfare or the environment.

21 (5) A person who violates or fails or refuses to  
 22 comply with an order issued under [section 4 5] or this  
 23 section may, in an action brought to enforce the order, be  
 24 assessed a civil penalty of not more than \$10,000 for each  
 25 day in which a violation occurs or a failure or refusal to

1 comply continues. IN DETERMINING THE AMOUNT OF ANY PENALTY  
 2 ASSESSED, THE COURT MAY TAKE INTO ACCOUNT THE NATURE,  
 3 CIRCUMSTANCES, EXTENT, AND GRAVITY OF THE NONCOMPLIANCE AND,  
 4 WITH RESPECT TO THE PERSON LIABLE UNDER 75-10-715(1), HIS  
 5 ABILITY TO PAY; ANY PRIOR HISTORY OF SUCH VIOLATIONS; THE  
 6 DEGREE OF CULPABILITY; THE ECONOMIC BENEFIT OR SAVINGS, IF  
 7 ANY, RESULTING FROM THE NONCOMPLIANCE; AND ANY OTHER MATTERS  
 8 AS JUSTICE MAY REQUIRE. Civil penalties collected under this  
 9 subsection must be deposited into the environmental quality  
 10 protection fund established in 75-10-704.

11 (6) A court has jurisdiction to review an order issued  
 12 under [section 4 5] or this section only in the following  
 13 actions:

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

16 (b) an action to enforce an order issued under  
 17 [section 4 5] or this section; or

18 (c) an action to recover a civil penalty for violation  
 19 of or failure to comply with an order issued under [section  
 20 4 5] or this section; OR

21 (D) AN ACTION BY A PERSON TO WHOM AN ORDER HAS BEEN  
 22 ISSUED TO DETERMINE THE VALIDITY OF THE ORDER, ONLY IF THE  
 23 PERSON HAS BEEN IN COMPLIANCE AND CONTINUES IN COMPLIANCE  
 24 WITH THE ORDER PENDING DECISION OF THE COURT.

25 (7) In considering objections raised in a judicial

1 action regarding orders issued under this part, the court  
 2 shall uphold and enforce an order issued by the department  
 3 unless the objecting party can demonstrate, on the  
 4 administrative record, that the department's decision to  
 5 issue the order was arbitrary and capricious or otherwise  
 6 not in accordance with law.

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

15 **Section 7.** Section 75-10-712, MCA, is amended to read:  
 16 **"75-10-712. Emergency action.** If the department  
 17 determines that immediate response to an imminent threat to  
 18 public health, public safety, or welfare, or the environment  
 19 is necessary to avoid substantial injury or damage to  
 20 persons, property, or resources, remedial action may be  
 21 taken pursuant to 75-10-711(1) ~~and--(2)~~ without the prior  
 22 written notice required by 75-10-711(3)~~(b)~~. ~~in such a case,~~  
 23 ~~the~~ The department must shall give subsequent written notice  
 24 to the ~~responsible-party~~ person liable under 75-10-715(1)  
 25 within 5 days after the action is taken, describing the

1 circumstances which required the action to be taken without  
 2 prior notice."

3 **NEW SECTION. Section 8. Liability of remedial action**  
 4 **contractor.** (1) A person who is a remedial action contractor  
 5 with respect to a release or threatened release of a  
 6 hazardous or deleterious substance is not liable under this  
 7 part to any person for injuries, costs, damages, expenses,  
 8 or other liability that results from the release or  
 9 threatened release, including but not limited to claims for  
 10 indemnification or contribution and claims by third parties  
 11 for death, personal injury, illness, loss or damage to  
 12 property, or economic loss.

13 (2) Immunity from liability, pursuant to subsection  
 14 (1), does not apply in the case of a release that is caused  
 15 by conduct of the remedial action contractor that is  
 16 negligent or grossly negligent or that constitutes  
 17 intentional misconduct.

18 (3) This section does not affect the liability of a  
 19 person under a warranty under federal, state, or common law  
 20 or the liability to an employee of an employer who is a  
 21 remedial action contractor under any provision of law,  
 22 including any provision of a law relating to workers'  
 23 compensation.

24 (4) A state agency, state employee, or an employee of  
 25 a political subdivision who provides services relating to

1 remedial action while acting within the scope of its or his  
2 authority as a governmental agency or employee has the same  
3 exemption from liability as is provided to the remedial  
4 action contractor under this section.

5 (5) The defense provided by 75-10-715(5)(c) is not  
6 available to a person liable under 75-10-715(1) with respect  
7 to remedial action costs or damages caused by an act or  
8 omission of a remedial action contractor.

9 (6) Except as provided in subsections (4) and (5),  
10 this section does not affect the liability under this part  
11 of a person other than a remedial action contractor.

12 (7) This section does not affect the plaintiff's  
13 burden of establishing liability under this part.

14 (8) This section does not minimize the liability,  
15 lessen the standard of liability, or otherwise shield from  
16 liability a potentially responsible party under 75-10-715 or  
17 section 107 of CERCLA for costs or damages incurred as a  
18 result of a release or threatened release of a hazardous or  
19 deleterious substance.

20 **NEW SECTION. Section 9. Administrative penalties.** (1)  
21 In lieu of proceeding under 75-10-711(5), the department may  
22 assess penalties of not more than \$1,000 per day per  
23 violation against a person liable under 75-10-715(1) for a  
24 release or threat of release who has failed or refused to  
25 comply with an order issued by the department pursuant to

1 75-10-711(4) or against a person who has failed or refused  
2 to comply with an order issued by the department pursuant to  
3 [section 4 5(5)].

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

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

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

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

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

1        "75-10-715. Reimbursement Liability -- reimbursement  
 2 and penalties -- proceedings -- defenses. (1) Subject  
 3 Notwithstanding any other provision of law and subject only  
 4 to the defenses set forth in subsection {4} (5), a--party  
 5 responsible--for--a--release--is--liable--for the following  
 6 persons are jointly and severally liable for a release or  
 7 threatened release of a hazardous or deleterious substance  
 8 from a facility:

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

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

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

21        (d) a person who accepts or has accepted a hazardous  
 22 or deleterious substance for transport to a disposal or  
 23 treatment facility.

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

1        (a) all costs-of remedial action taken costs incurred  
 2 by the department-pursuant-to-this-part state; and

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

16        {2}{3} If the responsible--party person liable under  
 17 75-10-715(1) fails, without sufficient cause, to comply with  
 18 a department order issued pursuant to 75-10-711(4) or to  
 19 properly provide remedial action upon notification by the  
 20 department pursuant to 75-10-711(3){b}, the responsible  
 21 party person may be liable for punitive-damages penalties in  
 22 an amount not to exceed two times the amount of any costs  
 23 incurred by the department state pursuant to this section.

24        {3}{4} The department may initiate civil proceedings  
 25 in district court to recover remedial action costs, natural

1 resource damages, or penalties under subsections (1) and  
 2 (2) through (3). Proceedings to recover costs and penalties  
 3 must be conducted in accordance with [section 13]. Venue for  
 4 any action to recover costs, damages, or penalties lies in  
 5 the county where the release occurred or where the  
 6 responsible-party person liable under 75-10-715(1) resides  
 7 or has its principal place of business or in the district  
 8 court of the first judicial district.

9 (4)(5) No party person is liable under subsection  
 10 subsections (1) or (2) through (3) if that party person can  
 11 establish by a preponderance of the evidence that:

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

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

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

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

23 (ii) an act or omission of a third party other than one  
 24 whose act or omission occurs in connection with a  
 25 contractual relationship, existing directly or indirectly,

1 with the person, if the person establishes by a  
 2 preponderance of the evidence that he:

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

settlement.

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

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

**NEW SECTION. Section 12. Condemnation -- creation of state lien.** (1) Whenever the department determines that property upon which a release or threatened release of a hazardous or deleterious substance has occurred may present an imminent and substantial endangerment to the public health, safety, or welfare or the environment, the department may condemn the property for public use to mitigate the threat. The taking of the property must be conducted in accordance with the procedure set forth in Title 70, chapter 30, parts 1 through 3.

(2) All costs, penalties, and natural resource damages for which a person has been judicially determined to be liable to the state pursuant to 75-10-715 constitute a lien in favor of the state upon all property and rights to the

1 property that belong to the person.

2 (3) The lien imposed by this section arises at the  
3 time notice incorporating a description of the property  
4 subject to the remedial action and an identification of the  
5 amount of costs, penalties, and natural resource damages is  
6 duly filed with the clerk and recorder of the county in  
7 which the real property is located. A copy of the notice  
8 must be served by certified mail upon the liable person.

9 (4) The costs, penalties, and natural resource damages  
10 constituting the lien may be recovered in an action in the  
11 district court for the district in which the property is  
12 located or in which the remedial action is occurring or has  
13 occurred. This section does not affect the right of the  
14 state to bring an action against a person to recover all  
15 costs, penalties, and natural resource damages for which  
16 that person is liable under this part or any other provision  
17 of state or federal law.

18 (5) The lien must continue until the liability for the  
19 costs and damages incurred as a result of the release of a  
20 hazardous or deleterious substance is satisfied.

21 **NEW SECTION. Section 13. Degree of cleanup required**  
22 **-- permit exemption.** (1) A remedial action performed under  
23 this part must attain a degree of cleanup of the hazardous  
24 or deleterious substance and control of a threatened release  
25 or further release of that substance that assures present

1 and future protection of public health, safety, and welfare  
2 and of the environment.

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

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

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

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

15 (i) use permanent solutions;

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

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

22 (3) The department may exempt any portion of a  
23 remedial action that is conducted entirely on site from a  
24 state or local permit that would, in the absence of the  
25 remedial action, be required if the remedial action is

1 carried out in accordance with the standards established  
2 under subsection (1) and this part.

3 NEW SECTION. Section 14. Payment of state costs and  
4 penalties. (1) The department shall keep a record of the  
5 state's remedial action costs.

6 (2) Based on this record, the department shall require  
7 a person liable under 75-10-715 to pay the amount of the  
8 state's remedial action costs and, if applicable, penalties  
9 under 75-10-715(3).

10 (3) If the state's remedial action costs and penalties  
11 are not paid by the liable person to the department within  
12 60 days after receipt of notice that the costs and penalties  
13 are due, the department shall bring an action in the name of  
14 the state to recover the amount owed plus reasonable legal  
15 expenses. The department's certification of the state's  
16 remedial action costs is prima facie evidence that the costs  
17 are reasonable and are consistent with this part.

18 (4) An action to recover remedial action costs may be  
19 brought under this section at any time after any remedial  
20 action costs have been incurred, and the court may enter a  
21 declaratory judgment on liability for remedial action costs  
22 that is binding on any subsequent action or actions to  
23 recover further remedial action costs.

24 (5) An initial action for recovery of remedial action  
25 costs must be commenced within 6 years after initiation of

1 physical on-site construction of the remedial action.

2 (6) Remedial action costs and any penalties recovered  
3 by the state under 75-10-715 must be deposited into the  
4 environmental quality protection fund established in  
5 75-10-704.

6 NEW SECTION. Section 15. Public notice of  
7 administrative order or consent decree. (1) Except as  
8 provided in 75-10-712, before FINAL approval BY THE DIRECTOR  
9 OF THE DEPARTMENT of any administrative order ON CONSENT  
10 ISSUED PURSUANT TO 75-10-711 or BEFORE JUDICIAL APPROVAL OF  
11 A consent decree issued pursuant to this part, the  
12 department shall:

13 (a) publish a notice and brief description of the  
14 proposed order or decree in a daily newspaper of general  
15 circulation in the area affected and make copies of the  
16 proposal available to the public;

17 (b) provide at least 30 days (or whatever additional  
18 time the department may in its discretion grant upon written  
19 request) for submission of written comments regarding the  
20 proposed order or decree and, upon written request by 10 or  
21 more persons or by a group having 10 or more members (but  
22 not including a liable person), conduct a public meeting at  
23 or near the facility for the purpose of receiving verbal  
24 comment regarding the proposed order or decree; and

25 (c) consider written or verbal comments properly

1 submitted during the comment period or at the public  
2 meeting.

3 (2) Upon making a final decision regarding the  
4 proposed order or decree, the department shall publish  
5 notice, as provided under subsection (1), and make copies of  
6 the approved order or decree available to the public.

7 NEW SECTION. Section 16. Agreements to perform  
8 remedial action. (1) To expedite effective remedial actions  
9 and minimize litigation, the department, in its discretion  
10 and whenever practicable and in the public interest, may  
11 NEGOTIATE AND enter into an agreement with any person,  
12 including the owner or operator of the facility from which a  
13 release emanates, to perform a remedial action if the  
14 department determines that the action will be properly done  
15 by the person. The agreement must contain terms and  
16 conditions that the department in its discretion determines  
17 to be appropriate.

18 (2) Whenever the department enters into an agreement  
19 under this section for remedial action or for assessment or  
20 payment of natural resource damages, the agreement must be  
21 filed in an appropriate district court as a consent decree  
22 and must be available for public comment for at least 30  
23 days.

24 (3) A decision of the department to enter into or not  
25 enter into agreements under this section is not subject to

1 judicial review.

2 NEW SECTION. Section 17. Liability apportionment and  
3 contribution. (1) Any person held jointly and severally  
4 liable under 75-10-715 has the right at trial to have the  
5 trier of fact apportion liability among the parties as  
6 provided in this section. The burden is on each liable  
7 person to show how his liability should be apportioned. In  
8 apportioning the liability of any person under this section,  
9 the trier of fact shall consider the following:

10 (a) the extent to which the person's contribution to  
11 the release of a hazardous or deleterious substance can be  
12 distinguished;

13 (b) the amount of hazardous or deleterious substance  
14 involved;

15 (c) the degree of toxicity of the hazardous or  
16 deleterious substance involved;

17 (d) the degree of involvement of and care exercised by  
18 the person in manufacturing, treating, transporting, and OR  
19 disposing of the hazardous or deleterious substance;

20 (e) the degree of cooperation by the person with  
21 federal, state, or local officials to prevent any harm to  
22 the public health, safety, or welfare or the environment;  
23 and

24 (f) knowledge by the person of the hazardous nature of  
25 the substance.

(2) If a person is held jointly and severally liable under 75-10-715 and establishes a proportionate share of the aggregate liability, the person has the right of contribution from any other liable person. If for any reason all or part of the contribution from a person liable for contribution cannot be obtained, each of the other persons against whom recovery is allowed is liable to contribute a proportional part of the unpaid portion of the noncontributing person's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing person.

**NEW SECTION. Section 18. Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

**NEW SECTION. Section 19. Codification instruction.** [Sections 1, ~~47-77-87-and-10-through-16~~ 2, 5, 8, 9, AND 11 THROUGH 17] are intended to be codified as an integral part of Title 75, chapter 10, part 7, and the provisions of Title 75, chapter 10, part 7, apply to [sections 1, ~~47-77-87-and-10-through-16~~ 2, 5, 8, 9, AND 11 THROUGH 17].

**NEW SECTION. Section 20. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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

~~NEW SECTION. Section 21. Retroactive applicability. [Section 9] applies retroactively, within the meaning of 1-2-109, to all remedial action costs incurred before the effective date of this act.~~

**NEW SECTION. Section 22. Effective date.** [This act] is effective on passage and approval.

-End-

SENATE BILL NO. 385

INTRODUCED BY HARP, D. BROWN

BY REQUEST OF THE DEPARTMENT OF HEALTH AND

ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO REMEDIAL ACTION UPON THE RELEASE OF A HAZARDOUS SUBSTANCE TO INCLUDE CERTAIN PROVISIONS PARALLEL TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (FEDERAL SUPERFUND); REDEFINING "HAZARDOUS OR DELETERIOUS SUBSTANCE"; ADDING LIMITED IMMUNITY FOR REMEDIAL ACTION CONTRACTORS; AUGMENTING INVESTIGATIVE AND ENFORCEMENT AUTHORITY; PROVIDING FOR PUBLIC NOTICE AND COMMENT ON ADMINISTRATIVE ORDERS AND CONSENT DECREES; CLARIFYING AND ADDING DEFENSES TO LIABILITY; GRANTING CONDEMNATION AUTHORITY FOR CONTAMINATED SITES; AMENDING SECTIONS 75-10-701, 75-10-704, 75-10-711, 75-10-712, AND 75-10-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE;--AND-PROVIDING-RETROACTIVE-APPLICABILITY-TO CERTAIN-REMEDIAL-ACTION-COSTS."

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

NEW SECTION. **Section 1.** Short title. This part may be cited as the "Comprehensive Environmental Cleanup and Responsibility Act".

NEW SECTION. SECTION 2. PURPOSE. THE PURPOSES OF THIS PART ARE TO:

(1) PROTECT THE PUBLIC HEALTH AND WELFARE OF ALL MONTANA CITIZENS AGAINST THE DANGERS ARISING FROM RELEASES OF HAZARDOUS OR DELETERIOUS SUBSTANCES;

(2) ENCOURAGE PRIVATE PARTIES TO CLEAN UP SITES WITHIN THE STATE AT WHICH RELEASES OF HAZARDOUS OR DELETERIOUS SUBSTANCES HAVE OCCURRED, RESULTING IN ADVERSE IMPACTS ON THE HEALTH AND WELFARE OF THE CITIZENS OF THE STATE AND ON THE STATE'S NATURAL, ENVIRONMENTAL, AND BIOLOGICAL SYSTEMS; AND

(3) PROVIDE FOR FUNDING TO STUDY, PLAN, AND UNDERTAKE THE REHABILITATION, REMOVAL, AND CLEANUP OF SITES WITHIN THE STATE AT WHICH NO VOLUNTARY ACTION HAS BEEN TAKEN.

**Section 3.** Section 75-10-701, MCA, is amended to read:

"75-10-701. Definitions. As used in this part, 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) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.

(3) (a) "Facility" means:

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

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

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

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

(5) "Hazardous or deleterious substance" means a substance that poses because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health and that is either a petroleum product or listed as a hazardous substance in volume 50, Federal Register, pages 13474 through 13513, safety, or welfare or the environment, including:

(a) all substances that are defined as hazardous substances by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14), as amended;

(b) all substances identified by the administrator of the United States environmental protection agency as hazardous substances pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended; AND

(c) all substances that are defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including all substances listed or identified in 40 CFR 261, and

~~(d) any petroleum product.~~

(6) "Natural resources" ~~includes but is not limited to~~ MEANS land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other resource SUCH RESOURCES within the state OF MONTANA or owned, managed, held in trust or otherwise controlled by or pertaining APPERTAINING to the state of Montana or a political subdivision of the state.

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

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that



1 acquired ownership or control through bankruptcy, tax  
 2 delinquency, abandonment, lien foreclosure, or other  
 3 circumstances in which the government acquires title by  
 4 virtue of its function as sovereign, unless the state or  
 5 local government has caused or contributed to the release or  
 6 threatened release of a hazardous or deleterious substance  
 7 from the facility. THE TERM ALSO DOES NOT INCLUDE THE OWNER  
 8 OR OPERATOR OF THE MILLTOWN DAM LICENSED UNDER PART 1 OF THE  
 9 FEDERAL POWER ACT (PERC LICENSE #2543-004) IF A HAZARDOUS OR  
 10 DELETERIOUS SUBSTANCE HAS BEEN RELEASED INTO THE ENVIRONMENT  
 11 UPSTREAM OF THE DAM AND HAS SUBSEQUENTLY COME TO BE LOCATED  
 12 IN THE RESERVOIR CREATED BY SUCH DAM, UNLESS SUCH OWNER OR  
 13 OPERATOR IS A PERSON WHO WOULD OTHERWISE BE LIABLE FOR SUCH  
 14 RELEASE OR THREATENED RELEASE UNDER 75-10-715(1).

15 (8) "Person" means an individual, trust, firm, joint  
 16 stock company, joint venture, consortium, commercial entity,  
 17 partnership, association, corporation, commission, state or  
 18 state agency, political subdivision of the state, interstate  
 19 body, or the federal government, including a federal agency.

20 ~~(9) -- "Petroleum product" includes gasoline, crude oil,~~  
 21 ~~fuel oil, diesel oil or fuel, lubricating oil, oil sludge or~~  
 22 ~~refuse, and any other petroleum-related product or waste or~~  
 23 ~~fraction thereof that is liquid at standard conditions of~~  
 24 ~~temperature and pressure (60 degrees F and 14.7 pounds per~~  
 25 ~~square inch absolute).~~

1 ~~(4)(10)(9)~~ "Release" means any spilling, leaking,  
 2 pumping, pouring, emitting, emptying, discharging,  
 3 injecting, escaping, leaching, dumping, or disposing of a  
 4 hazardous or deleterious substance either directly into the  
 5 environment or in a manner in which the substance can  
 6 reasonably be expected to enter the environment if not  
 7 contained, removed, or abated, but excludes releases  
 8 confined to the indoor workplace environment, the use of  
 9 pesticides as defined in 80-8-102(30) when they are applied  
 10 in accordance with approved federal and state labels, and  
 11 the use of commercial fertilizers as defined in 80-10-101(2)  
 12 when applied as part of accepted agricultural practice.

13 ~~(5)(11)(10)~~ "Remedial action" includes all  
 14 notification, investigation, administration, monitoring,  
 15 cleanup, restoration, MITIGATION, abatement, removal,  
 16 replacement, enforcement, legal action, health studies,  
 17 feasibility studies, and other actions necessary or  
 18 appropriate to respond to a release or threatened release.

19 ~~(12)(11)~~ "Remedial action contract" means a written  
 20 contract or agreement entered into by a remedial action  
 21 contractor with the state, or with a potentially responsible  
 22 party acting pursuant to an order or request issued by the  
 23 department, THE UNITED STATES, OR ANY FEDERAL AGENCY, to  
 24 provide a remedial action with respect to a release or  
 25 threatened release of a hazardous or deleterious substance.

~~13~~(12) "Remedial action contractor" means:

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

(b) any person who is retained or hired by a person described in subsection (13)(a) to provide services relating to a remedial action.

~~14~~(13) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies."

**Section 4.** 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 only be used 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. ~~Fund--uses must--include--the--conduct--of--the--hazardous--waste--site remedial-action-program, which--is--a--program--of--remedial~~

~~action-at-sites:~~

~~(a)--where-a-release-has-occurred; and~~

~~(b)--where--the--U.S.--environmental--protection--agency has, under the provisions of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, conducted a hazard ranking study and judged the site not eligible for inclusion on the national priority list or where the U.S. environmental protection agency has no authority or no plan to assess the site under CERCLA.~~

(3) The department's program for remedial action under subsection (2) must include ~~To maintain an adequate revolving fund, the~~ THE department shall:

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

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

(4) There must be deposited in the fund:

(a) all penalties, NATURAL RESOURCE damages, and department expenditures remedial action costs recovered

1 pursuant to 75-10-715;

2 (b) all administrative penalties assessed pursuant to  
 3 [section 8 9] and all civil penalties assessed pursuant to  
 4 75-10-711(5);

5 ~~(b)~~(c) funds appropriated to the fund by the  
 6 legislature; and

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

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

13 NEW SECTION. Section 5. Information gathering and  
 14 access. (1) The department may undertake any investigative  
 15 or other information-gathering action that it considers  
 16 necessary or appropriate for determining the need for  
 17 remedial action, choosing or taking a remedial action, or  
 18 otherwise enforcing the provisions of this part.

19 (2) Any AUTHORIZED officer, employee, or  
 20 representative of the department may require a person who  
 21 has or may have information relevant to a release or  
 22 threatened release of a hazardous or deleterious substance  
 23 to furnish, upon request, any information or documents  
 24 relating to but not limited to the following matters:

25 (a) the identification, nature, and quantity of a

1 hazardous or deleterious substance that has been or is being  
 2 generated, treated, stored, or disposed of at or transported  
 3 from a facility;

4 (b) the nature or extent of a release or threatened  
 5 release of a hazardous or deleterious substance at or from a  
 6 facility;

7 (c) information relating to the ability of a person to  
 8 pay for or to perform a cleanup; and

9 (d) any other information relevant to the department's  
 10 determination of the appropriate remedial action to be taken  
 11 or to the enforcement of this part.

12 (3) For purposes of assisting the department in  
 13 acquiring information relevant to the need for, the  
 14 determination of, or the taking of remedial action or  
 15 otherwise enforcing the provisions of this part, any ~~duty~~  
 16 authorized officer, employee, or representative of the  
 17 department is authorized to:

18 (a) enter or have access at reasonable times to any  
 19 facility or other place or property where:

20 (i) a hazardous or deleterious substance may be or has  
 21 been generated, stored, treated, disposed of, or transported  
 22 from;

23 (ii) there has been or may be a release of a hazardous  
 24 or deleterious substance;

25 (iii) records or other relevant information regarding a

1 release or threatened release is located;

2 (iv) entry is necessary to determine the need for any  
3 appropriate remedial action; or

4 (v) entry is necessary to effectuate a remedial action  
5 under this part; and

6 (b) inspect and obtain samples from the facility or  
7 other place or property referred to in subsection (3)(a) or  
8 from any location where a suspected hazardous or deleterious  
9 substance may be located. Any AUTHORIZED officer, employee,  
10 or representative of the department is authorized to inspect  
11 and obtain samples of containers or labeling for suspected  
12 hazardous or deleterious substances. If the AUTHORIZED  
13 officer, employee, or representative obtains samples, before  
14 leaving the premises he shall give to the owner, operator,  
15 tenant, or other person in charge of the place from which  
16 the samples were obtained a receipt describing the sample  
17 obtained and, if requested, a portion of each sample.

18 (4) The department may issue subpoenas for the  
19 attendance and testimony of witnesses and the production of  
20 relevant papers, books, or documents in connection with the  
21 information-gathering authority conferred pursuant to this  
22 section. The method for service of subpoenas and payment of  
23 witness fees and mileage is the same as that required in  
24 civil actions in the district courts of the state. In case  
25 of a refusal to obey a subpoena issued and served upon a

1 person pursuant to this subsection, the district court for a  
2 district in which the person is found, resides, or transacts  
3 business, upon application of the department and after  
4 notice to the person, has jurisdiction to issue an order  
5 requiring the person to appear and either give testimony or  
6 produce documents, or both, before a hearing officer. A  
7 failure to obey the order of the court may be punished by  
8 the court as a contempt.

9 (5) If consent is not granted regarding a request made  
10 by an AUTHORIZED officer, employee, or representative under  
11 this section, the director of the department may issue an  
12 order directing compliance with the request.

13 (6) The department may commence a civil action to  
14 compel compliance with an order issued pursuant to this  
15 section.

16 (7) In any action commenced pursuant to subsection (6)  
17 WHEN THE COURT DETERMINES THAT THERE MAY BE AN IMMINENT AND  
18 SUBSTANTIAL THREAT TO PUBLIC HEALTH, SAFETY, OR WELFARE OR  
19 THE ENVIRONMENT, the court shall enjoin any activity that  
20 constitutes a failure to comply with the order and shall  
21 direct compliance with the order unless, under the  
22 circumstances of the case, the order is arbitrary and  
23 capricious or otherwise not in accordance with law.

24 (8) Persons subject to the requirements of this  
25 section may make a written claim of confidentiality for

1 information unique to the owner or operator of a facility  
 2 that would, if disclosed, reveal methods or processes  
 3 entitled to protection as trade secrets. The claim of  
 4 confidentiality must be clearly designated on the materials  
 5 at the time they are obtained by the department. If the  
 6 department accepts the characterization, it shall maintain  
 7 that information as confidential. Information describing  
 8 physical or chemical characteristics of hazardous or  
 9 deleterious substances that have been or may be released  
 10 into the environment are not considered confidential. The  
 11 department has access to and may use any trade secret  
 12 information in carrying out the activities of this part as  
 13 may be necessary to protect the public health, safety, or  
 14 welfare or the environment while maintaining the information  
 15 as confidential.

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

17 "75-10-711. Remedial action -- orders -- penalties --  
 18 judicial proceedings. (1) The department may take remedial  
 19 action necessary--and--appropriate--to--protect--the-public  
 20 health;--public--welfare;--or--the--environment whenever it  
 21 determines-that:

22 (a) there has been a release or there is a substantial  
 23 threat of a release into the environment that may present an  
 24 imminent and substantial endangerment to the public health,  
 25 welfare, or safety or the environment; and

1 (b) the appropriate remedial action will not be done  
 2 properly and expeditiously by ~~the-owner-or-operator-of-the~~  
 3 ~~vessel;--vehicle;--or--facility--from--which--the--release--emanates~~  
 4 ~~or-by-any-other-responsible-party~~ by any person liable under  
 5 75-10-715(1).

6 (2) Whenever the department ~~is--authorized--to--act~~  
 7 ~~pursuant--to--subsection-(1)--or~~ has reason to believe that a  
 8 release has occurred or is about to occur, the department  
 9 may undertake remedial action in the form of any  
 10 investigation, monitoring, survey, testing, or other  
 11 information-gathering as authorized by [section 4 5] that is  
 12 necessary and appropriate to identify the existence, nature,  
 13 origin, and extent of the release or the threat of release  
 14 and the extent and imminence of the danger to the public  
 15 health, public safety, or welfare or the environment. ~~The~~  
 16 ~~department-is-authorized-to-draw-upon-the-fund-to--take--the~~  
 17 ~~remedial-action-~~

18 (3) Any person ~~responsible--for--the--release~~ liable  
 19 under 75-10-715(1) must take immediate action to contain,  
 20 remove, and abate the release. Except as provided in  
 21 75-10-712, the department is authorized to draw upon the  
 22 fund ~~in--order~~ to take action under subsections subsection  
 23 (1) and-(2) if it has made diligent good faith efforts to  
 24 determine the identity of the party person or parties  
 25 responsible persons liable for the release or threatened

1 release and:

2 (a) is unable to determine the identity of the  
3 ~~responsible-party~~ liable person or parties persons in a  
4 manner consistent with the need to take timely remedial  
5 action; or

6 (b) the party person or parties persons determined by  
7 the department to be ~~responsible--for--the--release--or~~  
8 ~~threatened--release~~ liable under 75-10-715(1) have been  
9 informed in writing of the department's determination and  
10 have been requested by the department to take appropriate  
11 remedial action but are unable or unwilling to take such  
12 action in a timely manner; and

13 ~~(4)--The (c) the written notice to a-responsible-party~~  
14 ~~must-inform-the-responsible-party~~ each person informs him  
15 that if that-party he is subsequently found liable pursuant  
16 to 75-10-715(1), he may be required to reimburse the fund  
17 for the ~~costs--of-the state's~~ remedial action ~~taken-by-the~~  
18 department costs and may be subject to ~~punitive--damages~~  
19 penalties pursuant to 75-10-715(3).

20 (4) Whenever the department is authorized to act  
21 pursuant to subsection (1) or has reason to believe that a  
22 release THAT MAY POSE AN IMMINENT AND SUBSTANTIAL THREAT TO  
23 PUBLIC HEALTH, SAFETY, OR WELFARE OR THE ENVIRONMENT has  
24 occurred or is about to occur, it may issue to any person  
25 liable under 75-10-715(1) cease and desist, remedial, or

1 other orders as may be necessary or appropriate to protect  
2 public health, safety, or welfare or the environment.

3 (5) A person who violates or fails or refuses to  
4 comply with an order issued under [section 4 5] or this  
5 section may, in an action brought to enforce the order, be  
6 assessed a civil penalty of not more than \$10,000 for each  
7 day in which a violation occurs or a failure or refusal to  
8 comply continues. IN DETERMINING THE AMOUNT OF ANY PENALTY  
9 ASSESSED, THE COURT MAY TAKE INTO ACCOUNT THE NATURE,  
10 CIRCUMSTANCES, EXTENT, AND GRAVITY OF THE NONCOMPLIANCE AND,  
11 WITH RESPECT TO THE PERSON LIABLE UNDER 75-10-715(1), HIS  
12 ABILITY TO PAY; ANY PRIOR HISTORY OF SUCH VIOLATIONS; THE  
13 DEGREE OF CULPABILITY; THE ECONOMIC BENEFIT OR SAVINGS, IF  
14 ANY, RESULTING FROM THE NONCOMPLIANCE; AND ANY OTHER MATTERS  
15 AS JUSTICE MAY REQUIRE. Civil penalties collected under this  
16 subsection must be deposited into the environmental quality  
17 protection fund established in 75-10-704.

18 (6) A court has jurisdiction to review an order issued  
19 under [section 4 5] or this section only in the following  
20 actions:

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

23 (b) an action to enforce an order issued under  
24 [section 4 5] or this section; or

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

1 of or failure to comply with an order issued under [section  
2 4 5] or this section; OR

3 (D) AN ACTION BY A PERSON TO WHOM AN ORDER HAS BEEN  
4 ISSUED TO DETERMINE THE VALIDITY OF THE ORDER, ONLY IF THE  
5 PERSON HAS BEEN IN COMPLIANCE AND CONTINUES IN COMPLIANCE  
6 WITH THE ORDER PENDING DECISION OF THE COURT.

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

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

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

23 "75-10-712. **Emergency action.** If the department  
24 determines that immediate response to an imminent threat to  
25 public health, public safety, or welfare, or the environment

1 is necessary to avoid substantial injury or damage to  
2 persons, property, or resources, remedial action may be  
3 taken pursuant to 75-10-711(1) ~~and--(2)~~ without the prior  
4 written notice required by 75-10-711(3)(b). ~~in such a case,~~  
5 ~~the~~ The department ~~must~~ shall give subsequent written notice  
6 to the ~~responsible-party~~ person liable under 75-10-715(1)  
7 within 5 days after the action is taken, describing the  
8 circumstances which required the action to be taken without  
9 prior notice."

10 **NEW SECTION. Section 8.** Liability of remedial action  
11 contractor. (1) A person who is a remedial action contractor  
12 with respect to a release or threatened release of a  
13 hazardous or deleterious substance is not liable under this  
14 part to any person for injuries, costs, damages, expenses,  
15 or other liability that results from the release or  
16 threatened release, including but not limited to claims for  
17 indemnification or contribution and claims by third parties  
18 for death, personal injury, illness, loss or damage to  
19 property, or economic loss.

20 (2) Immunity from liability, pursuant to subsection  
21 (1), does not apply in the case of a release that is caused  
22 by conduct of the remedial action contractor that is  
23 negligent or grossly negligent or that constitutes  
24 intentional misconduct.

25 (3) This section does not affect the liability of a

1 person under a warranty under federal, state, or common law  
2 or the liability to an employee of an employer who is a  
3 remedial action contractor under any provision of law,  
4 including any provision of a law relating to workers'  
5 compensation.

6 (4) A state agency, state employee, or an employee of  
7 a political subdivision who provides services relating to  
8 remedial action while acting within the scope of its or his  
9 authority as a governmental agency or employee has the same  
10 exemption from liability as is provided to the remedial  
11 action contractor under this section.

12 (5) The defense provided by 75-10-715(5)(c) is not  
13 available to a person liable under 75-10-715(1) with respect  
14 to remedial action costs or damages caused by an act or  
15 omission of a remedial action contractor.

16 (6) Except as provided in subsections (4) and (5),  
17 this section does not affect the liability under this part  
18 of a person other than a remedial action contractor.

19 (7) This section does not affect the plaintiff's  
20 burden of establishing liability under this part.

21 (8) This section does not minimize the liability,  
22 lessen the standard of liability, or otherwise shield from  
23 liability a potentially responsible party under 75-10-715 or  
24 section 107 of CERCLA for costs or damages incurred as a  
25 result of a release or threatened release of a hazardous or

1 deleterious substance.

2 NEW SECTION. **Section 9. Administrative penalties.** (1)

3 In lieu of proceeding under 75-10-711(5), the department may  
4 assess penalties of not more than \$1,000 per day per  
5 violation against a person liable under 75-10-715(1) for a  
6 release or threat of release who has failed or refused to  
7 comply with an order issued by the department pursuant to  
8 75-10-711(4) or against a person who has failed or refused  
9 to comply with an order issued by the department pursuant to  
10 [section 4 5(5)].

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

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

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



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

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

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

8 "75-10-715. Reimbursement Liability -- reimbursement  
9 and penalties -- proceedings -- defenses. (1) Subject  
10 Notwithstanding any other provision of law and subject only  
11 to the defenses set forth in subsection (4) (5), a--party  
12 responsible--for--a--release--is--liable--for the following  
13 persons are jointly and severally liable for a release or  
14 threatened release of a hazardous or deleterious substance  
15 from a facility:

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

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

22 (c) a person who generated, possessed, or was  
23 otherwise responsible for a hazardous or deleterious  
24 substance and who, by contract, agreement, or otherwise,  
25 arranged for disposal or treatment of the substance or

1 arranged with a transporter for transport of the substance  
2 for disposal or treatment; and

3 (d) a person who accepts or has accepted a hazardous  
4 or deleterious substance for transport to a disposal or  
5 treatment facility.

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

8 (a) all costs-of remedial action taken costs incurred  
9 by the department-pursuant-to-this-part state; and

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

23 (2)(3) If the responsible--party person liable under  
24 75-10-715(1) fails, without sufficient cause, to comply with  
25 a department order issued pursuant to 75-10-711(4) or to

properly provide remedial action upon notification by the department pursuant to 75-10-711(3)(b), the responsible party person may be liable for punitive-damages penalties in an amount not to exceed two times the amount of any costs incurred by the department state pursuant to this section.

(3)(4) The department may initiate civil proceedings in district court to recover remedial action costs, natural resource damages, or penalties under subsections (1) and (2) through (3). Proceedings to recover costs and penalties must be conducted in accordance with [section 13]. Venue for any action to recover costs, damages, or penalties lies in the county where the release occurred or where the responsible--party person liable under 75-10-715(1) resides or has its principal place of business or in the district court of the first judicial district.

(4)(5) No party person is liable under subsection subsections (1) or (2) through (3) if that party person can establish by a preponderance of the evidence that:

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

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

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

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

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

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

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

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

(e) the release or threatened release was from a facility for which a permit had been issued or an approval granted by the department, the hazardous or deleterious substance was specifically identified in the permit or approval, and the release was within the limits allowed in the permit or approval;

(c)(f) in the case of assessment of punitive-damages penalties under subsection (3), that factors beyond the control of the responsible-party person prevented the party person from taking timely remedial action; or

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

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

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

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

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

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

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

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

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

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

(iv) the obviousness of the presence or the likely

1 presence of contamination on the property; and

2 (v) the ability to detect the contamination by  
3 appropriate inspection.

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

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

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

22 **NEW SECTION. Section 11. Settlement -- bar to**  
23 **contribution liability.** (1) A person who has resolved his  
24 liability to the state arising under 75-10-715 or section  
25 107(a)(1) through (a)(4) of CERCLA 42 U.S.C. 9607(a)(1)

1 through (a)(4), in an administrative or judicially approved  
2 settlement is not liable for claims for contribution  
3 regarding matters addressed in the settlement. The  
4 settlement does not discharge any of the other potentially  
5 liable persons unless its terms provide a discharge. The  
6 terms of the settlement may reduce the potential liability  
7 of the other potentially liable persons by the amount of the  
8 settlement.

9 (2) If the state has obtained less than complete  
10 relief from a person who has resolved his liability to the  
11 state in an administrative or judicially approved  
12 settlement, the state may bring an action against any other  
13 person who has not resolved his liability.

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

19 **NEW SECTION. Section 12. Condemnation -- creation of**  
20 **state lien.** (1) Whenever the department determines that  
21 property upon which a release or threatened release of a  
22 hazardous or deleterious substance has occurred may present  
23 an imminent and substantial endangerment to the public  
24 health, safety, or welfare or the environment, the  
25 department may condemn the property for public use to

1 mitigate the threat. The taking of the property must be  
2 conducted in accordance with the procedure set forth in  
3 Title 70, chapter 30, parts 1 through 3.

4 (2) All costs, penalties, and natural resource damages  
5 for which a person has been judicially determined to be  
6 liable to the state pursuant to 75-10-715 constitute a lien  
7 in favor of the state upon all property and rights to the  
8 property that belong to the person.

9 (3) The lien imposed by this section arises at the  
10 time notice incorporating a description of the property  
11 subject to the remedial action and an identification of the  
12 amount of costs, penalties, and natural resource damages is  
13 duly filed with the clerk and recorder of the county in  
14 which the real property is located. A copy of the notice  
15 must be served by certified mail upon the liable person.

16 (4) The costs, penalties, and natural resource damages  
17 constituting the lien may be recovered in an action in the  
18 district court for the district in which the property is  
19 located or in which the remedial action is occurring or has  
20 occurred. This section does not affect the right of the  
21 state to bring an action against a person to recover all  
22 costs, penalties, and natural resource damages for which  
23 that person is liable under this part or any other provision  
24 of state or federal law.

25 (5) The lien must continue until the liability for the

1 costs and damages incurred as a result of the release of a  
2 hazardous or deleterious substance is satisfied.

3 NEW SECTION. **Section 13. Degree of cleanup required**  
4 **-- permit exemption.** (1) A remedial action performed under  
5 this part must attain a degree of cleanup of the hazardous  
6 or deleterious substance and control of a threatened release  
7 or further release of that substance that assures present  
8 and future protection of public health, safety, and welfare  
9 and of the environment.

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

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

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

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

22 (i) use permanent solutions;

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

25 (iii) are cost-effective, taking into account the total

1 short- and long-term costs of the actions, including the  
2 cost of operation and maintenance activities for the entire  
3 period during which the activities will be required.

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

10 **NEW SECTION. Section 14. Payment of state costs and**  
11 **penalties.** (1) The department shall keep a record of the  
12 state's remedial action costs.

13 (2) Based on this record, the department shall require  
14 a person liable under 75-10-715 to pay the amount of the  
15 state's remedial action costs and, if applicable, penalties  
16 under 75-10-715(3).

17 (3) If the state's remedial action costs and penalties  
18 are not paid by the liable person to the department within  
19 60 days after receipt of notice that the costs and penalties  
20 are due, the department shall bring an action in the name of  
21 the state to recover the amount owed plus reasonable legal  
22 expenses. The department's certification of the state's  
23 remedial action costs is prima facie evidence that the costs  
24 are reasonable and are consistent with this part.

25 (4) An action to recover remedial action costs may be

1 brought under this section at any time after any remedial  
2 action costs have been incurred, and the court may enter a  
3 declaratory judgment on liability for remedial action costs  
4 that is binding on any subsequent action or actions to  
5 recover further remedial action costs.

6 (5) An initial action for recovery of remedial action  
7 costs must be commenced within 6 years after initiation of  
8 physical on-site construction of the remedial action.

9 (6) Remedial action costs and any penalties recovered  
10 by the state under 75-10-715 must be deposited into the  
11 environmental quality protection fund established in  
12 75-10-704.

13 **NEW SECTION. Section 15. Public notice of**  
14 **administrative order or consent decree.** (1) Except as  
15 provided in 75-10-712, before FINAL approval BY THE DIRECTOR  
16 OF THE DEPARTMENT of any administrative order ON CONSENT  
17 ISSUED PURSUANT TO 75-10-711 or BEFORE JUDICIAL APPROVAL OF  
18 A consent decree issued pursuant to this part, the  
19 department shall:

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

24 (b) provide at least 30 days (or whatever additional  
25 time the department may in its discretion grant upon written

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

7 (c) consider written or verbal comments properly  
 8 submitted during the comment period or at the public  
 9 meeting.

10 (2) Upon making a final decision regarding the  
 11 proposed order or decree, the department shall publish  
 12 notice, as provided under subsection (1), and make copies of  
 13 the approved order or decree available to the public.

14 NEW SECTION. **Section 16. Agreements to perform**  
 15 **remedial action.** (1) To expedite effective remedial actions  
 16 and minimize litigation, the department, in its discretion  
 17 and whenever practicable and in the public interest, may  
 18 NEGOTIATE AND enter into an agreement with any person,  
 19 including the owner or operator of the facility from which a  
 20 release emanates, to perform a remedial action if the  
 21 department determines that the action will be properly done  
 22 by the person. The agreement must contain terms and  
 23 conditions that the department in its discretion determines  
 24 to be appropriate.

25 (2) Whenever the department enters into an agreement

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

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

9 NEW SECTION. **Section 17. Liability apportionment and**  
 10 **contribution.** (1) Any person held jointly and severally  
 11 liable under 75-10-715 has the right at trial to have the  
 12 trier of fact apportion liability among the parties as  
 13 provided in this section. The burden is on each liable  
 14 person to show how his liability should be apportioned. In  
 15 apportioning the liability of any person under this section,  
 16 the trier of fact shall consider the following:

17 (a) the extent to which the person's contribution to  
 18 the release of a hazardous or deleterious substance can be  
 19 distinguished;

20 (b) the amount of hazardous or deleterious substance  
 21 involved;

22 (c) the degree of toxicity of the hazardous or  
 23 deleterious substance involved;

24 (d) the degree of involvement of and care exercised by  
 25 the person in manufacturing, treating, transporting, and OR

1 disposing of the hazardous or deleterious substance;

2 (e) the degree of cooperation by the person with  
3 federal, state, or local officials to prevent any harm to  
4 the public health, safety, or welfare or the environment;  
5 and

6 (f) knowledge by the person of the hazardous nature of  
7 the substance.

8 (2) If a person is held jointly and severally liable  
9 under 75-10-715 and establishes a proportionate share of the  
10 aggregate liability, the person has the right of  
11 contribution from any other liable person. If for any reason  
12 all or part of the contribution from a person liable for  
13 contribution cannot be obtained, each of the other persons  
14 against whom recovery is allowed is liable to contribute a  
15 proportional part of the unpaid portion of the  
16 noncontributing person's share and may obtain judgment in a  
17 pending or subsequent action for contribution from the  
18 noncontributing person.

19 NEW SECTION. Section 18. Extension of authority. Any  
20 existing authority to make rules on the subject of the  
21 provisions of [this act] is extended to the provisions of  
22 [this act].

23 NEW SECTION. Section 19. Codification instruction.  
24 [Sections 1, ~~47-77-87-and-10-through-16~~ 2, 5, 8, 9, AND 11  
25 THROUGH 17] are intended to be codified as an integral part

1 of Title 75, chapter 10, part 7, and the provisions of Title  
2 75, chapter 10, part 7, apply to [sections 1, ~~47-77-87--and~~  
3 ~~10-through-16~~ 2, 5, 8, 9, AND 11 THROUGH 17].

4 NEW SECTION. Section 20. Saving clause. [This act]  
5 does not affect rights and duties that matured, penalties  
6 that were incurred, or proceedings that were begun before  
7 [the effective date of this act].

8 NEW SECTION. Section 21. Severability. If a part of  
9 [this act] is invalid, all valid parts that are severable  
10 from the invalid part remain in effect. If a part of [this  
11 act] is invalid in one or more of its applications, the part  
12 remains in effect in all valid applications that are  
13 severable from the invalid applications.

14 ~~NEW SECTION.--Section 21--Retroactive--applicability--~~  
15 ~~{Section--9}--applies--retroactively,--within-the-meaning-of~~  
16 ~~1-2-109,--to--all--remedial-action-costs-incurred--before--{the~~  
17 ~~effective-date-of-this-act};~~

18 NEW SECTION. Section 22. Effective date. [This act]  
19 is effective on passage and approval.

-End-

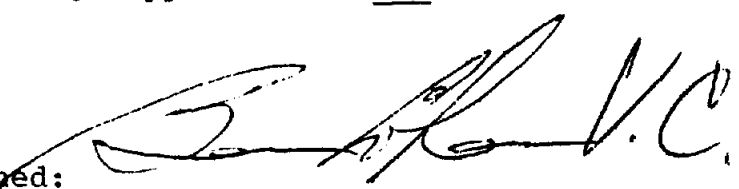


STANDING COMMITTEE REPORT

March 11, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that SENATE BILL 385 (third reading copy -- blue) be concurred in as amended .

Signed: 

Bob Raney, Chairman

[REP. DAVE BROWN WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 4, line 4.

Strike: "AND"

2. Page 4, line 9.

Following: "and"

Insert: "; and"

3. Page 4, line 10.

Following: "product"

Insert: "any petroleum product"

4. Page 5.

Following: line 25

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

Renumber: subsequent subsections

HOUSE

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SB 385

RT

COMMITTEE OF THE WHOLE AMENDMENT  
SENATE BILL 385  
Representative Dave Brown

March 16, 1989  
Page 2 of 2

March 16, 1989 12:21 pm  
Page 1 of 2

Mr. Chairman: I move to amend SENATE BILL 385 (third reading copy -- blue).

Signed:   
Representative Dave Brown

And, that such amendments to SENATE BILL 385 read as follows:

1. Page 22.

Following: line 21

Insert: "(2) 'Director' means the director of the department of health and environmental sciences."

Renumber: subsequent subsections

2. Page 6, lines 5 through 7.

Following: "environment" on line 5

Strike: "or" on line 5 through "abated" on line 7

Insert: "(including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance)"

3. Page 11, line 12.

Following: "substances."

Insert: "Each such inspection must be completed with reasonable promptness."

4. Page 11, line 17.

Following: "sample."

Insert: "A copy of the results of any analysis made of such samples must be furnished promptly to the owner, operator, tenant or other person in charge, if such person can be located."

5. Page 11, lines 20 and 21.

Following: "documents" on line 20

Strike: "in connection with the information gathering authority conferred pursuant to this section"

Insert: "relating to the matters in subsection (2) (a)-(d) of [section 5]"

6. Page 28.

Following: line 18

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

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

(i) The amount of the hazardous or deleterious substances contributed by that person to the facility.

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

(B) The person:

(i) is the owner of the real property on or in which the facility is located;

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

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

This subparagraph (B) does not apply if the person purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance."

7. Page 31, lines 22 through 24.

Following: "expenses." on line 22

Strike: The remainder of line 22 through "part." on line 24

8. Page 32, line 5.

Following: "costs."

Insert: "The court may disallow costs or damages only if the person liable under 75-10-715 can show on the record that the costs are not reasonable and are not consistent with this part."

ADOPT

REJECT

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(B)

HOUSE

SB 385

SENATE BILL NO. 385

INTRODUCED BY HARP, D. BROWN

BY REQUEST OF THE DEPARTMENT OF HEALTH AND  
ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
LAWS RELATING TO REMEDIAL ACTION UPON THE RELEASE OF A  
HAZARDOUS SUBSTANCE TO INCLUDE CERTAIN PROVISIONS PARALLEL  
TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE,  
COMPENSATION, AND LIABILITY ACT (FEDERAL SUPERFUND);  
REDEFINING "HAZARDOUS OR DELETERIOUS SUBSTANCE"; ADDING  
LIMITED IMMUNITY FOR REMEDIAL ACTION CONTRACTORS; AUGMENTING  
INVESTIGATIVE AND ENFORCEMENT AUTHORITY; PROVIDING FOR  
PUBLIC NOTICE AND COMMENT ON ADMINISTRATIVE ORDERS AND  
CONSENT DECREES; CLARIFYING AND ADDING DEFENSES TO  
LIABILITY; GRANTING CONDEMNATION AUTHORITY FOR CONTAMINATED  
SITES; AMENDING SECTIONS 75-10-701, 75-10-704, 75-10-711,  
75-10-712, AND 75-10-715, MCA; AND PROVIDING AN IMMEDIATE  
EFFECTIVE DATE;--AND-PROVIDING-RETROACTIVE-APPLICABILITY-TO  
CERTAIN-REMEDIAL-ACTION-COSTS."

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

NEW SECTION. **Section 1.** Short title. This part may be  
cited as the "Comprehensive Environmental Cleanup and  
Responsibility Act".

NEW SECTION. SECTION 2. PURPOSE. THE PURPOSES OF  
THIS PART ARE TO:

(1) PROTECT THE PUBLIC HEALTH AND WELFARE OF ALL  
MONTANA CITIZENS AGAINST THE DANGERS ARISING FROM RELEASES  
OF HAZARDOUS OR DELETERIOUS SUBSTANCES;

(2) ENCOURAGE PRIVATE PARTIES TO CLEAN UP SITES WITHIN  
THE STATE AT WHICH RELEASES OF HAZARDOUS OR DELETERIOUS  
SUBSTANCES HAVE OCCURRED, RESULTING IN ADVERSE IMPACTS ON  
THE HEALTH AND WELFARE OF THE CITIZENS OF THE STATE AND ON  
THE STATE'S NATURAL, ENVIRONMENTAL, AND BIOLOGICAL SYSTEMS;  
AND

(3) PROVIDE FOR FUNDING TO STUDY, PLAN, AND UNDERTAKE  
THE REHABILITATION, REMOVAL, AND CLEANUP OF SITES WITHIN THE  
STATE AT WHICH NO VOLUNTARY ACTION HAS BEEN TAKEN.

**Section 3.** Section 75-10-701, MCA, is amended to read:

"75-10-701. Definitions. As used in this part, 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) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL SCIENCES.

~~(2)~~(3) "Environment" means any surface water, ground  
water, drinking water supply, land surface or subsurface

1 strata, or ambient air within the state of Montana or under  
 2 the jurisdiction of the state of Montana.

3 {3}{4} (a) "Facility" means:

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

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

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

14 {2}{4}(5) "Fund" means the environmental quality  
 15 protection fund established in 75-10-704.

16 {3}{5}(6) "Hazardous or deleterious substance" means a  
 17 substance that poses because of its quantity, concentration,  
 18 or physical, chemical, or infectious characteristics may  
 19 pose an imminent and substantial threat to public health and  
 20 that--is-either-a-petroleum-product-or-listed-as-a-hazardous  
 21 substance--in--volume--50,--Federal--Register,--pages--13474  
 22 through--13513-, safety, or welfare or the environment,  
 23 including:

24 (a) all substances that are defined as hazardous  
 25 substances by section 101(14) of the federal Comprehensive

1 Environmental Response, Compensation, and Liability Act  
 2 (CERCLA), 42 U.S.C. 9601(14), as amended;

3 (b) all substances identified by the administrator of  
 4 the United States environmental protection agency as  
 5 hazardous substances pursuant to section 102 of CERCLA, 42  
 6 U.S.C. 9602, as amended; AND

7 (c) all substances that are defined as a hazardous  
 8 waste pursuant to section 1004(5) of the Resource  
 9 Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as  
 10 amended, including all substances listed or identified in 40  
 11 CFR 261,--and; AND

12 {d}--any-petroleum-product

13 (D) ANY PETROLEUM PRODUCT.

14 {6}{7} "Natural resources" includes-but-is-not-limited  
 15 to MEANS land, fish, wildlife, biota, air, surface water,  
 16 ground water, drinking water supplies, and any other  
 17 resource SUCH RESOURCES within the state OF MONTANA or  
 18 owned, managed, held in trust or otherwise controlled by or  
 19 pertaining APPERTAINING to the state of Montana or a  
 20 political subdivision of the state.

21 {7}{8} (a) "Owns or operates" means owning, leasing,  
 22 operating, managing activities at, or exercising control  
 23 over the operation of a facility.

24 (b) The term does not include holding the indicia of  
 25 ownership of a facility primarily to protect a security

1 interest in the facility or other location unless the holder  
 2 has participated in the management of the facility. The term  
 3 does not apply to the state or a local government that  
 4 acquired ownership or control through bankruptcy, tax  
 5 delinquency, abandonment, lien foreclosure, or other  
 6 circumstances in which the government acquires title by  
 7 virtue of its function as sovereign, unless the state or  
 8 local government has caused or contributed to the release or  
 9 threatened release of a hazardous or deleterious substance  
 10 from the facility. THE TERM ALSO DOES NOT INCLUDE THE OWNER  
 11 OR OPERATOR OF THE MILLTOWN DAM LICENSED UNDER PART 1 OF THE  
 12 FEDERAL POWER ACT (FERC LICENSE #2543-004) IF A HAZARDOUS OR  
 13 DELETERIOUS SUBSTANCE HAS BEEN RELEASED INTO THE ENVIRONMENT  
 14 UPSTREAM OF THE DAM AND HAS SUBSEQUENTLY COME TO BE LOCATED  
 15 IN THE RESERVOIR CREATED BY SUCH DAM, UNLESS SUCH OWNER OR  
 16 OPERATOR IS A PERSON WHO WOULD OTHERWISE BE LIABLE FOR SUCH  
 17 RELEASE OR THREATENED RELEASE UNDER 75-10-715(1).

18 {8}{9} "Person" means an individual, trust, firm,  
 19 joint stock company, joint venture, consortium, commercial  
 20 entity, partnership, association, corporation, commission,  
 21 state or state agency, political subdivision of the state,  
 22 interstate body, or the federal government, including a  
 23 federal agency.

24 {9}--"Petroleum-product"--includes-gasoline,crude-oil,  
 25 fuel-oil,diesel-oil-or-fuel,lubricating-oil,oil-sludge-or

1 refuse,--and-any-other-petroleum-related-product-or-waste-or  
 2 fraction-thereof-that-is-liquid-at--standard--conditions--of  
 3 temperature--and--pressure-{60-degrees-F-and-14.7-pounds-per  
 4 square-inch-absolute};

5 {9}{10} "PETROLEUM PRODUCT" INCLUDES GASOLINE, CRUDE  
 6 OIL (EXCEPT FOR CRUDE OIL AT PRODUCTION FACILITIES SUBJECT  
 7 TO REGULATION UNDER TITLE 82), FUEL OIL, DIESEL OIL OR FUEL,  
 8 LUBRICATING OIL, OIL SLUDGE OR REFUSE, AND ANY OTHER  
 9 PETROLEUM-RELATED PRODUCT OR WASTE OR FRACTION THEREOF THAT  
 10 IS LIQUID AT STANDARD CONDITIONS OF TEMPERATURE AND PRESSURE  
 11 {60 DEGREES F AND 14.7 POUNDS PER SQUARE INCH ABSOLUTE}.

12 {4}{10}{9}{10}{11} "Release" means any spilling,  
 13 leaking, pumping, pouring, emitting, emptying, discharging,  
 14 injecting, escaping, leaching, dumping, or disposing of a  
 15 hazardous or deleterious substance either directly into the  
 16 environment or-in-a-manner-in-which-the-substance-can  
 17 reasonably-be-expected-to-enter-the-environment-if-not  
 18 contained,removed,or-abated (INCLUDING THE ABANDONMENT OR  
 19 DISCARDING OF BARRELS, CONTAINERS, AND OTHER CLOSED  
 20 RECEPTACLES CONTAINING ANY HAZARDOUS OR DELETERIOUS  
 21 SUBSTANCE), but excludes releases confined to the indoor  
 22 workplace environment, the use of pesticides as defined in  
 23 80-8-102(30) when they are applied in accordance with  
 24 approved federal and state labels, and the use of commercial  
 25 fertilizers as defined in 80-10-101(2) when applied as part

1 of accepted agricultural practice.

2 {5}{11}{10}{11}(12) "Remedial action" includes all  
3 notification, investigation, administration, monitoring,  
4 cleanup, restoration, MITIGATION, abatement, removal,  
5 replacement, enforcement, legal action, health studies,  
6 feasibility studies, and other actions necessary or  
7 appropriate to respond to a release or threatened release.

8 {12}{11}{12}(13) "Remedial action contract" means a  
9 written contract or agreement entered into by a remedial  
10 action contractor with the state, or with a potentially  
11 responsible party acting pursuant to an order or request  
12 issued by the department, THE UNITED STATES, OR ANY FEDERAL  
13 AGENCY, to provide a remedial action with respect to a  
14 release or threatened release of a hazardous or deleterious  
15 substance.

16 {13}{12}{13}(14) "Remedial action contractor" means:

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

19 (b) any person who is retained or hired by a person  
20 described in subsection (13)(a) to provide services relating  
21 to a remedial action.

22 {14}{13}(15) "Remedial action costs" means reasonable  
23 costs that are attributable to or associated with a remedial  
24 action at a facility, including but not limited to the costs  
25 of administration, investigation, legal or enforcement

1 activities, contracts, feasibility studies, or health  
2 studies."

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

4 "75-10-704. Environmental quality protection fund. (1)  
5 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 this part.

10 (2) The fund may only be used to carry out the  
11 provisions of this part and for remedial actions taken by  
12 the department pursuant to this part in response to a  
13 release of hazardous or deleterious substances. Fund--uses  
14 must--include--the--conduct--of--the--hazardous--waste--site  
15 remedial-action-program, which--is--a--program--of--remedial  
16 action-at-sites:

17 (a)--where-a-release-has-occurred; and

18 (b)--where--the--U.S.--environmental--protection--agency  
19 has, under--the--provisions--of--the--federal--Comprehensive  
20 Environmental--Response--Compensation--and--Liability--Act--of  
21 1980--(CERCLA), as amended, conducted a hazard ranking--study  
22 and--judged--the--site--not--eligible--for--inclusion--on--the  
23 national--priority--list--or--where--the--U.S.--environmental  
24 protection--agency--has--no--authority--or--no--plan--to--assess--the  
25 site--under--CERCLA.

~~(3) The department's program for remedial action under subsection--(2)--must--include To--maintain--an--adequate revolving fund; the~~ THE department shall:

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

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

(4) There must be deposited in the fund:

(a) all penalties, NATURAL RESOURCE damages, and ~~department--expenditures~~ remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to [section 8 9] and all civil penalties assessed pursuant to 75-10-711(5);

~~(b)(c)~~ funds appropriated to the fund by the legislature; and

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

(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 established pursuant to 75-1-1101."

NEW SECTION. Section 5. Information gathering and access. (1) The department may undertake any investigative or other information-gathering action that it considers necessary or appropriate for determining the need for remedial action, choosing or taking a remedial action, or otherwise enforcing the provisions of this part.

(2) Any AUTHORIZED officer, employee, or representative of the department may require a person who has or may have information relevant to a release or threatened release of a hazardous or deleterious substance to furnish, upon request, any information or documents relating to but not limited to the following matters:

(a) the identification, nature, and quantity of a hazardous or deleterious substance that has been or is being generated, treated, stored, or disposed of at or transported from a facility;

(b) the nature or extent of a release or threatened release of a hazardous or deleterious substance at or from a facility;

(c) information relating to the ability of a person to pay for or to perform a cleanup; and

(d) any other information relevant to the department's determination of the appropriate remedial action to be taken

1 or to the enforcement of this part.

2 (3) For purposes of assisting the department in  
3 acquiring information relevant to the need for, the  
4 determination of, or the taking of remedial action or  
5 otherwise enforcing the provisions of this part, any duly  
6 authorized officer, employee, or representative of the  
7 department is authorized to:

8 (a) enter or have access at reasonable times to any  
9 facility or other place or property where:

10 (i) a hazardous or deleterious substance may be or has  
11 been generated, stored, treated, disposed of, or transported  
12 from;

13 (ii) there has been or may be a release of a hazardous  
14 or deleterious substance;

15 (iii) records or other relevant information regarding a  
16 release or threatened release is located;

17 (iv) entry is necessary to determine the need for any  
18 appropriate remedial action; or

19 (v) entry is necessary to effectuate a remedial action  
20 under this part; and

21 (b) inspect and obtain samples from the facility or  
22 other place or property referred to in subsection (3)(a) or  
23 from any location where a suspected hazardous or deleterious  
24 substance may be located. Any AUTHORIZED officer, employee,  
25 or representative of the department is authorized to inspect

1 and obtain samples of containers or labeling for suspected  
2 hazardous or deleterious substances. EACH SUCH INSPECTION  
3 MUST BE COMPLETED WITH REASONABLE PROMPTNESS. If the  
4 AUTHORIZED officer, employee, or representative obtains  
5 samples, before leaving the premises he shall give to the  
6 owner, operator, tenant, or other person in charge of the  
7 place from which the samples were obtained a receipt  
8 describing the sample obtained and, if requested, a portion  
9 of each sample. A COPY OF THE RESULTS OF ANY ANALYSIS MADE  
10 OF SUCH SAMPLES MUST BE FURNISHED PROMPTLY TO THE OWNER,  
11 OPERATOR, TENANT, OR OTHER PERSON IN CHARGE IF SUCH PERSON  
12 CAN BE LOCATED.

13 (4) The department may issue subpoenas for the  
14 attendance and testimony of witnesses and the production of  
15 relevant papers, books, or documents ~~in-connection-with-the~~  
16 ~~information-gathering-authority-conferred-pursuant-to--this~~  
17 ~~section~~ RELATING TO THE MATTERS IN [SECTION 5(2)(A) THROUGH  
18 (2)(D)]. The method for service of subpoenas and payment of  
19 witness fees and mileage is the same as that required in  
20 civil actions in the district courts of the state. In case  
21 of a refusal to obey a subpoena issued and served upon a  
22 person pursuant to this subsection, the district court for a  
23 district in which the person is found, resides, or transacts  
24 business, upon application of the department and after  
25 notice to the person, has jurisdiction to issue an order



1 requiring the person to appear and either give testimony or  
2 produce documents, or both, before a hearing officer. A  
3 failure to obey the order of the court may be punished by  
4 the court as a contempt.

5 (5) If consent is not granted regarding a request made  
6 by an AUTHORIZED officer, employee, or representative under  
7 this section, the director of the department may issue an  
8 order directing compliance with the request.

9 (6) The department may commence a civil action to  
10 compel compliance with an order issued pursuant to this  
11 section.

12 (7) In any action commenced pursuant to subsection (6)  
13 WHEN THE COURT DETERMINES THAT THERE MAY BE AN IMMINENT AND  
14 SUBSTANTIAL THREAT TO PUBLIC HEALTH, SAFETY, OR WELFARE OR  
15 THE ENVIRONMENT, the court shall enjoin any activity that  
16 constitutes a failure to comply with the order and shall  
17 direct compliance with the order unless, under the  
18 circumstances of the case, the order is arbitrary and  
19 capricious or otherwise not in accordance with law.

20 (8) Persons subject to the requirements of this  
21 section may make a written claim of confidentiality for  
22 information unique to the owner or operator of a facility  
23 that would, if disclosed, reveal methods or processes  
24 entitled to protection as trade secrets. The claim of  
25 confidentiality must be clearly designated on the materials

1 at the time they are obtained by the department. If the  
2 department accepts the characterization, it shall maintain  
3 that information as confidential. Information describing  
4 physical or chemical characteristics of hazardous or  
5 deleterious substances that have been or may be released  
6 into the environment are not considered confidential. The  
7 department has access to and may use any trade secret  
8 information in carrying out the activities of this part as  
9 may be necessary to protect the public health, safety, or  
10 welfare or the environment while maintaining the information  
11 as confidential.

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

13 "75-10-711. Remedial action -- orders -- penalties --  
14 judicial proceedings. (1) The department may take remedial  
15 action necessary--and--appropriate--to--protect--the-public  
16 health--public--welfare--or--the--environment whenever it  
17 determines that:

18 (a) there has been a release or there is a substantial  
19 threat of a release into the environment that may present an  
20 imminent and substantial endangerment to the public health,  
21 welfare, or safety or the environment; and

22 (b) the appropriate remedial action will not be done  
23 properly and expeditiously by the-owner-or-operator-of-the  
24 vessel--vehicle--or-facility-from-which-the-release-emanates  
25 or-by-any-other-responsible-party by any person liable under

1 75-10-715(1).

2 (2) Whenever the department ~~is--authorized--to--act~~  
3 ~~pursuant--to--subsection--(1)--or~~ has reason to believe that a  
4 release has occurred or is about to occur, the department  
5 may undertake remedial action in the form of any  
6 investigation, monitoring, survey, testing, or other  
7 information-gathering as authorized by [section 4 5] that is  
8 necessary and appropriate to identify the existence, nature,  
9 origin, and extent of the release or the threat of release  
10 and the extent and imminence of the danger to the public  
11 health, public safety, or welfare, or the environment. ~~The~~  
12 ~~department-is-authorized-to-draw-upon-the-fund-to--take--the~~  
13 ~~remedial-action-~~

14 (3) Any person ~~responsible--for--the--release~~ liable  
15 under 75-10-715(1) must take immediate action to contain,  
16 remove, and abate the release. Except as provided in  
17 75-10-712, the department is authorized to draw upon the  
18 fund ~~in--order~~ to take action under subsections subsection  
19 (1) and--(2) if it has made diligent good faith efforts to  
20 determine the identity of the party person or parties  
21 responsible persons liable for the release or threatened  
22 release and:

23 (a) is unable to determine the identity of the  
24 ~~responsible-party~~ liable person or parties persons in a  
25 manner consistent with the need to take timely remedial

1 action; or

2 (b) the party person or parties persons determined by  
3 the department to be ~~responsible--for--the--release--or~~  
4 ~~threatened--release~~ liable under 75-10-715(1) have been  
5 informed in writing of the department's determination and  
6 have been requested by the department to take appropriate  
7 remedial action but are unable or unwilling to take such  
8 action in a timely manner; and

9 ~~(4)--The (c)~~ the written notice to ~~a-responsible-party~~  
10 ~~must-inform-the-responsible-party~~ each person informs him  
11 that if that-party he is subsequently found liable pursuant  
12 to 75-10-715(1), he may be required to reimburse the fund  
13 for the ~~costs--of-the~~ state's remedial action ~~taken-by-the~~  
14 department costs and may be subject to ~~punitive--damages~~  
15 penalties pursuant to 75-10-715(3).

16 (4) Whenever the department is authorized to act  
17 pursuant to subsection (1) or has reason to believe that a  
18 release THAT MAY POSE AN IMMINENT AND SUBSTANTIAL THREAT TO  
19 PUBLIC HEALTH, SAFETY, OR WELFARE OR THE ENVIRONMENT has  
20 occurred or is about to occur, it may issue to any person  
21 liable under 75-10-715(1) cease and desist, remedial, or  
22 other orders as may be necessary or appropriate to protect  
23 public health, safety, or welfare or the environment.

24 (5) A person who violates or fails or refuses to  
25 comply with an order issued under [section 4 5] or this

section may, in an action brought to enforce the order, be assessed a civil penalty of not more than \$10,000 for each day in which a violation occurs or a failure or refusal to comply continues. IN DETERMINING THE AMOUNT OF ANY PENALTY ASSESSED, THE COURT MAY TAKE INTO ACCOUNT THE NATURE, CIRCUMSTANCES, EXTENT, AND GRAVITY OF THE NONCOMPLIANCE AND, WITH RESPECT TO THE PERSON LIABLE UNDER 75-10-715(1), HIS ABILITY TO PAY; ANY PRIOR HISTORY OF SUCH VIOLATIONS; THE DEGREE OF CULPABILITY; THE ECONOMIC BENEFIT OR SAVINGS, IF ANY, RESULTING FROM THE NONCOMPLIANCE; AND ANY OTHER MATTERS AS JUSTICE MAY REQUIRE. Civil penalties collected under this subsection must be deposited into the environmental quality protection fund established in 75-10-704.

(6) A court has jurisdiction to review an order issued under [section 4 5] or this section only in the following actions:

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

(b) an action to enforce an order issued under [section 4 5] or this section; or

(c) an action to recover a civil penalty for violation of or failure to comply with an order issued under [section 4 5] or this section; OR

(D) AN ACTION BY A PERSON TO WHOM AN ORDER HAS BEEN ISSUED TO DETERMINE THE VALIDITY OF THE ORDER, ONLY IF THE

PERSON HAS BEEN IN COMPLIANCE AND CONTINUES IN COMPLIANCE WITH THE ORDER PENDING DECISION OF THE COURT.

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

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

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

"75-10-712. Emergency action. If the department determines that immediate response to an imminent threat to public health, public safety, or welfare, or the environment is necessary to avoid substantial injury or damage to persons, property, or resources, remedial action may be taken pursuant to 75-10-711(1) and--(2) without the prior written notice required by 75-10-711(3)(b). In such a case,

1 the ~~The~~ department must shall give subsequent written notice  
2 to the responsible-party person liable under 75-10-715(1)  
3 within 5 days after the action is taken, describing the  
4 circumstances which required the action to be taken without  
5 prior notice."

6 NEW SECTION. Section 8. Liability of remedial action  
7 contractor. (1) A person who is a remedial action contractor  
8 with respect to a release or threatened release of a  
9 hazardous or deleterious substance is not liable under this  
10 part to any person for injuries, costs, damages, expenses,  
11 or other liability that results from the release or  
12 threatened release, including but not limited to claims for  
13 indemnification or contribution and claims by third parties  
14 for death, personal injury, illness, loss or damage to  
15 property, or economic loss.

16 (2) Immunity from liability, pursuant to subsection  
17 (1), does not apply in the case of a release that is caused  
18 by conduct of the remedial action contractor that is  
19 negligent or grossly negligent or that constitutes  
20 intentional misconduct.

21 (3) This section does not affect the liability of a  
22 person under a warranty under federal, state, or common law  
23 or the liability to an employee of an employer who is a  
24 remedial action contractor under any provision of law,  
25 including any provision of a law relating to workers'

1 compensation.

2 (4) A state agency, state employee, or an employee of  
3 a political subdivision who provides services relating to  
4 remedial action while acting within the scope of its or his  
5 authority as a governmental agency or employee has the same  
6 exemption from liability as is provided to the remedial  
7 action contractor under this section.

8 (5) The defense provided by 75-10-715(5)(c) is not  
9 available to a person liable under 75-10-715(1) with respect  
10 to remedial action costs or damages caused by an act or  
11 omission of a remedial action contractor.

12 (6) Except as provided in subsections (4) and (5),  
13 this section does not affect the liability under this part  
14 of a person other than a remedial action contractor.

15 (7) This section does not affect the plaintiff's  
16 burden of establishing liability under this part.

17 (8) This section does not minimize the liability,  
18 lessen the standard of liability, or otherwise shield from  
19 liability a potentially responsible party under 75-10-715 or  
20 section 107 of CERCLA for costs or damages incurred as a  
21 result of a release or threatened release of a hazardous or  
22 deleterious substance.

23 NEW SECTION. Section 9. Administrative penalties. (1)  
24 In lieu of proceeding under 75-10-711(5), the department may  
25 assess penalties of not more than \$1,000 per day per

violation against a person liable under 75-10-715(1) for a release or threat of release who has failed or refused to comply with an order issued by the department pursuant to 75-10-711(4) or against a person who has failed or refused to comply with an order issued by the department pursuant to [section 4 5(5)].

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

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

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

(5) Administrative penalties payable under this section must be deposited in the environmental quality

protection fund established in 75-10-704.

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

"75-10-715. Reimbursement Liability -- reimbursement and penalties -- proceedings -- defenses. (1) Subject Notwithstanding any other provision of law and subject only to the defenses set forth in subsection (4) (5), a--party responsible--for--a--release--is--liable--for the following persons are jointly and severally liable for a release or threatened release of a hazardous or deleterious substance from a facility:

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

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

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

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

1 treatment facility.

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

4 (a) all costs-of remedial action taken costs incurred  
5 by the department-pursuant-to-this-part state; and

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

19 {2}{3} If the responsible--party person liable under  
20 75-10-715(1) fails, without sufficient cause, to comply with  
21 a department order issued pursuant to 75-10-711(4) or to  
22 properly provide remedial action upon notification by the  
23 department pursuant to 75-10-711(3){b}, the responsible  
24 party person may be liable for punitive-damages penalties in  
25 an amount not to exceed two times the amount of any costs

1 incurred by the department state pursuant to this section.

2 {3}{4} The department may initiate civil proceedings  
3 in district court to recover remedial action costs, natural  
4 resource damages, or penalties under subsections (1) and  
5 {2} through (3). Proceedings to recover costs and penalties  
6 must be conducted in accordance with {section 13}. Venue for  
7 any action to recover costs, damages, or penalties lies in  
8 the county where the release occurred or where the  
9 responsible--party person liable under 75-10-715(1) resides  
10 or has its principal place of business or in the district  
11 court of the first judicial district.

12 {4}{5} No party person is liable under subsection  
13 subsections (1) or {2} through (3) if that party person can  
14 establish by a preponderance of the evidence that:

15 (a) the department failed to follow the notice  
16 provisions of 75-10-711 when required; or

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

22 (c) the release or threatened release occurred solely  
23 as a result of:

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

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

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

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

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

(e) the release or threatened release was from a facility for which a permit had been issued or an approval granted by the department, the hazardous or deleterious substance was specifically identified in the permit or approval, and the release was within the limits allowed in the permit or approval;

(f) in the case of assessment of punitive-damages penalties under subsection (3), that factors beyond the control of the responsible-party person prevented the party person from taking timely remedial action; or

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

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

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

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

1 condemnation.

2 (iii) The person acquired the facility by inheritance  
3 or bequest.

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

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

15 (i) any specialized knowledge or experience on the  
16 part of the person;

17 (ii) the relationship of the purchase price to the  
18 value of the property if uncontaminated;

19 (iii) commonly known or reasonably ascertainable  
20 information about the property;

21 (iv) the obviousness of the presence or the likely  
22 presence of contamination on the property; and

23 (v) the ability to detect the contamination by  
24 appropriate inspection.

25 (d) (i) Nothing in subsections (5)(b) and (5)(c) or in

1 this subsection (6) may diminish the liability of a previous  
2 owner or operator of the facility who would otherwise be  
3 liable under this part.

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

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

18 NEW SECTION. Section 11. Settlement -- bar to  
19 contribution liability. (1) A person who has resolved his  
20 liability to the state arising under 75-10-715 or section  
21 107(a)(1) through (a)(4) of CERCLA 42 U.S.C. 9607(a)(1)  
22 through (a)(4), in an administrative or judicially approved  
23 settlement is not liable for claims for contribution  
24 regarding matters addressed in the settlement. The  
25 settlement does not discharge any of the other potentially



liable persons unless its terms provide a discharge. The terms of the settlement may reduce the potential liability of the other potentially liable persons by the amount of the settlement.

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

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

(4) WHENEVER PRACTICABLE AND IN THE PUBLIC INTEREST, AS DETERMINED BY THE DIRECTOR OF THE DEPARTMENT, THE DEPARTMENT MAY, AS PROMPTLY AS POSSIBLE, REACH A FINAL SETTLEMENT WITH A PERSON LIABLE UNDER 75-10-715 IN AN ADMINISTRATIVE OR CIVIL ACTION UNDER 75-10-711 IF SUCH SETTLEMENT INVOLVES ONLY A MINOR PORTION OF THE RESPONSE COSTS AT THE FACILITY CONCERNED AND, IN THE JUDGMENT OF THE DEPARTMENT, THE CONDITIONS IN EITHER OF THE FOLLOWING SUBSECTION (4)(A) OR (4)(B) ARE MET:

(A) BOTH OF THE FOLLOWING ARE MINIMAL IN COMPARISON TO OTHER HAZARDOUS OR DELETERIOUS SUBSTANCES AT THE FACILITY;

(I) THE AMOUNT OF THE HAZARDOUS OR DELETERIOUS SUBSTANCES CONTRIBUTED BY THAT PERSON TO THE FACILITY;

(II) THE TOXIC OR OTHER HAZARDOUS EFFECTS OF THE SUBSTANCES CONTRIBUTED BY THAT PERSON TO THE FACILITY.

(B) THE PERSON:

(I) IS THE OWNER OF THE REAL PROPERTY ON OR IN WHICH THE FACILITY IS LOCATED;

(II) DID NOT CONDUCT OR PERMIT THE GENERATION, TRANSPORTATION, STORAGE, TREATMENT, OR DISPOSAL OF ANY HAZARDOUS OR DELETERIOUS SUBSTANCE AT THE FACILITY; AND

(III) DID NOT CONTRIBUTE TO THE RELEASE OR THREAT OF RELEASE OF A HAZARDOUS OR DELETERIOUS SUBSTANCE AT THE FACILITY THROUGH ANY ACTION OR OMISSION. THIS SUBSECTION

(4)(B) DOES NOT APPLY IF THE PERSON PURCHASED THE REAL PROPERTY WITH ACTUAL OR CONSTRUCTIVE KNOWLEDGE THAT THE PROPERTY WAS USED FOR THE GENERATION, TRANSPORTATION, STORAGE, TREATMENT, OR DISPOSAL OF ANY HAZARDOUS OR DELETERIOUS SUBSTANCE.

NEW SECTION. Section 12. Condemnation -- creation of state lien. (1) Whenever the department determines that property upon which a release or threatened release of a hazardous or deleterious substance has occurred may present an imminent and substantial endangerment to the public health, safety, or welfare or the environment, the department may condemn the property for public use to

1 mitigate the threat. The taking of the property must be  
2 conducted in accordance with the procedure set forth in  
3 Title 70, chapter 30, parts 1 through 3.

4 (2) All costs, penalties, and natural resource damages  
5 for which a person has been judicially determined to be  
6 liable to the state pursuant to 75-10-715 constitute a lien  
7 in favor of the state upon all property and rights to the  
8 property that belong to the person.

9 (3) The lien imposed by this section arises at the  
10 time notice incorporating a description of the property  
11 subject to the remedial action and an identification of the  
12 amount of costs, penalties, and natural resource damages is  
13 duly filed with the clerk and recorder of the county in  
14 which the real property is located. A copy of the notice  
15 must be served by certified mail upon the liable person.

16 (4) The costs, penalties, and natural resource damages  
17 constituting the lien may be recovered in an action in the  
18 district court for the district in which the property is  
19 located or in which the remedial action is occurring or has  
20 occurred. This section does not affect the right of the  
21 state to bring an action against a person to recover all  
22 costs, penalties, and natural resource damages for which  
23 that person is liable under this part or any other provision  
24 of state or federal law.

25 (5) The lien must continue until the liability for the

1 costs and damages incurred as a result of the release of a  
2 hazardous or deleterious substance is satisfied.

3 NEW SECTION. Section 13. Degree of cleanup required  
4 -- permit exemption. (1) A remedial action performed under  
5 this part must attain a degree of cleanup of the hazardous  
6 or deleterious substance and control of a threatened release  
7 or further release of that substance that assures present  
8 and future protection of public health, safety, and welfare  
9 and of the environment.

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

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

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

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

22 (i) use permanent solutions;

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

25 (iii) are cost-effective, taking into account the total

short- and long-term costs of the actions, including the cost of operation and maintenance activities for the entire period during which the activities will be required.

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

**NEW SECTION. Section 14.** Payment of state costs and penalties. (1) The department shall keep a record of the state's remedial action costs.

(2) Based on this record, the department shall require a person liable under 75-10-715 to pay the amount of the state's remedial action costs and, if applicable, penalties under 75-10-715(3).

(3) If the state's remedial action costs and penalties are not paid by the liable person to the department within 60 days after receipt of notice that the costs and penalties are due, the department shall bring an action in the name of the state to recover the amount owed plus reasonable legal expenses. ~~The--department's--certification--of--the--state's remedial-action-costs-is-prima-facie-evidence-that-the-costs are-reasonable-and-are-consistent-with-this-part.~~

(4) An action to recover remedial action costs may be

brought under this section at any time after any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability for remedial action costs that is binding on any subsequent action or actions to recover further remedial action costs. THE COURT MAY DISALLOW COSTS OR DAMAGES ONLY IF THE PERSON LIABLE UNDER 75-10-715 CAN SHOW ON THE RECORD THAT THE COSTS ARE NOT REASONABLE AND ARE NOT CONSISTENT WITH THIS PART.

(5) An initial action for recovery of remedial action costs must be commenced within 6 years after initiation of physical on-site construction of the remedial action.

(6) Remedial action costs and any penalties recovered by the state under 75-10-715 must be deposited into the environmental quality protection fund established in 75-10-704.

**NEW SECTION. Section 15.** Public notice of administrative order or consent decree. (1) Except as provided in 75-10-712, before FINAL approval BY THE DIRECTOR OF THE DEPARTMENT of any administrative order ON CONSENT ISSUED PURSUANT TO 75-10-711 or BEFORE JUDICIAL APPROVAL OF A consent decree issued pursuant to this part, the department shall:

(a) publish a notice and brief description of the proposed order or decree in a daily newspaper of general circulation in the area affected and make copies of the

1 proposal available to the public;

2 (b) provide at least 30 days (or whatever additional  
3 time the department may in its discretion grant upon written  
4 request) for submission of written comments regarding the  
5 proposed order or decree and, upon written request by 10 or  
6 more persons or by a group having 10 or more members (but  
7 not including a liable person), conduct a public meeting at  
8 or near the facility for the purpose of receiving verbal  
9 comment regarding the proposed order or decree; and

10 (c) consider written or verbal comments properly  
11 submitted during the comment period or at the public  
12 meeting.

13 (2) Upon making a final decision regarding the  
14 proposed order or decree, the department shall publish  
15 notice, as provided under subsection (1), and make copies of  
16 the approved order or decree available to the public.

17 NEW SECTION. Section 16. Agreements to perform  
18 remedial action. (1) To expedite effective remedial actions  
19 and minimize litigation, the department, in its discretion  
20 and whenever practicable and in the public interest, may  
21 NEGOTIATE AND enter into an agreement with any person,  
22 including the owner or operator of the facility from which a  
23 release emanates, to perform a remedial action if the  
24 department determines that the action will be properly done  
25 by the person. The agreement must contain terms and

1 conditions that the department in its discretion determines  
2 to be appropriate.

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

9 (3) A decision of the department to enter into or not  
10 enter into agreements under this section is not subject to  
11 judicial review.

12 NEW SECTION. Section 17. Liability apportionment and  
13 contribution. (1) Any person held jointly and severally  
14 liable under 75-10-715 has the right at trial to have the  
15 trier of fact apportion liability among the parties as  
16 provided in this section. The burden is on each liable  
17 person to show how his liability should be apportioned. In  
18 apportioning the liability of any person under this section,  
19 the trier of fact shall consider the following:

20 (a) the extent to which the person's contribution to  
21 the release of a hazardous or deleterious substance can be  
22 distinguished;

23 (b) the amount of hazardous or deleterious substance  
24 involved;

25 (c) the degree of toxicity of the hazardous or

1 deleterious substance involved;

2 (d) the degree of involvement of and care exercised by  
3 the person in manufacturing, treating, transporting, and OR  
4 disposing of the hazardous or deleterious substance;

5 (e) the degree of cooperation by the person with  
6 federal, state, or local officials to prevent any harm to  
7 the public health, safety, or welfare or the environment;  
8 and

9 (f) knowledge by the person of the hazardous nature of  
10 the substance.

11 (2) If a person is held jointly and severally liable  
12 under 75-10-715 and establishes a proportionate share of the  
13 aggregate liability, the person has the right of  
14 contribution from any other liable person. If for any reason  
15 all or part of the contribution from a person liable for  
16 contribution cannot be obtained, each of the other persons  
17 against whom recovery is allowed is liable to contribute a  
18 proportional part of the unpaid portion of the  
19 noncontributing person's share and may obtain judgment in a  
20 pending or subsequent action for contribution from the  
21 noncontributing person.

22 NEW SECTION. Section 18. Extension of authority. Any  
23 existing authority to make rules on the subject of the  
24 provisions of [this act] is extended to the provisions of  
25 [this act].

1 NEW SECTION. Section 19. Codification instruction.  
2 [Sections 1, ~~47-77-07-and-10-through-16~~ 2, 5, 8, 9, AND 11  
3 THROUGH 17] are intended to be codified as an integral part  
4 of Title 75, chapter 10, part 7, and the provisions of Title  
5 75, chapter 10, part 7, apply to [sections 1, ~~47-77--07--and~~  
6 ~~10-through-16~~ 2, 5, 8, 9, AND 11 THROUGH 17].

7 NEW SECTION. Section 20. Saving clause. [This act]  
8 does not affect rights and duties that matured, penalties  
9 that were incurred, or proceedings that were begun before  
10 [the effective date of this act].

11 NEW SECTION. Section 21. Severability. If a part of  
12 [this act] is invalid, all valid parts that are severable  
13 from the invalid part remain in effect. If a part of [this  
14 act] is invalid in one or more of its applications, the part  
15 remains in effect in all valid applications that are  
16 severable from the invalid applications.

17 ~~NEW-SECTION--Section-21--Retroactive---applicability-~~  
18 ~~{Section--9}--applies--retroactively--within-the-meaning-of~~  
19 ~~1-2-109--to-all-remedial-action-costs-incurred--before--{the~~  
20 ~~effective-date-of-this-act}.~~

21 NEW SECTION. Section 22. Effective date. [This act]  
22 is effective on passage and approval.

-End-

Free Conference Committee Report  
on SB 385  
Report No. 1, April 13, 1989  
page 1 of 2

FREE CONFERENCE COMMITTEE, SB 385  
April 13, 1989  
page 2 of 2

Mr. President and Mr. Speaker:

We, your Free Conference Committee on Senate Bill 385 met and considered:

Senate Bill 385 (reference copy -- salmon) in its entirety

We recommend that Senate Bill 385 (reference copy -- salmon) be amended as follows:

1. Page 3, line 23.

Strike: "including"

Insert: "and is"

2. Page 3, lines 24 and 25.

Following: "(a)" on line 24

Strike: "all substances that are defined as hazardous substances"

Insert: "a substance that is defined as a hazardous substance"

3. Page 4, line 3.

Strike: "all substances"

Insert: "a substance"

4. Page 4, line 5.

Strike: "hazardous substances"

Insert: "a hazardous substance"

5. Page 4, line 7.

Strike: "all substances that are"

Insert: "a substance that is"

6. Page 4, line 10.

Strike: "all substances"

Insert: "a substance"

7. Page 4, line 11.

Strike: "AND"

Insert: "or"

8. Page 4, line 17.

Strike: "or"

9. Page 15, line 3.

Following: "or"

Insert: "is authorized to act pursuant to subsection (1) or"

10. Page 23, line 16.

Following: "permit"

Strike: ", approval,"

11. Page 23, line 18.

Following: "permit"

Strike: ", approval,"

12. Page 25, lines 17 and 18.

Strike: "or" on line 17 through "granted" on line 18

13. Page 25, lines 19 and 20.

Following: "permit" on line 19

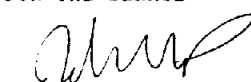
Strike: "or approval"

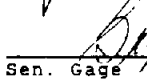
14. Page 25, line 21.


Strike: "or approval"

And that this Free Conference Committee Report be adopted.

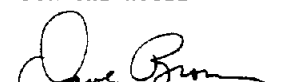
FOR THE SENATE


  
Sen. Harp, Chairman

  
Sen. Gage

  
Sen. Van Valkenburg

FOR THE HOUSE

  
Rep. D. Brown

  
Rep. Harper

  
Rep. Iverson

ADOPT

REJECT

SENATE BILL NO. 385

INTRODUCED BY HARP, D. BROWN

BY REQUEST OF THE DEPARTMENT OF HEALTH AND

ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO REMEDIAL ACTION UPON THE RELEASE OF A HAZARDOUS SUBSTANCE TO INCLUDE CERTAIN PROVISIONS PARALLEL TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (FEDERAL SUPERFUND); REDEFINING "HAZARDOUS OR DELETERIOUS SUBSTANCE"; ADDING LIMITED IMMUNITY FOR REMEDIAL ACTION CONTRACTORS; AUGMENTING INVESTIGATIVE AND ENFORCEMENT AUTHORITY; PROVIDING FOR PUBLIC NOTICE AND COMMENT ON ADMINISTRATIVE ORDERS AND CONSENT DECREES; CLARIFYING AND ADDING DEFENSES TO LIABILITY; GRANTING CONDEMNATION AUTHORITY FOR CONTAMINATED SITES; AMENDING SECTIONS 75-10-701, 75-10-704, 75-10-711, 75-10-712, AND 75-10-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE;--AND-PROVIDING-RETROACTIVE-APPLICABILITY-TO CERTAIN-REMEDIAL-ACTION-COSTS."

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

NEW SECTION. Section 1. Short title. This part may be cited as the "Comprehensive Environmental Cleanup and Responsibility Act".

NEW SECTION. SECTION 2. PURPOSE. THE PURPOSES OF THIS PART ARE TO:

(1) PROTECT THE PUBLIC HEALTH AND WELFARE OF ALL MONTANA CITIZENS AGAINST THE DANGERS ARISING FROM RELEASES OF HAZARDOUS OR DELETERIOUS SUBSTANCES;

(2) ENCOURAGE PRIVATE PARTIES TO CLEAN UP SITES WITHIN THE STATE AT WHICH RELEASES OF HAZARDOUS OR DELETERIOUS SUBSTANCES HAVE OCCURRED, RESULTING IN ADVERSE IMPACTS ON THE HEALTH AND WELFARE OF THE CITIZENS OF THE STATE AND ON THE STATE'S NATURAL, ENVIRONMENTAL, AND BIOLOGICAL SYSTEMS; AND

(3) PROVIDE FOR FUNDING TO STUDY, PLAN, AND UNDERTAKE THE REHABILITATION, REMOVAL, AND CLEANUP OF SITES WITHIN THE STATE AT WHICH NO VOLUNTARY ACTION HAS BEEN TAKEN.

**Section 3.** Section 75-10-701, MCA, is amended to read:

"75-10-701. Definitions. As used in this part, 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) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.

(3) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface

1 strata, or ambient air within the state of Montana or under  
 2 the jurisdiction of the state of Montana.

3 ~~3~~(4) (a) "Facility" means:

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

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

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

14 ~~2~~(4)(5) "Fund" means the environmental quality  
 15 protection fund established in 75-10-704.

16 ~~3~~(5)(6) "Hazardous or deleterious substance" means a  
 17 substance that poses because of its quantity, concentration,  
 18 or physical, chemical, or infectious characteristics may  
 19 pose an imminent and substantial threat to public health and  
 20 that--is-either-a-petroleum-product-or-listed-as-a-hazardous  
 21 substance--in--volume--507--Federal--Register--pages--13474  
 22 through--13513-, safety, or welfare or the environment,  
 23 including AND IS:

24 (a) ~~all--substances--that--are--defined--as--hazardous~~  
 25 substances A SUBSTANCE THAT IS DEFINED AS A HAZARDOUS

1 SUBSTANCE by section 101(14) of the federal Comprehensive  
 2 Environmental Response, Compensation, and Liability Act  
 3 (CERCLA), 42 U.S.C. 9601(14), as amended;

4 (b) ~~all--substances~~ A SUBSTANCE identified by the  
 5 administrator of the United States environmental protection  
 6 agency as ~~hazardous--substances~~ A HAZARDOUS SUBSTANCE  
 7 pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as  
 8 amended; AND

9 (c) ~~all--substances--that--are~~ A SUBSTANCE THAT IS  
 10 defined as a hazardous waste pursuant to section 1004(5) of  
 11 the Resource Conservation and Recovery Act of 1976, 42  
 12 U.S.C. 6903(5), as amended, including ~~all--substances~~ A  
 13 SUBSTANCE listed or identified in 40 CFR 2617--and; AND OR

14 ~~(d)--any-petroleum-product~~

15 (D) ANY PETROLEUM PRODUCT.

16 ~~(6)(7) "Natural resources" includes-but-is-not-limited~~  
 17 to MEANS land, fish, wildlife, biota, air, surface water,  
 18 ground water, drinking water supplies, and any other  
 19 resource SUCH RESOURCES within the state OF MONTANA or  
 20 owned, managed, held in trust or otherwise controlled by or  
 21 pertaining APPERTAINING to the state of Montana or a  
 22 political subdivision of the state.

23 ~~(7)(8) (a) "Owns or operates" means owning, leasing,~~  
 24 operating, managing activities at, or exercising control  
 25 over the operation of a facility.



1        (b) The term does not include holding the indicia of  
 2 ownership of a facility primarily to protect a security  
 3 interest in the facility or other location unless the holder  
 4 has participated in the management of the facility. The term  
 5 does not apply to the state or a local government that  
 6 acquired ownership or control through bankruptcy, tax  
 7 delinquency, abandonment, lien foreclosure, or other  
 8 circumstances in which the government acquires title by  
 9 virtue of its function as sovereign, unless the state or  
 10 local government has caused or contributed to the release or  
 11 threatened release of a hazardous or deleterious substance  
 12 from the facility. THE TERM ALSO DOES NOT INCLUDE THE OWNER  
 13 OR OPERATOR OF THE MILLTOWN DAM LICENSED UNDER PART 1 OF THE  
 14 FEDERAL POWER ACT (FERC LICENSE #2543-004) IF A HAZARDOUS OR  
 15 DELETERIOUS SUBSTANCE HAS BEEN RELEASED INTO THE ENVIRONMENT  
 16 UPSTREAM OF THE DAM AND HAS SUBSEQUENTLY COME TO BE LOCATED  
 17 IN THE RESERVOIR CREATED BY SUCH DAM, UNLESS SUCH OWNER OR  
 18 OPERATOR IS A PERSON WHO WOULD OTHERWISE BE LIABLE FOR SUCH  
 19 RELEASE OR THREATENED RELEASE UNDER 75-10-715(1).

20        {8}{9} "Person" means an individual, trust, firm,  
 21 joint stock company, joint venture, consortium, commercial  
 22 entity, partnership, association, corporation, commission,  
 23 state or state agency, political subdivision of the state,  
 24 interstate body, or the federal government, including a  
 25 federal agency.

1        {9}--"Petroleum-product"--includes gasoline, crude--oil,  
 2 fuel-oil, diesel-oil-or-fuel, lubricating-oil, oil-sludge-or  
 3 refuse,--and-any-other-petroleum-related-product-or-waste-or  
 4 fraction-thereof-that-is-liquid-at--standard--conditions--of  
 5 temperature--and--pressure--{60-degrees-F-and-14.7-pounds-per  
 6 square-inch-absolute}.

7        {9}{10} "PETROLEUM PRODUCT" INCLUDES GASOLINE, CRUDE  
 8 OIL (EXCEPT FOR CRUDE OIL AT PRODUCTION FACILITIES SUBJECT  
 9 TO REGULATION UNDER TITLE 82), FUEL OIL, DIESEL OIL OR FUEL,  
 10 LUBRICATING OIL, OIL SLUDGE OR REFUSE, AND ANY OTHER  
 11 PETROLEUM-RELATED PRODUCT OR WASTE OR FRACTION THEREOF THAT  
 12 IS LIQUID AT STANDARD CONDITIONS OF TEMPERATURE AND PRESSURE  
 13 (60 DEGREES F AND 14.7 POUNDS PER SQUARE INCH ABSOLUTE).

14        {4}{10}{9}{10}{11} "Release" means any spilling,  
 15 leaking, pumping, pouring, emitting, emptying, discharging,  
 16 injecting, escaping, leaching, dumping, or disposing of a  
 17 hazardous or deleterious substance either directly into the  
 18 environment or in--a--manner--in--which--the--substance--can  
 19 reasonably--be--expected--to--enter--the--environment-if-not  
 20 contained,--removed,--or--abated (INCLUDING THE ABANDONMENT OR  
 21 DISCARDING OF BARRELS, CONTAINERS, AND OTHER CLOSED  
 22 RECEPTACLES CONTAINING ANY HAZARDOUS OR DELETERIOUS  
 23 SUBSTANCE}, but excludes releases confined to the indoor  
 24 workplace environment, the use of pesticides as defined in  
 25 80-8-102(30) when they are applied in accordance with

1 approved federal and state labels, and the use of commercial  
2 fertilizers as defined in 80-10-101(2) when applied as part  
3 of accepted agricultural practice.

4 §5)(11)(10)(11)(12) "Remedial action" includes all  
5 notification, investigation, administration, monitoring,  
6 cleanup, restoration, MITIGATION, abatement, removal,  
7 replacement, enforcement, legal action, health studies,  
8 feasibility studies, and other actions necessary or  
9 appropriate to respond to a release or threatened release.

10 §12)(11)(12)(13) "Remedial action contract" means a  
11 written contract or agreement entered into by a remedial  
12 action contractor with the state, or with a potentially  
13 responsible party acting pursuant to an order or request  
14 issued by the department, THE UNITED STATES, OR ANY FEDERAL  
15 AGENCY, to provide a remedial action with respect to a  
16 release or threatened release of a hazardous or deleterious  
17 substance.

18 §13)(12)(13)(14) "Remedial action contractor" means:

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

21 (b) any person who is retained or hired by a person  
22 described in subsection (13)(a) to provide services relating  
23 to a remedial action.

24 §14)(13)(15) "Remedial action costs" means reasonable  
25 costs that are attributable to or associated with a remedial

1 action at a facility, including but not limited to the costs  
2 of administration, investigation, legal or enforcement  
3 activities, contracts, feasibility studies, or health  
4 studies."

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

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

12 (2) The fund may only be used to carry out the  
13 provisions of this part and for remedial actions taken by  
14 the department pursuant to this part in response to a  
15 release of hazardous or deleterious substances. Fund--uses  
16 must--include --the--conduct--of--the--hazardous--waste--site  
17 remedial-action-program, which--is--a--program--of--remedial  
18 action-at-sites;

19 (a)--where-a-release-has-occurred, and

20 (b)--where--the--U.S.--environmental--protection--agency  
21 has, under--the--provisions--of--the--federal--Comprehensive  
22 Environmental--Response,--Compensation, and--Liability--Act--of  
23 1980--(CERCLA)--as-amended, conducted-a-hazard-ranking--study  
24 and--judged--the--site--not--eligible--for--inclusion-on-the  
25 national-priority--list--or--where--the--U.S.--environmental

1 ~~protection--agency-has-no-authority-or-no-plan-to-assess-the~~  
2 ~~site-under-CERCLA-~~

3 (3) ~~The department's program for remedial action under~~  
4 ~~subsection--(2)--must--include~~ To--maintain--an--adequate  
5 revolving fund, the THE department shall:

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

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

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

16 (a) all penalties, NATURAL RESOURCE damages, and  
17 ~~department--expenditures~~ remedial action costs recovered  
18 pursuant to 75-10-715;

19 (b) all administrative penalties assessed pursuant to  
20 [section 8 9] and all civil penalties assessed pursuant to  
21 75-10-711(5);

22 ~~(b)(c)~~ funds appropriated to the fund by the  
23 legislature; and

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

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

5 NEW SECTION. **Section 5.** Information gathering and  
6 access. (1) The department may undertake any investigative  
7 or other information-gathering action that it considers  
8 necessary or appropriate for determining the need for  
9 remedial action, choosing or taking a remedial action, or  
10 otherwise enforcing the provisions of this part.

11 (2) Any AUTHORIZED officer, employee, or  
12 representative of the department may require a person who  
13 has or may have information relevant to a release or  
14 threatened release of a hazardous or deleterious substance  
15 to furnish, upon request, any information or documents  
16 relating to but not limited to the following matters:

17 (a) the identification, nature, and quantity of a  
18 hazardous or deleterious substance that has been or is being  
19 generated, treated, stored, or disposed of at or transported  
20 from a facility;

21 (b) the nature or extent of a release or threatened  
22 release of a hazardous or deleterious substance at or from a  
23 facility;

24 (c) information relating to the ability of a person to  
25 pay for or to perform a cleanup; and

(d) any other information relevant to the department's determination of the appropriate remedial action to be taken or to the enforcement of this part.

(3) For purposes of assisting the department in acquiring information relevant to the need for, the determination of, or the taking of remedial action or otherwise enforcing the provisions of this part, any duly authorized officer, employee, or representative of the department is authorized to:

(a) enter or have access at reasonable times to any facility or other place or property where:

(i) a hazardous or deleterious substance may be or has been generated, stored, treated, disposed of, or transported from;

(ii) there has been or may be a release of a hazardous or deleterious substance;

(iii) records or other relevant information regarding a release or threatened release is located;

(iv) entry is necessary to determine the need for any appropriate remedial action; or

(v) entry is necessary to effectuate a remedial action under this part; and

(b) inspect and obtain samples from the facility or other place or property referred to in subsection (3)(a) or from any location where a suspected hazardous or deleterious

substance may be located. Any AUTHORIZED officer, employee, or representative of the department is authorized to inspect and obtain samples of containers or labeling for suspected hazardous or deleterious substances. EACH SUCH INSPECTION MUST BE COMPLETED WITH REASONABLE PROMPTNESS. If the AUTHORIZED officer, employee, or representative obtains samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each sample. A COPY OF THE RESULTS OF ANY ANALYSIS MADE OF SUCH SAMPLES MUST BE FURNISHED PROMPTLY TO THE OWNER, OPERATOR, TENANT, OR OTHER PERSON IN CHARGE IF SUCH PERSON CAN BE LOCATED.

(4) The department may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents ~~in-connection-with-the information-gathering-authority-conferred-pursuant-to--this section~~ RELATING TO THE MATTERS IN [SECTION 5(2)(A) THROUGH (2)(D)]. The method for service of subpoenas and payment of witness fees and mileage is the same as that required in civil actions in the district courts of the state. In case of a refusal to obey a subpoena issued and served upon a person pursuant to this subsection, the district court for a district in which the person is found, resides, or transacts

business, upon application of the department and after notice to the person, has jurisdiction to issue an order requiring the person to appear and either give testimony or produce documents, or both, before a hearing officer. A failure to obey the order of the court may be punished by the court as a contempt.

(5) If consent is not granted regarding a request made by an AUTHORIZED officer, employee, or representative under this section, the director of the department may issue an order directing compliance with the request.

(6) The department may commence a civil action to compel compliance with an order issued pursuant to this section.

(7) In any action commenced pursuant to subsection (6) WHEN THE COURT DETERMINES THAT THERE MAY BE AN IMMINENT AND SUBSTANTIAL THREAT TO PUBLIC HEALTH, SAFETY, OR WELFARE OR THE ENVIRONMENT, the court shall enjoin any activity that constitutes a failure to comply with the order and shall direct compliance with the order unless, under the circumstances of the case, the order is arbitrary and capricious or otherwise not in accordance with law.

(8) Persons subject to the requirements of this section may make a written claim of confidentiality for information unique to the owner or operator of a facility that would, if disclosed, reveal methods or processes

entitled to protection as trade secrets. The claim of confidentiality must be clearly designated on the materials at the time they are obtained by the department. If the department accepts the characterization, it shall maintain that information as confidential. Information describing physical or chemical characteristics of hazardous or deleterious substances that have been or may be released into the environment are not considered confidential. The department has access to and may use any trade secret information in carrying out the activities of this part as may be necessary to protect the public health, safety, or welfare or the environment while maintaining the information as confidential.

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

**"75-10-711. Remedial action -- orders -- penalties -- judicial proceedings.** (1) The department may take remedial action ~~necessary--and--appropriate--to--protect--the--public health;--public--welfare;--or--the--environment~~ whenever it determines that:

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

(b) the appropriate remedial action will not be done properly and expeditiously by ~~the owner or operator of the~~

1 ~~vessel, vehicle, or facility from which the release emanates~~  
 2 ~~or by any other responsible party by any person liable under~~  
 3 ~~75-10-715(1).~~

4 (2) Whenever the department ~~is--authorized--to--act~~  
 5 ~~pursuant--to--subsection--(1)--or~~ IS AUTHORIZED TO ACT PURSUANT  
 6 TO SUBSECTION (1) OR has reason to believe that a release  
 7 has occurred or is about to occur, the department may  
 8 undertake remedial action in the form of any investigation,  
 9 monitoring, survey, testing, or other information-gathering  
 10 as authorized by [section 4 5] that is necessary and  
 11 appropriate to identify the existence, nature, origin, and  
 12 extent of the release or the threat of release and the  
 13 extent and imminence of the danger to the public health,  
 14 public safety, or welfare, or the environment. The  
 15 department--is--authorized--to--draw--upon--the--fund--to--take--the  
 16 remedial action.

17 (3) Any person ~~responsible--for--the--release~~ liable  
 18 under 75-10-715(1) must take immediate action to contain,  
 19 remove, and abate the release. Except as provided in  
 20 75-10-712, the department is authorized to draw upon the  
 21 fund ~~in-order~~ to take action under subsections subsection  
 22 (1) and--(2) if it has made diligent good faith efforts to  
 23 determine the identity of the party person or parties  
 24 responsible persons liable for the release or threatened  
 25 release and:

1 (a) is unable to determine the identity of the  
 2 ~~responsible--party~~ liable person or parties persons in a  
 3 manner consistent with the need to take timely remedial  
 4 action; or

5 (b) the party person or parties persons determined by  
 6 the department to be ~~responsible--for--the--release--or~~  
 7 ~~threatened--release~~ liable under 75-10-715(1) have been  
 8 informed in writing of the department's determination and  
 9 have been requested by the department to take appropriate  
 10 remedial action but are unable or unwilling to take ~~such~~  
 11 action in a timely manner; and

12 ~~(4)--The~~ (c) the written notice to ~~a--responsible-party~~  
 13 ~~must--inform--the--responsible-party~~ each person informs him  
 14 that if ~~that-party~~ he is subsequently found liable pursuant  
 15 to 75-10-715(1), he may be required to reimburse the fund  
 16 for the ~~costs-of-the~~ state's remedial action ~~taken--by--the~~  
 17 department costs and may be subject to ~~punitive-damages~~  
 18 penalties pursuant to 75-10-715(3).

19 (4) Whenever the department is authorized to act  
 20 pursuant to subsection (1) or has reason to believe that a  
 21 release THAT MAY POSE AN IMMINENT AND SUBSTANTIAL THREAT TO  
 22 PUBLIC HEALTH, SAFETY, OR WELFARE OR THE ENVIRONMENT has  
 23 occurred or is about to occur, it may issue to any person  
 24 liable under 75-10-715(1) cease and desist, remedial, or  
 25 other orders as may be necessary or appropriate to protect

1 public health, safety, or welfare or the environment.

2 (5) A person who violates or fails or refuses to  
 3 comply with an order issued under [section 4 5] or this  
 4 section may, in an action brought to enforce the order, be  
 5 assessed a civil penalty of not more than \$10,000 for each  
 6 day in which a violation occurs or a failure or refusal to  
 7 comply continues. IN DETERMINING THE AMOUNT OF ANY PENALTY  
 8 ASSESSED, THE COURT MAY TAKE INTO ACCOUNT THE NATURE,  
 9 CIRCUMSTANCES, EXTENT, AND GRAVITY OF THE NONCOMPLIANCE AND,  
 10 WITH RESPECT TO THE PERSON LIABLE UNDER 75-10-715(1), HIS  
 11 ABILITY TO PAY; ANY PRIOR HISTORY OF SUCH VIOLATIONS; THE  
 12 DEGREE OF CULPABILITY; THE ECONOMIC BENEFIT OR SAVINGS, IF  
 13 ANY, RESULTING FROM THE NONCOMPLIANCE; AND ANY OTHER MATTERS  
 14 AS JUSTICE MAY REQUIRE. Civil penalties collected under this  
 15 subsection must be deposited into the environmental quality  
 16 protection fund established in 75-10-704.

17 (6) A court has jurisdiction to review an order issued  
 18 under [section 4 5] or this section only in the following  
 19 actions:

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

22 (b) an action to enforce an order issued under  
 23 [section 4 5] or this section; or

24 (c) an action to recover a civil penalty for violation  
 25 of or failure to comply with an order issued under [section

1 4 5] or this section; OR

2 (D) AN ACTION BY A PERSON TO WHOM AN ORDER HAS BEEN  
 3 ISSUED TO DETERMINE THE VALIDITY OF THE ORDER, ONLY IF THE  
 4 PERSON HAS BEEN IN COMPLIANCE AND CONTINUES IN COMPLIANCE  
 5 WITH THE ORDER PENDING DECISION OF THE COURT.

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

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

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

22 **"75-10-712. Emergency action.** If the department  
 23 determines that immediate response to an imminent threat to  
 24 public health, public safety, or welfare, or the environment  
 25 is necessary to avoid substantial injury or damage to

1 persons, property, or resources, remedial action may be  
 2 taken pursuant to 75-10-711(1) and (2) without the prior  
 3 written notice required by 75-10-711(3)(b). ~~in such a case,~~  
 4 ~~the~~ The department must shall give subsequent written notice  
 5 to the ~~responsible--party~~ person liable under 75-10-715(1)  
 6 within 5 days after the action is taken, describing the  
 7 circumstances which required the action to be taken without  
 8 prior notice."

9 **NEW SECTION. Section 8.** Liability of remedial action  
 10 contractor. (1) A person who is a remedial action contractor  
 11 with respect to a release or threatened release of a  
 12 hazardous or deleterious substance is not liable under this  
 13 part to any person for injuries, costs, damages, expenses,  
 14 or other liability that results from the release or  
 15 threatened release, including but not limited to claims for  
 16 indemnification or contribution and claims by third parties  
 17 for death, personal injury, illness, loss or damage to  
 18 property, or economic loss.

19 (2) Immunity from liability, pursuant to subsection  
 20 (1), does not apply in the case of a release that is caused  
 21 by conduct of the remedial action contractor that is  
 22 negligent or grossly negligent or that constitutes  
 23 intentional misconduct.

24 (3) This section does not affect the liability of a  
 25 person under a warranty under federal, state, or common law

1 or the liability to an employee of an employer who is a  
 2 remedial action contractor under any provision of law,  
 3 including any provision of a law relating to workers'  
 4 compensation.

5 (4) A state agency, state employee, or an employee of  
 6 a political subdivision who provides services relating to  
 7 remedial action while acting within the scope of its or his  
 8 authority as a governmental agency or employee has the same  
 9 exemption from liability as is provided to the remedial  
 10 action contractor under this section.

11 (5) The defense provided by 75-10-715(5)(c) is not  
 12 available to a person liable under 75-10-715(1) with respect  
 13 to remedial action costs or damages caused by an act or  
 14 omission of a remedial action contractor.

15 (6) Except as provided in subsections (4) and (5),  
 16 this section does not affect the liability under this part  
 17 of a person other than a remedial action contractor.

18 (7) This section does not affect the plaintiff's  
 19 burden of establishing liability under this part.

20 (8) This section does not minimize the liability,  
 21 lessen the standard of liability, or otherwise shield from  
 22 liability a potentially responsible party under 75-10-715 or  
 23 section 107 of CERCLA for costs or damages incurred as a  
 24 result of a release or threatened release of a hazardous or  
 25 deleterious substance.



**NEW SECTION. Section 9. Administrative penalties. (1)**

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

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

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

(4) A person against whom a penalty is assessed under this section may obtain judicial review of the penalty as

provided for in Title 2, chapter 4, part 7.

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

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

"75-10-715. Reimbursement Liability -- reimbursement and penalties -- proceedings -- defenses. (1) Subject Notwithstanding any other provision of law and subject only to the defenses set forth in subsection (4) (5), a party responsible for a release is liable for the following persons are jointly and severally liable for a release or threatened release of a hazardous or deleterious substance from a facility:

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

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

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

1 for disposal or treatment; and

2 (d) a person who accepts or has accepted a hazardous  
3 or deleterious substance for transport to a disposal or  
4 treatment facility.

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

7 (a) all costs of remedial action taken costs incurred  
8 by the department pursuant to this part state; and

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

22 (2)(3) If the responsible-party person liable under  
23 75-10-715(1) fails, without sufficient cause, to comply with  
24 a department order issued pursuant to 75-10-711(4) or to  
25 properly provide remedial action upon notification by the

1 department pursuant to 75-10-711(3)(b), the responsible  
2 party person may be liable for punitive damages penalties in  
3 an amount not to exceed two times the amount of any costs  
4 incurred by the department state pursuant to this section.

5 (3)(4) The department may initiate civil proceedings  
6 in district court to recover remedial action costs, natural  
7 resource damages, or penalties under subsections (1) and  
8 (2) through (3). Proceedings to recover costs and penalties  
9 must be conducted in accordance with [section 13]. Venue for  
10 any action to recover costs, damages, or penalties lies in  
11 the county where the release occurred or where the  
12 responsible-party person liable under 75-10-715(1) resides  
13 or has its principal place of business or in the district  
14 court of the first judicial district.

15 (4)(5) No party person is liable under subsection  
16 subsections (1) or (2) through (3) if that party person can  
17 establish by a preponderance of the evidence that:

18 (a) the department failed to follow the notice  
19 provisions of 75-10-711 when required; or

20 (b) the release did not emanate from any vessel,  
21 vehicle, or facility to which the person contributed any  
22 hazardous or deleterious substance or over which the party  
23 person had any ownership, authority, or control and was not  
24 caused by any action or omission of the party person; or

25 (c) the release or threatened release occurred solely

1 as a result of:

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

4 (ii) an act or omission of a third party other than one  
5 whose act or omission occurs in connection with a  
6 contractual relationship, existing directly or indirectly,  
7 with the person, if the person establishes by a  
8 preponderance of the evidence that he:

9 (A) exercised due care with respect to the hazardous  
10 or deleterious substance concerned, taking into  
11 consideration the characteristics of the hazardous or  
12 deleterious substance in light of all relevant facts and  
13 circumstances; and

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

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

19 (e) the release or threatened release was from a  
20 facility for which a permit had been issued or--an--approval  
21 granted by the department, the hazardous or deleterious  
22 substance was specifically identified in the permit or  
23 approval, and the release was within the limits allowed in  
24 the permit or approval;

25 (f) in the case of assessment of punitive--damages

1 penalties under subsection (3), that factors beyond the  
2 control of the responsible-party person prevented the party  
3 person from taking timely remedial action; or

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

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

20 (i) At the time the person acquired the facility, the  
21 person did not know and had no reason to know that a  
22 hazardous or deleterious substance that is the subject of  
23 the release or threatened release was disposed of on, in, or  
24 at the facility.

25 (ii) The person is a governmental entity that acquired

1 the facility by escheat, lien foreclosure, or through any  
 2 other involuntary transfer or acquisition or through the  
 3 exercise of eminent domain authority by purchase or  
 4 condemnation.

5 (iii) The person acquired the facility by inheritance  
 6 or bequest.

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

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

18 (i) any specialized knowledge or experience on the  
 19 part of the person;

20 (ii) the relationship of the purchase price to the  
 21 value of the property if uncontaminated;

22 (iii) commonly known or reasonably ascertainable  
 23 information about the property;

24 (iv) the obviousness of the presence or the likely  
 25 presence of contamination on the property; and

1 (v) the ability to detect the contamination by  
 2 appropriate inspection.

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

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

16 (e) Nothing ~~is~~ IN this subsection (6) affects the  
 17 liability under this part of a person who, by any act or  
 18 omission, caused or contributed to the release or threatened  
 19 release of a hazardous or deleterious substance that is the  
 20 subject of the action relating to the facility."

21 **NEW SECTION. Section 11. Settlement -- bar to**  
 22 **contribution liability. (1) A person who has resolved his**  
 23 **liability to the state arising under 75-10-715 or section**  
 24 **107(a)(1) through (a)(4) of CERCLA 42 U.S.C. 9607(a)(1)**  
 25 **through (a)(4), in an administrative or judicially approved**

1 settlement is not liable for claims for contribution  
2 regarding matters addressed in the settlement. The  
3 settlement does not discharge any of the other potentially  
4 liable persons unless its terms provide a discharge. The  
5 terms of the settlement may reduce the potential liability  
6 of the other potentially liable persons by the amount of the  
7 settlement.

8 (2) If the state has obtained less than complete  
9 relief from a person who has resolved his liability to the  
10 state in an administrative or judicially approved  
11 settlement, the state may bring an action against any other  
12 person who has not resolved his liability.

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

18 (4) WHENEVER PRACTICABLE AND IN THE PUBLIC INTEREST,  
19 AS DETERMINED BY THE DIRECTOR OF THE DEPARTMENT, THE  
20 DEPARTMENT MAY, AS PROMPTLY AS POSSIBLE, REACH A FINAL  
21 SETTLEMENT WITH A PERSON LIABLE UNDER 75-10-715 IN AN  
22 ADMINISTRATIVE OR CIVIL ACTION UNDER 75-10-711 IF SUCH  
23 SETTLEMENT INVOLVES ONLY A MINOR PORTION OF THE RESPONSE  
24 COSTS AT THE FACILITY CONCERNED AND, IN THE JUDGMENT OF THE  
25 DEPARTMENT, THE CONDITIONS IN EITHER OF THE FOLLOWING

1 SUBSECTION (4)(A) OR (4)(B) ARE MET:

2 (A) BOTH OF THE FOLLOWING ARE MINIMAL IN COMPARISON TO  
3 OTHER HAZARDOUS OR DELETERIOUS SUBSTANCES AT THE FACILITY;

4 (I) THE AMOUNT OF THE HAZARDOUS OR DELETERIOUS  
5 SUBSTANCES CONTRIBUTED BY THAT PERSON TO THE FACILITY;

6 (II) THE TOXIC OR OTHER HAZARDOUS EFFECTS OF THE  
7 SUBSTANCES CONTRIBUTED BY THAT PERSON TO THE FACILITY.

8 (B) THE PERSON:

9 (I) IS THE OWNER OF THE REAL PROPERTY ON OR IN WHICH  
10 THE FACILITY IS LOCATED;

11 (II) DID NOT CONDUCT OR PERMIT THE GENERATION,  
12 TRANSPORTATION, STORAGE, TREATMENT, OR DISPOSAL OF ANY  
13 HAZARDOUS OR DELETERIOUS SUBSTANCE AT THE FACILITY; AND

14 (III) DID NOT CONTRIBUTE TO THE RELEASE OR THREAT OF  
15 RELEASE OF A HAZARDOUS OR DELETERIOUS SUBSTANCE AT THE  
16 FACILITY THROUGH ANY ACTION OR OMISSION. THIS SUBSECTION  
17 (4)(B) DOES NOT APPLY IF THE PERSON PURCHASED THE REAL  
18 PROPERTY WITH ACTUAL OR CONSTRUCTIVE KNOWLEDGE THAT THE  
19 PROPERTY WAS USED FOR THE GENERATION, TRANSPORTATION,  
20 STORAGE, TREATMENT, OR DISPOSAL OF ANY HAZARDOUS OR  
21 DELETERIOUS SUBSTANCE.

22 NEW SECTION. Section 12. Condemnation -- creation of  
23 state lien. (1) Whenever the department determines that  
24 property upon which a release or threatened release of a  
25 hazardous or deleterious substance has occurred may present

1 an imminent and substantial endangerment to the public  
2 health, safety, or welfare or the environment, the  
3 department may condemn the property for public use to  
4 mitigate the threat. The taking of the property must be  
5 conducted in accordance with the procedure set forth in  
6 Title 70, chapter 30, parts 1 through 3.

7 (2) All costs, penalties, and natural resource damages  
8 for which a person has been judicially determined to be  
9 liable to the state pursuant to 75-10-715 constitute a lien  
10 in favor of the state upon all property and rights to the  
11 property that belong to the person.

12 (3) The lien imposed by this section arises at the  
13 time notice incorporating a description of the property  
14 subject to the remedial action and an identification of the  
15 amount of costs, penalties, and natural resource damages is  
16 duly filed with the clerk and recorder of the county in  
17 which the real property is located. A copy of the notice  
18 must be served by certified mail upon the liable person.

19 (4) The costs, penalties, and natural resource damages  
20 constituting the lien may be recovered in an action in the  
21 district court for the district in which the property is  
22 located or in which the remedial action is occurring or has  
23 occurred. This section does not affect the right of the  
24 state to bring an action against a person to recover all  
25 costs, penalties, and natural resource damages for which

1 that person is liable under this part or any other provision  
2 of state or federal law.

3 (5) The lien must continue until the liability for the  
4 costs and damages incurred as a result of the release of a  
5 hazardous or deleterious substance is satisfied.

6 NEW SECTION. **Section 13. Degree of cleanup required**  
7 -- **permit exemption.** (1) A remedial action performed under  
8 this part must attain a degree of cleanup of the hazardous  
9 or deleterious substance and control of a threatened release  
10 or further release of that substance that assures present  
11 and future protection of public health, safety, and welfare  
12 and of the environment.

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

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

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

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

25 (i) use permanent solutions;

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

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

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

**NEW SECTION. Section 14.** Payment of state costs and penalties. (1) The department shall keep a record of the state's remedial action costs.

(2) Based on this record, the department shall require a person liable under 75-10-715 to pay the amount of the state's remedial action costs and, if applicable, penalties under 75-10-715(3).

(3) If the state's remedial action costs and penalties are not paid by the liable person to the department within 60 days after receipt of notice that the costs and penalties are due, the department shall bring an action in the name of the state to recover the amount owed plus reasonable legal expenses. ~~The--department's--certification--of--the-state's~~

~~remedial-action-costs-is-prima-facie-evidence-that-the-costs are-reasonable-and-are-consistent-with-this-part.~~

(4) An action to recover remedial action costs may be brought under this section at any time after any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability for remedial action costs that is binding on any subsequent action or actions to recover further remedial action costs. THE COURT MAY DISALLOW COSTS OR DAMAGES ONLY IF THE PERSON LIABLE UNDER 75-10-715 CAN SHOW ON THE RECORD THAT THE COSTS ARE NOT REASONABLE AND ARE NOT CONSISTENT WITH THIS PART.

(5) An initial action for recovery of remedial action costs must be commenced within 6 years after initiation of physical on-site construction of the remedial action.

(6) Remedial action costs and any penalties recovered by the state under 75-10-715 must be deposited into the environmental quality protection fund established in 75-10-704.

**NEW SECTION. Section 15.** Public notice of administrative order or consent decree. (1) Except as provided in 75-10-712, before FINAL approval BY THE DIRECTOR OF THE DEPARTMENT of any administrative order ON CONSENT ISSUED PURSUANT TO 75-10-711 or BEFORE JUDICIAL APPROVAL OF A consent decree issued pursuant to this part, the department shall:

1 (a) publish a notice and brief description of the  
2 proposed order or decree in a daily newspaper of general  
3 circulation in the area affected and make copies of the  
4 proposal available to the public;

5 (b) provide at least 30 days (or whatever additional  
6 time the department may in its discretion grant upon written  
7 request) for submission of written comments regarding the  
8 proposed order or decree and, upon written request by 10 or  
9 more persons or by a group having 10 or more members (but  
10 not including a liable person), conduct a public meeting at  
11 or near the facility for the purpose of receiving verbal  
12 comment regarding the proposed order or decree; and

13 (c) consider written or verbal comments properly  
14 submitted during the comment period or at the public  
15 meeting.

16 (2) Upon making a final decision regarding the  
17 proposed order or decree, the department shall publish  
18 notice, as provided under subsection (1), and make copies of  
19 the approved order or decree available to the public.

20 NEW SECTION. Section 16. Agreements to perform  
21 remedial action. (1) To expedite effective remedial actions  
22 and minimize litigation, the department, in its discretion  
23 and whenever practicable and in the public interest, may  
24 NEGOTIATE AND enter into an agreement with any person,  
25 including the owner or operator of the facility from which a

1 release emanates, to perform a remedial action if the  
2 department determines that the action will be properly done  
3 by the person. The agreement must contain terms and  
4 conditions that the department in its discretion determines  
5 to be appropriate.

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

12 (3) A decision of the department to enter into or not  
13 enter into agreements under this section is not subject to  
14 judicial review.

15 NEW SECTION. Section 17. Liability apportionment and  
16 contribution. (1) Any person held jointly and severally  
17 liable under 75-10-715 has the right at trial to have the  
18 trier of fact apportion liability among the parties as  
19 provided in this section. The burden is on each liable  
20 person to show how his liability should be apportioned. In  
21 apportioning the liability of any person under this section,  
22 the trier of fact shall consider the following:

23 (a) the extent to which the person's contribution to  
24 the release of a hazardous or deleterious substance can be  
25 distinguished;



(b) the amount of hazardous or deleterious substance involved;

(c) the degree of toxicity of the hazardous or deleterious substance involved;

(d) the degree of involvement of and care exercised by the person in manufacturing, treating, transporting, and OR disposing of the hazardous or deleterious substance;

(e) the degree of cooperation by the person with federal, state, or local officials to prevent any harm to the public health, safety, or welfare or the environment; and

(f) knowledge by the person of the hazardous nature of the substance.

(2) If a person is held jointly and severally liable under 75-10-715 and establishes a proportionate share of the aggregate liability, the person has the right of contribution from any other liable person. If for any reason all or part of the contribution from a person liable for contribution cannot be obtained, each of the other persons against whom recovery is allowed is liable to contribute a proportional part of the unpaid portion of the noncontributing person's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing person.

NEW SECTION. **Section 18.** Extension of authority. Any

existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **Section 19.** Codification instruction. [Sections 1, ~~47-77-87-and-10-through-16~~ 2, 5, 8, 9, AND 11 THROUGH 17] are intended to be codified as an integral part of Title 75, chapter 10, part 7, and the provisions of Title 75, chapter 10, part 7, apply to [sections 1, ~~47-77-87-and-10-through-16~~ 2, 5, 8, 9, AND 11 THROUGH 17].

NEW SECTION. **Section 20.** Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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

~~NEW SECTION. **Section 21.** Retroactive applicability. {Section 9} applies retroactively, within the meaning of 1-2-109, to all remedial action costs incurred before {the effective date of this act}.~~

NEW SECTION. **Section 22.** Effective date. [This act] is effective on passage and approval.

**SB 0385/05**

**-End-**