

SENATE BILL NO. 382

INTRODUCED BY

HARP

[Signature]

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING NATURAL RESOURCE AND ENVIRONMENTAL LAWS; AMENDING SECTIONS 15-38-202, 75-10-701, 75-10-704, 75-10-711, 75-10-715, 75-10-721, 75-10-722, 75-10-724, AND 85-1-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 15-38-202, MCA, is amended to read:

"15-38-202. (Temporary) Investment of resource indemnity trust fund -- expenditure -- minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-37-117, must be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund until it has reached the sum of \$10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches \$100 million. Thereafter, all net earnings and all receipts must be appropriated by the legislature and expended, provided that the balance in the fund may never be less than \$100 million.

(2) (a) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed \$175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed \$50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161;

(iii) beginning in fiscal year 1995, \$240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at northern Montana college to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs;

(iv) \$1,025,000 to be deposited into the renewable resource grant and loan program state special

1 revenue account, created by 85-1-604, for the purpose of making grants;

2 (v) \$2,200,000 to be deposited into the reclamation and development grants state special revenue
3 account, created by 90-2-1104, for the purpose of making grants; and

4 (vi) beginning in fiscal year 1994, \$250,000 to be deposited into the water storage state special
5 revenue account created by 85-1-631.

6 (b) The remainder of the interest income is allocated as follows:

7 (i) Thirty-eight percent of the interest income of the resource indemnity trust fund must be
8 allocated to the renewable resource grant and loan program state special revenue account created by
9 85-1-604.

10 (ii) Fifteen percent of the interest income of the resource indemnity trust fund must be allocated to
11 the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

12 (iii) Forty-one and one-half percent of the interest income from the resource indemnity trust fund
13 must be allocated to the reclamation and development grants account provided for in 90-2-1104.

14 (iv) Five and one-half percent of the interest income of the resource indemnity trust fund must be
15 allocated to the environmental quality protection fund provided for in 75-10-704.

16 (3) Any formal budget document prepared by the legislature or the executive branch that proposes
17 to appropriate funds from the resource indemnity trust interest account other than as provided for by the
18 allocations in subsection (2) must specify the amount of money from each allocation that is proposed to
19 be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and
20 publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the
21 legislative appropriation process or otherwise during a legislative session.

22 **15-38-202. (Effective July 1, 1995) Investment of resource indemnity trust fund -- expenditure --**
23 **minimum balance.** (1) All money paid into the resource indemnity trust fund, including money payable into
24 the fund under the provisions of 15-37-117, must be invested at the discretion of the board of investments.
25 All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund
26 until it has reached the sum of \$10 million. Thereafter, only the net earnings may be appropriated and
27 expended until the fund reaches \$100 million. Thereafter, all net earnings and all receipts must be
28 appropriated by the legislature and expended, provided that the balance in the fund may never be less than
29 \$100 million.

30 (2) (a) At the beginning of each biennium, there is allocated from the interest income of the

1 resource indemnity trust fund:

2 (i) an amount not to exceed \$175,000 to the environmental contingency account pursuant to the
3 conditions of 75-1-1101;

4 (ii) an amount not to exceed \$50,000 to the oil and gas production damage mitigation account
5 pursuant to the conditions of 82-11-161;

6 (iii) ~~beginning in fiscal year 1995,~~ \$240,000, which is statutorily appropriated, as provided in
7 17-7-502, from the renewable resource grant and loan program state special revenue account to support
8 the operations of the environmental science-water quality instructional programs at northern Montana
9 college to be used for support costs, for matching funds necessary to attract additional funds to further
10 expand statewide impact, and for enhancement of the facilities related to the programs;

11 (iv) beginning in fiscal year ~~1996~~ 1997, ~~\$2~~ \$1 million to be deposited into the renewable resource
12 grant and loan program state special revenue account, created by 85-1-604, for the purpose of making
13 grants;

14 (v) beginning in fiscal year ~~1996~~ 1997, ~~\$3~~ \$2 million to be deposited into the reclamation and
15 development grants state special revenue account, created by 90-2-1104, for the purpose of making grants;
16 and

17 (vi) beginning in fiscal year 1996, \$500,000 to be deposited into the water storage state special
18 revenue account created by 85-1-631.

19 (b) The remainder of the interest income is allocated as follows:

20 (i) ~~Thirty-six~~ Sixteen percent of the interest income of the resource indemnity trust fund must be
21 allocated to the renewable resource grant and loan program state special revenue account created by
22 85-1-604.

23 (ii) Eighteen percent of the interest income of the resource indemnity trust fund must be allocated
24 to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

25 (iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated
26 to the reclamation and development grants account provided for in 90-2-1104.

27 (iv) ~~Six~~ Sixteen percent of the interest income of the resource indemnity trust fund must be
28 allocated to the environmental quality protection fund provided for in 75-10-704.

29 (v) Ten percent of the interest income from the resource indemnity trust fund must be allocated
30 to the abandoned mine state special revenue account provided in [section 9].

1 (3) Any formal budget document prepared by the legislature or the executive branch that proposes
2 to appropriate funds from the resource indemnity trust interest account other than as provided for by the
3 allocations in subsection (2) must specify the amount of money from each allocation that is proposed to
4 be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and
5 publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the
6 legislative appropriation process or otherwise during a legislative session."

7
8 **Section 2.** Section 75-10-701, MCA, is amended to read:

9 **"75-10-701. Definitions.** As used in this part, unless the context requires otherwise, the following
10 definitions apply:

11 (1) "Department" means the department of health and environmental sciences provided for in Title
12 2, chapter 15, part 21.

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

14 (3) "Disposed" or "disposal" means:

15 (a) an affirmative act resulting in a discharge, deposit, injection, dumping, storing, spilling, leaking,
16 or placing of any hazardous or deleterious substance on any land or water so that the hazardous or
17 deleterious substance may enter the environment, be emitted into the air, or be discharged into any waters,
18 including ground waters.

19 (b) Disposed or disposal does not include the passive migration, movement, or dispersion of a
20 hazardous or deleterious substance or any constituent through the environment that occurs after the initial
21 disposal of the hazardous or deleterious substance into the environment.

22 ~~(3)~~(4) "Environment" means any surface water, ground water, drinking water supply, land surface
23 or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of
24 Montana.

25 ~~(4)~~(5) (a) "Facility" means:

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

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

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

2 ~~(5)~~(6) "Fund" means the environmental quality protection fund established in 75-10-704.

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

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

9 ~~(b)~~(ii) a substance identified by the administrator of the United States environmental protection
10 agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

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

14 ~~(d)~~(iv) any petroleum product.

15 (b) Hazardous or deleterious substance does not include any waste or constituent, the regulation
16 of which under the Solid Waste Disposal Act, 42 U.S.C. 6901, has been suspended by an act of congress
17 or that has been excluded from the definition of hazardous waste under 40 CFR 261.4(b)(7).

18 ~~(7)~~(8) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water,
19 drinking water supplies, and any other such resources within the state of Montana owned, managed, held
20 in trust or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the
21 state.

22 ~~(8)~~ ~~(a)~~(9) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or
23 exercising control over the operation of a facility.

24 (b) The term does not include holding the indicia of ownership of a facility primarily to protect a
25 security interest in the facility or other location unless the holder has participated in the management of the
26 facility. The term does not apply to the state or a local government that acquired ownership or control
27 through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the
28 government acquires title by virtue of its function as sovereign, unless the state or local government has
29 caused or contributed to the release or threatened release of a hazardous or deleterious substance from the
30 facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1

1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been
2 released into the environment upstream of the dam and has subsequently come to be located in the
3 reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for
4 a release or threatened release under 75-10-715(1).

5 ~~(9)~~(10) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium,
6 commercial entity, partnership, association, corporation, commission, state or state agency, political
7 subdivision of the state, interstate body, or the federal government, including a federal agency.

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

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

19 ~~(12)~~(13) "Remedial action" includes all notification, investigation, administration, monitoring,
20 cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action,
21 health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or
22 threatened release.

23 ~~(13)~~(14) "Remedial action contract" means a written contract or agreement entered into by a
24 remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or
25 request issued by the department, the United States, or any federal agency, to provide a remedial action
26 with respect to a release or threatened release of a hazardous or deleterious substance.

27 ~~(14)~~(15) "Remedial action contractor" means:

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

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

1 ~~(15)~~(16) "Remedial action costs" means reasonable costs that are attributable to or associated with
2 a remedial action at a facility, including but not limited to the costs of administration, investigation, legal
3 or enforcement activities, contracts, feasibility studies, or health studies."
4

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

6 **"75-10-704. Environmental quality protection fund.** (1) There is in the state special revenue fund
7 an environmental quality protection fund to be administered as a revolving fund by the department. The
8 department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.
9 The use of the fund is limited to remediation of sites not listed on the national priorities list.

10 (2) The fund may be used by the department only to:

11 (a) provide the department with funding for remedial actions to the extent that parties liable under
12 75-10-715 cannot pay all remedial action costs required to be expended to remedy releases at a facility;

13 (b) reimburse liable parties whose contributions to remedial action costs exceed their proportionate
14 liability;

15 (c) carry out the provisions of this part and provide for remedial actions taken by the department
16 pursuant to this part in response to a release of hazardous or deleterious substances; and

17 (d) carry out the provisions of this part.

18 (3) The department shall:

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

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

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

25 (a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs
26 recovered pursuant to 75-10-715;

27 (b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed
28 pursuant to 75-10-711(5);

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

30 (d) funds received from the interest income of the resource indemnity trust fund pursuant to

1 15-38-202.

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

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

8

9 **Section 4.** Section 75-10-711, MCA, is amended to read:

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

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

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

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

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

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

29 (b) the person or persons determined by the department to be liable under 75-10-715(1) have been
30 informed in writing of the department's determination and have been requested by the department to take

1 appropriate remedial action but are unable or unwilling to take action in a timely manner; and

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

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

10 (5) (a) A person who violates or fails or refuses to comply with an order issued under 75-10-707
11 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than
12 \$10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining
13 the amount of any penalty assessed, the court may take into account:

14 (i) the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the
15 person liable under 75-10-715(1), ~~his~~ the person's ability to pay;

16 (ii) any prior history of ~~such~~ violations;

17 (iii) the degree of culpability;

18 (iv) the economic benefit or savings, if any, resulting from the noncompliance; and

19 (v) any other matters ~~as~~ that justice may require.

20 (b) Civil penalties collected under this subsection must be deposited into the environmental quality
21 protection fund established in 75-10-704.

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

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

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

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

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

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

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

10 (9) ~~The Except as provided in 75-10-712, the department may not take remedial action pursuant~~
 11 ~~to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response,~~
 12 ~~Compensation, and Liability Act of 1980, Public Law 96-510, if the department determines that remedial~~
 13 ~~action is necessary to carry out the purposes of this part as amended. This subsection may not restrict the~~
 14 ~~department from entering into or carrying out cooperative agreements under Title 75, chapter 10, part 6,~~
 15 ~~or from accepting any deferral to the state of a CERCLA site from the U.S. environmental protection~~
 16 ~~agency."~~

17
 18 **Section 5.** Section 75-10-715, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

16 (4) The department may initiate civil proceedings in district court to recover remedial action costs,
17 natural resource damages, or penalties under subsections (1) through (3). Proceedings to recover costs
18 and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs,
19 damages, or penalties lies in the county where the release occurred or where ~~the~~ any person liable under
20 75-10-715(1) resides or has its principal place of business or in the district court of the first judicial district.

21 (5) ~~No~~ A person is not liable under subsections (1) through (3) if that person can establish by a
22 preponderance of the evidence that:

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

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

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

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

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

1 a preponderance of the evidence that ~~he~~ the person:

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

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

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

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

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

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

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

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

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

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

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

1 ~~(5)(c)(iii).~~

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

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

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

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

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

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

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

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

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

21

22 **Section 6.** Section 75-10-721, MCA, is amended to read:

23 **"75-10-721. Degree of cleanup required -- permit exemption -- financial assurance.** (1) A remedial
 24 action performed under this part or a voluntary cleanup under [sections 10 through 16] must attain a degree
 25 of cleanup of the hazardous or deleterious substance and control of a threatened release or further release
 26 of that substance that assures ~~present and future~~ protection of public health, safety, and welfare and of
 27 the environment that is consistent with this section.

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

29 ~~(a) shall require cleanup consistent with applicable state or federal environmental requirements,~~
 30 ~~criteria, or limitations;~~

1 ~~(b) shall consider and may require cleanup consistent with substantive state or federal~~
 2 ~~environmental requirements, criteria, or limitations that are well suited to the site conditions; and~~

3 ~~(c) shall select remedial actions that, at a minimum, protect the public health, safety, and welfare~~
 4 ~~and the environment. A remedial action must be considered protective of the public health, safety, and~~
 5 ~~welfare and of the environment when the amount of site-specific risk reduction is proportionate to the total~~
 6 ~~cost of the remedial action or when the remedial action reaches a level or risk reduction of 10 to the minus~~
 7 ~~4, whichever is more cost-effective. and that:~~

8 ~~(i) use permanent solutions;~~

9 ~~(ii) use alternative treatment technologies or resource recovery technologies to the maximum extent~~
 10 ~~practicable; and~~

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

14 ~~(3) To the extent consistent with the requirements of subsection (2), the department, in selecting~~
 15 ~~remedial actions under this part, shall consider for each remedial action:~~

16 ~~(a) technical practicability;~~

17 ~~(b) long-term and short-term reliability; and~~

18 ~~(c) local community and local government acceptance.~~

19 ~~(4) To the extent consistent with the requirements of subsection (2), the department shall give~~
 20 ~~equal consideration to engineering controls, institutional controls, and treatment.~~

21 ~~(5) All remedial actions selected by the department under this part must be based on current land~~
 22 ~~and resource uses unless the department can demonstrate on the administrative record that there are~~
 23 ~~reasonably anticipated uses that would require remedial actions that provide for a higher level of protection~~
 24 ~~for the public health, safety, and welfare, and for the environment. Only reasonably anticipated land and~~
 25 ~~resource uses, as determined by applicable local land and resource use requirements, regulations,~~
 26 ~~ordinances, restrictions or covenants, may be considered.~~

27 ~~(3)(6) The department may shall exempt any portion of a remedial action that is conducted entirely~~
 28 ~~on site from a state or local permit that would, in the absence of the remedial action, be required if the~~
 29 ~~remedial action is carried out in accordance with the standards established under subsection (1) and this~~
 30 ~~part.~~

1 ~~(4)~~(7) The department may require financial assurance from a liable person in an amount that the
2 department determines will ensure the long-term operation and maintenance of the remedial action site.
3 The liable person shall provide the financial assurance by any one method or combination of methods
4 satisfactory to the department, including but not limited to insurance, guarantee, performance or other
5 surety bond, letter of credit, qualification as a self-insurer, or other demonstration of financial capability."
6

7 **Section 7.** Section 75-10-722, MCA, is amended to read:

8 **"75-10-722. Payment of state costs and penalties.** (1) The department shall keep a record of the
9 state's remedial action costs.

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

12 (3) If the state's remedial action costs and penalties are not paid by the liable person to the
13 department within 60 days after receipt of notice that the costs and penalties are due, the department shall
14 bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.

15 (4) An action to recover remedial action costs may be brought under this section at any time after
16 any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability
17 for remedial action costs that is binding on any subsequent action or actions to recover further remedial
18 action costs. The court may disallow costs or damages only if the person liable under 75-10-715 can show
19 on the record that the costs are not reasonable and are not consistent with this part.

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

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

25 **Section 8.** Section 75-10-724, MCA, is amended to read:

26 **"75-10-724. Liability apportionment and contribution.** (1) ~~Any person held jointly and severally~~
27 ~~liable under 75-10-715 has the right at trial to have the trier of fact apportion liability among the parties~~
28 ~~as provided in this section. The burden is on each liable person to show how his liability should be~~
29 ~~apportioned. In apportioning the liability of any person under this section, the trier of fact shall consider~~
30 In any action initiated under 75-10-715 by the department or in any action initiated under subsection (2)

1 by any person or persons liable under 75-10-715(1), the trier of fact shall determine the proportionate share
 2 of the aggregate liability for each person who is found liable under 75-10-715(1). For purposes of
 3 determining the proportionate share of the aggregate liability, the trier of fact shall consider, for each person
 4 found liable under 75-10-715(1), the following:

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

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

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

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

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

13 (f) knowledge by the each person of the hazardous nature of the substance; and

14 (g) any remedial actions voluntarily taken by a person.

15 (2) ~~If a person is held jointly and severally liable under 75-10-715 and establishes a proportionate~~
 16 ~~share of the aggregate liability, the person has the right of contribution from any other liable person. If for~~
 17 ~~any reason all or part of the contribution from a person liable for contribution cannot be obtained, each of~~
 18 ~~the other persons against whom recovery is allowed is liable to contribute a proportional part of the unpaid~~
 19 ~~portion of the noncontributing person’s share and may obtain judgment in a pending or subsequent action~~
 20 ~~for contribution from the noncontributing person. A person liable under 75-10-715(1) may have a right of~~
 21 contribution for the recovery of the remedial action costs incurred by a person under this part against any
 22 other nonsettling party found liable under 75-10-715(1) in the proportionate shares determined under
 23 subsection (1).

24 (3) For sites not listed on the national priorities list, if for any reason all or part of the contribution
 25 from a person liable for contribution cannot be obtained, a person may apply to and must, in accordance
 26 with this subsection, receive reimbursement from the department from the environmental quality protection
 27 fund established in 75-10-704. If the environmental quality protection fund does not contain sufficient
 28 money to pay received claims for reimbursement, the fund and the department are not liable for making any
 29 reimbursement at that time. When the fund contains sufficient money, approved claims must be
 30 subsequently reimbursed in the order in which they were approved by the department. The department

1 shall approve claims for reimbursement of remedial action costs under this subsection unless the remedial
2 action costs are unreasonable, unnecessary, or inconsistent with this part.

3 (4) A person who has incurred remedial action costs may seek to recover those costs from any
4 person who is liable or potentially liable under 75-10-715. A person who is liable under this subsection is
5 not liable for more than the person's proportionate share of the aggregate liability determined in accordance
6 with the criteria in subsection (1). Subsections (3) and (4) of 75-10-714 apply to any actions under this
7 subsection."

8
9 **NEW SECTION. Section 9. Abandoned mine state special revenue account created.** (1) There is
10 an abandoned mine special revenue account within the state special revenue account fund established in
11 17-2-102.

12 (2) There must be paid into the abandoned mine state special revenue account money allocated
13 from the resource indemnity trust fund interest earnings pursuant to 15-38-202.

14 (3) Money that was not encumbered or expended from the abandoned mine state special revenue
15 account during the previous biennium must remain in the account.

16 (4) Deposits to the abandoned mine state special revenue account are to be placed in short-term
17 investments and accrue interest, which must be deposited in the abandoned mine state special revenue
18 account.

19 (5) The purpose of the abandoned mine state special revenue account is to provide the funding to
20 the department of state lands for the cleanup and reclamation of abandoned mines.

21 (6) The department of state lands shall administer this section as an integral part of the abandoned
22 mines program.

23
24 **NEW SECTION. Section 10. Short title.** [Sections 10 through 16] may be cited as the "Voluntary
25 Cleanup and Redevelopment Act".

26
27 **NEW SECTION. Section 11. Purpose -- legislative declaration.** (1) (a) The purposes of [sections
28 10 through 16] are to provide for the protection of the public health, welfare, and safety and of the
29 environment and to foster the cleanup, transfer, reuse, or redevelopment of facilities and sites that have
30 been previously contaminated with hazardous or deleterious substances.

1 (b) The legislature further declares that this program is intended to permit and encourage voluntary
2 cleanup of contaminated property by providing interested persons with a method of determining what the
3 cleanup responsibilities will be for reuse or redevelopment of existing sites.

4 (2) The legislature further intends that this voluntary program:

5 (a) encourage and facilitate prompt cleanup activities;

6 (b) eliminate impediments to the sale or redevelopment of previously contaminated property; and

7 (c) minimize administrative processes and costs.

8

9 **NEW SECTION. Section 12. Voluntary cleanup plan.** (1) A person who owns real property that
10 has been contaminated with hazardous or deleterious substances or any person who may be liable under
11 75-10-715(1) may submit an application for the approval of a voluntary cleanup plan to the department
12 under the provisions of this section.

13 (2) A voluntary cleanup plan must include:

14 (a) an environmental assessment of the real property that describes the contamination, if any, on
15 the property and the risk that the contamination currently poses to the public health, welfare, and safety
16 and to the environment;

17 (b) a proposal, if needed, for remedial actions consistent with 75-10-721. The proposal must
18 provide a timetable for implementing the proposal and for monitoring the site after the proposed measures
19 are completed.

20 (c) a description of the manner in which the remedial action plan satisfies the cleanup requirements
21 of 75-10-721 and a description of any current risk to the public health, welfare, or safety or to the
22 environment based upon the current or reasonably anticipated future use of the site.

23

24 **NEW SECTION. Section 13. Environmental assessment -- requirements.** (1) The department may
25 only accept environmental assessments under [sections 10 through 16] that are prepared by a qualified
26 environmental professional. A qualified environmental professional is a person with education, training, and
27 experience in preparing environmental studies and assessments.

28 (2) An environmental assessment described in this section must include the following information:

29 (a) the legal description of the site and a map identifying the location and size of the property;

30 (b) the physical characteristics of the site and areas contiguous to the site, including the location

1 of any surface water bodies and ground water aquifers;

2 (c) the location of any wells located on the site or on areas within a one-half mile radius of the site
3 and a description of the use of those wells;

4 (d) the current and reasonably anticipated future use of onsite ground water;

5 (e) the operational history of the site and the current use of areas contiguous to the site;

6 (f) the current and reasonably anticipated future uses of the site;

7 (g) information concerning the nature and extent of any contamination and releases of hazardous
8 or deleterious substances that have occurred at the site, including any impacts on areas contiguous to the
9 site;

10 (h) any sampling results or other data that characterizes the soil, ground water, or surface water
11 on the site; and

12 (i) a description of the human and environmental exposure to contamination at the site based upon
13 the property's current use and any reasonably anticipated future use proposed by the property owner.

14

15 **NEW SECTION. Section 14. Approval of voluntary action plan -- time limits -- content of notice**

16 -- **expiration of approval.** (1) (a) The department shall provide formal written notification that a voluntary
17 cleanup plan has been approved or disapproved within 60 days after a request by a property owner, unless
18 the property owner or person who may be liable under 75-10-715(1) and the department agree to an
19 extension of the review to a date certain. The review must be limited to a review of the materials
20 submitted by the applicant and documents or information readily available to the department. If the
21 department fails to act on an application within the time limits specified in this subsection (1), the voluntary
22 cleanup plan is approved.

23 (b) The department shall approve a voluntary cleanup plan if, based on the information submitted
24 by the property owner or person who may be liable under 75-10-715(1), the department concludes that
25 the plan will attain a degree of cleanup and control of hazardous or deleterious substances, or both, that
26 complies with the requirements of 75-10-721.

27 (c) If a voluntary cleanup plan is not approved by the department, the department shall promptly
28 provide the applicant with a written statement of the reasons for denial. If the department disapproves a
29 voluntary cleanup plan based upon the applicant's failure to submit the information required by [section 12],
30 the department shall notify the applicant of the specific information omitted by the applicant.

1 (d) The approval of a voluntary cleanup plan by the department applies only to conditions on the
2 property that exist as of the time of submission of the application. If a voluntary cleanup plan is not
3 initiated within 12 months and completed within 24 months after approval by the department, the
4 department's approval lapses. However, the department may grant an extension of the time limit for
5 completion of the voluntary cleanup plan.

6 (2) Written notification by the department that a voluntary cleanup plan is approved must contain
7 the basis for the approval.

8 (3) (a) Failure of a property owner to materially comply with the voluntary cleanup plan approved
9 by the department pursuant to this section renders the approval void.

10 (b) Submission of materially misleading information by the applicant in the voluntary cleanup plan
11 renders the department approval void.

12 (4) Within 60 days after the completion of the voluntary cleanup described in the voluntary cleanup
13 plan approved by the department, the applicant shall provide to the department a certification from a
14 qualified environmental professional that the plan has been fully implemented.

15
16 **NEW SECTION. Section 15. Voluntary action to preclude remedial action by department.** If a party
17 has elected to undertake an approved voluntary cleanup and is diligently proceeding to implement the plan,
18 the department may not, except as provided in 75-10-712, take remedial action under 75-10-711.

19
20 **NEW SECTION. Section 16. Closure and release from liability.** (1) After completion of the
21 remedial actions required by the department under this part or the voluntary action plan, a property owner
22 or any person who may be liable under 75-10-715(1) may petition the department for closure of the site
23 and release from liability for remedial actions and remedial action costs under [sections 10 through 16].

24 (2) The department shall review the site to determine that the site does not pose a significant threat
25 to public health, welfare, or safety or to the environment as determined in accordance with 75-10-721 and
26 that the responsible parties have:

27 (a) implemented all appropriate response actions; and

28 (b) provided for long-term funding for site maintenance or monitoring.

29 (3) In the event that the petition for closure and release from liability is not approved by the
30 department, the department shall promptly provide the applicant with a written statement of the reasons

1 for denial. Written notification that the petition is approved by the department must include the following
2 language:

3 "Based upon the information provided by [insert name(s) of property owner(s)] concerning property
4 located at [insert address], it is the opinion of the Montana Department of Health and Environmental
5 Sciences that upon completion of the remedial action or voluntary cleanup plan:

6 (1) no further action is required to ensure that this property, when used for the purposes identified,
7 is protective of existing and proposed uses and does not pose an unacceptable risk to the public health,
8 welfare, or safety or to the environment at the site; and

9 (2) [insert name(s) of property owner(s) or any person who may be liable under 75-10-715(1)] are
10 released from any liability, claims, or causes of action for remedial costs and remedial actions at the site."
11

12 **Section 17.** Section 85-1-604, MCA, is amended to read:

13 **"85-1-604. Renewable resource grant and loan program state special revenue account created --**
14 **revenues allocated -- limitations on appropriations from account.** (1) There is created a renewable resource
15 grant and loan program state special revenue account within the state special revenue fund established in
16 17-2-102.

17 (2) Except to the extent that they are required to be credited to the renewable resource loan debt
18 service fund pursuant to 85-1-603, there must be paid into the renewable resource grant and loan program
19 state special revenue account:

20 (a) all revenues of the works and other money as provided in 85-1-332;

21 (b) ~~33%~~ of the amount of interest income of the resource indemnity trust fund as provided in and
22 subject to the conditions of 15-38-202;

23 (c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource
24 loan debt service fund above debt service requirements as provided in and subject to the conditions of
25 85-1-619;

26 (d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of
27 loans, including arrangements for obtaining security interests; and

28 (e) 20% of the resource indemnity tax proceeds.

29 (3) Appropriations may be made from the renewable resource grant and loan program state special
30 revenue account for the following purposes and subject to the following conditions:

1 (a) The amount of resource indemnity trust fund interest earnings allocated under 15-38-202(2)(b)
2 must be used for renewable resource grants.

3 (b) An amount less than or equal to that paid into the account under 85-1-332 and only that
4 amount may be appropriated for the operation and maintenance of state-owned projects and works. If the
5 amount of money available for appropriation under this subsection (b) is greater than that necessary for
6 operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(c).

7 (c) An amount less than or equal to that paid into the account from the resource indemnity trust
8 account plus any excess from subsection (3)(b) and only that amount may be appropriated from the
9 account for expenditures that meet the policies and objectives of the renewable resource grant and loan
10 program. If the amount of money available for appropriation under this subsection (c) is greater than that
11 necessary for operation and maintenance expenses, the excess may be appropriated as provided in
12 subsection (3)(d).

13 (d) An amount less than or equal to that paid into the account from the sources provided for in
14 subsections (2)(c) and (2)(d) and any excess from subsection (3)(c) and only that amount may be
15 appropriated from the account for:

16 (i) loans and grants for renewable resource projects;

17 (ii) ~~for~~ purchase of liens and operation of property as provided in 85-1-615;

18 (iii) ~~for~~ administrative expenses, including but not limited to the salaries and expenses of personnel,
19 equipment, and office space;

20 (iv) ~~for~~ the servicing of loans, including arrangements for obtaining security interests; and

21 (v) ~~for~~ other necessities incurred in administering the loans and grants."

22

23 **NEW SECTION. Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are
24 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
25 applications, the part remains in effect in all valid applications that are severable from the invalid
26 applications.

27

28 **NEW SECTION. Section 19. Codification instructions.** (1) [Section 9] is intended to be codified
29 as an integral part of Title 82, chapter 4, and the provisions of Title 82, chapter 4, apply to [section 9].

30 (2) [Sections 10 through 16] are intended to be codified as an integral part of Title 75, chapter 10,

1 part 7, and the provisions of Title 75, chapter 10, part 7, apply to [sections 10 through 16].

2

3 NEW SECTION. **Section 20. Applicability.** [This act] applies to all pending actions or proceedings
4 by the state.

5

6 NEW SECTION. **Section 21. Effective date.** [This act] is effective on passage and approval.

7

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0382, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising natural resource and environmental laws. The bill amends the resource indemnity trust fund and the comprehensive environmental cleanup and responsibility act (CECRA) and creates a voluntary cleanup act.

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to calculate any fiscal impact due to this proposed legislation.
2. The Department of Health and Environmental Sciences (DHES) Environmental Remediation Division (ERD) assumes new responsibilities upon enactment of SB382.
3. Under current law, there is minimal state litigation of state Superfund sites due to the strict, joint and several liability in the Comprehensive Environmental Cleanup and Recovery Act (CECRA).
4. Under the bill, the apportioning of liability would be accomplished through litigation. DHES may be required to participate in litigation to represent insolvent parties and orphan shares (those liable entities that cannot be found or brought into the litigation), to protect the financial interest of the state.
5. SB382 would require the state, utilizing the environmental quality protection fund (EQPF), to reimburse parties for the insolvent and orphan shares for both past and future cleanup costs at hazardous substance sites. DHES would need to develop administrative procedures to handle this new reimbursement function. New procedures would include conducting detailed evaluation of the reasonableness of reimbursement costs claimed and providing for resolution of disputes. In addition, DHES would be required to determine the appropriate proportionate shares for reimbursement claims filed against the fund. Litigation may be necessary to defend DHES determinations.
6. To address the increased litigation and reimbursement workload, 3.00 FTE attorneys (grade 18) and 2.00 FTE paralegals (grade 12) would be necessary. Operating expenses associated with the additional staff are included, with additional equipment (5 computers at \$2,000 each) in FY96 only.
7. The bill would require DHES, when evaluating remedy alternatives, to conduct economic analyses in addition to the analysis usually performed.
8. To address the additional detailed economic analysis required for evaluating remedy alternatives, contracted economic specialists will be required at an estimated cost of \$50,000 per year.
9. Claims on the EQPF for state Superfund sites that may be made by applicants and approved by DHES include the following categories:
 - Reimbursement for portions of past costs incurred by private parties for at least 20 sites. Estimated reimbursement necessary for these sites is approximately \$5,300,000 for the biennium, or \$2,650,000 per year. All past claims are assumed to be filed in the biennium.
 - Reimbursement for portions of future costs incurred by private parties and orphan shares for approximately 25 sites. Estimated reimbursement necessary is approximately \$18,000,000. Claims are estimated to occur evenly over a 10-year period at \$1,800,000 per year.

(continued)

Dave Lewis 2-21-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

John Harp 2-21-95
JOHN HARP, PRIMARY SPONSOR DATE

Fiscal Note for SB0382, as introduced

SB 382

(continued)

- However, the bill provides that the department will only reimburse claims to the extent that funding in the EQPF is available. (Estimated total new EQPF revenue available to DHES is \$503,500 in FY96 and \$663,500 in FY97.)
10. Twenty-one applications for reimbursement for storage tank cleanup costs from the Montana Petroleum Tank Release Compensation Fund (PTRCF) are not eligible under current laws. These cleanups, plus an estimated additional 24 cleanups in FY96 and FY97, would be eligible for reimbursement from the EQPF under the liability provisions of the proposed bill. Estimated cost of this reimbursement is \$45,000 per site, or \$2,025,000 for the biennium. However, the bill provides that the department will only reimburse claims to the extent that funds in the EQPF are available.
 11. Revenues from the Underground Storage Tank (UST) program will not change as a result of the bill.
 12. The detailed estimates provided in this fiscal note are based on estimated costs associated with about 45 of the existing 271 state Superfund sites in Montana. The remaining sites are discussed under the Long-Range Effects category below.
 13. All inactive/abandoned mines would be referred to the Department of State Lands (DSL), Abandoned Mines Bureau for reclamation.
 14. The highest priority inactive/abandoned mine sites will cost \$5,000,000 - \$10,000,000 each to reclaim. Approximately 20 high priority sites have been identified. The midrange priority inactive/abandoned sites will cost an average of \$1,000,000 to reclaim. Approximately 60 midrange sites have been identified. However, the bill provides that the department will only reimburse claims to the extent that funding is available in the abandoned mine account. (Estimated total new abandoned mine funds available to DSL are \$503,500 in FY96 and \$603,500 in FY97.)
 15. Renewable resource grants will be reduced by \$1 million and will affect funding for 16 grants that have been approved by the House Appropriations Committee. A list of these grants is provided below. A reduction of \$1 million in reclamation and development grants will affect funding for 7 grants that have been approved by the House Appropriations Committee. A list of these grants is provided below. The reduced allocation to the renewable resource account will exasperate an already existing deficit in this account. Agencies including DNRC, Flathead Basin, Water Court, and NRIS/State Library are funded from this account. The loss of revenue amounts to \$1,628,378 over the biennium.

Affected Renewable Resource Grants:

City of Bozeman - Separator Waste Collection Facility	\$ 39,830
Flathead Basin Commission - Flathead Lake Watershed Management	100,000
DNRC - Flint Creek Return Flow Study	100,000
Butte-Silver Bow - Big Hole River Water Transmission Line	100,000
Montana Tech.-UM - Hydrologic Evaluation of Florence and Seeley Lake	95,422
Chouteau and Fergus Counties - PN Bridge	50,000
Libby Area Conservancy District - Libby, Granite, Cherry Creek Flood	35,000
DFWP - Assessment of Aquatic Resources in the Blackfoot Basin	100,000
Hysham, Town of - Sewer System Improvements	50,000
Fairview, Town of - Water System Improvements	100,000
Madison Conservation District - Willow Creek Water Management	25,000
Manhattan, Town of - Water System	50,000
Granite Conservation District - Upper Clark Fork Management Plan	64,740
Jackson Water and Sewer District - Geothermal Development	25,000
Sun River Water District - Water System	50,000
Lincoln, Lewis and Clark County - Sewer System	15,000

Affected Reclamation and Development Grants:

DHES - Nonpoint Source Pollution Control	\$ 54,932
Butte Silver Bow - Upper Clark Fork Basin Super Fund Tech. Asst.	93,622
DHES - Superfund GIS	95,200
Glacier County Conservation District - Red River Reclamation	150,000
Toole County - North Toole County Reclamation	295,246
Department of State Lands - Scobey Reclamation Site	11,000
Petroleum County CD - Artesian Basin Ground Water	300,000

(continued)

16. The allocation for the interest earnings from the RIT to Renewable Resource grants and loans account allocation will be reduced from 36% to 16%.
17. Interest earnings from the RIT to the EQPF are increased from 6% to 16%.
18. An abandoned mine state special revenue account is created and allocated 10% of the RIT interest income.

FISCAL IMPACT:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
House Bill No. 2:	<u>Difference</u>	<u>Difference</u>
FTE	5.00	5.00
Personal Services (DHES)	179,523	179,523
Operating Expenses (DHES)	137,520	112,520
Operating Expenses (DSL)	503,500	603,500
Equipment (DHES)	10,000	0
Benefits and Claims (on EQPF)	<u>176,457</u>	<u>371,457</u>
Total	1,007,000	1,267,000

Funding:

General Fund (01)	1,007,000	847,000
State Special (02)	<u>0</u>	<u>420,000</u>
Total	1,007,000	1,267,000

House Bill No. 6 & 7

Grants (2,000,000)

Net Impact on General Fund Balance:

General Fund (Cost) (01) (1,007,000) (847,000)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Counties and municipalities that may be liable parties under the state Superfund law may have liability status changed. Whether their liability would increase or decrease would depend on the specific situation at each site. The reallocation of funds generated by interest on the RIT may affect the ability of local governments to receive grants or loans funded from RIT sources.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The proposed bill would substantially increase the amount of public funding required to clean up Superfund sites in the future. Continuing increased public liability for funding cleanups has been estimated at about \$1,800,000 per year for at least 10 years, based solely on the needs to address approximately 25 high-priority sites where the proposed bill would create an insolvent or orphan share. DHES did not estimate financial impact associated with the majority of the existing medium- and low-priority sites because of the limited existing information now available regarding cleanup costs and liability. In addition, DHES did not assume a financial impact associated with any sites that are presently unidentified. It is safe to assume that considerable additional public funding would be required to address the remaining sites over the next several decades.

The provision of the bill which limits expenditures for remediation in any given year to the additional EQPF revenue available will create a backlog of claims. These will be a liability for the state against future revenues, and may accrue interest from the time they are filed until they are settled.

The legislation assigns a disproportionate workload for the AML program compared to the funding made available through the RIT interest income. The bill will result in all abandoned mines becoming the responsibility of DSL. The AML program can not effectively reclaim these sites with the available funding. The single highest prioritized site alone could require four to five years funding. Other individual sites could require the entire allocated amount annually. The top eighty sites may cost \$160 million which, given the proposed \$587,087 per year RIT funding, would take 200 years to reclaim.

TECHNICAL NOTES:

It is unclear how this act would function with the federal Surface Mine Control and Reclamation Act. The conditions attached to the use of RIT funds are different than conditions required by the Department of the Interior, Office of Surface Mining for the state to qualify for existing federal funds (approximately \$6 million annually).

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0382, second reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the degree of cleanup required for remedial actions; creating a voluntary cleanup and redevelopment process; requiring the Department of Health and Environmental Sciences. (DHES) to set up a collaborative process that analyzes the elimination of joint and several liability and related funding necessary to clean up superfund sites.

ASSUMPTIONS:

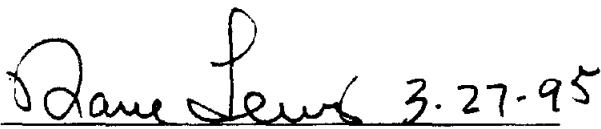
1. The Executive Budget present law base serves as the starting point from which to calculate any fiscal impact.
2. The bill provides workload relief measures (e.g., application limits) which will enable the existing staff to manage the increased workload for voluntary cleanups within the existing budget.
3. The collaborative department study can be accomplished with existing program budget and staff.
4. The department costs associated with voluntary remedial action plan review and cleanup oversight will be reimbursed by the applicant as proposed and will have a neutral fiscal impact.
5. The costs associated with public notification and hearings will be minimal and can be absorbed in the program budget.

FISCAL IMPACT:

No fiscal impact.

TECHNICAL NOTES:

Section 8(14), Page 26, line 27, refers to reimbursement for voluntary cleanups from the Environmental Quality Protection Fund "pursuant to the requirements and limitations of 75-10-724." However, the current version of 75-10-724 in state law does not contain provisions for these reimbursements. The reference to 75-10-724 in this legislation relates to amendments that have been stricken from this bill. For purposes of this fiscal note, it is assumed that this Section 8(14) will be deleted from this bill.

 3.27.95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


JOHN HARP, PRIMARY SPONSOR DATE

Fiscal Note for SB0382, second reading

SB 382-#2

SENATE BILL NO. 382

INTRODUCED BY HARP, BECK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ~~NATURAL RESOURCE AND ENVIRONMENTAL LAWS~~ THE DEGREE OF CLEANUP REQUIRED FOR REMEDIAL ACTIONS; CREATING A VOLUNTARY CLEANUP AND REDEVELOPMENT PROCESS; REQUIRING THE DEPARTMENT TO SET UP A COLLABORATIVE PROCESS THAT ANALYZES THE ELIMINATION OF JOINT AND SEVERAL LIABILITY AND RELATED FUNDING NECESSARY TO CLEAN UP STATE SUPERFUND SITES; AMENDING SECTIONS 15-38-202, 75-10-701, 75-10-704, 75-10-711, SECTION 75-10-715, 75-10-721, 75-10-722, 75-10-724, AND 85-1-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

~~Section 1. Section 15-38-202, MCA, is amended to read:~~

~~"15-38-202. (Temporary) Investment of resource indemnity trust fund—expenditure—minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-37-117, must be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund until it has reached the sum of \$10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches \$100 million. Thereafter, all net earnings and all receipts must be appropriated by the legislature and expended, provided that the balance in the fund may never be less than \$100 million.~~

~~(2) (a) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:~~

~~(i) an amount not to exceed \$175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;~~

~~(ii) an amount not to exceed \$50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161;~~

~~(iii) beginning in fiscal year 1995, \$240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science water quality instructional programs at northern Montana~~

1 ~~college to be used for support costs, for matching funds necessary to attract additional funds to further~~
 2 ~~expand statewide impact, and for enhancement of the facilities related to the programs;~~

3 ~~(iv) \$1,025,000 to be deposited into the renewable resource grant and loan program state special~~
 4 ~~revenue account, created by 85-1-604, for the purpose of making grants;~~

5 ~~(v) \$2,200,000 to be deposited into the reclamation and development grants state special revenue~~
 6 ~~account, created by 90-2-1104, for the purpose of making grants; and~~

7 ~~(vi) beginning in fiscal year 1994, \$250,000 to be deposited into the water storage state special~~
 8 ~~revenue account created by 85-1-631.~~

9 ~~(b) The remainder of the interest income is allocated as follows:~~

10 ~~(i) Thirty eight percent of the interest income of the resource indemnity trust fund must be~~
 11 ~~allocated to the renewable resource grant and loan program state special revenue account created by~~
 12 ~~85-1-604.~~

13 ~~(ii) Fifteen percent of the interest income of the resource indemnity trust fund must be allocated to~~
 14 ~~the hazardous waste/CERCLA special revenue account provided for in 75-10-621.~~

15 ~~(iii) Forty one and one half percent of the interest income from the resource indemnity trust fund~~
 16 ~~must be allocated to the reclamation and development grants account provided for in 90-2-1104.~~

17 ~~(iv) Five and one half percent of the interest income of the resource indemnity trust fund must be~~
 18 ~~allocated to the environmental quality protection fund provided for in 75-10-704.~~

19 ~~(3) Any formal budget document prepared by the legislature or the executive branch that proposes~~
 20 ~~to appropriate funds from the resource indemnity trust interest account other than as provided for by the~~
 21 ~~allocations in subsection (2) must specify the amount of money from each allocation that is proposed to~~
 22 ~~be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and~~
 23 ~~publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the~~
 24 ~~legislative appropriation process or otherwise during a legislative session.~~

25 ~~**15-38-202. (Effective July 1, 1995) Investment of resource indemnity trust fund — expenditure —**~~
 26 ~~**minimum balance.** (1) All money paid into the resource indemnity trust fund, including money payable into~~
 27 ~~the fund under the provisions of 15-37-117, must be invested at the discretion of the board of investments.~~
 28 ~~All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund~~
 29 ~~until it has reached the sum of \$10 million. Thereafter, only the net earnings may be appropriated and~~
 30 ~~expended until the fund reaches \$100 million. Thereafter, all net earnings and all receipts must be~~

1 appropriated by the legislature and expended, provided that the balance in the fund may never be less than
2 \$100 million.

3 (2) (a) ~~At the beginning of each biennium, there is allocated from the interest income of the~~
4 ~~resource indemnity trust fund:~~

5 (i) ~~an amount not to exceed \$175,000 to the environmental contingency account pursuant to the~~
6 ~~conditions of 75-1-1101;~~

7 (ii) ~~an amount not to exceed \$50,000 to the oil and gas production damage mitigation account~~
8 ~~pursuant to the conditions of 82-11-161;~~

9 (iii) ~~beginning in fiscal year 1995, \$240,000, which is statutorily appropriated, as provided in~~
10 ~~17-7-502, from the renewable resource grant and loan program state special revenue account to support~~
11 ~~the operations of the environmental science water quality instructional programs at northern Montana~~
12 ~~college to be used for support costs, for matching funds necessary to attract additional funds to further~~
13 ~~expand statewide impact, and for enhancement of the facilities related to the programs;~~

14 (iv) ~~beginning in fiscal year 1996-1997, \$2-\$1 million to be deposited into the renewable resource~~
15 ~~grant and loan program state special revenue account, created by 85-1-604, for the purpose of making~~
16 ~~grants;~~

17 (v) ~~beginning in fiscal year 1996-1997, \$3-\$2 million to be deposited into the reclamation and~~
18 ~~development grants state special revenue account, created by 90-2-1104, for the purpose of making grants;~~
19 and

20 (vi) ~~beginning in fiscal year 1996, \$500,000 to be deposited into the water storage state special~~
21 ~~revenue account created by 85-1-631.~~

22 (b) ~~The remainder of the interest income is allocated as follows:~~

23 (i) ~~Thirty six Sixteen percent of the interest income of the resource indemnity trust fund must be~~
24 ~~allocated to the renewable resource grant and loan program state special revenue account created by~~
25 ~~85-1-604.~~

26 (ii) ~~Eighteen percent of the interest income of the resource indemnity trust fund must be allocated~~
27 ~~to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.~~

28 (iii) ~~Forty percent of the interest income from the resource indemnity trust fund must be allocated~~
29 ~~to the reclamation and development grants account provided for in 90-2-1104.~~

30 (iv) ~~Six Sixteen percent of the interest income of the resource indemnity trust fund must be~~

1 allocated to the environmental quality protection fund provided for in ~~75-10-704.~~

2 ~~(v) Ten percent of the interest income from the resource indemnity trust fund must be allocated~~
3 ~~to the abandoned mine state special revenue account provided in [section 9].~~

4 ~~(3) Any formal budget document prepared by the legislature or the executive branch that proposes~~
5 ~~to appropriate funds from the resource indemnity trust interest account other than as provided for by the~~
6 ~~allocations in subsection (2) must specify the amount of money from each allocation that is proposed to~~
7 ~~be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and~~
8 ~~publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the~~
9 ~~legislative appropriation process or otherwise during a legislative session."~~

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

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

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

16 ~~(2) "Director" means the director of the department of health and environmental sciences.~~

17 ~~(3) "Disposed" or "disposal" means:~~

18 ~~(a) an affirmative act resulting in a discharge, deposit, injection, dumping, storing, spilling, leaking,~~
19 ~~or placing of any hazardous or deleterious substance on any land or water so that the hazardous or~~
20 ~~deleterious substance may enter the environment, be emitted into the air, or be discharged into any waters,~~
21 ~~including ground waters.~~

22 ~~(b) Disposed or disposal does not include the passive migration, movement, or dispersion of a~~
23 ~~hazardous or deleterious substance or any constituent through the environment that occurs after the initial~~
24 ~~disposal of the hazardous or deleterious substance into the environment.~~

25 ~~(3)(4) "Environment" means any surface water, ground water, drinking water supply, land surface~~
26 ~~or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of~~
27 ~~Montana.~~

28 ~~(4) (a)(5) (a) "Facility" means:~~

29 ~~(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer~~
30 ~~or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container,~~

1 ~~motor vehicle, rolling stock, or aircraft; or~~

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

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

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

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

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

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

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

17 ~~(d)(iv) any petroleum product.~~

18 ~~(b) Hazardous or deleterious substance does not include any waste or constituent, the regulation~~
19 ~~of which under the Solid Waste Disposal Act, 42 U.S.C. 6901, has been suspended by an act of congress~~
20 ~~or that has been excluded from the definition of hazardous waste under 40 CFR 261.4(b)(7).~~

21 ~~(7)(8) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water,~~
22 ~~drinking water supplies, and any other such resources within the state of Montana owned, managed, held~~
23 ~~in trust or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the~~
24 ~~state.~~

25 ~~(8) (a)(9) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or~~
26 ~~exercising control over the operation of a facility.~~

27 ~~(b) The term does not include holding the indicia of ownership of a facility primarily to protect a~~
28 ~~security interest in the facility or other location unless the holder has participated in the management of the~~
29 ~~facility. The term does not apply to the state or a local government that acquired ownership or control~~
30 ~~through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the~~

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

8 ~~(9)(10)~~ "Person" means an individual, trust, firm, joint stock company, joint venture, consortium,
 9 commercial entity, partnership, association, corporation, commission, state or state agency, political
 10 subdivision of the state, interstate body, or the federal government, including a federal agency.

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

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

22 ~~(12)(13)~~ "Remedial action" includes all notification, investigation, administration, monitoring,
 23 cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action,
 24 health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or
 25 threatened release.

26 ~~(13)(14)~~ "Remedial action contract" means a written contract or agreement entered into by a
 27 remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or
 28 request issued by the department, the United States, or any federal agency, to provide a remedial action
 29 with respect to a release or threatened release of a hazardous or deleterious substance.

30 ~~(14)(15)~~ "Remedial action contractor" means:

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

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

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

7

8 ~~Section 3. Section 75-10-704, MCA, is amended to read:~~

9 ~~"75-10-704. Environmental quality protection fund. (1) There is in the state special revenue fund~~
10 ~~an environmental quality protection fund to be administered as a revolving fund by the department. The~~
11 ~~department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.~~
12 ~~The use of the fund is limited to remediation of sites not listed on the national priorities list.~~

13 ~~(2) The fund may be used by the department only to:~~

14 ~~(a) provide the department with funding for remedial actions to the extent that parties liable under~~
15 ~~75-10-715 cannot pay all remedial action costs required to be expended to remedy releases at a facility;~~

16 ~~(b) reimburse liable parties whose contributions to remedial action costs exceed their proportionate~~
17 ~~liability;~~

18 ~~(c) carry out the provisions of this part and provide for remedial actions taken by the department~~
19 ~~pursuant to this part in response to a release of hazardous or deleterious substances.; and~~

20 ~~(d) carry out the provisions of this part.~~

21 ~~(3) The department shall:~~

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

24 ~~(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain~~
25 ~~the participation and financial contribution of liable persons for the remedial action, to achieve remedial~~
26 ~~action, and to recover costs and damages incurred by the state.~~

27 ~~(4) There must be deposited in the fund:~~

28 ~~(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs~~
29 ~~recovered pursuant to 75-10-715;~~

30 ~~(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed~~

1 pursuant to ~~75-10-711(5)~~;

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

3 ~~(d) funds received from the interest income of the resource indemnity trust fund pursuant to~~
4 ~~15-38-202.~~

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

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

11
12 **Section 4.** ~~Section 75-10-711, MCA, is amended to read:~~

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

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

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

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

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

30 ~~(a) is unable to determine the identity of the liable person or persons in a manner consistent with~~

1 ~~the need to take timely remedial action; or~~

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

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

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

13 ~~(5) (a) A person who violates or fails or refuses to comply with an order issued under 75-10-707~~
 14 ~~or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than~~
 15 ~~\$10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining~~
 16 ~~the amount of any penalty assessed, the court may take into account:~~

17 ~~(i) the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the~~
 18 ~~person liable under 75-10-715(1), his the person's ability to pay;~~

19 ~~(ii) any prior history of such violations;~~

20 ~~(iii) the degree of culpability;~~

21 ~~(iv) the economic benefit or savings, if any, resulting from the noncompliance; and~~

22 ~~(v) any other matters as that justice may require.~~

23 ~~(b) Civil penalties collected under this subsection must be deposited into the environmental quality~~
 24 ~~protection fund established in 75-10-704.~~

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

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

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

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

1 ~~(d) an action by a person to whom an order has been issued to determine the validity of the order,~~
 2 ~~only if the person has been in compliance and continues in compliance with the order pending decision of~~
 3 ~~the court.~~

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

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

13 ~~(9) The Except as provided in 75-10-712, the department may not take remedial action pursuant~~
 14 ~~to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response,~~
 15 ~~Compensation, and Liability Act of 1980, Public Law 96-510, if the department determines that remedial~~
 16 ~~action is necessary to carry out the purposes of this part as amended. This subsection may not restrict the~~
 17 ~~department from entering into or carrying out cooperative agreements under Title 75, chapter 10, part 6,~~
 18 ~~or from accepting any deferral to the state of a CERCLA site from the U.S. environmental protection~~
 19 ~~agency."~~

20
 21 ~~Section 5. Section 75-10-715, MCA, is amended to read:~~

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

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

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

30 ~~(c)(b) a person who generated, possessed, or was otherwise responsible for a hazardous or~~

1 deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment
 2 of the substance or arranged with a transporter for transport of the substance for disposal or treatment;
 3 and

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

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

7 (a) ~~all remedial action costs incurred by the state; and~~

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

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

19 (4) ~~The department may initiate civil proceedings in district court to recover remedial action costs,~~
 20 ~~natural resource damages, or penalties under subsections (1) through (3). Proceedings to recover costs~~
 21 ~~and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs,~~
 22 ~~damages, or penalties lies in the county where the release occurred or where the any person liable under~~
 23 ~~75-10-715(1) resides or has its principal place of business or in the district court of the first judicial district.~~

24 (5) ~~No A person is not liable under subsections (1) through (3) if that person can establish by a~~
 25 ~~preponderance of the evidence that:~~

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

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

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

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

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

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

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

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

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

14 (f) ~~in the case of assessment of penalties under subsection (3), that factors beyond the control of~~
 15 ~~the person prevented the person from taking timely remedial action; or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24
 25 **Section 1.** Section 75-10-721, MCA, is amended to read:

26 **"75-10-721. Degree of cleanup required -- permit exemption -- financial assurance.** (1) A remedial
 27 action performed under this part or a voluntary cleanup under [sections 10 2 through 10 10] must attain
 28 a degree of cleanup of the hazardous or deleterious substance and control of a threatened release or further
 29 release of that substance that assures ~~present and future~~ protection of public health, safety, and welfare
 30 and of the environment that is consistent with this section.

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

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

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

6 ~~(c) shall select remedial actions that, at a minimum, protect the public health, safety, and welfare~~
7 ~~and the environment. A remedial action must be considered protective of the public health, safety, and~~
8 ~~welfare and of the environment when the amount of site specific risk reduction is proportionate to the total~~
9 ~~cost of the remedial action or when the remedial action reaches a level or risk reduction of 10 to the minus~~
10 ~~4, whichever is more cost effective, and that:~~

11 ~~(i) use permanent solutions;~~

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

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

17 ~~(3) To the extent consistent with the requirements of subsection (2), the department, in selecting~~
18 ~~remedial actions under this part, shall consider for each remedial action:~~

19 ~~(a) technical practicability;~~

20 ~~(b) long term and short term reliability; and~~

21 ~~(c) local community and local government acceptance.~~

22 ~~(4) To the extent consistent with the requirements of subsection (2), the department shall give~~
23 ~~equal consideration to engineering controls, institutional controls, and treatment.~~

24 ~~(5) All remedial actions selected by the department under this part must be based on current land~~
25 ~~and resource uses unless the department can demonstrate on the administrative record that there are~~
26 ~~reasonably anticipated uses that would require remedial actions that provide for a higher level of protection~~
27 ~~for the public health, safety, and welfare, and for the environment. Only reasonably anticipated land and~~
28 ~~resource uses, as determined by applicable local land and resource use requirements, regulations,~~
29 ~~ordinances, restrictions or covenants, may be considered. (A) EXCEPT AS PROVIDED IN SUBSECTION (4),~~

30 ~~SHALL REQUIRE CLEANUP CONSISTENT WITH APPLICABLE STATE OR FEDERAL ENVIRONMENTAL~~

1 REQUIREMENTS, CRITERIA, OR LIMITATIONS;

2 (B) MAY CONSIDER SUBSTANTIVE STATE OR FEDERAL ENVIRONMENTAL REQUIREMENTS,
3 CRITERIA, OR LIMITATIONS THAT ARE RELEVANT TO THE SITE CONDITIONS; AND

4 (C) SHALL SELECT REMEDIAL ACTIONS, CONSIDERING PRESENT AND REASONABLY
5 ANTICIPATED FUTURE USES, THAT:

6 (I) DEMONSTRATE ACCEPTABLE MITIGATION OF EXPOSURE TO RISKS TO THE PUBLIC HEALTH,
7 SAFETY, AND WELFARE AND THE ENVIRONMENT;

8 (II) ARE EFFECTIVE AND RELIABLE IN THE SHORT TERM AND THE LONG TERM;

9 (III) ARE TECHNICALLY PRACTICABLE AND IMPLEMENTABLE;

10 (IV) USE TREATMENT TECHNOLOGIES OR RESOURCE RECOVERY TECHNOLOGIES IF
11 PRACTICABLE, GIVING DUE CONSIDERATION TO INSTITUTIONAL AND ENGINEERING CONTROLS; AND

12 (V) ARE COST-EFFECTIVE.

13 (3) IN SELECTING REMEDIAL ACTIONS, THE DEPARTMENT SHALL CONSIDER THE
14 ACCEPTABILITY OF THE ACTIONS TO THE AFFECTED COMMUNITY, AS INDICATED BY COMMUNITY
15 MEMBERS AND THE LOCAL GOVERNMENT.

16 (4) THE DEPARTMENT MAY SELECT A REMEDIAL ACTION THAT DOES NOT MEET AN
17 APPLICABLE STATE ENVIRONMENTAL REQUIREMENT, CRITERIA, OR LIMITATION UNDER ANY ONE OF
18 THE FOLLOWING CIRCUMSTANCES:

19 (A) THE REMEDIAL ACTION IS AN INTERIM MEASURE AND WILL BECOME PART OF A TOTAL
20 REMEDIAL ACTION THAT WILL ATTAIN THE APPLICABLE REQUIREMENT, CRITERIA, OR LIMITATION.

21 (B) COMPLIANCE WITH THE APPLICABLE REQUIREMENT, CRITERIA, OR LIMITATION WILL
22 RESULT IN GREATER RISK TO HUMAN HEALTH AND THE ENVIRONMENT THAN OTHER REMEDIAL
23 ACTION ALTERNATIVES.

24 (C) COMPLIANCE WITH THE APPLICABLE REQUIREMENT, CRITERIA, OR LIMITATION IS
25 TECHNICALLY IMPRACTICABLE FROM AN ENGINEERING PERSPECTIVE.

26 (D) THE REMEDIAL ACTION WILL ATTAIN A STANDARD OF PERFORMANCE THAT IS
27 EQUIVALENT TO THAT REQUIRED UNDER THE OTHERWISE APPLICABLE REQUIREMENT, CRITERIA, OR
28 LIMITATION THROUGH USE OF ANOTHER METHOD OR APPROACH.

29 (E) COMPLIANCE WITH THE REQUIREMENT WOULD NOT BE COST-EFFECTIVE.

30 (5) FOR PURPOSES OF THIS SECTION, COST-EFFECTIVENESS MUST BE DETERMINED THROUGH

1 AN ANALYSIS OF INCREMENTAL COSTS AND INCREMENTAL RISK REDUCTION AND OTHER BENEFITS
 2 OF ALTERNATIVES CONSIDERED, TAKING INTO ACCOUNT THE TOTAL ANTICIPATED SHORT-TERM AND
 3 LONG-TERM COSTS OF REMEDIAL ACTION ALTERNATIVES CONSIDERED, INCLUDING THE TOTAL
 4 ANTICIPATED COST OF OPERATION AND MAINTENANCE ACTIVITIES.

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

9 ~~(4)(7)~~ The department may require financial assurance from a liable person in an amount that the
 10 department determines will ensure the long-term operation and maintenance of the remedial action site.
 11 The liable person shall provide the financial assurance by any one method or combination of methods
 12 satisfactory to the department, including but not limited to insurance, guarantee, performance or other
 13 surety bond, letter of credit, qualification as a self-insurer, or other demonstration of financial capability."

14
 15 ~~Section 7. Section 75-10-722, MCA, is amended to read:~~

16 ~~"75-10-722. Payment of state costs and penalties. (1) The department shall keep a record of the~~
 17 ~~state's remedial action costs.~~

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

20 ~~(3) If the state's remedial action costs and penalties are not paid by the liable person to the~~
 21 ~~department within 60 days after receipt of notice that the costs and penalties are due, the department shall~~
 22 ~~bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.~~

23 ~~(4) An action to recover remedial action costs may be brought under this section at any time after~~
 24 ~~any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability~~
 25 ~~for remedial action costs that is binding on any subsequent action or actions to recover further remedial~~
 26 ~~action costs. The court may disallow costs or damages only if the person liable under 75-10-715 can show~~
 27 ~~on the record that the costs are not reasonable and are not consistent with this part.~~

28 ~~(5) An initial action for recovery of remedial action costs must be commenced within 6 years after~~
 29 ~~initiation of physical onsite construction of the remedial action.~~

30 ~~(6) Remedial action costs and any penalties recovered by the state under 75-10-715 must be~~

1 deposited into the environmental quality protection fund established in 75-10-704."

2
3 **Section 8.** Section 75-10-724, MCA, is amended to read:

4 ~~"75-10-724. Liability apportionment and contribution. (1) Any person held jointly and severally~~
5 ~~liable under 75-10-715 has the right at trial to have the trier of fact apportion liability among the parties~~
6 ~~as provided in this section. The burden is on each liable person to show how his liability should be~~
7 ~~apportioned. In apportioning the liability of any person under this section, the trier of fact shall consider~~
8 ~~In any action initiated under 75-10-715 by the department or in any action initiated under subsection (2)~~
9 ~~by any person or persons liable under 75-10-715(1), the trier of fact shall determine the proportionate share~~
10 ~~of the aggregate liability for each person who is found liable under 75-10-715(1). For purposes of~~
11 ~~determining the proportionate share of the aggregate liability, the trier of fact shall consider, for each person~~
12 ~~found liable under 75-10-715(1), the following:~~

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

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

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

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

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

21 (f) ~~knowledge by the each person of the hazardous nature of the substance; and~~

22 (g) ~~any remedial actions voluntarily taken by a person.~~

23 (2) ~~If a person is held jointly and severally liable under 75-10-715 and establishes a proportionate~~
24 ~~share of the aggregate liability, the person has the right of contribution from any other liable person. If for~~
25 ~~any reason all or part of the contribution from a person liable for contribution cannot be obtained, each of~~
26 ~~the other persons against whom recovery is allowed is liable to contribute a proportional part of the unpaid~~
27 ~~portion of the noncontributing person's share and may obtain judgment in a pending or subsequent action~~
28 ~~for contribution from the noncontributing person. A person liable under 75-10-715(1) may have a right of~~
29 ~~contribution for the recovery of the remedial action costs incurred by a person under this part against any~~
30 ~~other nonsettling party found liable under 75-10-715(1) in the proportionate shares determined under~~

1 ~~subsection (1).~~

2 ~~(3) For sites not listed on the national priorities list, if for any reason all or part of the contribution~~
 3 ~~from a person liable for contribution cannot be obtained, a person may apply to and must, in accordance~~
 4 ~~with this subsection, receive reimbursement from the department from the environmental quality protection~~
 5 ~~fund established in 75-10-704. If the environmental quality protection fund does not contain sufficient~~
 6 ~~money to pay received claims for reimbursement, the fund and the department are not liable for making any~~
 7 ~~reimbursement at that time. When the fund contains sufficient money, approved claims must be~~
 8 ~~subsequently reimbursed in the order in which they were approved by the department. The department~~
 9 ~~shall approve claims for reimbursement of remedial action costs under this subsection unless the remedial~~
 10 ~~action costs are unreasonable, unnecessary, or inconsistent with this part.~~

11 ~~(4) A person who has incurred remedial action costs may seek to recover those costs from any~~
 12 ~~person who is liable or potentially liable under 75-10-715. A person who is liable under this subsection is~~
 13 ~~not liable for more than the person's proportionate share of the aggregate liability determined in accordance~~
 14 ~~with the criteria in subsection (1). Subsections (3) and (4) of 75-10-714 apply to any actions under this~~
 15 ~~subsection."~~

16
 17 ~~**NEW SECTION. Section 9. Abandoned mine state special revenue account created.** (1) There is~~
 18 ~~an abandoned mine special revenue account within the state special revenue account fund established in~~
 19 ~~17-2-102.~~

20 ~~(2) There must be paid into the abandoned mine state special revenue account money allocated~~
 21 ~~from the resource indemnity trust fund interest earnings pursuant to 15-38-202.~~

22 ~~(3) Money that was not encumbered or expended from the abandoned mine state special revenue~~
 23 ~~account during the previous biennium must remain in the account.~~

24 ~~(4) Deposits to the abandoned mine state special revenue account are to be placed in short-term~~
 25 ~~investments and accrue interest, which must be deposited in the abandoned mine state special revenue~~
 26 ~~account.~~

27 ~~(5) The purpose of the abandoned mine state special revenue account is to provide the funding to~~
 28 ~~the department of state lands for the cleanup and reclamation of abandoned mines.~~

29 ~~(6) The department of state lands shall administer this section as an integral part of the abandoned~~
 30 ~~mines program.~~

1 NEW SECTION. Section 2. Short title. [Sections ~~40 2~~ through ~~46 10~~] may be cited as the
2 "Voluntary Cleanup and Redevelopment Act".
3

4 NEW SECTION. Section 3. Purpose -- legislative declaration. (1) (a) The purposes of [sections
5 ~~40 2~~ through ~~46 10~~] are to provide for the protection of the public health, welfare, and safety and of the
6 environment and to foster the cleanup, transfer, reuse, or redevelopment of facilities ~~and sites that have~~
7 ~~been previously contaminated with hazardous or deleterious substances~~ WHERE RELEASES OR
8 THREATENED RELEASES OF HAZARDOUS OR DELETERIOUS SUBSTANCES EXIST.

9 (b) The legislature further declares that this program is intended to permit and encourage voluntary
10 cleanup of ~~contaminated property~~ FACILITIES WHERE RELEASES OR THREATENED RELEASES OF
11 HAZARDOUS OR DELETERIOUS SUBSTANCES EXIST by providing interested persons with a method of
12 determining what the cleanup responsibilities will be for reuse or redevelopment of existing ~~sites~~
13 FACILITIES.

14 (2) The legislature further intends that this voluntary program:

15 (a) encourage and facilitate prompt cleanup activities;

16 (b) eliminate impediments to the sale or redevelopment of ~~previously contaminated property~~
17 FACILITIES WHERE RELEASES OR THREATENED RELEASES OF HAZARDOUS OR DELETERIOUS
18 SUBSTANCES EXIST; and

19 (c) minimize administrative processes and costs.
20

21 NEW SECTION. SECTION 4. ELIGIBILITY. (1) A FACILITY WHERE THERE HAS BEEN A RELEASE
22 OR THREATENED RELEASE OF A HAZARDOUS OR DELETERIOUS SUBSTANCE THAT MAY PRESENT AN
23 IMMINENT AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH, SAFETY, OR WELFARE OR
24 THE ENVIRONMENT MAY BE ELIGIBLE TO FOLLOW VOLUNTARY CLEANUP PROCEDURES UNDER THIS
25 PART, EXCEPT FOR FACILITIES THAT MEET ONE OF THE FOLLOWING CRITERIA AT THE TIME OF
26 APPLICATION FOR A VOLUNTARY CLEANUP PLAN:

27 (A) A FACILITY THAT IS LISTED OR PROPOSED FOR LISTING ON THE NATIONAL PRIORITIES LIST
28 PURSUANT TO 42 U.S.C. 9601, ET SEQ.;

29 (B) A FACILITY FOR WHICH AN ORDER HAS BEEN ISSUED OR CONSENT DECREE HAS BEEN
30 ENTERED INTO PURSUANT TO THIS PART;

1 (C) A FACILITY THAT IS THE SUBJECT OF AN AGENCY ORDER OR AN ACTION FILED IN
 2 DISTRICT COURT BY ANY STATE AGENCY THAT ADDRESSES THE RELEASE OR THREATENED RELEASE
 3 OF A HAZARDOUS OR DELETERIOUS SUBSTANCE; OR

4 (D) A FACILITY WHERE THE RELEASE OR THREATENED RELEASE OF A HAZARDOUS OR
 5 DELETERIOUS SUBSTANCE IS REGULATED BY THE MONTANA HAZARDOUS WASTE AND
 6 UNDERGROUND STORAGE TANK ACT AND REGULATIONS UNDER THAT ACT.

7 (2) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (1)(B) THROUGH (1)(D), THE
 8 DEPARTMENT MAY AGREE TO ACCEPT AND MAY APPROVE AN APPLICATION FOR A VOLUNTARY
 9 CLEANUP PLAN FOR A FACILITY.

10 (3) THE DEPARTMENT MAY DETERMINE THAT A FACILITY THAT IS POTENTIALLY ELIGIBLE FOR
 11 VOLUNTARY CLEANUP EXHIBITS COMPLEXITIES REGARDING PROTECTION OF PUBLIC HEALTH,
 12 SAFETY, AND WELFARE AND THE ENVIRONMENT AND THAT THE COMPLEXITIES SHOULD BE
 13 ADDRESSED UNDER AN ADMINISTRATIVE ORDER OR CONSENT DECREE PURSUANT TO THIS PART.
 14 THIS DETERMINATION MAY BE MADE ONLY AFTER CONSULTATION WITH ANY PERSON DESIRING TO
 15 CONDUCT A VOLUNTARY CLEANUP AT THE FACILITY.

16 (4) EXCEPT AS PROVIDED IN SUBSECTION (2), IF AN APPLICANT THAT SUBMITS AN
 17 APPLICATION FOR A VOLUNTARY CLEANUP PLAN DISAGREES WITH THE DEPARTMENT'S DECISION
 18 UNDER THIS SECTION, THE APPLICANT MAY SUBMIT A WRITTEN REQUEST FOR A HEARING BEFORE
 19 THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES. THE HEARING MUST BE HELD WITHIN 2
 20 MONTHS AT THE REGULAR MEETING OF THE BOARD OR AT THE TIME MUTUALLY AGREED TO BY THE
 21 BOARD AND THE APPLICANT. THE HEARING AND ANY APPEALS MUST BE CONDUCTED IN
 22 ACCORDANCE WITH THE CONTESTED CASE PROCEEDINGS PURSUANT TO TITLE 2, CHAPTER 4, PARTS
 23 6 AND 7.

24
 25 NEW SECTION. Section 5. Voluntary cleanup plan **AND REIMBURSEMENT OF REMEDIAL ACTION**
 26 **COSTS.** (1) A ANY person ~~who owns real property that has been contaminated with hazardous or~~
 27 ~~deleterious substances or any person who may be liable under 75-10-715(1)~~ may submit an application for
 28 the approval of a voluntary cleanup plan to the department under the provisions of this section.

29 (2) A voluntary cleanup plan must include:

30 (a) an environmental assessment of the ~~real property that describes the contamination, if any, on~~

1 ~~the property and the risk that the contamination currently poses to the public health, welfare, and safety~~
 2 ~~and to the environment~~ FACILITY THAT INCLUDES THE INFORMATION REQUIRED IN [SECTION 6];

3 (b) a REMEDIAION proposal, if needed, for remedial actions consistent with THAT INCLUDES THE
 4 INFORMATION REQUIRED IN [SECTION 6] AND THAT MEETS THE REQUIREMENTS OF 75-10-721. ~~The~~
 5 ~~proposal must provide a timetable for implementing the proposal and for monitoring the site after the~~
 6 ~~proposed measures are completed.~~

7 (c) ~~a description of the manner in which the remedial action plan satisfies the cleanup requirements~~
 8 ~~of 75-10-721 and a description of any current risk to the public health, welfare, or safety or to the~~
 9 ~~environment based upon the current or reasonably anticipated future use of the site; AND~~

10 (C) THE WRITTEN CONSENT OF CURRENT OWNERS OF THE FACILITY OR PROPERTY TO BOTH
 11 THE IMPLEMENTATION OF THE VOLUNTARY CLEANUP PLAN AND ACCESS TO THE FACILITY BY THE
 12 APPLICANT AND ITS AGENTS AND THE DEPARTMENT.

13 (3) THE APPLICANT SHALL REIMBURSE THE DEPARTMENT FOR ANY REMEDIAL ACTION COSTS
 14 THAT THE STATE INCURS IN THE REVIEW AND OVERSIGHT OF A VOLUNTARY CLEANUP PLAN.

15 (4) THE DEPARTMENT MAY APPROVE A VOLUNTARY CLEANUP PLAN THAT PROVIDES FOR
 16 PHASES OF REMEDIATION OR THAT ADDRESSES ONLY A PORTION OF THE FACILITY. TO THE EXTENT
 17 THAT THE ORIGINAL ENVIRONMENTAL ASSESSMENT REQUIRED UNDER [SECTION 6] ADDRESSES
 18 SUBSEQUENT PHASES OF REMEDIATION, THE APPLICANT MAY RELY ON THAT ASSESSMENT WHEN
 19 SUBMITTING VOLUNTARY CLEANUP PLANS FOR SUBSEQUENT PHASES OF REMEDIATION.

20
 21 NEW SECTION. Section 6. Environmental assessment VOLUNTARY CLEANUP PLANS --
 22 requirements. (1) The department may only accept ~~environmental assessments~~ VOLUNTARY CLEANUP
 23 PLANS under [sections ~~49 2~~ through ~~46 10~~] that are prepared by a qualified environmental professional.
 24 A qualified environmental professional is a person with education, training, and experience in preparing
 25 environmental studies and assessments.

26 (2) An environmental assessment described in this section must include the following information:

27 (a) the legal description of the ~~site~~ FACILITY and a map identifying the location and size of the
 28 ~~property~~ FACILITY AND RELEVANT FEATURES, SUCH AS PROPERTY BOUNDARIES, SURFACE
 29 TOPOGRAPHY, SURFACE AND SUBSURFACE STRUCTURES, AND UTILITY LINES;

30 (b) the physical characteristics of the ~~site~~ FACILITY and areas contiguous to the ~~site~~ FACILITY,

1 including the location of any surface water bodies and ground water aquifers;

2 (c) the location of any wells located on the site or on areas within a one-half mile radius of the site
3 and a description of the use of those wells;

4 (d) the current and reasonably anticipated future use of onsite ground AND SURFACE water;

5 (e) the operational history of the ~~site~~ FACILITY, INCLUDING OWNERSHIP, and the current use of
6 ~~areas contiguous to the site~~ THE FACILITY, INCLUDING ANY READILY AVAILABLE AERIAL PHOTOGRAPHS
7 FROM WITHIN THE STATE OF MONTANA;

8 (f) the current and reasonably anticipated future uses of the ~~site~~ FACILITY AND IMMEDIATELY
9 ADJACENT PROPERTIES;

10 (g) information ON THE METHODS AND RESULTS OF INVESTIGATIONS concerning the nature and
11 extent of any ~~contamination and~~ RELEASES OR THREATENED releases of hazardous or deleterious
12 substances that have occurred at the ~~site, including any impacts on areas contiguous to the site~~ FACILITY
13 AND A MAP SHOWING GENERAL AREAS AND CONCENTRATIONS OF HAZARDOUS OR DELETERIOUS
14 SUBSTANCES;

15 (h) any sampling results or other data that characterizes the soil, AIR, ground water, or surface
16 water on the site; ~~and~~

17 (i) a description of the human and environmental exposure to ~~contamination at the site~~ RELEASES
18 OR THREATENED RELEASES OF HAZARDOUS OR DELETERIOUS SUBSTANCES AT THE FACILITY based
19 upon the ~~property's~~ current use OF THE FACILITY AND ADJACENT PROPERTIES and any reasonably
20 anticipated future ~~use proposed by the property owner~~ USES OF THE FACILITY; AND

21 (J) READILY AVAILABLE INFORMATION ON THE ENVIRONMENTAL REGULATORY AND
22 COMPLIANCE HISTORY OF THE FACILITY, INCLUDING ALL ENVIRONMENTAL PERMITS.

23 (3) A REMEDIATION PROPOSAL MUST INCLUDE THE FOLLOWING INFORMATION:

24 (A) A DETAILED DESCRIPTION OF THE COMPONENTS OF THE REMEDIATION PROPOSAL,
25 INCLUDING, TO THE EXTENT APPLICABLE:

26 (I) THE PROPOSED CLEANUP LEVELS FOR THE FACILITY;

27 (II) THE MANNER IN WHICH THE REMEDIATION PLAN SATISFIES THE CLEANUP REQUIREMENTS
28 OF 75-10-721;

29 (III) IDENTIFICATION OF SAMPLING OR TREATABILITY STUDIES; AND

30 (IV) A DEMONSTRATION THAT EXPOSURES TO RISK AFFECTING THE PUBLIC HEALTH, SAFETY,

1 AND WELFARE AND THE ENVIRONMENT AT THE FACILITY WILL BE SUBSTANTIALLY MITIGATED BY THE
2 PLAN;

3 (B) A BRIEF COMPARISON OF THE REMEDIATION PROPOSAL TO REASONABLE ALTERNATIVES
4 BASED ON THE REMEDY SELECTION CRITERIA SPECIFIED IN 75-10-721;

5 (C) A TIMETABLE FOR IMPLEMENTING THE PROPOSAL AND FOR ANY NECESSARY MONITORING
6 OF THE FACILITY AFTER THE PROPOSED MEASURES ARE COMPLETED;

7 (D) A STATEMENT THAT APPLICABLE HEALTH AND SAFETY REGULATIONS WILL BE MET
8 DURING IMPLEMENTATION OF THE REMEDIATION PROPOSAL;

9 (E) A DESCRIPTION OF HOW SHORT-TERM DISTURBANCES DURING IMPLEMENTATION OF THE
10 REMEDICATION PROPOSAL WILL BE MINIMIZED; AND

11 (F) IDENTIFICATION OF ANY PERMITS NECESSARY TO CONDUCT THE PROPOSED REMEDIES.

12
13 NEW SECTION. SECTION 7. PUBLIC PARTICIPATION. (1) UPON DETERMINATION BY THE
14 DEPARTMENT THAT AN APPLICATION FOR A VOLUNTARY CLEANUP PLAN IS COMPLETE PURSUANT
15 TO [SECTION 8(1)], THE DEPARTMENT SHALL PUBLISH A NOTICE AND BRIEF ANALYSIS OF THE
16 PROPOSED PLAN IN A DAILY NEWSPAPER OF GENERAL CIRCULATION IN THE AREA AFFECTED AND
17 MAKE THE PLAN AVAILABLE TO THE PUBLIC.

18 (2) THE NOTICE MUST PROVIDE 30 DAYS FOR SUBMISSION OF WRITTEN COMMENTS TO THE
19 DEPARTMENT REGARDING THE PLAN. UPON WRITTEN REQUEST BY 10 OR MORE PERSONS, BY A
20 GROUP COMPOSED OF 10 OR MORE MEMBERS, OR BY A LOCAL GOVERNING BODY OF A CITY, TOWN,
21 OR COUNTY WITHIN THE COMMENT PERIOD, THE DEPARTMENT SHALL CONDUCT A PUBLIC MEETING
22 AT OR NEAR THE FACILITY REGARDING THE PROPOSED VOLUNTARY CLEANUP PLAN. THE MEETING
23 MUST BE HELD WITHIN 45 DAYS OF THE DEPARTMENT'S COMPLETENESS DETERMINATION UNDER
24 [SECTION 8(1)].

25 (3) THE DEPARTMENT SHALL CONSIDER AND RESPOND TO RELEVANT WRITTEN OR VERBAL
26 COMMENTS SUBMITTED DURING THE COMMENT PERIOD OR AT THE PUBLIC MEETING.

27 (4) THE DEPARTMENT'S DECISION ON THE FINAL PLAN AND THE REASONS FOR ANY
28 SIGNIFICANT MODIFICATION OF THE FINAL PLAN MUST BE PUBLISHED IN ACCORDANCE WITH
29 SUBSECTION (1).

30 (5) COMPLIANCE WITH THIS SECTION IS CONSIDERED TO SATISFY THE REQUIREMENTS OF

1 TITLE 75, CHAPTER 1.

2

3 NEW SECTION. Section 8. Approval of voluntary ~~action~~ CLEANUP plan -- time limits -- content
 4 of notice -- expiration of approval. (1) ~~(a) The~~ THE DEPARTMENT SHALL REVIEW FOR COMPLETENESS,
 5 INCLUDING ADEQUACY AND ACCURACY, AN APPLICATION FOR A VOLUNTARY CLEANUP PLAN AND
 6 SHALL PROVIDE A WRITTEN COMPLETENESS NOTICE TO THE APPLICANT WITHIN 30 DAYS AFTER
 7 RECEIPT OF THE APPLICATION. THE COMPLETENESS NOTICE MUST NOTE ALL DEFICIENCIES
 8 IDENTIFIED IN THE INFORMATION SUBMITTED.

9 (2) FOR A VOLUNTARY CLEANUP PLAN THAT IS CONSIDERED COMPLETE BY THE DEPARTMENT
 10 PURSUANT TO SUBSECTION (1), THE department shall provide formal written notification that ~~a~~ THE
 11 voluntary cleanup plan has been approved or disapproved within NO MORE THAN 60 days after a request
 12 by a property owner THE DEPARTMENT'S DETERMINATION THAT AN APPLICATION IS COMPLETE, unless
 13 the property owner or person who may be liable under 75-10-715(1) APPLICANT and the department agree
 14 to an extension of the review to a date certain. The review must be limited to a review of the materials
 15 submitted by the applicant, PUBLIC COMMENTS, and documents or information readily available to the
 16 department. ~~If the department fails to act on an application within the time limits specified in this~~
 17 subsection (1), the voluntary cleanup plan is approved. THE DEPARTMENT SHALL COMMUNICATE WITH
 18 THE APPLICANT DURING THE REVIEW PERIOD TO ENSURE THAT THE APPLICANT HAS THE
 19 OPPORTUNITY TO ADDRESS THE PUBLIC COMMENTS.

20 (3)(A) IF THE DEPARTMENT RECEIVES FIVE APPLICATIONS FOR REVIEW OF A VOLUNTARY
 21 CLEANUP PLAN IN A CALENDAR MONTH, INCLUDING APPLICATIONS DEFERRED FROM PRIOR MONTHS,
 22 THE DEPARTMENT MAY NOTIFY ANY ADDITIONAL APPLICANTS IN THAT MONTH THAT THEIR PLANS
 23 MUST BE REVIEWED IN THE ORDER RECEIVED. THE 30-DAY PERIOD FOR DEPARTMENT
 24 COMPLETENESS REVIEW OF DEFERRED APPLICATIONS PURSUANT TO SUBSECTION (1) MUST BEGIN
 25 ON THE FIRST DAY OF THE SUBSEQUENT MONTH THAT EACH PLAN IS ELIGIBLE FOR REVIEW.

26 (B) THE DEPARTMENT SHALL DISCONTINUE ACCEPTING VOLUNTARY CLEANUP APPLICATIONS
 27 WHEN 15 APPLICATIONS ARE PENDING AND ARE BEING REVIEWED BY THE DEPARTMENT. THE
 28 DEPARTMENT SHALL ESTABLISH A WAITING LIST FOR APPLICATIONS AND SHALL CONSIDER THE
 29 APPLICATIONS IN ORDER OF SUBMITTAL.

30 (C) IF THE DEPARTMENT HAS RECEIVED MULTIPLE CLEANUP APPLICATIONS FOR A VOLUNTARY

1 CLEANUP AT THE SAME FACILITY, THE DEPARTMENT SHALL NOTIFY ALL OF THE APPLICANTS AND
 2 OFFER THEM THE OPPORTUNITY TO SUBMIT A JOINT APPLICATION.

3 (4) CONSISTENT WITH THE PROVISIONS OF 75-10-707, THE DEPARTMENT MAY ACCESS THE
 4 FACILITY DURING REVIEW OF THE APPLICATION AND IMPLEMENTATION OF THE VOLUNTARY CLEANUP
 5 PLAN TO CONFIRM INFORMATION PROVIDED BY THE APPLICANT AND VERIFY THAT THE CLEANUP IS
 6 BEING CONDUCTED CONSISTENT WITH THE APPROVED PLAN.

7 ~~(b)(5)~~ The department shall approve a voluntary cleanup plan if, ~~based on the information submitted~~
 8 ~~by the property owner or person who may be liable under 75-10-715(1), the department concludes that~~
 9 the plan MEETS THE REQUIREMENTS SPECIFIED IN [SECTION 6] AND will attain a degree of cleanup and
 10 control of hazardous or deleterious substances, ~~or both,~~ that complies with the requirements of 75-10-721.
 11 EXCEPT FOR THE PERIOD NECESSARY FOR THE OPERATION AND MAINTENANCE OF THE APPROVED
 12 REMEDATION PROPOSAL, THE DEPARTMENT MAY NOT APPROVE A VOLUNTARY REMEDIATION
 13 PROPOSAL THAT WOULD TAKE LONGER THAN 24 MONTHS AFTER DEPARTMENT APPROVAL TO
 14 COMPLETE.

15 ~~(e)(6)~~ If a voluntary cleanup plan is not approved by the department, the department shall promptly
 16 provide the applicant with a written statement of the reasons for denial. ~~If the department disapproves a~~
 17 ~~voluntary cleanup plan based upon the applicant's failure to submit the information required by [section 12],~~
 18 ~~the department shall notify the applicant of the specific information omitted by the applicant.~~

19 ~~(d)(7)~~ The approval of a voluntary cleanup plan by the department applies only to conditions ~~on~~
 20 ~~the property~~ AT THE FACILITY that ~~exist as of~~ ARE KNOWN TO THE DEPARTMENT AT the time of
 21 ~~submission of the application~~ DEPARTMENT APPROVAL. If a voluntary cleanup plan REMEDATION
 22 PROPOSAL is not initiated within 12 months and, EXCEPT FOR THE PERIOD NECESSARY FOR THE
 23 OPERATION AND MAINTENANCE OF THE APPROVED REMEDIATION PROPOSAL, IS NOT completed within
 24 24 months after approval by the department, the department's approval lapses. However, the department
 25 may grant an extension of the time limit for completion of the voluntary cleanup plan.

26 (8) IF REASONABLY UNFORESEEABLE CONDITIONS ARE DISCOVERED DURING
 27 IMPLEMENTATION OF A VOLUNTARY CLEANUP PLAN THAT SUBSTANTIALLY AFFECT THE RISK TO
 28 PUBLIC HEALTH, SAFETY, OR WELFARE OR THE ENVIRONMENT OR SUBSTANTIALLY CHANGE THE
 29 SCOPE OF THE APPROVED PLAN, THE APPLICANT SHALL PROMPTLY NOTIFY THE DEPARTMENT. THE
 30 DEPARTMENT MAY REQUIRE THE APPLICANT TO SUBMIT AN AMENDMENT TO THE APPROVED PLAN

1 TO ADDRESS THE UNFORESEEN CONDITIONS OR MAY DETERMINE THAT A VOLUNTARY CLEANUP
 2 PLAN IS NO LONGER APPROPRIATE PURSUANT TO [SECTION 4(3)].

3 ~~(2)(9)~~ Written notification by the department that a voluntary cleanup plan is NOT approved must
 4 ~~contain~~ STATE the basis for ~~the approval~~ DISAPPROVAL OF THE VOLUNTARY CLEANUP PLAN.

5 ~~(3)(10)~~ (a) Failure of ~~a property owner~~ THE APPLICANT OR THE APPLICANT'S AGENTS to
 6 materially comply with the voluntary cleanup plan approved by the department pursuant to this section
 7 renders the approval void.

8 (b) Submission of materially misleading information by the applicant OR THE APPLICANT'S
 9 AGENTS in the APPLICATION OR DURING IMPLEMENTATION OF THE voluntary cleanup plan renders the
 10 department approval void.

11 ~~(4)(11)~~ Within 60 days after ~~the completion of the voluntary cleanup~~ APPROVED REMEDIATION
 12 PROPOSAL described in the voluntary cleanup plan approved by the department, the applicant shall provide
 13 to the department a certification from a qualified environmental professional that the plan has been fully
 14 implemented, INCLUDING ALL DOCUMENTATION NECESSARY TO DEMONSTRATE THE SUCCESSFUL
 15 IMPLEMENTATION OF THE PLAN, SUCH AS CONFIRMATION SAMPLING, IF NECESSARY.

16 (12) EXCEPT AS PROVIDED IN [SECTION 10(2)(B)], THE DEPARTMENT MAY NOT REQUIRE
 17 FINANCIAL ASSURANCE UNDER THIS PART FOR VOLUNTARY CLEANUP PLANS APPROVED UNDER THIS
 18 SECTION.

19 (13) IF A PERSON WHO WOULD OTHERWISE NOT BE A LIABLE PERSON UNDER 75-10-715(1)
 20 ELECTS TO UNDERTAKE AN APPROVED VOLUNTARY CLEANUP PLAN, THE PERSON MAY NOT BECOME
 21 A LIABLE PERSON UNDER 75-10-715(1) BY UNDERTAKING A VOLUNTARY CLEANUP IF THE PERSON
 22 MATERIALLY COMPLIES WITH THE VOLUNTARY CLEANUP PLAN APPROVED BY THE DEPARTMENT
 23 PURSUANT TO THIS SECTION.

24 (14) AFTER COMPLETION OF AN APPROVED VOLUNTARY CLEANUP PLAN OR PHASE OF A
 25 PLAN, A PERSON WHO IS LIABLE UNDER 75-10-715(1) AND INCURS REMEDIAL ACTION COSTS MAY
 26 SEEK CONTRIBUTION AND REIMBURSEMENT FROM THE ENVIRONMENTAL QUALITY PROTECTION FUND
 27 PURSUANT TO THE REQUIREMENTS AND LIMITATIONS OF 75-10-724.

28
 29 NEW SECTION. Section 9. Voluntary action to preclude remedial action by department. If a party
 30 has elected to undertake an approved voluntary cleanup and is diligently proceeding to implement the plan,

1 the department may not, except as provided in 75-10-712, take remedial action under 75-10-711 WITH
 2 REGARD TO THOSE RELEASES OR THREATENED RELEASES OF HAZARDOUS OR DELETERIOUS
 3 SUBSTANCES THAT ARE ADDRESSED BY THE APPROVED VOLUNTARY CLEANUP PLAN.

4
 5 NEW SECTION. Section 10. Closure and release from liability. (1) After completion of the
 6 remedial actions required by the department under this part or the voluntary action plan, a property owner
 7 or any person who may be liable under 75-10-715(1) VOLUNTARY CLEANUP PLAN, AN APPLICANT may
 8 petition the department for closure of the ~~site and release from liability for remedial actions and remedial~~
 9 ~~action costs~~ FACILITY under [sections ~~40 2~~ through ~~46 10~~].

10 (2) The WITHIN 60 DAYS OF RECEIPT OF A PETITION FOR CLOSURE, WEATHER PERMITTING,
 11 THE department shall CONDUCT A review ~~the site~~ to determine that the ~~site does~~ RELEASES OR
 12 THREATENED RELEASES ADDRESSED IN THE VOLUNTARY CLEANUP PLAN DO not pose a significant
 13 threat to public health, welfare, or safety or to the environment as determined in accordance with
 14 75-10-721 and that the ~~responsible parties have~~ APPLICANT HAS:

15 (a) implemented all appropriate ~~response~~ REMEDIAL actions; ~~and~~

16 (b) IF NECESSARY, provided for long-term funding for ~~site~~ FACILITY maintenance or monitoring;

17 AND

18 (C) REIMBURSED THE DEPARTMENT FOR ALL REMEDIAL ACTION COSTS OF THE VOLUNTARY
 19 CLEANUP.

20 (3) In the event that the petition for closure ~~and release from liability~~ is not approved by the
 21 department, the department shall promptly provide the applicant with a written statement of the reasons
 22 for denial. Written notification that the petition is approved by the department must include the following
 23 language:

24 "Based upon the information provided by [insert name(s) of ~~property owner(s)~~ APPLICANT(S)]
 25 concerning property located at [insert address], it is the opinion of the Montana Department of Health and
 26 Environmental Sciences that upon completion of the ~~remedial action or voluntary cleanup plan:~~

27 ~~(1) no further action is required to ensure that this property, when used for the purposes identified,~~
 28 ~~is protective of existing and proposed uses and does not pose an unacceptable risk to the public health,~~
 29 ~~welfare, or safety or to the environment at the site; and~~

30 ~~(2) [insert name(s) of property owner(s) or any person who may be liable under 75-10-715(1)] are~~

1 released from any liability, claims, or causes of action for remedial costs and remedial actions at the site."
 2 VOLUNTARY CLEANUP PLAN, NO FURTHER ACTION IS REQUIRED TO ENSURE THAT THIS FACILITY,
 3 WHEN USED FOR THE PURPOSES IDENTIFIED, IS PROTECTIVE OF EXISTING AND PROPOSED USES AND
 4 DOES NOT POSE A SIGNIFICANT RISK TO PUBLIC HEALTH, SAFETY, OR WELFARE OR THE
 5 ENVIRONMENT AT THE FACILITY WITH REGARD TO RELEASES OR THREATENED RELEASES ADDRESSED
 6 IN THE VOLUNTARY CLEANUP PLAN. THE DEPARTMENT RESERVES THE RIGHT TO CONDUCT OR
 7 REQUIRE FURTHER REMEDIAL ACTION AT THIS FACILITY IF A NEW RELEASE OCCURS OR IF THE
 8 DEPARTMENT RECEIVES NEW OR DIFFERENT INFORMATION THAN PRESENTED IN THE APPROVED
 9 VOLUNTARY CLEANUP PLAN."

10 (4) AFTER COMPLETION OF A PORTION OF A FACILITY ADDRESSED IN THE VOLUNTARY
 11 CLEANUP PLAN, THE DEPARTMENT SHALL ISSUE A LETTER OF COMPLETION NOTICE TO THE
 12 APPLICANT IF THE DEPARTMENT DETERMINES THAT THE APPLICANT HAS SATISFIED THE
 13 REQUIREMENTS OF SUBSECTION (2).

14
 15 ~~Section 17. Section 85-1-604, MCA, is amended to read:~~

16 ~~"85-1-604. Renewable resource grant and loan program state special revenue account created—~~
 17 ~~revenues allocated—limitations on appropriations from account. (1) There is created a renewable resource~~
 18 ~~grant and loan program state special revenue account within the state special revenue fund established in~~
 19 ~~17-2-102.~~

20 ~~(2) Except to the extent that they are required to be credited to the renewable resource loan debt~~
 21 ~~service fund pursuant to 85-1-603, there must be paid into the renewable resource grant and loan program~~
 22 ~~state special revenue account:~~

23 ~~(a) all revenues of the works and other money as provided in 85-1-332;~~

24 ~~(b) 38% of the amount of interest income of the resource indemnity trust fund as provided in and~~
 25 ~~subject to the conditions of 15-38-202;~~

26 ~~(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource~~
 27 ~~loan debt service fund above debt service requirements as provided in and subject to the conditions of~~
 28 ~~85-1-619;~~

29 ~~(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of~~
 30 ~~loans, including arrangements for obtaining security interests; and~~

1 ~~(e) 20% of the resource indemnity tax proceeds.~~

2 ~~(3) Appropriations may be made from the renewable resource grant and loan program state special~~
 3 ~~revenue account for the following purposes and subject to the following conditions:~~

4 ~~(a) The amount of resource indemnity trust fund interest earnings allocated under 15-38-202(2)(b)~~
 5 ~~must be used for renewable resource grants.~~

6 ~~(b) An amount less than or equal to that paid into the account under 85-1-332 and only that~~
 7 ~~amount may be appropriated for the operation and maintenance of state owned projects and works. If the~~
 8 ~~amount of money available for appropriation under this subsection (b) is greater than that necessary for~~
 9 ~~operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(c).~~

10 ~~(c) An amount less than or equal to that paid into the account from the resource indemnity trust~~
 11 ~~account plus any excess from subsection (3)(b) and only that amount may be appropriated from the~~
 12 ~~account for expenditures that meet the policies and objectives of the renewable resource grant and loan~~
 13 ~~program. If the amount of money available for appropriation under this subsection (c) is greater than that~~
 14 ~~necessary for operation and maintenance expenses, the excess may be appropriated as provided in~~
 15 ~~subsection (3)(d).~~

16 ~~(d) An amount less than or equal to that paid into the account from the sources provided for in~~
 17 ~~subsections (2)(c) and (2)(d) and any excess from subsection (3)(c) and only that amount may be~~
 18 ~~appropriated from the account for:~~

19 ~~(i) loans and grants for renewable resource projects;~~

20 ~~(ii) for purchase of liens and operation of property as provided in 85-1-615;~~

21 ~~(iii) for administrative expenses, including but not limited to the salaries and expenses of personnel,~~
 22 ~~equipment, and office space;~~

23 ~~(iv) for the servicing of loans, including arrangements for obtaining security interests; and~~

24 ~~(v) for other necessities incurred in administering the loans and grants."~~

25
 26 NEW SECTION. SECTION 11. STUDY PROCESS. THE DEPARTMENT OF HEALTH AND
 27 ENVIRONMENTAL SCIENCES, WITH LEGISLATIVE OVERSIGHT FROM THE ENVIRONMENTAL QUALITY
 28 COUNCIL, SHALL INSTITUTE A COLLABORATIVE PROCESS INVOLVING ALL AFFECTED AND INTERESTED
 29 PARTIES THAT SPECIFICALLY ANALYZES THE ELIMINATION OF JOINT AND SEVERAL LIABILITY WITH
 30 RESPECT TO CLEANUP OF STATE CECRA SITES AND ANY RELATED FUNDING NECESSARY TO CLEAN

1 UP STATE CECRA SITES AS A RESULT OF ELIMINATING JOINT AND SEVERAL LIABILITY. THE
2 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES SHALL SUBMIT A REPORT AND
3 LEGISLATIVE PROPOSALS THAT COLLABORATIVELY RESULTED FROM THAT PROCESS TO THE 55TH
4 LEGISLATURE.

5
6 NEW SECTION. Section 12. Severability. If a part of [this act] is invalid, all valid parts that are
7 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
8 applications, the part remains in effect in all valid applications that are severable from the invalid
9 applications.

10
11 NEW SECTION. Section 13. Codification instructions. ~~(1) [Section 9] is intended to be codified~~
12 ~~as an integral part of Title 82, chapter 4, and the provisions of Title 82, chapter 4, apply to [section 9].~~

13 ~~(2) [Sections 40 2 through 46 10] are intended to be codified as an integral part of Title 75,~~
14 ~~chapter 10, part 7, and the provisions of Title 75, chapter 10, part 7, apply to [sections 40 2 through 46~~
15 ~~10].~~

16
17 NEW SECTION. Section 14. Applicability. [This act] ~~applies to all pending actions or proceedings~~
18 ~~by the state~~ DOES NOT APPLY TO CIVIL OR ADMINISTRATIVE ACTIONS COMMENCED OR BEGUN PRIOR
19 TO [THE EFFECTIVE DATE OF THIS ACT] OR TO CLAIMS BASED ON THOSE ACTIONS. CLAIMS FOR
20 REIMBURSEMENT FROM THE ENVIRONMENTAL QUALITY PROTECTION FUND MAY NOT BE SUBMITTED
21 FOR ANY COSTS INCURRED PRIOR TO [THE EFFECTIVE DATE OF THIS ACT].

22
23 NEW SECTION. Section 21. Effective date. [This act] ~~is effective on passage and approval.~~

24 -END-

1 SENATE BILL NO. 382

2 INTRODUCED BY HARP, BECK

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ~~NATURAL RESOURCE AND~~
5 ~~ENVIRONMENTAL LAWS~~ THE DEGREE OF CLEANUP REQUIRED FOR REMEDIAL ACTIONS; CREATING A
6 VOLUNTARY CLEANUP AND REDEVELOPMENT PROCESS; REQUIRING THE DEPARTMENT TO SET UP A
7 COLLABORATIVE PROCESS THAT ANALYZES THE ELIMINATION OF JOINT AND SEVERAL LIABILITY AND
8 RELATED FUNDING NECESSARY TO CLEAN UP STATE SUPERFUND SITES; AMENDING SECTIONS
9 15-38-202, 75-10-701, 75-10-704, 75-10-711, SECTION 75-10-715, 75-10-721, 75-10-722, 75-10-724,
10 AND 85-1-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

11

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL
NOT BE REPRINTED. PLEASE REFER TO SECOND
READING COPY (YELLOW) FOR COMPLETE TEXT.



HOUSE STANDING COMMITTEE REPORT

April 6, 1995

Page 1 of 7

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 382 (third reading copy -- blue) be concurred in as amended.

Signed: *Dick Knox*
Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Story

1. Title, line 5.
Strike: "DEGREE OF"
Insert: "METHOD OF SELECTING"
2. Title, line 9.
Strike: "SECTION"
Insert: "SECTIONS 75-10-701 AND"
3. Title, line 10.
Following: "~~DATE AND~~"
Insert: "AN IMMEDIATE EFFECTIVE DATE AND"
4. Title, line 10.
Strike: "AN"
Strike: "DATE"
Insert: "DATES AND A TERMINATION DATE"
5. Page 13.
Following: line 23
Insert: "
Section 1. 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:

Committee Vote:
Yes 14, No 4.

SB 382

HOUSE

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

(4) (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.

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

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

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

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

(c) a substance that is 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 a substance listed or identified in 40 CFR 261; or

(d) any petroleum product.

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

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

(9) "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.

(10) "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).

(11) "Reasonably anticipated future uses" means likely future land or resource uses that take into consideration:

(a) local land and resource use regulations, ordinances, restrictions, or covenants;

(b) historical and anticipated uses of the facility;

(c) patterns of development in the immediate area; and

(d) relevant indications of anticipated land use from the owner of the facility and local planning officials.

~~(11)~~ (12) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance), 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.

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

~~(13)~~ (14) "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially liable person 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.

~~(14)~~ (15) "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 ~~(14)~~(a) (15) (a) to provide services relating to a remedial action.

~~(15)~~ (16) "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."

Renumber: subsequent sections

6. Page 13, line 27.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

7. Page 19, lines 1 and 5.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

8. Page 19, line 24.

Following: "ELIGIBLE"

Strike: "TO FOLLOW"

Insert: "for"

9. Page 20, line 6.

Following: the second "ACT"

Strike: "."

Insert: "; or

(e) a facility that is the subject of pending action under this part because the facility has been issued a notice commencing a specified period of negotiations on an administrative order on consent."

10. Page 20, line 7.

Following: "THROUGH"

Strike: "(1) (D)"

Insert: "(1)(e)"

11. Page 20, line 16.

Following: "(4)"

Strike: "EXCEPT" through "(2), IF"

Insert: "If"

12. Page 20, line 17.

Following: "DECISION"

Insert: "to reject the filing of the application"

13. Page 20, line 18.

Following: "UNDER"

Strike: "THIS SECTION"

Insert: "subsection (1) or (3)"

Following: "MAY"

Insert: ", within 30 days of receipt of the department's written decision pursuant to [section 9],"

14. Page 20, line 19.

Following: "SCIENCES."

Insert: "In reviewing a department decision to reject an application under subsection (1) or (3), the board shall apply the standards of review specified in 2-4-704."

15. Page 20, line 21.

Following: "BOARD"

Insert: ", the department,"

16. Page 20, line 23.

Following: "7."

Insert: "A hearing before the board may not be requested regarding a decision of the department made pursuant to subsection (2)."

17. Page 21, lines 2, 4 and 17.

Strike: "6"

Insert: "7"

18. Page 21, line 23.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

19. Page 23, lines 15 and 24.

Strike: "8(1)"

Insert: "9(1)"

20. Page 23, line 30.

Following: "SATISFY THE"

Insert: "public participation"

21. Page 25, line 9.

Strike: "6"

Insert: "7"

22. Page 26, line 2.

Strike: "4(3)"

Insert: "5(3)"

23. Page 26, line 16.

Strike: "10(2)(B)"

Insert: "11(2)(b)"

24. Page 26, lines 24 through 27.

Strike: subsection (14) in its entirety

Insert: "

(14) Immunity from liability under this section does not apply to a release that is caused by conduct that is negligent or grossly negligent or that constitutes intentional misconduct."

25. Page 27, line 9.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

26. Page 28, line 3.

Following: "FOR"

Strike: "THE"

Insert: "[insert"

Following: "IDENTIFIED"

Insert: "]"

27. Page 30, line 13.

Page 30, lines 14 and 15.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

28. Page 30, line 17.

Following: "**Applicability.**"

Insert: "(1)"

29. Page 30, line 18.

Strike: "OR ADMINISTRATIVE"

30. Page 30, lines 19 through 21.

Following: "._"

Strike: "CLAIMS" on line 19 through "." on line 21

31. Page 30.

Following: line 21

Insert: "(2) [Sections 2 through 10] apply after January 1, 2001, to voluntary cleanup plans approved by the department of health and environmental sciences between [the effective date of this act] and January 1, 2001."

32. Page 30.

Following: line 23

Insert: "

NEW SECTION. Section 15. Termination. [Sections 2 through 10] terminate January 1, 2001."

33. Page 30.

Following: line 23

Insert: "NEW SECTION. Section 16. Effective date. [This act] is effective on passage and approval."

-END-

1 SENATE BILL NO. 382

2 INTRODUCED BY HARP, BECK

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ~~NATURAL RESOURCE AND~~
 5 ~~ENVIRONMENTAL LAWS~~ THE DEGREE OF METHOD OF SELECTING CLEANUP REQUIRED FOR REMEDIAL
 6 ACTIONS; CREATING A VOLUNTARY CLEANUP AND REDEVELOPMENT PROCESS; REQUIRING THE
 7 DEPARTMENT TO SET UP A COLLABORATIVE PROCESS THAT ANALYZES THE ELIMINATION OF JOINT
 8 AND SEVERAL LIABILITY AND RELATED FUNDING NECESSARY TO CLEAN UP STATE SUPERFUND SITES;
 9 AMENDING SECTIONS 15-38-202, 75-10-701, 75-10-704, 75-10-711, SECTION SECTIONS 75-10-701
 10 AND 75-10-715, 75-10-721, 75-10-722, 75-10-724, AND 85-1-604, MCA; AND PROVIDING AN
 11 IMMEDIATE EFFECTIVE DATE AND AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE DATES,
 12 AND A TERMINATION DATE."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
 16 ~~Section 1. Section 15-38-202, MCA, is amended to read:~~

17 ~~"15-38-202. (Temporary) Investment of resource indemnity trust fund expenditure minimum~~
 18 ~~balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund~~
 19 ~~under the provisions of 15-37-117, must be invested at the discretion of the board of investments. All the~~
 20 ~~net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund until~~
 21 ~~it has reached the sum of \$10 million. Thereafter, only the net earnings may be appropriated and expended~~
 22 ~~until the fund reaches \$100 million. Thereafter, all net earnings and all receipts must be appropriated by~~
 23 ~~the legislature and expended, provided that the balance in the fund may never be less than \$100 million.~~

24 ~~(2) (a) At the beginning of each biennium, there is allocated from the interest income of the~~
 25 ~~resource indemnity trust fund:~~

26 ~~(i) an amount not to exceed \$175,000 to the environmental contingency account pursuant to the~~
 27 ~~conditions of 75-1-1101;~~

28 ~~(ii) an amount not to exceed \$50,000 to the oil and gas production damage mitigation account~~
 29 ~~pursuant to the conditions of 82-11-161;~~

30 ~~(iii) beginning in fiscal year 1995, \$240,000, which is statutorily appropriated, as provided in~~

1 ~~17-7-502, from the renewable resource grant and loan program state special revenue account to support~~
 2 ~~the operations of the environmental science water quality instructional programs at northern Montana~~
 3 ~~college to be used for support costs, for matching funds necessary to attract additional funds to further~~
 4 ~~expand statewide impact, and for enhancement of the facilities related to the programs;~~

5 ~~(iv) \$1,025,000 to be deposited into the renewable resource grant and loan program state special~~
 6 ~~revenue account, created by 85-1-604, for the purpose of making grants;~~

7 ~~(v) \$2,200,000 to be deposited into the reclamation and development grants state special revenue~~
 8 ~~account, created by 90-2-1104, for the purpose of making grants; and~~

9 ~~(vi) beginning in fiscal year 1994, \$250,000 to be deposited into the water storage state special~~
 10 ~~revenue account created by 85-1-631.~~

11 ~~(b) The remainder of the interest income is allocated as follows:~~

12 ~~(i) Thirty eight percent of the interest income of the resource indemnity trust fund must be~~
 13 ~~allocated to the renewable resource grant and loan program state special revenue account created by~~
 14 ~~85-1-604.~~

15 ~~(ii) Fifteen percent of the interest income of the resource indemnity trust fund must be allocated to~~
 16 ~~the hazardous waste/CERCLA special revenue account provided for in 75-10-621.~~

17 ~~(iii) Forty one and one half percent of the interest income from the resource indemnity trust fund~~
 18 ~~must be allocated to the reclamation and development grants account provided for in 90-2-1104.~~

19 ~~(iv) Five and one half percent of the interest income of the resource indemnity trust fund must be~~
 20 ~~allocated to the environmental quality protection fund provided for in 75-10-704.~~

21 ~~(3) Any formal budget document prepared by the legislature or the executive branch that proposes~~
 22 ~~to appropriate funds from the resource indemnity trust interest account other than as provided for by the~~
 23 ~~allocations in subsection (2) must specify the amount of money from each allocation that is proposed to~~
 24 ~~be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and~~
 25 ~~publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the~~
 26 ~~legislative appropriation process or otherwise during a legislative session.~~

27 ~~15-38-202. (Effective July 1, 1995) Investment of resource indemnity trust fund expenditure~~
 28 ~~minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into~~
 29 ~~the fund under the provisions of 15-37-117, must be invested at the discretion of the board of investments.~~
 30 ~~All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund~~

1 until it has reached the sum of \$10 million. Thereafter, only the net earnings may be appropriated and
 2 expended until the fund reaches \$100 million. Thereafter, all net earnings and all receipts must be
 3 appropriated by the legislature and expended, provided that the balance in the fund may never be less than
 4 \$100 million.

5 (2) (a) At the beginning of each biennium, there is allocated from the interest income of the
 6 resource indemnity trust fund:

7 (i) an amount not to exceed \$175,000 to the environmental contingency account pursuant to the
 8 conditions of 75-1-1101;

9 (ii) an amount not to exceed \$50,000 to the oil and gas production damage mitigation account
 10 pursuant to the conditions of 82-11-161;

11 (iii) beginning in fiscal year 1995, \$240,000, which is statutorily appropriated, as provided in
 12 17-7-502, from the renewable resource grant and loan program state special revenue account to support
 13 the operations of the environmental science water quality instructional programs at northern Montana
 14 college to be used for support costs, for matching funds necessary to attract additional funds to further
 15 expand statewide impact, and for enhancement of the facilities related to the programs;

16 (iv) beginning in fiscal year 1996-1997, \$2-\$1 million to be deposited into the renewable resource
 17 grant and loan program state special revenue account, created by 85-1-604, for the purpose of making
 18 grants;

19 (v) beginning in fiscal year 1996-1997, \$3-\$2 million to be deposited into the reclamation and
 20 development grants state special revenue account, created by 90-2-1104, for the purpose of making grants;
 21 and

22 (vi) beginning in fiscal year 1996, \$500,000 to be deposited into the water storage state special
 23 revenue account created by 85-1-631.

24 (b) The remainder of the interest income is allocated as follows:

25 (i) Thirty six ~~Sixteen~~ percent of the interest income of the resource indemnity trust fund must be
 26 allocated to the renewable resource grant and loan program state special revenue account created by
 27 85-1-604.

28 (ii) Eighteen percent of the interest income of the resource indemnity trust fund must be allocated
 29 to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

30 (iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated

1 ~~to the reclamation and development grants account provided for in 90-2-1104.~~

2 ~~(iv) Six Sixteen percent of the interest income of the resource indemnity trust fund must be~~
3 ~~allocated to the environmental quality protection fund provided for in 75-10-704.~~

4 ~~(v) Ten percent of the interest income from the resource indemnity trust fund must be allocated~~
5 ~~to the abandoned mine state special revenue account provided in [section 9].~~

6 ~~(3) Any formal budget document prepared by the legislature or the executive branch that proposes~~
7 ~~to appropriate funds from the resource indemnity trust interest account other than as provided for by the~~
8 ~~allocations in subsection (2) must specify the amount of money from each allocation that is proposed to~~
9 ~~be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and~~
10 ~~publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the~~
11 ~~legislative appropriation process or otherwise during a legislative session."~~

12
13 **Section 2.** ~~Section 75-10-701, MCA, is amended to read:~~

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

16 ~~(1) "Department" means the department of health and environmental sciences provided for in Title~~
17 ~~2, chapter 15, part 21.~~

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

19 ~~(3) "Disposed" or "disposal" means:~~

20 ~~(a) an affirmative act resulting in a discharge, deposit, injection, dumping, storing, spilling, leaking,~~
21 ~~or placing of any hazardous or deleterious substance on any land or water so that the hazardous or~~
22 ~~deleterious substance may enter the environment, be emitted into the air, or be discharged into any waters,~~
23 ~~including ground waters.~~

24 ~~(b) Disposed or disposal does not include the passive migration, movement, or dispersion of a~~
25 ~~hazardous or deleterious substance or any constituent through the environment that occurs after the initial~~
26 ~~disposal of the hazardous or deleterious substance into the environment.~~

27 ~~(3)(4) "Environment" means any surface water, ground water, drinking water supply, land surface~~
28 ~~or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of~~
29 ~~Montana.~~

30 ~~(4) (a)(5) (a) "Facility" means:~~

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

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

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

7 ~~(5)(6) "Fund" means the environmental quality protection fund established in 75-10-704.~~

8 ~~(6)(7) (a) "Hazardous or deleterious substance" means a substance that because of its quantity,~~
 9 ~~concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial~~
 10 ~~threat to public health, safety, or welfare or the environment and is:~~

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

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

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

19 ~~(d)(iv) any petroleum product.~~

20 ~~(b) Hazardous or deleterious substance does not include any waste or constituent, the regulation~~
 21 ~~of which under the Solid Waste Disposal Act, 42 U.S.C. 6901, has been suspended by an act of congress~~
 22 ~~or that has been excluded from the definition of hazardous waste under 40 CFR 261.4(b)(7).~~

23 ~~(7)(8) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water,~~
 24 ~~drinking water supplies, and any other such resources within the state of Montana owned, managed, held~~
 25 ~~in trust or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the~~
 26 ~~state.~~

27 ~~(8) (a)(9) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or~~
 28 ~~exercising control over the operation of a facility.~~

29 ~~(b) The term does not include holding the indicia of ownership of a facility primarily to protect a~~
 30 ~~security interest in the facility or other location unless the holder has participated in the management of the~~

1 facility. The term does not apply to the state or a local government that acquired ownership or control
 2 through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the
 3 government acquires title by virtue of its function as sovereign, unless the state or local government has
 4 caused or contributed to the release or threatened release of a hazardous or deleterious substance from the
 5 facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1
 6 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been
 7 released into the environment upstream of the dam and has subsequently come to be located in the
 8 reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for
 9 a release or threatened release under ~~75-10-715(1)~~.

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

13 ~~(10)(11)~~ "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities
 14 subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any
 15 other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of
 16 temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

17 ~~(11)(12)~~ "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging,
 18 injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into
 19 the environment (including the abandonment or discarding of barrels, containers, and other closed
 20 receptacles containing any hazardous or deleterious substance), but excludes releases confined to the
 21 indoor workplace environment, the use of pesticides as defined in ~~80-8-102(30)~~ when they are applied in
 22 accordance with approved federal and state labels, and the use of commercial fertilizers as defined in
 23 ~~80-10-101(2)~~ when applied as part of accepted agricultural practice.

24 ~~(12)(13)~~ "Remedial action" includes all notification, investigation, administration, monitoring,
 25 cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action,
 26 health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or
 27 threatened release.

28 ~~(13)(14)~~ "Remedial action contract" means a written contract or agreement entered into by a
 29 remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or
 30 request issued by the department, the United States, or any federal agency, to provide a remedial action

1 with respect to a release or threatened release of a hazardous or deleterious substance.

2 ~~(14)(15)~~ "Remedial action contractor" means:

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

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

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

9
10 ~~Section 3. Section 75-10-704, MCA, is amended to read:~~

11 ~~"75-10-704. Environmental quality protection fund. (1) There is in the state special revenue fund~~
12 ~~an environmental quality protection fund to be administered as a revolving fund by the department. The~~
13 ~~department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.~~
14 ~~The use of the fund is limited to remediation of sites not listed on the national priorities list.~~

15 ~~(2) The fund may be used by the department only to:~~

16 ~~(a) provide the department with funding for remedial actions to the extent that parties liable under~~
17 ~~75-10-715 cannot pay all remedial action costs required to be expended to remedy releases at a facility;~~

18 ~~(b) reimburse liable parties whose contributions to remedial action costs exceed their proportionate~~
19 ~~liability;~~

20 ~~(c) carry out the provisions of this part and provide for remedial actions taken by the department~~
21 ~~pursuant to this part in response to a release of hazardous or deleterious substances.; and~~

22 ~~(d) carry out the provisions of this part.~~

23 ~~(3) The department shall:~~

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

26 ~~(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain~~
27 ~~the participation and financial contribution of liable persons for the remedial action, to achieve remedial~~
28 ~~action, and to recover costs and damages incurred by the state.~~

29 ~~(4) There must be deposited in the fund:~~

30 ~~(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs~~

1 ~~recovered pursuant to 75-10-715;~~

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

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

5 ~~(d) funds received from the interest income of the resource indemnity trust fund pursuant to~~
 6 ~~15-38-202.~~

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

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

13
 14 **Section 4.** ~~Section 75-10-711, MCA, is amended to read:~~

15 ~~"75-10-711. Remedial action orders penalties judicial proceedings. (1) The department may~~
 16 ~~take remedial action whenever:~~

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

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

22 ~~(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to~~
 23 ~~believe that a release has occurred or is about to occur, the department may undertake remedial action in~~
 24 ~~the form of any investigation, monitoring, survey, testing, or other information gathering as authorized by~~
 25 ~~75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the~~
 26 ~~release or the threat of release and the extent and imminence of the danger to the public health, safety,~~
 27 ~~or welfare of the environment.~~

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

1 ~~person or persons liable for the release or threatened release and:~~

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

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

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

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

15 ~~(5) (a) A person who violates or fails or refuses to comply with an order issued under 75-10-707~~
16 ~~or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than~~
17 ~~\$10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining~~
18 ~~the amount of any penalty assessed, the court may take into account:~~

19 ~~(i) the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the~~
20 ~~person liable under 75-10-715(1), his the person's ability to pay;~~

21 ~~(ii) any prior history of such violations;~~

22 ~~(iii) the degree of culpability;~~

23 ~~(iv) the economic benefit or savings, if any, resulting from the noncompliance; and~~

24 ~~(v) any other matters as that justice may require.~~

25 ~~(b) Civil penalties collected under this subsection must be deposited into the environmental quality~~
26 ~~protection fund established in 75-10-704.~~

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

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

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

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

3 ~~(d) an action by a person to whom an order has been issued to determine the validity of the order,~~
4 ~~only if the person has been in compliance and continues in compliance with the order pending decision of~~
5 ~~the court.~~

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

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

15 ~~(9) The Except as provided in 75-10-712, the department may not take remedial action pursuant~~
16 ~~to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response,~~
17 ~~Compensation, and Liability Act of 1980, Public Law 96-510, if the department determines that remedial~~
18 ~~action is necessary to carry out the purposes of this part as amended. This subsection may not restrict the~~
19 ~~department from entering into or carrying out cooperative agreements under Title 75, chapter 10, part 6,~~
20 ~~or from accepting any deferral to the state of a CERCLA site from the U.S. environmental protection~~
21 ~~agency.~~"

22
23 **Section 5.** Section 75-10-715, MCA, is amended to read:

24 ~~"75-10-715. Liability reimbursement and penalties proceedings defenses. (1)~~
25 ~~Notwithstanding any other provision of law and subject only to the defenses set forth in subsection (5),~~
26 ~~the following persons are jointly and severally liable for a release or threatened release of a hazardous or~~
27 ~~deleterious substance from a facility:~~

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

30 ~~(b)(a) a person who at the time of disposal of a hazardous or deleterious substance owned or~~

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

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

6 ~~{d}(c) a person who accepts or has accepted a hazardous or deleterious substance for transport~~
7 ~~to a disposal or treatment facility.~~

8 ~~{2} A person identified in subsection (1) is proportionately liable for the following costs:~~

9 ~~{a} all remedial action costs incurred by the state; and~~

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

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

21 ~~{4} The department may initiate civil proceedings in district court to recover remedial action costs,~~
22 ~~natural resource damages, or penalties under subsections (1) through (3). Proceedings to recover costs~~
23 ~~and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs,~~
24 ~~damages, or penalties lies in the county where the release occurred or where the any person liable under~~
25 ~~75-10-715(1) resides or has its principal place of business or in the district court of the first judicial district.~~

26 ~~{5} No A person is not liable under subsections (1) through (3) if that person can establish by a~~
27 ~~preponderance of the evidence that:~~

28 ~~{a} the department failed to follow the notice provisions of 75-10-711 when required;~~

29 ~~{b} the release did not emanate from any vessel, vehicle, or facility to which the person contributed~~
30 ~~any hazardous or deleterious substance or over which the person had any ownership, authority, or control~~

1 and was not caused by any action or omission of the person;

2 ~~(e) the release or threatened release occurred solely as a result of:~~

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

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

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

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

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

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

16 ~~(f) in the case of assessment of penalties under subsection (3), that factors beyond the control of~~
 17 ~~the person prevented the person from taking timely remedial action; or~~

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

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

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

30 ~~(ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or~~

1 through any other involuntary transfer or acquisition or through the exercise of eminent domain authority
2 by purchase or condemnation.

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

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

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

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

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

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

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

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

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

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

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

26
27 **SECTION 1. SECTION 75-10-701, MCA, IS AMENDED TO READ:**

28 "75-10-701. **Definitions.** As used in this part, unless the context requires otherwise, the following
29 definitions apply:

30 (1) "Department" means the department of health and environmental sciences provided for in Title

1 2, chapter 15, part 21.

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

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

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

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

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

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

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

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

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

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

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

25 (d) any petroleum product.

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

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

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

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

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

19 (11) "Reasonably anticipated future uses" means likely future land or resource uses that take into
20 consideration:

21 (a) local land and resource use regulations, ordinances, restrictions, or covenants;

22 (b) historical and anticipated uses of the facility;

23 (c) patterns of development in the immediate area; and

24 (d) relevant indications of anticipated land use from the owner of the facility and local planning
25 officials.

26 ~~{11}~~(12) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging,
27 injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into
28 the environment (including the abandonment or discarding of barrels, containers, and other closed
29 receptacles containing any hazardous or deleterious substance), but excludes releases confined to the
30 indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in

1 accordance with approved federal and state labels, and the use of commercial fertilizers as defined in
2 80-10-101(2) when applied as part of accepted agricultural practice.

3 ~~(12)~~(13) "Remedial action" includes all notification, investigation, administration, monitoring,
4 cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action,
5 health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or
6 threatened release.

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

11 ~~(14)~~(15) "Remedial action contractor" means:

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

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

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

19 **Section 2.** Section 75-10-721, MCA, is amended to read:

20 **"75-10-721. Degree of cleanup required -- permit exemption -- financial assurance.** (1) A remedial
21 action performed under this part or a voluntary cleanup under [sections ~~10 2 3~~ through ~~16 10 11~~] must
22 attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release
23 or further release of that substance that assures ~~present and future~~ protection of public health, safety, and
24 welfare and of the environment that is consistent with this section.

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

26 ~~(a) shall require cleanup consistent with applicable state or federal environmental requirements,~~
27 ~~criteria, or limitations;~~

28 ~~(b) shall consider and may require cleanup consistent with substantive state or federal~~
29 ~~environmental requirements, criteria, or limitations that are well suited to the site conditions; and~~

30 ~~(c) shall select remedial actions that, at a minimum, protect the public health, safety, and welfare~~

~~1 and the environment. A remedial action must be considered protective of the public health, safety, and
2 welfare and of the environment when the amount of site specific risk reduction is proportionate to the total
3 cost of the remedial action or when the remedial action reaches a level of risk reduction of 10 to the minus
4 4, whichever is more cost effective, and that:~~

~~5 (i) use permanent solutions;~~

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

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

~~11 (3) To the extent consistent with the requirements of subsection (2), the department, in selecting
12 remedial actions under this part, shall consider for each remedial action:~~

~~13 (a) technical practicability;~~

~~14 (b) long term and short term reliability; and~~

~~15 (c) local community and local government acceptance.~~

~~16 (4) To the extent consistent with the requirements of subsection (2), the department shall give
17 equal consideration to engineering controls, institutional controls, and treatment.~~

~~18 (5) All remedial actions selected by the department under this part must be based on current land
19 and resource uses unless the department can demonstrate on the administrative record that there are
20 reasonably anticipated uses that would require remedial actions that provide for a higher level of protection
21 for the public health, safety, and welfare, and for the environment. Only reasonably anticipated land and
22 resource uses, as determined by applicable local land and resource use requirements, regulations,
23 ordinances, restrictions or covenants, may be considered.: (A) EXCEPT AS PROVIDED IN SUBSECTION (4),
24 SHALL REQUIRE CLEANUP CONSISTENT WITH APPLICABLE STATE OR FEDERAL ENVIRONMENTAL
25 REQUIREMENTS, CRITERIA, OR LIMITATIONS;~~

~~26 (B) MAY CONSIDER SUBSTANTIVE STATE OR FEDERAL ENVIRONMENTAL REQUIREMENTS,
27 CRITERIA, OR LIMITATIONS THAT ARE RELEVANT TO THE SITE CONDITIONS; AND~~

~~28 (C) SHALL SELECT REMEDIAL ACTIONS, CONSIDERING PRESENT AND REASONABLY
29 ANTICIPATED FUTURE USES, THAT:~~

~~30 (I) DEMONSTRATE ACCEPTABLE MITIGATION OF EXPOSURE TO RISKS TO THE PUBLIC HEALTH,~~

- 1 SAFETY, AND WELFARE AND THE ENVIRONMENT;
- 2 (II) ARE EFFECTIVE AND RELIABLE IN THE SHORT TERM AND THE LONG TERM;
- 3 (III) ARE TECHNICALLY PRACTICABLE AND IMPLEMENTABLE;
- 4 (IV) USE TREATMENT TECHNOLOGIES OR RESOURCE RECOVERY TECHNOLOGIES IF
- 5 PRACTICABLE, GIVING DUE CONSIDERATION TO INSTITUTIONAL AND ENGINEERING CONTROLS; AND
- 6 (V) ARE COST-EFFECTIVE.

7 (3) IN SELECTING REMEDIAL ACTIONS, THE DEPARTMENT SHALL CONSIDER THE
 8 ACCEPTABILITY OF THE ACTIONS TO THE AFFECTED COMMUNITY, AS INDICATED BY COMMUNITY
 9 MEMBERS AND THE LOCAL GOVERNMENT.

10 (4) THE DEPARTMENT MAY SELECT A REMEDIAL ACTION THAT DOES NOT MEET AN
 11 APPLICABLE STATE ENVIRONMENTAL REQUIREMENT, CRITERIA, OR LIMITATION UNDER ANY ONE OF
 12 THE FOLLOWING CIRCUMSTANCES:

13 (A) THE REMEDIAL ACTION IS AN INTERIM MEASURE AND WILL BECOME PART OF A TOTAL
 14 REMEDIAL ACTION THAT WILL ATTAIN THE APPLICABLE REQUIREMENT, CRITERIA, OR LIMITATION.

15 (B) COMPLIANCE WITH THE APPLICABLE REQUIREMENT, CRITERIA, OR LIMITATION WILL
 16 RESULT IN GREATER RISK TO HUMAN HEALTH AND THE ENVIRONMENT THAN OTHER REMEDIAL
 17 ACTION ALTERNATIVES.

18 (C) COMPLIANCE WITH THE APPLICABLE REQUIREMENT, CRITERIA, OR LIMITATION IS
 19 TECHNICALLY IMPRACTICABLE FROM AN ENGINEERING PERSPECTIVE.

20 (D) THE REMEDIAL ACTION WILL ATTAIN A STANDARD OF PERFORMANCE THAT IS
 21 EQUIVALENT TO THAT REQUIRED UNDER THE OTHERWISE APPLICABLE REQUIREMENT, CRITERIA, OR
 22 LIMITATION THROUGH USE OF ANOTHER METHOD OR APPROACH.

23 (E) COMPLIANCE WITH THE REQUIREMENT WOULD NOT BE COST-EFFECTIVE.

24 (5) FOR PURPOSES OF THIS SECTION, COST-EFFECTIVENESS MUST BE DETERMINED THROUGH
 25 AN ANALYSIS OF INCREMENTAL COSTS AND INCREMENTAL RISK REDUCTION AND OTHER BENEFITS
 26 OF ALTERNATIVES CONSIDERED, TAKING INTO ACCOUNT THE TOTAL ANTICIPATED SHORT-TERM AND
 27 LONG-TERM COSTS OF REMEDIAL ACTION ALTERNATIVES CONSIDERED, INCLUDING THE TOTAL
 28 ANTICIPATED COST OF OPERATION AND MAINTENANCE ACTIVITIES.

29 ~~(3)(6)~~ (6) The department ~~may shall~~ MAY exempt any portion of a remedial action that is conducted
 30 entirely on site from a state or local permit that would, in the absence of the remedial action, be required

1 if the remedial action is carried out in accordance with the standards established under ~~subsection (4)~~ THIS
 2 SECTION and this part.

3 ~~(4)(7)~~ The department may require financial assurance from a liable person in an amount that the
 4 department determines will ensure the long-term operation and maintenance of the remedial action site.
 5 The liable person shall provide the financial assurance by any one method or combination of methods
 6 satisfactory to the department, including but not limited to insurance, guarantee, performance or other
 7 surety bond, letter of credit, qualification as a self-insurer, or other demonstration of financial capability."

8

9 ~~Section 7. Section 75-10-722, MCA, is amended to read:~~

10 ~~"75-10-722. Payment of state costs and penalties. (1) The department shall keep a record of the~~
 11 ~~state's remedial action costs.~~

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

14 ~~(3) If the state's remedial action costs and penalties are not paid by the liable person to the~~
 15 ~~department within 60 days after receipt of notice that the costs and penalties are due, the department shall~~
 16 ~~bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.~~

17 ~~(4) An action to recover remedial action costs may be brought under this section at any time after~~
 18 ~~any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability~~
 19 ~~for remedial action costs that is binding on any subsequent action or actions to recover further remedial~~
 20 ~~action costs. The court may disallow costs or damages only if the person liable under 75-10-715 can show~~
 21 ~~on the record that the costs are not reasonable and are not consistent with this part.~~

22 ~~(5) An initial action for recovery of remedial action costs must be commenced within 6 years after~~
 23 ~~initiation of physical onsite construction of the remedial action.~~

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

26

27 ~~Section 8. Section 75-10-724, MCA, is amended to read:~~

28 ~~"75-10-724. Liability apportionment and contribution. (1) Any person held jointly and severally~~
 29 ~~liable under 75-10-715 has the right at trial to have the trier of fact apportion liability among the parties~~
 30 ~~as provided in this section. The burden is on each liable person to show how his liability should be~~

1 ~~apportioned. In apportioning the liability of any person under this section, the trier of fact shall consider~~
2 ~~in any action initiated under 75-10-715 by the department or in any action initiated under subsection (2)~~
3 ~~by any person or persons liable under 75-10-715(1), the trier of fact shall determine the proportionate share~~
4 ~~of the aggregate liability for each person who is found liable under 75-10-715(1). For purposes of~~
5 ~~determining the proportionate share of the aggregate liability, the trier of fact shall consider, for each person~~
6 ~~found liable under 75-10-715(1), the following:~~

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

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

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

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

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

15 (f) ~~knowledge by the each person of the hazardous nature of the substance; and~~

16 (g) ~~any remedial actions voluntarily taken by a person.~~

17 (2) ~~If a person is held jointly and severally liable under 75-10-715 and establishes a proportionate~~
18 ~~share of the aggregate liability, the person has the right of contribution from any other liable person. If for~~
19 ~~any reason all or part of the contribution from a person liable for contribution cannot be obtained, each of~~
20 ~~the other persons against whom recovery is allowed is liable to contribute a proportional part of the unpaid~~
21 ~~portion of the noncontributing person's share and may obtain judgment in a pending or subsequent action~~
22 ~~for contribution from the noncontributing person. A person liable under 75-10-715(1) may have a right of~~
23 ~~contribution for the recovery of the remedial action costs incurred by a person under this part against any~~
24 ~~other nonsettling party found liable under 75-10-715(1) in the proportionate shares determined under~~
25 ~~subsection (1).~~

26 (3) ~~For sites not listed on the national priorities list, if for any reason all or part of the contribution~~
27 ~~from a person liable for contribution cannot be obtained, a person may apply to and must, in accordance~~
28 ~~with this subsection, receive reimbursement from the department from the environmental quality protection~~
29 ~~fund established in 75-10-704. If the environmental quality protection fund does not contain sufficient~~
30 ~~money to pay received claims for reimbursement, the fund and the department are not liable for making any~~

1 ~~reimbursement at that time. When the fund contains sufficient money, approved claims must be~~
 2 ~~subsequently reimbursed in the order in which they were approved by the department. The department~~
 3 ~~shall approve claims for reimbursement of remedial action costs under this subsection unless the remedial~~
 4 ~~action costs are unreasonable, unnecessary, or inconsistent with this part.~~

5 ~~(4) A person who has incurred remedial action costs may seek to recover those costs from any~~
 6 ~~person who is liable or potentially liable under 75-10-715. A person who is liable under this subsection is~~
 7 ~~not liable for more than the person's proportionate share of the aggregate liability determined in accordance~~
 8 ~~with the criteria in subsection (1). Subsections (3) and (4) of 75-10-714 apply to any actions under this~~
 9 ~~subsection."~~

10
 11 ~~**NEW SECTION. Section 9. Abandoned mine state special revenue account created.** (1) There is~~
 12 ~~an abandoned mine special revenue account within the state special revenue account fund established in~~
 13 ~~17-2-102.~~

14 ~~(2) There must be paid into the abandoned mine state special revenue account money allocated~~
 15 ~~from the resource indemnity trust fund interest earnings pursuant to 15-38-202.~~

16 ~~(3) Money that was not encumbered or expended from the abandoned mine state special revenue~~
 17 ~~account during the previous biennium must remain in the account.~~

18 ~~(4) Deposits to the abandoned mine state special revenue account are to be placed in short term~~
 19 ~~investments and accrue interest, which must be deposited in the abandoned mine state special revenue~~
 20 ~~account.~~

21 ~~(5) The purpose of the abandoned mine state special revenue account is to provide the funding to~~
 22 ~~the department of state lands for the cleanup and reclamation of abandoned mines.~~

23 ~~(6) The department of state lands shall administer this section as an integral part of the abandoned~~
 24 ~~mines program.~~

25
 26 ~~**NEW SECTION. Section 3. Short title.** [Sections ~~40-2-3~~ through ~~46-10-11~~] may be cited as the~~
 27 ~~"Voluntary Cleanup and Redevelopment Act".~~

28
 29 ~~**NEW SECTION. Section 4. Purpose -- legislative declaration.** (1) (a) The purposes of [sections~~
 30 ~~40-2-3 through 46-10-11] are to provide for the protection of the public health, welfare, and safety and~~

1 of the environment and to foster the cleanup, transfer, reuse, or redevelopment of facilities ~~and sites that~~
 2 ~~have been previously contaminated with hazardous or deleterious substances~~ WHERE RELEASES OR
 3 THREATENED RELEASES OF HAZARDOUS OR DELETERIOUS SUBSTANCES EXIST.

4 (b) The legislature further declares that this program is intended to permit and encourage voluntary
 5 cleanup of ~~contaminated property~~ FACILITIES WHERE RELEASES OR THREATENED RELEASES OF
 6 HAZARDOUS OR DELETERIOUS SUBSTANCES EXIST by providing interested persons with a method of
 7 determining what the cleanup responsibilities will be for reuse or redevelopment of existing ~~sites~~
 8 FACILITIES.

9 (2) The legislature further intends that this voluntary program:

10 (a) encourage and facilitate prompt cleanup activities;

11 (b) eliminate impediments to the sale or redevelopment of ~~previously contaminated property~~
 12 FACILITIES WHERE RELEASES OR THREATENED RELEASES OF HAZARDOUS OR DELETERIOUS
 13 SUBSTANCES EXIST; and

14 (c) minimize administrative processes and costs.

15
 16 NEW SECTION. SECTION 5. ELIGIBILITY. (1) A FACILITY WHERE THERE HAS BEEN A RELEASE
 17 OR THREATENED RELEASE OF A HAZARDOUS OR DELETERIOUS SUBSTANCE THAT MAY PRESENT AN
 18 IMMINENT AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH, SAFETY, OR WELFARE OR
 19 THE ENVIRONMENT MAY BE ELIGIBLE TO FOLLOW FOR VOLUNTARY CLEANUP PROCEDURES UNDER
 20 THIS PART, EXCEPT FOR FACILITIES THAT MEET ONE OF THE FOLLOWING CRITERIA AT THE TIME OF
 21 APPLICATION FOR A VOLUNTARY CLEANUP PLAN:

22 (A) A FACILITY THAT IS LISTED OR PROPOSED FOR LISTING ON THE NATIONAL PRIORITIES LIST
 23 PURSUANT TO 42 U.S.C. 9601, ET SEQ.;

24 (B) A FACILITY FOR WHICH AN ORDER HAS BEEN ISSUED OR CONSENT DECREE HAS BEEN
 25 ENTERED INTO PURSUANT TO THIS PART;

26 (C) A FACILITY THAT IS THE SUBJECT OF AN AGENCY ORDER OR AN ACTION FILED IN
 27 DISTRICT COURT BY ANY STATE AGENCY THAT ADDRESSES THE RELEASE OR THREATENED RELEASE
 28 OF A HAZARDOUS OR DELETERIOUS SUBSTANCE; OR

29 (D) A FACILITY WHERE THE RELEASE OR THREATENED RELEASE OF A HAZARDOUS OR
 30 DELETERIOUS SUBSTANCE IS REGULATED BY THE MONTANA HAZARDOUS WASTE AND

1 UNDERGROUND STORAGE TANK ACT AND REGULATIONS UNDER THAT ACT; OR

2 (E) A FACILITY THAT IS THE SUBJECT OF PENDING ACTION UNDER THIS PART BECAUSE THE
 3 FACILITY HAS BEEN ISSUED A NOTICE COMMENCING A SPECIFIED PERIOD OF NEGOTIATIONS ON AN
 4 ADMINISTRATIVE ORDER ON CONSENT.

5 (2) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (1)(B) THROUGH (1)(D) (1)(E), THE
 6 DEPARTMENT MAY AGREE TO ACCEPT AND MAY APPROVE AN APPLICATION FOR A VOLUNTARY
 7 CLEANUP PLAN FOR A FACILITY.

8 (3) THE DEPARTMENT MAY DETERMINE THAT A FACILITY THAT IS POTENTIALLY ELIGIBLE FOR
 9 VOLUNTARY CLEANUP EXHIBITS COMPLEXITIES REGARDING PROTECTION OF PUBLIC HEALTH,
 10 SAFETY, AND WELFARE AND THE ENVIRONMENT AND THAT THE COMPLEXITIES SHOULD BE
 11 ADDRESSED UNDER AN ADMINISTRATIVE ORDER OR CONSENT DECREE PURSUANT TO THIS PART.
 12 THIS DETERMINATION MAY BE MADE ONLY AFTER CONSULTATION WITH ANY PERSON DESIRING TO
 13 CONDUCT A VOLUNTARY CLEANUP AT THE FACILITY.

14 (4) EXCEPT AS PROVIDED IN SUBSECTION (2), IF AN APPLICANT THAT SUBMITS AN
 15 APPLICATION FOR A VOLUNTARY CLEANUP PLAN DISAGREES WITH THE DEPARTMENT'S DECISION
 16 TO REJECT THE FILING OF THE APPLICATION UNDER THIS SECTION SUBSECTION (1) OR (3), THE
 17 APPLICANT MAY, WITHIN 30 DAYS OF RECEIPT OF THE DEPARTMENT'S WRITTEN DECISION
 18 PURSUANT TO [SECTION 9], SUBMIT A WRITTEN REQUEST FOR A HEARING BEFORE THE BOARD OF
 19 HEALTH AND ENVIRONMENTAL SCIENCES. IN REVIEWING A DEPARTMENT DECISION TO REJECT AN
 20 APPLICATION UNDER SUBSECTION (1) OR (3), THE BOARD SHALL APPLY THE STANDARDS OF REVIEW
 21 SPECIFIED IN 2-4-704. THE HEARING MUST BE HELD WITHIN 2 MONTHS AT THE REGULAR MEETING
 22 OF THE BOARD OR AT THE TIME MUTUALLY AGREED TO BY THE BOARD, THE DEPARTMENT, AND THE
 23 APPLICANT. THE HEARING AND ANY APPEALS MUST BE CONDUCTED IN ACCORDANCE WITH THE
 24 CONTESTED CASE PROCEEDINGS PURSUANT TO TITLE 2, CHAPTER 4, PARTS 6 AND 7. A HEARING
 25 BEFORE THE BOARD MAY NOT BE REQUESTED REGARDING A DECISION OF THE DEPARTMENT MADE
 26 PURSUANT TO SUBSECTION (2).

27
 28 **NEW SECTION. Section 6. Voluntary cleanup plan AND REIMBURSEMENT OF REMEDIAL ACTION**
 29 **COSTS.** (1) ~~A ANY person who owns real property that has been contaminated with hazardous or~~
 30 ~~deleterious substances or any person who may be liable under 75-10-715(1)~~ may submit an application for

1 the approval of a voluntary cleanup plan to the department under the provisions of this section.

2 (2) A voluntary cleanup plan must include:

3 (a) an environmental assessment of the ~~real property that describes the contamination, if any, on~~
4 ~~the property and the risk that the contamination currently poses to the public health, welfare, and safety~~
5 ~~and to the environment~~ FACILITY THAT INCLUDES THE INFORMATION REQUIRED IN [SECTION 6 7];

6 (b) a REMEDATION proposal, ~~if needed, for remedial actions consistent with~~ THAT INCLUDES THE
7 INFORMATION REQUIRED IN [SECTION 6 7] AND THAT MEETS THE REQUIREMENTS OF 75-10-721. ~~The~~
8 ~~proposal must provide a timetable for implementing the proposal and for monitoring the site after the~~
9 ~~proposed measures are completed.~~

10 (c) ~~a description of the manner in which the remedial action plan satisfies the cleanup requirements~~
11 ~~of 75-10-721 and a description of any current risk to the public health, welfare, or safety or to the~~
12 ~~environment based upon the current or reasonably anticipated future use of the site; AND~~

13 (C) THE WRITTEN CONSENT OF CURRENT OWNERS OF THE FACILITY OR PROPERTY TO BOTH
14 THE IMPLEMENTATION OF THE VOLUNTARY CLEANUP PLAN AND ACCESS TO THE FACILITY BY THE
15 APPLICANT AND ITS AGENTS AND THE DEPARTMENT.

16 (3) THE APPLICANT SHALL REIMBURSE THE DEPARTMENT FOR ANY REMEDIAL ACTION COSTS
17 THAT THE STATE INCURS IN THE REVIEW AND OVERSIGHT OF A VOLUNTARY CLEANUP PLAN.

18 (4) THE DEPARTMENT MAY APPROVE A VOLUNTARY CLEANUP PLAN THAT PROVIDES FOR
19 PHASES OF REMEDIATION OR THAT ADDRESSES ONLY A PORTION OF THE FACILITY. TO THE EXTENT
20 THAT THE ORIGINAL ENVIRONMENTAL ASSESSMENT REQUIRED UNDER [SECTION 6 7] ADDRESSES
21 SUBSEQUENT PHASES OF REMEDIATION, THE APPLICANT MAY RELY ON THAT ASSESSMENT WHEN
22 SUBMITTING VOLUNTARY CLEANUP PLANS FOR SUBSEQUENT PHASES OF REMEDIATION.

23
24 NEW SECTION. Section 7. Environmental assessment VOLUNTARY CLEANUP PLANS --
25 requirements. (1) The department may only accept environmental assessments VOLUNTARY CLEANUP
26 PLANS under [sections 40 2 3 through 46 10 11] that are prepared by a qualified environmental
27 professional. A qualified environmental professional is a person with education, training, and experience
28 in preparing environmental studies and assessments.

29 (2) An environmental assessment described in this section must include the following information:

30 (a) the legal description of the site FACILITY and a map identifying the location and size of the

- 1 ~~property~~ FACILITY AND RELEVANT FEATURES, SUCH AS PROPERTY BOUNDARIES, SURFACE
 2 TOPOGRAPHY, SURFACE AND SUBSURFACE STRUCTURES, AND UTILITY LINES;
- 3 (b) the physical characteristics of the ~~site~~ FACILITY and areas contiguous to the ~~site~~ FACILITY,
 4 including the location of any surface water bodies and ground water aquifers;
- 5 (c) the location of any wells located on the site or on areas within a one-half mile radius of the site
 6 and a description of the use of those wells;
- 7 (d) the current and reasonably anticipated future use of onsite ground AND SURFACE water;
- 8 (e) the operational history of the ~~site~~ FACILITY, INCLUDING OWNERSHIP, and the current use of
 9 ~~areas contiguous to the site~~ THE FACILITY, INCLUDING ANY READILY AVAILABLE AERIAL PHOTOGRAPHS
 10 FROM WITHIN THE STATE OF MONTANA;
- 11 (f) the current and reasonably anticipated future uses of the ~~site~~ FACILITY AND IMMEDIATELY
 12 ADJACENT PROPERTIES;
- 13 (g) information ON THE METHODS AND RESULTS OF INVESTIGATIONS concerning the nature and
 14 extent of any ~~contamination and~~ RELEASES OR THREATENED releases of hazardous or deleterious
 15 substances that have occurred at the ~~site, including any impacts on areas contiguous to the site~~ FACILITY
 16 AND A MAP SHOWING GENERAL AREAS AND CONCENTRATIONS OF HAZARDOUS OR DELETERIOUS
 17 SUBSTANCES;
- 18 (h) any sampling results or other data that characterizes the soil, AIR, ground water, or surface
 19 water on the site; ~~and~~
- 20 (i) a description of the human and environmental exposure to ~~contamination at the site~~ RELEASES
 21 OR THREATENED RELEASES OF HAZARDOUS OR DELETERIOUS SUBSTANCES AT THE FACILITY based
 22 upon the ~~property's~~ current use OF THE FACILITY AND ADJACENT PROPERTIES and any reasonably
 23 anticipated future ~~use proposed by the property owner~~ USES OF THE FACILITY; AND
- 24 (J) READILY AVAILABLE INFORMATION ON THE ENVIRONMENTAL REGULATORY AND
 25 COMPLIANCE HISTORY OF THE FACILITY, INCLUDING ALL ENVIRONMENTAL PERMITS.
- 26 (3) A REMEDIATION PROPOSAL MUST INCLUDE THE FOLLOWING INFORMATION:
- 27 (A) A DETAILED DESCRIPTION OF THE COMPONENTS OF THE REMEDIATION PROPOSAL,
 28 INCLUDING, TO THE EXTENT APPLICABLE:
- 29 (I) THE PROPOSED CLEANUP LEVELS FOR THE FACILITY;
- 30 (II) THE MANNER IN WHICH THE REMEDIATION PLAN SATISFIES THE CLEANUP REQUIREMENTS

1 OF 75-10-721;

2 (III) IDENTIFICATION OF SAMPLING OR TREATABILITY STUDIES; AND

3 (IV) A DEMONSTRATION THAT EXPOSURES TO RISK AFFECTING THE PUBLIC HEALTH, SAFETY,
4 AND WELFARE AND THE ENVIRONMENT AT THE FACILITY WILL BE SUBSTANTIALLY MITIGATED BY THE
5 PLAN;

6 (B) A BRIEF COMPARISON OF THE REMEDIATION PROPOSAL TO REASONABLE ALTERNATIVES
7 BASED ON THE REMEDY SELECTION CRITERIA SPECIFIED IN 75-10-721;

8 (C) A TIMETABLE FOR IMPLEMENTING THE PROPOSAL AND FOR ANY NECESSARY MONITORING
9 OF THE FACILITY AFTER THE PROPOSED MEASURES ARE COMPLETED;

10 (D) A STATEMENT THAT APPLICABLE HEALTH AND SAFETY REGULATIONS WILL BE MET
11 DURING IMPLEMENTATION OF THE REMEDIATION PROPOSAL;

12 (E) A DESCRIPTION OF HOW SHORT-TERM DISTURBANCES DURING IMPLEMENTATION OF THE
13 REMEDATION PROPOSAL WILL BE MINIMIZED; AND

14 (F) IDENTIFICATION OF ANY PERMITS NECESSARY TO CONDUCT THE PROPOSED REMEDIES.

15
16 NEW SECTION. SECTION 8. PUBLIC PARTICIPATION. (1) UPON DETERMINATION BY THE
17 DEPARTMENT THAT AN APPLICATION FOR A VOLUNTARY CLEANUP PLAN IS COMPLETE PURSUANT
18 TO [SECTION 8(1) 9(1)], THE DEPARTMENT SHALL PUBLISH A NOTICE AND BRIEF ANALYSIS OF THE
19 PROPOSED PLAN IN A DAILY NEWSPAPER OF GENERAL CIRCULATION IN THE AREA AFFECTED AND
20 MAKE THE PLAN AVAILABLE TO THE PUBLIC.

21 (2) THE NOTICE MUST PROVIDE 30 DAYS FOR SUBMISSION OF WRITTEN COMMENTS TO THE
22 DEPARTMENT REGARDING THE PLAN. UPON WRITTEN REQUEST BY 10 OR MORE PERSONS, BY A
23 GROUP COMPOSED OF 10 OR MORE MEMBERS, OR BY A LOCAL GOVERNING BODY OF A CITY, TOWN,
24 OR COUNTY WITHIN THE COMMENT PERIOD, THE DEPARTMENT SHALL CONDUCT A PUBLIC MEETING
25 AT OR NEAR THE FACILITY REGARDING THE PROPOSED VOLUNTARY CLEANUP PLAN. THE MEETING
26 MUST BE HELD WITHIN 45 DAYS OF THE DEPARTMENT'S COMPLETENESS DETERMINATION UNDER
27 [SECTION 8(1) 9(1)].

28 (3) THE DEPARTMENT SHALL CONSIDER AND RESPOND TO RELEVANT WRITTEN OR VERBAL
29 COMMENTS SUBMITTED DURING THE COMMENT PERIOD OR AT THE PUBLIC MEETING.

30 (4) THE DEPARTMENT'S DECISION ON THE FINAL PLAN AND THE REASONS FOR ANY

1 SIGNIFICANT MODIFICATION OF THE FINAL PLAN MUST BE PUBLISHED IN ACCORDANCE WITH
 2 SUBSECTION (1).

3 (5) COMPLIANCE WITH THIS SECTION IS CONSIDERED TO SATISFY THE PUBLIC PARTICIPATION
 4 REQUIREMENTS OF TITLE 75, CHAPTER 1.

5
 6 NEW SECTION. Section 9. Approval of voluntary action CLEANUP plan -- time limits -- content
 7 of notice -- expiration of approval. (1) ~~the~~ THE DEPARTMENT SHALL REVIEW FOR COMPLETENESS,
 8 INCLUDING ADEQUACY AND ACCURACY, AN APPLICATION FOR A VOLUNTARY CLEANUP PLAN AND
 9 SHALL PROVIDE A WRITTEN COMPLETENESS NOTICE TO THE APPLICANT WITHIN 30 DAYS AFTER
 10 RECEIPT OF THE APPLICATION. THE COMPLETENESS NOTICE MUST NOTE ALL DEFICIENCIES
 11 IDENTIFIED IN THE INFORMATION SUBMITTED.

12 (2) FOR A VOLUNTARY CLEANUP PLAN THAT IS CONSIDERED COMPLETE BY THE DEPARTMENT
 13 PURSUANT TO SUBSECTION (1), THE department shall provide formal written notification that a THE
 14 voluntary cleanup plan has been approved or disapproved within NO MORE THAN 60 days after a request
 15 by a property owner THE DEPARTMENT'S DETERMINATION THAT AN APPLICATION IS COMPLETE, unless
 16 the property owner or person who may be liable under 75-10-715(1) APPLICANT and the department agree
 17 to an extension of the review to a date certain. The review must be limited to a review of the materials
 18 submitted by the applicant, PUBLIC COMMENTS, and documents or information readily available to the
 19 department. If the department fails to act on an application within the time limits specified in this
 20 subsection (1), the voluntary cleanup plan is approved. THE DEPARTMENT SHALL COMMUNICATE WITH
 21 THE APPLICANT DURING THE REVIEW PERIOD TO ENSURE THAT THE APPLICANT HAS THE
 22 OPPORTUNITY TO ADDRESS THE PUBLIC COMMENTS.

23 (3) (A) IF THE DEPARTMENT RECEIVES FIVE APPLICATIONS FOR REVIEW OF A VOLUNTARY
 24 CLEANUP PLAN IN A CALENDAR MONTH, INCLUDING APPLICATIONS DEFERRED FROM PRIOR MONTHS,
 25 THE DEPARTMENT MAY NOTIFY ANY ADDITIONAL APPLICANTS IN THAT MONTH THAT THEIR PLANS
 26 MUST BE REVIEWED IN THE ORDER RECEIVED. THE 30-DAY PERIOD FOR DEPARTMENT
 27 COMPLETENESS REVIEW OF DEFERRED APPLICATIONS PURSUANT TO SUBSECTION (1) MUST BEGIN
 28 ON THE FIRST DAY OF THE SUBSEQUENT MONTH THAT EACH PLAN IS ELIGIBLE FOR REVIEW.

29 (B) THE DEPARTMENT SHALL DISCONTINUE ACCEPTING VOLUNTARY CLEANUP APPLICATIONS
 30 WHEN 15 APPLICATIONS ARE PENDING AND ARE BEING REVIEWED BY THE DEPARTMENT. THE

1 DEPARTMENT SHALL ESTABLISH A WAITING LIST FOR APPLICATIONS AND SHALL CONSIDER THE
 2 APPLICATIONS IN ORDER OF SUBMITTAL.

3 (C) IF THE DEPARTMENT HAS RECEIVED MULTIPLE CLEANUP APPLICATIONS FOR A
 4 VOLUNTARY CLEANUP AT THE SAME FACILITY, THE DEPARTMENT SHALL NOTIFY ALL OF THE
 5 APPLICANTS AND OFFER THEM THE OPPORTUNITY TO SUBMIT A JOINT APPLICATION.

6 (4) CONSISTENT WITH THE PROVISIONS OF 75-10-707, THE DEPARTMENT MAY ACCESS THE
 7 FACILITY DURING REVIEW OF THE APPLICATION AND IMPLEMENTATION OF THE VOLUNTARY CLEANUP
 8 PLAN TO CONFIRM INFORMATION PROVIDED BY THE APPLICANT AND VERIFY THAT THE CLEANUP IS
 9 BEING CONDUCTED CONSISTENT WITH THE APPROVED PLAN.

10 ~~(b)(5)~~ The department shall approve a voluntary cleanup plan if, ~~based on the information submitted~~
 11 ~~by the property owner or person who may be liable under 75-10-715(1),~~ the department concludes that
 12 the plan MEETS THE REQUIREMENTS SPECIFIED IN [SECTION 6 7] AND will attain a degree of cleanup
 13 and control of hazardous or deleterious substances, ~~or both,~~ that complies with the requirements of
 14 75-10-721. EXCEPT FOR THE PERIOD NECESSARY FOR THE OPERATION AND MAINTENANCE OF THE
 15 APPROVED REMEDIATION PROPOSAL, THE DEPARTMENT MAY NOT APPROVE A VOLUNTARY
 16 REMEDATION PROPOSAL THAT WOULD TAKE LONGER THAN 24 MONTHS AFTER DEPARTMENT
 17 APPROVAL TO COMPLETE.

18 ~~(e)(6)~~ If a voluntary cleanup plan is not approved by the department, the department shall promptly
 19 provide the applicant with a written statement of the reasons for denial. ~~If the department disapproves a~~
 20 ~~voluntary cleanup plan based upon the applicant's failure to submit the information required by [section 1-2],~~
 21 ~~the department shall notify the applicant of the specific information omitted by the applicant.~~

22 ~~(d)(7)~~ The approval of a voluntary cleanup plan by the department applies only to conditions ~~on~~
 23 ~~the property~~ AT THE FACILITY that ~~exist as of~~ ARE KNOWN TO THE DEPARTMENT AT the time of
 24 ~~submission of the application~~ DEPARTMENT APPROVAL. If a voluntary ~~cleanup plan~~ REMEDATION
 25 PROPOSAL is not initiated within 12 months and, EXCEPT FOR THE PERIOD NECESSARY FOR THE
 26 OPERATION AND MAINTENANCE OF THE APPROVED REMEDIATION PROPOSAL, IS NOT completed within
 27 24 months after approval by the department, the department's approval lapses. However, the department
 28 may grant an extension of the time limit for completion of the voluntary cleanup plan.

29 (8) IF REASONABLY UNFORESEEABLE CONDITIONS ARE DISCOVERED DURING
 30 IMPLEMENTATION OF A VOLUNTARY CLEANUP PLAN THAT SUBSTANTIALLY AFFECT THE RISK TO

1 PUBLIC HEALTH, SAFETY, OR WELFARE OR THE ENVIRONMENT OR SUBSTANTIALLY CHANGE THE
 2 SCOPE OF THE APPROVED PLAN, THE APPLICANT SHALL PROMPTLY NOTIFY THE DEPARTMENT. THE
 3 DEPARTMENT MAY REQUIRE THE APPLICANT TO SUBMIT AN AMENDMENT TO THE APPROVED PLAN
 4 TO ADDRESS THE UNFORESEEN CONDITIONS OR MAY DETERMINE THAT A VOLUNTARY CLEANUP
 5 PLAN IS NO LONGER APPROPRIATE PURSUANT TO [SECTION 4(3) 5(3)].

6 ~~(2)(9)~~ Written notification by the department that a voluntary cleanup plan is NOT approved must
 7 ~~contain~~ STATE the basis for ~~the approval~~ DISAPPROVAL OF THE VOLUNTARY CLEANUP PLAN.

8 ~~(3)(10)~~ (a) Failure of ~~a property owner~~ THE APPLICANT OR THE APPLICANT'S AGENTS to
 9 materially comply with the voluntary cleanup plan approved by the department pursuant to this section
 10 renders the approval void.

11 (b) Submission of materially misleading information by the applicant OR THE APPLICANT'S
 12 AGENTS in the APPLICATION OR DURING IMPLEMENTATION OF THE voluntary cleanup plan renders the
 13 department approval void.

14 ~~(4)(11)~~ Within 60 days after ~~the completion of the voluntary cleanup~~ APPROVED REMEDIATION
 15 PROPOSAL described in the voluntary cleanup plan approved by the department, the applicant shall provide
 16 to the department a certification from a qualified environmental professional that the plan has been fully
 17 implemented, INCLUDING ALL DOCUMENTATION NECESSARY TO DEMONSTRATE THE SUCCESSFUL
 18 IMPLEMENTATION OF THE PLAN, SUCH AS CONFIRMATION SAMPLING, IF NECESSARY.

19 ~~(12)~~ EXCEPT AS PROVIDED IN [SECTION 4(2)(B) 11(2)(B)], THE DEPARTMENT MAY NOT
 20 REQUIRE FINANCIAL ASSURANCE UNDER THIS PART FOR VOLUNTARY CLEANUP PLANS APPROVED
 21 UNDER THIS SECTION.

22 ~~(13)~~ IF A PERSON WHO WOULD OTHERWISE NOT BE A LIABLE PERSON UNDER 75-10-715(1)
 23 ELECTS TO UNDERTAKE AN APPROVED VOLUNTARY CLEANUP PLAN, THE PERSON MAY NOT BECOME
 24 A LIABLE PERSON UNDER 75-10-715(1) BY UNDERTAKING A VOLUNTARY CLEANUP IF THE PERSON
 25 MATERIALLY COMPLIES WITH THE VOLUNTARY CLEANUP PLAN APPROVED BY THE DEPARTMENT
 26 PURSUANT TO THIS SECTION.

27 ~~(14)~~ AFTER COMPLETION OF AN APPROVED VOLUNTARY CLEANUP PLAN OR PHASE OF A
 28 PLAN, A PERSON WHO IS LIABLE UNDER 75-10-715(1) AND INCURS REMEDIAL ACTION COSTS MAY
 29 SEEK CONTRIBUTION AND REIMBURSEMENT FROM THE ENVIRONMENTAL QUALITY PROTECTION FUND
 30 PURSUANT TO THE REQUIREMENTS AND LIMITATIONS OF 75-10-724.

1 (14) IMMUNITY FROM LIABILITY UNDER THIS SECTION DOES NOT APPLY TO A RELEASE THAT
 2 IS CAUSED BY CONDUCT THAT IS NEGLIGENT OR GROSSLY NEGLIGENT OR THAT CONSTITUTES
 3 INTENTIONAL MISCONDUCT.

4
 5 NEW SECTION. Section 10. Voluntary action to preclude remedial action by department. If a party
 6 has elected to undertake an approved voluntary cleanup and is diligently proceeding to implement the plan,
 7 the department may not, except as provided in 75-10-712, take remedial action under 75-10-711 WITH
 8 REGARD TO THOSE RELEASES OR THREATENED RELEASES OF HAZARDOUS OR DELETERIOUS
 9 SUBSTANCES THAT ARE ADDRESSED BY THE APPROVED VOLUNTARY CLEANUP PLAN.

10
 11 NEW SECTION. Section 11. Closure and release from liability. (1) After completion of the
 12 ~~remedial actions required by the department under this part or the voluntary action plan, a property owner~~
 13 ~~or any person who may be liable under 75-10-715(1)~~ VOLUNTARY CLEANUP PLAN, AN APPLICANT may
 14 petition the department for closure of the ~~site and release from liability for remedial actions and remedial~~
 15 ~~action costs~~ FACILITY under [sections ~~40 2 3~~ through ~~46 40 11~~].

16 (2) ~~The~~ WITHIN 60 DAYS OF RECEIPT OF A PETITION FOR CLOSURE, WEATHER PERMITTING,
 17 THE department shall CONDUCT A review ~~the site~~ to determine that the ~~site does~~ RELEASES OR
 18 THREATENED RELEASES ADDRESSED IN THE VOLUNTARY CLEANUP PLAN DO not pose a significant
 19 threat to public health, welfare, or safety or to the environment as determined in accordance with
 20 75-10-721 and that the ~~responsible parties have~~ APPLICANT HAS:

21 (a) implemented all appropriate ~~response~~ REMEDIAL actions; ~~and~~

22 (b) IF NECESSARY, provided for long-term funding for ~~site~~ FACILITY maintenance or monitoring;

23 AND

24 (C) REIMBURSED THE DEPARTMENT FOR ALL REMEDIAL ACTION COSTS OF THE VOLUNTARY
 25 CLEANUP.

26 (3) In the event that the petition for closure ~~and release from liability~~ is not approved by the
 27 department, the department shall promptly provide the applicant with a written statement of the reasons
 28 for denial. Written notification that the petition is approved by the department must include the following
 29 language:

30 "Based upon the information provided by [insert name(s) of ~~property owner(s)~~ APPLICANT(S)]

1 concerning property located at [insert address], it is the opinion of the Montana Department of Health and
2 Environmental Sciences that upon completion of the remedial action or voluntary cleanup plan:

3 ~~(1) no further action is required to ensure that this property, when used for the purposes identified,~~
4 ~~is protective of existing and proposed uses and does not pose an unacceptable risk to the public health,~~
5 ~~welfare, or safety or to the environment at the site; and~~

6 ~~(2) [insert name(s) of property owner(s) or any person who may be liable under 75-10-715(1)] are~~
7 ~~released from any liability, claims, or causes of action for remedial costs and remedial actions at the site."~~

8 VOLUNTARY CLEANUP PLAN, NO FURTHER ACTION IS REQUIRED TO ENSURE THAT THIS FACILITY,
9 WHEN USED FOR THE [INSERT PURPOSES IDENTIFIED], IS PROTECTIVE OF EXISTING AND PROPOSED
10 USES AND DOES NOT POSE A SIGNIFICANT RISK TO PUBLIC HEALTH, SAFETY, OR WELFARE OR THE
11 ENVIRONMENT AT THE FACILITY WITH REGARD TO RELEASES OR THREATENED RELEASES ADDRESSED
12 IN THE VOLUNTARY CLEANUP PLAN. THE DEPARTMENT RESERVES THE RIGHT TO CONDUCT OR
13 REQUIRE FURTHER REMEDIAL ACTION AT THIS FACILITY IF A NEW RELEASE OCCURS OR IF THE
14 DEPARTMENT RECEIVES NEW OR DIFFERENT INFORMATION THAN PRESENTED IN THE APPROVED
15 VOLUNTARY CLEANUP PLAN."

16 (4) AFTER COMPLETION OF A PORTION OF A FACILITY ADDRESSED IN THE VOLUNTARY
17 CLEANUP PLAN, THE DEPARTMENT SHALL ISSUE A LETTER OF COMPLETION NOTICE TO THE
18 APPLICANT IF THE DEPARTMENT DETERMINES THAT THE APPLICANT HAS SATISFIED THE
19 REQUIREMENTS OF SUBSECTION (2).

20
21 ~~Section 17. Section 85-1-604, MCA, is amended to read:~~

22 ~~"85-1-604. Renewable resource grant and loan program state special revenue account created --~~
23 ~~revenues allocated -- limitations on appropriations from account. (1) There is created a renewable resource~~
24 ~~grant and loan program state special revenue account within the state special revenue fund established in~~
25 ~~17-2-102.~~

26 ~~(2) Except to the extent that they are required to be credited to the renewable resource loan debt~~
27 ~~service fund pursuant to 85-1-603, there must be paid into the renewable resource grant and loan program~~
28 ~~state special revenue account:~~

29 ~~(a) all revenues of the works and other money as provided in 85-1-332;~~

30 ~~(b) 38% of the amount of interest income of the resource indemnity trust fund as provided in and~~

1 ~~subject to the conditions of 15-38-202;~~

2 ~~(e) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource~~
 3 ~~loan debt service fund above debt service requirements as provided in and subject to the conditions of~~
 4 ~~85-1-619;~~

5 ~~(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of~~
 6 ~~loans, including arrangements for obtaining security interests; and~~

7 ~~(e) 20% of the resource indemnity tax proceeds.~~

8 ~~(3) Appropriations may be made from the renewable resource grant and loan program state special~~
 9 ~~revenue account for the following purposes and subject to the following conditions:~~

10 ~~(a) The amount of resource indemnity trust fund interest earnings allocated under 15-38-202(2)(b)~~
 11 ~~must be used for renewable resource grants.~~

12 ~~(b) An amount less than or equal to that paid into the account under 85-1-332 and only that~~
 13 ~~amount may be appropriated for the operation and maintenance of state owned projects and works. If the~~
 14 ~~amount of money available for appropriation under this subsection (b) is greater than that necessary for~~
 15 ~~operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(c).~~

16 ~~(c) An amount less than or equal to that paid into the account from the resource indemnity trust~~
 17 ~~account plus any excess from subsection (3)(b) and only that amount may be appropriated from the~~
 18 ~~account for expenditures that meet the policies and objectives of the renewable resource grant and loan~~
 19 ~~program. If the amount of money available for appropriation under this subsection (c) is greater than that~~
 20 ~~necessary for operation and maintenance expenses, the excess may be appropriated as provided in~~
 21 ~~subsection (3)(d).~~

22 ~~(d) An amount less than or equal to that paid into the account from the sources provided for in~~
 23 ~~subsections (2)(c) and (2)(d) and any excess from subsection (3)(c) and only that amount may be~~
 24 ~~appropriated from the account for:~~

25 ~~(i) loans and grants for renewable resource projects;~~

26 ~~(ii) for purchase of liens and operation of property as provided in 85-1-615;~~

27 ~~(iii) for administrative expenses, including but not limited to the salaries and expenses of personnel,~~
 28 ~~equipment, and office space;~~

29 ~~(iv) for the servicing of loans, including arrangements for obtaining security interests; and~~

30 ~~(v) for other necessities incurred in administering the loans and grants."~~

1 NEW SECTION. SECTION 12. STUDY PROCESS. THE DEPARTMENT OF HEALTH AND
 2 ENVIRONMENTAL SCIENCES, WITH LEGISLATIVE OVERSIGHT FROM THE ENVIRONMENTAL QUALITY
 3 COUNCIL, SHALL INSTITUTE A COLLABORATIVE PROCESS INVOLVING ALL AFFECTED AND INTERESTED
 4 PARTIES THAT SPECIFICALLY ANALYZES THE ELIMINATION OF JOINT AND SEVERAL LIABILITY WITH
 5 RESPECT TO CLEANUP OF STATE CECRA SITES AND ANY RELATED FUNDING NECESSARY TO CLEAN
 6 UP STATE CECRA SITES AS A RESULT OF ELIMINATING JOINT AND SEVERAL LIABILITY. THE
 7 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES SHALL SUBMIT A REPORT AND
 8 LEGISLATIVE PROPOSALS THAT COLLABORATIVELY RESULTED FROM THAT PROCESS TO THE 55TH
 9 LEGISLATURE.

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

15
 16 NEW SECTION. Section 14. Codification instructions. ~~(1) [Section 9] is intended to be codified~~
 17 ~~as an integral part of Title 82, chapter 4, and the provisions of Title 82, chapter 4, apply to [section 9].~~

18 ~~(2) [Sections 10 2 3 through 16 10 11] are intended to be codified as an integral part of Title 75,~~
 19 ~~chapter 10, part 7, and the provisions of Title 75, chapter 10, part 7, apply to [sections 10 2 3 through~~
 20 ~~16 10 11].~~

21
 22 NEW SECTION. Section 15. Applicability. (1) [This act] applies to all pending actions or
 23 proceedings by the state DOES NOT APPLY TO CIVIL OR ADMINISTRATIVE ACTIONS COMMENCED OR
 24 BEGUN PRIOR TO [THE EFFECTIVE DATE OF THIS ACT] OR TO CLAIMS BASED ON THOSE ACTIONS.
 25 CLAIMS FOR REIMBURSEMENT FROM THE ENVIRONMENTAL QUALITY PROTECTION FUND MAY NOT
 26 BE SUBMITTED FOR ANY COSTS INCURRED PRIOR TO [THE EFFECTIVE DATE OF THIS ACT].

27 (2) [SECTIONS 2 THROUGH 10] APPLY AFTER JANUARY 1, 2001, TO VOLUNTARY CLEANUP
 28 PLANS APPROVED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES BETWEEN [THE
 29 EFFECTIVE DATE OF THIS ACT] AND JANUARY 1, 2001.

1 NEW SECTION. SECTION 16. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND
2 APPROVAL.

3

4 NEW SECTION. SECTION 17. TERMINATION. [SECTIONS 2 THROUGH 10] TERMINATE
5 JANUARY 1, 2001.

6

7 ~~NEW SECTION. Section 21. Effective date. [This act] is effective on passage and approval.~~

8

-END-

Free Conference Committee
on SB 382
Report No. 1, April 12, 1995

Page 1 of 8

Mr. President and Mr. Speaker:

We, your Free Conference Committee on SB 382, met and considered:

SB 382 in its entirety

We recommend that SB 382 (reference copy as amended - salmon) be amended as follows:

1. Title, line 6.

Following: "PROCESS;"

Insert: "ESTABLISHING THE MIXED FUNDING PILOT PROGRAM;"

2. Title, line 9.

Following: "SECTIONS"

Insert: "15-37-117,"

Following: "75-10-701"

Insert: ", "

3. Title, line 10.

Strike: "AND"

Following: "~~85-1-604,~~"

Insert: "AND 75-10-722,"

4. Title, line 12.

Strike: "A"

Strike: "DATE"

Insert: "DATES"

5. Page 16, line 21.

Strike: "3"

Insert: "4"

Strike: "11"

Insert: "12"

6. Page 21.

Following: line 25

Insert: "

Section 3. Section 75-10-722, MCA, is amended to read:

"75-10-722. 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~~ may 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).

ADOPT

REJECT

SB 382
FCCR #1

841641CC.SPV

(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.

(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 onsite 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."
Renumber: subsequent sections

7. Page 21, line 26.

Strike: "3"

Insert: "4"

Strike: "11"

Insert: "12"

8. Page 21, line 30.

Strike: "3"

Insert: "4"

Strike: "11"

Insert: "12"

9. Page 23, line 18.

Strike: "9"

Insert: "10"

10. Page 24, lines 5, 7, and 20.

Strike: "7"

Insert: "8"

11. Page 24, line 26.

Strike: "3"

Insert: "4"

Strike: "11"

Insert: "12"

12. Page 26, lines 18 and 27.

Strike: "9(1)"

Insert: "10(1)"

13. Page 28, line 12.

Strike: "7"

Insert: "8"

14. Page 29, line 5.

Strike: "5(3)"

Insert: "6(3)"

15. Page 29, line 19.

Strike: "11(2)(B)"

Insert: "12(2)(b)"

16. Page 30, line 15.

Strike: "3"

Insert: "4"

Strike: "11"

Insert: "12"

17. Page 33.

Following: line 10

NEW SECTION. **Section 14. Short title.** [Sections 14 through 20] may be cited as the "Mixed Funding Pilot Program".

NEW SECTION. **Section 15. Purpose -- legislative declaration.** (1) The purposes of [sections 14 through 20] are to establish a pilot remediation program to operate in conjunction with the voluntary cleanup program provided for in [sections 4 through 12] and to provide information during the 2-year study process in [section 13].

(2) The legislature further intends that the pilot program provide necessary data related to:

(a) actual costs incurred in the remediation of facilities;
(b) the costs associated with the elimination of joint and several liability;

(c) the potential use of resource indemnity trust fund money in remediating facilities;

(d) the feasibility of voluntary cleanup plans; and

(e) the coordination between an applicant and the department in the use of voluntary cleanup programs.

NEW SECTION. **Section 16. Criteria.** (1) The pilot program must consist of remediation of three sites from the department of state lands' abandoned hard-rock mine priority list. The three sites must be selected from the top ten priority sites on that list as of April 1, 1995.

(2) Any site remediated under this pilot program must meet

the following criteria:

(a) The owner of the property has, prior to May 22, 1989, purchased or entered into a lease purchase agreement or an option to purchase property where the facility is located.

(b) The applicant has submitted a voluntary cleanup plan in accordance with the provisions of [sections 7 and 8].

(c) The department has accepted and approved the application for a voluntary cleanup plan in accordance with the provisions of [sections 6 through 10].

(3) The department and the applicant shall negotiate an apportionment of the applicant's liability pursuant to [section 17]. The department, as a trier of fact, shall make the final determination of the applicant's apportioned liability. If the applicant disagrees with the department's determination of the applicant's proportionate share of liability, the applicant may appeal the department's decision in accordance with the requirements of [section 6(4)].

(4) If more than three applicants submit voluntary cleanup plans for the highest priority sites on the department of state lands' abandoned hard-rock mine priority list and the department approves more than three plans, the department shall select three plans to incorporate into the pilot program on a priority basis as determined by the date of submittal of a complete application.

NEW SECTION. Section 17. Mixed funding -- determination of liability. (1) An applicant who satisfies the requirements of [section 16(2)] shall meet with the department within 30 days of approval of the voluntary cleanup plan to negotiate an apportionment of liability for the site. The burden is on the applicant to show how the applicant's liability should be apportioned. In apportioning the liability of the applicant under this section, the department shall balance all of the following factors:

(a) the extent to which the applicant caused the release of the hazardous or deleterious substance;

(b) the extent to which an applicant's contribution to the release of a hazardous or deleterious substance can be diminished;

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

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

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

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

(g) the applicant's knowledge of the hazardous nature of

the substance.

(2) Once the department and the applicant have negotiated an apportionment of the applicant's liability, the applicant has a right of reimbursement subject to the requirements and limitations of [section 18].

NEW SECTION. Section 18. Claims for and limitations on reimbursement. (1) After completion of the voluntary cleanup plan approved by the department, the applicant may apply to and must, in accordance with this section, receive reimbursement from the abandoned mines state special revenue account. Reimbursement must be subject to the following requirements and limitations:

(a) The applicant shall complete remediation prior to making a claim for reimbursement.

(b) The reimbursement may not exceed 90% of eligible costs up to a maximum of \$300,000 per facility.

(c) The claim for reimbursement may not include legal fees or department costs incurred in the oversight of the voluntary cleanup plan.

(2) For purposes of this section, "eligible costs" means costs in excess of an applicant's proportionate share of total costs incurred in the remediation of the site during the 1996-97 biennium.

(3) If costs are reimbursed out of the abandoned mines state special revenue account, nothing in [sections 14 through 20] prohibits the department from pursuing an action against other potentially liable parties to recover those costs.

(4) If the abandoned mines state special revenue account does not contain sufficient money to pay received claims for reimbursement, the abandoned mines state special revenue account and the department are not liable for making any reimbursement at that time. All claims are subject to appropriations to the abandoned mines state special revenue account.

NEW SECTION. Section 19. Abandoned mines state special revenue account created. (1) There is an abandoned mines state special revenue account within the state special revenue account fund established in 17-2-102.

(2) There must be paid into the abandoned mines state special revenue account money allocated from the metalliferous mines license tax pursuant to 15-37-117.

(3) Deposits to the abandoned mines state special revenue account must be placed in short-term investments. The interest on short-term investments must be deposited in the abandoned mines state special revenue account.

(4) The purpose of the abandoned mines state special revenue account is to provide the funding to the department of health and environmental sciences for the cleanup and reclamation of sites eligible for the pilot program in [sections 14 through

20].

NEW SECTION. Section 20. Incorporation into study process -- report to legislature. The department of health and environmental sciences and applicants participating in the pilot program shall submit reports to the 55th legislature detailing the success of and difficulties with the operation of the pilot program.

Section 21. Section 15-37-117, MCA, is amended to read:

"15-37-117. Disposition of metalliferous mines license taxes. (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;

(c) ~~to the state resource indemnity trust fund, 15.5% to~~ the abandoned mines state special revenue account provided for in [section 19], 8.5% of total collections each year;

(d) to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(d)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(d) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(d). The allocation to the county described by subsection (1)(d) is a statutory appropriation pursuant to 17-7-502."

NEW SECTION. Section 22. Coordination instruction. If House Bill No. 569 and [this act] are both passed and approved, the amendment to 15-37-117(1)(c) in House Bill No. 569, relating to the percentage allocation to the resource indemnity trust fund, is void."

Renumber: subsequent sections

18. Page 33, line 18.

Strike: "3"

Insert: "4"

Strike: "11"

Insert: "12"

19. Page 33, line 19.

Strike: "3"

Insert: "4"

20. Page 33, line 20.

Strike: "11"

Insert: "12"

21. Page 33, line 27.

Strike: "2"

Insert: "4"

Strike: "10"

Insert: "12"

22. Page 34, line 4

Following: "TERMINATION."

Insert: "(1)"

Strike: "2"

Insert: "4"

Strike: "10"

Insert: "12"

23. Page 34.

Following: line 5

Insert: "(2) [Sections 14 through 21] terminate June 30, 1997."

And that this Free Conference Committee report be adopted.

For the Senate:

Grosfield *[Signature]*

Chair

Lynch *[Signature]*

Foster *[Signature]*

Amd. Coord.

[Signature]
Sec. of Senate

For the House:

Orr *[Signature]*

Chair

Knox *[Signature]*

Tuss *[Signature]*

1 SENATE BILL NO. 382

2 INTRODUCED BY HARP, BECK

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING NATURAL RESOURCE AND
 5 ENVIRONMENTAL LAWS THE DEGREE OF METHOD OF SELECTING CLEANUP REQUIRED FOR REMEDIAL
 6 ACTIONS; CREATING A VOLUNTARY CLEANUP AND REDEVELOPMENT PROCESS; ESTABLISHING THE
 7 MIXED FUNDING PILOT PROGRAM; REQUIRING THE DEPARTMENT TO SET UP A COLLABORATIVE
 8 PROCESS THAT ANALYZES THE ELIMINATION OF JOINT AND SEVERAL LIABILITY AND RELATED
 9 FUNDING NECESSARY TO CLEAN UP STATE SUPERFUND SITES; AMENDING SECTIONS 15-38-202,
 10 75-10-701, 75-10-704, 75-10-711, SECTION SECTIONS 15-37-117, 75-10-701, AND 75-10-715,
 11 75-10-721, 75-10-722, 75-10-724, AND 85-1-604, AND 75-10-722, MCA; AND PROVIDING AN
 12 IMMEDIATE EFFECTIVE DATE AND AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE DATES,
 13 AND A TERMINATION DATE DATES."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
 17 ~~Section 1. Section 15-38-202, MCA, is amended to read:~~

18 ~~"15-38-202. (Temporary) Investment of resource indemnity trust fund expenditure minimum~~
 19 ~~balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund~~
 20 ~~under the provisions of 15-37-117, must be invested at the discretion of the board of investments. All the~~
 21 ~~net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund until~~
 22 ~~it has reached the sum of \$10 million. Thereafter, only the net earnings may be appropriated and expended~~
 23 ~~until the fund reaches \$100 million. Thereafter, all net earnings and all receipts must be appropriated by~~
 24 ~~the legislature and expended, provided that the balance in the fund may never be less than \$100 million.~~

25 ~~(2) (a) At the beginning of each biennium, there is allocated from the interest income of the~~
 26 ~~resource indemnity trust fund:~~

27 ~~(i) an amount not to exceed \$175,000 to the environmental contingency account pursuant to the~~
 28 ~~conditions of 75-1-1101;~~

29 ~~(ii) an amount not to exceed \$50,000 to the oil and gas production damage mitigation account~~
 30 ~~pursuant to the conditions of 82-11-161;~~

1 ~~(iii) beginning in fiscal year 1995, \$240,000, which is statutorily appropriated, as provided in~~
2 ~~17-7-502, from the renewable resource grant and loan program state special revenue account to support~~
3 ~~the operations of the environmental science water quality instructional programs at northern Montana~~
4 ~~college to be used for support costs, for matching funds necessary to attract additional funds to further~~
5 ~~expand statewide impact, and for enhancement of the facilities related to the programs;~~

6 ~~(iv) \$1,025,000 to be deposited into the renewable resource grant and loan program state special~~
7 ~~revenue account, created by 85-1-604, for the purpose of making grants;~~

8 ~~(v) \$2,200,000 to be deposited into the reclamation and development grants state special revenue~~
9 ~~account, created by 90-2-1104, for the purpose of making grants; and~~

10 ~~(vi) beginning in fiscal year 1994, \$250,000 to be deposited into the water storage state special~~
11 ~~revenue account created by 85-1-631.~~

12 ~~(b) The remainder of the interest income is allocated as follows:~~

13 ~~(i) Thirty eight percent of the interest income of the resource indemnity trust fund must be~~
14 ~~allocated to the renewable resource grant and loan program state special revenue account created by~~
15 ~~85-1-604.~~

16 ~~(ii) Fifteen percent of the interest income of the resource indemnity trust fund must be allocated to~~
17 ~~the hazardous waste/CERCLA special revenue account provided for in 75-10-621.~~

18 ~~(iii) Forty one and one half percent of the interest income from the resource indemnity trust fund~~
19 ~~must be allocated to the reclamation and development grants account provided for in 90-2-1104.~~

20 ~~(iv) Five and one half percent of the interest income of the resource indemnity trust fund must be~~
21 ~~allocated to the environmental quality protection fund provided for in 75-10-704.~~

22 ~~(3) Any formal budget document prepared by the legislature or the executive branch that proposes~~
23 ~~to appropriate funds from the resource indemnity trust interest account other than as provided for by the~~
24 ~~allocations in subsection (2) must specify the amount of money from each allocation that is proposed to~~
25 ~~be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and~~
26 ~~publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the~~
27 ~~legislative appropriation process or otherwise during a legislative session.~~

28 ~~15-38-202. (Effective July 1, 1995) Investment of resource indemnity trust fund expenditure~~
29 ~~minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into~~
30 ~~the fund under the provisions of 15-37-117, must be invested at the discretion of the board of investments.~~

1 ~~All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund~~
 2 ~~until it has reached the sum of \$10 million. Thereafter, only the net earnings may be appropriated and~~
 3 ~~expended until the fund reaches \$100 million. Thereafter, all net earnings and all receipts must be~~
 4 ~~appropriated by the legislature and expended, provided that the balance in the fund may never be less than~~
 5 ~~\$100 million.~~

6 ~~(2) (a) At the beginning of each biennium, there is allocated from the interest income of the~~
 7 ~~resource indemnity trust fund:~~

8 ~~(i) an amount not to exceed \$175,000 to the environmental contingency account pursuant to the~~
 9 ~~conditions of 75-1-1101;~~

10 ~~(ii) an amount not to exceed \$50,000 to the oil and gas production damage mitigation account~~
 11 ~~pursuant to the conditions of 82-11-161;~~

12 ~~(iii) beginning in fiscal year 1995, \$240,000, which is statutorily appropriated, as provided in~~
 13 ~~17-7-502, from the renewable resource grant and loan program state special revenue account to support~~
 14 ~~the operations of the environmental science water quality instructional programs at northern Montana~~
 15 ~~college to be used for support costs, for matching funds necessary to attract additional funds to further~~
 16 ~~expand statewide impact, and for enhancement of the facilities related to the programs;~~

17 ~~(iv) beginning in fiscal year 1996 1997, \$2 \$1 million to be deposited into the renewable resource~~
 18 ~~grant and loan program state special revenue account, created by 85-1-604, for the purpose of making~~
 19 ~~grants;~~

20 ~~(v) beginning in fiscal year 1996 1997, \$3 \$2 million to be deposited into the reclamation and~~
 21 ~~development grants state special revenue account, created by 90-2-1104, for the purpose of making grants;~~
 22 ~~and~~

23 ~~(vi) beginning in fiscal year 1996, \$500,000 to be deposited into the water storage state special~~
 24 ~~revenue account created by 85-1-631.~~

25 ~~(b) The remainder of the interest income is allocated as follows:~~

26 ~~(i) Thirty six Sixteen percent of the interest income of the resource indemnity trust fund must be~~
 27 ~~allocated to the renewable resource grant and loan program state special revenue account created by~~
 28 ~~85-1-604.~~

29 ~~(ii) Eighteen percent of the interest income of the resource indemnity trust fund must be allocated~~
 30 ~~to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.~~

1 ~~(iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated~~
2 ~~to the reclamation and development grants account provided for in 90-2-1104.~~

3 ~~(iv) Six Sixteen percent of the interest income of the resource indemnity trust fund must be~~
4 ~~allocated to the environmental quality protection fund provided for in 75-10-704.~~

5 ~~(v) Ten percent of the interest income from the resource indemnity trust fund must be allocated~~
6 ~~to the abandoned mine state special revenue account provided in [section 9].~~

7 ~~(3) Any formal budget document prepared by the legislature or the executive branch that proposes~~
8 ~~to appropriate funds from the resource indemnity trust interest account other than as provided for by the~~
9 ~~allocations in subsection (2) must specify the amount of money from each allocation that is proposed to~~
10 ~~be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and~~
11 ~~publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the~~
12 ~~legislative appropriation process or otherwise during a legislative session."~~

13
14 **Section 2.** Section 75-10-701, MCA, is amended to read:

15 ~~"75-10-701. Definitions.~~ As used in this part, unless the context requires otherwise, the following
16 ~~definitions apply:~~

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

19 ~~(2) "Director" means the director of the department of health and environmental sciences.~~

20 ~~(3) "Disposed" or "disposal" means:~~

21 ~~(a) an affirmative act resulting in a discharge, deposit, injection, dumping, storing, spilling, leaking,~~
22 ~~or placing of any hazardous or deleterious substance on any land or water so that the hazardous or~~
23 ~~deleterious substance may enter the environment, be emitted into the air, or be discharged into any waters,~~
24 ~~including ground waters.~~

25 ~~(b) Disposed or disposal does not include the passive migration, movement, or dispersion of a~~
26 ~~hazardous or deleterious substance or any constituent through the environment that occurs after the initial~~
27 ~~disposal of the hazardous or deleterious substance into the environment.~~

28 ~~(3)(4) "Environment" means any surface water, ground water, drinking water supply, land surface~~
29 ~~or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of~~
30 ~~Montana.~~

1 ~~(4) (a)(5) (a)~~ "Facility" means:

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

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

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

8 ~~(5)(6)~~ "Fund" means the environmental quality protection fund established in ~~75-10-704~~.

9 ~~(6)(7) (a)~~ "Hazardous or deleterious substance" means a substance that because of its quantity,
 10 concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial
 11 threat to public health, safety, or welfare or the environment and is:

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

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

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

20 ~~(d)(iv) any petroleum product.~~

21 ~~(b) Hazardous or deleterious substance does not include any waste or constituent, the regulation~~
 22 ~~of which under the Solid Waste Disposal Act, 42 U.S.C. 6901, has been suspended by an act of congress~~
 23 ~~or that has been excluded from the definition of hazardous waste under 40 CFR 261.4(b)(7).~~

24 ~~(7)(8)~~ "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water,
 25 drinking water supplies, and any other such resources within the state of Montana owned, managed, held
 26 in trust or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the
 27 state.

28 ~~(8) (a)(9) (a)~~ "Owns or operates" means owning, leasing, operating, managing activities at, or
 29 exercising control over the operation of a facility.

30 ~~(b) The term does not include holding the indicia of ownership of a facility primarily to protect a~~

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

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

14 ~~(10)(11)~~ "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities
15 subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any
16 other petroleum related product or waste or fraction thereof that is liquid at standard conditions of
17 temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

18 ~~(11)(12)~~ "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging,
19 injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into
20 the environment (including the abandonment or discarding of barrels, containers, and other closed
21 receptacles containing any hazardous or deleterious substance), but excludes releases confined to the
22 indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in
23 accordance with approved federal and state labels, and the use of commercial fertilizers as defined in
24 80-10-101(2) when applied as part of accepted agricultural practice.

25 ~~(12)(13)~~ "Remedial action" includes all notification, investigation, administration, monitoring,
26 cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action,
27 health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or
28 threatened release.

29 ~~(13)(14)~~ "Remedial action contract" means a written contract or agreement entered into by a
30 remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or

1 request issued by the department, the United States, or any federal agency, to provide a remedial action
2 with respect to a release or threatened release of a hazardous or deleterious substance.

3 ~~(14)(15)~~ "Remedial action contractor" means:

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

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

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

10
11 ~~Section 3. Section 75-10-704, MCA, is amended to read:~~

12 ~~"75-10-704. Environmental quality protection fund. (1) There is in the state special revenue fund~~
13 ~~an environmental quality protection fund to be administered as a revolving fund by the department. The~~
14 ~~department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.~~
15 ~~The use of the fund is limited to remediation of sites not listed on the national priorities list.~~

16 ~~(2) The fund may be used by the department only to:~~

17 ~~(a) provide the department with funding for remedial actions to the extent that parties liable under~~
18 ~~75-10-715 cannot pay all remedial action costs required to be expended to remedy releases at a facility;~~

19 ~~(b) reimburse liable parties whose contributions to remedial action costs exceed their proportionate~~
20 ~~liability;~~

21 ~~(c) carry out the provisions of this part and provide for remedial actions taken by the department~~
22 ~~pursuant to this part in response to a release of hazardous or deleterious substances; and~~

23 ~~(d) carry out the provisions of this part.~~

24 ~~(3) The department shall:~~

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

27 ~~(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain~~
28 ~~the participation and financial contribution of liable persons for the remedial action, to achieve remedial~~
29 ~~action, and to recover costs and damages incurred by the state.~~

30 ~~(4) There must be deposited in the fund:~~

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

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

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

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

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

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

14
15 ~~**Section 4.** Section 75-10-711, MCA, is amended to read:~~

16 ~~**"75-10-711. Remedial action orders penalties judicial proceedings.** (1) The department may~~
17 ~~take remedial action whenever:~~

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

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

23 ~~(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to~~
24 ~~believe that a release has occurred or is about to occur, the department may undertake remedial action in~~
25 ~~the form of any investigation, monitoring, survey, testing, or other information gathering as authorized by~~
26 ~~75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the~~
27 ~~release or the threat of release and the extent and imminence of the danger to the public health, safety,~~
28 ~~or welfare or the environment.~~

29 ~~(3) Any person liable under 75-10-715(1) must take immediate action to contain, remove, and~~
30 ~~abate the release. Except as provided in 75-10-712, the department is authorized to draw upon the fund~~

1 ~~to take action under subsection (1) if it has made diligent good faith efforts to determine the identity of the~~
 2 ~~person or persons liable for the release or threatened release and:~~

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

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

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

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

16 ~~(5) (a) A person who violates or fails or refuses to comply with an order issued under 75-10-707~~
 17 ~~or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than~~
 18 ~~\$10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining~~
 19 ~~the amount of any penalty assessed, the court may take into account:~~

20 ~~(i) the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the~~
 21 ~~person liable under 75-10-715(1), his the person's ability to pay;~~

22 ~~(ii) any prior history of such violations;~~

23 ~~(iii) the degree of culpability;~~

24 ~~(iv) the economic benefit or savings, if any, resulting from the noncompliance; and~~

25 ~~(v) any other matters as that justice may require.~~

26 ~~(b) Civil penalties collected under this subsection must be deposited into the environmental quality~~
 27 ~~protection fund established in 75-10-704.~~

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

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

1 ~~(b) an action to enforce an order issued under 75 10 707 or this section;~~

2 ~~(c) an action to recover a civil penalty for violation of or failure to comply with an order issued~~
3 ~~under 75 10 707 or this section; or~~

4 ~~(d) an action by a person to whom an order has been issued to determine the validity of the order,~~
5 ~~only if the person has been in compliance and continues in compliance with the order pending decision of~~
6 ~~the court.~~

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

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

16 ~~(9) The Except as provided in 75 10 712, the department may not take remedial action pursuant~~
17 ~~to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response,~~
18 ~~Compensation, and Liability Act of 1980, Public Law 96 510, if the department determines that remedial~~
19 ~~action is necessary to carry out the purposes of this part as amended. This subsection may not restrict the~~
20 ~~department from entering into or carrying out cooperative agreements under Title 75, chapter 10, part 6,~~
21 ~~or from accepting any deferral to the state of a CERCLA site from the U.S. environmental protection~~
22 ~~agency.~~

23
24 **Section 5.** ~~Section 75 10 715, MCA, is amended to read:~~

25 ~~"75 10 715. Liability — reimbursement and penalties — proceedings — defenses. (1)~~

26 ~~Notwithstanding any other provision of law and subject only to the defenses set forth in subsection (5),~~
27 ~~the following persons are jointly and severally liable for a release or threatened release of a hazardous or~~
28 ~~deleterious substance from a facility:~~

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

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

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

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

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

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

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

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

22 (4) ~~The department may initiate civil proceedings in district court to recover remedial action costs,~~
 23 ~~natural resource damages, or penalties under subsections (1) through (3). Proceedings to recover costs~~
 24 ~~and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs,~~
 25 ~~damages, or penalties lies in the county where the release occurred or where the any person liable under~~
 26 ~~75-10-715(1) resides or has its principal place of business or in the district court of the first judicial district.~~

27 (5) ~~No A person is not liable under subsections (1) through (3) if that person can establish by a~~
 28 ~~preponderance of the evidence that:~~

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

30 (b) ~~the release did not emanate from any vessel, vehicle, or facility to which the person contributed~~

1 ~~any hazardous or deleterious substance or over which the person had any ownership, authority, or control~~
2 ~~and was not caused by any action or omission of the person;~~

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

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

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

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

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

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

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

17 ~~(f) in the case of assessment of penalties under subsection (3), that factors beyond the control of~~
18 ~~the person prevented the person from taking timely remedial action; or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27
 28 **SECTION 1. SECTION 75-10-701, MCA, IS AMENDED TO READ:**

29 **"75-10-701. Definitions.** As used in this part, unless the context requires otherwise, the following
 30 definitions apply:

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

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

4 (3) "Environment" means any surface water, ground water, drinking water supply, land surface
5 or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of
6 Montana.

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

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

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

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

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

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

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

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

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

26 (d) any petroleum product.

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

30 (8) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising

1 control over the operation of a facility.

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

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

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

20 (11) "Reasonably anticipated future uses" means likely future land or resource uses that take into
21 consideration:

22 (a) local land and resource use regulations, ordinances, restrictions, or covenants;

23 (b) historical and anticipated uses of the facility;

24 (c) patterns of development in the immediate area; and

25 (d) relevant indications of anticipated land use from the owner of the facility and local planning
26 officials.

27 ~~(11)~~(12) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging,
28 injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into
29 the environment (including the abandonment or discarding of barrels, containers, and other closed
30 receptacles containing any hazardous or deleterious substance), but excludes releases confined to the

1 indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in
 2 accordance with approved federal and state labels, and the use of commercial fertilizers as defined in
 3 80-10-101(2) when applied as part of accepted agricultural practice.

4 ~~(12)~~(13) "Remedial action" includes all notification, investigation, administration, monitoring,
 5 cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action,
 6 health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or
 7 threatened release.

8 ~~(13)~~(14) "Remedial action contract" means a written contract or agreement entered into by a
 9 remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or
 10 request issued by the department, the United States, or any federal agency, to provide a remedial action
 11 with respect to a release or threatened release of a hazardous or deleterious substance.

12 ~~(14)~~(15) "Remedial action contractor" means:

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

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

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

19
 20 **Section 2.** Section 75-10-721, MCA, is amended to read:

21 **"75-10-721. Degree of cleanup required -- permit exemption -- financial assurance.** (1) A remedial
 22 action performed under this part or a voluntary cleanup under [sections ~~10 2 3 4~~ through ~~16 10 11 12~~]
 23 must attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened
 24 release or further release of that substance that assures ~~present and future~~ protection of public health,
 25 safety, and welfare and of the environment that is consistent with this section.

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

27 ~~(a) shall require cleanup consistent with applicable state or federal environmental requirements,~~
 28 ~~criteria, or limitations;~~

29 ~~(b) shall consider and may require cleanup consistent with substantive state or federal~~
 30 ~~environmental requirements, criteria, or limitations that are well suited to the site conditions; and~~

1 ~~(c) shall select remedial actions that, at a minimum, protect the public health, safety, and welfare~~
2 ~~and the environment. A remedial action must be considered protective of the public health, safety, and~~
3 ~~welfare and of the environment when the amount of site-specific risk reduction is proportionate to the total~~
4 ~~cost of the remedial action or when the remedial action reaches a level of risk reduction of 10 to the minus~~
5 ~~4, whichever is more cost-effective, and that:~~

6 ~~(i) use permanent solutions;~~

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

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

12 ~~(3) To the extent consistent with the requirements of subsection (2), the department, in selecting~~
13 ~~remedial actions under this part, shall consider for each remedial action:~~

14 ~~(a) technical practicability;~~

15 ~~(b) long term and short term reliability; and~~

16 ~~(c) local community and local government acceptance.~~

17 ~~(4) To the extent consistent with the requirements of subsection (2), the department shall give~~
18 ~~equal consideration to engineering controls, institutional controls, and treatment.~~

19 ~~(5) All remedial actions selected by the department under this part must be based on current land~~
20 ~~and resource uses unless the department can demonstrate on the administrative record that there are~~
21 ~~reasonably anticipated uses that would require remedial actions that provide for a higher level of protection~~
22 ~~for the public health, safety, and welfare, and for the environment. Only reasonably anticipated land and~~
23 ~~resource uses, as determined by applicable local land and resource use requirements, regulations,~~
24 ~~ordinances, restrictions or covenants, may be considered.: (A) EXCEPT AS PROVIDED IN SUBSECTION (4),~~
25 ~~SHALL REQUIRE CLEANUP CONSISTENT WITH APPLICABLE STATE OR FEDERAL ENVIRONMENTAL~~
26 ~~REQUIREMENTS, CRITERIA, OR LIMITATIONS;~~

27 ~~(B) MAY CONSIDER SUBSTANTIVE STATE OR FEDERAL ENVIRONMENTAL REQUIREMENTS,~~
28 ~~CRITERIA, OR LIMITATIONS THAT ARE RELEVANT TO THE SITE CONDITIONS; AND~~

29 ~~(C) SHALL SELECT REMEDIAL ACTIONS, CONSIDERING PRESENT AND REASONABLY~~
30 ~~ANTICIPATED FUTURE USES, THAT:~~

1 (I) DEMONSTRATE ACCEPTABLE MITIGATION OF EXPOSURE TO RISKS TO THE PUBLIC HEALTH,
 2 SAFETY, AND WELFARE AND THE ENVIRONMENT;

3 (II) ARE EFFECTIVE AND RELIABLE IN THE SHORT TERM AND THE LONG TERM;

4 (III) ARE TECHNICALLY PRACTICABLE AND IMPLEMENTABLE;

5 (IV) USE TREATMENT TECHNOLOGIES OR RESOURCE RECOVERY TECHNOLOGIES IF
 6 PRACTICABLE, GIVING DUE CONSIDERATION TO INSTITUTIONAL AND ENGINEERING CONTROLS; AND

7 (V) ARE COST-EFFECTIVE.

8 (3) IN SELECTING REMEDIAL ACTIONS, THE DEPARTMENT SHALL CONSIDER THE
 9 ACCEPTABILITY OF THE ACTIONS TO THE AFFECTED COMMUNITY, AS INDICATED BY COMMUNITY
 10 MEMBERS AND THE LOCAL GOVERNMENT.

11 (4) THE DEPARTMENT MAY SELECT A REMEDIAL ACTION THAT DOES NOT MEET AN
 12 APPLICABLE STATE ENVIRONMENTAL REQUIREMENT, CRITERIA, OR LIMITATION UNDER ANY ONE OF
 13 THE FOLLOWING CIRCUMSTANCES:

14 (A) THE REMEDIAL ACTION IS AN INTERIM MEASURE AND WILL BECOME PART OF A TOTAL
 15 REMEDIAL ACTION THAT WILL ATTAIN THE APPLICABLE REQUIREMENT, CRITERIA, OR LIMITATION.

16 (B) COMPLIANCE WITH THE APPLICABLE REQUIREMENT, CRITERIA, OR LIMITATION WILL
 17 RESULT IN GREATER RISK TO HUMAN HEALTH AND THE ENVIRONMENT THAN OTHER REMEDIAL
 18 ACTION ALTERNATIVES.

19 (C) COMPLIANCE WITH THE APPLICABLE REQUIREMENT, CRITERIA, OR LIMITATION IS
 20 TECHNICALLY IMPRACTICABLE FROM AN ENGINEERING PERSPECTIVE.

21 (D) THE REMEDIAL ACTION WILL ATTAIN A STANDARD OF PERFORMANCE THAT IS
 22 EQUIVALENT TO THAT REQUIRED UNDER THE OTHERWISE APPLICABLE REQUIREMENT, CRITERIA, OR
 23 LIMITATION THROUGH USE OF ANOTHER METHOD OR APPROACH.

24 (E) COMPLIANCE WITH THE REQUIREMENT WOULD NOT BE COST-EFFECTIVE.

25 (5) FOR PURPOSES OF THIS SECTION, COST-EFFECTIVENESS MUST BE DETERMINED THROUGH
 26 AN ANALYSIS OF INCREMENTAL COSTS AND INCREMENTAL RISK REDUCTION AND OTHER BENEFITS
 27 OF ALTERNATIVES CONSIDERED, TAKING INTO ACCOUNT THE TOTAL ANTICIPATED SHORT-TERM AND
 28 LONG-TERM COSTS OF REMEDIAL ACTION ALTERNATIVES CONSIDERED, INCLUDING THE TOTAL
 29 ANTICIPATED COST OF OPERATION AND MAINTENANCE ACTIVITIES.

30 ~~(3)(6)~~ The department ~~may shall~~ MAY exempt any portion of a remedial action that is conducted

1 entirely on site from a state or local permit that would, in the absence of the remedial action, be required
 2 if the remedial action is carried out in accordance with the standards established under ~~subsection (4)~~ THIS
 3 SECTION and this part.

4 ~~(4)~~(7) The department may require financial assurance from a liable person in an amount that the
 5 department determines will ensure the long-term operation and maintenance of the remedial action site.
 6 The liable person shall provide the financial assurance by any one method or combination of methods
 7 satisfactory to the department, including but not limited to insurance, guarantee, performance or other
 8 surety bond, letter of credit, qualification as a self-insurer, or other demonstration of financial capability."
 9

10 ~~Section 7.~~ Section 75-10-722, MCA, is amended to read:

11 ~~"75-10-722. Payment of state costs and 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 may require a person liable under 75-10-715 to pay~~
 14 ~~the amount of the state's remedial action costs and, if applicable, penalties under 75-10-715(3).~~

15 ~~(3) If the state's remedial action costs and penalties are not paid by the liable person to the~~
 16 ~~department within 60 days after receipt of notice that the costs and penalties are due, the department shall~~
 17 ~~bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.~~

18 ~~(4) An action to recover remedial action costs may be brought under this section at any time after~~
 19 ~~any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability~~
 20 ~~for remedial action costs that is binding on any subsequent action or actions to recover further remedial~~
 21 ~~action costs. The court may disallow costs or damages only if the person liable under 75-10-715 can show~~
 22 ~~on the record that the costs are not reasonable and are not consistent with this part.~~

23 ~~(5) An initial action for recovery of remedial action costs must be commenced within 6 years after~~
 24 ~~initiation of physical onsite construction of the remedial action.~~

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

27
 28 ~~Section 8.~~ Section 75-10-724, MCA, is amended to read:

29 ~~"75-10-724. Liability apportionment and contribution. (1) Any person held jointly and severally~~
 30 ~~liable under 75-10-715 has the right at trial to have the trier of fact apportion liability among the parties~~

1 as provided in this section. The burden is on each liable person to show how his liability should be
2 apportioned. In apportioning the liability of any person under this section, the trier of fact shall consider
3 In any action initiated under 75-10-715 by the department or in any action initiated under subsection (2)
4 by any person or persons liable under 75-10-715(1), the trier of fact shall determine the proportionate share
5 of the aggregate liability for each person who is found liable under 75-10-715(1). For purposes of
6 determining the proportionate share of the aggregate liability, the trier of fact shall consider, for each person
7 found liable under 75-10-715(1), the following:

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

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

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

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

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

16 (f) knowledge by the each person of the hazardous nature of the substance; and

17 (g) any remedial actions voluntarily taken by a person.

18 (2) If a person is held jointly and severally liable under 75-10-715 and establishes a proportionate
19 share of the aggregate liability, the person has the right of contribution from any other liable person. If for
20 any reason all or part of the contribution from a person liable for contribution cannot be obtained, each of
21 the other persons against whom recovery is allowed is liable to contribute a proportional part of the unpaid
22 portion of the noncontributing person's share and may obtain judgment in a pending or subsequent action
23 for contribution from the noncontributing person. A person liable under 75-10-715(1) may have a right of
24 contribution for the recovery of the remedial action costs incurred by a person under this part against any
25 other nonsettling party found liable under 75-10-715(1) in the proportionate shares determined under
26 subsection (1).

27 (3) For sites not listed on the national priorities list, if for any reason all or part of the contribution
28 from a person liable for contribution cannot be obtained, a person may apply to and must, in accordance
29 with this subsection, receive reimbursement from the department from the environmental quality protection
30 fund established in 75-10-704. If the environmental quality protection fund does not contain sufficient

~~1 money to pay received claims for reimbursement, the fund and the department are not liable for making any
2 reimbursement at that time. When the fund contains sufficient money, approved claims must be
3 subsequently reimbursed in the order in which they were approved by the department. The department
4 shall approve claims for reimbursement of remedial action costs under this subsection unless the remedial
5 action costs are unreasonable, unnecessary, or inconsistent with this part.~~

~~6 (4) A person who has incurred remedial action costs may seek to recover those costs from any
7 person who is liable or potentially liable under 75-10-715. A person who is liable under this subsection is
8 not liable for more than the person's proportionate share of the aggregate liability determined in accordance
9 with the criteria in subsection (1). Subsections (3) and (4) of 75-10-714 apply to any actions under this
10 subsection."~~

~~11
12 **NEW SECTION. Section 9. Abandoned mine state special revenue account created.** (1) There is
13 an abandoned mine special revenue account within the state special revenue account fund established in
14 17-2-102.~~

~~15 (2) There must be paid into the abandoned mine state special revenue account money allocated
16 from the resource indemnity trust fund interest earnings pursuant to 15-38-202.~~

~~17 (3) Money that was not encumbered or expended from the abandoned mine state special revenue
18 account during the previous biennium must remain in the account.~~

~~19 (4) Deposits to the abandoned mine state special revenue account are to be placed in short term
20 investments and accrue interest, which must be deposited in the abandoned mine state special revenue
21 account.~~

~~22 (5) The purpose of the abandoned mine state special revenue account is to provide the funding to
23 the department of state lands for the cleanup and reclamation of abandoned mines.~~

~~24 (6) The department of state lands shall administer this section as an integral part of the abandoned
25 mines program.~~

~~26
27 **SECTION 3. SECTION 75-10-722, MCA, IS AMENDED TO READ:**~~

~~28 **"75-10-722. Payment of state costs and penalties.** (1) The department shall keep a record of the
29 state's remedial action costs.~~

~~30 (2) Based on this record, the department shall may require a person liable under 75-10-715 to pay~~

1 the amount of the state's remedial action costs and, if applicable, penalties under 75-10-715(3).

2 (3) If the state's remedial action costs and penalties are not paid by the liable person to the
3 department within 60 days after receipt of notice that the costs and penalties are due, the department shall
4 bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.

5 (4) An action to recover remedial action costs may be brought under this section at any time after
6 any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability
7 for remedial action costs that is binding on any subsequent action or actions to recover further remedial
8 action costs. The court may disallow costs or damages only if the person liable under 75-10-715 can show
9 on the record that the costs are not reasonable and are not consistent with this part.

10 (5) An initial action for recovery of remedial action costs must be commenced within 6 years after
11 initiation of physical onsite construction of the remedial action.

12 (6) Remedial action costs and any penalties recovered by the state under 75-10-715 must be
13 deposited into the environmental quality protection fund established in 75-10-704."
14

15 **NEW SECTION. Section 4. Short title.** [Sections ~~40 2 3 4~~ through ~~46 40 41 12~~] may be cited as
16 the "Voluntary Cleanup and Redevelopment Act".
17

18 **NEW SECTION. Section 5. Purpose -- legislative declaration.** (1) (a) The purposes of [sections
19 ~~40 2 3 4~~ through ~~46 40 41 12~~] are to provide for the protection of the public health, welfare, and safety
20 and of the environment and to foster the cleanup, transfer, reuse, or redevelopment of facilities ~~and sites~~
21 ~~that have been previously contaminated with hazardous or deleterious substances~~ **WHERE RELEASES OR**
22 **THREATENED RELEASES OF HAZARDOUS OR DELETERIOUS SUBSTANCES EXIST.**

23 (b) The legislature further declares that this program is intended to permit and encourage voluntary
24 cleanup of ~~contaminated property~~ **FACILITIES WHERE RELEASES OR THREATENED RELEASES OF**
25 **HAZARDOUS OR DELETERIOUS SUBSTANCES EXIST** by providing interested persons with a method of
26 determining what the cleanup responsibilities will be for reuse or redevelopment of existing ~~sites~~
27 **FACILITIES.**

28 (2) The legislature further intends that this voluntary program:

29 (a) encourage and facilitate prompt cleanup activities;

30 (b) eliminate impediments to the sale or redevelopment of ~~previously contaminated property~~

1 FACILITIES WHERE RELEASES OR THREATENED RELEASES OF HAZARDOUS OR DELETERIOUS
 2 SUBSTANCES EXIST; and

3 (c) minimize administrative processes and costs.

4
 5 NEW SECTION. SECTION 6. ELIGIBILITY. (1) A FACILITY WHERE THERE HAS BEEN A RELEASE
 6 OR THREATENED RELEASE OF A HAZARDOUS OR DELETERIOUS SUBSTANCE THAT MAY PRESENT AN
 7 IMMINENT AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH, SAFETY, OR WELFARE OR
 8 THE ENVIRONMENT MAY BE ELIGIBLE TO FOLLOW FOR VOLUNTARY CLEANUP PROCEDURES UNDER
 9 THIS PART, EXCEPT FOR FACILITIES THAT MEET ONE OF THE FOLLOWING CRITERIA AT THE TIME OF
 10 APPLICATION FOR A VOLUNTARY CLEANUP PLAN:

11 (A) A FACILITY THAT IS LISTED OR PROPOSED FOR LISTING ON THE NATIONAL PRIORITIES LIST
 12 PURSUANT TO 42 U.S.C. 9601, ET SEQ.;

13 (B) A FACILITY FOR WHICH AN ORDER HAS BEEN ISSUED OR CONSENT DECREE HAS BEEN
 14 ENTERED INTO PURSUANT TO THIS PART;

15 (C) A FACILITY THAT IS THE SUBJECT OF AN AGENCY ORDER OR AN ACTION FILED IN
 16 DISTRICT COURT BY ANY STATE AGENCY THAT ADDRESSES THE RELEASE OR THREATENED RELEASE
 17 OF A HAZARDOUS OR DELETERIOUS SUBSTANCE; OR

18 (D) A FACILITY WHERE THE RELEASE OR THREATENED RELEASE OF A HAZARDOUS OR
 19 DELETERIOUS SUBSTANCE IS REGULATED BY THE MONTANA HAZARDOUS WASTE AND
 20 UNDERGROUND STORAGE TANK ACT AND REGULATIONS UNDER THAT ACT.; OR

21 (E) A FACILITY THAT IS THE SUBJECT OF PENDING ACTION UNDER THIS PART BECAUSE THE
 22 FACILITY HAS BEEN ISSUED A NOTICE COMMENCING A SPECIFIED PERIOD OF NEGOTIATIONS ON AN
 23 ADMINISTRATIVE ORDER ON CONSENT.

24 (2) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (1)(B) THROUGH ~~(1)(D)~~ (1)(E), THE
 25 DEPARTMENT MAY AGREE TO ACCEPT AND MAY APPROVE AN APPLICATION FOR A VOLUNTARY
 26 CLEANUP PLAN FOR A FACILITY.

27 (3) THE DEPARTMENT MAY DETERMINE THAT A FACILITY THAT IS POTENTIALLY ELIGIBLE FOR
 28 VOLUNTARY CLEANUP EXHIBITS COMPLEXITIES REGARDING PROTECTION OF PUBLIC HEALTH,
 29 SAFETY, AND WELFARE AND THE ENVIRONMENT AND THAT THE COMPLEXITIES SHOULD BE
 30 ADDRESSED UNDER AN ADMINISTRATIVE ORDER OR CONSENT DECREE PURSUANT TO THIS PART.

1 THIS DETERMINATION MAY BE MADE ONLY AFTER CONSULTATION WITH ANY PERSON DESIRING TO
 2 CONDUCT A VOLUNTARY CLEANUP AT THE FACILITY.

3 ~~(4) EXCEPT AS PROVIDED IN SUBSECTION (2), IF AN APPLICANT THAT SUBMITS AN~~
 4 APPLICATION FOR A VOLUNTARY CLEANUP PLAN DISAGREES WITH THE DEPARTMENT'S DECISION
 5 TO REJECT THE FILING OF THE APPLICATION UNDER THIS SECTION SUBSECTION (1) OR (3), THE
 6 APPLICANT MAY, WITHIN 30 DAYS OF RECEIPT OF THE DEPARTMENT'S WRITTEN DECISION
 7 PURSUANT TO [SECTION 9 10], SUBMIT A WRITTEN REQUEST FOR A HEARING BEFORE THE BOARD
 8 OF HEALTH AND ENVIRONMENTAL SCIENCES. IN REVIEWING A DEPARTMENT DECISION TO REJECT
 9 AN APPLICATION UNDER SUBSECTION (1) OR (3), THE BOARD SHALL APPLY THE STANDARDS OF
 10 REVIEW SPECIFIED IN 2-4-704. THE HEARING MUST BE HELD WITHIN 2 MONTHS AT THE REGULAR
 11 MEETING OF THE BOARD OR AT THE TIME MUTUALLY AGREED TO BY THE BOARD, THE DEPARTMENT,
 12 AND THE APPLICANT. THE HEARING AND ANY APPEALS MUST BE CONDUCTED IN ACCORDANCE
 13 WITH THE CONTESTED CASE PROCEEDINGS PURSUANT TO TITLE 2, CHAPTER 4, PARTS 6 AND 7. A
 14 HEARING BEFORE THE BOARD MAY NOT BE REQUESTED REGARDING A DECISION OF THE
 15 DEPARTMENT MADE PURSUANT TO SUBSECTION (2).

16
 17 **NEW SECTION. Section 7. Voluntary cleanup plan AND REIMBURSEMENT OF REMEDIAL ACTION**
 18 **COSTS.** (1) ~~A ANY person who owns real property that has been contaminated with hazardous or~~
 19 ~~deleterious substances or any person who may be liable under 75-10-715(4) may submit an application for~~
 20 ~~the approval of a voluntary cleanup plan to the department under the provisions of this section.~~

21 (2) A voluntary cleanup plan must include:

22 (a) ~~an environmental assessment of the real property that describes the contamination, if any, on~~
 23 ~~the property and the risk that the contamination currently poses to the public health, welfare, and safety~~
 24 ~~and to the environment~~ **FACILITY THAT INCLUDES THE INFORMATION REQUIRED IN [SECTION 6 7 8];**

25 (b) ~~a REMEDIATION proposal, if needed, for remedial actions consistent with THAT INCLUDES THE~~
 26 **INFORMATION REQUIRED IN [SECTION 6 7 8] AND THAT MEETS THE REQUIREMENTS OF 75-10-721.**
 27 ~~The proposal must provide a timetable for implementing the proposal and for monitoring the site after the~~
 28 ~~proposed measures are completed.~~

29 ~~(c) a description of the manner in which the remedial action plan satisfies the cleanup requirements~~
 30 ~~of 75-10-721 and a description of any current risk to the public health, welfare, or safety or to the~~

1 ~~environment based upon the current or reasonably anticipated future use of the site; AND~~

2 (C) THE WRITTEN CONSENT OF CURRENT OWNERS OF THE FACILITY OR PROPERTY TO BOTH
 3 THE IMPLEMENTATION OF THE VOLUNTARY CLEANUP PLAN AND ACCESS TO THE FACILITY BY THE
 4 APPLICANT AND ITS AGENTS AND THE DEPARTMENT.

5 (3) THE APPLICANT SHALL REIMBURSE THE DEPARTMENT FOR ANY REMEDIAL ACTION COSTS
 6 THAT THE STATE INCURS IN THE REVIEW AND OVERSIGHT OF A VOLUNTARY CLEANUP PLAN.

7 (4) THE DEPARTMENT MAY APPROVE A VOLUNTARY CLEANUP PLAN THAT PROVIDES FOR
 8 PHASES OF REMEDIATION OR THAT ADDRESSES ONLY A PORTION OF THE FACILITY. TO THE EXTENT
 9 THAT THE ORIGINAL ENVIRONMENTAL ASSESSMENT REQUIRED UNDER [SECTION 6 7 8] ADDRESSES
 10 SUBSEQUENT PHASES OF REMEDIATION, THE APPLICANT MAY RELY ON THAT ASSESSMENT WHEN
 11 SUBMITTING VOLUNTARY CLEANUP PLANS FOR SUBSEQUENT PHASES OF REMEDIATION.

12
 13 NEW SECTION. Section 8. ~~Environmental assessment~~ VOLUNTARY CLEANUP PLANS --
 14 requirements. (1) The department may only accept ~~environmental assessments~~ VOLUNTARY CLEANUP
 15 PLANS under [sections ~~10 2 3 4~~ through ~~16 10 11 12~~] that are prepared by a qualified environmental
 16 professional. A qualified environmental professional is a person with education, training, and experience
 17 in preparing environmental studies and assessments.

18 (2) An environmental assessment described in this section must include the following information:

19 (a) the legal description of the ~~site~~ FACILITY and a map identifying the location and size of the
 20 ~~property~~ FACILITY AND RELEVANT FEATURES, SUCH AS PROPERTY BOUNDARIES, SURFACE
 21 TOPOGRAPHY, SURFACE AND SUBSURFACE STRUCTURES, AND UTILITY LINES;

22 (b) the physical characteristics of the ~~site~~ FACILITY and areas contiguous to the ~~site~~ FACILITY,
 23 including the location of any surface water bodies and ground water aquifers;

24 (c) the location of any wells located on the site or on areas within a one-half mile radius of the site
 25 and a description of the use of those wells;

26 (d) the current and reasonably anticipated future use of onsite ground AND SURFACE water;

27 (e) the operational history of the ~~site~~ FACILITY, INCLUDING OWNERSHIP, and the current use of
 28 ~~areas contiguous to the site~~ THE FACILITY, INCLUDING ANY READILY AVAILABLE AERIAL PHOTOGRAPHS
 29 FROM WITHIN THE STATE OF MONTANA;

30 (f) the current and reasonably anticipated future uses of the ~~site~~ FACILITY AND IMMEDIATELY

1 ADJACENT PROPERTIES;

2 (g) information ON THE METHODS AND RESULTS OF INVESTIGATIONS concerning the nature and
3 extent of any ~~contamination and~~ RELEASES OR THREATENED releases of hazardous or deleterious
4 substances that have occurred at the site, ~~including any impacts on areas contiguous to the site~~ FACILITY
5 AND A MAP SHOWING GENERAL AREAS AND CONCENTRATIONS OF HAZARDOUS OR DELETERIOUS
6 SUBSTANCES;

7 (h) any sampling results or other data that characterizes the soil, AIR, ground water, or surface
8 water on the site; ~~and~~

9 (i) a description of the human and environmental exposure to ~~contamination at the site~~ RELEASES
10 OR THREATENED RELEASES OF HAZARDOUS OR DELETERIOUS SUBSTANCES AT THE FACILITY based
11 upon the ~~property's~~ current use OF THE FACILITY AND ADJACENT PROPERTIES and any reasonably
12 anticipated future use ~~proposed by the property owner~~ USES OF THE FACILITY; AND

13 (J) READILY AVAILABLE INFORMATION ON THE ENVIRONMENTAL REGULATORY AND
14 COMPLIANCE HISTORY OF THE FACILITY, INCLUDING ALL ENVIRONMENTAL PERMITS.

15 (3) A REMEDIATION PROPOSAL MUST INCLUDE THE FOLLOWING INFORMATION:

16 (A) A DETAILED DESCRIPTION OF THE COMPONENTS OF THE REMEDIATION PROPOSAL,
17 INCLUDING, TO THE EXTENT APPLICABLE:

18 (I) THE PROPOSED CLEANUP LEVELS FOR THE FACILITY;

19 (II) THE MANNER IN WHICH THE REMEDIATION PLAN SATISFIES THE CLEANUP REQUIREMENTS
20 OF 75-10-721;

21 (III) IDENTIFICATION OF SAMPLING OR TREATABILITY STUDIES; AND

22 (IV) A DEMONSTRATION THAT EXPOSURES TO RISK AFFECTING THE PUBLIC HEALTH, SAFETY,
23 AND WELFARE AND THE ENVIRONMENT AT THE FACILITY WILL BE SUBSTANTIALLY MITIGATED BY THE
24 PLAN;

25 (B) A BRIEF COMPARISON OF THE REMEDIATION PROPOSAL TO REASONABLE ALTERNATIVES
26 BASED ON THE REMEDY SELECTION CRITERIA SPECIFIED IN 75-10-721;

27 (C) A TIMETABLE FOR IMPLEMENTING THE PROPOSAL AND FOR ANY NECESSARY MONITORING
28 OF THE FACILITY AFTER THE PROPOSED MEASURES ARE COMPLETED;

29 (D) A STATEMENT THAT APPLICABLE HEALTH AND SAFETY REGULATIONS WILL BE MET
30 DURING IMPLEMENTATION OF THE REMEDIATION PROPOSAL;

1 (E) A DESCRIPTION OF HOW SHORT-TERM DISTURBANCES DURING IMPLEMENTATION OF THE
 2 REMEDATION PROPOSAL WILL BE MINIMIZED; AND

3 (F) IDENTIFICATION OF ANY PERMITS NECESSARY TO CONDUCT THE PROPOSED REMEDIES.
 4

5 NEW SECTION. SECTION 9. PUBLIC PARTICIPATION. (1) UPON DETERMINATION BY THE
 6 DEPARTMENT THAT AN APPLICATION FOR A VOLUNTARY CLEANUP PLAN IS COMPLETE PURSUANT
 7 TO [SECTION 8(1) 9(1) 10(1)], THE DEPARTMENT SHALL PUBLISH A NOTICE AND BRIEF ANALYSIS OF
 8 THE PROPOSED PLAN IN A DAILY NEWSPAPER OF GENERAL CIRCULATION IN THE AREA AFFECTED
 9 AND MAKE THE PLAN AVAILABLE TO THE PUBLIC.

10 (2) THE NOTICE MUST PROVIDE 30 DAYS FOR SUBMISSION OF WRITTEN COMMENTS TO THE
 11 DEPARTMENT REGARDING THE PLAN. UPON WRITTEN REQUEST BY 10 OR MORE PERSONS, BY A
 12 GROUP COMPOSED OF 10 OR MORE MEMBERS, OR BY A LOCAL GOVERNING BODY OF A CITY, TOWN,
 13 OR COUNTY WITHIN THE COMMENT PERIOD, THE DEPARTMENT SHALL CONDUCT A PUBLIC MEETING
 14 AT OR NEAR THE FACILITY REGARDING THE PROPOSED VOLUNTARY CLEANUP PLAN. THE MEETING
 15 MUST BE HELD WITHIN 45 DAYS OF THE DEPARTMENT'S COMPLETENESS DETERMINATION UNDER
 16 [SECTION 8(1) 9(1) 10(1)].

17 (3) THE DEPARTMENT SHALL CONSIDER AND RESPOND TO RELEVANT WRITTEN OR VERBAL
 18 COMMENTS SUBMITTED DURING THE COMMENT PERIOD OR AT THE PUBLIC MEETING.

19 (4) THE DEPARTMENT'S DECISION ON THE FINAL PLAN AND THE REASONS FOR ANY
 20 SIGNIFICANT MODIFICATION OF THE FINAL PLAN MUST BE PUBLISHED IN ACCORDANCE WITH
 21 SUBSECTION (1).

22 (5) COMPLIANCE WITH THIS SECTION IS CONSIDERED TO SATISFY THE PUBLIC PARTICIPATION
 23 REQUIREMENTS OF TITLE 75, CHAPTER 1.
 24

25 NEW SECTION. Section 10. Approval of voluntary action CLEANUP plan -- time limits -- content
 26 of notice -- expiration of approval. (1) ~~(a) The~~ THE DEPARTMENT SHALL REVIEW FOR COMPLETENESS,
 27 INCLUDING ADEQUACY AND ACCURACY, AN APPLICATION FOR A VOLUNTARY CLEANUP PLAN AND
 28 SHALL PROVIDE A WRITTEN COMPLETENESS NOTICE TO THE APPLICANT WITHIN 30 DAYS AFTER
 29 RECEIPT OF THE APPLICATION. THE COMPLETENESS NOTICE MUST NOTE ALL DEFICIENCIES
 30 IDENTIFIED IN THE INFORMATION SUBMITTED.

1 (2) FOR A VOLUNTARY CLEANUP PLAN THAT IS CONSIDERED COMPLETE BY THE DEPARTMENT
 2 PURSUANT TO SUBSECTION (1), THE department shall provide formal written notification that a THE
 3 voluntary cleanup plan has been approved or disapproved ~~within~~ NO MORE THAN 60 days after a request
 4 ~~by a property owner~~ THE DEPARTMENT'S DETERMINATION THAT AN APPLICATION IS COMPLETE, unless
 5 the ~~property owner or person who may be liable under 75-10-715(1)~~ APPLICANT and the department agree
 6 to an extension of the review to a date certain. The review must be limited to a review of the materials
 7 submitted by the applicant, PUBLIC COMMENTS, and documents or information readily available to the
 8 department. ~~If the department fails to act on an application within the time limits specified in this~~
 9 ~~subsection (1), the voluntary cleanup plan is approved.~~ THE DEPARTMENT SHALL COMMUNICATE WITH
 10 THE APPLICANT DURING THE REVIEW PERIOD TO ENSURE THAT THE APPLICANT HAS THE
 11 OPPORTUNITY TO ADDRESS THE PUBLIC COMMENTS.

12 (3) (A) IF THE DEPARTMENT RECEIVES FIVE APPLICATIONS FOR REVIEW OF A VOLUNTARY
 13 CLEANUP PLAN IN A CALENDAR MONTH, INCLUDING APPLICATIONS DEFERRED FROM PRIOR MONTHS,
 14 THE DEPARTMENT MAY NOTIFY ANY ADDITIONAL APPLICANTS IN THAT MONTH THAT THEIR PLANS
 15 MUST BE REVIEWED IN THE ORDER RECEIVED. THE 30-DAY PERIOD FOR DEPARTMENT
 16 COMPLETENESS REVIEW OF DEFERRED APPLICATIONS PURSUANT TO SUBSECTION (1) MUST BEGIN
 17 ON THE FIRST DAY OF THE SUBSEQUENT MONTH THAT EACH PLAN IS ELIGIBLE FOR REVIEW.

18 (B) THE DEPARTMENT SHALL DISCONTINUE ACCEPTING VOLUNTARY CLEANUP APPLICATIONS
 19 WHEN 15 APPLICATIONS ARE PENDING AND ARE BEING REVIEWED BY THE DEPARTMENT. THE
 20 DEPARTMENT SHALL ESTABLISH A WAITING LIST FOR APPLICATIONS AND SHALL CONSIDER THE
 21 APPLICATIONS IN ORDER OF SUBMITTAL.

22 (C) IF THE DEPARTMENT HAS RECEIVED MULTIPLE CLEANUP APPLICATIONS FOR A
 23 VOLUNTARY CLEANUP AT THE SAME FACILITY, THE DEPARTMENT SHALL NOTIFY ALL OF THE
 24 APPLICANTS AND OFFER THEM THE OPPORTUNITY TO SUBMIT A JOINT APPLICATION.

25 (4) CONSISTENT WITH THE PROVISIONS OF 75-10-707, THE DEPARTMENT MAY ACCESS THE
 26 FACILITY DURING REVIEW OF THE APPLICATION AND IMPLEMENTATION OF THE VOLUNTARY CLEANUP
 27 PLAN TO CONFIRM INFORMATION PROVIDED BY THE APPLICANT AND VERIFY THAT THE CLEANUP IS
 28 BEING CONDUCTED CONSISTENT WITH THE APPROVED PLAN.

29 ~~(b)(5)~~ The department shall approve a voluntary cleanup plan if, ~~based on the information submitted~~
 30 ~~by the property owner or person who may be liable under 75-10-715(1),~~ the department concludes that

1 the plan MEETS THE REQUIREMENTS SPECIFIED IN [SECTION 6 7 B] AND will attain a degree of cleanup
 2 and control of hazardous or deleterious substances, ~~or both~~, that complies with the requirements of
 3 75-10-721. EXCEPT FOR THE PERIOD NECESSARY FOR THE OPERATION AND MAINTENANCE OF THE
 4 APPROVED REMEDIATION PROPOSAL, THE DEPARTMENT MAY NOT APPROVE A VOLUNTARY
 5 REMEDATION PROPOSAL THAT WOULD TAKE LONGER THAN 24 MONTHS AFTER DEPARTMENT
 6 APPROVAL TO COMPLETE.

7 ~~(e)(6)~~ If a voluntary cleanup plan is not approved by the department, the department shall promptly
 8 provide the applicant with a written statement of the reasons for denial. ~~If the department disapproves a~~
 9 ~~voluntary cleanup plan based upon the applicant's failure to submit the information required by [section 12],~~
 10 ~~the department shall notify the applicant of the specific information omitted by the applicant.~~

11 ~~(d)(7)~~ The approval of a voluntary cleanup plan by the department applies only to conditions ~~on~~
 12 ~~the property~~ AT THE FACILITY that exist ~~as of~~ ARE KNOWN TO THE DEPARTMENT AT the time of
 13 ~~submission of the application~~ DEPARTMENT APPROVAL. If a voluntary ~~cleanup plan~~ REMEDATION
 14 PROPOSAL is not initiated within 12 months and, EXCEPT FOR THE PERIOD NECESSARY FOR THE
 15 OPERATION AND MAINTENANCE OF THE APPROVED REMEDIATION PROPOSAL, IS NOT completed within
 16 24 months after approval by the department, the department's approval lapses. However, the department
 17 may grant an extension of the time limit for completion of the voluntary cleanup plan.

18 (8) IF REASONABLY UNFORESEEABLE CONDITIONS ARE DISCOVERED DURING
 19 IMPLEMENTATION OF A VOLUNTARY CLEANUP PLAN THAT SUBSTANTIALLY AFFECT THE RISK TO
 20 PUBLIC HEALTH, SAFETY, OR WELFARE OR THE ENVIRONMENT OR SUBSTANTIALLY CHANGE THE
 21 SCOPE OF THE APPROVED PLAN, THE APPLICANT SHALL PROMPTLY NOTIFY THE DEPARTMENT. THE
 22 DEPARTMENT MAY REQUIRE THE APPLICANT TO SUBMIT AN AMENDMENT TO THE APPROVED PLAN
 23 TO ADDRESS THE UNFORESEEN CONDITIONS OR MAY DETERMINE THAT A VOLUNTARY CLEANUP
 24 PLAN IS NO LONGER APPROPRIATE PURSUANT TO [SECTION 4(3) 5(3) 6(3)].

25 ~~(2)(9)~~ Written notification by the department that a voluntary cleanup plan is NOT approved must
 26 ~~contain~~ STATE the basis for ~~the approval~~ DISAPPROVAL OF THE VOLUNTARY CLEANUP PLAN.

27 ~~(3)(10)~~ (a) Failure of ~~a property owner~~ THE APPLICANT OR THE APPLICANT'S AGENTS to
 28 materially comply with the voluntary cleanup plan approved by the department pursuant to this section
 29 renders the approval void.

30 (b) Submission of materially misleading information by the applicant OR THE APPLICANT'S

1 AGENTS in the APPLICATION OR DURING IMPLEMENTATION OF THE voluntary cleanup plan renders the
2 department approval void.

3 ~~(4)(11)~~ Within 60 days after the completion of the ~~voluntary cleanup~~ APPROVED REMEDIATION
4 PROPOSAL described in the voluntary cleanup plan approved by the department, the applicant shall provide
5 to the department a certification from a qualified environmental professional that the plan has been fully
6 implemented, INCLUDING ALL DOCUMENTATION NECESSARY TO DEMONSTRATE THE SUCCESSFUL
7 IMPLEMENTATION OF THE PLAN, SUCH AS CONFIRMATION SAMPLING, IF NECESSARY.

8 (12) EXCEPT AS PROVIDED IN [SECTION ~~10(2)(B)~~ ~~11(2)(B)~~ 12(2)(B)], THE DEPARTMENT MAY
9 NOT REQUIRE FINANCIAL ASSURANCE UNDER THIS PART FOR VOLUNTARY CLEANUP PLANS
10 APPROVED UNDER THIS SECTION.

11 (13) IF A PERSON WHO WOULD OTHERWISE NOT BE A LIABLE PERSON UNDER 75-10-715(1)
12 ELECTS TO UNDERTAKE AN APPROVED VOLUNTARY CLEANUP PLAN, THE PERSON MAY NOT BECOME
13 A LIABLE PERSON UNDER 75-10-715(1) BY UNDERTAKING A VOLUNTARY CLEANUP IF THE PERSON
14 MATERIALLY COMPLIES WITH THE VOLUNTARY CLEANUP PLAN APPROVED BY THE DEPARTMENT
15 PURSUANT TO THIS SECTION.

16 ~~(14) AFTER COMPLETION OF AN APPROVED VOLUNTARY CLEANUP PLAN OR PHASE OF A~~
17 ~~PLAN, A PERSON WHO IS LIABLE UNDER 75-10-715(1) AND INCURS REMEDIAL ACTION COSTS MAY~~
18 ~~SEEK CONTRIBUTION AND REIMBURSEMENT FROM THE ENVIRONMENTAL QUALITY PROTECTION FUND~~
19 ~~PURSUANT TO THE REQUIREMENTS AND LIMITATIONS OF 75-10-724.~~

20 (14) IMMUNITY FROM LIABILITY UNDER THIS SECTION DOES NOT APPLY TO A RELEASE THAT
21 IS CAUSED BY CONDUCT THAT IS NEGLIGENT OR GROSSLY NEGLIGENT OR THAT CONSTITUTES
22 INTENTIONAL MISCONDUCT.

23
24 NEW SECTION. Section 11. Voluntary action to preclude remedial action by department. If a party
25 has elected to undertake an approved voluntary cleanup and is diligently proceeding to implement the plan,
26 the department may not, except as provided in 75-10-712, take remedial action under 75-10-711 WITH
27 REGARD TO THOSE RELEASES OR THREATENED RELEASES OF HAZARDOUS OR DELETERIOUS
28 SUBSTANCES THAT ARE ADDRESSED BY THE APPROVED VOLUNTARY CLEANUP PLAN.

29
30 NEW SECTION. Section 12. Closure and release from liability. (1) After completion of the

1 ~~remedial actions required by the department under this part or the voluntary action plan, a property owner~~
 2 ~~or any person who may be liable under 75-10-715(1)~~ VOLUNTARY CLEANUP PLAN, AN APPLICANT may
 3 petition the department for closure of the ~~site and release from liability for remedial actions and remedial~~
 4 ~~action costs~~ FACILITY under [sections ~~10 2 3 4~~ through ~~16 10 11 12~~].

5 (2) THE WITHIN 60 DAYS OF RECEIPT OF A PETITION FOR CLOSURE, WEATHER PERMITTING,
 6 THE department shall CONDUCT A review ~~the site~~ to determine that the ~~site does~~ RELEASES OR
 7 THREATENED RELEASES ADDRESSED IN THE VOLUNTARY CLEANUP PLAN DO not pose a significant
 8 threat to public health, welfare, or safety or to the environment as determined in accordance with
 9 75-10-721 and that the ~~responsible parties have~~ APPLICANT HAS:

10 (a) implemented all appropriate ~~response~~ REMEDIAL actions; and

11 (b) IF NECESSARY, provided for long-term funding for ~~site~~ FACILITY maintenance or monitoring;

12 AND

13 (C) REIMBURSED THE DEPARTMENT FOR ALL REMEDIAL ACTION COSTS OF THE VOLUNTARY
 14 CLEANUP.

15 (3) In the event that the petition for closure ~~and release from liability~~ is not approved by the
 16 department, the department shall promptly provide the applicant with a written statement of the reasons
 17 for denial. Written notification that the petition is approved by the department must include the following
 18 language:

19 "Based upon the information provided by [insert name(s) of ~~property owner(s)~~ APPLICANT(S)]
 20 concerning property located at [insert address], it is the opinion of the Montana Department of Health and
 21 Environmental Sciences that upon completion of the ~~remedial action or voluntary cleanup plan~~:

22 ~~(1) no further action is required to ensure that this property, when used for the purposes identified,~~
 23 ~~is protective of existing and proposed uses and does not pose an unacceptable risk to the public health,~~
 24 ~~welfare, or safety or to the environment at the site; and~~

25 ~~(2) [insert name(s) of property owner(s) or any person who may be liable under 75-10-715(1)] are~~
 26 ~~released from any liability, claims, or causes of action for remedial costs and remedial actions at the site."~~

27 VOLUNTARY CLEANUP PLAN, NO FURTHER ACTION IS REQUIRED TO ENSURE THAT THIS FACILITY,
 28 WHEN USED FOR THE [INSERT PURPOSES IDENTIFIED], IS PROTECTIVE OF EXISTING AND PROPOSED
 29 USES AND DOES NOT POSE A SIGNIFICANT RISK TO PUBLIC HEALTH, SAFETY, OR WELFARE OR THE
 30 ENVIRONMENT AT THE FACILITY WITH REGARD TO RELEASES OR THREATENED RELEASES ADDRESSED

1 IN THE VOLUNTARY CLEANUP PLAN. THE DEPARTMENT RESERVES THE RIGHT TO CONDUCT OR
 2 REQUIRE FURTHER REMEDIAL ACTION AT THIS FACILITY IF A NEW RELEASE OCCURS OR IF THE
 3 DEPARTMENT RECEIVES NEW OR DIFFERENT INFORMATION THAN PRESENTED IN THE APPROVED
 4 VOLUNTARY CLEANUP PLAN."

5 (4) AFTER COMPLETION OF A PORTION OF A FACILITY ADDRESSED IN THE VOLUNTARY
 6 CLEANUP PLAN, THE DEPARTMENT SHALL ISSUE A LETTER OF COMPLETION NOTICE TO THE
 7 APPLICANT IF THE DEPARTMENT DETERMINES THAT THE APPLICANT HAS SATISFIED THE
 8 REQUIREMENTS OF SUBSECTION (2).

9

10 ~~Section 17. Section 85-1-604, MCA, is amended to read:~~

11 ~~"85-1-604. Renewable resource grant and loan program state special revenue account created —~~
 12 ~~revenues allocated — limitations on appropriations from account. (1) There is created a renewable resource~~
 13 ~~grant and loan program state special revenue account within the state special revenue fund established in~~
 14 ~~17-2-102.~~

15 ~~(2) Except to the extent that they are required to be credited to the renewable resource loan debt~~
 16 ~~service fund pursuant to 85-1-603, there must be paid into the renewable resource grant and loan program~~
 17 ~~state special revenue account:~~

18 ~~(a) all revenues of the works and other money as provided in 85-1-332;~~

19 ~~(b) 38% of the amount of interest income of the resource indemnity trust fund as provided in and~~
 20 ~~subject to the conditions of 15-38-202;~~

21 ~~(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource~~
 22 ~~loan debt service fund above debt service requirements as provided in and subject to the conditions of~~
 23 ~~85-1-619;~~

24 ~~(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of~~
 25 ~~loans, including arrangements for obtaining security interests; and~~

26 ~~(e) 20% of the resource indemnity tax proceeds.~~

27 ~~(3) Appropriations may be made from the renewable resource grant and loan program state special~~
 28 ~~revenue account for the following purposes and subject to the following conditions:~~

29 ~~(a) The amount of resource indemnity trust fund interest earnings allocated under 15-38-202(2)(b)~~
 30 ~~must be used for renewable resource grants.~~

1 ~~(b) An amount less than or equal to that paid into the account under 85-1-332 and only that~~
 2 ~~amount may be appropriated for the operation and maintenance of state owned projects and works. If the~~
 3 ~~amount of money available for appropriation under this subsection (b) is greater than that necessary for~~
 4 ~~operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(c).~~

5 ~~(c) An amount less than or equal to that paid into the account from the resource indemnity trust~~
 6 ~~account plus any excess from subsection (3)(b) and only that amount may be appropriated from the~~
 7 ~~account for expenditures that meet the policies and objectives of the renewable resource grant and loan~~
 8 ~~program. If the amount of money available for appropriation under this subsection (c) is greater than that~~
 9 ~~necessary for operation and maintenance expenses, the excess may be appropriated as provided in~~
 10 ~~subsection (3)(d).~~

11 ~~(d) An amount less than or equal to that paid into the account from the sources provided for in~~
 12 ~~subsections (2)(c) and (2)(d) and any excess from subsection (3)(c) and only that amount may be~~
 13 ~~appropriated from the account for:~~

14 ~~(i) loans and grants for renewable resource projects;~~

15 ~~(ii) for purchase of liens and operation of property as provided in 85-1-615;~~

16 ~~(iii) for administrative expenses, including but not limited to the salaries and expenses of personnel,~~
 17 ~~equipment, and office space;~~

18 ~~(iv) for the servicing of loans, including arrangements for obtaining security interests; and~~

19 ~~(v) for other necessities incurred in administering the loans and grants."~~

20
 21 NEW SECTION. SECTION 13. STUDY PROCESS. THE DEPARTMENT OF HEALTH AND
 22 ENVIRONMENTAL SCIENCES, WITH LEGISLATIVE OVERSIGHT FROM THE ENVIRONMENTAL QUALITY
 23 COUNCIL, SHALL INSTITUTE A COLLABORATIVE PROCESS INVOLVING ALL AFFECTED AND INTERESTED
 24 PARTIES THAT SPECIFICALLY ANALYZES THE ELIMINATION OF JOINT AND SEVERAL LIABILITY WITH
 25 RESPECT TO CLEANUP OF STATE CECRA SITES AND ANY RELATED FUNDING NECESSARY TO CLEAN
 26 UP STATE CECRA SITES AS A RESULT OF ELIMINATING JOINT AND SEVERAL LIABILITY. THE
 27 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES SHALL SUBMIT A REPORT AND
 28 LEGISLATIVE PROPOSALS THAT COLLABORATIVELY RESULTED FROM THAT PROCESS TO THE 55TH
 29 LEGISLATURE.

1 NEW SECTION. SECTION 14. SHORT TITLE. [SECTIONS 14 THROUGH 20] MAY BE CITED AS
2 THE "MIXED FUNDING PILOT PROGRAM".

3
4 NEW SECTION. SECTION 15. PURPOSE -- LEGISLATIVE DECLARATION. (1) THE PURPOSES
5 OF [SECTIONS 14 THROUGH 20] ARE TO ESTABLISH A PILOT REMEDIATION PROGRAM TO OPERATE
6 IN CONJUNCTION WITH THE VOLUNTARY CLEANUP PROGRAM PROVIDED FOR IN [SECTIONS 4
7 THROUGH 12] AND TO PROVIDE INFORMATION DURING THE 2-YEAR STUDY PROCESS IN [SECTION 13].

8 (2) THE LEGISLATURE FURTHER INTENDS THAT THE PILOT PROGRAM PROVIDE NECESSARY
9 DATA RELATED TO:

- 10 (A) ACTUAL COSTS INCURRED IN THE REMEDIATION OF FACILITIES;
11 (B) THE COSTS ASSOCIATED WITH THE ELIMINATION OF JOINT AND SEVERAL LIABILITY;
12 (C) THE POTENTIAL USE OF RESOURCE INDEMNITY TRUST FUND MONEY IN REMEDIATING
13 FACILITIES;
14 (D) THE FEASIBILITY OF VOLUNTARY CLEANUP PLANS; AND
15 (E) THE COORDINATION BETWEEN AN APPLICANT AND THE DEPARTMENT IN THE USE OF
16 VOLUNTARY CLEANUP PROGRAMS.

17
18 NEW SECTION. SECTION 16. CRITERIA. (1) THE PILOT PROGRAM MUST CONSIST OF
19 REMEDICATION OF THREE SITES FROM THE DEPARTMENT OF STATE LANDS' ABANDONED HARD-ROCK
20 MINE PRIORITY LIST. THE THREE SITES MUST BE SELECTED FROM THE TOP TEN PRIORITY SITES ON
21 THAT LIST AS OF APRIL 1, 1995.

22 (2) ANY SITE REMEDIATED UNDER THIS PILOT PROGRAM MUST MEET THE FOLLOWING
23 CRITERIA:

24 (A) THE OWNER OF THE PROPERTY HAS, PRIOR TO MAY 22, 1989, PURCHASED OR ENTERED
25 INTO A LEASE PURCHASE AGREEMENT OR AN OPTION TO PURCHASE PROPERTY WHERE THE FACILITY
26 IS LOCATED.

27 (B) THE APPLICANT HAS SUBMITTED A VOLUNTARY CLEANUP PLAN IN ACCORDANCE WITH
28 THE PROVISIONS OF [SECTIONS 7 AND 8].

29 (C) THE DEPARTMENT HAS ACCEPTED AND APPROVED THE APPLICATION FOR A VOLUNTARY
30 CLEANUP PLAN IN ACCORDANCE WITH THE PROVISIONS OF [SECTIONS 6 THROUGH 10].

1 (3) THE DEPARTMENT AND THE APPLICANT SHALL NEGOTIATE AN APPORTIONMENT OF THE
 2 APPLICANT'S LIABILITY PURSUANT TO [SECTION 17]. THE DEPARTMENT, AS A TRIER OF FACT, SHALL
 3 MAKE THE FINAL DETERMINATION OF THE APPLICANT'S APPORTIONED LIABILITY. IF THE APPLICANT
 4 DISAGREES WITH THE DEPARTMENT'S DETERMINATION OF THE APPLICANT'S PROPORTIONATE SHARE
 5 OF LIABILITY, THE APPLICANT MAY APPEAL THE DEPARTMENT'S DECISION IN ACCORDANCE WITH
 6 THE REQUIREMENTS OF [SECTION 6(4)].

7 (4) IF MORE THAN THREE APPLICANTS SUBMIT VOLUNTARY CLEANUP PLANS FOR THE
 8 HIGHEST PRIORITY SITES ON THE DEPARTMENT OF STATE LANDS' ABANDONED HARD-ROCK MINE
 9 PRIORITY LIST AND THE DEPARTMENT APPROVES MORE THAN THREE PLANS, THE DEPARTMENT
 10 SHALL SELECT THREE PLANS TO INCORPORATE INTO THE PILOT PROGRAM ON A PRIORITY BASIS AS
 11 DETERMINED BY THE DATE OF SUBMITTAL OF A COMPLETE APPLICATION.

12
 13 NEW SECTION. SECTION 17. MIXED FUNDING -- DETERMINATION OF LIABILITY. (1) AN
 14 APPLICANT WHO SATISFIES THE REQUIREMENTS OF [SECTION 16(2)] SHALL MEET WITH THE
 15 DEPARTMENT WITHIN 30 DAYS OF APPROVAL OF THE VOLUNTARY CLEANUP PLAN TO NEGOTIATE
 16 AN APPORTIONMENT OF LIABILITY FOR THE SITE. THE BURDEN IS ON THE APPLICANT TO SHOW HOW
 17 THE APPLICANT'S LIABILITY SHOULD BE APPORTIONED. IN APPORTIONING THE LIABILITY OF THE
 18 APPLICANT UNDER THIS SECTION, THE DEPARTMENT SHALL BALANCE ALL OF THE FOLLOWING
 19 FACTORS:

20 (A) THE EXTENT TO WHICH THE APPLICANT CAUSED THE RELEASE OF THE HAZARDOUS OR
 21 DELETERIOUS SUBSTANCE;

22 (B) THE EXTENT TO WHICH AN APPLICANT'S CONTRIBUTION TO THE RELEASE OF A
 23 HAZARDOUS OR DELETERIOUS SUBSTANCE CAN BE DIMINISHED;

24 (C) THE AMOUNT OF THE HAZARDOUS OR DELETERIOUS SUBSTANCE INVOLVED;

25 (D) THE DEGREE OF TOXICITY OF THE HAZARDOUS OR DELETERIOUS SUBSTANCE INVOLVED;

26 (E) THE DEGREE OF INVOLVEMENT OF AND CARE EXERCISED BY THE APPLICANT IN
 27 MANUFACTURING, TREATING, TRANSPORTING, OR DISPOSING OF THE HAZARDOUS OR DELETERIOUS
 28 SUBSTANCE;

29 (F) THE DEGREE OF COOPERATION BY THE APPLICANT WITH STATE OR LOCAL OFFICIALS TO
 30 PREVENT ANY HARM TO THE PUBLIC HEALTH, SAFETY, OR WELFARE OR TO THE ENVIRONMENT; AND

1 (G) THE APPLICANT'S KNOWLEDGE OF THE HAZARDOUS NATURE OF THE SUBSTANCE.

2 (2) ONCE THE DEPARTMENT AND THE APPLICANT HAVE NEGOTIATED AN APPORTIONMENT
3 OF THE APPLICANT'S LIABILITY, THE APPLICANT HAS A RIGHT OF REIMBURSEMENT SUBJECT TO THE
4 REQUIREMENTS AND LIMITATIONS OF [SECTION 18].

5
6 NEW SECTION. SECTION 18. CLAIMS FOR AND LIMITATIONS ON REIMBURSEMENT. (1) AFTER
7 COMPLETION OF THE VOLUNTARY CLEANUP PLAN APPROVED BY THE DEPARTMENT, THE APPLICANT
8 MAY APPLY TO AND MUST, IN ACCORDANCE WITH THIS SECTION, RECEIVE REIMBURSEMENT FROM
9 THE ABANDONED MINES STATE SPECIAL REVENUE ACCOUNT. REIMBURSEMENT MUST BE SUBJECT
10 TO THE FOLLOWING REQUIREMENTS AND LIMITATIONS:

11 (A) THE APPLICANT SHALL COMPLETE REMEDIATION PRIOR TO MAKING A CLAIM FOR
12 REIMBURSEMENT.

13 (B) THE REIMBURSEMENT MAY NOT EXCEED 90% OF ELIGIBLE COSTS UP TO A MAXIMUM OF
14 \$300,000 PER FACILITY.

15 (C) THE CLAIM FOR REIMBURSEMENT MAY NOT INCLUDE LEGAL FEES OR DEPARTMENT COSTS
16 INCURRED IN THE OVERSIGHT OF THE VOLUNTARY CLEANUP PLAN.

17 (2) FOR PURPOSES OF THIS SECTION, "ELIGIBLE COSTS" MEANS COSTS IN EXCESS OF AN
18 APPLICANT'S PROPORTIONATE SHARE OF TOTAL COSTS INCURRED IN THE REMEDIATION OF THE SITE
19 DURING THE 1996-97 BIENNIUM.

20 (3) IF COSTS ARE REIMBURSED OUT OF THE ABANDONED MINES STATE SPECIAL REVENUE
21 ACCOUNT, NOTHING IN [SECTIONS 14 THROUGH 20] PROHIBITS THE DEPARTMENT FROM PURSUING
22 AN ACTION AGAINST OTHER POTENTIALLY LIABLE PARTIES TO RECOVER THOSE COSTS.

23 (4) IF THE ABANDONED MINES STATE SPECIAL REVENUE ACCOUNT DOES NOT CONTAIN
24 SUFFICIENT MONEY TO PAY RECEIVED CLAIMS FOR REIMBURSEMENT, THE ABANDONED MINES STATE
25 SPECIAL REVENUE ACCOUNT AND THE DEPARTMENT ARE NOT LIABLE FOR MAKING ANY
26 REIMBURSEMENT AT THAT TIME. ALL CLAIMS ARE SUBJECT TO APPROPRIATIONS TO THE
27 ABANDONED MINES STATE SPECIAL REVENUE ACCOUNT.

28
29 NEW SECTION. SECTION 19. ABANDONED MINES STATE SPECIAL REVENUE ACCOUNT
30 CREATED. (1) THERE IS AN ABANDONED MINES STATE SPECIAL REVENUE ACCOUNT WITHIN THE

1 STATE SPECIAL REVENUE ACCOUNT FUND ESTABLISHED IN 17-2-102.

2 (2) THERE MUST BE PAID INTO THE ABANDONED MINES STATE SPECIAL REVENUE ACCOUNT
3 MONEY ALLOCATED FROM THE METALLIFEROUS MINES LICENSE TAX PURSUANT TO 15-37-117.

4 (3) DEPOSITS TO THE ABANDONED MINES STATE SPECIAL REVENUE ACCOUNT MUST BE
5 PLACED IN SHORT-TERM INVESTMENTS. THE INTEREST ON SHORT-TERM INVESTMENTS MUST BE
6 DEPOSITED IN THE ABANDONED MINES STATE SPECIAL REVENUE ACCOUNT.

7 (4) THE PURPOSE OF THE ABANDONED MINES STATE SPECIAL REVENUE ACCOUNT IS TO
8 PROVIDE THE FUNDING TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FOR THE
9 CLEANUP AND RECLAMATION OF SITES ELIGIBLE FOR THE PILOT PROGRAM IN [SECTIONS 14
10 THROUGH 20].

11
12 NEW SECTION. SECTION 20. INCORPORATION INTO STUDY PROCESS -- REPORT TO
13 LEGISLATURE. THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AND APPLICANTS
14 PARTICIPATING IN THE PILOT PROGRAM SHALL SUBMIT REPORTS TO THE 55TH LEGISLATURE
15 DETAILING THE SUCCESS OF AND DIFFICULTIES WITH THE OPERATION OF THE PILOT PROGRAM.

16
17 SECTION 21. SECTION 15-37-117, MCA, IS AMENDED TO READ:

18 "15-37-117. Disposition of metalliferous mines license taxes. (1) Metalliferous mines license taxes
19 collected under the provisions of this part must, in accordance with the provisions of 15-1-501(6), be
20 allocated as follows:

21 (a) to the credit of the general fund of the state, 58% of total collections each year;

22 (b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5%
23 of total collections each year;

24 (c) ~~to the state resource indemnity trust fund, 15.5%~~ to the abandoned mines state special revenue
25 account provided for in [section 19], 8.5% of total collections each year;

26 (d) to the county or counties identified as experiencing fiscal and economic impacts, resulting in
27 increased employment or local government costs, under an impact plan for a large-scale mineral
28 development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic
29 impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine
30 is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

1 (i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225;
2 and

3 (ii) all money not allocated to the account pursuant to subsection (1)(d)(i) to be further allocated
4 as follows:

5 (A) 33 1/3% is allocated to the county for planning or economic development activities;

6 (B) 33 1/3% is allocated to the elementary school districts within the county that have been
7 affected by the development or operation of the metal mine; and

8 (C) 33 1/3% is allocated to the high school districts within the county that have been affected by
9 the development or operation of the metal mine.

10 (2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307
11 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under
12 subsection (1)(d) in a manner similar to that provided for property tax sharing under Title 90, chapter 6,
13 part 4.

14 (3) The department shall return to the county in which metals are produced the tax collections
15 allocated under subsection (1)(d). The allocation to the county described by subsection (1)(d) is a statutory
16 appropriation pursuant to 17-7-502."

17

18 **NEW SECTION. SECTION 22. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 569 AND**
19 **[THIS ACT] ARE BOTH PASSED AND APPROVED, THE AMENDMENT TO 15-37-117(1)(C) IN HOUSE BILL**
20 **NO. 569, RELATING TO THE PERCENTAGE ALLOCATION TO THE RESOURCE INDEMNITY TRUST FUND,**
21 **IS VOID.**

22

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

27

28 **NEW SECTION. Section 24. Codification instructions.** ~~(1) [Section 9] is intended to be codified~~
29 ~~as an integral part of Title 82, chapter 4, and the provisions of Title 82, chapter 4, apply to [section 9].~~

30 ~~(2) [Sections 10 2 3 4 through 16 10 11 12] are intended to be codified as an integral part of Title~~

1 75, chapter 10, part 7, and the provisions of Title 75, chapter 10, part 7, apply to [sections ~~10 2 3 4~~
2 through ~~10 11 12~~].

3

4 NEW SECTION. Section 25. Applicability. (1) [This act] ~~applies to all pending actions or~~
5 ~~proceedings by the state~~ DOES NOT APPLY TO CIVIL OR ADMINISTRATIVE ACTIONS COMMENCED OR
6 BEGUN PRIOR TO [THE EFFECTIVE DATE OF THIS ACT] OR TO CLAIMS BASED ON THOSE ACTIONS.
7 CLAIMS FOR REIMBURSEMENT FROM THE ENVIRONMENTAL QUALITY PROTECTION FUND MAY NOT
8 BE SUBMITTED FOR ANY COSTS INCURRED PRIOR TO [THE EFFECTIVE DATE OF THIS ACT].

9 (2) [SECTIONS 2 4 THROUGH 10 12] APPLY AFTER JANUARY 1, 2001, TO VOLUNTARY
10 CLEANUP PLANS APPROVED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
11 BETWEEN [THE EFFECTIVE DATE OF THIS ACT] AND JANUARY 1, 2001.

12

13 NEW SECTION. SECTION 26. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND
14 APPROVAL.

15

16 NEW SECTION. SECTION 27. TERMINATION. (1) [SECTIONS 2 4 THROUGH 10 12] TERMINATE
17 JANUARY 1, 2001.

18 (2) [SECTIONS 14 THROUGH 21] TERMINATE JUNE 30, 1997.

19

20 NEW SECTION. Section 21. Effective date. [This act] is effective on passage and approval.

21

-END-