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 2 INTRODUCED BY *Anderson Grosbeck Secretary HARP*  
 3 *Anderson* House BILL NO. *524*

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING REMEDIATION REQUIREMENTS FOR  
 5 HAZARDOUS AND DELETERIOUS SUBSTANCES; PROVIDING THAT A PERSON LIABLE FOR REMEDIAL  
 6 ACTION HAVE THE OPPORTUNITY TO RESPOND PRIOR TO REMEDIAL ACTION BEING INITIATED BY THE  
 7 STATE; CLARIFYING THE PROCESS FOR WHEN STATE ORDERS MAY BE ISSUED; ELIMINATING THE  
 8 REQUIREMENT FOR AGREEMENTS TO BE FILED IN DISTRICT COURT AS CONSENT DECREES;  
 9 INCREASING ELIGIBILITY FOR SITES SUBMITTING VOLUNTARY REMEDIATION PLANS; PROVIDING FOR  
 10 APPEAL OF AGENCY DECISIONS REGARDING REMEDIATION PLANS; AMENDING SECTIONS 75-10-711,  
 11 75-10-723, 75-10-732, AND 75-10-736, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

It is the intent of this bill to provide potentially liable persons the opportunity to take the necessary remedial action before the state takes action.

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

Section 1. Section 75-10-711, MCA, is amended to read:

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

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

(b) the appropriate remedial action will not be done properly and expeditiously by any person liable under 75-10-715(1) and that person has been given the opportunity by letter to expeditiously perform the appropriate remedial action. Any person liable under 75-10-715(1) shall take immediate action to contain, remove, and abate the release.

(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, the department may undertake remedial action in

1 the form of any investigation, monitoring, survey, testing, or other information gathering as authorized by  
2 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the  
3 release or the threat of release and the extent and imminence of the danger to the public health, safety,  
4 or welfare or the environment.

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

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

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

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

17 (4) Whenever the department is authorized to act pursuant to subsection (1) ~~or has reason to~~  
18 ~~believe that a release that may pose an imminent and substantial threat to the public health, safety, or~~  
19 ~~welfare or the environment has occurred or is about to occur,~~ it may issue to any person liable under  
20 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to protect the  
21 public health, safety, or welfare or the environment.

22 (5) (a) A person who violates or fails or refuses to comply with an order issued under 75-10-707  
23 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than  
24 \$10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining  
25 the amount of any penalty assessed, the court may take into account:

26 (i) the nature, circumstances, extent, and gravity of the noncompliance;

27 (ii) with respect to the person liable under 75-10-715(1):

28 (A) the person's ability to pay;

29 (B) any prior history of violations;

30 (C) the degree of culpability; and

1 (D) the economic benefit or savings, if any, resulting from the noncompliance; and

2 (iii) any other matters as justice may require.

3 (b) Civil penalties collected under subsection (5)(a) must be deposited into the environmental  
4 quality protection fund established in 75-10-704.

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

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

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

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

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

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

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

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

27

28 **Section 2.** Section 75-10-723, MCA, is amended to read:

29 **"75-10-723. Agreements and administrative orders on consent to perform remedial action.** (1) To  
30 expedite effective remedial actions and minimize litigation, the department, in its discretion and whenever

1 practicable and in the public interest, may negotiate and enter into an agreement or an administrative order  
2 on consent with any person, including the owner or operator of the facility from which a release emanates,  
3 to perform a remedial action if the department determines that the action will be properly done by the  
4 person. The agreement must contain terms and conditions that the department in its discretion determines  
5 to be appropriate.

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

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

12  
13 **Section 3.** Section 75-10-732, MCA, is amended to read:

14 **"75-10-732. (Temporary) Eligibility.** (1) A facility where there has been a release or threatened  
15 release of a hazardous or deleterious substance that may present an imminent and substantial  
16 endangerment to the public health, safety, or welfare or the environment may be eligible for voluntary  
17 cleanup procedures under this part, except for facilities that meet one of the following criteria at the time  
18 of application for a voluntary cleanup plan:

19 (a) a facility that is listed or proposed for listing on the national priorities list pursuant to 42 U.S.C.  
20 9601, et seq.;

21 (b) a facility for which an order has been issued or consent decree has been entered into pursuant  
22 to this part;

23 (c) a facility that is the subject of an agency order or an action filed in district court by any state  
24 agency that addresses the release or threatened release of a hazardous or deleterious substance; or

25 (d) a facility where the release or threatened release of a hazardous or deleterious substance is  
26 regulated by the Montana Hazardous Waste and Underground Storage Tank Act and regulations under that  
27 act; or

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

30 (2) Notwithstanding the provisions of subsections (1)(b) through (1)(e), the department may agree

1 to accept and may approve an application for a voluntary cleanup plan for a facility.

2 (3) The department may determine that a facility that is potentially eligible for voluntary cleanup  
3 exhibits complexities regarding protection of public health, safety, and welfare and the environment and  
4 that the complexities should be addressed under an administrative order on consent or consent decree  
5 pursuant to this part. This determination may be made only after consultation with any person desiring to  
6 conduct a voluntary cleanup at the facility.

7 (4) If an applicant ~~that~~ who submits an application for a voluntary cleanup plan disagrees with the  
8 department's decision to reject the filing of the application under subsection (1) or (3), or disagrees with  
9 the department's decision to disapprove the voluntary cleanup plan submitted pursuant to 75-10-736, the  
10 applicant may, within 30 days of receipt of the department's written decision pursuant to 75-10-736,  
11 submit a written request for a hearing before the board of environmental review. In reviewing a department  
12 decision to reject an application under subsection (1) or (3) or to disapprove a voluntary cleanup plan  
13 submitted pursuant to 75-10-736, the board shall apply the standards of review specified in 2-4-704. The  
14 hearing must be held within 2 months at the regular meeting of the board or at the time mutually agreed  
15 to by the board, the department, and the applicant. The hearing and any appeals must be conducted in  
16 accordance with the contested case proceedings pursuant to Title 2, chapter 4, parts 6 and 7. A hearing  
17 before the board may not be requested regarding a decision of the department made pursuant to subsection  
18 (2). (Terminates January 1, 2001--sec. 27, Ch. 584, L. 1995.)"

19

20 **Section 4.** Section 75-10-736, MCA, is amended to read:

21 **"75-10-736. (Temporary) Approval of voluntary cleanup plan -- time limits -- content of notice --**  
22 **expiration of approval.** (1) The department shall review for completeness, including adequacy and  
23 accuracy, an application for a voluntary cleanup plan and shall provide a written completeness notice to  
24 the applicant within 30 days after receipt of the application. The completeness notice must note all  
25 deficiencies identified in the information submitted.

26 (2) For a voluntary cleanup plan that is considered complete by the department pursuant to  
27 subsection (1), the department shall provide formal written notification that the voluntary cleanup plan has  
28 been approved or disapproved no more than 60 days after the department's determination that an  
29 application is complete, unless the applicant and the department agree to an extension of the review to a  
30 date certain. The review must be limited to a review of the materials submitted by the applicant, public

1 comments, and documents or information readily available to the department. The department shall  
2 communicate with the applicant during the review period to ensure that the applicant has the opportunity  
3 to address the public comments.

4 (3) (a) If the department receives five applications for review of a voluntary cleanup plan in a  
5 calendar month, including applications deferred from prior months, the department may notify any additional  
6 applicants in that month that their plans must be reviewed in the order received. The 30-day period for  
7 department completeness review of deferred applications pursuant to subsection (1) must begin on the first  
8 day of the subsequent month that each plan is eligible for review.

9 (b) The department shall discontinue accepting voluntary cleanup applications when 15 applications  
10 are pending and are being reviewed by the department. The department shall establish a waiting list for  
11 applications and shall consider the applications in order of submittal.

12 (c) If the department has received multiple cleanup applications for a voluntary cleanup at the same  
13 facility, the department shall notify all of the applicants and offer them the opportunity to submit a joint  
14 application.

15 (4) Consistent with the provisions of 75-10-707, the department may access the facility during  
16 review of the application and implementation of the voluntary cleanup plan to confirm information provided  
17 by the applicant and verify that the cleanup is being conducted consistent with the approved plan.

18 (5) The department shall approve a voluntary cleanup plan if the department concludes that the  
19 plan meets the requirements specified in 75-10-734 and will attain a degree of cleanup and control of  
20 hazardous or deleterious substances that complies with the requirements of 75-10-721. Except for the  
21 period necessary for the operation and maintenance of the approved remediation proposal, the department  
22 may not approve a voluntary remediation proposal that would take longer than ~~24~~ 60 months after  
23 department approval to complete.

24 (6) If a voluntary cleanup plan is not approved by the department, the department shall promptly  
25 provide the applicant with a written statement of the reasons for denial. The denial may be appealed to the  
26 board of environmental review in accordance with the provisions of 75-10-732(4).

27 (7) The approval of a voluntary cleanup plan by the department applies only to conditions at the  
28 facility that are known to the department at the time of department approval. If a voluntary remediation  
29 proposal is not initiated within 12 months and, except for the period necessary for the operation and  
30 maintenance of the approved remediation proposal, is not completed within 24 months after approval by

1 the department, the department's approval lapses. However, the department may grant an extension of the  
2 time limit for completion of the voluntary cleanup plan.

3 (8) If reasonably unforeseeable conditions are discovered during implementation of a voluntary  
4 cleanup plan that substantially affect the risk to public health, safety, or welfare or the environment or  
5 substantially change the scope of the approved plan, the applicant shall promptly notify the department.  
6 The department may require the applicant to submit an amendment to the approved plan to address the  
7 unforeseen conditions or may determine that a voluntary cleanup plan is no longer appropriate pursuant to  
8 75-10-732(3).

9 (9) Written notification by the department that a voluntary cleanup plan is not approved must state  
10 the basis for disapproval of the voluntary cleanup plan.

11 (10) (a) Failure of the applicant or the applicant's agents to materially comply with the voluntary  
12 cleanup plan approved by the department pursuant to this section renders the approval void.

13 (b) Submission of materially misleading information by the applicant or the applicant's agents in  
14 the application or during implementation of the voluntary cleanup plan renders the department approval  
15 void.

16 (11) Within 60 days after completion of the approved remediation proposal described in the  
17 voluntary cleanup plan approved by the department, the applicant shall provide to the department a  
18 certification from a qualified environmental professional that the plan has been fully implemented, including  
19 all documentation necessary to demonstrate the successful implementation of the plan, such as  
20 confirmation sampling, if necessary.

21 (12) Except as provided in 75-10-738(2)(b), the department may not require financial assurance  
22 under this part for voluntary cleanup plans approved under this section.

23 (13) If a person who would otherwise not be a liable person under 75-10-715(1) elects to undertake  
24 an approved voluntary cleanup plan, the person may not become a liable person under 75-10-715(1) by  
25 undertaking a voluntary cleanup if the person materially complies with the voluntary cleanup plan approved  
26 by the department pursuant to this section.

27 (14) Immunity from liability under this section does not apply to a release that is caused by conduct  
28 that is negligent or grossly negligent or that constitutes intentional misconduct. (Terminates January 1,  
29 2001--sec. 27, Ch. 584, L. 1995.)"

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2

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

-END-



## 1 HOUSE BILL NO. 524

2 INTRODUCED BY ANDERSON, GROSFIELD, BEAUDRY, HARP, KNOX, QUILICI

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING REMEDIATION REQUIREMENTS FOR  
5 HAZARDOUS AND DELETERIOUS SUBSTANCES; PROVIDING THAT A PERSON LIABLE FOR REMEDIAL  
6 ACTION HAVE THE OPPORTUNITY TO RESPOND PRIOR TO REMEDIAL ACTION BEING INITIATED BY THE  
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8 REQUIREMENT FOR AGREEMENTS TO BE FILED IN DISTRICT COURT AS CONSENT DECREES;  
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23 may present an imminent and substantial endangerment to the public health, welfare, or safety or the  
24 environment; and

25 (b) the appropriate remedial action will not be done properly and expeditiously by any person liable  
26 under 75-10-715(1) and that EACH person THAT IS LIABLE OR POTENTIALLY LIABLE UNDER  
27 75-10-715(1) has been given the opportunity by letter to expeditiously perform the appropriate remedial  
28 action. Any person liable under 75-10-715(1) shall take immediate action to contain, remove, and abate  
29 the release.

30 (2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to

1 believe that a release has occurred or is about to occur, the department may undertake remedial action in  
2 the form of any investigation, monitoring, survey, testing, or other information gathering as authorized by  
3 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the  
4 release or the threat of release and the extent and imminence of the danger to the public health, safety,  
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8 to take action under subsection (1) if it has made diligent good faith efforts to determine the identity of the  
9 person or persons liable for the release or threatened release and:

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

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

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

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23 (5) (a) A person who violates or fails or refuses to comply with an order issued under 75-10-707  
24 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than  
25 \$10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining  
26 the amount of any penalty assessed, the court may take into account:

27 (i) the nature, circumstances, extent, and gravity of the noncompliance;

28 (ii) with respect to the person liable under 75-10-715(1):

29 (A) the person's ability to pay;

30 (B) any prior history of violations;

- 1 (C) the degree of culpability; and
- 2 (D) the economic benefit or savings, if any, resulting from the noncompliance; and
- 3 (iii) any other matters as justice may require.
- 4 (b) Civil penalties collected under subsection (5)(a) must be deposited into the environmental
- 5 quality protection fund established in 75-10-704.
- 6 (6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the
- 7 following actions:
- 8 (a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;
- 9 (b) an action to enforce an order issued under 75-10-707 or this section;
- 10 (c) an action to recover a civil penalty for violation of or failure to comply with an order issued
- 11 under 75-10-707 or this section; or
- 12 (d) an action by a person to whom an order has been issued to determine the validity of the order,
- 13 only if the person has been in compliance and continues in compliance with the order pending a decision
- 14 of the court.
- 15 (7) In considering objections raised in a judicial action regarding orders issued under this part, the
- 16 court shall uphold and enforce an order issued by the department unless the objecting party can
- 17 demonstrate, on the administrative record, that the department's decision to issue the order was arbitrary
- 18 and capricious or otherwise not in accordance with law.
- 19 (8) Instead of issuing a notification or an order under this section, the department may bring an
- 20 action for legal or equitable relief in the district court of the county where the release or threatened release
- 21 occurred or in the first judicial district as may be necessary to abate any imminent and substantial
- 22 endangerment to the public health, safety, or welfare or the environment resulting from the release or
- 23 threatened release.
- 24 (9) The department may take remedial action pursuant to subsection (1) at a site that is regulated
- 25 under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public
- 26 Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of
- 27 this part."

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29 **Section 2.** Section 75-10-723, MCA, is amended to read:

30 "**75-10-723. Agreements and administrative orders on consent to perform remedial action.** (1) To

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

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

11 (3) A decision of the department to enter into or not enter into agreements or administrative orders  
12 on consent under this section is not subject to judicial review."  
13

14 **Section 3.** Section 75-10-732, MCA, is amended to read:

15 **"75-10-732. (Temporary) Eligibility.** (1) A facility where there has been a release or threatened  
16 release of a hazardous or deleterious substance that may present an imminent and substantial  
17 endangerment to the public health, safety, or welfare or the environment may be eligible for voluntary  
18 cleanup procedures under this part, except for facilities that meet one of the following criteria at the time  
19 of application for a voluntary cleanup plan:

20 (a) a facility that is listed or proposed for listing on the national priorities list pursuant to 42 U.S.C.  
21 9601, et seq.;

22 (b) a facility for which an order has been issued or consent decree has been entered into pursuant  
23 to this part;

24 (c) a facility that is the subject of an agency order or an action filed in district court by any state  
25 agency that addresses the release or threatened release of a hazardous or deleterious substance; or

26 (d) a facility where the release or threatened release of a hazardous or deleterious substance is  
27 regulated by the Montana Hazardous Waste and Underground Storage Tank Act and regulations under that  
28 act; or

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

1 (2) Notwithstanding the provisions of subsections (1)(b) through (1)(e), the department may agree  
2 to accept and may approve an application for a voluntary cleanup plan for a facility.

3 (3) The department may determine that a facility that is potentially eligible for voluntary cleanup  
4 exhibits complexities regarding protection of public health, safety, and welfare and the environment and  
5 that the complexities should be addressed under an administrative order ~~on consent~~ or consent decree  
6 pursuant to this part. This determination may be made only after consultation with any person desiring to  
7 conduct a voluntary cleanup at the facility.

8 (4) If an applicant ~~that~~ who submits an application for a voluntary cleanup plan disagrees with the  
9 department's decision to reject the filing of the application under subsection (1) or (3), or disagrees with  
10 the department's decision to disapprove the voluntary cleanup plan submitted pursuant to 75-10-736, the  
11 applicant may, within 30 days of receipt of the department's written decision pursuant to 75-10-736,  
12 submit a written request for a hearing before the board of environmental review. In reviewing a department  
13 decision to reject an application under subsection (1) or (3) or to disapprove a voluntary cleanup plan  
14 submitted pursuant to 75-10-736, the board shall apply the standards of review specified in 2-4-704. The  
15 hearing must be held within 2 months at the regular meeting of the board or at the time mutually agreed  
16 to by the board, the department, and the applicant. The hearing and any appeals must be conducted in  
17 accordance with the contested case proceedings pursuant to Title 2, chapter 4, parts 6 and 7. A hearing  
18 before the board may not be requested regarding a decision of the department made pursuant to subsection  
19 (2). (Terminates January 1, 2001--sec. 27, Ch. 584, L. 1995.)"

20  
21 **Section 4.** Section 75-10-736, MCA, is amended to read:

22 **"75-10-736. (Temporary) Approval of voluntary cleanup plan -- time limits -- content of notice --**  
23 **expiration of approval.** (1) The department shall review for completeness, including adequacy and  
24 accuracy, an application for a voluntary cleanup plan and shall provide a written completeness notice to  
25 the applicant within 30 days after receipt of ~~the~~ AN application FOR A PLAN THAT WOULD TAKE 24  
26 MONTHS OR LESS TO COMPLETE AND WITHIN 60 DAYS FOR A PLAN THAT WOULD TAKE MORE THAN  
27 24 MONTHS TO COMPLETE. The completeness notice must note all deficiencies identified in the  
28 information submitted.

29 (2) For a voluntary cleanup plan that is considered complete by the department pursuant to  
30 subsection (1), the department shall provide formal written notification that the voluntary cleanup plan has

1 been approved or disapproved no more than 60 days FOR A PLAN THAT WOULD TAKE 24 MONTHS OR  
2 LESS TO COMPLETE AND WITHIN 75 DAYS FOR A PLAN THAT WOULD TAKE MORE THAN 24 MONTHS  
3 TO COMPLETE after the department's determination that an application is complete, unless the applicant  
4 and the department agree to an extension of the review to a date certain. The review must be limited to  
5 a review of the materials submitted by the applicant, public comments, and documents or information  
6 readily available to the department. The department shall communicate with the applicant during the review  
7 period to ensure that the applicant has the opportunity to address the public comments.

8 (3) (a) If the department receives five applications for review of a voluntary cleanup plan in a  
9 calendar month, including applications deferred from prior months, the department may notify any additional  
10 applicants in that month that their plans must be reviewed in the order received. The 30-day period for  
11 department completeness review of deferred applications pursuant to subsection (1) must begin on the first  
12 day of the subsequent month that each plan is eligible for review.

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14 are pending and are being reviewed by the department. The department shall establish a waiting list for  
15 applications and shall consider the applications in order of submittal.

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17 facility, the department shall notify all of the applicants and offer them the opportunity to submit a joint  
18 application.

19 (4) Consistent with the provisions of 75-10-707, the department may access the facility during  
20 review of the application and implementation of the voluntary cleanup plan to confirm information provided  
21 by the applicant and verify that the cleanup is being conducted consistent with the approved plan.

22 (5) The department shall approve a voluntary cleanup plan if the department concludes that the  
23 plan meets the requirements specified in 75-10-734 and will attain a degree of cleanup and control of  
24 hazardous or deleterious substances that complies with the requirements of 75-10-721. Except for the  
25 period necessary for the operation and maintenance of the approved remediation proposal, the department  
26 may not approve a voluntary remediation proposal that would take longer than ~~24~~ 60 months after  
27 department approval to complete.

28 (6) If a voluntary cleanup plan is not approved by the department, the department shall promptly  
29 provide the applicant with a written statement of the reasons for denial. The denial may be appealed to the  
30 board of environmental review in accordance with the provisions of 75-10-732(4).

1 (7) The approval of a voluntary cleanup plan by the department applies only to conditions at the  
2 facility that are known to the department at the time of department approval. If a voluntary remediation  
3 proposal is not initiated within 12 months and, except for the period necessary for the operation and  
4 maintenance of the approved remediation proposal, is not completed within 24 months after approval by  
5 the department, the department's approval lapses. However, the department may grant an extension of the  
6 time limit for completion of the voluntary cleanup plan.

7 (8) If reasonably unforeseeable conditions are discovered during implementation of a voluntary  
8 cleanup plan that substantially affect the risk to public health, safety, or welfare or the environment or  
9 substantially change the scope of the approved plan, the applicant shall promptly notify the department.  
10 The department may require the applicant to submit an amendment to the approved plan to address the  
11 unforeseen conditions or may determine that a voluntary cleanup plan is no longer appropriate pursuant to  
12 75-10-732(3).

13 (9) Written notification by the department that a voluntary cleanup plan is not approved must state  
14 the basis for disapproval of the voluntary cleanup plan.

15 (10) (a) Failure of the applicant or the applicant's agents to materially comply with the voluntary  
16 cleanup plan approved by the department pursuant to this section renders the approval void.

17 (b) Submission of materially misleading information by the applicant or the applicant's agents in  
18 the application or during implementation of the voluntary cleanup plan renders the department approval  
19 void.

20 (11) Within 60 days after completion of the approved remediation proposal described in the  
21 voluntary cleanup plan approved by the department, the applicant shall provide to the department a  
22 certification from a qualified environmental professional that the plan has been fully implemented, including  
23 all documentation necessary to demonstrate the successful implementation of the plan, such as  
24 confirmation sampling, if necessary.

25 (12) Except as provided in 75-10-738(2)(b), the department may not require financial assurance  
26 under this part for voluntary cleanup plans approved under this section.

27 (13) If a person who would otherwise not be a liable person under 75-10-715(1) elects to undertake  
28 an approved voluntary cleanup plan, the person may not become a liable person under 75-10-715(1) by  
29 undertaking a voluntary cleanup if the person materially complies with the voluntary cleanup plan approved  
30 by the department pursuant to this section.

1           (14) Immunity from liability under this section does not apply to a release that is caused by conduct  
2 that is negligent or grossly negligent or that constitutes intentional misconduct. (Terminates January 1,  
3 2001--sec. 27, Ch. 584, L. 1995.)”

4

5           NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

6

-END-



## 1 HOUSE BILL NO. 524

2 INTRODUCED BY ANDERSON, GROSFIELD, BEAUDRY, HARP, KNOX, QUILICI

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING REMEDIATION REQUIREMENTS FOR  
5 HAZARDOUS AND DELETERIOUS SUBSTANCES; PROVIDING THAT A PERSON LIABLE FOR REMEDIAL  
6 ACTION HAVE THE OPPORTUNITY TO RESPOND PRIOR TO REMEDIAL ACTION BEING INITIATED BY THE  
7 STATE; CLARIFYING THE PROCESS FOR WHEN STATE ORDERS MAY BE ISSUED; ELIMINATING THE  
8 REQUIREMENT FOR AGREEMENTS TO BE FILED IN DISTRICT COURT AS CONSENT DECREES;  
9 INCREASING ELIGIBILITY FOR SITES SUBMITTING VOLUNTARY REMEDIATION PLANS; PROVIDING FOR  
10 APPEAL OF AGENCY DECISIONS REGARDING REMEDIATION PLANS; AMENDING SECTIONS 75-10-711,  
11 75-10-723, 75-10-732, AND 75-10-736, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
12

## 13 STATEMENT OF INTENT

14 It is the intent of this bill to provide potentially liable persons the opportunity to take the necessary  
15 remedial action before the state takes action.  
16

17 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.**

## 1 HOUSE BILL NO. 524

2 INTRODUCED BY ANDERSON, GROSFIELD, BEAUDRY, HARP, KNOX, QUILICI

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING REMEDIATION REQUIREMENTS FOR  
5 HAZARDOUS AND DELETERIOUS SUBSTANCES; PROVIDING THAT A PERSON LIABLE FOR REMEDIAL  
6 ACTION HAVE THE OPPORTUNITY TO RESPOND PRIOR TO REMEDIAL ACTION BEING INITIATED BY THE  
7 STATE; CLARIFYING THE PROCESS FOR WHEN STATE ORDERS MAY BE ISSUED; ELIMINATING THE  
8 REQUIREMENT FOR AGREEMENTS TO BE FILED IN DISTRICT COURT AS CONSENT DECREES;  
9 INCREASING ELIGIBILITY FOR SITES SUBMITTING VOLUNTARY REMEDIATION PLANS; PROVIDING FOR  
10 APPEAL OF AGENCY DECISIONS REGARDING REMEDIATION PLANS; AUTHORIZING THE DEPARTMENT  
11 OF ENVIRONMENTAL QUALITY TO ADOPT RULES FOR THE JOINT SELECTION OF REMEDIAL ACTION  
12 CONTRACTORS; AMENDING SECTIONS 75-10-711, 75-10-723, 75-10-732, AND 75-10-736, MCA; AND  
13 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

14  
15 STATEMENT OF INTENT

16 It is the intent of this bill to provide potentially liable persons the opportunity to take the necessary  
17 remedial action before the state takes action AND TO AUTHORIZE THE DEPARTMENT OF  
18 ENVIRONMENTAL QUALITY TO ADOPT RULES THAT ALLOW FOR THE JOINT AND MUTUAL SELECTION  
19 OF REMEDIAL ACTION CONTRACTORS BY THE DEPARTMENT AND THE POTENTIALLY LIABLE PERSONS  
20 RESPONSIBLE FOR TAKING REMEDIAL ACTION AT SITES.

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

23  
24 **Section 1.** Section 75-10-711, MCA, is amended to read:

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

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

30 (b) the appropriate remedial action will not be done properly and expeditiously by any person liable

1 under 75-10-715(1) and ~~that~~ EACH person THAT IS LIABLE OR POTENTIALLY LIABLE UNDER  
2 75-10-715(1) has been given the opportunity by letter to PROPERLY AND expeditiously perform the  
3 appropriate remedial action. Any person liable under 75-10-715(1) shall take immediate action to contain,  
4 remove, and abate the release.

5 (2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to  
6 believe that a release has occurred or is about to occur, the department may undertake remedial action in  
7 the form of any investigation, monitoring, survey, testing, or other information gathering as authorized by  
8 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the  
9 release or the threat of release and the extent and imminence of the danger to the public health, safety,  
10 or welfare or the environment.

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

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

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

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

23 (4) Whenever the department is authorized to act pursuant to subsection (1) ~~or has reason to~~  
24 ~~believe that a release that may pose an imminent and substantial threat to the public health, safety, or~~  
25 ~~welfare or the environment has occurred or is about to occur,~~ it may issue to any person liable under  
26 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to protect the  
27 public health, safety, or welfare or the environment.

28 (5) (a) A person who violates or fails or refuses to comply with an order issued under 75-10-707  
29 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than  
30 \$10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining

1 the amount of any penalty assessed, the court may take into account:

2 (i) the nature, circumstances, extent, and gravity of the noncompliance;

3 (ii) with respect to the person liable under 75-10-715(1):

4 (A) the person’s ability to pay;

5 (B) any prior history of violations;

6 (C) the degree of culpability; and

7 (D) the economic benefit or savings, if any, resulting from the noncompliance; and

8 (iii) any other matters as justice may require.

9 (b) Civil penalties collected under subsection (5)(a) must be deposited into the environmental  
10 quality protection fund established in 75-10-704.

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

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

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

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

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

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

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

29 (9) The department may take remedial action pursuant to subsection (1) at a site that is regulated  
30 under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public

1 Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of  
2 this part."

3

4 **Section 2.** Section 75-10-723, MCA, is amended to read:

5 **"75-10-723. Agreements and administrative orders on consent to perform remedial action.** (1) To  
6 expedite effective remedial actions and minimize litigation, the department, in its discretion and whenever  
7 practicable and in the public interest, may negotiate and enter into an agreement or an administrative order  
8 on consent with any person, including the owner or operator of the facility from which a release emanates,  
9 to perform a remedial action if the department determines that the action will be properly done by the  
10 person. The agreement must contain terms and conditions that the department in its discretion determines  
11 to be appropriate.

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

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

18

19 **Section 3.** Section 75-10-732, MCA, is amended to read:

20 **"75-10-732. (Temporary) Eligibility.** (1) A facility where there has been a release or threatened  
21 release of a hazardous or deleterious substance that may present an imminent and substantial  
22 endangerment to the public health, safety, or welfare or the environment may be eligible for voluntary  
23 cleanup procedures under this part, except for facilities that meet one of the following criteria at the time  
24 of application for a voluntary cleanup plan:

25 (a) a facility that is listed or proposed for listing on the national priorities list pursuant to 42 U.S.C.  
26 9601, et seq.;

27 (b) a facility for which an order has been issued or consent decree has been entered into pursuant  
28 to this part;

29 (c) a facility that is the subject of an agency order or an action filed in district court by any state  
30 agency that addresses the release or threatened release of a hazardous or deleterious substance; or

1 (d) a facility where the release or threatened release of a hazardous or deleterious substance is  
 2 regulated by the Montana Hazardous Waste and Underground Storage Tank Act and regulations under that  
 3 act; or

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

6 (2) Notwithstanding the provisions of subsections (1)(b) through (1)(e), the department may agree  
 7 to accept and may approve an application for a voluntary cleanup plan for a facility.

8 (3) The department may determine that a facility that is potentially eligible for voluntary cleanup  
 9 exhibits complexities regarding protection of public health, safety, and welfare and the environment and  
 10 that the complexities should be addressed under an administrative order ~~on consent~~ or consent decree  
 11 pursuant to this part. This determination may be made only after consultation with any person desiring to  
 12 conduct a voluntary cleanup at the facility.

13 (4) If an applicant ~~that~~ who submits an application for a voluntary cleanup plan disagrees with the  
 14 department's decision to reject the filing of the application under subsection (1) or (3), or disagrees with  
 15 the department's decision to disapprove the voluntary cleanup plan submitted pursuant to 75-10-736, the  
 16 applicant may, within 30 days of receipt of the department's written decision pursuant to 75-10-736,  
 17 submit a written request for a hearing before the board of environmental review. In reviewing a department  
 18 decision to reject an application under subsection (1) or (3) or to disapprove a voluntary cleanup plan  
 19 submitted pursuant to 75-10-736, the board shall apply the standards of review specified in 2-4-704. The  
 20 hearing must be held within 2 months at the regular meeting of the board or at the time mutually agreed  
 21 to by the board, the department, 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 6 and 7. A hearing  
 23 before the board may not be requested regarding a decision of the department made pursuant to subsection  
 24 (2). (Terminates January 1, 2001--sec. 27, Ch. 584, L. 1995.)"

25  
 26 **Section 4.** Section 75-10-736, MCA, is amended to read:

27 **"75-10-736. (Temporary) Approval of voluntary cleanup plan -- time limits -- content of notice --**  
 28 **expiration of approval.** (1) The department shall review for completeness, including adequacy and  
 29 accuracy, an application for a voluntary cleanup plan and shall provide a written completeness notice to  
 30 the applicant within 30 days after receipt of ~~the~~ AN application FOR A PLAN THAT WOULD TAKE 24

1 MONTHS OR LESS TO COMPLETE AND WITHIN 60 DAYS FOR A PLAN THAT WOULD TAKE MORE THAN  
2 24 MONTHS TO COMPLETE. The completeness notice must note all deficiencies identified in the  
3 information submitted.

4 (2) For a voluntary cleanup plan that is considered complete by the department pursuant to  
5 subsection (1), the department shall provide formal written notification that the voluntary cleanup plan has  
6 been approved or disapproved no more than 60 days FOR A PLAN THAT WOULD TAKE 24 MONTHS OR  
7 LESS TO COMPLETE AND WITHIN 75 DAYS FOR A PLAN THAT WOULD TAKE MORE THAN 24 MONTHS  
8 TO COMPLETE after the department's determination that an application is complete, unless the applicant  
9 and the department agree to an extension of the review to a date certain. The review must be limited to  
10 a review of the materials submitted by the applicant, public comments, and documents or information  
11 readily available to the department. The department shall communicate with the applicant during the review  
12 period to ensure that the applicant has the opportunity to address the public comments.

13 (3) (a) If the department receives five applications for review of a voluntary cleanup plan in a  
14 calendar month, including applications deferred from prior months, the department may notify any additional  
15 applicants in that month that their plans must be reviewed in the order received. The 30-day period for  
16 department completeness review of deferred applications pursuant to subsection (1) must begin on the first  
17 day of the subsequent month that each plan is eligible for review.

18 (b) The department shall discontinue accepting voluntary cleanup applications when 15 applications  
19 are pending and are being reviewed by the department. The department shall establish a waiting list for  
20 applications and shall consider the applications in order of submittal.

21 (c) If the department has received multiple cleanup applications for a voluntary cleanup at the same  
22 facility, the department shall notify all of the applicants and offer them the opportunity to submit a joint  
23 application.

24 (4) Consistent with the provisions of 75-10-707, the department may access the facility during  
25 review of the application and implementation of the voluntary cleanup plan to confirm information provided  
26 by the applicant and verify that the cleanup is being conducted consistent with the approved plan.

27 (5) The department shall approve a voluntary cleanup plan if the department concludes that the  
28 plan meets the requirements specified in 75-10-734 and will attain a degree of cleanup and control of  
29 hazardous or deleterious substances that complies with the requirements of 75-10-721. Except for the  
30 period necessary for the operation and maintenance of the approved remediation proposal, the department

1 may not approve a voluntary remediation proposal that would take longer than ~~24~~ 60 months after  
2 department approval to complete.

3 (6) If a voluntary cleanup plan is not approved by the department, the department shall promptly  
4 provide the applicant with a written statement of the reasons for denial. The denial may be appealed to the  
5 board of environmental review in accordance with the provisions of 75-10-732(4).

6 (7) The approval of a voluntary cleanup plan by the department applies only to conditions at the  
7 facility that are known to the department at the time of department approval. If a voluntary remediation  
8 proposal is not initiated within 12 months and, except for the period necessary for the operation and  
9 maintenance of the approved remediation proposal, is not completed within ~~24~~ 60 months after approval  
10 by the department, the department's approval lapses. However, the department may grant an extension  
11 of the time limit for completion of the voluntary cleanup plan.

12 (8) If reasonably unforeseeable conditions are discovered during implementation of a voluntary  
13 cleanup plan that substantially affect the risk to public health, safety, or welfare or the environment or  
14 substantially change the scope of the approved plan, the applicant shall promptly notify the department.  
15 The department may require the applicant to submit an amendment to the approved plan to address the  
16 unforeseen conditions or may determine that a voluntary cleanup plan is no longer appropriate pursuant to  
17 75-10-732(3).

18 (9) Written notification by the department that a voluntary cleanup plan is not approved must state  
19 the basis for disapproval of the voluntary cleanup plan.

20 (10) (a) Failure of the applicant or the applicant's agents to materially comply with the voluntary  
21 cleanup plan approved by the department pursuant to this section renders the approval void.

22 (b) Submission of materially misleading information by the applicant or the applicant's agents in  
23 the application or during implementation of the voluntary cleanup plan renders the department approval  
24 void.

25 (11) Within 60 days after completion of the approved remediation proposal described in the  
26 voluntary cleanup plan approved by the department, the applicant shall provide to the department a  
27 certification from a qualified environmental professional that the plan has been fully implemented, including  
28 all documentation necessary to demonstrate the successful implementation of the plan, such as  
29 confirmation sampling, if necessary.

30 (12) Except as provided in 75-10-738(2)(b), the department may not require financial assurance



1 under this part for voluntary cleanup plans approved under this section.

2 (13) If a person who would otherwise not be a liable person under 75-10-715(1) elects to undertake  
3 an approved voluntary cleanup plan, the person may not become a liable person under 75-10-715(1) by  
4 undertaking a voluntary cleanup if the person materially complies with the voluntary cleanup plan approved  
5 by the department pursuant to this section.

6 (14) Immunity from liability under this section does not apply to a release that is caused by conduct  
7 that is negligent or grossly negligent or that constitutes intentional misconduct. (Terminates January 1,  
8 2001--sec. 27, Ch. 584, L. 1995.)"

9

10 NEW SECTION. SECTION 5. RULEMAKING AUTHORITY. THE DEPARTMENT SHALL ADOPT,  
11 AMEND, OR REPEAL RULES THAT ALLOW FOR THE JOINT SELECTION OF REMEDIAL ACTION  
12 CONTRACTORS ACCEPTABLE TO THE DEPARTMENT AND ANY PERSON LIABLE FOR REMEDIAL ACTION  
13 UNDER 75-10-715.

14

15 NEW SECTION. SECTION 6. CODIFICATION INSTRUCTION. [SECTION 5] IS INTENDED TO BE  
16 CODIFIED AS AN INTEGRAL PART OF TITLE 75, CHAPTER 10, PART 7, AND THE PROVISIONS OF TITLE  
17 75, CHAPTER 10, PART 7, APPLY TO [SECTION 5].

18

19 NEW SECTION. SECTION 7. APPLICABILITY. [THIS ACT] DOES NOT APPLY TO ANY FACILITY  
20 FOR WHICH AN ADMINISTRATIVE ORDER HAS BEEN ISSUED PURSUANT TO 75-10-711 PRIOR TO [THE  
21 EFFECTIVE DATE OF THIS ACT] OR TO ANY FACILITY FOR WHICH THE DEPARTMENT OF  
22 ENVIRONMENTAL QUALITY AND A LIABLE OR POTENTIALLY LIABLE PERSON HAVE, PRIOR TO [THE  
23 EFFECTIVE DATE OF THIS ACT], ENTERED INTO AN AGREEMENT REGARDING THE PERFORMANCE OF  
24 REMEDIAL ACTION FOR THAT FACILITY.

25

26 NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.

27

-END-

## HOUSE BILL NO. 524

INTRODUCED BY ANDERSON, GROSFIELD, BEAUDRY, HARP, KNOX, QUILICI

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING REMEDIATION REQUIREMENTS FOR HAZARDOUS AND DELETERIOUS SUBSTANCES; PROVIDING THAT A PERSON LIABLE FOR REMEDIAL ACTION HAVE THE OPPORTUNITY TO RESPOND PRIOR TO REMEDIAL ACTION BEING INITIATED BY THE STATE; CLARIFYING THE PROCESS FOR WHEN STATE ORDERS MAY BE ISSUED; ELIMINATING THE REQUIREMENT FOR AGREEMENTS TO BE FILED IN DISTRICT COURT AS CONSENT DECREES; INCREASING ELIGIBILITY FOR SITES SUBMITTING VOLUNTARY REMEDIATION PLANS; PROVIDING FOR APPEAL OF AGENCY DECISIONS REGARDING REMEDIATION PLANS; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES FOR THE JOINT SELECTION OF REMEDIAL ACTION CONTRACTORS; AMENDING SECTIONS 75-10-711, 75-10-723, 75-10-732, AND 75-10-736, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

## STATEMENT OF INTENT

It is the intent of this bill to provide potentially liable persons the opportunity to take the necessary remedial action before the state takes action AND TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES THAT ALLOW FOR THE JOINT AND MUTUAL SELECTION OF REMEDIAL ACTION CONTRACTORS BY THE DEPARTMENT AND THE POTENTIALLY LIABLE PERSONS RESPONSIBLE FOR TAKING REMEDIAL ACTION AT SITES.

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

**Section 1.** Section 75-10-711, MCA, is amended to read:

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

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

(b) the appropriate remedial action will not be done properly and expeditiously by any person liable

1 under 75-10-715(1) ~~and that~~ EACH person THAT IS LIABLE OR POTENTIALLY LIABLE UNDER  
2 75-10-715(1) has been given the opportunity by letter to PROPERLY AND expeditiously perform the  
3 appropriate remedial action. Any person liable under 75-10-715(1) shall take immediate action to contain,  
4 remove, and abate the release.

5 (2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to  
6 believe that a release has occurred or is about to occur, the department may undertake remedial action in  
7 the form of any investigation, monitoring, survey, testing, or other information gathering as authorized by  
8 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the  
9 release or the threat of release and the extent and imminence of the danger to the public health, safety,  
10 or welfare or the environment.

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

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

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

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

23 (4) Whenever the department is authorized to act pursuant to subsection (1) ~~or has reason to~~  
24 ~~believe that a release that may pose an imminent and substantial threat to the public health, safety, or~~  
25 ~~welfare or the environment has occurred or is about to occur,~~ it may issue to any person liable under  
26 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to protect the  
27 public health, safety, or welfare or the environment.

28 (5) (a) A person who violates or fails or refuses to comply with an order issued under 75-10-707  
29 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than  
30 \$10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining

1 the amount of any penalty assessed, the court may take into account:

2 (i) the nature, circumstances, extent, and gravity of the noncompliance;

3 (ii) with respect to the person liable under 75-10-715(1):

4 (A) the person's ability to pay;

5 (B) any prior history of violations;

6 (C) the degree of culpability; and

7 (D) the economic benefit or savings, if any, resulting from the noncompliance; and

8 (iii) any other matters as justice may require.

9 (b) Civil penalties collected under subsection (5)(a) must be deposited into the environmental  
10 quality protection fund established in 75-10-704.

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

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

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

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

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

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

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

29 (9) The department may take remedial action pursuant to subsection (1) at a site that is regulated  
30 under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public

1 Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of  
2 this part."

3

4 **Section 2.** Section 75-10-723, MCA, is amended to read:

5 **"75-10-723. Agreements and administrative orders on consent to perform remedial action.** (1) To  
6 expedite effective remedial actions and minimize litigation, the department, in its discretion and whenever  
7 practicable and in the public interest, may negotiate and enter into an agreement or an administrative order  
8 on consent with any person, including the owner or operator of the facility from which a release emanates,  
9 to perform a remedial action if the department determines that the action will be properly done by the  
10 person. The agreement must contain terms and conditions that the department in its discretion determines  
11 to be appropriate.

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

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

18

19 **Section 3.** Section 75-10-732, MCA, is amended to read:

20 **"75-10-732. (Temporary) Eligibility.** (1) A facility where there has been a release or threatened  
21 release of a hazardous or deleterious substance that may present an imminent and substantial  
22 endangerment to the public health, safety, or welfare or the environment may be eligible for voluntary  
23 cleanup procedures under this part, except for facilities that meet one of the following criteria at the time  
24 of application for a voluntary cleanup plan:

25 (a) a facility that is listed or proposed for listing on the national priorities list pursuant to 42 U.S.C.  
26 9601, et seq.;

27 (b) a facility for which an order has been issued or consent decree has been entered into pursuant  
28 to this part;

29 (c) a facility that is the subject of an agency order or an action filed in district court by any state  
30 agency that addresses the release or threatened release of a hazardous or deleterious substance; or

1 (d) a facility where the release or threatened release of a hazardous or deleterious substance is  
 2 regulated by the Montana Hazardous Waste and Underground Storage Tank Act and regulations under that  
 3 act; or

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

6 (2) Notwithstanding the provisions of subsections (1)(b) through (1)(e), the department may agree  
 7 to accept and may approve an application for a voluntary cleanup plan for a facility.

8 (3) The department may determine that a facility that is potentially eligible for voluntary cleanup  
 9 exhibits complexities regarding protection of public health, safety, and welfare and the environment and  
 10 that the complexities should be addressed under an administrative order ~~on consent~~ or consent decree  
 11 pursuant to this part. This determination may be made only after consultation with any person desiring to  
 12 conduct a voluntary cleanup at the facility.

13 (4) If an applicant ~~that~~ who submits an application for a voluntary cleanup plan disagrees with the  
 14 department's decision to reject the filing of the application under subsection (1) or (3), or disagrees with  
 15 the department's decision to disapprove the voluntary cleanup plan submitted pursuant to 75-10-736, the  
 16 applicant may, within 30 days of receipt of the department's written decision pursuant to 75-10-736,  
 17 submit a written request for a hearing before the board of environmental review. In reviewing a department  
 18 decision to reject an application under subsection (1) or (3) or to disapprove a voluntary cleanup plan  
 19 submitted pursuant to 75-10-736, the board shall apply the standards of review specified in 2-4-704. The  
 20 hearing must be held within 2 months at the regular meeting of the board or at the time mutually agreed  
 21 to by the board, the department, 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 6 and 7. A hearing  
 23 before the board may not be requested regarding a decision of the department made pursuant to subsection  
 24 (2). (Terminates January 1, 2001--sec. 27, Ch. 584, L. 1995.)"

25  
 26 **Section 4.** Section 75-10-736, MCA, is amended to read:

27 **"75-10-736. (Temporary) Approval of voluntary cleanup plan -- time limits -- content of notice --**  
 28 **expiration of approval.** (1) The department shall review for completeness, including adequacy and  
 29 accuracy, an application for a voluntary cleanup plan and shall provide a written completeness notice to  
 30 the applicant within 30 days after receipt of ~~the~~ AN application FOR A PLAN THAT WOULD TAKE 24

1 MONTHS OR LESS TO COMPLETE AND WITHIN 60 DAYS FOR A PLAN THAT WOULD TAKE MORE THAN  
2 24 MONTHS TO COMPLETE. The completeness notice must note all deficiencies identified in the  
3 information submitted.

4 (2) For a voluntary cleanup plan that is considered complete by the department pursuant to  
5 subsection (1), the department shall provide formal written notification that the voluntary cleanup plan has  
6 been approved or disapproved no more than 60 days FOR A PLAN THAT WOULD TAKE 24 MONTHS OR  
7 LESS TO COMPLETE AND WITHIN 75 DAYS FOR A PLAN THAT WOULD TAKE MORE THAN 24 MONTHS  
8 TO COMPLETE after the department's determination that an application is complete, unless the applicant  
9 and the department agree to an extension of the review to a date certain. The review must be limited to  
10 a review of the materials submitted by the applicant, public comments, and documents or information  
11 readily available to the department. The department shall communicate with the applicant during the review  
12 period to ensure that the applicant has the opportunity to address the public comments.

13 (3) (a) If the department receives five applications for review of a voluntary cleanup plan in a  
14 calendar month, including applications deferred from prior months, the department may notify any additional  
15 applicants in that month that their plans must be reviewed in the order received. The 30-day period for  
16 department completeness review of deferred applications pursuant to subsection (1) must begin on the first  
17 day of the subsequent month that each plan is eligible for review.

18 (b) The department shall discontinue accepting voluntary cleanup applications when 15 applications  
19 are pending and are being reviewed by the department. The department shall establish a waiting list for  
20 applications and shall consider the applications in order of submittal.

21 (c) If the department has received multiple cleanup applications for a voluntary cleanup at the same  
22 facility, the department shall notify all of the applicants and offer them the opportunity to submit a joint  
23 application.

24 (4) Consistent with the provisions of 75-10-707, the department may access the facility during  
25 review of the application and implementation of the voluntary cleanup plan to confirm information provided  
26 by the applicant and verify that the cleanup is being conducted consistent with the approved plan.

27 (5) The department shall approve a voluntary cleanup plan if the department concludes that the  
28 plan meets the requirements specified in 75-10-734 and will attain a degree of cleanup and control of  
29 hazardous or deleterious substances that complies with the requirements of 75-10-721. Except for the  
30 period necessary for the operation and maintenance of the approved remediation proposal, the department

1 may not approve a voluntary remediation proposal that would take longer than ~~24~~ 60 months after  
2 department approval to complete.

3 (6) If a voluntary cleanup plan is not approved by the department, the department shall promptly  
4 provide the applicant with a written statement of the reasons for denial. The denial may be appealed to the  
5 board of environmental review in accordance with the provisions of 75-10-732(4).

6 (7) The approval of a voluntary cleanup plan by the department applies only to conditions at the  
7 facility that are known to the department at the time of department approval. If a voluntary remediation  
8 proposal is not initiated within 12 months and, except for the period necessary for the operation and  
9 maintenance of the approved remediation proposal, is not completed within ~~24~~ 60 months after approval  
10 by the department, the department's approval lapses. However, the department may grant an extension  
11 of the time limit for completion of the voluntary cleanup plan.

12 (8) If reasonably unforeseeable conditions are discovered during implementation of a voluntary  
13 cleanup plan that substantially affect the risk to public health, safety, or welfare or the environment or  
14 substantially change the scope of the approved plan, the applicant shall promptly notify the department.  
15 The department may require the applicant to submit an amendment to the approved plan to address the  
16 unforeseen conditions or may determine that a voluntary cleanup plan is no longer appropriate pursuant to  
17 75-10-732(3).

18 (9) Written notification by the department that a voluntary cleanup plan is not approved must state  
19 the basis for disapproval of the voluntary cleanup plan.

20 (10) (a) Failure of the applicant or the applicant's agents to materially comply with the voluntary  
21 cleanup plan approved by the department pursuant to this section renders the approval void.

22 (b) Submission of materially misleading information by the applicant or the applicant's agents in  
23 the application or during implementation of the voluntary cleanup plan renders the department approval  
24 void.

25 (11) Within 60 days after completion of the approved remediation proposal described in the  
26 voluntary cleanup plan approved by the department, the applicant shall provide to the department a  
27 certification from a qualified environmental professional that the plan has been fully implemented, including  
28 all documentation necessary to demonstrate the successful implementation of the plan, such as  
29 confirmation sampling, if necessary.

30 (12) Except as provided in 75-10-738(2)(b), the department may not require financial assurance



1 under this part for voluntary cleanup plans approved under this section.

2 (13) If a person who would otherwise not be a liable person under 75-10-715(1) elects to undertake  
3 an approved voluntary cleanup plan, the person may not become a liable person under 75-10-715(1) by  
4 undertaking a voluntary cleanup if the person materially complies with the voluntary cleanup plan approved  
5 by the department pursuant to this section.

6 (14) Immunity from liability under this section does not apply to a release that is caused by conduct  
7 that is negligent or grossly negligent or that constitutes intentional misconduct. (Terminates January 1,  
8 2001--sec. 27, Ch. 584, L. 1995.)"

9

10 NEW SECTION. SECTION 5. RULEMAKING AUTHORITY. THE DEPARTMENT SHALL ADOPT,  
11 AMEND, OR REPEAL RULES THAT ALLOW FOR THE JOINT SELECTION OF REMEDIAL ACTION  
12 CONTRACTORS ACCEPTABLE TO THE DEPARTMENT AND ANY PERSON LIABLE FOR REMEDIAL ACTION  
13 UNDER 75-10-715.

14

15 NEW SECTION. SECTION 6. CODIFICATION INSTRUCTION. [SECTION 5] IS INTENDED TO BE  
16 CODIFIED AS AN INTEGRAL PART OF TITLE 75, CHAPTER 10, PART 7, AND THE PROVISIONS OF TITLE  
17 75, CHAPTER 10, PART 7, APPLY TO [SECTION 5].

18

19 NEW SECTION. SECTION 7. APPLICABILITY. [THIS ACT] DOES NOT APPLY TO ANY FACILITY  
20 FOR WHICH AN ADMINISTRATIVE ORDER HAS BEEN ISSUED PURSUANT TO 75-10-711 PRIOR TO [THE  
21 EFFECTIVE DATE OF THIS ACT] OR TO ANY FACILITY FOR WHICH THE DEPARTMENT OF  
22 ENVIRONMENTAL QUALITY AND A LIABLE OR POTENTIALLY LIABLE PERSON HAVE, PRIOR TO [THE  
23 EFFECTIVE DATE OF THIS ACT], ENTERED INTO AN AGREEMENT REGARDING THE PERFORMANCE OF  
24 REMEDIAL ACTION FOR THAT FACILITY.

25

26 NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.

27

-END-