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Senate BILL NO. 377
INTRODUCED BY Grosfield Knox
Richard Clark *Secretary*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE STATE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; PROVIDING AN OPTIONAL PROCEDURE FOR ALLOCATING LIABILITY FOR SITE REMEDIATION; CREATING AN ORPHAN SHARE FUND ACCOUNT AND ALLOCATING CERTAIN FINES, PENALTIES, RESOURCE INDEMNITY TRUST INTEREST AND TAX PROCEEDS, METALLIFEROUS MINE TAX PROCEEDS, AND OTHER MONEY TO THE ACCOUNT; PROVIDING FOR CITIZEN SUITS; PROVIDING EXCLUSIONS FROM LIABILITY; PROVIDING ADDITIONAL AND SPECIFIC RULEMAKING AUTHORITY; AMENDING PROVISIONS AND EXTENDING THE TERMINATION DATE OF THE MIXED FUNDING PILOT PROGRAM; AMENDING SECTIONS 15-37-117, 15-38-106, 15-38-202, 75-2-412, 75-2-413, 75-2-427, 75-3-407, 75-5-634, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-423, 75-10-424, 75-10-542, 75-10-701, 75-10-702, 75-10-704, 75-10-715, 75-10-719, 75-10-720, 75-10-724, 82-4-141, AND 82-4-241, MCA, AND SECTIONS 16, 18, AND 27, CHAPTER 584, LAWS OF 1995; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

WHEREAS, the 1995 Legislature, in Chapter 584, Laws of 1995, directed the Department of Environmental Quality to institute a collaborative process involving all affected and interested persons to analyze the elimination of joint and several liability with respect to the cleanup of state Comprehensive Environmental Cleanup and Responsibility Act (CECRA) facilities and to submit any legislative proposals that collaboratively resulted from that process to the 55th Legislature; and

WHEREAS, the Department instituted this collaborative process with industry and business representatives; state, federal, and local government representatives; and public interest and environmental interest group representatives; and

WHEREAS, through a contract with the Department, the Montana Consensus Council designed the study process, facilitated the organization of the collaborative process, and conducted the numerous meetings of the study committees and interest group caucuses through which the parties to the collaborative process reached consensus on legislative proposals that are contained in this bill.

STATEMENT OF INTENT



58377
INTRODUCED BILL

1 It is the intent of this bill to provide an option to the concept of joint and several liability for
2 potentially liable persons to have their proportionate share of liability for a state Comprehensive
3 Environmental Cleanup and Responsibility Act (CECRA) facility determined through an expedited process
4 while ensuring that the concurrent cleanup of the facility occurs. The bill clarifies defenses to liability and
5 creates exclusions from liability. The bill also provides rulemaking authority to the department for
6 developing guidance and criteria and involving the public and the liable parties in the decisionmaking
7 process for listing and delisting sites on a CECRA priority list. The department will be required to provide
8 written justification for its decisions to list, delist, and prioritize sites needing remediation. The written
9 criteria for listing and delisting represent the legislature's intent for this rulemaking.

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

12
13 **Section 1.** Section 15-37-117, MCA, is amended to read:

14 **"15-37-117. (Temporary) Disposition of metalliferous mines license taxes.** (1) Metalliferous mines
15 license taxes collected under the provisions of this part must, in accordance with the provisions of
16 15-1-501, be allocated as follows:

17 (a) to the credit of the general fund of the state, 58% of total collections each year;

18 (b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5%
19 of total collections each year;

20 (c) to the abandoned mines state special revenue account provided for in section 19, Chapter 584,
21 Laws of 1995, 8.5% of total collections each year;

22 (d) to the ground water assessment account established in 85-2-905, 2.2% of total collections
23 each year;

24 (e) to the reclamation and development grants program state special revenue account, 1.8% of
25 total collections each year; and

26 (f) 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
30 mine is located, 25% of total collections each year, to be allocated by the county commissioners as

1 follows:

2 (i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225;

3 and

4 (ii) all money not allocated to the account pursuant to subsection (1)(f)(i) to be further allocated as
5 follows:

6 (A) 33 1/3% is allocated to the county for planning or economic development activities;

7 (B) 33 1/3% is allocated to the elementary school districts within the county that have been
8 affected by the development or operation of the metal mine; and

9 (C) 33 1/3% is allocated to the high school districts within the county that have been affected by
10 the development or operation of the metal mine.

11 (2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307
12 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under
13 subsection (1)(f) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part
14 4.

15 (3) The department shall return to the county in which metals are produced the tax collections
16 allocated under subsection (1)(f). The allocation to the county described by subsection (1)(f) is a statutory
17 appropriation pursuant to 17-7-502. (~~Terminates June 30, 1997 - sec. 27, Ch. 584, L. 1995~~ 1999.)

18 **15-37-117. (Effective July 1, 1997 1999) Disposition of metalliferous mines license taxes.** (1)
19 Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the
20 provisions of 15-1-501, be 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% of total collections each year~~ orphan share
25 state special revenue account established in [section 27], 8.5% of total collections each year;

26 (d) to the ground water assessment account established in 85-2-905, 2.2% of total collections
27 each year;

28 (e) to the reclamation and development grants program state special revenue account, 4.8% of
29 total collections each year; and

30 (f) to the county or counties identified as experiencing fiscal and economic impacts, resulting in

1 increased employment or local government costs, under an impact plan for a large-scale mineral
 2 development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic
 3 impacts determined in the plan, or, if an impact plan has not been prepared, to the county in which the
 4 mine is located, 25% of total collections each year, to be allocated by the county commissioners as
 5 follows:

6 (i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225;
 7 and

8 (ii) all money not allocated to the account pursuant to subsection (1)(f)(i) to be further allocated as
 9 follows:

10 (A) 33 1/3% is allocated to the county for planning or economic development activities;

11 (B) 33 1/3% is allocated to the elementary school districts within the county that have been
 12 affected by the development or operation of the metal mine; and

13 (C) 33 1/3% is allocated to the high school districts within the county that have been affected by
 14 the development or operation of the metal mine.

15 (2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307
 16 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under
 17 subsection (1)(f) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part
 18 4.

19 (3) The department shall return to the county in which metals are produced the tax collections
 20 allocated under subsection (1)(f). The allocation to the county described by subsection (1)(f) is a statutory
 21 appropriation pursuant to 17-7-502."

22

23 **Section 2.** Section 15-38-106, MCA, is amended to read:

24 **"15-38-106. Payment of tax -- records -- collection of taxes -- refunds.** (1) The tax imposed by
 25 this chapter must be paid by each person to which the tax applies, on or before March 31, on the value
 26 of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to
 27 the department at the time the statement of yield for the preceding calendar year is filed with the
 28 department.

29 (2) The department shall, in accordance with the provisions of 15-1-501(6), deposit the proceeds
 30 of the tax in the resource indemnity trust fund of the nonexpendable trust fund type, except that:

1 (a) 14.1% of the proceeds must be deposited in the ground water assessment account established
2 by 85-2-905;

3 (b) 10% of the proceeds must be deposited in the renewable resource grant and loan program state
4 special revenue account established by 85-1-604; and

5 (c) 30% of the proceeds must be deposited in the reclamation and development grants account
6 established by 90-2-1104; and

7 (d) if there are sufficient unallocated funds remaining, at the beginning of each fiscal year there is
8 allocated from the proceeds of the tax up to \$200,000 to be deposited in the orphan share account
9 established in [section 27].

10 (3) Every person to whom the tax applies shall keep records in accordance with 15-38-105, and
11 the records are subject to inspection by the department upon reasonable notice during normal business
12 hours.

13 (4) The department shall examine the statement and compute the taxes to be imposed, and the
14 amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer.
15 If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the
16 department within 30 days after written notice of the amount of deficiency is mailed by the department to
17 the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit
18 against tax liability for subsequent years or refunded if requested by the taxpayer."

19
20 **Section 3.** Section 15-38-202, MCA, is amended to read:

21 **"15-38-202. Investment of resource indemnity trust fund -- expenditure -- minimum balance. (1)**

22 All money paid into the resource indemnity trust fund, including money payable into the fund under the
23 provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments.

24 All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund
25 until it has reached the sum of \$10 million. Thereafter, only the net earnings may be appropriated and
26 expended until the fund reaches \$100 million. Thereafter, all net earnings and all receipts must be
27 appropriated by the legislature and expended, provided that the balance in the fund may never be less than
28 \$100 million.

29 (2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the
30 resource indemnity trust fund \$240,000, which is statutorily appropriated, as provided in 17-7-502, from

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

5 (b) At the beginning of each biennium, there is allocated from the interest income of the resource
 6 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 1996,~~ \$2 million to be deposited into the renewable resource grant and
 12 loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

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

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

17 (c) At the beginning of each fiscal year, there is allocated from the interest income of the resource
 18 indemnity trust fund up to \$200,000 to be deposited in the orphan share account established in [section
 19 27].

20 ~~(d)~~ (d) The remainder of the interest income is allocated as follows:

21 (i) Thirty-six percent of the interest income of the resource indemnity trust fund must be allocated
 22 to the renewable resource grant and loan program state special revenue account created by 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 percent of the interest income of the resource indemnity trust fund must be allocated to the
 28 environmental quality protection fund provided for in 75-10-704.

29 (3) Any formal budget document prepared by the legislature or the executive branch that proposes
 30 to appropriate funds from the resource indemnity trust interest account other than as provided for by the

1 allocations in subsection (2) must specify the amount of money from each allocation that is proposed to
2 be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and
3 publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the
4 legislative appropriation process or otherwise during a legislative session."

5
6 **Section 4.** Section 75-2-412, MCA, is amended to read:

7 **"75-2-412. Criminal penalties -- injunction preserved.** (1) A person is guilty of an offense under
8 this section if that person knowingly:

9 (a) violates a provision of this chapter or a rule, order, or permit made or issued under this chapter;

10 (b) makes a false material statement, representation, or certification on a form required under this
11 chapter or in a notice or report required by a permit under this chapter; or

12 (c) renders inaccurate a monitoring device or method required under this chapter.

13 (2) A person guilty of an offense under subsection (1) is subject to a fine of not more than \$10,000
14 per violation or imprisonment for a period not to exceed 2 years, or both. This offense must be classified
15 as a misdemeanor. Each day of each violation constitutes a separate violation.

16 (3) Fines collected under this section, except fines collected by an approved local air pollution
17 control program, must be deposited in the orphan share account in the state general special revenue fund.

18 (4) Action under this section is not a bar to enforcement of this chapter or of a rule, order, or
19 permit made or issued under it by injunction or other appropriate civil or administrative remedy. The
20 department may institute and maintain in the name of the state any enforcement proceedings."

21
22 **Section 5.** Section 75-2-413, MCA, is amended to read:

23 **"75-2-413. Civil penalties -- out-of-state litigants -- effect of action -- presumption of continuing**
24 **violation under certain circumstances.** (1) A person who violates any provision of this chapter, a rule
25 adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil
26 penalty not to exceed \$10,000 per violation. Each day of each violation constitutes a separate violation.
27 The department may institute and maintain in the name of the state any enforcement proceedings under
28 this section. Upon request of the department, the attorney general or the county attorney of the county
29 of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty
30 is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the

1 operating permit program required by Subchapter V of the federal Clean Air Act.

2 (2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order,
3 or permit made or issued under this chapter by injunction or other appropriate civil remedies.

4 (b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or
5 issued under this chapter may be brought in the district court of any county where a violation occurs or
6 is threatened if the defendant cannot be located in Montana.

7 (3) If the department has notified a person operating a commercial hazardous waste incinerator of
8 a violation and if the department makes a prima facie showing that the conduct or events giving rise to the
9 violations are likely to have continued or recurred past the date of notice, the days of violation are
10 presumed to include the date of the notice and every day after the notice until the person establishes that
11 continuous compliance has been achieved. This presumption may be overcome to the extent that the
12 person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that
13 there were intervening days when a violation did not occur, that the violation was not continuing in nature,
14 or that the telemetering device was compromised or otherwise tampered with.

15 (4) Money collected under this section must be deposited in the orphan share account in the state
16 ~~general special revenue~~ fund. This subsection does not apply to money collected by an approved local air
17 pollution control program."
18

19 **Section 6.** Section 75-2-427, MCA, is amended to read:

20 "**75-2-427. Deposit of noncompliance penalty fees.** All noncompliance penalties collected by the
21 department pursuant to 75-2-421 through 75-2-429 ~~shall~~ must be deposited in the state special revenue
22 fund until a final determination and adjustment have been made as provided in 75-2-424 and amounts have
23 been deducted by the department for costs attributable to implementation of 75-2-421 through 75-2-429
24 and for contract costs incurred pursuant to 75-2-422(3), if any. After a final determination has been made
25 and additional payments or refunds have been made, the penalty money remaining ~~shall~~ must be transferred
26 to the orphan share account in the state ~~general special revenue~~ fund."
27

28 **Section 7.** Section 75-3-407, MCA, is amended to read:

29 "**75-3-407. Civil penalties -- deposit in general fund -- injunctions not barred.** (1) A person who
30 violates this chapter or a rule or order issued under this chapter is subject to a civil penalty not to exceed

1 \$5,000 for each violation. For purposes of this section, each day of a violation is a separate violation. .

2 (2) The department shall initiate civil proceedings in district court to recover a penalty under
3 subsection (1).

4 (3) Civil penalties collected under this section must be deposited in the general orphan share
5 account in the state special revenue fund.

6 (4) An action under this section does not bar enforcement of this chapter or of rules or orders
7 issued under it by injunction or other appropriate remedy."

8
9 **Section 8.** Section 75-5-634, MCA, is amended to read:

10 **"75-5-634. Disposition of fines and civil penalties.** Fines and civil penalties collected under this
11 chapter, except those collected in a justice's court, must be deposited into the orphan share account in the
12 state general special revenue fund."

13
14 **Section 9.** Section 75-6-109, MCA, is amended to read:

15 **"75-6-109. Administrative enforcement.** (1) If the department believes that a violation of this part,
16 a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve
17 written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice
18 must specify the provision of this part, the rule, or the condition of approval alleged to have been violated
19 and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective
20 action within a reasonable period of time. The time period must be stated in the order. Service by mail is
21 complete on the date of filing.

22 (2) If the alleged violator does not request a hearing before the board within 30 days of the date
23 of service, the order becomes final. Failure to comply with a final order may subject the violator to an action
24 commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.

25 (3) If the alleged violator requests a hearing before the board within 30 days of the date of service,
26 the board shall schedule a hearing. After the hearing is held, the board may:

27 (a) affirm or modify the department's order issued under subsection (1) if the board finds that a
28 violation has occurred; or

29 (b) rescind the department's order if the board finds that a violation has not occurred.

30 (4) An order issued by the department or the board may set a date by which the violation must

1 cease and set a time limit for action to correct a violation.

2 (5) As an alternative to issuing an order pursuant to subsection (1), the department may:

3 (a) require the alleged violator to appear before the board for a hearing, at a time and place
4 specified in the notice, to answer the charges complained of; or

5 (b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.

6 (6) An action initiated under this part may include an administrative penalty not to exceed \$500
7 for each day of violation. Administrative penalties collected under this section must be deposited in the
8 orphan share account in the state ~~general~~ special revenue fund.

9 (7) In determining the amount of penalty to be assessed to a person, the department or the board,
10 as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under
11 75-6-103(2)(j).

12 (8) The contested case provisions of the Montana Administrative Procedure Act, provided for in
13 Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."

14

15 **Section 10.** Section 75-6-114, MCA, is amended to read:

16 **"75-6-114. Civil penalty.** (1) In an action initiated by the department to collect civil penalties
17 against a person who is found to have violated this part or a rule, order, or condition of approval issued
18 under this part, the person is subject to a civil penalty not to exceed \$10,000.

19 (2) Each day of violation constitutes a separate violation.

20 (3) Action under this section does not bar enforcement of this part or a rule, order, or condition
21 of approval issued under this part by injunction or other appropriate remedy.

22 (4) When seeking penalties under this section, the department shall take into account the following
23 factors in determining an appropriate settlement or judgment, as appropriate:

24 (a) the nature, circumstances, extent, and gravity of the violation; and

25 (b) with respect to the violator, the violator's ability to pay, prior history of violations, the economic
26 benefit or savings, if any, to the violator resulting from the violator's action, the amounts voluntarily
27 expended by the violator to address or mitigate the violation or impacts of the violation to waters of the
28 state, and other matters that justice may require.

29 (5) Civil penalties collected pursuant to this section must be deposited in the orphan share account
30 in the state ~~general~~ special revenue fund."

1 **Section 11.** Section 75-10-417, MCA, is amended to read:

2 **"75-10-417. Civil penalties.** (1) Any person who violates any provision of this part, a rule adopted
3 under this part, an order of the department or the board, or a permit is subject to a civil penalty not to
4 exceed \$10,000 per violation. Each day of violation constitutes a separate violation.

5 (2) The department may institute and maintain in the name of the state any enforcement
6 proceedings under this section. Upon request of the department, the attorney general or the county
7 attorney of the county of violation shall petition the district court to impose, assess, and recover the civil
8 penalty.

9 (3) Action under this section does not bar:

10 (a) enforcement of this part, rules adopted under this part, orders of the department or the board,
11 or permits by injunction or other appropriate remedy; or

12 (b) action under 75-10-418.

13 (4) Money collected under this section ~~shall~~ **must** be deposited in the orphan share account in the
14 state general special revenue fund."

15

16 **Section 12.** Section 75-10-418, MCA, is amended to read:

17 **"75-10-418. Criminal penalties.** (1) A person is guilty of an offense under this section if the person
18 knowingly:

19 (a) transports any hazardous waste to an unpermitted facility;

20 (b) treats, stores, or disposes of hazardous waste subject to regulation under this part or the rules
21 adopted under this part without a permit or contrary to a material permit condition;

22 (c) omits material information or makes any false statement or representation in any application,
23 label, manifest, record, report, permit, or other document filed, maintained, or used for compliance with
24 provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste;

25 (d) generates, stores, treats, transports, disposes of, or otherwise handles any used oil or
26 hazardous waste regulated under this part or rules adopted under this part and knowingly destroys, alters,
27 conceals, or fails to file any record, application, manifest, report, or other document required to be
28 maintained or filed in compliance with the provisions of this part, an order issued under this part, or rules
29 adopted under this part; or

30 (e) transports or causes to be transported without a manifest any hazardous waste required to be

1 accompanied by a manifest.

2 (2) A person who is guilty of an offense under subsection (1) is subject to a fine of not more than
3 \$25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation
4 constitutes a separate violation.

5 (3) A person who knowingly violates any requirement of this part or any rule or material permit
6 condition issued pursuant to this part, ~~(except those violations specified in subsection (1))~~, regarding any
7 hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to \$5,000
8 per violation or subject to imprisonment not to exceed 6 months, or both. Each day of violation constitutes
9 a separate violation.

10 (4) Upon a second conviction for a violation of this section, the maximum penalties specified in this
11 section must be doubled.

12 (5) Action under this section does not bar enforcement of this part, rules made under this part,
13 orders of the department or the board, or permits by injunction or other appropriate remedy.

14 (6) Money collected under this section, except money collected in a justice's court, must be
15 deposited in the orphan share account in the state general special revenue fund."

16

17 **Section 13.** Section 75-10-423, MCA, is amended to read:

18 **"75-10-423. Administrative penalties for underground storage tank violations -- appeals -- venue**
19 **for hearings.** (1) A person who violates any of the underground storage tank provisions of this chapter or
20 any underground storage tank rules promulgated under the authority of this chapter may be assessed and
21 ordered by the department to pay an administrative penalty not to exceed \$500 per violation. This limitation
22 on administrative penalties applies only to penalties assessed under this section. Each occurrence of the
23 violation and each day it remains uncorrected constitutes a separate violation. The department may suspend
24 a portion of the administrative penalty assessed under this section if the condition that caused the
25 assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty
26 under this section may be made in conjunction with any order or other administrative action authorized by
27 Title 75, chapter 11, or by this chapter.

28 (2) When the department assesses an administrative penalty under this section, it must have
29 written notice served personally or by certified mail on the alleged violator or the violator's agent. For
30 purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

1 (a) the provision alleged to be violated;

2 (b) the facts alleged to constitute the violation;

3 (c) the amount of the administrative penalty assessed under this section;

4 (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused
5 the assessment of the penalty;

6 (e) the nature of any corrective action the department requires, whether or not a portion of the
7 penalty is to be suspended;

8 (f) as applicable, the time within which the corrective action is to be taken and the time within
9 which the administrative penalty is to be paid;

10 (g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and
11 nature of any hearing; and

12 (h) that a formal proceeding may be waived.

13 (3) The department shall provide each person assessed a penalty under this section an opportunity
14 for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case
15 provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply
16 to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis
17 and Clark County or the county where the alleged violation occurred. This subsection does not apply until
18 the department gives written notice, served personally or by certified mail, to the alleged violator or the
19 violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt. The
20 notice must state:

21 (a) the provision allegedly violated;

22 (b) the facts that constitute the alleged violation;

23 (c) the specific nature of any corrective action the department requires, estimated costs of
24 compliance with the action, and where to receive help to correct the alleged violation; and

25 (d) a timetable that a reasonable person would consider appropriate for compliance with the alleged
26 violations.

27 (4) The department shall publish a schedule of maximum and minimum penalties for specific
28 violations. In determining appropriate penalties for violations, the department shall consider the gravity of
29 the violations and the potential for significant harm to public health or the environment. In determining the
30 appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the

1 penalty assessment, the department shall consider the cooperation and the degree of care exercised by the
2 person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm
3 resulted to the public health or the environment from the violation.

4 (5) If the department is unable to collect an administrative penalty assessed under this section or
5 if a person fails to pay all or any portion of an administrative penalty assessed under this section, the
6 department may take action in district court to recover the penalty amount and any additional amounts
7 assessed or sought under Title 75, chapter 11, or this chapter.

8 (6) Action under this section does not bar action under Title 75, chapter 11, or this chapter, or any
9 other remedy available to the department for violations of underground storage tank laws or rules
10 promulgated under those laws.

11 (7) Administrative penalties collected under this section must be deposited in the orphan share
12 account in the state general special revenue fund."

13
14 **Section 14.** Section 75-10-424, MCA, is amended to read:

15 **"75-10-424. Administrative penalty.** (1) The department may assess a person who violates a used
16 oil or hazardous waste provision of this part, or a used oil or hazardous waste rule adopted under this part,
17 an administrative penalty, not to exceed \$10,000 per violation. Each day of violation constitutes a separate
18 violation, but the maximum penalty may not exceed \$100,000 for any related series of violations.
19 Assessment of an administrative penalty under this section must be made in conjunction with an order or
20 administrative action authorized by this chapter.

21 (2) An administrative penalty may not be assessed under this section unless the alleged violator
22 is given notice and opportunity for a hearing before the board pursuant to Title 2, chapter 4, part 6.

23 (3) In determining the appropriate amount of an administrative penalty, the department shall
24 consider:

25 (a) the gravity and the number of violations;

26 (b) the degree of care exercised by the alleged violator;

27 (c) whether significant harm resulted to public health or the environment; and

28 (d) the degree of potential significant harm to public health or the environment.

29 (4) If the department is unable to collect the administrative penalty or if a person fails to pay all
30 or any portion of the administrative penalty as determined by the department, the department may seek

1 to recover the amount in an appropriate district court.

2 (5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other
3 appropriate remedy.

4 (6) Administrative penalties collected under this section must be deposited in the orphan share
5 account in the state ~~general~~ special revenue fund."

6
7 **Section 15.** Section 75-10-542, MCA, is amended to read:

8 **"75-10-542. Penalties.** (1) A person who willfully violates this part, except 75-10-520, is guilty
9 of a misdemeanor and upon conviction shall be fined not to exceed \$250, imprisoned in the county jail for
10 a term not to exceed 30 days, or both.

11 (2) A person who violates this part, except 75-10-520, a rule of the department, or an order issued
12 as provided in this part ~~shall be~~ is subject to a civil penalty of not more than \$50. Each day upon which
13 a violation of this part or a rule or order occurs is a separate violation.

14 (3) Civil penalties collected under this section must be deposited in the orphan share account in the
15 state special revenue fund."

16
17 **Section 16.** Section 75-10-701, MCA, is amended to read:

18 **"75-10-701. Definitions.** As used in this part, unless the context requires otherwise, the following
19 definitions apply:

20 (1) "Department" means the department of environmental quality provided for in 2-15-3501.

21 (2) "Director" means the director of the department.

22 (3) "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) (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) "Fiduciary" means a trustee, executor, administrator, personal representative, custodian,
3 conservator, guardian, or receiver acting or holding property for the exclusive benefit of another person.

4 The term does not include:

5 (a) a person who has previously owned or operated the property in a nonfiduciary capacity; or

6 (b) a person acting as fiduciary with respect to a trust or other fiduciary estate that has no
7 objectively reasonable or substantial purpose apart from avoidance of or limitation of liability under this part.

8 For the purposes of 75-10-715~~(7)~~(9), the term does not include the state, a state agency, or a political
9 subdivision of the state acting as trustee of natural resources within the state of Montana.

10 (6) "Foreclosure" means acquisition of title to property through foreclosure, purchase at foreclosure
11 sale, assignment or acquisition of title in lieu of foreclosure, repossession in the case of a lease financing
12 transaction, or acquisition of a right to title or other agreement in full or partial settlement of a loan
13 obligation.

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

15 (8) "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 of 1980 (CERCLA), 42 U.S.C.
20 9601(14), 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 (9) "Household" means single and multiple residences, hotels and motels, bunkhouses, ranger
28 stations, crew quarters, campgrounds, picnic grounds, day-use recreational areas, or similar structures or
29 areas.

30 (10) "Household refuse" means garbage, trash, and sanitary wastes in septic tanks that are derived

1 from a household.

2 ~~(9)~~(11) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water,
3 drinking water supplies, and any other resources within the state of Montana owned, managed, held in
4 trust, or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the
5 state.

6 (12) "Orphan share" means the percentage share of remedial action costs for a facility that is
7 attributable, under the procedures in [sections 26 through 36], to identified but bankrupt or defunct persons
8 who are not affiliated with any viable person.

9 (13) "Orphan share fund" means the fund for the orphan share account established in [section 27].

10 ~~(10)~~(14) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or
11 exercising control over the operation of a facility.

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

23 ~~(11)~~(15) "Person" means an individual, trust, firm, joint-stock company, joint venture, consortium,
24 commercial entity, partnership, association, corporation, commission, state or state agency, political
25 subdivision of the state, interstate body, or the federal government, including a federal agency.

26 ~~(12)~~(16) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities
27 subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any
28 other ~~petroleum-related~~ petroleum related product or waste or fraction of the product or waste that is liquid
29 at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch
30 absolute).

1 ~~(13)~~(17) "Reasonably anticipated future uses" means likely future land or resource uses that take
2 into consideration:

- 3 (a) local land and resource use regulations, ordinances, restrictions, or covenants;
4 (b) historical and anticipated uses of the facility;
5 (c) patterns of development in the immediate area; and
6 (d) relevant indications of anticipated land use from the owner of the facility and local planning
7 officials.

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

15 ~~(15)~~(19) "Remedial action" includes all notification, investigation, administration, monitoring,
16 cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action,
17 health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or
18 threatened release.

19 ~~(16)~~(20) "Remedial action contract" means a written contract or agreement entered into by a
20 remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or
21 request issued by the department, the United States, or any federal agency, to provide a remedial action
22 with respect to a release or threatened release of a hazardous or deleterious substance.

23 ~~(17)~~(21) "Remedial action contractor" means:

- 24 (a) any person who enters into and is carrying out a remedial action contract; or
25 (b) any person who is retained or hired by a person described in subsection ~~(17)(a)~~ (21)(a) to
26 provide services relating to a remedial action.

27 ~~(18)~~(22) "Remedial action costs" means reasonable costs that are attributable to or associated with
28 a remedial action at a facility, including but not limited to the costs of administration, investigation, legal
29 or enforcement activities, contracts, feasibility studies, or health studies."
30

1 **Section 17.** Section 75-10-702, MCA, is amended to read:

2 **"75-10-702. Rulemaking authority.** (1) The department is authorized to adopt rules for the
3 implementation of this part, including but not limited to:

4 (a) rules for listing and delisting facilities on a priority list, required by 75-10-704, based on the
5 following criteria:

6 (i) a facility eligible for listing must have a confirmed release or substantial threat of a release of
7 a hazardous or deleterious substance that may pose an imminent and substantial threat to public health,
8 safety, or welfare or the environment and the department shall provide a written description of the nature
9 and severity of the threat;

10 (ii) if remedial actions to address the hazardous or deleterious substances are required at the facility
11 by another state program, the department shall explain, in writing, its rationale for listing the facility;

12 (iii) listing and delisting must be done through a formal process that provides for public
13 participation, including participation of the affected or potentially liable persons in the decisionmaking
14 process, by conducting at least one public meeting in the community most likely to be threatened by the
15 facility that is proposed for listing or delisting; and

16 (iv) a facility must be delisted when another state program assumes jurisdiction or when further
17 remedial actions are not necessary;

18 (b) rules for establishing and implementing a system for prioritizing facilities, including categories
19 for maximum and high-priority facilities, as required by 75-10-704, and for remedial action based on
20 potential effects on human health and the environment.

21 (2) The rulemaking authority granted in subsection (1) may not invalidate the existing priorities list.
22 Rules promulgated pursuant to subsection (1) must provide for the reevaluation of facilities on the existing
23 priorities list. A decision by the department to list, delist, or establish a priority for a facility must be made
24 in writing."

25
26 **Section 18.** Section 75-10-704, MCA, is amended to read:

27 **"75-10-704. Environmental quality protection fund.** (1) There is in the state special revenue fund
28 an environmental quality protection fund to be administered as a revolving fund by the department. The
29 department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

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

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

3 (3) The department shall:

4 (a) except as provided in subsection (7), establish and implement a system, including the
5 preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human
6 health and the environment; and

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

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

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

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

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

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

18 (e) funds received from the interest income of the fund; and

19 (f) funds received from settlements pursuant to 75-10-719(7).

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

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

26 (7) (a) There is established a state special revenue account for all funds donated or granted from
27 private parties to remediate a specific release at a specific facility. There must be deposited into the account
28 the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of
29 contributing to this account.

30 (b) Funds donated or granted for a specific project pursuant to this subsection (7) must be

1 accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by
2 the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds
3 are donated.

4 (c) If the balance of the fund created in this subsection (7), as determined by the department
5 pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the
6 date of the initial contribution, all donated or granted funds, including any interest on those donated or
7 granted funds, must be returned to the grantor.

8 (d) If the balance for a specific project is determined by the department to be sufficient to
9 remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high
10 priority for remedial action, using the funds donated under this subsection (7).

11 (e) This subsection (7) is not intended to interfere with or to diminish the authority or actions of
12 the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons,
13 to obtain the participation and financial contribution of liable persons for the remedial action, to achieve
14 remedial action, and to recover costs and damages incurred by the state. Subsections (7) and (8) do not
15 pertain to facilities where the department has initiated actions under this part.

16 (f) The department shall expend the funds in a manner that maximizes the application of the funds
17 to physically remediating the specific release.

18 (8) (a) A person may donate in-kind services to remediate a specific release at a specific facility
19 pursuant to subsection (7). A person that donates in-kind services is not liable under 75-10-715 solely as
20 a result of the contribution of in-kind services.

21 (b) A person who donates in-kind services with respect to remediating a specific release at a
22 specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other
23 liability that results from the release or threatened release, including but not limited to claims for
24 indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or
25 damage to property, or economic loss.

26 (c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release
27 that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or
28 that constitutes intentional misconduct.

29 (d) This subsection does not minimize the liability, lessen the standard of liability, or otherwise
30 shield from liability a potentially liable person under 75-10-715 or section 107 of CERCLA for costs or

1 damages incurred as a result of a release or threatened release of a hazardous or deleterious substance.

2 (e) Any donated in-kind services that are employed as part of a remedial action pursuant to this
3 subsection (8) must be approved by the department as appropriate remedial action."

4

5 **Section 19.** Section 75-10-715, MCA, is amended to read:

6 **"75-10-715. Liability -- reimbursement and penalties -- proceedings -- defenses and exclusions.**

7 (1) Except as provided in [sections 26 through 36], notwithstanding ~~Notwithstanding~~ any other provision
8 of law, and subject only to the defenses set forth in subsection (5) and the exclusions set forth in
9 subsection (7), the following persons are jointly and severally liable for a release or threatened release of
10 a hazardous or deleterious substance from a facility:

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

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

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

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

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

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

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

30 (3) If the person liable under subsection (1) fails, without sufficient cause, to comply with a

1 department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification
2 by the department pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to
3 exceed two times the amount of any costs incurred by the state pursuant to this section.

4 (4) The department may initiate civil proceedings in district court to recover remedial action costs,
5 natural resource damages, or penalties under subsections (1), (2), and (3). Proceedings to recover costs
6 and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs,
7 damages, or penalties lies in the county where the release occurred or where the person liable under
8 subsection (1) resides or has its principal place of business or in the district court of the first judicial district.

9 (5) A person has a defense and is not liable under subsections (1), (2), and (3) if the person can
10 establish by a preponderance of the evidence that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (d) (i) ~~Nothing in subsections~~ Subsections (5)(b) and (5)(c) or ~~in~~ this subsection (6) may not
 30 diminish the liability of a previous owner or operator of the facility who would otherwise be liable under this

1 part.

2 (ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge
3 of the release or threatened release of a hazardous or deleterious substance at the facility when the person
4 owned the real property and then subsequently transferred ownership of the property to another person
5 without disclosing the knowledge, the previous owner is liable under subsections (1), (2), and (3) and ~~no~~
6 a defense under subsection (5)(b) or (5)(c) is not available to that person.

7 (e) ~~Nothing in this subsection~~ Subsection (6) effects does not affect the liability under this part of
8 a person who, by any act or omission, caused or contributed to the release or threatened release of a
9 hazardous or deleterious substance that is the subject of the action relating to the facility.

10 (7) A person has an exclusion and is not liable under this section if:

11 (a) the person generated or disposed of only household refuse, unless the person knew or
12 reasonably should have known that the hazardous or deleterious substance was present in the refuse;

13 (b) the person owns or operates real property where hazardous or deleterious substances have
14 come to be located solely as a result of subsurface migration in an aquifer from a source or sources outside
15 the person's property, provided that the following conditions are met:

16 (i) the owner or operator did not cause, contribute to, or exacerbate the release or threatened
17 release of any hazardous or deleterious substances through any act or omission. The failure to take
18 affirmative steps to mitigate or address contamination that has migrated from a source outside the owner's
19 or operator's property does not, in the absence of exceptional circumstances, constitute an omission by
20 the owner or operator.

21 (ii) the person who caused, contributed to, or exacerbated the release or threatened release of any
22 hazardous or deleterious substance is not and was not an agent or employee of the owner or operator and
23 is not or was not in a direct or indirect contractual relationship with the owner or operator, unless the
24 department provides a written determination that an existing or proposed contractual relationship is an
25 insufficient basis to establish liability under this section;

26 (iii) there is no other basis of liability under subsection (1) for the owner or operator for the release
27 or threatened release of a hazardous or deleterious substance; and

28 (iv) the owner or operator cooperates with the department and all persons conducting
29 department-approved remedial actions on the property, including granting access and complying with and
30 implementing all required institutional controls;

1 (c) the person owns or occupies real property of 20 acres or less for residential purposes, provided
 2 that the following conditions are met:

3 (i) the person did not cause, contribute to, or exacerbate the release or threatened release of any
 4 hazardous or deleterious substance through any act or omission;

5 (ii) the person uses or allows the use of the real property for residential purposes. This exclusion
 6 does not apply to any person who acquires or develops real property for commercial use or any use other
 7 than residential use.

8 (iii) at the time the person purchased or occupied the real property, there were no visible indications
 9 of contamination on the surface of the real property;

10 (iv) the person cooperates with the department and all persons conducting department-approved
 11 remedial actions on the property, including granting access and complying with and implementing all
 12 required institutional controls; and

13 (v) there is no other basis of liability under subsection (1) for the owner or occupier for the release
 14 or threatened release of a hazardous or deleterious substance.

15 (8) A person is liable under this section if the department provides substantial credible evidence
 16 that the person fails to satisfy any element of each exclusion in subsections (7)(a) through (7)(c).

17 ~~(7)(9)~~ The liability of a fiduciary under the provisions of this part for a release or a threatened
 18 release of a hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed
 19 the assets held in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary
 20 is liable under this part independent of the person's ownership or actions taken in a fiduciary capacity.

21 ~~(8)(10)~~ A person who holds indicia of ownership in a facility primarily to protect a security interest
 22 is not liable under subsections (1)(a) and (1)(b) for having participated in the management of a facility
 23 within the meaning of 75-10-701~~(10)(b)~~ (14)(b) because of any one or any combination of the following:

24 (a) holding an interest in real or personal property when the interest is being held as security for
 25 payment or performance of an obligation, including but not limited to a mortgage, deed of trust, lien,
 26 security interest, assignment, pledge, or other right or encumbrance against real or personal property that
 27 is furnished by the owner to ensure repayment of a financial obligation;

28 (b) requiring or conducting financial or environmental assessments of a facility or a portion of a
 29 facility, making financing conditional upon environmental compliance, or providing environmental
 30 information or reports;

1 (c) monitoring the operations conducted at a facility or providing access to a facility to the
2 department or its agents or to remedial action contractors;

3 (d) having the mere capacity or unexercised right to influence a facility's management of hazardous
4 or deleterious substances;

5 (e) giving advice, information, guidance, or direction concerning the administrative and financial
6 aspects, as opposed to day-to-day operational aspects, of a borrower's operations;

7 (f) providing general information concerning federal, state, or local laws governing the
8 transportation, storage, treatment, and disposal of hazardous or deleterious substances and concerning the
9 hiring of remedial action contractors;

10 (g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;

11 (h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or
12 undertaking other activities to protect or preserve the value of the security interest in a facility;

13 (i) extending or denying credit to a person owning or in lawful possession of a facility;

14 (j) in an emergency, requiring or undertaking activities to prevent exposure of persons to hazardous
15 or deleterious substances or to contain a release;

16 (k) requiring or conducting remedial action in response to a release or threatened release if prior
17 notice is given to the department and the department approves of the remedial action; or

18 (l) taking title to a facility by foreclosure, provided that the holder of indicia of ownership, from the
19 time the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing
20 transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest
21 itself of the property in a reasonably expeditious manner, using whatever commercially reasonable means
22 are relevant or appropriate with respect to the facility and taking all facts and circumstances into
23 consideration and provided that the holder does not:

24 (i) outbid or refuse a bid for fair consideration for the property or outbid or refuse a bid that would
25 effectively compensate the holder for the amount secured by the facility;

26 (ii) worsen the contamination at the facility;

27 (iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting
28 hazardous or deleterious substances; or

29 (iv) engage in conduct described in subsection ~~+~~ (11).

30 ~~(9)~~ (11) The protection from liability provided in subsections ~~(7)~~ (9) and ~~(8)~~ (10) is not available to

1 a fiduciary or to a person holding indicia of ownership primarily to protect a security interest if the fiduciary
2 or person through affirmative conduct:

- 3 (a) causes or contributes to a release of hazardous or deleterious substances from the facility;
4 (b) allows others to cause or contribute to a release of hazardous or deleterious substances; or
5 (c) in the case of a person holding indicia of ownership primarily to protect a security interest,
6 actually participates in the management of a facility by:
7 (i) exercising decisionmaking control over environmental compliance; or
8 (ii) exercising control at a level comparable to that of a manager of the enterprise with responsibility
9 for day-to-day decisionmaking either with respect to environmental compliance or substantially all of the
10 operational, as opposed to financial or administrative, aspects of the facility."

11

12 **Section 20.** Section 75-10-719, MCA, is amended to read:

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

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

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

25 (4) Whenever practicable and in the public interest, as determined by the director of the
26 department, the department may, as promptly as possible, reach a final settlement with a potentially liable
27 or liable person ~~liable~~ under 75-10-715 in an administrative or civil action under 75-10-711 if the settlement
28 involves only a minor portion of the ~~response~~ remedial action costs at the facility concerned and, in the
29 judgment of the department, taking into account the toxicity of the hazardous or deleterious substances
30 involved and the person's contribution of hazardous or deleterious substances in relation to the total volume

1 of hazardous or deleterious substances at the facility, the conditions in either any of the following
 2 subsection subsections (4)(a) or (4)(b) through (4)(d) are met:

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

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

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

7 the person is one whose liability is based solely on 75-10-715(1)(c) or (1)(d) and who presents substantial
 8 credible evidence that the person contributed less than 0.002% of the total volume or less than 100 gallons
 9 or 200 pounds of materials containing hazardous or deleterious substances at a facility that received
 10 hazardous or deleterious substances from multiple contributors. The department may not require the
 11 payment of remedial action costs from this person.

12 (b) (i) the person is one whose liability is based solely on 75-10-715(1)(c) or (1)(d) and who
 13 presents substantial credible evidence that the person arranged for disposal or treatment of less than 5%
 14 of the total quantity of solid waste or hazardous or deleterious substances disposed of at a facility that
 15 received solid waste or hazardous or deleterious substances from multiple contributors.

16 (ii) For the purposes of subsection (5)(a) and this subsection (4)(b) only, the term "solid waste"
 17 means:

18 (A) all putrescible and nonputrescible wastes, including garbage, rubbish, refuse, or ashes;

19 (B) sludge from sewage treatment plants, water supply plants, or air pollution control facilities;

20 (C) construction and demolition wastes;

21 (D) dead animals, including offal;

22 (E) discarded home and industrial appliances; and

23 (F) wood products or wood byproducts and inert materials.

24 (b)(c) (i) ~~The~~ the person:

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

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

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

30 (ii) This subsection (4)(b) (4)(c) does not apply if the person purchased the real property with actual

1 or constructive knowledge that the property was used for the generation, transportation, storage,
2 treatment, or disposal of any hazardous or deleterious substance.

3 (d) the person presents substantial credible evidence that the person has a defense under
4 75-10-715(5).

5 (5) When reaching a settlement under subsection (4)(b), (4)(c), or (4)(d), the department may
6 require the payment of remedial action costs not to exceed two times the person's reasonably projected
7 liability for remedial action costs as determined by the department. Except as provided in subsection (6),
8 the settlement must contain a reservation of rights clause in the event that the department obtains new
9 information showing that the settling person no longer qualifies for a settlement because:

10 (a) the solid waste or hazardous or deleterious substances contributed by the person was of a
11 greater volume or toxicity than originally estimated; or

12 (b) the settlement was reached under subsection (4)(c) and, after settlement, the department finds
13 that the person had actual or constructive knowledge that the property was used for the generation,
14 transportation, storage, treatment, or disposal of any hazardous or deleterious substance.

15 (6) A person who agrees to a liability settlement may avoid the reservation of rights clause under
16 subsection (5) by paying remedial action costs in the amount of four times the person's reasonably
17 projected liability for remedial action costs as determined by the department.

18 (7) All funds received as a result of settlements under this section must be paid in the following
19 order of priority:

20 (a) to the department as reimbursement for its remedial action costs at the facility;

21 (b) to liable persons as reimbursement for remedial action costs at the facility. In the event of an
22 allocation under [sections 26 through 36], the reimbursement must be in proportion to each liable person's
23 share of liability as determined under the provisions of [section 34 or 35];

24 (c) the remainder, if any:

25 (i) to the orphan share fund provided in [section 27] if the facility went through the allocation
26 process provided in [sections 26 through 36]; or

27 (ii) to the fund provided in 75-10-704 if the facility did not undergo the allocation process provided
28 in [sections 26 through 36].

29 (8) Any person who enters into a settlement under this section may not be subject to or assigned
30 a share in the allocation process provided in [sections 26 through 36].

1 ~~(5)~~(9) As part of an administrative or judicially approved settlement agreement, the department may
 2 require the liable person to provide financial assurance, in an amount determined by the department, to
 3 ensure the long-term operation and maintenance of the remedial action site. The liable person shall provide
 4 the financial assurance by any one method or combination of methods satisfactory to the department,
 5 including but not limited to insurance, guarantee, performance or other surety bond, letter of credit,
 6 qualification as a self-insurer, or other demonstration of financial capability."

7
 8 **Section 21.** Section 75-10-720, MCA, is amended to read:

9 **"75-10-720. Condemnation -- creation of state lien.** (1) Whenever the department determines that
 10 property upon which a release or threatened release of a hazardous or deleterious substance has occurred
 11 may present an imminent and substantial endangerment to the public health, safety, or welfare or the
 12 environment, the department may condemn the property for public use to mitigate the threat. The taking
 13 of the property must be conducted in accordance with the procedure set forth in Title 70, chapter 30, parts
 14 1 through 3.

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

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

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

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

29 (6) If the department expends money from the fund for orphan share remedial action costs at a
 30 facility or for a facility at which a reimbursed orphan share exists, the state has a lien upon the facility for

1 the unrecovered costs. The lien:

2 (a) may not exceed the increase in fair market value of the property attributable to the unfunded
3 portion of the remedial action at the time of a subsequent sale or other disposition of the property;

4 (b) arises at the time costs are first incurred by the department with respect to a remedial action
5 at the facility;

6 (c) must be filed according to subsection (3); and

7 (d) continues until the earlier of satisfaction of the lien or recovery of all remedial action costs
8 incurred at the facility.

9 (7) Payment of any liens under this section must be deposited in one of the two accounts from
10 which the remedial action costs originated, including the fund established in 75-10-704 or the orphan share
11 fund established in [section 27]."

12

13 **Section 22.** Section 75-10-724, MCA, is amended to read:

14 **"75-10-724. ~~Liability apportionment and contribution~~ Private right of action. (1) Any person who**
15 **receives notice under 75-10-711, who is held jointly and severally liable under 75-10-715, or who initiates**
16 **a voluntary cleanup under the provisions of 75-10-730 through 75-10-738 may bring a private right of**
17 **action, including a claim for contribution or declaratory relief, against any other person who is liable or**
18 **potentially liable under 75-10-715 for the recovery of remedial action costs. In resolving contribution claims,**
19 **the court shall allocate remedial action costs among the liable persons based on the factors set out in**
20 **[section 34]. ~~has the right at trial to have the trier of fact apportion liability among the parties as provided~~**
21 **in this section. ~~The burden is on each liable person to show how his liability should be apportioned. In~~**
22 **apportioning the liability of any person under this section, the trier of fact shall consider the following:**

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

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

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

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

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

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

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

8
 9 **Section 23.** Section 82-4-141, MCA, is amended to read:

10 **"82-4-141. Violation -- penalty.** (1) A person or operator who violates any of the provisions of this
 11 part or rules or orders adopted under this part shall pay a civil penalty of not less than \$100 or more than
 12 \$1,000 for the violation and an additional civil penalty of not less than \$100 or more than \$1,000 for each
 13 day during which a violation continues and may be enjoined from continuing ~~such~~ the violations as provided
 14 in this section. These penalties ~~shall~~ must be recoverable in any action brought in the name of the state of
 15 Montana by the attorney general in the district court of the first judicial district of this state in and for the
 16 county of Lewis and Clark or in the district court having jurisdiction of the defendant.

17 (2) The attorney general shall, upon the request of the director, sue for the recovery of the
 18 penalties provided for in this section and bring an action for a restraining order, temporary or permanent
 19 injunction against an operator or other person violating or threatening to violate an order adopted under this
 20 part.

21 (3) A person who willfully violates any of the provisions of this part or any determination or order
 22 adopted under this part ~~which~~ that has become final is guilty of a misdemeanor and shall be fined not less
 23 than \$500 and not more than \$5,000. Each day on which a violation occurs constitutes a separate offense.

24 (4) Civil penalties collected under this section must be deposited in the orphan share account in
 25 the state special revenue fund."

26
 27 **Section 24.** Section 82-4-241, MCA, is amended to read:

28 **"82-4-241. Receipts paid into general fund.** (1) ~~Except for bond forfeiture moneys as provided in~~
 29 subsection (2), all fees, penalties, and other moneys money available or paid to the department under the
 30 provisions of this part ~~shall~~ must be placed in the state treasury and credited to the general fund.

1 (2) Civil penalties paid to the department under 82-4-254 must be placed in the orphan share
 2 account in the state special revenue fund."

3
 4 **NEW SECTION. Section 25. Citizens suit.** (1) Any person may commence a civil action to compel
 5 compliance with [sections 26 through 36] by any liable or potentially liable person under 75-10-715 alleged
 6 to be in violation of a rule, notice letter, order, or department-approved remedial action required pursuant
 7 to a notice letter or order under this chapter.

8 (2) At least 60 days before commencing the action, the person shall give notice of intent to sue
 9 to all liable or potentially liable persons under 75-10-715 who are contemplated to be defendants in the
 10 proposed action.

11 (3) An action may not be commenced under subsection (1) if the liable or potentially liable person
 12 is diligently coming into compliance with the rule, notice letter, order, or department-approved remedial
 13 action plan or if the department has commenced and is diligently prosecuting an action to require
 14 compliance with the rule, notice letter, order, or department-approved remedial action plan.

15
 16 **NEW SECTION. Section 26. Short title.** [Sections 26 through 36] may be cited as the "Controlled
 17 Allocation of Liability Act".

18
 19 **NEW SECTION. Section 27. Orphan share state special revenue account -- reimbursement of**
 20 **claims -- payment of department costs.** (1) There is an orphan share account in the state special revenue
 21 fund established in 17-2-102 that is to be administered by the department. Money in the account is
 22 available to the department by appropriation and must be used to reimburse remedial action costs claimed
 23 pursuant to [sections 26 through 36] and to pay costs incurred by the department in defending the orphan
 24 share.

25 (2) There must be deposited in the orphan share account:

26 (a) money allocated from the metalliferous mines license tax pursuant to 15-37-117;

27 (b) money in excess of \$250,000 per year collected by the department as provided in [section 2
 28 of House Bill No. 284] establishing an environmental rehabilitation and prevention account;

29 (c) all penalties assessed pursuant to [section 34(12)];

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

1 15-38-202;

2 (e) funds allocated from the resource indemnity and ground water assessment tax proceeds
3 provided for in 15-38-106;

4 (f) unencumbered funds remaining in the abandoned mines state special revenue account provided
5 in section 19, Chapter 584, Laws of 1995, as of [the termination date of section 19, Chapter 584, Laws
6 of 1995, as may be amended];

7 (g) interest income on the account;

8 (h) funds received from settlements pursuant to 75-10-719(7);

9 (i) funds received from reimbursement of the department's orphan share defense costs pursuant
10 to subsection (6);

11 (j) fine and penalty money received pursuant to 75-2-412, 75-2-413, 75-2-427, 75-3-407,
12 75-5-634, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-423, 75-10-424, 75-10-542, 82-4-141, and
13 82-4-241; and

14 (k) unclaimed or excess reclamation bond money received pursuant to 82-4-141 and 82-4-241.

15 (3) If the orphan share fund contains sufficient money, valid claims must be reimbursed
16 subsequently in the order in which they were received by the department. If the orphan share fund does
17 not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not
18 be made and the orphan share fund, the department, and the state are not liable for making any
19 reimbursement for the costs. The department and the state are not liable for any penalties if the orphan
20 share fund does not contain sufficient money to reimburse claims, and interest may not accrue on
21 outstanding claims.

22 (4) Except as provided in subsection (8), claims may not be submitted and remedial action costs
23 may not be reimbursed from the orphan share fund until all remedial actions, except for operation and
24 maintenance, are completed at a facility.

25 (5) Reimbursement from the orphan share fund must be limited to actual documented remedial
26 action costs incurred after the date of petition provided in [section 29]. Reimbursement may not be made
27 for attorney fees, legal costs, or operation and maintenance costs.

28 (6) (a) The department's costs incurred in defending the orphan share must be paid by the persons
29 participating in the allocation under [sections 26 through 36] in proportion to their allocated shares. The
30 orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan

1 share in proportion to the orphan share's allocated share, as follows:

2 (i) If sufficient funds are available in the orphan share fund, the orphan share fund must pay the
3 department's costs incurred in defending the orphan share in proportion to the share of liability allocated
4 to the orphan share.

5 (ii) If sufficient funds are not available in the orphan share fund, persons participating in the
6 allocation under [sections 26 through 36] shall pay all the orphan share's allocated share of the
7 department's costs incurred in defending the orphan share in proportion to each person's allocated share
8 of liability.

9 (b) A person who pays the orphan share's proportional share of costs has a claim against the
10 orphan share fund and must be reimbursed as provided in subsection (3).

11 (7) If any money remains in the orphan share fund after [the termination date of this section] and
12 after outstanding claims are paid, the money must be deposited in the general fund.

13 (8) If the lead liable person under [section 30] presents evidence to the department that the person
14 cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will
15 cause undue financial hardship on the person, the department may allow the submission of claims and may
16 reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early
17 reimbursement unless the person is in substantial compliance with all department-approved remedial action
18 plans.

19 (9) A person participating in the allocation process who received funds under the mixed funding
20 pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive
21 reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot
22 program that are later attributed to the orphan share under the allocation process.

23

24 **NEW SECTION. Section 28. Eligibility -- statute of limitations.** (1) Except for a facility that is listed
25 on the national priorities list pursuant to the federal Comprehensive Environmental Response,
26 Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., a facility listed on the priority list
27 established pursuant to 75-10-702 is eligible for the allocation process under [sections 26 through 36].

28 (2) Only liability for remedial action costs is eligible for allocation and reimbursement from the
29 orphan share fund. Allocation of liability and reimbursement of costs for natural resource damages is not
30 permitted under [sections 26 through 36].

1 (3) Remedial action costs incurred prior to the date of the potentially liable person’s written petition
2 to the department as provided in [section 29] are not eligible for reimbursement from the orphan share fund.

3 (4) Only one allocation will be allowed for each facility unless:

4 (a) the department determines that an additional allocation is appropriate due to:

5 (i) the existence of more than one discrete unit of contamination at the facility;

6 (ii) the discovery of new releases after remedial actions at the facility are complete; or

7 (iii) other factors the department determines appropriate.

8 (b) all the liable or potentially liable persons under 75-10-715 agree in writing that an orphan share
9 does not exist for the proposed allocation and either of the conditions in subsection (4)(a)(i) or (4)(a)(ii) is
10 met.

11 (5) A liable or potentially liable person under 75-10-715 may not file a cost recovery or contribution
12 action against any person participating in the allocation process provided for in [sections 26 through 36]
13 until the allocation process is complete. The statute of limitations on the filing of cost recovery or
14 contribution actions is tolled from the first date of a petition for allocation on a facility until 30 days after
15 the submittal of the allocation report provided for in [section 34], or until 30 days following the expiration
16 of the time period for appeal or the final decision on appeal.

17
18 **NEW SECTION. Section 29. Allocation of liability -- process initiation.** (1) For a facility at which
19 the department has initiated a remedial action under 75-10-711 through the issuance of a notice letter prior
20 to [the effective date of this section], any person determined to be potentially liable under 75-10-715 may
21 petition the department in writing to initiate the allocation process. The right to participate in the allocation
22 process is waived if the written petition is not provided to the department prior to the completion of
23 remedial actions, except for operation and maintenance, at the facility.

24 (2) For a facility at which the department has not initiated a remedial action through the issuance
25 of a notice letter under 75-10-711, any person potentially liable under 75-10-715 who has received
26 approval of a voluntary cleanup plan under 75-10-730 through 75-10-738 may petition the department in
27 writing to initiate the allocation process. The right to participate in the allocation process is waived if the
28 written petition is not provided to the department prior to the completion of remedial actions, except for
29 operation and maintenance, at the facility.

30 (3) For a facility at which the department initiates a remedial action through the issuance of a

1 notice letter under 75-10-711 after [the effective date of this section], any person potentially liable under
2 75-10-715 may petition the department in writing within 60 days of the date of the notice letter to initiate
3 the allocation process. Any potentially liable person under 75-10-715 who does not provide a written
4 petition to the department within this timeframe waives the right to participate in the allocation process and
5 remains liable as provided in 75-10-715. The notice letter sent by the department must advise that a failure
6 to petition the department for allocation as provided in this subsection will result in a waiver of the right
7 to participate in the allocation process.

8 (4) The allocation process may be initiated and may proceed upon written petition of one or more
9 potentially liable persons.

10 (5) Prior to the initiation of discovery as provided in [section 31], all persons who participate in the
11 allocation process shall agree in writing that the allocator's decision is binding, subject only to the
12 provisions of [section 34(9)] and the appeal provisions of [section 35].

13 (6) All liable or potentially liable persons under 75-10-715 who do not participate in the allocation
14 process under [sections 26 through 36] remain liable as provided in 75-10-715.

15 (7) Upon receipt of a written petition under subsections (1) or (2) or when initiating actions at a
16 facility without a prior notice letter under subsection (3), the department shall:

17 (a) conduct a good faith investigation and may use its authority in 75-10-707 to identify persons
18 who may be liable under 75-10-715; and

19 (b) issue notice letters to the persons it identifies as potentially liable under 75-10-715.

20 (8) A person who receives a notice letter may, within 60 days from the date of the notice letter,
21 petition the department in writing to participate in an allocation process and provide the department with
22 the identity of other potentially liable persons under 75-10-715 who were not noticed by the department.
23 When identifying additional potentially liable persons, the noticed person shall provide to the department
24 a statement and credible evidence showing that there is a basis in law and fact to determine that the
25 identified person is potentially liable under 75-10-715.

26 (9) Within 30 days of receipt of the information provided for in subsection (8), the department may
27 issue a notice letter to an identified person whom the department determines is a potentially liable person
28 under 75-10-715. If the department does not issue a notice letter to an identified person, the department
29 shall issue the person a nomination letter indicating that the person has been identified as potentially liable
30 under 75-10-715. The nomination letter must state that the person has the right to participate in the

1 allocation process and that if the person does not participate and is found liable, the person remains subject
2 to liability as provided in 75-10-715. If the newly noticed or nominated person chooses to participate in
3 the allocation process, the person shall provide a written petition of the person's intent to participate in the
4 allocation process to the department within 30 days of the date of the notice or nomination letter. A failure
5 to petition the department for allocation as provided in this subsection results in a waiver of the right to
6 participate in the allocation process.

7 (10) If a person nominated under subsection (9) cannot be readily located, the department shall,
8 within 30 days of receipt of the information provided for in subsection (8), publish one notice of the
9 person's nomination, along with the information contained in a nomination letter under subsection (9), in
10 a newspaper of general circulation in the county where all or a portion of the facility is located. The notice
11 must state that the person has 30 days from the date of the notice to petition the department, in writing,
12 to participate in the allocation process. A failure to petition the department for allocation as provided in
13 this subsection results in a waiver of the right to participate in the allocation process.

14 (11) If one or more potentially liable persons petition in writing for an allocation process under
15 subsection (1), (2), or (3) and the department determines that the facility has a potential orphan share, the
16 department shall:

17 (a) publish a notice and brief description of the facility in a newspaper of general circulation in the
18 area affected and provide at least 30 days for submission of public comment on the identification of
19 potentially liable persons under 75-10-715; and

20 (b) notify interested persons and the county commissioners of the county where the facility is
21 located and provide at least 30 days for submission of comments on the identification of potentially liable
22 persons under 75-10-715.

23 (12) If a nominated person participates in the allocation and the person is assigned a zero share of
24 liability by the allocator, that person's reasonable costs of participating in the allocation, including attorney
25 fees, must be borne by the person who proposed the addition of the nominated person to the allocation.

26 (13) If the department anticipates that a facility may have an orphan share, the department shall
27 represent the orphan share in the allocation process. If the state is a potentially liable person under
28 75-10-715, an agency or entity other than the department shall represent the state in the allocation
29 process.

30 (14) Except as provided in subsection (15), whenever the department is involved in allocation

1 processes on five facilities, other allocation processes may be stayed before the discovery stage provided
2 in [section 31]. Upon completion of an allocation provided in [section 34 or 35], execution of a stipulated
3 agreement under [section 34], or a default to liability as provided in 75-10-715 for one of the five facilities,
4 the department shall notify the potentially liable persons for the facility on the waiting list that has the
5 earliest date of written petition. Discovery under [section 31] must begin within 10 days of department
6 notification.

7 (15) A stay on the allocation process may not occur under subsection (14) if all persons
8 participating in the allocation process agree in writing that there is no orphan share and that the state is
9 not a potentially liable person under 75-10-715. The agreement is binding upon all noticed or nominated
10 persons.

11 (16) If, after initiating the process, a potentially liable person elects to discontinue participation in
12 the process, the person remains subject to liability as provided in 75-10-715.

13

14 **NEW SECTION. Section 30. Emergency actions -- remedial action requirements -- designation of**
15 **lead person -- enforcement.** (1) If the department determines that immediate response to an imminent
16 threat to public health, safety, or welfare or the environment is necessary to avoid substantial injury or
17 damage to persons, property, or resources, the department may require any potentially liable person to take
18 remedial actions without the prior written notice required by 75-10-711(3). The department has 30 days
19 to comply with the notification requirements provided in 75-10-711(3) and [section 29] when requiring
20 emergency remedial actions.

21 (2) Within 30 days of the issuance of the notice letters, the noticed persons shall designate a lead
22 person who shall conduct remedial actions at the facility. Upon request of the noticed persons and for
23 good cause shown, the department may grant a 30-day extension of time to identify the lead person.

24 (3) If the department determines that the identified lead person is financially or otherwise incapable
25 of completing remedial actions required by the department, the department shall notify all noticed persons
26 of this determination in writing and request that another lead person be designated within 15 days.

27 (4) The designated lead person shall undertake all remedial actions required by the department.

28 (5) If the noticed persons do not designate an approved lead person within the timeframes provided
29 under subsection (2) or (3), the department shall designate a lead person to undertake required remedial
30 actions.

1 (6) If the department finds that the lead person has not complied with the requirements of a notice
2 letter, order, stipulated agreement, or any department-approved remedial action plan, the department shall
3 notify all potentially liable persons of the noncompliance.

4 (7) If the noncompliance continues for 30 days after the date of the notice provided in subsection
5 (6), the potentially liable persons have not demonstrated that the noncompliance is due to good cause, and
6 the facility is a maximum or high-priority facility on the department’s priority list established pursuant to
7 75-10-702, the department shall take one or more of the following actions:

8 (a) issue a unilateral order requiring the potentially liable persons to comply with the requirements
9 of the notice letter, order, stipulated agreement, or department-approved remedial action plan;

10 (b) file a civil action as provided in 75-10-711;

11 (c) conduct the required remedial actions and seek cost recovery and penalties as provided in
12 75-10-711;

13 (d) file a cost recovery action as provided in 75-10-722; or

14 (e) void approval of the voluntary cleanup plan as provided in 75-10-736.

15 (8) If the noncompliance continues for 30 days after the date of the notice provided in subsection
16 (6), the potentially liable persons have not demonstrated that the noncompliance is due to good cause, and
17 the facility is not a maximum or high-priority facility on the department’s priority list, the department may
18 take one or more of the actions provided for in subsection (7).

19 (9) For purposes of subsections (7), (8), and (10), "good cause" means factors beyond a person’s
20 control that include severe weather conditions, third-party interference, an act of God, or an act of war.
21 Before a person may claim good cause due to third-party interference, the person shall show that the
22 person used reasonable efforts to obtain cooperation or compliance from the third party.

23 (10) If the lead person fails to comply with the requirements of a notice letter, order, stipulated
24 agreement, or other department-approved remedial action plan, the facility and all noticed persons remain
25 subject to liability as provided in 75-10-715 unless another person assumes the lead role in implementing
26 the cleanup plan or the lead person can establish that the noncompliance is due to good cause.

27
28 **NEW SECTION. Section 31. Discovery.** (1) Each person participating in the allocation process for
29 a facility may conduct discovery for a period of not more than 90 days from the date of the last notice or
30 nomination letter. Discovery requests by each person participating in the allocation process, including the

1 orphan share representative, are limited to the following unless otherwise agreed to by all persons
2 participating in the allocation, including the orphan share representative:

3 (a) 5 1-day oral depositions not to exceed 8 hours each;

4 (b) 25 written interrogatories, including subparts;

5 (c) 50 requests for admission; and

6 (d) 50 requests for production of documents.

7 (2) The persons participating in the allocation process may extend the discovery period for up to
8 30 days if all persons agree to the extension in writing

9 (3) Any participating person who is not responsive to discovery requests or who does not
10 participate in the subsequent allocation proceeding and is allocated a share of liability remains subject to
11 liability as provided in 75-10-715.

12
13 **NEW SECTION. Section 32. Preallocation negotiations.** (1) After discovery pursuant to [section
14 31] closes, all persons participating in the allocation process shall conduct good faith settlement
15 negotiations for a period of 30 days.

16 (2) The participating potentially liable persons may use an impartial mediator when conducting
17 settlement negotiations.

18 (3) If a settlement is reached under subsection (1), the persons shall execute a stipulated
19 agreement as provided in [section 34].

20 (4) If a stipulated agreement is not executed as provided in [section 34], the persons shall select
21 an allocator as provided in [section 33].

22
23 **NEW SECTION. Section 33. Allocator selection -- payment of fees.** (1) If the preallocation
24 negotiations pursuant to [section 32] fail to produce a stipulated agreement within the timeframe provided
25 in [section 32], the participating persons shall select an allocator within 30 days after the preallocation
26 negotiations end. All participating persons shall agree on the selected allocator.

27 (2) Before selection or appointment as an allocator, a person shall disclose all conflicts of interest,
28 including whether the allocator is or has been a relative, attorney, agent, employee, creditor, or contractor
29 of, or in any manner is or has been interested financially or personally with, any person involved in the
30 allocation.

1 (3) If the participating persons are unable to agree on an allocator within the required 30 days, one
2 or more of the participating persons shall apply for judicial resolution, within 10 days, to the district court
3 in the county where the release occurred or where any potentially liable person under 75-10-715 resides
4 or has a principal place of business or in the district court of the first judicial district. If an application to
5 the district court is not made within 10 days, all persons remain subject to liability as provided in 75-10-715
6 and the allocation process ends.

7 (4) Upon selection or appointment of the allocator, the lead person shall advance, if required by
8 the allocator, up to \$5,000 toward the allocator's expenses. Any expenses accrued by the allocator for
9 legal or technical expertise must be approved in advance by all the participating persons. The allocator's
10 fees and reasonable expenses must be divided among the participating liable persons, except the orphan
11 share, in proportion to their allocated shares. The orphan share fund established in [section 27] is not
12 responsible for any portion of the allocator's fees and expenses.

13
14 **NEW SECTION. Section 34. Allocating liability.** (1) Upon selection or appointment, the allocator
15 shall establish the process and schedule for determining the allocation, including the length and scope of
16 any documents to be presented.

17 (2) The participating persons shall submit to the allocator and to each other a statement of position
18 and exhibits of a factual nature. Each person's statement must identify the factors listed in subsection (5)
19 that the person believes are relevant to allocation of liability for the facility.

20 (3) The allocator may convene the participating persons as the allocator believes necessary to
21 clarify the facts and may pose additional questions, interview any person or the person's representative,
22 and impose presumptions concerning missing information. The allocator may seek department assistance
23 with information gathering pursuant to 75-10-707.

24 (4) The allocator may not engage in ex parte communications with any person or the person's
25 representative.

26 (5) The allocator shall allocate each participating and nonparticipating person's share of liability
27 based only on information presented or collected during the allocation process and, taking into account
28 facility characteristics, shall apportion liability on a percentage basis according to the following factors:

- 29 (a) the extent to which the person caused the release of the hazardous or deleterious substance;
30 (b) the extent to which the person's contribution to the release of a hazardous or deleterious

1 substance can be distinguished;

2 (c) the amount or volume of hazardous or deleterious substance and the amount contributed by the
3 person;

4 (d) the relative hazard of the hazardous or deleterious substance contributed by the person,
5 including volatility, carcinogenicity, mobility, persistence, reactivity, and toxicity;

6 (e) the degree of past and present cooperation by the person with the government to prevent harm
7 to the public health, safety, or welfare and the environment, including participation in remedial actions
8 occurring concurrently with the allocation process and compliance and cooperation with discovery pursuant
9 to [section 31];

10 (f) what the person knew or should have known of:

11 (i) the hazardous nature of the substance, the risk associated with that substance, and proper
12 waste disposal practices;

13 (ii) the circumstances of the property acquisition, including the documented price paid and discounts
14 granted; and

15 (iii) the person's knowledge of or acquiescence to waste generation, storage, handling, treatment,
16 or disposal;

17 (g) the length of time of ownership, operation, generation, or transportation;

18 (h) any violations of or noncompliance with health and environmental regulations, including permit
19 violations or violations relating to public notification;

20 (i) the degree to which a person providing publicly owned landfill or sewer and water systems had
21 or has a reasonable ability to control disposed materials and the person's degree of care in maintaining
22 those services;

23 (j) the person's financial or economic benefit from:

24 (i) ownership or operation of the facility;

25 (ii) the generation, transportation, or disposal of the hazardous or deleterious substance; and

26 (iii) cleanup of the facility;

27 (k) whether the person exercised due diligence in generating, transporting, or disposing of
28 hazardous or deleterious substances and the person's control over those activities; and

29 (l) other equitable factors that are appropriate.

30 (6) Within 60 days of selection or appointment, the allocator shall submit to the department and

1 all noticed and nominated persons a written allocation report that allocates each person's share of liability
2 and that documents the rationale for the percentage of liability allocated to each person.

3 (7) The allocator or the participating persons may extend the allocation proceeding by up to 30
4 days if agreed to by the allocator and all the participating persons.

5 (8) Within 30 days of the date of the allocation report, the persons who participated in the
6 allocation and who were allocated a share of liability, except for the orphan share, shall prepare and sign
7 a stipulated agreement that contains:

8 (a) the percentage share of liability for each person as determined by the allocator;

9 (b) procedures for paying for the orphan share prior to reimbursement from the orphan share fund;

10 (c) a waiver of contribution rights against all persons who are potentially liable for the remedial
11 action as well as a waiver of any rights to challenge any settlement that the department enters into with
12 any other potentially liable person;

13 (d) covenants not to sue and provisions regarding performance or adequate assurance of
14 performance of remedial actions;

15 (e) how remedial actions will be conducted;

16 (f) a penalty provision in accordance with subsection (12);

17 (g) acknowledgment of contribution protection, consistent with 75-10-719(1), regarding matters
18 addressed in the settlement; and

19 (h) provisions detailing how the persons signing the stipulated agreement should receive
20 reimbursement from the orphan share fund for any remedial action costs incurred by the persons in excess
21 of their allocated share.

22 (9) If the department determines that the stipulated agreement does not satisfy the requirements
23 of subsection (8), the liable persons who participated in the allocation remain subject to liability as provided
24 in 75-10-715.

25 (10) A person who did not participate in the allocation but who was assigned a share of liability
26 may sign the stipulated agreement prepared according to subsection (8).

27 (11) Any liable person allocated a share of liability who does not sign the stipulated agreement
28 remains subject to liability as provided in 75-10-715.

29 (12) Any liable person who signs the stipulated agreement and fails to comply with the terms of
30 the stipulated agreement shall pay, in addition to the person's share of remedial action costs, a penalty of

1 two times the amount of the person's allocated share of liability. Any funds received must be applied to
2 the facility's orphan share and any funds in excess of the facility's orphan share amount must be deposited
3 in the orphan share fund established under [section 27].

4 (13) If a liable person becomes bankrupt or defunct after the stipulated agreement is signed and
5 before remedial actions are complete at the facility, that person's share of liability becomes an orphan
6 share.

7
8 **NEW SECTION. Section 35. Appeal of allocator's decision.** (1) A person may appeal the
9 allocator's decision to district court within 30 days of the date of the allocation report. Venue lies in the
10 county where the release occurred or where the liable person resides or has a principal place of business
11 or in the first judicial district.

12 (2) The allocator's decision must be upheld unless the person appealing the decision demonstrates
13 that the decision was:

14 (a) made upon unlawful procedure;

15 (b) affected by other error of law;

16 (c) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole
17 record; or

18 (d) arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise
19 of discretion or was fraudulent.

20 (3) If the appeal is successful, the district court shall allocate the liability of the potentially liable
21 persons using the factors outlined in [section 34].

22 (4) After decision on the appeal, all liable persons shall submit a stipulated agreement as provided
23 in [section 34] to the department based on the court order.

24
25 **NEW SECTION. Section 36. Effect of termination on allocations.** (1) Persons participating in the
26 allocation process may complete the allocation process for the facility at issue and claim reimbursement
27 from the orphan share fund provided that the discovery process under [section 31] had been initiated by
28 [the termination date of sections 26 through 36].

29 (2) If discovery, as provided in [section 31], has not commenced by [the termination date of
30 sections 26 through 36], the facility and its potentially liable persons under 75-10-715 are not eligible to

1 participate in the allocation process under [sections 26 through 36] and remain subject to liability as
2 provided in 75-10-715.

3
4 **Section 37.** Section 16, Chapter 584, Laws of 1995, is amended to read:

5 "**Section 16. Criteria.** (1) the pilot program ~~must consist~~ consists of remediation of the Joslyn
6 street tailings facility, the Corbin flats facility, and the block P mill facility ~~three sites from the department~~
7 ~~of state lands' abandoned hard rock mine priority list. The three sites must be selected from the top ten~~
8 ~~priority sites on that list as of April 1, 1995.~~

9 (2) Any site remediated under this pilot program must meet the following criteria:

10 (a) The owner of the property has, prior to May 22, 1989, purchased or entered into a lease
11 purchase agreement or an option to purchase property where the facility is located.

12 (b) The applicant has submitted a voluntary cleanup plan in accordance with the provisions of
13 [sections 7 and 8].

14 (c) The department has accepted and approved the application for a voluntary cleanup plan in
15 accordance with the provisions of [sections 6 through 10] by June 30, 1997.

16 (3) The department and the applicant shall negotiate an apportionment of the applicant's liability
17 pursuant to [section 17]. The department, as a trier of fact, shall make the final determination of the
18 applicant's apportioned liability. If the applicant disagrees with the department's determination of the
19 applicant's proportionate share of liability, the applicant may appeal the department's decision in
20 accordance with the requirements of [section 6(4)].

21 ~~(4) If more than three applicants submit voluntary cleanup plans for the highest priority sites on~~
22 ~~the department of state lands' abandoned hard rock mine priority list and the department approves more~~
23 ~~than three plans, the department shall select three plans to incorporate into the pilot program on a priority~~
24 ~~basis as determined by the date of submittal of a complete application."~~

25
26 **Section 38.** Section 18, Chapter 584, Laws of 1995, is amended to read:

27 "**Section 18. Claims for and limitations on reimbursement.** (1) After completion of the voluntary
28 cleanup plan approved by the department, the applicant may apply to and must, in accordance with this
29 section, receive reimbursement from the abandoned mines state special revenue account. Reimbursement
30 must be subject to the following requirements and limitations:

1 (a) The applicant shall complete remediation prior to making a claim for reimbursement.

2 (b) The reimbursement may not exceed 90% of eligible costs up to a maximum of \$300,000 per
3 facility.

4 (c) The claim for reimbursement may not include legal fees or department costs incurred in the
5 oversight of the voluntary cleanup plan.

6 (2) For purposes of this section, "eligible costs" means costs in excess of an applicant's
7 proportionate share of total costs incurred in the remediation of the site during the 1996-97 biennium and
8 the 1998-99 biennium.

9 (3) If costs are reimbursed out of the abandoned mines state special revenue account, nothing in
10 [sections 14 through 20] prohibits the department from pursuing an action against other potentially liable
11 parties to recover those costs.

12 (4) If the abandoned mines state special revenue account does not contain sufficient money to pay
13 received claims for reimbursement, the abandoned mines state special revenue account and the department
14 are not liable for making any reimbursement at that time. All claims are subject to appropriations to the
15 abandoned mines state special revenue account."
16

17 **Section 39.** Section 27, Chapter 584, Laws of 1995, is amended to read:

18 "Section 27. Termination. (1) [Sections 4 through 12] terminate January 1, 2001.

19 (2) [Sections 14 through 21] terminate June 30, ~~1997~~ 1999."
20

21 NEW SECTION. **Section 40. Codification instruction.** [Sections 25 through 36] are intended to
22 be codified as an integral part of Title 75, chapter 10, part 7, and the provisions of Title 75, chapter 10,
23 part 7, apply to [sections 25 through 36].
24

25 NEW SECTION. **Section 41. Coordination instructions.** (1) If Senate Bill No. 7 and [this act] are
26 both passed and approved, the amendments to 15-37-117 in Senate Bill No. 7, relating to the allocation
27 of the metal mines license tax, are void.

28 (2) If [this act] and House Bill No. 284 are both passed and approved and House Bill No. 284 does
29 not contain a section creating and depositing excess penalty collections into an orphan share account, then
30 [section 27 (2)(b) of this act] is void.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0377, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the laws relating to the state Comprehensive Environmental Cleanup and Responsibility Act (CECRA); providing an optional procedure for allocating liability for site remediation; creating an orphan share fund account and allocating certain fines, penalties, resource indemnity trust interest and tax proceeds, metalliferous mine tax proceeds, and other money to the account; providing for citizen suits; providing exclusions from liability; providing additional and specific rulemaking authority; amending provisions and extending the termination date of the mixed funding pilot program.

ASSUMPTIONS:

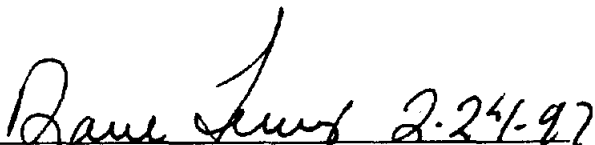
Department of Natural Resources and Conservation (DNRC):

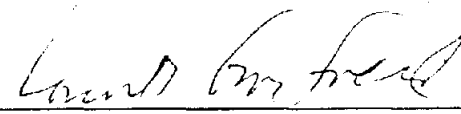
1. Assume revenue oversight committee revenue estimates.
2. Assume metal mine tax deposits to the RIT trust under current law are \$474,045 in fiscal year 1998 and \$542,725 in fiscal year 1999. Further, assume these deposits are made on the first of May.
3. Assume that RIGWA tax deposits to the RIT trust under current law are \$559,521 in fiscal year 1998 and \$551,259 in fiscal year 1999. Further, assume these deposits are made on the first of May.
4. Assume that rate of return on fiscal year 1998 deposits is 6.48% and 6.33% for fiscal year 1999 deposits.
5. Assume that \$200,000 per year of RIGWA taxes are available for distribution to the orphan share account (page 5, lines 7-9).
6. Assume that no metal mine tax funds are not deposited into the RIT trust fund.
7. Assume that oil and gas tax deposits to the RIT trust are not affected by SB 377.

Department of Environmental Quality (DEQ):

8. The CECRA site list contains 211 sites. Of these, 70 sites will have an orphan share of liability allocated for remedial action costs. These 70 sites are a mix of maximum-high-, and medium-priority.
9. There is sufficient information for 39 of 70 sites to estimate remedial action costs and the potential orphan share. There is insufficient information for the remaining 31 sites to estimate remedial action costs, but they may also have an orphan share of liability. Orphan shares estimates were not made for low-priority sites.
11. This bill provides a controlled allocation of liability option that will redistribute financial responsibility for the orphan share costs on the 39 sites identified between the state and private entities.
12. The department will negotiate the allocation of liability for orphan share remedial action costs on the 39 sites that have been identified and where the controlled allocation of liability option is used. The bill controls the number of orphan share allocation proceedings that can occur at one time and limits this number to five.
13. Currently, the assignment of responsibility for remedial action costs on 39 sites where there is an orphan share under the joint and several liability system are estimated to range from \$8 million to \$20 million.
14. Allocation of liability for the 39 sites identified increases the state's financial responsibility by \$22 to \$30 million.
15. During the next 5 years, cleanup is expected to begin or continue at 18 of the 39 sites that have been identified, with estimated orphan share costs of approximately \$9 million to \$11 million and the controlled allocation of liability option will be used for all 18 sites.
16. During the following 6 to 10 years, cleanup will begin at 8 of the 39 sites that have been identified, with an estimated orphan share of approximately \$16 million to \$18 million and the controlled allocation of liability option will be used for all 8 sites.

(Continued)


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


LORENTS GROSFIELD, PRIMARY SPONSOR DATE

Fiscal Note for SB0377, as introduced

≡

SB 377

- 17. After 10 years, cleanup will begin at the remaining 13 sites, with an estimated orphan share of approximately \$17 million to \$19 million and the controlled allocation of liability option will be used for all 13 sites.
- 18. The orphan share state special revenue account will be used to reimburse potentially-liable persons (PLPs) who are participating in the controlled allocation of liability option.
- 19. The department will only reimburse claims for payment of orphan share remedial action costs if the balance of the orphan share account is sufficient to cover the cost of the claim. Reimbursement is not required if the account balance is insufficient to reimburse a claim and no interest will accrue on unpaid claims.
- 20. Remedial actions, except for operation and maintenance, must be completed before a claim is submitted and before orphan share costs are reimbursed. Operation and maintenance costs will not be reimbursed. The department expects no claims for orphan share remedial action costs to be reimbursed in the next biennium.
- 21. The department requires 1.00 FTE program specialist (grade 16) with operating expenses to participate in the liability allocation process for sites with likely orphan shares. Projected operating expenses include \$5,000 in FY 98 for equipment, \$13,000 per year in the biennium for contracted services, and \$15,000 per year for travel, office expenses, and supplies.
- 22. Fines and penalties revenues reallocated from the general fund to the orphan share account will be \$650,000 in FY 98 and \$670,000 in FY 99 (HJR 2). [Although the full amount is shown in the bill based on Sections 4-15, if HB 284 is passed and approved, the first \$250,000 would be allocated in accordance with that bill.]
- 23. The 8.5% metalliferous mines license tax proceeds will not be deposited into an abandoned mine state special revenue account this biennium [Amendment adopted 2/21/97 by the Senate Natural Resources Committee].

Department of Revenue (DOR):

- 24. Metalliferous Mines License Tax collections are \$5,578,000 in fiscal year 1998 and \$6,385,000 in FY99 (HJR2).

General Assumptions:

- 25. The reductions in revenue distribution to four state special revenue accounts total \$58,835 for the 1999 biennium. If any of these reductions cause a deficit in any of the associated accounts, some minor amount of state expenditures in HB 2 will be transferred to the general fund at the end of the session.
- 26. Based on assumption 25, the agencies and programs potentially impacted by SB 377 are not all listed herein.
- 27. Funding would be available for payment of clean-up costs at CECRA sites. Under current law, the responsible parties bear these costs. Under SB 377, the state may pay for these clean-up costs if all or portions of the original contamination was caused by a party (or parties) that is bankrupt or defunct or for some other reason these costs are not associated with any viable person. During the 1999 biennium the revenue will be deposited in the orphan share account and administrative expenses will be paid from the account. However, actual clean-up disbursements from the new orphan fund may not occur in the 1999 biennium because of the time necessary to proceed through the process and to clean-up the site.

FISCAL IMPACT:

Department of Environmental Quality (DEQ)

<u>Expenditures:</u>	<u>FY98</u> <u>Difference</u>	<u>FY99</u> <u>Difference</u>
FTE	1.00	1.00
Personal Services	\$37,340	\$37,340
Operating Expenses	34,348	34,348
Equipment	<u>5,000</u>	<u>0</u>
Total	<u>\$76,688</u>	<u>\$71,688</u>

Funding:

State Special Revenue (02)	\$76,688	\$71,688
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DNRC & DEQ Assumptions:Revenues:

By diverting proceeds away from the RIT trust and using these funds for other purposes, SB 377 does impact RIT trust fund earnings. This impact would be felt in the four special revenue accounts that now receive RIT interest earnings. The impacts are:

	<u>FY 98</u>	<u>FY 99</u>	<u>Total</u>
	<u>Difference</u>	<u>Difference</u>	
Renewable Resource Account (02272):	(\$2,628)	(\$18,553)	(\$21,181)
Reclamation and Development Account (02458):	(2,920)	(20,614)	(23,534)
Hazardous Waste/CERCLA Account (02070):	(1,314)	(9,276)	(10,590)
Environmental Quality Protection Fund (02162):	<u>(438)</u>	<u>(3,092)</u>	<u>(3,530)</u>
Subtotal Interest Impact	(\$7,300)	(\$51,535)	(\$58,835)
RIT Trust Deposits	(674,045)	(742,725)	(1,416,770)
RIT Proceeds	(200,000)	(200,000)	(400,000)
Orphan Share Fund (8.5%)	674,045	742,725	1,416,770
Orphan Share Fund (balance of \$200K)	123,312	128,312	251,624
Penalty Revenue to Orphan Share Fund	650,000	670,000	1,320,000
DEQ Penalties Deposits to General Fund	(650,000)	(670,000)	(1,320,000)
<u>Net Impact on Fund Balance:(Revenues - Expenditures)</u>			
General Fund (01)	(\$650,000)	(\$670,000)	(1,320,000)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

To the extent that a county or local government is a responsible party under the CECRA legislation, under current law they may be held responsible for the entire clean-up costs. SB 377 would set up a process through which local governments may be able to reduce this liability to a portion of the costs associated with the portion of the pollution caused by the local government.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

- To fully fund the orphan fund, significant increases in revenue will be needed. Orphan share remedial action costs over the next 10 to 15 years are estimated to range from \$42 million to \$48 million. It is anticipated that \$3 to \$4 million per year will be required to fully fund the orphan share costs of known CERCRA site clean-up projects.
- Beginning in fiscal year 2000, the proposed legislation will annually allocate \$200,000 from the resource indemnity trust fund interest income to the orphan share account, in addition to the \$200,000 from the proceeds of the tax. This allocation to the orphan share account will result in the following annual reductions after FY99. The 1999 legislature would need to either reduce appropriation authority for currently-funded programs or find alternative sources of funding.

Renewable Resource State Special	(\$72,000)
Hazardous waste/CERCLA	(\$36,000)
Reclamation & Development State Special	(\$80,000)
Environmental Quality Protection Fund	(\$12,000)

TECHNICAL NOTES:

- HB 284 does not create an orphan share account. Section 41 (2) and (3) should be amended to reflect this fact.
- Section 2 of the proposed legislation amends MCA 15-38-106 to allocate up to \$200,000 of the remaining revenues from the resource indemnity and groundwater assessment Tax (RIGWAT) to the orphan share account. It should be noted that the current law distribution instructions already allocate 100% of RIGWAT revenues; therefore, there would be no remaining revenues to allocate to the orphan share account.
- Sections 4 - 15 reallocate all DEQ fines and penalty revenues from the general fund to the orphan share account. Virtually all of this revenue is from air quality violations and the general fund impact is about \$660,000 per year.
- HB 284, which has passed the House, provides that the first \$250,000 of fines and penalties be used for environmental remediation and is coordinated with SB 377 in Section 27(2)(b).

(Continued)

TECHNICAL NOTES: (Continued)

5. Moreover, apparently there is an "agreement" among some of the parties supporting the proposed legislation that the fines and penalties revenues should be estimated at the 1993-1996 four-year average of \$400,000 rather than the HJR 2 estimates used in this fiscal note. If \$400,000 were used, and the first \$250,000 were assumed to apply to HB 284, then the amount of \$150,000 would be remaining for application to this bill.

DEDICATION OF REVENUE:

- a) Are there persons or entities that benefit from this dedicated revenue that do not pay? (Please explain)

Yes. (1) The public at large will benefit from a more clean and healthful environments. (2) Business and industries that are liable parties but have not contributed to the tax will benefit because their cleanup costs may be reduced.

- b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?

If the revenue were allocated to the general fund, there the would be no guarantee that appropriations would be made to meet the intent of this bill (cleanup CECRA sites with costs shared among PLPs and an orphan share).

- c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended? Yes No (if no, explain)

The revenue identified at this time will not cover the potential cost of cleanup reimbursement for the short term. If the account and statutes are maintained with continued appropriations, this fund is projected to be adequate.

- d) Does the need for this state special revenue provision still exist? Yes No (Explain)

This legislation establishes this state special revenue account and provisions for the use of the funds in the account.

- e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)

No. This revenue and expenditure activity level will be requested to each regular body through legislation separate from HB2.

- f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please explain)

Yes. Through passage of this bill the legislature will establish the activities required by statute as a priority.

- g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

A dedicated state special revenue account will assist the department in tracking the revenue and expenditure activity as a result of this legislation. It will be the only activity accounted for in this state special revenue account. If this activity received general fund the agency could adequately account for the program/activity. However, then there would be a concern for the long-term appropriations to this project.

1 SENATE BILL NO. 377

2 INTRODUCED BY GROSFIELD, KNOX, CRISMORE, KEATING, DEPRATU, CLARK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE STATE
5 COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; PROVIDING AN OPTIONAL
6 PROCEDURE FOR ALLOCATING LIABILITY FOR SITE REMEDIATION; CREATING AN ORPHAN SHARE FUND
7 ACCOUNT AND ALLOCATING CERTAIN FINES, PENALTIES, RESOURCE INDEMNITY TRUST INTEREST
8 AND TAX PROCEEDS, METALLIFEROUS MINE TAX PROCEEDS, AND OTHER MONEY TO THE ACCOUNT;
9 PROVIDING FOR CITIZEN SUITS; PROVIDING EXCLUSIONS FROM LIABILITY; PROVIDING ADDITIONAL
10 AND SPECIFIC RULEMAKING AUTHORITY; AMENDING PROVISIONS AND EXTENDING THE TERMINATION
11 DATE OF THE MIXED FUNDING PILOT PROGRAM; AMENDING SECTIONS 15-37-117, 15-38-106,
12 15-38-202, 75-2-412, 75-2-413, 75-2-427, 75-3-407, 75-5-634, 75-6-109, 75-6-114, 75-10-417,
13 75-10-418, 75-10-423, 75-10-424, 75-10-542, 75-10-701, 75-10-702, 75-10-704, 75-10-715,
14 75-10-719, 75-10-720, 75-10-724, 82-4-141, AND 82-4-241, MCA, AND SECTIONS 16, 18, AND 27,
15 CHAPTER 584, LAWS OF 1995; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."
16

17 WHEREAS, the 1995 Legislature, in Chapter 584, Laws of 1995, directed the Department of
18 Environmental Quality to institute a collaborative process involving all affected and interested persons to
19 analyze the elimination of joint and several liability with respect to the cleanup of state Comprehensive
20 Environmental Cleanup and Responsibility Act (CECRA) facilities and to submit any legislative proposals that
21 collaboratively resulted from that process to the 55th Legislature; and

22 WHEREAS, the Department instituted this collaborative process with industry and business
23 representatives; state, federal, and local government representatives; and public interest and environmental
24 interest group representatives; and

25 WHEREAS, through a contract with the Department, the Montana Consensus Council designed the
26 study process, facilitated the organization of the collaborative process, and conducted the numerous
27 meetings of the study committees and interest group caucuses through which the parties to the
28 collaborative process reached consensus on legislative proposals that are contained in this bill.
29

30 STATEMENT OF INTENT

1 It is the intent of this bill to provide an option to the concept of joint and several liability for
2 potentially liable persons to have their proportionate share of liability for a state Comprehensive
3 Environmental Cleanup and Responsibility Act (CECRA) facility determined through an expedited process
4 while ensuring that the concurrent cleanup of the facility occurs. The bill clarifies defenses to liability and
5 creates exclusions from liability. The bill also provides rulemaking authority to the department for
6 developing guidance and criteria and involving the public and the liable parties in the decisionmaking
7 process for listing and delisting sites on a CECRA priority list. The department will be required to provide
8 written justification for its decisions to list, delist, and prioritize sites needing remediation. The written
9 criteria for listing and delisting represent the legislature's intent for this rulemaking.

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

12
13 **Section 1.** Section 15-37-117, MCA, is amended to read:

14 **"15-37-117. (Temporary) Disposition of metalliferous mines license taxes.** (1) Metalliferous mines
15 license taxes collected under the provisions of this part must, in accordance with the provisions of
16 15-1-501, be allocated as follows:

17 (a) to the credit of the general fund of the state, 58% of total collections each year;

18 (b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5%
19 of total collections each year;

20 (c) to the abandoned mines state special revenue account provided for in section 19, Chapter 584,
21 Laws of 1995, 8.5% of total collections each year;

22 (d) to the ground water assessment account established in 85-2-905, 2.2% of total collections
23 each year;

24 (e) to the reclamation and development grants program state special revenue account, 4.8% of
25 total collections each year; and

26 (f) 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
30 mine is located, 25% of total collections each year, to be allocated by the county commissioners as

1 follows:

2 (i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225;

3 and

4 (ii) all money not allocated to the account pursuant to subsection (1)(f)(i) to be further allocated as

5 follows:

6 (A) 33 1/3% is allocated to the county for planning or economic development activities;

7 (B) 33 1/3% is allocated to the elementary school districts within the county that have been
8 affected by the development or operation of the metal mine; and

9 (C) 33 1/3% is allocated to the high school districts within the county that have been affected by
10 the development or operation of the metal mine.

11 (2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307
12 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under
13 subsection (1)(f) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part
14 4.

15 (3) The department shall return to the county in which metals are produced the tax collections
16 allocated under subsection (1)(f). The allocation to the county described by subsection (1)(f) is a statutory
17 appropriation pursuant to 17-7-502. (Terminates June 30, ~~1997 sec. 27, Ch. 584, L. 1995-1999~~
18 1997--SEC. 27, CH. 584, L. 1995.)

19 **15-37-117. (Effective July 1, ~~1997-1999~~ 1997) Disposition of metalliferous mines license taxes.**

20 (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with
21 the provisions of 15-1-501, be allocated as follows:

22 (a) to the credit of the general fund of the state, 58% of total collections each year;

23 (b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5%
24 of total collections each year;

25 (c) to the ~~state resource indemnity trust fund, 15.5% of total collections each year~~ orphan share
26 state special revenue account established in [section 27], 8.5% of total collections each year;

27 (d) to the ground water assessment account established in 85-2-905, 2.2% of total collections
28 each year;

29 (e) to the reclamation and development grants program state special revenue account, 4.8% of
30 total collections each year; and

1 (f) to the county or counties identified as experiencing fiscal and economic impacts, resulting in
 2 increased employment or local government costs, under an impact plan for a large-scale mineral
 3 development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic
 4 impacts determined in the plan, or, if an impact plan has not been prepared, to the county in which the
 5 mine is located, 25% of total collections each year, to be allocated by the county commissioners as
 6 follows:

7 (i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225;
 8 and

9 (ii) all money not allocated to the account pursuant to subsection (1)(f)(i) to be further allocated as
 10 follows:

11 (A) 33 1/3% is allocated to the county for planning or economic development activities;

12 (B) 33 1/3% is allocated to the elementary school districts within the county that have been
 13 affected by the development or operation of the metal mine; and

14 (C) 33 1/3% is allocated to the high school districts within the county that have been affected by
 15 the development or operation of the metal mine.

16 (2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307
 17 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under
 18 subsection (1)(f) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part
 19 4.

20 (3) The department shall return to the county in which metals are produced the tax collections
 21 allocated under subsection (1)(f). The allocation to the county described by subsection (1)(f) is a statutory
 22 appropriation pursuant to 17-7-502."
 23

24 **Section 2.** Section 15-38-106, MCA, is amended to read:

25 "**15-38-106. Payment of tax -- records -- collection of taxes -- refunds.** (1) The tax imposed by
 26 this chapter must be paid by each person to which the tax applies, on or before March 31, on the value
 27 of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to
 28 the department at the time the statement of yield for the preceding calendar year is filed with the
 29 department.

30 (2) The department shall, in accordance with the provisions of 15-1-501(6), deposit the proceeds

1 of the tax in the resource indemnity trust fund of the nonexpendable trust fund type, except that:

2 (a) 14.1% of the proceeds must be deposited in the ground water assessment account established
3 by 85-2-905;

4 (b) 10% of the proceeds must be deposited in the renewable resource grant and loan program state
5 special revenue account established by 85-1-604; and

6 (c) 30% of the proceeds must be deposited in the reclamation and development grants account
7 established by 90-2-1104; and

8 (d) if there are sufficient unallocated funds remaining, at the beginning of each fiscal year there is
9 allocated from the proceeds of the tax up to \$200,000 to be deposited in the orphan share account
10 established in [section 27].

11 (3) Every person to whom the tax applies shall keep records in accordance with 15-38-105, and
12 the records are subject to inspection by the department upon reasonable notice during normal business
13 hours.

14 (4) The department shall examine the statement and compute the taxes to be imposed, and the
15 amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer.
16 If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the
17 department within 30 days after written notice of the amount of deficiency is mailed by the department to
18 the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit
19 against tax liability for subsequent years or refunded if requested by the taxpayer.”

20

21 **Section 3.** Section 15-38-202, MCA, is amended to read:

22 **"15-38-202. Investment of resource indemnity trust fund -- expenditure -- minimum balance.** (1)
23 All money paid into the resource indemnity trust fund, including money payable into the fund under the
24 provisions of 15-36-324 and 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 fiscal year, there is allocated from the interest income of the

1 resource indemnity trust fund \$240,000, which is statutorily appropriated, as provided in 17-7-502, from
 2 the renewable resource grant and loan program state special revenue account to support the operations of
 3 the environmental science-water quality instructional programs at Montana state university-northern, to be
 4 used for support costs, for matching funds necessary to attract additional funds to further expand statewide
 5 impact, and for enhancement of the facilities related to the programs.

6 (b) At the beginning of each biennium, there is allocated from the interest income of the resource
 7 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 1996,~~ \$2 million to be deposited into the renewable resource grant and
 13 loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

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

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

18 (c) At the beginning of each fiscal year, there is allocated from the interest income of the resource
 19 indemnity trust fund up to \$200,000 to be deposited in the orphan share account established in [section
 20 27].

21 ~~(d)~~ The remainder of the interest income is allocated as follows:

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

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

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

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

30 (3) Any formal budget document prepared by the legislature or the executive branch that proposes

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

6
7 **Section 4.** Section 75-2-412, MCA, is amended to read:

8 **"75-2-412. Criminal penalties -- injunction preserved.** (1) A person is guilty of an offense under
9 this section if that person knowingly:

10 (a) violates a provision of this chapter or a rule, order, or permit made or issued under this chapter;

11 (b) makes a false material statement, representation, or certification on a form required under this
12 chapter or in a notice or report required by a permit under this chapter; or

13 (c) renders inaccurate a monitoring device or method required under this chapter.

14 (2) A person guilty of an offense under subsection (1) is subject to a fine of not more than \$10,000
15 per violation or imprisonment for a period not to exceed 2 years, or both. This offense must be classified
16 as a misdemeanor. Each day of each violation constitutes a separate violation.

17 (3) Fines collected under this section, except fines collected by an approved local air pollution
18 control program, must be deposited in the orphan share account in the state general special revenue fund.

19 (4) Action under this section is not a bar to enforcement of this chapter or of a rule, order, or
20 permit made or issued under it by injunction or other appropriate civil or administrative remedy. The
21 department may institute and maintain in the name of the state any enforcement proceedings."

22
23 **Section 5.** Section 75-2-413, MCA, is amended to read:

24 **"75-2-413. Civil penalties -- out-of-state litigants -- effect of action -- presumption of continuing**
25 **violation under certain circumstances.** (1) A person who violates any provision of this chapter, a rule
26 adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil
27 penalty not to exceed \$10,000 per violation. Each day of each violation constitutes a separate violation.
28 The department may institute and maintain in the name of the state any enforcement proceedings under
29 this section. Upon request of the department, the attorney general or the county attorney of the county
30 of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty

1 is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the
2 operating permit program required by Subchapter V of the federal Clean Air Act.

3 (2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order,
4 or permit made or issued under this chapter by injunction or other appropriate civil remedies.

5 (b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or
6 issued under this chapter may be brought in the district court of any county where a violation occurs or
7 is threatened if the defendant cannot be located in Montana.

8 (3) If the department has notified a person operating a commercial hazardous waste incinerator of
9 a violation and if the department makes a prima facie showing that the conduct or events giving rise to the
10 violations are likely to have continued or recurred past the date of notice, the days of violation are
11 presumed to include the date of the notice and every day after the notice until the person establishes that
12 continuous compliance has been achieved. This presumption may be overcome to the extent that the
13 person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that
14 there were intervening days when a violation did not occur, that the violation was not continuing in nature,
15 or that the telemetering device was compromised or otherwise tampered with.

16 (4) Money collected under this section must be deposited in the orphan share account in the state
17 ~~general special revenue~~ fund. This subsection does not apply to money collected by an approved local air
18 pollution control program."
19

20 **Section 6.** Section 75-2-427, MCA, is amended to read:

21 **"75-2-427. Deposit of noncompliance penalty fees.** All noncompliance penalties collected by the
22 department pursuant to 75-2-421 through 75-2-429 ~~shall~~ must be deposited in the state special revenue
23 fund until a final determination and adjustment have been made as provided in 75-2-424 and amounts have
24 been deducted by the department for costs attributable to implementation of 75-2-421 through 75-2-429
25 and for contract costs incurred pursuant to 75-2-422(3), if any. After a final determination has been made
26 and additional payments or refunds have been made, the penalty money remaining ~~shall~~ must be transferred
27 to the orphan share account in the state ~~general special revenue~~ fund."
28

29 **Section 7.** Section 75-3-407, MCA, is amended to read:

30 **"75-3-407. Civil penalties -- deposit in general fund -- injunctions not barred.** (1) A person who

1 violates this chapter or a rule or order issued under this chapter is subject to a civil penalty not to exceed
2 \$5,000 for each violation. For purposes of this section, each day of a violation is a separate violation.

3 (2) The department shall initiate civil proceedings in district court to recover a penalty under
4 subsection (1).

5 (3) Civil penalties collected under this section must be deposited in the ~~general~~ orphan share
6 account in the state special revenue fund.

7 (4) An action under this section does not bar enforcement of this chapter or of rules or orders
8 issued under it by injunction or other appropriate remedy."

9
10 **Section 8.** Section 75-5-634, MCA, is amended to read:

11 **"75-5-634. Disposition of fines and civil penalties.** Fines and civil penalties collected under this
12 chapter, except those collected in a justice's court, must be deposited into the orphan share account in the
13 state ~~general~~ special revenue fund."

14
15 **Section 9.** Section 75-6-109, MCA, is amended to read:

16 **"75-6-109. Administrative enforcement.** (1) If the department believes that a violation of this part,
17 a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve
18 written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice
19 must specify the provision of this part, the rule, or the condition of approval alleged to have been violated
20 and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective
21 action within a reasonable period of time. The time period must be stated in the order. Service by mail is
22 complete on the date of filing.

23 (2) If the alleged violator does not request a hearing before the board within 30 days of the date
24 of service, the order becomes final. Failure to comply with a final order may subject the violator to an action
25 commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.

26 (3) If the alleged violator requests a hearing before the board within 30 days of the date of service,
27 the board shall schedule a hearing. After the hearing is held, the board may:

28 (a) affirm or modify the department's order issued under subsection (1) if the board finds that a
29 violation has occurred; or

30 (b) rescind the department's order if the board finds that a violation has not occurred.

1 (4) An order issued by the department or the board may set a date by which the violation must
2 cease and set a time limit for action to correct a violation.

3 (5) As an alternative to issuing an order pursuant to subsection (1), the department may:

4 (a) require the alleged violator to appear before the board for a hearing, at a time and place
5 specified in the notice, to answer the charges complained of; or

6 (b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.

7 (6) An action initiated under this part may include an administrative penalty not to exceed \$500
8 for each day of violation. Administrative penalties collected under this section must be deposited in the
9 orphan share account in the state general special revenue fund.

10 (7) In determining the amount of penalty to be assessed to a person, the department or the board,
11 as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under
12 75-6-103(2)(j).

13 (8) The contested case provisions of the Montana Administrative Procedure Act, provided for in
14 Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."

15
16 **Section 10.** Section 75-6-114, MCA, is amended to read:

17 **"75-6-114. Civil penalty.** (1) In an action initiated by the department to collect civil penalties
18 against a person who is found to have violated this part or a rule, order, or condition of approval issued
19 under this part, the person is subject to a civil penalty not to exceed \$10,000.

20 (2) Each day of violation constitutes a separate violation.

21 (3) Action under this section does not bar enforcement of this part or a rule, order, or condition
22 of approval issued under this part by injunction or other appropriate remedy.

23 (4) When seeking penalties under this section, the department shall take into account the following
24 factors in determining an appropriate settlement or judgment, as appropriate:

25 (a) the nature, circumstances, extent, and gravity of the violation; and

26 (b) with respect to the violator, the violator's ability to pay, prior history of violations, the economic
27 benefit or savings, if any, to the violator resulting from the violator's action, the amounts voluntarily
28 expended by the violator to address or mitigate the violation or impacts of the violation to waters of the
29 state, and other matters that justice may require.

30 (5) Civil penalties collected pursuant to this section must be deposited in the orphan share account

1 in the state general special revenue fund."

2

3 **Section 11.** Section 75-10-417, MCA, is amended to read:

4 **"75-10-417. Civil penalties.** (1) Any person who violates any provision of this part, a rule adopted
5 under this part, an order of the department or the board, or a permit is subject to a civil penalty not to
6 exceed \$10,000 per violation. Each day of violation constitutes a separate violation.

7 (2) The department may institute and maintain in the name of the state any enforcement
8 proceedings under this section. Upon request of the department, the attorney general or the county
9 attorney of the county of violation shall petition the district court to impose, assess, and recover the civil
10 penalty.

11 (3) Action under this section does not bar:

12 (a) enforcement of this part, rules adopted under this part, orders of the department or the board,
13 or permits by injunction or other appropriate remedy; or

14 (b) action under 75-10-418.

15 (4) Money collected under this section ~~shall~~ must be deposited in the orphan share account in the
16 state general special revenue fund."

17

18 **Section 12.** Section 75-10-418, MCA, is amended to read:

19 **"75-10-418. Criminal penalties.** (1) A person is guilty of an offense under this section if the person
20 knowingly:

21 (a) transports any hazardous waste to an unpermitted facility;

22 (b) treats, stores, or disposes of hazardous waste subject to regulation under this part or the rules
23 adopted under this part without a permit or contrary to a material permit condition;

24 (c) omits material information or makes any false statement or representation in any application,
25 label, manifest, record, report, permit, or other document filed, maintained, or used for compliance with
26 provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste;

27 (d) generates, stores, treats, transports, disposes of, or otherwise handles any used oil or
28 hazardous waste regulated under this part or rules adopted under this part and knowingly destroys, alters,
29 conceals, or fails to file any record, application, manifest, report, or other document required to be
30 maintained or filed in compliance with the provisions of this part, an order issued under this part, or rules

1 adopted under this part; or

2 (e) transports or causes to be transported without a manifest any hazardous waste required to be
3 accompanied by a manifest.

4 (2) A person who is guilty of an offense under subsection (1) is subject to a fine of not more than
5 \$25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation
6 constitutes a separate violation.

7 (3) A person who knowingly violates any requirement of this part or any rule or material permit
8 condition issued pursuant to this part, ~~except those violations specified in subsection (1)~~, regarding any
9 hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to \$5,000
10 per violation or subject to imprisonment not to exceed 6 months, or both. Each day of violation constitutes
11 a separate violation.

12 (4) Upon a second conviction for a violation of this section, the maximum penalties specified in this
13 section must be doubled.

14 (5) Action under this section does not bar enforcement of this part, rules made under this part,
15 orders of the department or the board, or permits by injunction or other appropriate remedy.

16 (6) Money collected under this section, except money collected in a justice's court, must be
17 deposited in the orphan share account in the state general special revenue fund."

18

19 **Section 13.** Section 75-10-423, MCA, is amended to read:

20 **"75-10-423. Administrative penalties for underground storage tank violations -- appeals -- venue**
21 **for hearings.** (1) A person who violates any of the underground storage tank provisions of this chapter or
22 any underground storage tank rules promulgated under the authority of this chapter may be assessed and
23 ordered by the department to pay an administrative penalty not to exceed \$500 per violation. This limitation
24 on administrative penalties applies only to penalties assessed under this section. Each occurrence of the
25 violation and each day it remains uncorrected constitutes a separate violation. The department may suspend
26 a portion of the administrative penalty assessed under this section if the condition that caused the
27 assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty
28 under this section may be made in conjunction with any order or other administrative action authorized by
29 Title 75, chapter 11, or by this chapter.

30 (2) When the department assesses an administrative penalty under this section, it must have

1 written notice served personally or by certified mail on the alleged violator or the violator's agent. For
2 purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

3 (a) the provision alleged to be violated;

4 (b) the facts alleged to constitute the violation;

5 (c) the amount of the administrative penalty assessed under this section;

6 (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused
7 the assessment of the penalty;

8 (e) the nature of any corrective action the department requires, whether or not a portion of the
9 penalty is to be suspended;

10 (f) as applicable, the time within which the corrective action is to be taken and the time within
11 which the administrative penalty is to be paid;

12 (g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and
13 nature of any hearing; and

14 (h) that a formal proceeding may be waived.

15 (3) The department shall provide each person assessed a penalty under this section an opportunity
16 for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case
17 provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply
18 to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis
19 and Clark County or the county where the alleged violation occurred. This subsection does not apply until
20 the department gives written notice, served personally or by certified mail, to the alleged violator or the
21 violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt. The
22 notice must state:

23 (a) the provision allegedly violated;

24 (b) the facts that constitute the alleged violation;

25 (c) the specific nature of any corrective action the department requires, estimated costs of
26 compliance with the action, and where to receive help to correct the alleged violation; and

27 (d) a timetable that a reasonable person would consider appropriate for compliance with the alleged
28 violations.

29 (4) The department shall publish a schedule of maximum and minimum penalties for specific
30 violations. In determining appropriate penalties for violations, the department shall consider the gravity of

1 the violations and the potential for significant harm to public health or the environment. In determining the
2 appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the
3 penalty assessment, the department shall consider the cooperation and the degree of care exercised by the
4 person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm
5 resulted to the public health or the environment from the violation.

6 (5) If the department is unable to collect an administrative penalty assessed under this section or
7 if a person fails to pay all or any portion of an administrative penalty assessed under this section, the
8 department may take action in district court to recover the penalty amount and any additional amounts
9 assessed or sought under Title 75, chapter 11, or this chapter.

10 (6) Action under this section does not bar action under Title 75, chapter 11, or this chapter, or any
11 other remedy available to the department for violations of underground storage tank laws or rules
12 promulgated under those laws.

13 (7) Administrative penalties collected under this section must be deposited in the orphan share
14 account in the state general special revenue fund."

15
16 **Section 14.** Section 75-10-424, MCA, is amended to read:

17 **"75-10-424. Administrative penalty.** (1) The department may assess a person who violates a used
18 oil or hazardous waste provision of this part, or a used oil or hazardous waste rule adopted under this part,
19 an administrative penalty, not to exceed \$10,000 per violation. Each day of violation constitutes a separate
20 violation, but the maximum penalty may not exceed \$100,000 for any related series of violations.
21 Assessment of an administrative penalty under this section must be made in conjunction with an order or
22 administrative action authorized by this chapter.

23 (2) An administrative penalty may not be assessed under this section unless the alleged violator
24 is given notice and opportunity for a hearing before the board pursuant to Title 2, chapter 4, part 6.

25 (3) In determining the appropriate amount of an administrative penalty, the department shall
26 consider:

27 (a) the gravity and the number of violations;

28 (b) the degree of care exercised by the alleged violator;

29 (c) whether significant harm resulted to public health or the environment; and

30 (d) the degree of potential significant harm to public health or the environment.

1 (4) If the department is unable to collect the administrative penalty or if a person fails to pay all
2 or any portion of the administrative penalty as determined by the department, the department may seek
3 to recover the amount in an appropriate district court.

4 (5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other
5 appropriate remedy.

6 (6) Administrative penalties collected under this section must be deposited in the orphan share
7 account in the state ~~general~~ special revenue fund."

8
9 **Section 15.** Section 75-10-542, MCA, is amended to read:

10 **"75-10-542. Penalties.** (1) A person who willfully violates this part, except 75-10-520, is guilty
11 of a misdemeanor and upon conviction shall be fined not to exceed \$250, imprisoned in the county jail for
12 a term not to exceed 30 days, or both.

13 (2) A person who violates this part, except 75-10-520, a rule of the department, or an order issued
14 as provided in this part ~~shall be~~ is subject to a civil penalty of not more than \$50. Each day upon which
15 a violation of this part or a rule or order occurs is a separate violation.

16 (3) Civil penalties collected under this section must be deposited in the orphan share account in the
17 state special revenue fund."

18
19 **Section 16.** Section 75-10-701, MCA, is amended to read:

20 **"75-10-701. Definitions.** As used in this part, unless the context requires otherwise, the following
21 definitions apply:

22 (1) "Department" means the department of environmental quality provided for in 2-15-3501.

23 (2) "Director" means the director of the department.

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

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

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

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

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

4 (5) "Fiduciary" means a trustee, executor, administrator, personal representative, custodian,
5 conservator, guardian, or receiver acting or holding property for the exclusive benefit of another person.

6 The term does not include:

7 (a) a person who has previously owned or operated the property in a nonfiduciary capacity; or

8 (b) a person acting as fiduciary with respect to a trust or other fiduciary estate that has no
9 objectively reasonable or substantial purpose apart from avoidance of or limitation of liability under this part.

10 For the purposes of 75-10-715~~(7)~~(9), the term does not include the state, a state agency, or a political
11 subdivision of the state acting as trustee of natural resources within the state of Montana.

12 (6) "Foreclosure" means acquisition of title to property through foreclosure, purchase at foreclosure
13 sale, assignment or acquisition of title in lieu of foreclosure, repossession in the case of a lease financing
14 transaction, or acquisition of a right to title or other agreement in full or partial settlement of a loan
15 obligation.

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

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

20 (a) a substance that is defined as a hazardous substance by section 101(14) of the federal
21 Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C.
22 9601(14), as amended;

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

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

28 (d) any petroleum product.

29 (9) "Household" means single and multiple residences, hotels and motels, bunkhouses, ranger
30 stations, crew quarters, campgrounds, picnic grounds, day-use recreational areas, or similar structures or

1 areas.

2 (10) "Household refuse" means garbage, trash, and sanitary wastes in septic tanks that are derived
3 from a household.

4 ~~(9)~~(11) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water,
5 drinking water supplies, and any other resources within the state of Montana owned, managed, held in
6 trust, or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the
7 state.

8 (12) "Orphan share" means the percentage share of remedial action costs for a facility that is
9 attributable, under the procedures in [sections 26 through 36], to identified but bankrupt or defunct persons
10 who are not affiliated with any viable person.

11 (13) "Orphan share fund" means the fund for the orphan share account established in [section 27].

12 ~~(10)~~(14) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or
13 exercising control over the operation of a facility.

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

25 ~~(11)~~(15) "Person" means an individual, trust, firm, joint-stock company, joint venture, consortium,
26 commercial entity, partnership, association, corporation, commission, state or state agency, political
27 subdivision of the state, interstate body, or the federal government, including a federal agency.

28 ~~(12)~~(16) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities
29 subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any
30 other ~~petroleum-related~~ petroleum related product or waste or fraction of the product or waste that is liquid

1 at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch
2 absolute).

3 ~~(13)~~(17) "Reasonably anticipated future uses" means likely future land or resource uses that take
4 into consideration:

- 5 (a) local land and resource use regulations, ordinances, restrictions, or covenants;
- 6 (b) historical and anticipated uses of the facility;
- 7 (c) patterns of development in the immediate area; and
- 8 (d) relevant indications of anticipated land use from the owner of the facility and local planning
9 officials.

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

17 ~~(15)~~(19) "Remedial action" includes all notification, investigation, administration, monitoring,
18 cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action,
19 health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or
20 threatened release.

21 ~~(16)~~(20) "Remedial action contract" means a written contract or agreement entered into by a
22 remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or
23 request issued by the department, the United States, or any federal agency, to provide a remedial action
24 with respect to a release or threatened release of a hazardous or deleterious substance.

25 ~~(17)~~(21) "Remedial action contractor" means:

- 26 (a) any person who enters into and is carrying out a remedial action contract; or
- 27 (b) any person who is retained or hired by a person described in subsection ~~(17)~~(21)(a) to
28 provide services relating to a remedial action.

29 ~~(18)~~(22) "Remedial action costs" means reasonable costs that are attributable to or associated with
30 a remedial action at a facility, including but not limited to the costs of administration, investigation, legal

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

2
3 **Section 17.** Section 75-10-702, MCA, is amended to read:

4 **"75-10-702. Rulemaking authority.** (1) The department is authorized to adopt rules for the
5 implementation of this part, including but not limited to:

6 (a) rules for listing and delisting facilities on a priority list, required by 75-10-704, based on the
7 following criteria:

8 (i) a facility eligible for listing must have a confirmed release or substantial threat of a release of
9 a hazardous or deleterious substance that may pose an imminent and substantial threat to public health,
10 safety, or welfare or the environment and the department shall provide a written description of the nature
11 and severity of the threat;

12 (ii) if remedial actions to address the hazardous or deleterious substances are required at the facility
13 by another state program, the department shall explain, in writing, its rationale for listing the facility;

14 (iii) listing and delisting must be done through a formal process that provides for public
15 participation, including participation of the affected or potentially liable persons in the decisionmaking
16 process, by ~~conducting~~ GIVING PUBLIC NOTICE AND PROVIDING OPPORTUNITY FOR at least one public
17 meeting in the community most likely to be threatened by the facility that is proposed for listing or delisting;
18 and

19 (iv) a facility must be delisted when another state program assumes jurisdiction or when further
20 remedial actions are not necessary;

21 (b) rules for establishing and implementing a system for prioritizing facilities, including categories
22 for maximum and high-priority facilities, as required by 75-10-704, and for remedial action based on
23 potential effects on human health and the environment.

24 (2) The rulemaking authority granted in subsection (1) may not invalidate the existing priorities list.
25 Rules promulgated pursuant to subsection (1) must provide for the reevaluation of facilities on the existing
26 priorities list. A decision by the department to list, delist, or establish a priority for a facility must be made
27 in writing."

28
29 **Section 18.** Section 75-10-704, MCA, is amended to read:

30 **"75-10-704. Environmental quality protection fund.** (1) There is in the state special revenue fund

1 an environmental quality protection fund to be administered as a revolving fund by the department. The
2 department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

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

6 (3) The department shall:

7 (a) except as provided in subsection (7), establish and implement a system, including the
8 preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human
9 health and the environment; and

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

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

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

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

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

19 (d) funds received from the interest income of the resource indemnity trust fund pursuant to
20 15-38-202;

21 (e) funds received from the interest income of the fund; and

22 (f) funds received from settlements pursuant to 75-10-719(7).

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

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

29 (7) (a) There is established a state special revenue account for all funds donated or granted from
30 private parties to remediate a specific release at a specific facility. There must be deposited into the account

1 the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of
2 contributing to this account.

3 (b) Funds donated or granted for a specific project pursuant to this subsection (7) must be
4 accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by
5 the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds
6 are donated.

7 (c) If the balance of the fund created in this subsection (7), as determined by the department
8 pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the
9 date of the initial contribution, all donated or granted funds, including any interest on those donated or
10 granted funds, must be returned to the grantor.

11 (d) If the balance for a specific project is determined by the department to be sufficient to
12 remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high
13 priority for remedial action, using the funds donated under this subsection (7).

14 (e) This subsection (7) is not intended to interfere with or to diminish the authority or actions of
15 the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons,
16 to obtain the participation and financial contribution of liable persons for the remedial action, to achieve
17 remedial action, and to recover costs and damages incurred by the state. Subsections (7) and (8) do not
18 pertain to facilities where the department has initiated actions under this part.

19 (f) The department shall expend the funds in a manner that maximizes the application of the funds
20 to physically remediating the specific release.

21 (8) (a) A person may donate in-kind services to remediate a specific release at a specific facility
22 pursuant to subsection (7). A person that donates in-kind services is not liable under 75-10-715 solely as
23 a result of the contribution of in-kind services.

24 (b) A person who donates in-kind services with respect to remediating a specific release at a
25 specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other
26 liability that results from the release or threatened release, including but not limited to claims for
27 indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or
28 damage to property, or economic loss.

29 (c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release
30 that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or

1 that constitutes intentional misconduct.

2 (d) This subsection does not minimize the liability, lessen the standard of liability, or otherwise
3 shield from liability a potentially liable person under 75-10-715 or section 107 of CERCLA for costs or
4 damages incurred as a result of a release or threatened release of a hazardous or deleterious substance.

5 (e) Any donated in-kind services that are employed as part of a remedial action pursuant to this
6 subsection (8) must be approved by the department as appropriate remedial action."

7

8 **Section 19.** Section 75-10-715, MCA, is amended to read:

9 **"75-10-715. Liability -- reimbursement and penalties -- proceedings -- defenses and exclusions.**

10 (1) Except as provided in [sections 26 through 36], notwithstanding ~~Notwithstanding~~ any other provision
11 of law, and subject only to the defenses set forth in subsection (5) and the exclusions set forth in
12 subsection (7), the following persons are jointly and severally liable for a release or threatened release of
13 a hazardous or deleterious substance from a facility:

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

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

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

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

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

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

26 (b) damages for injury to, destruction of, or loss of natural resources caused by the release or
27 threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim
28 for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were
29 specifically identified as an irreversible and irretrievable commitment of natural resources in an approved
30 final state or federal environmental impact statement or other comparable approved final environmental

1 analysis for a project or facility that was the subject of a governmental permit or license and the project
2 or facility was being operated within the terms of its permit or license.

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

7 (4) The department may initiate civil proceedings in district court to recover remedial action costs,
8 natural resource damages, or penalties under subsections (1), (2), and (3). Proceedings to recover costs
9 and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs,
10 damages, or penalties lies in the county where the release occurred or where the person liable under
11 subsection (1) resides or has its principal place of business or in the district court of the first judicial district.

12 (5) A person has a defense and is not liable under subsections (1), (2), and (3) if the person can
13 establish by a preponderance of the evidence that:

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

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

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

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

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

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

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

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

29 (e) the release or threatened release was from a facility for which a permit had been issued by the
30 department, the hazardous or deleterious substance was specifically identified in the permit, and the release

1 was within the limits allowed in the permit;

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

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

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

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

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

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

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

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

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

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

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

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

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

2 (d) (i) ~~Nothing in subsections~~ Subsections (5)(b) and (5)(c) or ~~in~~ this subsection (6) may not
3 diminish the liability of a previous owner or operator of the facility who would otherwise be liable under this
4 part.

5 (ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge
6 of the release or threatened release of a hazardous or deleterious substance at the facility when the person
7 owned the real property and then subsequently transferred ownership of the property to another person
8 without disclosing the knowledge, the previous owner is liable under subsections (1), (2), and (3) and ~~is~~
9 a defense under subsection (5)(b) or (5)(c) is not available to that person.

10 (e) ~~Nothing in this subsection~~ Subsection (6) affects does not affect the liability under this part of
11 a person who, by any act or omission, caused or contributed to the release or threatened release of a
12 hazardous or deleterious substance that is the subject of the action relating to the facility.

13 (7) A person has an exclusion and is not liable under this section if:

14 (a) the person generated or disposed of only household refuse, unless the person knew or
15 reasonably should have known that the hazardous or deleterious substance was present in the refuse;

16 (b) the person owns or operates real property where hazardous or deleterious substances have
17 come to be located solely as a result of subsurface migration in an aquifer from a source or sources outside
18 the person's property, provided that the following conditions are met:

19 (i) the owner or operator did not cause, contribute to, or exacerbate the release or threatened
20 release of any hazardous or deleterious substances through any act or omission. The failure to take
21 affirmative steps to mitigate or address contamination that has migrated from a source outside the owner's
22 or operator's property does not, in the absence of exceptional circumstances, constitute an omission by
23 the owner or operator.

24 (ii) the person who caused, contributed to, or exacerbated the release or threatened release of any
25 hazardous or deleterious substance is not and was not an agent or employee of the owner or operator and
26 is not or was not in a direct or indirect contractual relationship with the owner or operator, unless the
27 department provides a written determination that an existing or proposed contractual relationship is an
28 insufficient basis to establish liability under this section;

29 (iii) there is no other basis of liability under subsection (1) for the owner or operator for the release
30 or threatened release of a hazardous or deleterious substance; and

1 (iv) the owner or operator cooperates with the department and all persons conducting
 2 department-approved remedial actions on the property, including granting access and complying with and
 3 implementing all required institutional controls;

4 (c) the person owns or occupies real property of 20 acres or less for residential purposes, provided
 5 that the following conditions are met:

6 (i) the person did not cause, contribute to, or exacerbate the release or threatened release of any
 7 hazardous or deleterious substance through any act or omission;

8 (ii) the person uses or allows the use of the real property for residential purposes. This exclusion
 9 does not apply to any person who acquires or develops real property for commercial use or any use other
 10 than residential use.

11 (iii) at the time the person purchased or occupied the real property, there were no visible indications
 12 of contamination on the surface of the real property;

13 (iv) the person cooperates with the department and all persons conducting department-approved
 14 remedial actions on the property, including granting access and complying with and implementing all
 15 required institutional controls; and

16 (v) there is no other basis of liability under subsection (1) for the owner or occupier for the release
 17 or threatened release of a hazardous or deleterious substance.

18 (8) A person is liable under this section if the department provides substantial credible evidence
 19 that the person fails to satisfy any element of each exclusion in subsections (7)(a) through (7)(c).

20 ~~(7)~~(9) The liability of a fiduciary under the provisions of this part for a release or a threatened
 21 release of a hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed
 22 the assets held in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary
 23 is liable under this part independent of the person's ownership or actions taken in a fiduciary capacity.

24 ~~(8)~~(10) A person who holds indicia of ownership in a facility primarily to protect a security interest
 25 is not liable under subsections (1)(a) and (1)(b) for having participated in the management of a facility
 26 within the meaning of 75-10-701~~(10)(b)~~(14)(b) because of any one or any combination of the following:

27 (a) holding an interest in real or personal property when the interest is being held as security for
 28 payment or performance of an obligation, including but not limited to a mortgage, deed of trust, lien,
 29 security interest, assignment, pledge, or other right or encumbrance against real or personal property that
 30 is furnished by the owner to ensure repayment of a financial obligation;

1 (b) requiring or conducting financial or environmental assessments of a facility or a portion of a
2 facility, making financing conditional upon environmental compliance, or providing environmental
3 information or reports;

4 (c) monitoring the operations conducted at a facility or providing access to a facility to the
5 department or its agents or to remedial action contractors;

6 (d) having the mere capacity or unexercised right to influence a facility's management of hazardous
7 or deleterious substances;

8 (e) giving advice, information, guidance, or direction concerning the administrative and financial
9 aspects, as opposed to day-to-day operational aspects, of a borrower's operations;

10 (f) providing general information concerning federal, state, or local laws governing the
11 transportation, storage, treatment, and disposal of hazardous or deleterious substances and concerning the
12 hiring of remedial action contractors;

13 (g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;

14 (h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or
15 undertaking other activities to protect or preserve the value of the security interest in a facility;

16 (i) extending or denying credit to a person owning or in lawful possession of a facility;

17 (j) in an emergency, requiring or undertaking activities to prevent exposure of persons to hazardous
18 or deleterious substances or to contain a release;

19 (k) requiring or conducting remedial action in response to a release or threatened release if prior
20 notice is given to the department and the department approves of the remedial action; or

21 (l) taking title to a facility by foreclosure, provided that the holder of indicia of ownership, from the
22 time the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing
23 transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest
24 itself of the property in a reasonably expeditious manner, using whatever commercially reasonable means
25 are relevant or appropriate with respect to the facility and taking all facts and circumstances into
26 consideration and provided that the holder does not:

27 (i) outbid or refuse a bid for fair consideration for the property or outbid or refuse a bid that would
28 effectively compensate the holder for the amount secured by the facility;

29 (ii) worsen the contamination at the facility;

30 (iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting

1 hazardous or deleterious substances; or

2 (iv) engage in conduct described in subsection ~~(9)~~ (11).

3 ~~(9)~~(11) The protection from liability provided in subsections ~~(7)~~ (9) and ~~(8)~~ (10) is not available to
4 a fiduciary or to a person holding indicia of ownership primarily to protect a security interest if the fiduciary
5 or person through affirmative conduct:

6 (a) causes or contributes to a release of hazardous or deleterious substances from the facility;

7 (b) allows others to cause or contribute to a release of hazardous or deleterious substances; or

8 (c) in the case of a person holding indicia of ownership primarily to protect a security interest,
9 actually participates in the management of a facility by:

10 (i) exercising decisionmaking control over environmental compliance; or

11 (ii) exercising control at a level comparable to that of a manager of the enterprise with responsibility
12 for day-to-day decisionmaking either with respect to environmental compliance or substantially all of the
13 operational, as opposed to financial or administrative, aspects of the facility."

14

15 **Section 20.** Section 75-10-719, MCA, is amended to read:

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

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

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

28 (4) Whenever practicable and in the public interest, as determined by the director of the
29 department, the department may, as promptly as possible, reach a final settlement with a potentially liable
30 or liable person ~~liable~~ under 75-10-715 in an administrative or civil action under 75-10-711 if the settlement

1 involves only a minor portion of the ~~response~~ remedial action costs at the facility concerned and, in the
 2 judgment of the department, taking into account the toxicity of the hazardous or deleterious substances
 3 involved and the person's contribution of hazardous or deleterious substances in relation to the total volume
 4 of hazardous or deleterious substances at the facility, the conditions in ~~either~~ any of the following
 5 subsection subsections (4)(a) or (4)(b) through (4)(d) are met:

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

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

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

10 the person is one whose liability is based solely on 75-10-715(1)(c) or (1)(d) and who presents substantial
 11 credible evidence that the person contributed less than 0.002% of the total volume or less than 100 gallons
 12 or 200 pounds of materials containing hazardous or deleterious substances at a facility that received
 13 hazardous or deleterious substances from multiple contributors. The department may not require the
 14 payment of remedial action costs from this person.

15 (b) (i) the person is one whose liability is based solely on 75-10-715(1)(c) or (1)(d) and who
 16 presents substantial credible evidence that the person arranged for disposal or treatment of less than 5%
 17 of the total quantity of solid waste or hazardous or deleterious substances disposed of at a facility that
 18 received solid waste or hazardous or deleterious substances from multiple contributors.

19 (ii) For the purposes of subsection (5)(a) and this subsection (4)(b) only, the term "solid waste"
 20 means:

21 (A) all putrescible and nonputrescible wastes, including garbage, rubbish, refuse, or ashes;

22 (B) sludge from sewage treatment plants, water supply plants, or air pollution control facilities;

23 (C) construction and demolition wastes;

24 (D) dead animals, including offal;

25 (E) discarded home and industrial appliances; and

26 (F) wood products or wood byproducts and inert materials.

27 ~~(b)(c)~~ (i) The the person:

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

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

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

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

6 (d) the person presents substantial credible evidence that the person has a defense under
7 75-10-715(5).

8 (5) When reaching a settlement under subsection (4)(b), (4)(c), or (4)(d), the department may
9 require the payment of remedial action costs not to exceed two times the person's reasonably projected
10 liability for remedial action costs as determined by the department. Except as provided in subsection (6),
11 the settlement must contain a reservation of rights clause in the event that the department obtains new
12 information showing that the settling person no longer qualifies for a settlement because:

13 (a) the solid waste or hazardous or deleterious substances contributed by the person was of a
14 greater volume or toxicity than originally estimated; or

15 (b) the settlement was reached under subsection (4)(c) and, after settlement, the department finds
16 that the person had actual or constructive knowledge that the property was used for the generation,
17 transportation, storage, treatment, or disposal of any hazardous or deleterious substance.

18 (6) A person who agrees to a liability settlement may avoid the reservation of rights clause under
19 subsection (5) by paying remedial action costs in the amount of four times the person's reasonably
20 projected liability for remedial action costs as determined by the department.

21 (7) All funds received as a result of settlements under this section must be paid in the following
22 order of priority:

23 (a) to the department as reimbursement for its remedial action costs at the facility;

24 (b) to liable persons as reimbursement for remedial action costs at the facility. In the event of an
25 allocation under [sections 26 through 36], the reimbursement must be in proportion to each liable person's
26 share of liability as determined under the provisions of [section 34 or 35];

27 (c) the remainder, if any:

28 (i) to the orphan share fund provided in [section 27] if the facility went through the allocation
29 process provided in [sections 26 through 36]; or

30 (ii) to the fund provided in 75-10-704 if the facility did not undergo the allocation process provided

1 in [sections 26 through 36].

2 (8) Any person who enters into a settlement under this section may not be subject to or assigned
3 a share in the allocation process provided in [sections 26 through 36].

4 ~~(5)~~(9) As part of an administrative or judicially approved settlement agreement, the department may
5 require the liable person to provide financial assurance, in an amount determined by the department, to
6 ensure the long-term operation and maintenance of the remedial action site. The liable person shall provide
7 the financial assurance by any one method or combination of methods satisfactory to the department,
8 including but not limited to insurance, guarantee, performance or other surety bond, letter of credit,
9 qualification as a self-insurer, or other demonstration of financial capability.”

10

11 **Section 21.** Section 75-10-720, MCA, is amended to read:

12 **"75-10-720. Condemnation -- creation of state lien.** (1) Whenever the department determines that
13 property upon which a release or threatened release of a hazardous or deleterious substance has occurred
14 may present an imminent and substantial endangerment to the public health, safety, or welfare or the
15 environment, the department may condemn the property for public use to mitigate the threat. The taking
16 of the property must be conducted in accordance with the procedure set forth in Title 70, chapter 30, parts
17 1 through 3.

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

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

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

30 (5) The lien must continue until the liability for the costs and damages incurred as a result of the

1 release of a hazardous or deleterious substance is satisfied.

2 (6) If the department expends money from the fund for orphan share remedial action costs at a
 3 facility or for a facility at which a reimbursed orphan share exists, the state has a lien upon the facility for
 4 the unrecovered costs. The lien:

5 (a) may not exceed the increase in fair market value of the property attributable to the unfunded
 6 portion of the remedial action at the time of a subsequent sale or other disposition of the property;

7 (b) arises at the time costs are first incurred by the department with respect to a remedial action
 8 at the facility;

9 (c) must be filed according to subsection (3); and

10 (d) continues until the earlier of satisfaction of the lien or recovery of all remedial action costs
 11 incurred at the facility.

12 (7) Payment of any liens under this section must be deposited in one of the two accounts from
 13 which the remedial action costs originated, including the fund established in 75-10-704 or the orphan share
 14 fund established in [section 27]."

15
 16 **Section 22.** Section 75-10-724, MCA, is amended to read:

17 ~~"75-10-724. Liability apportionment and contribution~~ **Private right of action.** (4) Any person who
 18 receives notice under 75-10-711, who is held jointly and severally liable under 75-10-715, or who initiates
 19 a voluntary cleanup under the provisions of 75-10-730 through 75-10-738 may bring a private right of
 20 action, including a claim for contribution or declaratory relief, against any other person who is liable or
 21 potentially liable under 75-10-715 for the recovery of remedial action costs. In resolving contribution claims,
 22 the court shall allocate remedial action costs among the liable persons based on the factors set out in
 23 [section 34]. ~~has the right at trial to have the trier of fact apportion liability among the parties as provided~~
 24 in this section. The burden is on each liable person to show how his liability should be apportioned. In
 25 apportioning the liability of any person under this section, the trier of fact shall consider the following:

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

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

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

30 ~~(d) the degree of involvement of and care exercised by the person in manufacturing, treating,~~

1 ~~transporting, or disposing of the hazardous or deleterious substance;~~

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

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

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

11
 12 **Section 23.** Section 82-4-141, MCA, is amended to read:

13 **"82-4-141. Violation -- penalty.** (1) A person or operator who violates any of the provisions of this
 14 part or rules or orders adopted under this part shall pay a civil penalty of not less than \$100 or more than
 15 \$1,000 for the violation and an additional civil penalty of not less than \$100 or more than \$1,000 for each
 16 day during which a violation continues and may be enjoined from continuing ~~such~~ the violations as provided
 17 in this section. These penalties ~~shall~~ must be recoverable in any action brought in the name of the state of
 18 Montana by the attorney general in the district court of the first judicial district of this state in and for the
 19 county of Lewis and Clark or in the district court having jurisdiction of the defendant.

20 (2) The attorney general shall, upon the request of the director, sue for the recovery of the
 21 penalties provided for in this section and bring an action for a restraining order, temporary or permanent
 22 injunction against an operator or other person violating or threatening to violate an order adopted under this
 23 part.

24 (3) A person who willfully violates any of the provisions of this part or any determination or order
 25 adopted under this part ~~which~~ that has become final is guilty of a misdemeanor and shall be fined not less
 26 than \$500 and not more than \$5,000. Each day on which a violation occurs constitutes a separate offense.

27 (4) Civil penalties collected under this section must be deposited in the orphan share account in
 28 the state special revenue fund."

29
 30 **Section 24.** Section 82-4-241, MCA, is amended to read:

1 **"82-4-241. Receipts paid into general fund.** ~~(1) Except for bond forfeiture moneys as provided in~~
 2 ~~subsection (2), all fees, penalties, and other moneys~~ money available or paid to the department under the
 3 provisions of this part ~~shall~~ must be placed in the state treasury and credited to the general fund.

4 (2) Civil penalties paid to the department under 82-4-254 must be placed in the orphan share
 5 account in the state special revenue fund."

6
 7 **NEW SECTION. Section 25. Citizens suit.** (1) Any person may commence a civil action to compel
 8 compliance ~~with [sections 26 through 36]~~ by any liable or potentially liable person under 75-10-715 alleged
 9 to be in violation of a rule, notice letter, order, or department-approved remedial action required pursuant
 10 to a notice letter or order under this chapter.

11 (2) At least 60 days before commencing the action, the person shall give notice of intent to sue
 12 to all liable or potentially liable persons under 75-10-715 who are contemplated to be defendants in the
 13 proposed action.

14 (3) An action may not be commenced under subsection (1) if the liable or potentially liable person
 15 is diligently coming into compliance with the rule, notice letter, order, or department-approved remedial
 16 action plan or if the department has commenced and is diligently prosecuting an action to require
 17 compliance with the rule, notice letter, order, or department-approved remedial action plan.

18
 19 **NEW SECTION. Section 26. Short title.** [Sections 26 through 36] may be cited as the "Controlled
 20 Allocation of Liability Act".

21
 22 **NEW SECTION. Section 27. Orphan share state special revenue account -- reimbursement of**
 23 **claims -- payment of department costs.** (1) There is an orphan share account in the state special revenue
 24 fund established in 17-2-102 that is to be administered by the department. Money in the account is
 25 available to the department by appropriation and must be used to reimburse remedial action costs claimed
 26 pursuant to [sections 26 through 36] and to pay costs incurred by the department in defending the orphan
 27 share.

28 (2) There must be deposited in the orphan share account:

29 (a) money allocated from the metalliferous mines license tax pursuant to 15-37-117;

30 (b) money in excess of \$250,000 per year collected by the department as provided in [section 2

- 1 of House Bill No. 284] establishing an environmental rehabilitation and prevention account;
- 2 (c) all penalties assessed pursuant to [section 34(12)];
- 3 (d) funds received from the interest income of the resource indemnity trust fund pursuant to
4 15-38-202;
- 5 (e) funds allocated from the resource indemnity and ground water assessment tax proceeds
6 provided for in 15-38-106;
- 7 (f) unencumbered funds remaining in the abandoned mines state special revenue account provided
8 in section 19, Chapter 584, Laws of 1995, as of [the termination date of section 19, Chapter 584, Laws
9 of 1995, as may be amended];
- 10 (g) interest income on the account;
- 11 (h) funds received from settlements pursuant to 75-10-719(7);
- 12 (i) funds received from reimbursement of the department's orphan share defense costs pursuant
13 to subsection (6);
- 14 (j) fine and penalty money received pursuant to 75-2-412, 75-2-413, 75-2-427, 75-3-407,
15 75-5-634, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-423, 75-10-424, 75-10-542, 82-4-141, and
16 82-4-241; and
- 17 (k) unclaimed or excess reclamation bond money received pursuant to 82-4-141 and 82-4-241.
- 18 (3) If the orphan share fund contains sufficient money, valid claims must be reimbursed
19 subsequently in the order in which they were received by the department. If the orphan share fund does
20 not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not
21 be made and the orphan share fund, the department, and the state are not liable for making any
22 reimbursement for the costs. The department and the state are not liable for any penalties if the orphan
23 share fund does not contain sufficient money to reimburse claims, and interest may not accrue on
24 outstanding claims.
- 25 (4) Except as provided in subsection (8), claims may not be submitted and remedial action costs
26 may not be reimbursed from the orphan share fund until all remedial actions, except for operation and
27 maintenance, are completed at a facility.
- 28 (5) Reimbursement from the orphan share fund must be limited to actual documented remedial
29 action costs incurred after the date of petition provided in [section 29]. Reimbursement may not be made
30 for attorney fees, legal costs, or operation and maintenance costs.

1 (6) (a) The department's costs incurred in defending the orphan share must be paid by the persons
2 participating in the allocation under [sections 26 through 36] in proportion to their allocated shares. The
3 orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan
4 share in proportion to the orphan share's allocated share, as follows:

5 (i) If sufficient funds are available in the orphan share fund, the orphan share fund must pay the
6 department's costs incurred in defending the orphan share in proportion to the share of liability allocated
7 to the orphan share.

8 (ii) If sufficient funds are not available in the orphan share fund, persons participating in the
9 allocation under [sections 26 through 36] shall pay all the orphan share's allocated share of the
10 department's costs incurred in defending the orphan share in proportion to each person's allocated share
11 of liability.

12 **(b)** A person who pays the orphan share's proportional share of costs has a claim against the
13 orphan share fund and must be reimbursed as provided in subsection (3).

14 (7) If any money remains in the orphan share fund after [the termination date of this section] and
15 after outstanding claims are paid, the money must be deposited in the general fund.

16 (8) If the lead liable person under [section 30] presents evidence to the department that the person
17 cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will
18 cause undue financial hardship on the person, the department may allow the submission of claims and may
19 reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early
20 reimbursement unless the person is in substantial compliance with all department-approved remedial action
21 plans.

22 (9) A person participating in the allocation process who received funds under the mixed funding
23 pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive
24 reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot
25 program that are later attributed to the orphan share under the allocation process.

26
27 **NEW SECTION. Section 28. Eligibility -- statute of limitations.** (1) Except for a facility that is listed
28 on the national priorities list pursuant to the federal Comprehensive Environmental Response,
29 Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., a facility listed on the priority list
30 established pursuant to 75-10-702 is eligible for the allocation process under [sections 26 through 36].

1 (2) Only liability for remedial action costs is eligible for allocation and reimbursement from the
2 orphan share fund. Allocation of liability and reimbursement of costs for natural resource damages is not
3 permitted under [sections 26 through 36].

4 (3) Remedial action costs incurred prior to the date of the potentially liable person's written petition
5 to the department as provided in [section 29] are not eligible for reimbursement from the orphan share fund.

6 (4) Only one allocation will be allowed for each facility unless:

7 (a) the department determines that an additional allocation is appropriate due to:

8 (i) the existence of more than one discrete unit of contamination at the facility;

9 (ii) the discovery of new releases after remedial actions at the facility are complete; or

10 (iii) other factors the department determines appropriate.

11 (b) all the liable or potentially liable persons under 75-10-715 agree in writing that an orphan share
12 does not exist for the proposed allocation and either of the conditions in subsection (4)(a)(i) or (4)(a)(ii) is
13 met.

14 (5) A liable or potentially liable person under 75-10-715 may not file a cost recovery or contribution
15 action against any person participating in the allocation process provided for in [sections 26 through 36]
16 until the allocation process is complete. The statute of limitations on the filing of cost recovery or
17 contribution actions is tolled from the first date of a petition for allocation on a facility until 30 days after
18 the submittal of the allocation report provided for in [section 34], or until 30 days following the expiration
19 of the time period for appeal or the final decision on appeal.

20
21 **NEW SECTION. Section 29. Allocation of liability -- process initiation.** (1) For a facility at which
22 the department has initiated a remedial action under 75-10-711 through the issuance of a notice letter prior
23 to [the effective date of this section], any person determined to be potentially liable under 75-10-715 may
24 petition the department in writing to initiate the allocation process. The right to participate in the allocation
25 process is waived if the written petition is not provided to the department prior to the completion of
26 remedial actions, except for operation and maintenance, at the facility.

27 (2) For a facility at which the department has not initiated a remedial action through the issuance
28 of a notice letter under 75-10-711, any person potentially liable under 75-10-715 who has received
29 approval of a voluntary cleanup plan under 75-10-730 through 75-10-738 may petition the department in
30 writing to initiate the allocation process. The right to participate in the allocation process is waived if the

1 written petition is not provided to the department prior to the completion of remedial actions, except for
2 operation and maintenance, at the facility.

3 (3) For a facility at which the department initiates a remedial action through the issuance of a
4 notice letter under 75-10-711 after [the effective date of this section], any person potentially liable under
5 75-10-715 may petition the department in writing within 60 days of the date of the notice letter to initiate
6 the allocation process. Any potentially liable person under 75-10-715 who does not provide a written
7 petition to the department within this timeframe waives the right to participate in the allocation process and
8 remains liable as provided in 75-10-715. The notice letter sent by the department must advise that a failure
9 to petition the department for allocation as provided in this subsection will result in a waiver of the right
10 to participate in the allocation process.

11 (4) The allocation process may be initiated and may proceed upon written petition of one or more
12 potentially liable persons.

13 (5) Prior to the initiation of discovery as provided in [section 31], all persons who participate in the
14 allocation process shall agree in writing that the allocator's decision is binding, subject only to the
15 provisions of [section 34(9)] and the appeal provisions of [section 35].

16 (6) All liable or potentially liable persons under 75-10-715 who do not participate in the allocation
17 process under [sections 26 through 36] remain liable as provided in 75-10-715.

18 (7) Upon receipt of a written petition under subsections (1) or (2) or when initiating actions at a
19 facility without a prior notice letter under subsection (3), the department shall:

20 (a) conduct a good faith investigation and may use its authority in 75-10-707 to identify persons
21 who may be liable under 75-10-715; and

22 (b) issue notice letters to the persons it identifies as potentially liable under 75-10-715.

23 (8) A person who receives a notice letter may, within 60 days from the date of the notice letter,
24 petition the department in writing to participate in an allocation process and provide the department with
25 the identity of other potentially liable persons under 75-10-715 who were not noticed by the department.
26 When identifying additional potentially liable persons, the noticed person shall provide to the department
27 a statement and credible evidence showing that there is a basis in law and fact to determine that the
28 identified person is potentially liable under 75-10-715.

29 (9) Within 30 days of receipt of the information provided for in subsection (8), the department may
30 issue a notice letter to an identified person whom the department determines is a potentially liable person

1 under 75-10-715. If the department does not issue a notice letter to an identified person, the department
2 shall issue the person a nomination letter indicating that the person has been identified as potentially liable
3 under 75-10-715. The nomination letter must state that the person has the right to participate in the
4 allocation process and that if the person does not participate and is found liable, the person remains subject
5 to liability as provided in 75-10-715. If the newly noticed or nominated person chooses to participate in
6 the allocation process, the person shall provide a written petition of the person's intent to participate in the
7 allocation process to the department within 30 days of the date of the notice or nomination letter. A failure
8 to petition the department for allocation as provided in this subsection results in a waiver of the right to
9 participate in the allocation process.

10 (10) If a person nominated under subsection (9) cannot be readily located, the department shall,
11 within 30 days of receipt of the information provided for in subsection (8), publish one notice of the
12 person's nomination, along with the information contained in a nomination letter under subsection (9), in
13 a newspaper of general circulation in the county where all or a portion of the facility is located. The notice
14 must state that the person has 30 days from the date of the notice to petition the department, in writing,
15 to participate in the allocation process. A failure to petition the department for allocation as provided in
16 this subsection results in a waiver of the right to participate in the allocation process.

17 (11) If one or more potentially liable persons petition in writing for an allocation process under
18 subsection (1), (2), or (3) and the department determines that the facility has a potential orphan share, the
19 department shall:

20 (a) publish a notice and brief description of the facility in a newspaper of general circulation in the
21 area affected and provide at least 30 days for submission of public comment on the identification of
22 potentially liable persons under 75-10-715; and

23 (b) notify interested persons and the county commissioners of ~~the county where~~ EACH COUNTY
24 IN WHICH ALL OR A PORTION OF the facility is located and provide at least 30 days for submission of
25 comments on the identification of potentially liable persons under 75-10-715.

26 (12) If a nominated person participates in the allocation and the person is assigned a zero share of
27 liability by the allocator, that person's reasonable costs of participating in the allocation, including attorney
28 fees, must be borne by the person who proposed the addition of the nominated person to the allocation.

29 (13) If the department anticipates that a facility may have an orphan share, the department shall
30 represent the orphan share in the allocation process. If the state is a potentially liable person under

1 75-10-715, an agency or entity other than the department shall represent the state in the allocation
2 process.

3 (14) Except as provided in subsection (15), whenever the department is involved in allocation
4 processes on five facilities, other allocation processes may be stayed before the discovery stage provided
5 in [section 31]. Upon completion of an allocation provided in [section 34 or 35], execution of a stipulated
6 agreement under [section 34], or a default to liability as provided in 75-10-715 for one of the five facilities,
7 the department shall notify the potentially liable persons for the facility on the waiting list that has the
8 earliest date of written petition. Discovery under [section 31] must begin within 10 days of department
9 notification.

10 (15) A stay on the allocation process may not occur under subsection (14) if all persons
11 participating in the allocation process agree in writing that there is no orphan share and that the state is
12 not a potentially liable person under 75-10-715. The agreement is binding upon all noticed or nominated
13 persons.

14 (16) If, after initiating the process, a potentially liable person elects to discontinue participation in
15 the process, the person remains subject to liability as provided in 75-10-715.

16

17 **NEW SECTION. Section 30. Emergency actions -- remedial action requirements -- designation of**
18 **lead person -- enforcement.** (1) If the department determines that immediate response to an imminent
19 threat to public health, safety, or welfare or the environment is necessary to avoid substantial injury or
20 damage to persons, property, or resources, the department may require any potentially liable person to take
21 remedial actions without the prior written notice required by 75-10-711(3). The department has 30 days
22 to comply with the notification requirements provided in 75-10-711(3) and [section 29] when requiring
23 emergency remedial actions.

24 (2) Within 30 days of the issuance of the notice letters, the noticed persons shall designate a lead
25 person who shall conduct remedial actions at the facility. Upon request of the noticed persons and for
26 good cause shown, the department may grant a 30-day extension of time to identify the lead person.

27 (3) If the department determines that the identified lead person is financially or otherwise incapable
28 of completing remedial actions required by the department, the department shall notify all noticed persons
29 of this determination in writing and request that another lead person be designated within 15 days.

30 (4) The designated lead person shall undertake all remedial actions required by the department.

1 (5) If the noticed persons do not designate an approved lead person within the timeframes provided
2 under subsection (2) or (3), the department shall designate a lead person to undertake required remedial
3 **actions.**

4 (6) If the department finds that the lead person has not complied with the requirements of a notice
5 letter, order, stipulated agreement, or any department-approved remedial action plan, the department shall
6 notify all potentially liable persons of the noncompliance.

7 (7) If the noncompliance continues for 30 days after the date of the notice provided in subsection
8 (6), the potentially liable persons have not demonstrated that the noncompliance is due to good cause, and
9 the facility is a maximum or high-priority facility on the department's priority list established pursuant to
10 75-10-702, the department shall take one or more of the following actions:

11 (a) issue a unilateral order requiring the potentially liable persons to comply with the requirements
12 of the notice letter, order, stipulated agreement, or department-approved remedial action plan;

13 (b) file a civil action as provided in 75-10-711;

14 (c) conduct the required remedial actions and seek cost recovery and penalties as provided in
15 75-10-711;

16 (d) file a cost recovery action as provided in 75-10-722; or

17 (e) void approval of the voluntary cleanup plan as provided in 75-10-736.

18 (8) If the noncompliance continues for 30 days after the date of the notice provided in subsection
19 (6), the potentially liable persons have not demonstrated that the noncompliance is due to good cause, and
20 the facility is not a maximum or high-priority facility on the department's priority list, the department may
21 take one or more of the actions provided for in subsection (7).

22 (9) For purposes of subsections (7), (8), and (10), "good cause" means factors beyond a person's
23 control that include severe weather conditions, third-party interference, an act of God, or an act of war.
24 Before a person may claim good cause due to third-party interference, the person shall show that the
25 person used reasonable efforts to obtain cooperation or compliance from the third party.

26 (10) If the lead person fails to comply with the requirements of a notice letter, order, stipulated
27 agreement, or other department-approved remedial action plan, the facility and all noticed persons remain
28 subject to liability as provided in 75-10-715 unless another person assumes the lead role in implementing
29 the ~~cleanup plan~~ **REQUIRED REMEDIAL ACTIONS** or the lead person can establish that the noncompliance
30 is due to good cause.

1 **NEW SECTION. Section 31. Discovery.** (1) Each person participating in the allocation process for
2 a facility may conduct discovery for a period of not more than 90 days from the date of the last notice or
3 nomination letter. Discovery requests by each person participating in the allocation process, including the
4 orphan share representative, are limited to the following unless otherwise agreed to by all persons
5 participating in the allocation, including the orphan share representative:

6 (a) 5 1-day oral depositions not to exceed 8 hours each;

7 (b) 25 written interrogatories, including subparts;

8 (c) 50 requests for admission; and

9 (d) 50 requests for production of documents.

10 (2) The persons participating in the allocation process may extend the discovery period for up to
11 30 days if all persons agree to the extension in writing.

12 (3) Any participating person who is not responsive to discovery requests or who does not
13 participate in the subsequent allocation proceeding and is allocated a share of liability remains subject to
14 liability as provided in 75-10-715.

15
16 **NEW SECTION. Section 32. Preallocation negotiations.** (1) After discovery pursuant to [section
17 31] closes, all persons participating in the allocation process shall conduct good faith settlement
18 negotiations for a period of 30 days.

19 (2) The participating potentially liable persons may use an impartial mediator when conducting
20 settlement negotiations.

21 (3) If a settlement is reached under subsection (1), the persons shall execute a stipulated
22 agreement as provided in [section 34].

23 (4) If a stipulated agreement is not executed as provided in [section 34], the persons shall select
24 an allocator as provided in [section 33].

25
26 **NEW SECTION. Section 33. Allocator selection -- payment of fees.** (1) If the preallocation
27 negotiations pursuant to [section 32] fail to produce a stipulated agreement within the timeframe provided
28 in [section 32], the participating persons shall select an allocator within 30 days after the preallocation
29 negotiations end. All participating persons shall agree on the selected allocator.

30 (2) Before selection or appointment as an allocator, a person shall disclose all conflicts of interest,

1 including whether the allocator is or has been a relative, attorney, agent, employee, creditor, or contractor
2 of, or in any manner is or has been interested financially or personally with, any person involved in the
3 allocation.

4 (3) If the participating persons are unable to agree on an allocator within the required 30 days, one
5 or more of the participating persons shall apply for judicial resolution, within 10 days, to the district court
6 in the county where the release occurred or where any potentially liable person under 75-10-715 resides
7 or has a principal place of business or in the district court of the first judicial district. If an application to
8 the district court is not made within 10 days, all persons remain subject to liability as provided in 75-10-715
9 and the allocation process ends.

10 (4) Upon selection or appointment of the allocator, the lead person shall advance, if required by
11 the allocator, up to \$5,000 toward the allocator's expenses. Any expenses accrued by the allocator for
12 legal or technical expertise must be approved in advance by all the participating persons. The allocator's
13 fees and reasonable expenses must be divided among the participating liable persons, except the orphan
14 share, in proportion to their allocated shares. The orphan share fund established in [section 27] is not
15 responsible for any portion of the allocator's fees and expenses.

16

17 **NEW SECTION. Section 34. Allocating liability.** (1) Upon selection or appointment, the allocator
18 shall establish the process and schedule for determining the allocation, including the length and scope of
19 any documents to be presented.

20 (2) The participating persons shall submit to the allocator and to each other a statement of position
21 and exhibits of a factual nature. Each person's statement must identify the factors listed in subsection (5)
22 that the person believes are relevant to allocation of liability for the facility.

23 (3) The allocator may convene the participating persons as the allocator believes necessary to
24 clarify the facts and may pose additional questions, interview any person or the person's representative,
25 and impose presumptions concerning missing information. The allocator may seek department assistance
26 with information gathering pursuant to 75-10-707.

27 (4) The allocator may not engage in ex parte communications with any person or the person's
28 representative.

29 (5) The allocator shall allocate each participating and nonparticipating person's share of liability
30 based only on information presented or collected during the allocation process and, taking into account

- 1 facility characteristics, shall apportion liability on a percentage basis according to the following factors:
- 2 (a) the extent to which the person caused the release of the hazardous or deleterious substance;
- 3 (b) the extent to which the person's contribution to the release of a hazardous or deleterious
4 substance can be distinguished;
- 5 (c) the amount or volume of hazardous or deleterious substance and the amount contributed by the
6 person;
- 7 (d) the relative hazard of the hazardous or deleterious substance contributed by the person,
8 including volatility, carcinogenicity, mobility, persistence, reactivity, and toxicity;
- 9 (e) the degree of past and present cooperation by the person with the government to prevent harm
10 to the public health, safety, or welfare and the environment, including participation in remedial actions
11 occurring concurrently with the allocation process and compliance and cooperation with discovery pursuant
12 to [section 31];
- 13 (f) what the person knew or should have known of:
- 14 ~~(i)~~ the hazardous nature of the substance, the risk associated with that substance, and proper
15 waste disposal practices;
- 16 ~~(ii)~~(G) the circumstances of the property acquisition, including the documented price paid and
17 discounts granted; ~~and~~
- 18 ~~(iii)~~(H) the person's knowledge of or acquiescence to waste generation, storage, handling,
19 treatment, or disposal;
- 20 ~~(iv)~~(I) the length of time of ownership, operation, generation, or transportation;
- 21 ~~(v)~~(J) any violations of or noncompliance with health and environmental regulations, including
22 permit violations or violations relating to public notification;
- 23 ~~(vi)~~(K) the degree to which a person providing publicly owned landfill or sewer and water systems
24 had or has a reasonable ability to control disposed materials and the person's degree of care in maintaining
25 those services;
- 26 ~~(vii)~~(L) the person's financial or economic benefit from:
- 27 (i) ownership or operation of the facility;
- 28 (ii) the generation, transportation, or disposal of the hazardous or deleterious substance; and
- 29 (iii) cleanup of the facility;
- 30 ~~(viii)~~(M) whether the person exercised due diligence in generating, transporting, or disposing of

1 hazardous or deleterious substances and the person's control over those activities; and

2 ~~##~~(N) other equitable factors that are appropriate.

3 (6) Within 60 days of selection or appointment, the allocator shall submit to the department and
4 all noticed and nominated persons a written allocation report that allocates each person's share of liability
5 and that documents the rationale for the percentage of liability allocated to each person.

6 (7) The allocator or the participating persons may extend the allocation proceeding by up to 30
7 days if agreed to by the allocator and all the participating persons.

8 (8) Within 30 days of the date of the allocation report, the persons who participated in the
9 allocation and who were allocated a share of liability, except for the orphan share, shall prepare and sign
10 a stipulated agreement that contains:

11 (a) the percentage share of liability for each person as determined by the allocator;

12 (b) procedures for paying for the orphan share prior to reimbursement from the orphan share fund;

13 (c) a waiver of contribution rights against all persons who are potentially liable for the remedial
14 action as well as a waiver of any rights to challenge any settlement that the department enters into with
15 any other potentially liable person;

16 (d) covenants not to sue and provisions regarding performance or adequate assurance of
17 performance of remedial actions;

18 (e) how remedial actions will be conducted;

19 (f) a penalty provision in accordance with subsection (12);

20 (g) acknowledgment of contribution protection, consistent with 75-10-719(1), regarding matters
21 addressed in the settlement; and

22 (h) provisions detailing how the persons signing the stipulated agreement should receive
23 reimbursement from the orphan share fund for any remedial action costs incurred by the persons in excess
24 of their allocated share.

25 (9) If the department determines that the stipulated agreement does not satisfy the requirements
26 of subsection (8), the liable persons who participated in the allocation remain subject to liability as provided
27 in 75-10-715.

28 (10) A person who did not participate in the allocation but who was assigned a share of liability
29 may sign the stipulated agreement prepared according to subsection (8).

30 (11) Any liable person allocated a share of liability who does not sign the stipulated agreement

1 remains subject to liability as provided in 75-10-715.

2 (12) Any liable person who signs the stipulated agreement and fails to comply with the terms of
3 the stipulated agreement shall pay, in addition to the person's share of remedial action costs, a penalty of
4 two times the amount of the person's allocated share of liability. Any funds received must be applied to
5 the facility's orphan share and any funds in excess of the facility's orphan share amount must be deposited
6 in the orphan share fund established under [section 27].

7 (13) If a liable person becomes bankrupt or defunct after the stipulated agreement is signed and
8 before remedial actions are complete at the facility, that person's share of liability becomes an orphan
9 share.

10

11 **NEW SECTION.** **Section 35. Appeal of allocator's decision.** (1) A person may appeal the
12 allocator's decision to district court within 30 days of the date of the allocation report. Venue lies in the
13 county where the release occurred or where the liable person resides or has a principal place of business
14 or in the first judicial district.

15 (2) The allocator's decision must be upheld unless the person appealing the decision demonstrates
16 that the decision was:

17 (a) made upon unlawful procedure;

18 (b) affected by other error of law;

19 (c) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole
20 record; or

21 (d) arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise
22 of discretion or was fraudulent.

23 (3) If the appeal is successful, the district court shall allocate the liability of the potentially liable
24 persons using the factors outlined in [section 34].

25 (4) After decision on the appeal, all liable persons shall submit a stipulated agreement as provided
26 in [section 34] to the department based on the court order.

27

28 **NEW SECTION.** **Section 36. Effect of termination on allocations.** (1) Persons participating in the
29 allocation process may complete the allocation process for the facility at issue and claim reimbursement
30 from the orphan share fund provided that the discovery process under [section 31] had been initiated by

1 [the termination date of sections 26 through 36].

2 (2) If discovery, as provided in [section 31], has not commenced by [the termination date of
3 **sections 26 through 36], the facility and its potentially liable persons under 75-10-715 are not eligible to
4 participate in the allocation process under [sections 26 through 36] and remain subject to liability as
5 provided in 75-10-715.**

6

7 **Section 37.** Section 16, Chapter 584, Laws of 1995, is amended to read:

8 "**Section 16. Criteria.** (1) the pilot program ~~must consist~~ consists of remediation of the Joslyn
9 street tailings facility, the Corbin flats facility, and the block P mill facility ~~three sites from the department~~
10 ~~of state lands' abandoned hard rock mine priority list. The three sites must be selected from the top ten~~
11 ~~priority sites on that list as of April 1, 1995.~~

12 (2) Any site remediated under this pilot program must meet the following criteria:

13 (a) The owner of the property has, prior to May 22, 1989, purchased or entered into a lease
14 purchase agreement or an option to purchase property where the facility is located.

15 (b) The applicant has submitted a voluntary cleanup plan in accordance with the provisions of
16 [sections 7 and 8].

17 (c) The department has accepted and approved the application for a voluntary cleanup plan in
18 accordance with the provisions of [sections 6 through 10] by June 30, 1997.

19 (3) The department and the applicant shall negotiate an apportionment of the applicant's liability
20 pursuant to [section 17]. The department, as a trier of fact, shall make the final determination of the
21 applicant's apportioned liability. If the applicant disagrees with the department's determination of the
22 applicant's proportionate share of liability, the applicant may appeal the department's decision in
23 accordance with the requirements of [section 6(4)].

24 ~~(4) If more than three applicants submit voluntary cleanup plans for the highest priority sites on~~
25 ~~the department of state lands' abandoned hard rock mine priority list and the department approves more~~
26 ~~than three plans, the department shall select three plans to incorporate into the pilot program on a priority~~
27 ~~basis as determined by the date of submittal of a complete application."~~

28

29 **Section 38.** Section 18, Chapter 584, Laws of 1995, is amended to read:

30 "**Section 18. Claims for and limitations on reimbursement.** (1) After completion of the voluntary

1 cleanup plan approved by the department, the applicant may apply to and must, in accordance with this
 2 section, receive reimbursement from the abandoned mines state special revenue account. Reimbursement
 3 must be subject to the following requirements and limitations:

4 (a) The applicant shall complete remediation prior to making a claim for reimbursement.

5 (b) The reimbursement may not exceed 90% of eligible costs up to a maximum of \$300,000 per
 6 facility.

7 (c) The claim for reimbursement may not include legal fees or department costs incurred in the
 8 oversight of the voluntary cleanup plan.

9 (2) For purposes of this section, "eligible costs" means costs in excess of an applicant's
 10 proportionate share of total costs incurred in the remediation of the site during the 1996-97 biennium and
 11 the 1998-99 biennium.

12 (3) If costs are reimbursed out of the abandoned mines state special revenue account, nothing in
 13 [sections 14 through 20] prohibits the department from pursuing an action against other potentially liable
 14 parties to recover those costs.

15 (4) If the abandoned mines state special revenue account does not contain sufficient money to pay
 16 received claims for reimbursement, the abandoned mines state special revenue account and the department
 17 are not liable for making any reimbursement at that time. All claims are subject to appropriations to the
 18 abandoned mines state special revenue account."
 19

20 **Section 39.** Section 27, Chapter 584, Laws of 1995, is amended to read:

21 "**Section 27. Termination.** (1) [Sections 4 through 12] terminate January 1, 2001.

22 (2) [Sections 14 through ~~24~~ 20] terminate June 30, ~~1997~~ 1999.

23 (3) [SECTION 21] TERMINATES JUNE 30, 1997."
 24

25 **NEW SECTION. Section 40. Codification instruction.** [Sections 25 through 36] are intended to
 26 be codified as an integral part of Title 75, chapter 10, part 7, and the provisions of Title 75, chapter 10,
 27 part 7, apply to [sections 25 through 36].
 28

29 **NEW SECTION. Section 41. Coordination instructions.** (1) If Senate Bill No. 7 and [this act] are
 30 both passed and approved, the amendments to 15-37-117 in Senate Bill No. 7, relating to the allocation

1 of the metal mines license tax, are void.

2 (2) If [this act] and House Bill No. 284 are both passed and approved and House Bill No. 284 does
3 not contain a section ~~creating and~~ depositing excess penalty collections into an orphan share account, then
4 [section 27 (2)(b) of this act] is void.

5 (3) If [this act] and House Bill No. 284 are both passed and approved and House Bill No. 284 does
6 ~~contain the~~ DEPOSIT EXCESS PENALTY COLLECTIONS IN AN orphan share account referenced in
7 subsection (2) of this section, then [sections 4 through 15, 23, 24, and 27(2)(j) of this act] are void.

8

9 NEW SECTION. Section 42. Severability. If a part of [sections 25 through 36] are invalid, all valid
10 parts that are severable from the invalid part remain in effect. If a part of [sections 25 through 36] is invalid
11 in one or more of its applications, the part remains in effect in all valid applications that are severable from
12 the invalid applications.

13

14 NEW SECTION. Section 43. Effective dates. (1) Except as provided in subsections (2) and (3),
15 [this act] is effective July 1, 1997.

16 (2) [Section 17 and this section] are effective on passage and approval.

17 (3) [Section 3] is effective July 1, 1999.

18

19 NEW SECTION. Section 44. Termination. [Sections ~~25~~ 26 through 36] terminate June 30, 2005.

20

-END-

1 SENATE BILL NO. 377

2 INTRODUCED BY GROSFIELD, KNOX, CRISMORE, KEATING, DEPRATU, CLARK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE STATE
5 COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; PROVIDING AN OPTIONAL
6 PROCEDURE FOR ALLOCATING LIABILITY FOR SITE REMEDIATION; CREATING AN ORPHAN SHARE FUND
7 ACCOUNT AND ALLOCATING CERTAIN FINES, PENALTIES, RESOURCE INDEMNITY TRUST INTEREST
8 AND TAX PROCEEDS, METALLIFEROUS MINE TAX PROCEEDS, AND OTHER MONEY TO THE ACCOUNT;
9 PROVIDING FOR CITIZEN SUITS; PROVIDING EXCLUSIONS FROM LIABILITY; PROVIDING ADDITIONAL
10 AND SPECIFIC RULEMAKING AUTHORITY; AMENDING PROVISIONS AND EXTENDING THE TERMINATION
11 DATE OF THE MIXED FUNDING PILOT PROGRAM; AMENDING SECTIONS 15-37-117, 15-38-106,
12 15-38-202, 75-2-412, 75-2-413, 75-2-427, 75-3-407, 75-5-634, 75-6-109, 75-6-114, 75-10-417,
13 75-10-418, 75-10-423, 75-10-424, 75-10-542, 75-10-701, 75-10-702, 75-10-704, 75-10-715,
14 75-10-719, 75-10-720, 75-10-724, 82-4-141, AND 82-4-241, MCA, AND SECTIONS 16, 18, AND 27,
15 CHAPTER 584, LAWS OF 1995; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

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

1 SENATE BILL NO. 377

2 INTRODUCED BY GROSFIELD, KNOX, CRISMORE, KEATING, DEPRATU, CLARK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE STATE
5 COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; PROVIDING AN OPTIONAL
6 PROCEDURE FOR ALLOCATING LIABILITY FOR SITE REMEDIATION; CREATING AN ORPHAN SHARE FUND
7 ACCOUNT AND ALLOCATING CERTAIN ~~FINES, PENALTIES,~~ RESOURCE INDEMNITY TRUST INTEREST
8 AND TAX PROCEEDS, METALLIFEROUS MINE TAX PROCEEDS, AND OTHER MONEY TO THE ACCOUNT;
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10 AND SPECIFIC RULEMAKING AUTHORITY; AMENDING PROVISIONS AND EXTENDING THE TERMINATION
11 DATE OF THE MIXED FUNDING PILOT PROGRAM; AMENDING SECTIONS 15-37-117, 15-38-106,
12 15-38-202, ~~75-2-412, 75-2-413, 75-2-427, 75-3-407, 75-5-634, 75-6-109, 75-6-114, 75-10-417,~~
13 ~~75-10-418, 75-10-423, 75-10-424, 75-10-542,~~ 75-10-701, 75-10-702, 75-10-704, 75-10-715,
14 75-10-719, 75-10-720, AND 75-10-724, ~~82-4-141, AND 82-4-241,~~ MCA, AND SECTIONS 16, 18, AND
15 27, CHAPTER 584, LAWS OF 1995; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."
16

17 WHEREAS, the 1995 Legislature, in Chapter 584, Laws of 1995, directed the Department of
18 Environmental Quality to institute a collaborative process involving all affected and interested persons to
19 analyze the elimination of joint and several liability with respect to the cleanup of state Comprehensive
20 Environmental Cleanup and Responsibility Act (CECRA) facilities and to submit any legislative proposals that
21 collaboratively resulted from that process to the 55th Legislature; and

22 WHEREAS, the Department instituted this collaborative process with industry and business
23 representatives; state, federal, and local government representatives; and public interest and environmental
24 interest group representatives; and

25 WHEREAS, through a contract with the Department, the Montana Consensus Council designed the
26 study process, facilitated the organization of the collaborative process, and conducted the numerous
27 meetings of the study committees and interest group caucuses through which the parties to the
28 collaborative process reached consensus on legislative proposals that are contained in this bill.
29

30 STATEMENT OF INTENT

1 It is the intent of this bill to provide an option to the concept of joint and several liability for
2 potentially liable persons to have their proportionate share of liability for a state Comprehensive
3 Environmental Cleanup and Responsibility Act (CECRA) facility determined through an expedited process
4 while ensuring that the concurrent cleanup of the facility occurs. The bill clarifies defenses to liability and
5 creates exclusions from liability. The bill also provides rulemaking authority to the department for
6 developing guidance and criteria and involving the public and the liable parties in the decisionmaking
7 process for listing and delisting sites on a CECRA priority list. The department will be required to provide
8 written justification for its decisions to list, delist, and prioritize sites needing remediation. The written
9 criteria for listing and delisting represent the legislature's intent for this rulemaking.

10
11 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:**

12
13 **Section 1.** Section 15-37-117, MCA, is amended to read:

14 **"15-37-117. (Temporary) Disposition of metalliferous mines license taxes.** (1) Metalliferous mines
15 license taxes collected under the provisions of this part must, in accordance with the provisions of
16 15-1-501, be allocated as follows:

17 (a) to the credit of the general fund of the state, 58% of total collections each year;

18 (b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5%
19 of total collections each year;

20 (c) to the abandoned mines state special revenue account provided for in section 19, Chapter 584,
21 Laws of 1995, 8.5% of total collections each year;

22 (d) to the ground water assessment account established in 85-2-905, 2.2% of total collections
23 each year;

24 (e) to the reclamation and development grants program state special revenue account, 4.8% of
25 total collections each year; and

26 (f) 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
30 mine is located, 25% of total collections each year, to be allocated by the county commissioners as

1 follows:

2 (i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225;

3 and

4 (ii) all money not allocated to the account pursuant to subsection (1)(f)(i) to be further allocated as

5 follows:

6 (A) 33 1/3% is allocated to the county for planning or economic development activities;

7 (B) 33 1/3% is allocated to the elementary school districts within the county that have been
8 affected by the development or operation of the metal mine; and

9 (C) 33 1/3% is allocated to the high school districts within the county that have been affected by
10 the development or operation of the metal mine.

11 (2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307
12 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under
13 subsection (1)(f) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part
14 4.

15 (3) The department shall return to the county in which metals are produced the tax collections
16 allocated under subsection (1)(f). The allocation to the county described by subsection (1)(f) is a statutory
17 appropriation pursuant to 17-7-502. (Terminates June 30, ~~1997~~ ~~sec. 27, Ch. 584, L. 1995~~ ~~1999~~
18 1997--SEC. 27, CH. 584, L. 1995.)

19 **15-37-117. (Effective July 1, ~~1997~~ 1999 1997) Disposition of metalliferous mines license taxes.**

20 (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with
21 the provisions of 15-1-501, be allocated as follows:

22 (a) to the credit of the general fund of the state, 58% of total collections each year;

23 (b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5%
24 of total collections each year;

25 (c) to the ~~state resource indemnity trust fund, 15.5% of total collections each year~~ orphan share
26 state special revenue account established in [section 27 13], 8.5% of total collections each year;

27 (d) to the ground water assessment account established in 85-2-905, 2.2% of total collections
28 each year;

29 (e) to the reclamation and development grants program state special revenue account, 4.8% of
30 total collections each year; and

1 (f) to the county or counties identified as experiencing fiscal and economic impacts, resulting in
 2 increased employment or local government costs, under an impact plan for a large-scale mineral
 3 development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic
 4 impacts determined in the plan, or, if an impact plan has not been prepared, to the county in which the
 5 mine is located, 25% of total collections each year, to be allocated by the county commissioners as
 6 follows:

7 (i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225;

8 and

9 (ii) all money not allocated to the account pursuant to subsection (1)(f)(i) to be further allocated as
 10 follows:

11 (A) 33 1/3% is allocated to the county for planning or economic development activities;

12 (B) 33 1/3% is allocated to the elementary school districts within the county that have been
 13 affected by the development or operation of the metal mine; and

14 (C) 33 1/3% is allocated to the high school districts within the county that have been affected by
 15 the development or operation of the metal mine.

16 (2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307
 17 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under
 18 subsection (1)(f) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part
 19 4.

20 (3) The department shall return to the county in which metals are produced the tax collections
 21 allocated under subsection (1)(f). The allocation to the county described by subsection (1)(f) is a statutory
 22 appropriation pursuant to 17-7-502."

23
 24 **Section 2.** Section 15-38-106, MCA, is amended to read:

25 "**15-38-106. Payment of tax -- records -- collection of taxes -- refunds.** (1) The tax imposed by
 26 this chapter must be paid by each person to which the tax applies, on or before March 31, on the value
 27 of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to
 28 the department at the time the statement of yield for the preceding calendar year is filed with the
 29 department.

30 (2) The department shall, in accordance with the provisions of 15-1-501(6), deposit the proceeds

1 of the tax in the resource indemnity trust fund of the nonexpendable trust fund type, except that:

2 (a) 14.1% of the proceeds must be deposited in the ground water assessment account established
3 by 85-2-905;

4 (b) 10% of the proceeds must be deposited in the renewable resource grant and loan program state
5 special revenue account established by 85-1-604; and

6 (c) 30% of the proceeds must be deposited in the reclamation and development grants account
7 established by 90-2-1104; and

8 (d) if there are sufficient unallocated funds remaining, at the beginning of each fiscal year, there
9 is allocated from the proceeds of the tax up to \$200,000 to be deposited in the orphan share account
10 established in [section 27 13].

11 (3) Every person to whom the tax applies shall keep records in accordance with 15-38-105, and
12 the records are subject to inspection by the department upon reasonable notice during normal business
13 hours.

14 (4) The department shall examine the statement and compute the taxes to be imposed, and the
15 amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer.
16 If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the
17 department within 30 days after written notice of the amount of deficiency is mailed by the department to
18 the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit
19 against tax liability for subsequent years or refunded if requested by the taxpayer."
20

21 **Section 3.** Section 15-38-202, MCA, is amended to read:

22 **"15-38-202. Investment of resource indemnity trust fund -- expenditure -- minimum balance.** (1)
23 All money paid into the resource indemnity trust fund, including money payable into the fund under the
24 provisions of 15-36-324 and 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 fiscal year, there is allocated from the interest income of the

1 resource indemnity trust fund \$240,000, which is statutorily appropriated, as provided in 17-7-502, from
2 the renewable resource grant and loan program state special revenue account to support the operations of
3 the environmental science-water quality instructional programs at Montana state university-northern, to be
4 used for support costs, for matching funds necessary to attract additional funds to further expand statewide
5 impact, and for enhancement of the facilities related to the programs.

6 (b) At the beginning of each biennium, there is allocated from the interest income of the resource
7 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 1996,~~ \$2 million to be deposited into the renewable resource grant and
13 loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

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

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

18 (c) At the beginning of each fiscal year, there is allocated from the interest income of the resource
19 indemnity trust fund up to \$200,000 to be deposited in the orphan share account established in [section
20 27 13].

21 ~~(d)~~ (d) The remainder of the interest income is allocated as follows:

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

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

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

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

30 (3) Any formal budget document prepared by the legislature or the executive branch that proposes

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

6
 7 ~~Section 4. Section 75-2-412, MCA, is amended to read:~~

8 ~~"75-2-412. Criminal penalties— injunction preserved. (1) A person is guilty of an offense under~~
 9 ~~this section if that person knowingly:~~

10 ~~(a) violates a provision of this chapter or a rule, order, or permit made or issued under this chapter;~~

11 ~~(b) makes a false material statement, representation, or certification on a form required under this~~
 12 ~~chapter or in a notice or report required by a permit under this chapter; or~~

13 ~~(c) renders inaccurate a monitoring device or method required under this chapter.~~

14 ~~(2) A person guilty of an offense under subsection (1) is subject to a fine of not more than \$10,000~~
 15 ~~per violation or imprisonment for a period not to exceed 2 years, or both. This offense must be classified~~
 16 ~~as a misdemeanor. Each day of each violation constitutes a separate violation.~~

17 ~~(3) Fines collected under this section, except fines collected by an approved local air pollution~~
 18 ~~control program, must be deposited in the orphan share account in the state general special revenue fund.~~

19 ~~(4) Action under this section is not a bar to enforcement of this chapter or of a rule, order, or~~
 20 ~~permit made or issued under it by injunction or other appropriate civil or administrative remedy. The~~
 21 ~~department may institute and maintain in the name of the state any enforcement proceedings."~~

22
 23 ~~Section 5. Section 75-2-413, MCA, is amended to read:~~

24 ~~"75-2-413. Civil penalties— out of state litigants— effect of action— presumption of continuing~~
 25 ~~violation under certain circumstances. (1) A person who violates any provision of this chapter, a rule~~
 26 ~~adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil~~
 27 ~~penalty not to exceed \$10,000 per violation. Each day of each violation constitutes a separate violation.~~
 28 ~~The department may institute and maintain in the name of the state any enforcement proceedings under~~
 29 ~~this section. Upon request of the department, the attorney general or the county attorney of the county~~
 30 ~~of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty~~

1 is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the
 2 operating permit program required by Subchapter V of the federal Clean Air Act.

3 ~~(2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order,~~
 4 ~~or permit made or issued under this chapter by injunction or other appropriate civil remedies.~~

5 ~~(b) An action under subsection (1) to enforce this chapter or a rule, order, or permit made or~~
 6 ~~issued under this chapter may be brought in the district court of any county where a violation occurs or~~
 7 ~~is threatened if the defendant cannot be located in Montana.~~

8 ~~(3) If the department has notified a person operating a commercial hazardous waste incinerator of~~
 9 ~~a violation and if the department makes a prima facie showing that the conduct or events giving rise to the~~
 10 ~~violations are likely to have continued or recurred past the date of notice, the days of violation are~~
 11 ~~presumed to include the date of the notice and every day after the notice until the person establishes that~~
 12 ~~continuous compliance has been achieved. This presumption may be overcome to the extent that the~~
 13 ~~person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that~~
 14 ~~there were intervening days when a violation did not occur, that the violation was not continuing in nature,~~
 15 ~~or that the telemetering device was compromised or otherwise tampered with.~~

16 ~~(4) Money collected under this section must be deposited in the orphan share account in the state~~
 17 ~~general special revenue fund. This subsection does not apply to money collected by an approved local air~~
 18 ~~pollution control program."~~

19

20 ~~Section 6. Section 75-2-427, MCA, is amended to read:~~

21 ~~"75-2-427. Deposit of noncompliance penalty fees. All noncompliance penalties collected by the~~
 22 ~~department pursuant to 75-2-421 through 75-2-429 shall must be deposited in the state special revenue~~
 23 ~~fund until a final determination and adjustment have been made as provided in 75-2-424 and amounts have~~
 24 ~~been deducted by the department for costs attributable to implementation of 75-2-421 through 75-2-429~~
 25 ~~and for contract costs incurred pursuant to 75-2-422(3), if any. After a final determination has been made~~
 26 ~~and additional payments or refunds have been made, the penalty money remaining shall must be transferred~~
 27 ~~to the orphan share account in the state general special revenue fund."~~

28

29 ~~Section 7. Section 75-3-407, MCA, is amended to read:~~

30 ~~"75-3-407. Civil penalties deposit in general fund -- injunctions not barred. (1) A person who~~

1 ~~violates this chapter or a rule or order issued under this chapter is subject to a civil penalty not to exceed~~
 2 ~~\$5,000 for each violation. For purposes of this section, each day of a violation is a separate violation.~~

3 ~~(2) The department shall initiate civil proceedings in district court to recover a penalty under~~
 4 ~~subsection (1).~~

5 ~~(3) Civil penalties collected under this section must be deposited in the general orphan share~~
 6 ~~account in the state special revenue fund.~~

7 ~~(4) An action under this section does not bar enforcement of this chapter or of rules or orders~~
 8 ~~issued under it by injunction or other appropriate remedy."~~

9
 10 ~~**Section 8.** Section 75-5-634, MCA, is amended to read:~~

11 ~~"**75-5-634. Disposition of fines and civil penalties.** Fines and civil penalties collected under this~~
 12 ~~chapter, except those collected in a justice's court, must be deposited into the orphan share account in the~~
 13 ~~state general special revenue fund."~~

14
 15 ~~**Section 9.** Section 75-6-109, MCA, is amended to read:~~

16 ~~"**75-6-109. Administrative enforcement.** (1) If the department believes that a violation of this part,~~
 17 ~~a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve~~
 18 ~~written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice~~
 19 ~~must specify the provision of this part, the rule, or the condition of approval alleged to have been violated~~
 20 ~~and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective~~
 21 ~~action within a reasonable period of time. The time period must be stated in the order. Service by mail is~~
 22 ~~complete on the date of filing.~~

23 ~~(2) If the alleged violator does not request a hearing before the board within 30 days of the date~~
 24 ~~of service, the order becomes final. Failure to comply with a final order may subject the violator to an action~~
 25 ~~commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.~~

26 ~~(3) If the alleged violator requests a hearing before the board within 30 days of the date of service,~~
 27 ~~the board shall schedule a hearing. After the hearing is held, the board may:~~

28 ~~(a) affirm or modify the department's order issued under subsection (1) if the board finds that a~~
 29 ~~violation has occurred; or~~

30 ~~(b) rescind the department's order if the board finds that a violation has not occurred.~~

1 ~~(4) An order issued by the department or the board may set a date by which the violation must~~
2 ~~cease and set a time limit for action to correct a violation.~~

3 ~~(5) As an alternative to issuing an order pursuant to subsection (1), the department may:~~

4 ~~(a) require the alleged violator to appear before the board for a hearing, at a time and place~~
5 ~~specified in the notice, to answer the charges complained of; or~~

6 ~~(b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.~~

7 ~~(6) An action initiated under this part may include an administrative penalty not to exceed \$500~~
8 ~~for each day of violation. Administrative penalties collected under this section must be deposited in the~~
9 ~~orphan share account in the state general special revenue fund.~~

10 ~~(7) In determining the amount of penalty to be assessed to a person, the department or the board,~~
11 ~~as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under~~
12 ~~75-6-103(2)(j).~~

13 ~~(8) The contested case provisions of the Montana Administrative Procedure Act, provided for in~~
14 ~~Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."~~

15
16 ~~Section 10. Section 75-6-114, MCA, is amended to read:~~

17 ~~"75-6-114. Civil penalty. (1) In an action initiated by the department to collect civil penalties~~
18 ~~against a person who is found to have violated this part or a rule, order, or condition of approval issued~~
19 ~~under this part, the person is subject to a civil penalty not to exceed \$10,000.~~

20 ~~(2) Each day of violation constitutes a separate violation.~~

21 ~~(3) Action under this section does not bar enforcement of this part or a rule, order, or condition~~
22 ~~of approval issued under this part by injunction or other appropriate remedy.~~

23 ~~(4) When seeking penalties under this section, the department shall take into account the following~~
24 ~~factors in determining an appropriate settlement or judgment, as appropriate:~~

25 ~~(a) the nature, circumstances, extent, and gravity of the violation; and~~

26 ~~(b) with respect to the violator, the violator's ability to pay, prior history of violations, the economic~~
27 ~~benefit or savings, if any, to the violator resulting from the violator's action, the amounts voluntarily~~
28 ~~expended by the violator to address or mitigate the violation or impacts of the violation to waters of the~~
29 ~~state, and other matters that justice may require.~~

30 ~~(5) Civil penalties collected pursuant to this section must be deposited in the orphan share account~~

1 ~~in the state general special revenue fund."~~

2

3 ~~Section 11. Section 75-10-417, MCA, is amended to read:~~

4 ~~"75-10-417. Civil penalties. (1) Any person who violates any provision of this part, a rule adopted~~
5 ~~under this part, an order of the department or the board, or a permit is subject to a civil penalty not to~~
6 ~~exceed \$10,000 per violation. Each day of violation constitutes a separate violation.~~

7 ~~(2) The department may institute and maintain in the name of the state any enforcement~~
8 ~~proceedings under this section. Upon request of the department, the attorney general or the county~~
9 ~~attorney of the county of violation shall petition the district court to impose, assess, and recover the civil~~
10 ~~penalty.~~

11 ~~(3) Action under this section does not bar:~~

12 ~~(a) enforcement of this part, rules adopted under this part, orders of the department or the board,~~
13 ~~or permits by injunction or other appropriate remedy; or~~

14 ~~(b) action under 75-10-418.~~

15 ~~(4) Money collected under this section shall must be deposited in the orphan share account in the~~
16 ~~state general special revenue fund."~~

17

18 ~~Section 12. Section 75-10-418, MCA, is amended to read:~~

19 ~~"75-10-418. Criminal penalties. (1) A person is guilty of an offense under this section if the person~~
20 ~~knowingly:~~

21 ~~(a) transports any hazardous waste to an unpermitted facility;~~

22 ~~(b) treats, stores, or disposes of hazardous waste subject to regulation under this part or the rules~~
23 ~~adopted under this part without a permit or contrary to a material permit condition;~~

24 ~~(c) omits material information or makes any false statement or representation in any application,~~
25 ~~label, manifest, record, report, permit, or other document filed, maintained, or used for compliance with~~
26 ~~provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste;~~

27 ~~(d) generates, stores, treats, transports, disposes of, or otherwise handles any used oil or~~
28 ~~hazardous waste regulated under this part or rules adopted under this part and knowingly destroys, alters,~~
29 ~~conceals, or fails to file any record, application, manifest, report, or other document required to be~~
30 ~~maintained or filed in compliance with the provisions of this part, an order issued under this part, or rules~~

1 ~~adopted under this part; or~~

2 ~~(e) transports or causes to be transported without a manifest any hazardous waste required to be~~
3 ~~accompanied by a manifest.~~

4 ~~(2) A person who is guilty of an offense under subsection (1) is subject to a fine of not more than~~
5 ~~\$25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation~~
6 ~~constitutes a separate violation.~~

7 ~~(3) A person who knowingly violates any requirement of this part or any rule or material permit~~
8 ~~condition issued pursuant to this part, (except those violations specified in subsection (1)), regarding any~~
9 ~~hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to \$5,000~~
10 ~~per violation or subject to imprisonment not to exceed 6 months, or both. Each day of violation constitutes~~
11 ~~a separate violation.~~

12 ~~(4) Upon a second conviction for a violation of this section, the maximum penalties specified in this~~
13 ~~section must be doubled.~~

14 ~~(5) Action under this section does not bar enforcement of this part, rules made under this part,~~
15 ~~orders of the department or the board, or permits by injunction or other appropriate remedy.~~

16 ~~(6) Money collected under this section, except money collected in a justice's court, must be~~
17 ~~deposited in the orphan share account in the state general special revenue fund."~~

18

19 ~~**Section 13.** Section 75-10-423, MCA, is amended to read:~~

20 ~~"75-10-423. Administrative penalties for underground storage tank violations — appeals — venue~~
21 ~~for hearings. (1) A person who violates any of the underground storage tank provisions of this chapter or~~
22 ~~any underground storage tank rules promulgated under the authority of this chapter may be assessed and~~
23 ~~ordered by the department to pay an administrative penalty not to exceed \$500 per violation. This limitation~~
24 ~~on administrative penalties applies only to penalties assessed under this section. Each occurrence of the~~
25 ~~violation and each day it remains uncorrected constitutes a separate violation. The department may suspend~~
26 ~~a portion of the administrative penalty assessed under this section if the condition that caused the~~
27 ~~assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty~~
28 ~~under this section may be made in conjunction with any order or other administrative action authorized by~~
29 ~~Title 75, chapter 11, or by this chapter.~~

30 ~~(2) When the department assesses an administrative penalty under this section, it must have~~

1 ~~written notice served personally or by certified mail on the alleged violator or the violator's agent. For~~
 2 ~~purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:~~

3 ~~(a) the provision alleged to be violated;~~

4 ~~(b) the facts alleged to constitute the violation;~~

5 ~~(c) the amount of the administrative penalty assessed under this section;~~

6 ~~(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused~~
 7 ~~the assessment of the penalty;~~

8 ~~(e) the nature of any corrective action the department requires, whether or not a portion of the~~
 9 ~~penalty is to be suspended;~~

10 ~~(f) as applicable, the time within which the corrective action is to be taken and the time within~~
 11 ~~which the administrative penalty is to be paid;~~

12 ~~(g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and~~
 13 ~~nature of any hearing; and~~

14 ~~(h) that a formal proceeding may be waived.~~

15 ~~(3) The department shall provide each person assessed a penalty under this section an opportunity~~
 16 ~~for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case~~
 17 ~~provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply~~
 18 ~~to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis~~
 19 ~~and Clark County or the county where the alleged violation occurred. This subsection does not apply until~~
 20 ~~the department gives written notice, served personally or by certified mail, to the alleged violator or the~~
 21 ~~violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt. The~~
 22 ~~notice must state:~~

23 ~~(a) the provision allegedly violated;~~

24 ~~(b) the facts that constitute the alleged violation;~~

25 ~~(c) the specific nature of any corrective action the department requires, estimated costs of~~
 26 ~~compliance with the action, and where to receive help to correct the alleged violation; and~~

27 ~~(d) a timetable that a reasonable person would consider appropriate for compliance with the alleged~~
 28 ~~violations.~~

29 ~~(4) The department shall publish a schedule of maximum and minimum penalties for specific~~
 30 ~~violations. In determining appropriate penalties for violations, the department shall consider the gravity of~~

1 the violations and the potential for significant harm to public health or the environment. In determining the
 2 appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the
 3 penalty assessment, the department shall consider the cooperation and the degree of care exercised by the
 4 person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm
 5 resulted to the public health or the environment from the violation.

6 (5) ~~If the department is unable to collect an administrative penalty assessed under this section or~~
 7 ~~if a person fails to pay all or any portion of an administrative penalty assessed under this section, the~~
 8 ~~department may take action in district court to recover the penalty amount and any additional amounts~~
 9 ~~assessed or sought under Title 75, chapter 11, or this chapter.~~

10 (6) ~~Action under this section does not bar action under Title 75, chapter 11, or this chapter, or any~~
 11 ~~other remedy available to the department for violations of underground storage tank laws or rules~~
 12 ~~promulgated under those laws.~~

13 (7) ~~Administrative penalties collected under this section must be deposited in the orphan care~~
 14 ~~account in the state general special revenue fund."~~

15
 16 **Section 14.** ~~Section 75-10-424, MCA, is amended to read:~~

17 ~~"75-10-424. Administrative penalty. (1) The department may assess a person who violates a used~~
 18 ~~oil or hazardous waste provision of this part, or a used oil or hazardous waste rule adopted under this part,~~
 19 ~~an administrative penalty, not to exceed \$10,000 per violation. Each day of violation constitutes a separate~~
 20 ~~violation, but the maximum penalty may not exceed \$100,000 for any related series of violations.~~
 21 ~~Assessment of an administrative penalty under this section must be made in conjunction with an order or~~
 22 ~~administrative action authorized by this chapter.~~

23 (2) ~~An administrative penalty may not be assessed under this section unless the alleged violator~~
 24 ~~is given notice and opportunity for a hearing before the board pursuant to Title 2, chapter 4, part 6.~~

25 (3) ~~In determining the appropriate amount of an administrative penalty, the department shall~~
 26 ~~consider:~~

27 (a) ~~the gravity and the number of violations;~~

28 (b) ~~the degree of care exercised by the alleged violator;~~

29 (c) ~~whether significant harm resulted to public health or the environment; and~~

30 (d) ~~the degree of potential significant harm to public health or the environment.~~

1 ~~(4) If the department is unable to collect the administrative penalty or if a person fails to pay all~~
 2 ~~or any portion of the administrative penalty as determined by the department, the department may seek~~
 3 ~~to recover the amount in an appropriate district court.~~

4 ~~(5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other~~
 5 ~~appropriate remedy.~~

6 ~~(6) Administrative penalties collected under this section must be deposited in the orphan share~~
 7 ~~account in the state general special revenue fund."~~

8
 9 ~~**Section 15.** Section 75-10-542, MCA, is amended to read:~~

10 ~~"75-10-542. Penalties. (1) A person who willfully violates this part, except 75-10-520, is guilty~~
 11 ~~of a misdemeanor and upon conviction shall be fined not to exceed \$250, imprisoned in the county jail for~~
 12 ~~a term not to exceed 30 days, or both.~~

13 ~~(2) A person who violates this part, except 75-10-520, a rule of the department, or an order issued~~
 14 ~~as provided in this part shall be is subject to a civil penalty of not more than \$50. Each day upon which~~
 15 ~~a violation of this part or a rule or order occurs is a separate violation.~~

16 ~~(3) Civil penalties collected under this section must be deposited in the orphan share account in the~~
 17 ~~state special revenue fund."~~

18
 19 **Section 4.** Section 75-10-701, MCA, is amended to read:

20 **"75-10-701. Definitions.** As used in this part, unless the context requires otherwise, the following
 21 definitions apply:

22 (1) "Department" means the department of environmental quality provided for in 2-15-3501.

23 (2) "Director" means the director of the department.

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

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

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

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

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

4 (5) "Fiduciary" means a trustee, executor, administrator, personal representative, custodian,
5 conservator, guardian, or receiver acting or holding property for the exclusive benefit of another person.
6 The term does not include:

7 (a) a person who has previously owned or operated the property in a nonfiduciary capacity; or

8 (b) a person acting as fiduciary with respect to a trust or other fiduciary estate that has no
9 objectively reasonable or substantial purpose apart from avoidance of or limitation of liability under this part.
10 For the purposes of 75-10-715~~(7)~~(9), the term does not include the state, a state agency, or a political
11 subdivision of the state acting as trustee of natural resources within the state of Montana.

12 (6) "Foreclosure" means acquisition of title to property through foreclosure, purchase at foreclosure
13 sale, assignment or acquisition of title in lieu of foreclosure, repossession in the case of a lease financing
14 transaction, or acquisition of a right to title or other agreement in full or partial settlement of a loan
15 obligation.

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

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

20 (a) a substance that is defined as a hazardous substance by section 101(14) of the federal
21 Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C.
22 9601(14), as amended;

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

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

28 (d) any petroleum product.

29 (9) "Household" means single and multiple residences, hotels and motels, bunkhouses, ranger
30 stations, crew quarters, campgrounds, picnic grounds, day-use recreational areas, or similar structures or

1 areas.

2 (10) "Household refuse" means garbage, trash, and sanitary wastes in septic tanks that are derived
3 from a household.

4 ~~(9)~~(11) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water,
5 drinking water supplies, and any other resources within the state of Montana owned, managed, held in
6 trust, or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the
7 state.

8 (12) "Orphan share" means the percentage share of remedial action costs for a facility that is
9 attributable, under the procedures in [sections ~~26~~ 12 through ~~36~~ 22], to identified but bankrupt or defunct
10 persons who are not affiliated with any viable person.

11 (13) "Orphan share fund" means the fund for the orphan share account established in [section ~~27~~
12 13].

13 ~~(10)~~(14) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or
14 exercising control over the operation of a facility.

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

26 ~~(14)~~(15) "Person" means an individual, trust, firm, joint-stock company, joint venture, consortium,
27 commercial entity, partnership, association, corporation, commission, state or state agency, political
28 subdivision of the state, interstate body, or the federal government, including a federal agency.

29 ~~(12)~~(16) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities
30 subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any

1 other ~~petroleum-related~~ petroleum related product or waste or fraction of the product or waste that is liquid
 2 at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch
 3 absolute).

4 ~~(13)~~(17) "Reasonably anticipated future uses" means likely future land or resource uses that take
 5 into consideration:

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

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

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

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

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

18 ~~(15)~~(19) "Remedial action" includes all notification, investigation, administration, monitoring,
 19 cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action,
 20 health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or
 21 threatened release.

22 ~~(16)~~(20) "Remedial action contract" means a written contract or agreement entered into by a
 23 remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or
 24 request issued by the department, the United States, or any federal agency, to provide a remedial action
 25 with respect to a release or threatened release of a hazardous or deleterious substance.

26 ~~(17)~~(21) "Remedial action contractor" means:

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

28 (b) any person who is retained or hired by a person described in subsection ~~(17)(a)~~ (21)(a) to
 29 provide services relating to a remedial action.

30 ~~(18)~~(22) "Remedial action costs" means reasonable costs that are attributable to or associated with

1 a remedial action at a facility, including but not limited to the costs of administration, investigation, legal
2 or enforcement activities, contracts, feasibility studies, or health studies."

3

4 **Section 5.** Section 75-10-702, MCA, is amended to read:

5 **"75-10-702. Rulemaking authority.** (1) The department is authorized to adopt rules for the
6 implementation of this part, including but not limited to:

7 (a) rules for listing and delisting facilities on a priority list, required by 75-10-704, based on the
8 following criteria:

9 (i) a facility eligible for listing must have a confirmed release or substantial threat of a release of
10 a hazardous or deleterious substance that may pose an imminent and substantial threat to public health,
11 safety, or welfare or the environment and the department shall provide a written description of the nature
12 and severity of the threat;

13 (ii) if remedial actions to address the hazardous or deleterious substances are required at the facility
14 by another state program, the department shall explain, in writing, its rationale for listing the facility;

15 (iii) listing and delisting must be done through a formal process that provides for public
16 participation, including participation of the affected or potentially liable persons in the decisionmaking
17 process, by ~~conducting~~ GIVING PUBLIC NOTICE AND PROVIDING OPPORTUNITY FOR at least one public
18 meeting in the community most likely to be threatened by the facility that is proposed for listing or delisting;
19 and

20 (iv) a facility must be delisted when another state program assumes jurisdiction or when further
21 remedial actions are not necessary;

22 (b) rules for establishing and implementing a system for prioritizing facilities, including categories
23 for maximum and high-priority facilities, as required by 75-10-704, and for remedial action based on
24 potential effects on human health and the environment.

25 (2) The rulemaking authority granted in subsection (1) may not invalidate the existing priorities list.
26 Rules promulgated pursuant to subsection (1) must provide for the reevaluation of facilities on the existing
27 priorities list. A decision by the department to list, delist, or establish a priority for a facility must be made
28 in writing."

29

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

- 1 **"75-10-704. Environmental quality protection fund.** (1) There is in the state special revenue fund
2 an environmental quality protection fund to be administered as a revolving fund by the department. The
3 department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.
- 4 (2) The fund may be used by the department only to carry out the provisions of this part and for
5 remedial actions taken by the department pursuant to this part in response to a release of hazardous or
6 deleterious substances.
- 7 (3) The department shall:
- 8 (a) except as provided in subsection (7), establish and implement a system, including the
9 preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human
10 health and the environment; and
- 11 (b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain
12 the participation and financial contribution of liable persons for the remedial action, to achieve remedial
13 action, and to recover costs and damages incurred by the state.
- 14 (4) There must be deposited in the fund:
- 15 (a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs
16 recovered pursuant to 75-10-715;
- 17 (b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed
18 pursuant to 75-10-711(5);
- 19 (c) funds appropriated to the fund by the legislature; ~~and~~
- 20 (d) funds received from the interest income of the resource indemnity trust fund pursuant to
21 15-38-202;
- 22 (e) funds received from the interest income of the fund; and
- 23 (f) funds received from settlements pursuant to 75-10-719(7).
- 24 (5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and
25 additional money remains in the fund, the department shall seek additional authority to spend money from
26 the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.
- 27 (6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the
28 department may apply to the governor for a grant from the environmental contingency account established
29 pursuant to 75-1-1101.
- 30 (7) (a) There is established a state special revenue account for all funds donated or granted from

1 private parties to remediate a specific release at a specific facility. There must be deposited into the account
2 the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of
3 contributing to this account.

4 (b) Funds donated or granted for a specific project pursuant to this subsection (7) must be
5 accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by
6 the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds
7 are donated.

8 (c) If the balance of the fund created in this subsection (7), as determined by the department
9 pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the
10 date of the initial contribution, all donated or granted funds, including any interest on those donated or
11 granted funds, must be returned to the grantor.

12 (d) If the balance for a specific project is determined by the department to be sufficient to
13 remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high
14 priority for remedial action, using the funds donated under this subsection (7).

15 (e) This subsection (7) is not intended to interfere with or to diminish the authority or actions of
16 the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons,
17 to obtain the participation and financial contribution of liable persons for the remedial action, to achieve
18 remedial action, and to recover costs and damages incurred by the state. Subsections (7) and (8) do not
19 pertain to facilities where the department has initiated actions under this part.

20 (f) The department shall expend the funds in a manner that maximizes the application of the funds
21 to physically remediating the specific release.

22 (8) (a) A person may donate in-kind services to remediate a specific release at a specific facility
23 pursuant to subsection (7). A person that donates in-kind services is not liable under 75-10-715 solely as
24 a result of the contribution of in-kind services.

25 (b) A person who donates in-kind services with respect to remediating a specific release at a
26 specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other
27 liability that results from the release or threatened release, including but not limited to claims for
28 indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or
29 damage to property, or economic loss.

30 (c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release

1 that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or
2 that constitutes intentional misconduct.

3 (d) This subsection does not minimize the liability, lessen the standard of liability, or otherwise
4 shield from liability a potentially liable person under 75-10-715 or section 107 of CERCLA for costs or
5 damages incurred as a result of a release or threatened release of a hazardous or deleterious substance.

6 (e) Any donated in-kind services that are employed as part of a remedial action pursuant to this
7 subsection (8) must be approved by the department as appropriate remedial action."
8

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

10 **"75-10-715. Liability -- reimbursement and penalties -- proceedings -- defenses and exclusions.**

11 (1) Except as provided in [sections 26 12 through 36 22], notwithstanding ~~Notwithstanding~~ any other
12 provision of law, and subject only to the defenses set forth in subsection (5) and the exclusions set forth
13 in subsection (7), the following persons are jointly and severally liable for a release or threatened release
14 of a hazardous or deleterious substance from a facility:

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

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

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

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

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

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

27 (b) damages for injury to, destruction of, or loss of natural resources caused by the release or
28 threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim
29 for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were
30 specifically identified as an irreversible and irretrievable commitment of natural resources in an approved

1 final state or federal environmental impact statement or other comparable approved final environmental
2 analysis for a project or facility that was the subject of a governmental permit or license and the project
3 or facility was being operated within the terms of its permit or license.

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

8 (4) The department may initiate civil proceedings in district court to recover remedial action costs,
9 natural resource damages, or penalties under subsections (1), (2), and (3). Proceedings to recover costs
10 and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs,
11 damages, or penalties lies in the county where the release occurred or where the person liable under
12 subsection (1) resides or has its principal place of business or in the district court of the first judicial district.

13 (5) A person has a defense and is not liable under subsections (1), (2), and (3) if the person can
14 establish by a preponderance of the evidence that:

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

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

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

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

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

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

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

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

30 (e) the release or threatened release was from a facility for which a permit had been issued by the

1 department, the hazardous or deleterious substance was specifically identified in the permit, and the release
2 was within the limits allowed in the permit;

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

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

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

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

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

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

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

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

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

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

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

1 (iv) the obviousness of the presence or the likely presence of contamination on the property; and
 2 (v) the ability to detect the contamination by appropriate inspection.

3 (d) (i) ~~Nothing in subsections~~ Subsections (5)(b) and (5)(c) or ~~in~~ this subsection (6) may not
 4 diminish the liability of a previous owner or operator of the facility who would otherwise be liable under this
 5 part.

6 (ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge
 7 of the release or threatened release of a hazardous or deleterious substance at the facility when the person
 8 owned the real property and then subsequently transferred ownership of the property to another person
 9 without disclosing the knowledge, the previous owner is liable under subsections (1), (2), and (3) and ~~is~~
 10 a defense under subsection (5)(b) or (5)(c) is not available to that person.

11 (e) ~~Nothing in this subsection~~ Subsection (6) ~~affects~~ does not affect the liability under this part of
 12 a person who, by any act or omission, caused or contributed to the release or threatened release of a
 13 hazardous or deleterious substance that is the subject of the action relating to the facility.

14 (7) A person has an exclusion and is not liable under this section if:

15 (a) the person generated or disposed of only household refuse, unless the person knew or
 16 reasonably should have known that the hazardous or deleterious substance was present in the refuse;

17 (b) the person owns or operates real property where hazardous or deleterious substances have
 18 come to be located solely as a result of subsurface migration in an aquifer from a source or sources outside
 19 the person's property, provided that the following conditions are met:

20 (i) the owner or operator did not cause, contribute to, or exacerbate the release or threatened
 21 release of any hazardous or deleterious substances through any act or omission. The failure to take
 22 affirmative steps to mitigate or address contamination that has migrated from a source outside the owner's
 23 or operator's property does not, in the absence of exceptional circumstances, constitute an omission by
 24 the owner or operator.

25 (ii) the person who caused, contributed to, or exacerbated the release or threatened release of any
 26 hazardous or deleterious substance is not and was not an agent or employee of the owner or operator and
 27 is not or was not in a direct or indirect contractual relationship with the owner or operator, unless the
 28 department provides a written determination that an existing or proposed contractual relationship is an
 29 insufficient basis to establish liability under this section;

30 (iii) there is no other basis of liability under subsection (1) for the owner or operator for the release

1 or threatened release of a hazardous or deleterious substance; and

2 (iv) the owner or operator cooperates with the department and all persons conducting
3 department-approved remedial actions on the property, including granting access and complying with and
4 implementing all required institutional controls;

5 (c) the person owns or occupies real property of 20 acres or less for residential purposes, provided
6 that the following conditions are met:

7 (i) the person did not cause, contribute to, or exacerbate the release or threatened release of any
8 hazardous or deleterious substance through any act or omission;

9 (ii) the person uses or allows the use of the real property for residential purposes. This exclusion
10 does not apply to any person who acquires or develops real property for commercial use or any use other
11 than residential use.

12 (iii) at the time the person purchased or occupied the real property, there were no visible indications
13 of contamination on the surface of the real property;

14 (iv) the person cooperates with the department and all persons conducting department-approved
15 remedial actions on the property, including granting access and complying with and implementing all
16 required institutional controls; and

17 (v) there is no other basis of liability under subsection (1) for the owner or occupier for the release
18 or threatened release of a hazardous or deleterious substance.

19 (8) A person is liable under this section if the department provides substantial credible evidence
20 that the person fails to satisfy any element of each exclusion in subsections (7)(a) through (7)(c).

21 ~~(7)(9)~~ The liability of a fiduciary under the provisions of this part for a release or a threatened
22 release of a hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed
23 the assets held in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary
24 is liable under this part independent of the person's ownership or actions taken in a fiduciary capacity.

25 ~~(9)(10)~~ A person who holds indicia of ownership in a facility primarily to protect a security interest
26 is not liable under subsections (1)(a) and (1)(b) for having participated in the management of a facility
27 within the meaning of 75-10-701~~(10)(b)~~ (14)(b) because of any one or any combination of the following:

28 (a) holding an interest in real or personal property when the interest is being held as security for
29 payment or performance of an obligation, including but not limited to a mortgage, deed of trust, lien,
30 security interest, assignment, pledge, or other right or encumbrance against real or personal property that

1 is furnished by the owner to ensure repayment of a financial obligation;

2 (b) requiring or conducting financial or environmental assessments of a facility or a portion of a
3 facility, making financing conditional upon environmental compliance, or providing environmental
4 information or reports;

5 (c) monitoring the operations conducted at a facility or providing access to a facility to the
6 department or its agents or to remedial action contractors;

7 (d) having the mere capacity or unexercised right to influence a facility's management of hazardous
8 or deleterious substances;

9 (e) giving advice, information, guidance, or direction concerning the administrative and financial
10 aspects, as opposed to day-to-day operational aspects, of a borrower's operations;

11 (f) providing general information concerning federal, state, or local laws governing the
12 transportation, storage, treatment, and disposal of hazardous or deleterious substances and concerning the
13 hiring of remedial action contractors;

14 (g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;

15 (h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or
16 undertaking other activities to protect or preserve the value of the security interest in a facility;

17 (i) extending or denying credit to a person owning or in lawful possession of a facility;

18 (j) in an emergency, requiring or undertaking activities to prevent exposure of persons to hazardous
19 or deleterious substances or to contain a release;

20 (k) requiring or conducting remedial action in response to a release or threatened release if prior
21 notice is given to the department and the department approves of the remedial action; or

22 (l) taking title to a facility by foreclosure, provided that the holder of indicia of ownership, from the
23 time the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing
24 transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest
25 itself of the property in a reasonably expeditious manner, using whatever commercially reasonable means
26 are relevant or appropriate with respect to the facility and taking all facts and circumstances into
27 consideration and provided that the holder does not:

28 (i) outbid or refuse a bid for fair consideration for the property or outbid or refuse a bid that would
29 effectively compensate the holder for the amount secured by the facility;

30 (ii) worsen the contamination at the facility;

1 (iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting
2 hazardous or deleterious substances; or

3 (iv) engage in conduct described in subsection ~~(9)~~ (11).

4 ~~(9)~~(11) The protection from liability provided in subsections ~~(7)~~ (9) and ~~(8)~~ (10) is not available to
5 a fiduciary or to a person holding indicia of ownership primarily to protect a security interest if the fiduciary
6 or person through affirmative conduct:

7 (a) causes or contributes to a release of hazardous or deleterious substances from the facility;

8 (b) allows others to cause or contribute to a release of hazardous or deleterious substances; or

9 (c) in the case of a person holding indicia of ownership primarily to protect a security interest,
10 actually participates in the management of a facility by:

11 (i) exercising decisionmaking control over environmental compliance; or

12 (ii) exercising control at a level comparable to that of a manager of the enterprise with responsibility
13 for day-to-day decisionmaking either with respect to environmental compliance or substantially all of the
14 operational, as opposed to financial or administrative, aspects of the facility."

15

16 **Section 8.** Section 75-10-719, MCA, is amended to read:

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

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

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

29 (4) Whenever practicable and in the public interest, as determined by the director of the
30 department, the department may, as promptly as possible, reach a final settlement with a potentially liable

1 ~~or liable person liable~~ under 75-10-715 in an administrative or civil action under 75-10-711 if the settlement
 2 involves only a minor portion of the ~~response~~ remedial action costs at the facility concerned and, in the
 3 judgment of the department, taking into account the toxicity of the hazardous or deleterious substances
 4 involved and the person's contribution of hazardous or deleterious substances in relation to the total volume
 5 of hazardous or deleterious substances at the facility, the conditions in ~~either~~ any of the following
 6 ~~subsection~~ subsections (4)(a) or (4)(b) through (4)(d) are met:

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

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

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

11 the person is one whose liability is based solely on 75-10-715(1)(c) or (1)(d) and who presents substantial
 12 credible evidence that the person contributed less than 0.002% of the total volume or less than 100 gallons
 13 or 200 pounds of materials containing hazardous or deleterious substances at a facility that received
 14 hazardous or deleterious substances from multiple contributors. The department may not require the
 15 payment of remedial action costs from this person.

16 (b) (i) the person is one whose liability is based solely on 75-10-715(1)(c) or (1)(d) and who
 17 presents substantial credible evidence that the person arranged for disposal or treatment of less than 5%
 18 of the total quantity of solid waste or hazardous or deleterious substances disposed of at a facility that
 19 received solid waste or hazardous or deleterious substances from multiple contributors.

20 (ii) For the purposes of subsection (5)(a) and this subsection (4)(b) only, the term "solid waste"
 21 means:

22 (A) all putrescible and nonputrescible wastes, including garbage, rubbish, refuse, or ashes;

23 (B) sludge from sewage treatment plants, water supply plants, or air pollution control facilities;

24 (C) construction and demolition wastes;

25 (D) dead animals, including offal;

26 (E) discarded home and industrial appliances; and

27 (F) wood products or wood byproducts and inert materials.

28 (b)(c) (i) ~~The~~ the person:

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

30 (B) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any

1 hazardous or deleterious substance at the facility; and

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

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

7 (d) the person presents substantial credible evidence that the person has a defense under
8 75-10-715(5).

9 (5) When reaching a settlement under subsection (4)(b), (4)(c), or (4)(d), the department may
10 require the payment of remedial action costs not to exceed two times the person's reasonably projected
11 liability for remedial action costs as determined by the department. Except as provided in subsection (6),
12 the settlement must contain a reservation of rights clause in the event that the department obtains new
13 information showing that the settling person no longer qualifies for a settlement because:

14 (a) the solid waste or hazardous or deleterious substances contributed by the person was of a
15 greater volume or toxicity than originally estimated; or

16 (b) the settlement was reached under subsection (4)(c) and, after settlement, the department finds
17 that the person had actual or constructive knowledge that the property was used for the generation,
18 transportation, storage, treatment, or disposal of any hazardous or deleterious substance.

19 (6) A person who agrees to a liability settlement may avoid the reservation of rights clause under
20 subsection (5) by paying remedial action costs in the amount of four times the person's reasonably
21 projected liability for remedial action costs as determined by the department.

22 (7) All funds received as a result of settlements under this section must be paid in the following
23 order of priority:

24 (a) to the department as reimbursement for its remedial action costs at the facility;

25 (b) to liable persons as reimbursement for remedial action costs at the facility. In the event of an
26 allocation under [sections ~~26~~ 12 through ~~36~~ 22], the reimbursement must be in proportion to each liable
27 person's share of liability as determined under the provisions of [section ~~34~~ 20 or ~~35~~ 21];

28 (c) the remainder, if any:

29 (i) to the orphan share fund provided in [section ~~27~~ 13] if the facility went through the allocation
30 process provided in [sections ~~26~~ 12 through ~~36~~ 22]; or

1 (ii) to the fund provided in 75-10-704 if the facility did not undergo the allocation process provided
2 in [sections ~~26~~ 12 through ~~36~~ 22].

3 (8) Any person who enters into a settlement under this section may not be subject to or assigned
4 a share in the allocation process provided in [sections ~~26~~ 12 through ~~36~~ 22].

5 ~~(6)~~(9) As part of an administrative or judicially approved settlement agreement, the department may
6 require the liable person to provide financial assurance, in an amount determined by the department, to
7 ensure the long-term operation and maintenance of the remedial action site. The liable person shall provide
8 the financial assurance by any one method or combination of methods satisfactory to the department,
9 including but not limited to insurance, guarantee, performance or other surety bond, letter of credit,
10 qualification as a self-insurer, or other demonstration of financial capability."

11
12 **Section 9.** Section 75-10-720, MCA, is amended to read:

13 **"75-10-720. Condemnation -- creation of state lien.** (1) Whenever the department determines that
14 property upon which a release or threatened release of a hazardous or deleterious substance has occurred
15 may present an imminent and substantial endangerment to the public health, safety, or welfare or the
16 environment, the department may condemn the property for public use to mitigate the threat. The taking
17 of the property must be conducted in accordance with the procedure set forth in Title 70, chapter 30, parts
18 1 through 3.

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

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

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

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

3 (6) If the department expends money from the fund for orphan share remedial action costs at a
4 facility or for a facility at which a reimbursed orphan share exists, the state has a lien upon the facility for
5 the unrecovered costs. The lien:

6 (a) may not exceed the increase in fair market value of the property attributable to the unfunded
7 portion of the remedial action at the time of a subsequent sale or other disposition of the property;

8 (b) arises at the time costs are first incurred by the department with respect to a remedial action
9 at the facility;

10 (c) must be filed according to subsection (3); and

11 (d) continues until the earlier of satisfaction of the lien or recovery of all remedial action costs
12 incurred at the facility.

13 (7) Payment of any liens under this section must be deposited in one of the two accounts from
14 which the remedial action costs originated, including the fund established in 75-10-704 or the orphan share
15 fund established in [section 27 13]."

16
17 **Section 10.** Section 75-10-724, MCA, is amended to read:

18 **"75-10-724. ~~Liability apportionment and contribution~~ Private right of action.** ~~(4) Any person who~~
19 ~~receives notice under 75-10-711, who is held jointly and severally liable under 75-10-715, or who initiates~~
20 ~~a voluntary cleanup under the provisions of 75-10-730 through 75-10-738 may bring a private right of~~
21 ~~action, including a claim for contribution or declaratory relief, against any other person who is liable or~~
22 ~~potentially liable under 75-10-715 for the recovery of remedial action costs. In resolving contribution claims,~~
23 ~~the court shall allocate remedial action costs among the liable persons based on the factors set out in~~
24 ~~[section 34 20]. has the right at trial to have the trier of fact apportion liability among the parties as~~
25 ~~provided in this section. The burden is on each liable person to show how his liability should be~~
26 ~~apportioned. In apportioning the liability of any person under this section, the trier of fact shall consider the~~
27 ~~following:~~

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

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

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

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

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

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

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

13
14 **Section 23.** ~~Section 82-4-141, MCA, is amended to read:~~

15 ~~"82-4-141. Violation penalty. (1) A person or operator who violates any of the provisions of this~~
16 ~~part or rules or orders adopted under this part shall pay a civil penalty of not less than \$100 or more than~~
17 ~~\$1,000 for the violation and an additional civil penalty of not less than \$100 or more than \$1,000 for each~~
18 ~~day during which a violation continues and may be enjoined from continuing such the violations as provided~~
19 ~~in this section. These penalties shall must be recoverable in any action brought in the name of the state of~~
20 ~~Montana by the attorney general in the district court of the first judicial district of this state in and for the~~
21 ~~county of Lewis and Clark or in the district court having jurisdiction of the defendant.~~

22 ~~(2) The attorney general shall, upon the request of the director, sue for the recovery of the~~
23 ~~penalties provided for in this section and bring an action for a restraining order, temporary or permanent~~
24 ~~injunction against an operator or other person violating or threatening to violate an order adopted under this~~
25 ~~part.~~

26 ~~(3) A person who willfully violates any of the provisions of this part or any determination or order~~
27 ~~adopted under this part which that has become final is guilty of a misdemeanor and shall be fined not less~~
28 ~~than \$500 and not more than \$5,000. Each day on which a violation occurs constitutes a separate offense.~~

29 ~~(4) Civil penalties collected under this section must be deposited in the orphan share account in~~
30 ~~the state special revenue fund."~~

1 ~~Section 24. Section 82-4-241, MCA, is amended to read:~~

2 ~~"82-4-241. Receipts paid into general fund. (1) Except for bond forfeiture moneys as provided in~~
 3 ~~subsection (2), all fees, penalties, and other moneys money available or paid to the department under the~~
 4 ~~provisions of this part shall must be placed in the state treasury and credited to the general fund.~~

5 ~~(2) Civil penalties paid to the department under 82-4-254 must be placed in the orphan share~~
 6 ~~account in the state special revenue fund."~~

7

8 **NEW SECTION. Section 11. Citizens suit.** (1) Any person may commence a civil action to compel
 9 compliance with [sections 26 through 36] by any liable or potentially liable person under 75-10-715 alleged
 10 to be in violation of a rule, notice letter, order, or department-approved remedial action required pursuant
 11 to a notice letter or order under this chapter.

12 (2) At least 60 days before commencing the action, the person shall give notice of intent to sue
 13 to all liable or potentially liable persons under 75-10-715 who are contemplated to be defendants in the
 14 proposed action.

15 (3) An action may not be commenced under subsection (1) if the liable or potentially liable person
 16 is diligently coming into compliance with the rule, notice letter, order, or department-approved remedial
 17 action plan or if the department has commenced and is diligently prosecuting an action to require
 18 compliance with the rule, notice letter, order, or department-approved remedial action plan.

19

20 **NEW SECTION. Section 12. Short title.** [Sections 26 12 through 36 22] may be cited as the
 21 "Controlled Allocation of Liability Act".

22

23 **NEW SECTION. Section 13. Orphan share state special revenue account -- reimbursement of**
 24 **claims -- payment of department costs.** (1) There is an orphan share account in the state special revenue
 25 fund established in 17-2-102 that is to be administered by the department. Money in the account is
 26 available to the department by appropriation and must be used to reimburse remedial action costs claimed
 27 pursuant to [sections 26 12 through 36 22] and to pay costs incurred by the department in defending the
 28 orphan share.

29 (2) There must be deposited in the orphan share account:

30 (a) money allocated from the metalliferous mines license tax pursuant to 15-37-117;

1 ~~(b) money in excess of \$250,000 per year collected by the department as provided in [section 2~~
 2 ~~of House Bill No. 284] establishing an environmental rehabilitation and prevention account;~~

3 ~~(B)~~ all penalties assessed pursuant to [section ~~34(12)~~ 20(12)];

4 ~~(C)~~ funds received from the interest income of the resource indemnity trust fund pursuant to
 5 15-38-202;

6 ~~(D)~~ funds allocated from the resource indemnity and ground water assessment tax proceeds
 7 provided for in 15-38-106;

8 ~~(E)~~ unencumbered funds remaining in the abandoned mines state special revenue account
 9 provided in section 19, Chapter 584, Laws of 1995, as of [the termination date of section 19, Chapter 584,
 10 Laws of 1995, as may be amended];

11 ~~(F)~~ interest income on the account;

12 ~~(G)~~ funds received from settlements pursuant to 75-10-719(7); AND

13 ~~(H)~~ funds received from reimbursement of the department's orphan share defense costs pursuant
 14 to subsection (6);

15 ~~(j) fine and penalty money received pursuant to 75-2-412, 75-2-413, 75-2-427, 75-3-407,~~
 16 ~~75-5-634, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-423, 75-10-424, 75-10-542, 82-4-141, and~~
 17 ~~82-4-241; and~~

18 ~~(k) unclaimed or excess reclamation bond money received pursuant to 82-4-141 and 82-4-241.~~

19 (3) If the orphan share fund contains sufficient money, valid claims must be reimbursed
 20 subsequently in the order in which they were received by the department. If the orphan share fund does
 21 not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not
 22 be made and the orphan share fund, the department, and the state are not liable for making any
 23 reimbursement for the costs. The department and the state are not liable for any penalties if the orphan
 24 share fund does not contain sufficient money to reimburse claims, and interest may not accrue on
 25 outstanding claims.

26 (4) Except as provided in subsection (8), claims may not be submitted and remedial action costs
 27 may not be reimbursed from the orphan share fund until all remedial actions, except for operation and
 28 maintenance, are completed at a facility.

29 (5) Reimbursement from the orphan share fund must be limited to actual documented remedial
 30 action costs incurred after the date of petition provided in [section ~~29~~ 15]. Reimbursement may not be

1 made for attorney fees, legal costs, or operation and maintenance costs.

2 (6) (a) The department's costs incurred in defending the orphan share must be paid by the persons
3 participating in the allocation under [sections ~~26 12~~ through ~~36 22~~] in proportion to their allocated shares.
4 The orphan share fund is responsible for a portion of the department's costs incurred in defending the
5 orphan share in proportion to the orphan share's allocated share, as follows:

6 (i) If sufficient funds are available in the orphan share fund, the orphan share fund must pay the
7 department's costs incurred in defending the orphan share in proportion to the share of liability allocated
8 to the orphan share.

9 (ii) If sufficient funds are not available in the orphan share fund, persons participating in the
10 allocation under [sections ~~26 12~~ through ~~36 22~~] shall pay all the orphan share's allocated share of the
11 department's costs incurred in defending the orphan share in proportion to each person's allocated share
12 of liability.

13 (b) A person who pays the orphan share's proportional share of costs has a claim against the
14 orphan share fund and must be reimbursed as provided in subsection (3).

15 (7) If any money remains in the orphan share fund after [the termination date of this section] and
16 after outstanding claims are paid, the money must be deposited in the general fund.

17 (8) If the lead liable person under [section ~~30 16~~] presents evidence to the department that the
18 person cannot complete the remedial actions without partial reimbursement and that a delay in
19 reimbursement will cause undue financial hardship on the person, the department may allow the submission
20 of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not
21 eligible for early reimbursement unless the person is in substantial compliance with all department-approved
22 remedial action plans.

23 (9) A person participating in the allocation process who received funds under the mixed funding
24 pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive
25 reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot
26 program that are later attributed to the orphan share under the allocation process.

27

28 **NEW SECTION. Section 14. Eligibility -- statute of limitations.** (1) Except for a facility that is listed
29 on the national priorities list pursuant to the federal Comprehensive Environmental Response,
30 Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., a facility listed on the priority list

1 established pursuant to 75-10-702 is eligible for the allocation process under [sections ~~26~~ 12 through ~~36~~
2 22].

3 (2) Only liability for remedial action costs is eligible for allocation and reimbursement from the
4 orphan share fund. Allocation of liability and reimbursement of costs for natural resource damages is not
5 permitted under [sections ~~26~~ 12 through ~~36~~ 22].

6 (3) Remedial action costs incurred prior to the date of the potentially liable person's written petition
7 to the department as provided in [section ~~29~~ 15] are not eligible for reimbursement from the orphan share
8 fund.

9 (4) Only one allocation will be allowed for each facility unless:

10 (a) the department determines that an additional allocation is appropriate due to:

11 (i) the existence of more than one discrete unit of contamination at the facility;

12 (ii) the discovery of new releases after remedial actions at the facility are complete; or

13 (iii) other factors the department determines appropriate.

14 (b) all the liable or potentially liable persons under 75-10-715 agree in writing that an orphan share
15 does not exist for the proposed allocation and either of the conditions in subsection (4)(a)(i) or (4)(a)(ii) is
16 met.

17 (5) A liable or potentially liable person under 75-10-715 may not file a cost recovery or contribution
18 action against any person participating in the allocation process provided for in [sections ~~26~~ 12 through ~~36~~
19 22] until the allocation process is complete. The statute of limitations on the filing of cost recovery or
20 contribution actions is tolled from the first date of a petition for allocation on a facility until 30 days after
21 the submittal of the allocation report provided for in [section ~~34~~ 20], or until 30 days following the
22 expiration of the time period for appeal or the final decision on appeal.

23
24 **NEW SECTION. Section 15. Allocation of liability -- process initiation.** (1) For a facility at which
25 the department has initiated a remedial action under 75-10-711 through the issuance of a notice letter prior
26 to [the effective date of this section], any person determined to be potentially liable under 75-10-715 may
27 petition the department in writing to initiate the allocation process. The right to participate in the allocation
28 process is waived if the written petition is not provided to the department prior to the completion of
29 remedial actions, except for operation and maintenance, at the facility.

30 (2) For a facility at which the department has not initiated a remedial action through the issuance

1 of a notice letter under 75-10-711, any person potentially liable under 75-10-715 who has received
2 approval of a voluntary cleanup plan under 75-10-730 through 75-10-738 may petition the department in
3 writing to initiate the allocation process. The right to participate in the allocation process is waived if the
4 written petition is not provided to the department prior to the completion of remedial actions, except for
5 operation and maintenance, at the facility.

6 (3) For a facility at which the department initiates a remedial action through the issuance of a
7 notice letter under 75-10-711 after [the effective date of this section], any person potentially liable under
8 75-10-715 may petition the department in writing within 60 days of the date of the notice letter to initiate
9 the allocation process. Any potentially liable person under 75-10-715 who does not provide a written
10 petition to the department within this timeframe waives the right to participate in the allocation process and
11 remains liable as provided in 75-10-715. The notice letter sent by the department must advise that a failure
12 to petition the department for allocation as provided in this subsection will result in a waiver of the right
13 to participate in the allocation process.

14 (4) The allocation process may be initiated and may proceed upon written petition of one or more
15 potentially liable persons.

16 (5) Prior to the initiation of discovery as provided in [section ~~34~~ 17], all persons who participate
17 in the allocation process shall agree in writing that the allocator's decision is binding, subject only to the
18 provisions of [section ~~34(9)~~ 20(9)] and the appeal provisions of [section ~~35~~ 21].

19 (6) All liable or potentially liable persons under 75-10-715 who do not participate in the allocation
20 process under [sections ~~26~~ 12 through ~~36~~ 22] remain liable as provided in 75-10-715.

21 (7) Upon receipt of a written petition under subsections (1) or (2) or when initiating actions at a
22 facility without a prior notice letter under subsection (3), the department shall:

23 (a) conduct a good faith investigation and may use its authority in 75-10-707 to identify persons
24 who may be liable under 75-10-715; and

25 (b) issue notice letters to the persons it identifies as potentially liable under 75-10-715.

26 (8) A person who receives a notice letter may, within 60 days from the date of the notice letter,
27 petition the department in writing to participate in an allocation process and provide the department with
28 the identity of other potentially liable persons under 75-10-715 who were not noticed by the department.
29 When identifying additional potentially liable persons, the noticed person shall provide to the department
30 a statement and credible evidence showing that there is a basis in law and fact to determine that the

1 identified person is potentially liable under 75-10-715.

2 (9) Within 30 days of receipt of the information provided for in subsection (8), the department may
3 issue a notice letter to an identified person whom the department determines is a potentially liable person
4 under 75-10-715. If the department does not issue a notice letter to an identified person, the department
5 shall issue the person a nomination letter indicating that the person has been identified as potentially liable
6 under 75-10-715. The nomination letter must state that the person has the right to participate in the
7 allocation process and that if the person does not participate and is found liable, the person remains subject
8 to liability as provided in 75-10-715. If the newly noticed or nominated person chooses to participate in
9 the allocation process, the person shall provide a written petition of the person's intent to participate in the
10 allocation process to the department within 30 days of the date of the notice or nomination letter. A failure
11 to petition the department for allocation as provided in this subsection results in a waiver of the right to
12 participate in the allocation process.

13 (10) If a person nominated under subsection (9) cannot be readily located, the department shall,
14 within 30 days of receipt of the information provided for in subsection (8), publish one notice of the
15 person's nomination, along with the information contained in a nomination letter under subsection (9), in
16 a newspaper of general circulation in the county where all or a portion of the facility is located. The notice
17 must state that the person has 30 days from the date of the notice to petition the department, in writing,
18 to participate in the allocation process. A failure to petition the department for allocation as provided in
19 this subsection results in a waiver of the right to participate in the allocation process.

20 (11) If one or more potentially liable persons petition in writing for an allocation process under
21 subsection (1), (2), or (3) and the department determines that the facility has a potential orphan share, the
22 department shall:

23 (a) publish a notice and brief description of the facility in a newspaper of general circulation in the
24 area affected and provide at least 30 days for submission of public comment on the identification of
25 potentially liable persons under 75-10-715; and

26 (b) notify interested persons and the county commissioners of ~~the county where~~ EACH COUNTY
27 IN WHICH ALL OR A PORTION OF the facility is located and provide at least 30 days for submission of
28 comments on the identification of potentially liable persons under 75-10-715.

29 (12) If a nominated person participates in the allocation and the person is assigned a zero share of
30 liability by the allocator, that person's reasonable costs of participating in the allocation, including attorney

1 fees, must be borne by the person who proposed the addition of the nominated person to the allocation.

2 (13) If the department anticipates that a facility may have an orphan share, the department shall
3 represent the orphan share in the allocation process. If the state is a potentially liable person under
4 75-10-715, an agency or entity other than the department shall represent the state in the allocation
5 process.

6 (14) Except as provided in subsection (15), whenever the department is involved in allocation
7 processes on five facilities, other allocation processes may be stayed before the discovery stage provided
8 in [section ~~34~~ 17]. Upon completion of an allocation provided in [section ~~34~~ 20 or ~~35~~ 21], execution of
9 a stipulated agreement under [section ~~34~~ 20], or a default to liability as provided in 75-10-715 for one of
10 the five facilities, the department shall notify the potentially liable persons for the facility on the waiting list
11 that has the earliest date of written petition. Discovery under [section ~~34~~ 17] must begin within 10 days
12 of department notification.

13 (15) A stay on the allocation process may not occur under subsection (14) if all persons
14 participating in the allocation process agree in writing that there is no orphan share and that the state is
15 not a potentially liable person under 75-10-715. The agreement is binding upon all noticed or nominated
16 persons.

17 (16) If, after initiating the process, a potentially liable person elects to discontinue participation in
18 the process, the person remains subject to liability as provided in 75-10-715.

19

20 **NEW SECTION. Section 16. Emergency actions -- remedial action requirements -- designation of**
21 **lead person -- enforcement.** (1) If the department determines that immediate response to an imminent
22 threat to public health, safety, or welfare or the environment is necessary to avoid substantial injury or
23 damage to persons, property, or resources, the department may require any potentially liable person to take
24 remedial actions without the prior written notice required by 75-10-711(3). The department has 30 days
25 to comply with the notification requirements provided in 75-10-711(3) and [section ~~29~~ 15] when requiring
26 emergency remedial actions.

27 (2) Within 30 days of the issuance of the notice letters, the noticed persons shall designate a lead
28 person who shall conduct remedial actions at the facility. Upon request of the noticed persons and for
29 good cause shown, the department may grant a 30-day extension of time to identify the lead person.

30 (3) If the department determines that the identified lead person is financially or otherwise incapable

1 of completing remedial actions required by the department, the department shall notify all noticed persons
2 of this determination in writing and request that another lead person be designated within 15 days.

3 (4) The designated lead person shall undertake all remedial actions required by the department.

4 (5) If the noticed persons do not designate an approved lead person within the timeframes provided
5 under subsection (2) or (3), the department shall designate a lead person to undertake required remedial
6 actions.

7 (6) If the department finds that the lead person has not complied with the requirements of a notice
8 letter, order, stipulated agreement, or any department-approved remedial action plan, the department shall
9 notify all potentially liable persons of the noncompliance.

10 (7) If the noncompliance continues for 30 days after the date of the notice provided in subsection
11 (6), the potentially liable persons have not demonstrated that the noncompliance is due to good cause, and
12 the facility is a maximum or high-priority facility on the department's priority list established pursuant to
13 75-10-702, the department shall take one or more of the following actions:

14 (a) issue a unilateral order requiring the potentially liable persons to comply with the requirements
15 of the notice letter, order, stipulated agreement, or department-approved remedial action plan;

16 (b) file a civil action as provided in 75-10-711;

17 (c) conduct the required remedial actions and seek cost recovery and penalties as provided in
18 75-10-711;

19 (d) file a cost recovery action as provided in 75-10-722; or

20 (e) void approval of the voluntary cleanup plan as provided in 75-10-736.

21 (8) If the noncompliance continues for 30 days after the date of the notice provided in subsection
22 (6), the potentially liable persons have not demonstrated that the noncompliance is due to good cause, and
23 the facility is not a maximum or high-priority facility on the department's priority list, the department may
24 take one or more of the actions provided for in subsection (7).

25 (9) For purposes of subsections (7), (8), and (10), "good cause" means factors beyond a person's
26 control that include severe weather conditions, third-party interference, an act of God, or an act of war.
27 Before a person may claim good cause due to third-party interference, the person shall show that the
28 person used reasonable efforts to obtain cooperation or compliance from the third party.

29 (10) If the lead person fails to comply with the requirements of a notice letter, order, stipulated
30 agreement, or other department-approved remedial action plan, the facility and all noticed persons remain

1 subject to liability as provided in 75-10-715 unless another person assumes the lead role in implementing
2 the ~~cleanup plan~~ **REQUIRED REMEDIAL ACTIONS** or the lead person can establish that the noncompliance
3 is due to good cause.

4

5 **NEW SECTION. Section 17. Discovery.** (1) Each person participating in the allocation process for
6 a facility may conduct discovery for a period of not more than 90 days from the date of the last notice or
7 nomination letter. Discovery requests by each person participating in the allocation process, including the
8 orphan share representative, are limited to the following unless otherwise agreed to by all persons
9 participating in the allocation, including the orphan share representative:

10 (a) 5 1-day oral depositions not to exceed 8 hours each;

11 (b) 25 written interrogatories, including subparts;

12 (c) 50 requests for admission; and

13 (d) 50 requests for production of documents.

14 (2) The persons participating in the allocation process may extend the discovery period for up to
15 30 days if all persons agree to the extension in writing.

16 (3) Any participating person who is not responsive to discovery requests or who does not
17 participate in the subsequent allocation proceeding and is allocated a share of liability remains subject to
18 liability as provided in 75-10-715.

19

20 **NEW SECTION. Section 18. Preallocation negotiations.** (1) After discovery pursuant to [section
21 ~~34 17~~] closes, all persons participating in the allocation process shall conduct good faith settlement
22 negotiations for a period of 30 days.

23 (2) The participating potentially liable persons may use an impartial mediator when conducting
24 settlement negotiations.

25 (3) If a settlement is reached under subsection (1), the persons shall execute a stipulated
26 agreement as provided in [section ~~34 20~~].

27 (4) If a stipulated agreement is not executed as provided in [section ~~34 20~~], the persons shall select
28 an allocator as provided in [section ~~33 19~~].

29

30 **NEW SECTION. Section 19. Allocator selection -- payment of fees.** (1) If the preallocation

1 negotiations pursuant to [section ~~32~~ 18] fail to produce a stipulated agreement within the timeframe
2 provided in [section ~~32~~ 18], the participating persons shall select an allocator within 30 days after the
3 preallocation negotiations end. All participating persons shall agree on the selected allocator.

4 (2) Before selection or appointment as an allocator, a person shall disclose all conflicts of interest,
5 including whether the allocator is or has been a relative, attorney, agent, employee, creditor, or contractor
6 of, or in any manner is or has been interested financially or personally with, any person involved in the
7 allocation.

8 (3) If the participating persons are unable to agree on an allocator within the required 30 days, one
9 or more of the participating persons shall apply for judicial resolution, within 10 days, to the district court
10 in the county where the release occurred or where any potentially liable person under 75-10-715 resides
11 or has a principal place of business or in the district court of the first judicial district. If an application to
12 the district court is not made within 10 days, all persons remain subject to liability as provided in 75-10-715
13 and the allocation process ends.

14 (4) Upon selection or appointment of the allocator, the lead person shall advance, if required by
15 the allocator, up to \$5,000 toward the allocator's expenses. Any expenses accrued by the allocator for
16 legal or technical expertise must be approved in advance by all the participating persons. The allocator's
17 fees and reasonable expenses must be divided among the participating liable persons, except the orphan
18 share, in proportion to their allocated shares. The orphan share fund established in [section ~~27~~ 13] is not
19 responsible for any portion of the allocator's fees and expenses.

20
21 **NEW SECTION. Section 20. Allocating liability.** (1) Upon selection or appointment, the allocator
22 shall establish the process and schedule for determining the allocation, including the length and scope of
23 any documents to be presented.

24 (2) The participating persons shall submit to the allocator and to each other a statement of position
25 and exhibits of a factual nature. Each person's statement must identify the factors listed in subsection (5)
26 that the person believes are relevant to allocation of liability for the facility.

27 (3) The allocator may convene the participating persons as the allocator believes necessary to
28 clarify the facts and may pose additional questions, interview any person or the person's representative,
29 and impose presumptions concerning missing information. The allocator may seek department assistance
30 with information gathering pursuant to 75-10-707.

1 (4) The allocator may not engage in ex parte communications with any person or the person's
2 representative.

3 (5) The allocator shall allocate each participating and nonparticipating person's share of liability
4 based only on information presented or collected during the allocation process and, taking into account
5 facility characteristics, shall apportion liability on a percentage basis according to the following factors:

6 (a) the extent to which the person caused the release of the hazardous or deleterious substance;

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

9 (c) the amount or volume of hazardous or deleterious substance and the amount contributed by the
10 person;

11 (d) the relative hazard of the hazardous or deleterious substance contributed by the person,
12 including volatility, carcinogenicity, mobility, persistence, reactivity, and toxicity;

13 (e) the degree of past and present cooperation by the person with the government to prevent harm
14 to the public health, safety, or welfare and the environment, including participation in remedial actions
15 occurring concurrently with the allocation process and compliance and cooperation with discovery pursuant
16 to [section ~~34~~ 17];

17 (f) what the person knew or should have known of;

18 ~~(g)~~ the hazardous nature of the substance, the risk associated with that substance, and proper
19 waste disposal practices;

20 ~~(h)~~(G) the circumstances of the property acquisition, including the documented price paid and
21 discounts granted; ~~and~~

22 ~~(i)~~(H) the person's knowledge of or acquiescence to waste generation, storage, handling,
23 treatment, or disposal;

24 ~~(j)~~(I) the length of time of ownership, operation, generation, or transportation;

25 ~~(k)~~(J) any violations of or noncompliance with health and environmental regulations, including
26 permit violations or violations relating to public notification;

27 ~~(l)~~(K) the degree to which a person providing publicly owned landfill or sewer and water systems
28 had or has a reasonable ability to control disposed materials and the person's degree of care in maintaining
29 those services;

30 ~~(m)~~(L) the person's financial or economic benefit from:

- 1 (i) ownership or operation of the facility;
- 2 (ii) the generation, transportation, or disposal of the hazardous or deleterious substance; and
- 3 (iii) cleanup of the facility;
- 4 ~~(M)~~ whether the person exercised due diligence in generating, transporting, or disposing of
- 5 hazardous or deleterious substances and the person's control over those activities; and
- 6 ~~(N)~~ other equitable factors that are appropriate.
- 7 (6) Within 60 days of selection or appointment, the allocator shall submit to the department and
- 8 all noticed and nominated persons a written allocation report that allocates each person's share of liability
- 9 and that documents the rationale for the percentage of liability allocated to each person.
- 10 (7) The allocator or the participating persons may extend the allocation proceeding by up to 30
- 11 days if agreed to by the allocator and all the participating persons.
- 12 (8) Within 30 days of the date of the allocation report, the persons who participated in the
- 13 allocation and who were allocated a share of liability, except for the orphan share, shall prepare and sign
- 14 a stipulated agreement that contains:
- 15 (a) the percentage share of liability for each person as determined by the allocator;
- 16 (b) procedures for paying for the orphan share prior to reimbursement from the orphan share fund;
- 17 (c) a waiver of contribution rights against all persons who are potentially liable for the remedial
- 18 action as well as a waiver of any rights to challenge any settlement that the department enters into with
- 19 any other potentially liable person;
- 20 (d) covenants not to sue and provisions regarding performance or adequate assurance of
- 21 performance of remedial actions;
- 22 (e) how remedial actions will be conducted;
- 23 (f) a penalty provision in accordance with subsection (12);
- 24 (g) acknowledgment of contribution protection, consistent with 75-10-719(1), regarding matters
- 25 addressed in the settlement; and
- 26 (h) provisions detailing how the persons signing the stipulated agreement should receive
- 27 reimbursement from the orphan share fund for any remedial action costs incurred by the persons in excess
- 28 of their allocated share.
- 29 (9) If the department determines that the stipulated agreement does not satisfy the requirements
- 30 of subsection (8), the liable persons who participated in the allocation remain subject to liability as provided

1 in 75-10-715.

2 (10) A person who did not participate in the allocation but who was assigned a share of liability
3 may sign the stipulated agreement prepared according to subsection (8).

4 (11) Any liable person allocated a share of liability who does not sign the stipulated agreement
5 remains subject to liability as provided in 75-10-715.

6 (12) Any liable person who signs the stipulated agreement and fails to comply with the terms of
7 the stipulated agreement shall pay, in addition to the person's share of remedial action costs, a penalty of
8 two times the amount of the person's allocated share of liability. Any funds received must be applied to
9 the facility's orphan share and any funds in excess of the facility's orphan share amount must be deposited
10 in the orphan share fund established under [section ~~27~~ 13].

11 (13) If a liable person becomes bankrupt or defunct after the stipulated agreement is signed and
12 before remedial actions are complete at the facility, that person's share of liability becomes an orphan
13 share.

14

15 **NEW SECTION.** **Section 21. Appeal of allocator's decision.** (1) A person may appeal the
16 allocator's decision to district court within 30 days of the date of the allocation report. Venue lies in the
17 county where the release occurred or where the liable person resides or has a principal place of business
18 or in the first judicial district.

19 (2) The allocator's decision must be upheld unless the person appealing the decision demonstrates
20 that the decision was:

21 (a) made upon unlawful procedure;

22 (b) affected by other error of law;

23 (c) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole
24 record; or

25 (d) arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise
26 of discretion or was fraudulent.

27 (3) If the appeal is successful, the district court shall allocate the liability of the potentially liable
28 persons using the factors outlined in [section ~~34~~ 20].

29 (4) After decision on the appeal, all liable persons shall submit a stipulated agreement as provided
30 in [section ~~34~~ 20] to the department based on the court order.

1 NEW SECTION. Section 22. Effect of termination on allocations. (1) Persons participating in the
 2 allocation process may complete the allocation process for the facility at issue and claim reimbursement
 3 from the orphan share fund provided that the discovery process under [section ~~34 17~~] had been initiated
 4 by [the termination date of sections ~~26 12~~ through ~~36 22~~].

5 (2) If discovery, as provided in [section ~~34 17~~], has not commenced by [the termination date of
 6 sections ~~26 12~~ through ~~36 22~~], the facility and its potentially liable persons under 75-10-715 are not
 7 eligible to participate in the allocation process under [sections ~~26 12~~ through ~~36 22~~] and remain subject
 8 to liability as provided in 75-10-715.

9
 10 **Section 23.** Section 16, Chapter 584, Laws of 1995, is amended to read:

11 **"Section 16. Criteria.** (1) The pilot program ~~must consist~~ consists of remediation of the Joslyn
 12 street tailings facility, the Corbin flats facility, and the block P mill facility ~~three sites from the department~~
 13 ~~of state lands' abandoned hard rock mine priority list. The three sites must be selected from the top ten~~
 14 ~~priority sites on that list as of April 1, 1995.~~

15 (2) Any site remediated under this pilot program must meet the following criteria:

16 (a) The owner of the property has, prior to May 22, 1989, purchased or entered into a lease
 17 purchase agreement or an option to purchase property where the facility is located.

18 (b) The applicant has submitted a voluntary cleanup plan in accordance with the provisions of
 19 [sections 7 and 8].

20 (c) The department has accepted and approved the application for a voluntary cleanup plan in
 21 accordance with the provisions of [sections 6 through 10] by June 30, 1997.

22 (3) The department and the applicant shall negotiate an apportionment of the applicant's liability
 23 pursuant to [section 17]. The department, as a trier of fact, shall make the final determination of the
 24 applicant's apportioned liability. If the applicant disagrees with the department's determination of the
 25 applicant's proportionate share of liability, the applicant may appeal the department's decision in
 26 accordance with the requirements of [section 6(4)].

27 ~~(4) If more than three applicants submit voluntary cleanup plans for the highest priority sites on~~
 28 ~~the department of state lands' abandoned hard rock mine priority list and the department approves more~~
 29 ~~than three plans, the department shall select three plans to incorporate into the pilot program on a priority~~
 30 ~~basis as determined by the date of submittal of a complete application."~~

1 **Section 24.** Section 18, Chapter 584, Laws of 1995, is amended to read:

2 **"Section 18. Claims for and limitations on reimbursement.** (1) After completion of the voluntary
3 cleanup plan approved by the department, the applicant may apply to and must, in accordance with this
4 section, receive reimbursement from the abandoned mines state special revenue account. Reimbursement
5 must be subject to the following requirements and limitations:

6 (a) The applicant shall complete remediation prior to making a claim for reimbursement.

7 (b) The reimbursement may not exceed 90% of eligible costs up to a maximum of \$300,000 per
8 facility.

9 (c) The claim for reimbursement may not include legal fees or department costs incurred in the
10 oversight of the voluntary cleanup plan.

11 (2) For purposes of this section, "eligible costs" means costs in excess of an applicant's
12 proportionate share of total costs incurred in the remediation of the site during the 1996-97 biennium and
13 the 1998-99 biennium.

14 (3) If costs are reimbursed out of the abandoned mines state special revenue account, nothing in
15 [sections 14 through 20] prohibits the department from pursuing an action against other potentially liable
16 parties to recover those costs.

17 (4) If the abandoned mines state special revenue account does not contain sufficient money to pay
18 received claims for reimbursement, the abandoned mines state special revenue account and the department
19 are not liable for making any reimbursement at that time. All claims are subject to appropriations to the
20 abandoned mines state special revenue account."

21

22 **Section 25.** Section 27, Chapter 584, Laws of 1995, is amended to read:

23 **"Section 27. Termination.** (1) [Sections 4 through 12] terminate January 1, 2001.

24 (2) [Sections 14 through ~~21~~ 20] terminate June 30, ~~1997~~ 1999.

25 (3) [SECTION 21] TERMINATES JUNE 30, 1997."

26

27 NEW SECTION. **Section 26. Codification instruction.** [Sections ~~25~~ 11 through ~~36~~ 22] are intended
28 to be codified as an integral part of Title 75, chapter 10, part 7, and the provisions of Title 75, chapter 10,
29 part 7, apply to [sections ~~25~~ 11 through ~~36~~ 22].

30

1 NEW SECTION. Section 27. Coordination instructions INSTRUCTION. ~~(4) If Senate Bill No. 7 and~~
 2 [this act] are both passed and approved, ~~the amendments to 15-37-117 in THEN Senate Bill No. 7, relating~~
 3 ~~to the allocation of the metal mines license tax, are IS void.~~

4 ~~(2) If [this act] and House Bill No. 284 are both passed and approved and House Bill No. 284 does~~
 5 ~~not contain a section creating and depositing excess penalty collections into an orphan share account, then~~
 6 ~~{section 27 (2)(b) of this act} is void.~~

7 ~~(3) If [this act] and House Bill No. 284 are both passed and approved and House Bill No. 284 does~~
 8 ~~contain the DEPOSIT EXCESS PENALTY COLLECTIONS IN AN orphan share account referenced in~~
 9 ~~subsection (2) of this section, then {sections 4 through 15, 23, 24, and 27(2)(j) of this act} are void.~~

10
 11 NEW SECTION. Section 28. Severability. If a part of [sections ~~25 11~~ through ~~36 22~~] are invalid,
 12 all valid parts that are severable from the invalid part remain in effect. If a part of [sections ~~25 11~~ through
 13 ~~36 22~~] is invalid in one or more of its applications, the part remains in effect in all valid applications that
 14 are severable from the invalid applications.

15
 16 NEW SECTION. Section 29. Effective dates. (1) Except as provided in subsections (2) and (3),
 17 [this act] is effective July 1, 1997.

18 (2) [Section ~~47 5~~ and this section] are effective on passage and approval.

19 (3) [Section 3] is effective July 1, 1999.

20
 21 NEW SECTION. Section 30. Termination. [Sections ~~25-26 12~~ through ~~36 22~~] terminate June 30,
 22 2005.

23 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0377, 2nd reading, 2nd house, as amended

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the laws relating to the state Comprehensive Environmental Cleanup and Responsibility Act (CECRA); providing an optional procedure for allocating liability for site remediation; creating an orphan share fund account and allocating resource indemnity trust interest and tax proceeds, metalliferous mine tax proceeds, and other money to the account; providing for citizen suits; providing exclusions from liability; providing additional and specific rulemaking authority; amending provisions and extending the termination date of the mixed funding pilot program.

ASSUMPTIONS:


Department of Natural Resources and Conservation (DNRC):

1. Assume revenue oversight committee revenue estimates.
2. Assume metal mine tax deposits to the RIT trust under current law are \$474,045 in fiscal year 1998 and \$542,725 in fiscal year 1999. Further, assume these deposits are made on the first of May.
3. Assume that RIGWA tax deposits to the RIT trust under current law are \$559,521 in fiscal year 1998 and \$551,259 in fiscal year 1999. Further, assume these deposits are made on the first of May.
4. Assume that rate of return on fiscal year 1998 deposits is 6.48% and 6.33% for fiscal year 1999 deposits.
5. Assume that \$200,000 per year of RIGWA taxes are available for distribution to the orphan share account (page 5, lines 7-9).
6. Assume that no metal mine tax funds are not deposited into the RIT trust fund.
7. Assume that oil and gas tax deposits to the RIT trust are not affected by SB 377.

Department of Environmental Quality (DEQ):

8. The CECRA site list contains 211 sites. Of these, 70 sites will have an orphan share of liability allocated for remedial action costs. These 70 sites are a mix of maximum-high-, and medium-priority.
9. There is sufficient information for 39 of 70 sites to estimate remedial action costs and the potential orphan share. There is insufficient information for the remaining 31 sites to estimate remedial action costs, but they may also have an orphan share of liability. Orphan shares estimates were not made for low-priority sites.
11. This bill provides a controlled allocation of liability option that will redistribute financial responsibility for the orphan share costs on the 39 sites identified between the state and private entities.
12. The department will negotiate the allocation of liability for orphan share remedial action costs on the 39 sites that have been identified and where the controlled allocation of liability option is used. The bill controls the number of orphan share allocation proceedings that can occur at one time and limits this number to five.
13. Currently, the assignment of responsibility for remedial action costs on 39 sites where there is an orphan share under the joint and several liability system are estimated to range from \$8 million to \$20 million.
14. Allocation of liability for the 39 sites identified increases the state's financial responsibility by \$22 to \$30 million.
15. During the next 5 years, cleanup is expected to begin or continue at 18 of the 39 sites that have been identified, with estimated orphan share costs of approximately \$9 million to \$11 million and the controlled allocation of liability option will be used for all 18 sites.
16. During the following 6 to 10 years, cleanup will begin at 8 of the 39 sites that have been identified, with an estimated orphan share of approximately \$16 million to \$18 million and the controlled allocation of liability option will be used for all 8 sites.

(Continued)

 4-12-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

LORENTS GROSFIELD, PRIMARY SPONSOR DATE

Fiscal Note for SB0377, 2nd reading,
2nd house, as amended

SB 377-#2

17. After 10 years, cleanup will begin at the remaining 13 sites, with an estimated orphan share of approximately \$17 million to \$19 million and the controlled allocation of liability option will be used for all 13 sites.
18. The orphan share state special revenue account will be used to reimburse potentially-liable persons (PLPs) who are participating in the controlled allocation of liability option.
19. The department will only reimburse claims for payment of orphan share remedial action costs if the balance of the orphan share account is sufficient to cover the cost of the claim. Reimbursement is not required if the account balance is insufficient to reimburse a claim and no interest will accrue on unpaid claims.
20. Remedial actions, except for operation and maintenance, must be completed before a claim is submitted and before orphan share costs are reimbursed. Operation and maintenance costs will not be reimbursed. The department expects no claims for orphan share remedial action costs to be reimbursed in the next biennium.
21. The department requires 1.00 FTE program specialist (grade 16) with operating expenses to participate in the liability allocation process for sites with likely orphan shares. Projected operating expenses include \$5,000 in FY 98 for equipment, \$13,000 per year in the biennium for contracted services, and \$15,000 per year for travel, office expenses, and supplies.
22. The 8.5% metalliferous mines license tax proceeds will not be deposited into an abandoned mine state special revenue account this biennium [Amendment adopted 2/21/97 by the Senate Natural Resources Committee].

Department of Revenue (DOR):

23. Metalliferous Mines License Tax collections are \$5,578,000 in fiscal year 1998 and \$6,385,000 in FY99 (HJR2).

General Assumptions:

24. The reductions in revenue distribution to four state special revenue accounts total \$58,835 for the 1999 biennium. If any of these reductions cause a deficit in any of the associated accounts, some minor amount of state expenditures in HB 2 will be transferred to the general fund at the end of the session.
25. Based on assumption 25, the agencies and programs potentially impacted by SB 377 are not all listed herein.
26. Funding would be available for payment of clean-up costs at CECRA sites. Under current law, the responsible parties bear these costs. Under SB 377, the state may pay for these clean-up costs if all or portions of the original contamination was caused by a party (or parties) that is bankrupt or defunct or for some other reason these costs are not associated with any viable person. During the 1999 biennium the revenue will be deposited in the orphan share account and administrative expenses will be paid from the account. However, actual clean-up disbursements from the new orphan fund may not occur in the 1999 biennium because of the time necessary to proceed through the process and to clean-up the site.

FISCAL IMPACT:

Department of Environmental Quality (DEQ)

	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
FTE	1.00	1.00
Personal Services	\$37,340	\$37,340
Operating Expenses	34,348	34,348
Equipment	<u>5,000</u>	<u>0</u>
Total	\$76,688	\$71,688
<u>Funding:</u>		
State Special Revenue (02)	\$76,688	\$71,688

(Continued)

DNRC & DEQ Assumptions:

Revenues:

By diverting proceeds away from the RIT trust and using these funds for other purposes, SB 377 does impact RIT trust fund earnings. This impact would be felt in the four special revenue accounts that now receive RIT interest earnings. The impacts are:

	<u>FY 98</u>	<u>FY 99</u>	<u>Total</u>
	<u>Difference</u>	<u>Difference</u>	
Renewable Resource Account (02272):	(\$2,628)	(\$18,553)	(\$21,181)
Reclamation and Development Account (02458):	(2,920)	(20,614)	(23,534)
Hazardous Waste/CERCLA Account (02070):	(1,314)	(9,276)	(10,590)
Environmental Quality Protection Fund (02162):	<u>(438)</u>	<u>(3,092)</u>	<u>(3,530)</u>
Subtotal Interest Impact	(\$7,300)	(\$51,535)	(\$58,835)
RIT Trust Deposits	(674,045)	(742,725)	(1,416,770)
RIT Proceeds	(200,000)	(200,000)	(400,000)
Orphan Share Fund (8.5%)	674,045	742,725	1,416,770
Orphan Share Fund (balance of \$200K)	123,312	128,312	251,624

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

To the extent that a county or local government is a responsible party under the CECRA legislation, under current law they may be held responsible for the entire clean-up costs. SB 377 would set up a process through which local governments may be able to reduce this liability to a portion of the costs associated with the portion of the pollution caused by the local government.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. To fully fund the orphan fund, significant increases in revenue will be needed. Orphan share remedial action costs over the next 10 to 15 years are estimated to range from \$42 million to \$48 million. It is anticipated that \$3 to \$4 million per year will be required to fully fund the orphan share costs of known CERCRA site clean-up projects.
2. Beginning in fiscal year 2000, the proposed legislation will annually allocate \$200,000 from the resource indemnity trust fund interest income to the orphan share account, in addition to the \$200,000 from the proceeds of the tax. This allocation to the orphan share account will result in the following annual reductions after FY99. The 1999 legislature would need to either reduce appropriation authority for currently-funded programs or find alternative sources of funding.

Renewable Resource State Special	(\$72,000)
Hazardous waste/CERCLA	(\$36,000)
Reclamation & Development State Special	(\$80,000)
Environmental Quality Protection Fund	(\$12,000)

TECHNICAL NOTES:

1. Section 2 of the proposed legislation amends MCA 15-38-106 to allocate up to \$200,000 of the remaining revenues from the resource indemnity and groundwater assessment Tax (RIGWAT) to the orphan share account. It should be noted that the current law distribution instructions already allocate 100% of RIGWAT revenues; therefore, there would be no remaining revenues to allocate to the orphan share account.

(Continued)

DEDICATION OF REVENUE:

- a) Are there persons or entities that benefit from this dedicated revenue that do not pay? (Please explain)

Yes. (1) The public at large will benefit from a more clean and healthful environments. (2) Business and industries that are liable parties but have not contributed to the tax will benefit because their cleanup costs may be reduced.

- b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?

If the revenue were allocated to the general fund, there the would be no guarantee that appropriations would be made to meet the intent of this bill (cleanup CECRA sites with costs shared among PLPs and an orphan share).

- c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended? ___ Yes X No (if no, explain)

The revenue identified at this time will not cover the potential cost of cleanup reimbursement for the short term. If the account and statutes are maintained with continued appropriations, this fund is projected to be adequate.

- d) Does the need for this state special revenue provision still exist? X Yes ___ No (Explain)

This legislation establishes this state special revenue account and provisions for the use of the funds in the account.

- e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)

No. This revenue and expenditure activity level will be requested to each regular body through legislation separate from HB2.

- f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please explain)

Yes. Through passage of this bill the legislature will establish the activities required by statute as a priority.

- g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

A dedicated state special revenue account will assist the department in tracking the revenue and expenditure activity as a result of this legislation. It will be the only activity accounted for in this state special revenue account. If this activity received general fund the agency could adequately account for the program/activity. However, then there would be a concern for the long-term appropriations to this project.

1 SENATE BILL NO. 377

2 INTRODUCED BY GROSFIELD, KNOX, CRISMORE, KEATING, DEPRATU, CLARK

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE STATE
 5 COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; PROVIDING AN OPTIONAL
 6 PROCEDURE FOR ALLOCATING LIABILITY FOR SITE REMEDIATION; CREATING AN ORPHAN SHARE FUND
 7 ACCOUNT AND ALLOCATING CERTAIN ~~FINES, PENALTIES,~~ RESOURCE INDEMNITY TRUST INTEREST
 8 AND TAX PROCEEDS, METALLIFEROUS MINE TAX PROCEEDS, AND OTHER MONEY TO THE ACCOUNT;
 9 PROVIDING FOR CITIZEN SUITS; PROVIDING EXCLUSIONS FROM LIABILITY; PROVIDING ADDITIONAL
 10 AND SPECIFIC RULEMAKING AUTHORITY; AMENDING PROVISIONS AND EXTENDING THE TERMINATION
 11 DATE OF THE MIXED FUNDING PILOT PROGRAM; AMENDING SECTIONS 15-37-117, 15-38-106,
 12 15-38-202, ~~75-2-412, 75-2-413, 75-2-427, 75-3-407, 75-5-634, 75-6-109, 75-6-114, 75-10-417,~~
 13 ~~75-10-418, 75-10-423, 75-10-424, 75-10-642,~~ 75-10-701, 75-10-702, 75-10-704, 75-10-715,
 14 75-10-719, 75-10-720, AND 75-10-724, ~~82-4-141, AND 82-4-241,~~ MCA, AND SECTIONS 16, 18, AND
 15 27, CHAPTER 584, LAWS OF 1995; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."
 16

17 WHEREAS, the 1995 Legislature, in Chapter 584, Laws of 1995, directed the Department of
 18 Environmental Quality to institute a collaborative process involving all affected and interested persons to
 19 analyze the elimination of joint and several liability with respect to the cleanup of state Comprehensive
 20 Environmental Cleanup and Responsibility Act (CECRA) facilities and to submit any legislative proposals that
 21 collaboratively resulted from that process to the 55th Legislature; and

22 WHEREAS, the Department instituted this collaborative process with industry and business
 23 representatives; state, federal, and local government representatives; and public interest and environmental
 24 interest group representatives; and

25 WHEREAS, through a contract with the Department, the Montana Consensus Council designed the
 26 study process, facilitated the organization of the collaborative process, and conducted the numerous
 27 meetings of the study committees and interest group caucuses through which the parties to the
 28 collaborative process reached consensus on legislative proposals that are contained in this bill.

29
30 STATEMENT OF INTENT

1 It is the intent of this bill to provide an option to the concept of joint and several liability for
2 potentially liable persons to have their proportionate share of liability for a state Comprehensive
3 Environmental Cleanup and Responsibility Act (CECRA) facility determined through an expedited process
4 while ensuring that the concurrent cleanup of the facility occurs. The bill clarifies defenses to liability and
5 creates exclusions from liability. The bill also provides rulemaking authority to the department for
6 developing guidance and criteria and involving the public and the liable parties in the decisionmaking
7 process for listing and delisting sites on a CECRA priority list. The department will be required to provide
8 written justification for its decisions to list, delist, and prioritize sites needing remediation. The written
9 criteria for listing and delisting represent the legislature's intent for this rulemaking.

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

12
13 **Section 1.** Section 15-37-117, MCA, is amended to read:

14 "**15-37-117. (Temporary) Disposition of metalliferous mines license taxes.** (1) Metalliferous mines
15 license taxes collected under the provisions of this part must, in accordance with the provisions of
16 15-1-501, be allocated as follows:

17 (a) to the credit of the general fund of the state, 58% of total collections each year;

18 (b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5%
19 of total collections each year;

20 (c) to the abandoned mines state special revenue account provided for in section 19, Chapter 584,
21 Laws of 1995, 8.5% of total collections each year;

22 (d) to the ground water assessment account established in 85-2-905, 2.2% of total collections
23 each year;

24 (e) to the reclamation and development grants program state special revenue account, 4.8% of
25 total collections each year; and

26 (f) 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
30 mine is located, 25% of total collections each year, to be allocated by the county commissioners as

1 follows:

2 (i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225;

3 and

4 (ii) all money not allocated to the account pursuant to subsection (1)(f)(i) to be further allocated as

5 follows:

6 (A) 33 1/3% is allocated to the county for planning or economic development activities;

7 (B) 33 1/3% is allocated to the elementary school districts within the county that have been
8 affected by the development or operation of the metal mine; and

9 (C) 33 1/3% is allocated to the high school districts within the county that have been affected by
10 the development or operation of the metal mine.

11 (2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307
12 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under
13 subsection (1)(f) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part
14 4.

15 (3) The department shall return to the county in which metals are produced the tax collections
16 allocated under subsection (1)(f). The allocation to the county described by subsection (1)(f) is a statutory
17 appropriation pursuant to 17-7-502. (Terminates June 30, ~~1997 sec. 27, Ch. 584, L. 1995 1999~~
18 1997--SEC. 27, CH. 584, L. 1995.)

19 **15-37-117. (Effective July 1, ~~1997 1999~~ 1997) Disposition of metalliferous mines license taxes.**

20 (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with
21 the provisions of 15-1-501, be allocated as follows:

22 (a) to the credit of the general fund of the state, 58% of total collections each year;

23 (b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5%
24 of total collections each year;

25 (c) to the ~~state resource indemnity trust fund, 15.5% of total collections each year~~ orphan share
26 state special revenue account established in [section 27 13], 8.5% of total collections each year;

27 (d) to the ground water assessment account established in 85-2-905, 2.2% of total collections
28 each year;

29 (e) to the reclamation and development grants program state special revenue account, 4.8% of
30 total collections each year; and

1 (f) to the county or counties identified as experiencing fiscal and economic impacts, resulting in
 2 increased employment or local government costs, under an impact plan for a large-scale mineral
 3 development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic
 4 impacts determined in the plan, or, if an impact plan has not been prepared, to the county in which the
 5 mine is located, 25% of total collections each year, to be allocated by the county commissioners as
 6 follows:

7 (i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225;

8 and

9 (ii) all money not allocated to the account pursuant to subsection (1)(f)(i) to be further allocated as
 10 follows:

11 (A) 33 1/3% is allocated to the county for planning or economic development activities;

12 (B) 33 1/3% is allocated to the elementary school districts within the county that have been
 13 affected by the development or operation of the metal mine; and

14 (C) 33 1/3% is allocated to the high school districts within the county that have been affected by
 15 the development or operation of the metal mine.

16 (2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307
 17 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under
 18 subsection (1)(f) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part
 19 4.

20 (3) The department shall return to the county in which metals are produced the tax collections
 21 allocated under subsection (1)(f). The allocation to the county described by subsection (1)(f) is a statutory
 22 appropriation pursuant to 17-7-502."

23
 24 **Section 2.** Section 15-38-106, MCA, is amended to read:

25 **"15-38-106. Payment of tax -- records -- collection of taxes -- refunds.** (1) The tax imposed by
 26 this chapter must be paid by each person to which the tax applies, on or before March 31, on the value
 27 of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to
 28 the department at the time the statement of yield for the preceding calendar year is filed with the
 29 department.

30 (2) The department shall, in accordance with the provisions of 15-1-501(6), deposit the proceeds

1 of the tax in the resource indemnity trust fund of the nonexpendable trust fund type, except that:

2 (a) 14.1% of the proceeds must be deposited in the ground water assessment account established
3 by 85-2-905;

4 (b) 10% of the proceeds must be deposited in the renewable resource grant and loan program state
5 special revenue account established by 85-1-604; and

6 (c) 30% of the proceeds must be deposited in the reclamation and development grants account
7 established by 90-2-1104; and

8 ~~(d) if there are sufficient unallocated funds remaining, at the beginning of each fiscal year, there~~
9 ~~is allocated from the proceeds of the tax up to \$200,000 to be deposited in the orphan share account~~
10 ~~established in [section 27 13].~~

11 (3) Every person to whom the tax applies shall keep records in accordance with 15-38-105, and
12 the records are subject to inspection by the department upon reasonable notice during normal business
13 hours.

14 (4) The department shall examine the statement and compute the taxes to be imposed, and the
15 amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer.
16 If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the
17 department within 30 days after written notice of the amount of deficiency is mailed by the department to
18 the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit
19 against tax liability for subsequent years or refunded if requested by the taxpayer."
20

21 **Section 3.** Section 15-38-202, MCA, is amended to read:

22 "**15-38-202. Investment of resource indemnity trust fund -- expenditure -- minimum balance.** (1)
23 All money paid into the resource indemnity trust fund, including money payable into the fund under the
24 provisions of 15-36-324 and 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 fiscal year, there is allocated from the interest income of the

1 resource indemnity trust fund \$240,000, which is statutorily appropriated, as provided in 17-7-502, from
 2 the renewable resource grant and loan program state special revenue account to support the operations of
 3 the environmental science-water quality instructional programs at Montana state university-northern, to be
 4 used for support costs, for matching funds necessary to attract additional funds to further expand statewide
 5 impact, and for enhancement of the facilities related to the programs.

6 (b) At the beginning of each biennium, there is allocated from the interest income of the resource
 7 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 1996,~~ \$2 million to be deposited into the renewable resource grant and
 13 loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

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

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

18 (c) At the beginning of each fiscal year, there is allocated from the interest income of the resource
 19 indemnity trust fund up to \$200,000 to be deposited in the orphan share account established in [section
 20 ~~27~~ 13].

21 ~~(e)~~(d) The remainder of the interest income is allocated as follows:

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

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

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

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

30 (3) Any formal budget document prepared by the legislature or the executive branch that proposes

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

6
 7 ~~Section 4. Section 75-2-412, MCA, is amended to read:~~

8 ~~"75-2-412. Criminal penalties — injunction preserved. (1) A person is guilty of an offense under~~
 9 ~~this section if that person knowingly:~~

10 ~~(a) violates a provision of this chapter or a rule, order, or permit made or issued under this chapter;~~

11 ~~(b) makes a false material statement, representation, or certification on a form required under this~~
 12 ~~chapter or in a notice or report required by a permit under this chapter; or~~

13 ~~(c) renders inaccurate a monitoring device or method required under this chapter.~~

14 ~~(2) A person guilty of an offense under subsection (1) is subject to a fine of not more than \$10,000~~
 15 ~~per violation or imprisonment for a period not to exceed 2 years, or both. This offense must be classified~~
 16 ~~as a misdemeanor. Each day of each violation constitutes a separate violation.~~

17 ~~(3) Fines collected under this section, except fines collected by an approved local air pollution~~
 18 ~~control program, must be deposited in the orphan share account in the state general special revenue fund.~~

19 ~~(4) Action under this section is not a bar to enforcement of this chapter or of a rule, order, or~~
 20 ~~permit made or issued under it by injunction or other appropriate civil or administrative remedy. The~~
 21 ~~department may institute and maintain in the name of the state any enforcement proceedings."~~

22
 23 ~~Section 5. Section 75-2-413, MCA, is amended to read:~~

24 ~~"75-2-413. Civil penalties — out of state litigants — effect of action — presumption of continuing~~
 25 ~~violation under certain circumstances. (1) A person who violates any provision of this chapter, a rule~~
 26 ~~adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil~~
 27 ~~penalty not to exceed \$10,000 per violation. Each day of each violation constitutes a separate violation.~~
 28 ~~The department may institute and maintain in the name of the state any enforcement proceedings under~~
 29 ~~this section. Upon request of the department, the attorney general or the county attorney of the county~~
 30 ~~of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty~~

1 is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the
2 operating permit program required by Subchapter V of the federal Clean Air Act.

3 ~~(2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order,~~
4 ~~or permit made or issued under this chapter by injunction or other appropriate civil remedies.~~

5 ~~(b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or~~
6 ~~issued under this chapter may be brought in the district court of any county where a violation occurs or~~
7 ~~is threatened if the defendant cannot be located in Montana.~~

8 ~~(3) If the department has notified a person operating a commercial hazardous waste incinerator of~~
9 ~~a violation and if the department makes a prima facie showing that the conduct or events giving rise to the~~
10 ~~violations are likely to have continued or recurred past the date of notice, the days of violation are~~
11 ~~presumed to include the date of the notice and every day after the notice until the person establishes that~~
12 ~~continuous compliance has been achieved. This presumption may be overcome to the extent that the~~
13 ~~person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that~~
14 ~~there were intervening days when a violation did not occur, that the violation was not continuing in nature,~~
15 ~~or that the telemetering device was compromised or otherwise tampered with.~~

16 ~~(4) Money collected under this section must be deposited in the orphan share account in the state~~
17 ~~general special revenue fund. This subsection does not apply to money collected by an approved local air~~
18 ~~pollution control program."~~

19

20 ~~Section 6. Section 75-2-427, MCA, is amended to read:~~

21 ~~"75-2-427. Deposit of noncompliance penalty fees. All noncompliance penalties collected by the~~
22 ~~department pursuant to 75-2-421 through 75-2-429 shall must be deposited in the state special revenue~~
23 ~~fund until a final determination and adjustment have been made as provided in 75-2-424 and amounts have~~
24 ~~been deducted by the department for costs attributable to implementation of 75-2-421 through 75-2-429~~
25 ~~and for contract costs incurred pursuant to 75-2-422(3), if any. After a final determination has been made~~
26 ~~and additional payments or refunds have been made, the penalty money remaining shall must be transferred~~
27 ~~to the orphan share account in the state general special revenue fund."~~

28

29 ~~Section 7. Section 75-3-407, MCA, is amended to read:~~

30 ~~"75-3-407. Civil penalties — deposit in general fund — injunctions not barred. (1) A person who~~

1 ~~violates this chapter or a rule or order issued under this chapter is subject to a civil penalty not to exceed~~
 2 ~~\$5,000 for each violation. For purposes of this section, each day of a violation is a separate violation.~~

3 ~~(2) The department shall initiate civil proceedings in district court to recover a penalty under~~
 4 ~~subsection (1).~~

5 ~~(3) Civil penalties collected under this section must be deposited in the general orphan share~~
 6 ~~account in the state special revenue fund.~~

7 ~~(4) An action under this section does not bar enforcement of this chapter or of rules or orders~~
 8 ~~issued under it by injunction or other appropriate remedy."~~

9
 10 ~~**Section 8.** Section 75-5-634, MCA, is amended to read:~~

11 ~~"**75-5-634. Disposition of fines and civil penalties.** Fines and civil penalties collected under this~~
 12 ~~chapter, except those collected in a justice's court, must be deposited into the orphan share account in the~~
 13 ~~state general special revenue fund."~~

14
 15 ~~**Section 9.** Section 75-6-109, MCA, is amended to read:~~

16 ~~"**75-6-109. Administrative enforcement.** (1) If the department believes that a violation of this part,~~
 17 ~~a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve~~
 18 ~~written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice~~
 19 ~~must specify the provision of this part, the rule, or the condition of approval alleged to have been violated~~
 20 ~~and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective~~
 21 ~~action within a reasonable period of time. The time period must be stated in the order. Service by mail is~~
 22 ~~complete on the date of filing.~~

23 ~~(2) If the alleged violator does not request a hearing before the board within 30 days of the date~~
 24 ~~of service, the order becomes final. Failure to comply with a final order may subject the violator to an action~~
 25 ~~commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.~~

26 ~~(3) If the alleged violator requests a hearing before the board within 30 days of the date of service,~~
 27 ~~the board shall schedule a hearing. After the hearing is held, the board may:~~

28 ~~(a) affirm or modify the department's order issued under subsection (1) if the board finds that a~~
 29 ~~violation has occurred; or~~

30 ~~(b) rescind the department's order if the board finds that a violation has not occurred.~~

1 ~~(4) An order issued by the department or the board may set a date by which the violation must~~
2 ~~cease and set a time limit for action to correct a violation.~~

3 ~~(5) As an alternative to issuing an order pursuant to subsection (1), the department may:~~

4 ~~(a) require the alleged violator to appear before the board for a hearing, at a time and place~~
5 ~~specified in the notice, to answer the charges complained of; or~~

6 ~~(b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.~~

7 ~~(6) An action initiated under this part may include an administrative penalty not to exceed \$500~~
8 ~~for each day of violation. Administrative penalties collected under this section must be deposited in the~~
9 ~~orphan share account in the state general special revenue fund.~~

10 ~~(7) In determining the amount of penalty to be assessed to a person, the department or the board,~~
11 ~~as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under~~
12 ~~75-6-103(2)(j).~~

13 ~~(8) The contested case provisions of the Montana Administrative Procedure Act, provided for in~~
14 ~~Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."~~

15
16 **Section 10.** ~~Section 75-6-114, MCA, is amended to read:~~

17 ~~"75-6-114. Civil penalty. (1) In an action initiated by the department to collect civil penalties~~
18 ~~against a person who is found to have violated this part or a rule, order, or condition of approval issued~~
19 ~~under this part, the person is subject to a civil penalty not to exceed \$10,000.~~

20 ~~(2) Each day of violation constitutes a separate violation.~~

21 ~~(3) Action under this section does not bar enforcement of this part or a rule, order, or condition~~
22 ~~of approval issued under this part by injunction or other appropriate remedy.~~

23 ~~(4) When seeking penalties under this section, the department shall take into account the following~~
24 ~~factors in determining an appropriate settlement or judgment, as appropriate:~~

25 ~~(a) the nature, circumstances, extent, and gravity of the violation; and~~

26 ~~(b) with respect to the violator, the violator's ability to pay, prior history of violations, the economic~~
27 ~~benefit or savings, if any, to the violator resulting from the violator's action, the amounts voluntarily~~
28 ~~expended by the violator to address or mitigate the violation or impacts of the violation to waters of the~~
29 ~~state, and other matters that justice may require.~~

30 ~~(5) Civil penalties collected pursuant to this section must be deposited in the orphan share account~~

1 ~~in the state general special revenue fund."~~

2

3 ~~Section 11. Section 75-10-417, MCA, is amended to read:~~

4 ~~"75-10-417. Civil penalties. (1) Any person who violates any provision of this part, a rule adopted~~
 5 ~~under this part, an order of the department or the board, or a permit is subject to a civil penalty not to~~
 6 ~~exceed \$10,000 per violation. Each day of violation constitutes a separate violation.~~

7 ~~(2) The department may institute and maintain in the name of the state any enforcement~~
 8 ~~proceedings under this section. Upon request of the department, the attorney general or the county~~
 9 ~~attorney of the county of violation shall petition the district court to impose, assess, and recover the civil~~
 10 ~~penalty.~~

11 ~~(3) Action under this section does not bar:~~

12 ~~(a) enforcement of this part, rules adopted under this part, orders of the department or the board,~~
 13 ~~or permits by injunction or other appropriate remedy; or~~

14 ~~(b) action under 75-10-418.~~

15 ~~(4) Money collected under this section shall must be deposited in the orphan share account in the~~
 16 ~~state general special revenue fund."~~

17

18 ~~Section 12. Section 75-10-418, MCA, is amended to read:~~

19 ~~"75-10-418. Criminal penalties. (1) A person is guilty of an offense under this section if the person~~
 20 ~~knowingly:~~

21 ~~(a) transports any hazardous waste to an unpermitted facility;~~

22 ~~(b) treats, stores, or disposes of hazardous waste subject to regulation under this part or the rules~~
 23 ~~adopted under this part without a permit or contrary to a material permit condition;~~

24 ~~(c) omits material information or makes any false statement or representation in any application,~~
 25 ~~label, manifest, record, report, permit, or other document filed, maintained, or used for compliance with~~
 26 ~~provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste;~~

27 ~~(d) generates, stores, treats, transports, disposes of, or otherwise handles any used oil or~~
 28 ~~hazardous waste regulated under this part or rules adopted under this part and knowingly destroys, alters,~~
 29 ~~conceals, or fails to file any record, application, manifest, report, or other document required to be~~
 30 ~~maintained or filed in compliance with the provisions of this part, an order issued under this part, or rules~~

1 ~~adopted under this part; or~~

2 ~~(e) transports or causes to be transported without a manifest any hazardous waste required to be~~
3 ~~accompanied by a manifest.~~

4 ~~(2) A person who is guilty of an offense under subsection (1) is subject to a fine of not more than~~
5 ~~\$25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation~~
6 ~~constitutes a separate violation.~~

7 ~~(3) A person who knowingly violates any requirement of this part or any rule or material permit~~
8 ~~condition issued pursuant to this part, (except those violations specified in subsection (1)), regarding any~~
9 ~~hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to \$5,000~~
10 ~~per violation or subject to imprisonment not to exceed 6 months, or both. Each day of violation constitutes~~
11 ~~a separate violation.~~

12 ~~(4) Upon a second conviction for a violation of this section, the maximum penalties specified in this~~
13 ~~section must be doubled.~~

14 ~~(5) Action under this section does not bar enforcement of this part, rules made under this part,~~
15 ~~orders of the department or the board, or permits by injunction or other appropriate remedy.~~

16 ~~(6) Money collected under this section, except money collected in a justice's court, must be~~
17 ~~deposited in the orphan share account in the state general special revenue fund."~~

18

19 **Section 13.** ~~Section 75-10-423, MCA, is amended to read:~~

20 ~~"75-10-423. Administrative penalties for underground storage tank violations — appeals — venue~~
21 ~~for hearings. (1) A person who violates any of the underground storage tank provisions of this chapter or~~
22 ~~any underground storage tank rules promulgated under the authority of this chapter may be assessed and~~
23 ~~ordered by the department to pay an administrative penalty not to exceed \$500 per violation. This limitation~~
24 ~~on administrative penalties applies only to penalties assessed under this section. Each occurrence of the~~
25 ~~violation and each day it remains uncorrected constitutes a separate violation. The department may suspend~~
26 ~~a portion of the administrative penalty assessed under this section if the condition that caused the~~
27 ~~assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty~~
28 ~~under this section may be made in conjunction with any order or other administrative action authorized by~~
29 ~~Title 75, chapter 11, or by this chapter.~~

30 ~~(2) When the department assesses an administrative penalty under this section, it must have~~

1 ~~written notice served personally or by certified mail on the alleged violator or the violator's agent. For~~
2 ~~purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:~~

3 ~~(a) the provision alleged to be violated;~~

4 ~~(b) the facts alleged to constitute the violation;~~

5 ~~(c) the amount of the administrative penalty assessed under this section;~~

6 ~~(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused~~
7 ~~the assessment of the penalty;~~

8 ~~(e) the nature of any corrective action the department requires, whether or not a portion of the~~
9 ~~penalty is to be suspended;~~

10 ~~(f) as applicable, the time within which the corrective action is to be taken and the time within~~
11 ~~which the administrative penalty is to be paid;~~

12 ~~(g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and~~
13 ~~nature of any hearing; and~~

14 ~~(h) that a formal proceeding may be waived.~~

15 ~~(3) The department shall provide each person assessed a penalty under this section an opportunity~~
16 ~~for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case~~
17 ~~provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply~~
18 ~~to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis~~
19 ~~and Clark County or the county where the alleged violation occurred. This subsection does not apply until~~
20 ~~the department gives written notice, served personally or by certified mail, to the alleged violator or the~~
21 ~~violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt. The~~
22 ~~notice must state:~~

23 ~~(a) the provision allegedly violated;~~

24 ~~(b) the facts that constitute the alleged violation;~~

25 ~~(c) the specific nature of any corrective action the department requires, estimated costs of~~
26 ~~compliance with the action, and where to receive help to correct the alleged violation; and~~

27 ~~(d) a timetable that a reasonable person would consider appropriate for compliance with the alleged~~
28 ~~violations.~~

29 ~~(4) The department shall publish a schedule of maximum and minimum penalties for specific~~
30 ~~violations. In determining appropriate penalties for violations, the department shall consider the gravity of~~

1 the violations and the potential for significant harm to public health or the environment. In determining the
 2 appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the
 3 penalty assessment, the department shall consider the cooperation and the degree of care exercised by the
 4 person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm
 5 resulted to the public health or the environment from the violation.

6 ~~(5) If the department is unable to collect an administrative penalty assessed under this section or~~
 7 ~~if a person fails to pay all or any portion of an administrative penalty assessed under this section, the~~
 8 ~~department may take action in district court to recover the penalty amount and any additional amounts~~
 9 ~~assessed or sought under Title 75, chapter 11, or this chapter.~~

10 ~~(6) Action under this section does not bar action under Title 75, chapter 11, or this chapter, or any~~
 11 ~~other remedy available to the department for violations of underground storage tank laws or rules~~
 12 ~~promulgated under those laws.~~

13 ~~(7) Administrative penalties collected under this section must be deposited in the orphan share~~
 14 ~~account in the state general special revenue fund."~~

15
 16 **Section 14.** ~~Section 75-10-424, MCA, is amended to read:~~

17 ~~"75-10-424. Administrative penalty. (1) The department may assess a person who violates a used~~
 18 ~~oil or hazardous waste provision of this part, or a used oil or hazardous waste rule adopted under this part,~~
 19 ~~an administrative penalty, not to exceed \$10,000 per violation. Each day of violation constitutes a separate~~
 20 ~~violation, but the maximum penalty may not exceed \$100,000 for any related series of violations.~~
 21 ~~Assessment of an administrative penalty under this section must be made in conjunction with an order or~~
 22 ~~administrative action authorized by this chapter.~~

23 ~~(2) An administrative penalty may not be assessed under this section unless the alleged violator~~
 24 ~~is given notice and opportunity for a hearing before the board pursuant to Title 2, chapter 4, part 6.~~

25 ~~(3) In determining the appropriate amount of an administrative penalty, the department shall~~
 26 ~~consider:~~

27 ~~(a) the gravity and the number of violations;~~

28 ~~(b) the degree of care exercised by the alleged violator;~~

29 ~~(c) whether significant harm resulted to public health or the environment; and~~

30 ~~(d) the degree of potential significant harm to public health or the environment.~~

1 ~~(4) If the department is unable to collect the administrative penalty or if a person fails to pay all~~
2 ~~or any portion of the administrative penalty as determined by the department, the department may seek~~
3 ~~to recover the amount in an appropriate district court.~~

4 ~~(5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other~~
5 ~~appropriate remedy.~~

6 ~~(6) Administrative penalties collected under this section must be deposited in the orphan share~~
7 ~~account in the state general special revenue fund."~~

8
9 **Section 15.** ~~Section 75-10-542, MCA, is amended to read:~~

10 ~~"75-10-542. Penalties. (1) A person who willfully violates this part, except 75-10-520, is guilty~~
11 ~~of a misdemeanor and upon conviction shall be fined not to exceed \$250, imprisoned in the county jail for~~
12 ~~a term not to exceed 30 days, or both.~~

13 ~~(2) A person who violates this part, except 75-10-520, a rule of the department, or an order issued~~
14 ~~as provided in this part shall be is subject to a civil penalty of not more than \$50. Each day upon which~~
15 ~~a violation of this part or a rule or order occurs is a separate violation.~~

16 ~~(3) Civil penalties collected under this section must be deposited in the orphan share account in the~~
17 ~~state special revenue fund."~~

18
19 **Section 4.** Section 75-10-701, MCA, is amended to read:

20 **"75-10-701. Definitions.** As used in this part, unless the context requires otherwise, the following
21 definitions apply:

- 22 (1) "Department" means the department of environmental quality provided for in 2-15-3501.
- 23 (2) "Director" means the director of the department.
- 24 (3) "Environment" means any surface water, ground water, drinking water supply, land surface
25 or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of
26 Montana.
- 27 (4) (a) "Facility" means:
28 (i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer
29 or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container,
30 motor vehicle, rolling stock, or aircraft; or

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

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

4 (5) "Fiduciary" means a trustee, executor, administrator, personal representative, custodian,
5 conservator, guardian, or receiver acting or holding property for the exclusive benefit of another person.

6 The term does not include:

7 (a) a person who has previously owned or operated the property in a nonfiduciary capacity; or

8 (b) a person acting as fiduciary with respect to a trust or other fiduciary estate that has no
9 objectively reasonable or substantial purpose apart from avoidance of or limitation of liability under this part.

10 For the purposes of 75-10-715~~(7)~~(9), the term does not include the state, a state agency, or a political
11 subdivision of the state acting as trustee of natural resources within the state of Montana.

12 (6) "Foreclosure" means acquisition of title to property through foreclosure, purchase at foreclosure
13 sale, assignment or acquisition of title in lieu of foreclosure, repossession in the case of a lease financing
14 transaction, or acquisition of a right to title or other agreement in full or partial settlement of a loan
15 obligation.

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

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

20 (a) a substance that is defined as a hazardous substance by section 101(14) of the federal
21 Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C.
22 9601(14), as amended;

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

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

28 (d) any petroleum product.

29 (9) "Household" means single and multiple residences, hotels and motels, bunkhouses, ranger
30 stations, crew quarters, campgrounds, picnic grounds, day-use recreational areas, or similar structures or

1 areas.

2 (10) "Household refuse" means garbage, trash, and sanitary wastes in septic tanks that are derived
3 from a household.

4 ~~(9)~~(11) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water,
5 drinking water supplies, and any other resources within the state of Montana owned, managed, held in
6 trust, or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the
7 state.

8 (12) "Orphan share" means the percentage share of remedial action costs for a facility that is
9 attributable, under the procedures in [sections ~~26~~ 12 through ~~36~~ 22], to identified but bankrupt or defunct
10 persons who are not affiliated with any viable person.

11 (13) "Orphan share fund" means the fund for the orphan share account established in [section ~~27~~
12 13].

13 ~~(10)~~(14) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or
14 exercising control over the operation of a facility.

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

26 ~~(11)~~(15) "Person" means an individual, trust, firm, joint-stock company, joint venture, consortium,
27 commercial entity, partnership, association, corporation, commission, state or state agency, political
28 subdivision of the state, interstate body, or the federal government, including a federal agency.

29 ~~(12)~~(16) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities
30 subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any

1 other ~~petroleum-related~~ petroleum related product or waste or fraction of the product or waste that is liquid
2 at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch
3 absolute).

4 ~~(13)~~(17) "Reasonably anticipated future uses" means likely future land or resource uses that take
5 into consideration:

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

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

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

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

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

18 ~~(15)~~(19) "Remedial action" includes all notification, investigation, administration, monitoring,
19 cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action,
20 health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or
21 threatened release.

22 ~~(16)~~(20) "Remedial action contract" means a written contract or agreement entered into by a
23 remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or
24 request issued by the department, the United States, or any federal agency, to provide a remedial action
25 with respect to a release or threatened release of a hazardous or deleterious substance.

26 ~~(17)~~(21) "Remedial action contractor" means:

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

28 (b) any person who is retained or hired by a person described in subsection ~~(17)(a)~~ (21)(a) to
29 provide services relating to a remedial action.

30 ~~(18)~~(22) "Remedial action costs" means reasonable costs that are attributable to or associated with

1 a remedial action at a facility, including but not limited to the costs of administration, investigation, legal
2 or enforcement activities, contracts, feasibility studies, or health studies."

3
4 **Section 5.** Section 75-10-702, MCA, is amended to read:

5 **"75-10-702. Rulemaking authority.** (1) The department is authorized to adopt rules for the
6 implementation of this part, including but not limited to:

7 (a) rules for listing and delisting facilities on a priority list, required by 75-10-704, based on the
8 following criteria:

9 (i) a facility eligible for listing must have a confirmed release or substantial threat of a release of
10 a hazardous or deleterious substance that may pose an imminent and substantial threat to public health,
11 safety, or welfare or the environment and the department shall provide a written description of the nature
12 and severity of the threat;

13 (ii) if remedial actions to address the hazardous or deleterious substances are required at the facility
14 by another state program, the department shall explain, in writing, its rationale for listing the facility;

15 (iii) listing and delisting must be done through a formal process that provides for public
16 participation, including participation of the affected or potentially liable persons in the decisionmaking
17 process, by conducting GIVING PUBLIC NOTICE AND PROVIDING OPPORTUNITY FOR at least one public
18 meeting in the community most likely to be threatened by the facility that is proposed for listing or delisting;
19 and

20 (iv) a facility must be delisted when another state program assumes jurisdiction or when further
21 remedial actions are not necessary;

22 (b) rules for establishing and implementing a system for prioritizing facilities, including categories
23 for maximum and high-priority facilities, as required by 75-10-704, and for remedial action based on
24 potential effects on human health and the environment.

25 (2) The rulemaking authority granted in subsection (1) may not invalidate the existing priorities list.
26 Rules promulgated pursuant to subsection (1) must provide for the reevaluation of facilities on the existing
27 priorities list. A decision by the department to list, delist, or establish a priority for a facility must be made
28 in writing."

29
30 **Section 6.** Section 75-10-704, MCA, is amended to read:

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

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

7 (3) The department shall:

8 (a) except as provided in subsection (7), establish and implement a system, including the
9 preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human
10 health and the environment; and

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

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

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

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

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

20 (d) funds received from the interest income of the resource indemnity trust fund pursuant to
21 15-38-202;

22 (e) funds received from the interest income of the fund; and

23 (f) funds received from settlements pursuant to 75-10-719(7).

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

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

30 (7) (a) There is established a state special revenue account for all funds donated or granted from

1 private parties to remediate a specific release at a specific facility. There must be deposited into the account
2 the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of
3 contributing to this account.

4 (b) Funds donated or granted for a specific project pursuant to this subsection (7) must be
5 accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by
6 the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds
7 are donated.

8 (c) If the balance of the fund created in this subsection (7), as determined by the department
9 pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the
10 date of the initial contribution, all donated or granted funds, including any interest on those donated or
11 granted funds, must be returned to the grantor.

12 (d) If the balance for a specific project is determined by the department to be sufficient to
13 remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high
14 priority for remedial action, using the funds donated under this subsection (7).

15 (e) This subsection (7) is not intended to interfere with or to diminish the authority or actions of
16 the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons,
17 to obtain the participation and financial contribution of liable persons for the remedial action, to achieve
18 remedial action, and to recover costs and damages incurred by the state. Subsections (7) and (8) do not
19 pertain to facilities where the department has initiated actions under this part.

20 (f) The department shall expend the funds in a manner that maximizes the application of the funds
21 to physically remediating the specific release.

22 (8) (a) A person may donate in-kind services to remediate a specific release at a specific facility
23 pursuant to subsection (7). A person that donates in-kind services is not liable under 75-10-715 solely as
24 a result of the contribution of in-kind services.

25 (b) A person who donates in-kind services with respect to remediating a specific release at a
26 specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other
27 liability that results from the release or threatened release, including but not limited to claims for
28 indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or
29 damage to property, or economic loss.

30 (c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release

1 that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or
2 that constitutes intentional misconduct.

3 (d) This subsection does not minimize the liability, lessen the standard of liability, or otherwise
4 shield from liability a potentially liable person under 75-10-715 or section 107 of CERCLA for costs or
5 damages incurred as a result of a release or threatened release of a hazardous or deleterious substance.

6 (e) Any donated in-kind services that are employed as part of a remedial action pursuant to this
7 subsection (8) must be approved by the department as appropriate remedial action."
8

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

10 **"75-10-715. Liability -- reimbursement and penalties -- proceedings -- defenses and exclusions.**

11 (1) Except as provided in [sections 26 12 through 36 22], notwithstanding ~~Notwithstanding~~ any other
12 provision of law, and subject only to the defenses set forth in subsection (5) and the exclusions set forth
13 in subsection (7), the following persons are jointly and severally liable for a release or threatened release
14 of a hazardous or deleterious substance from a facility:

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

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

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

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

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

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

27 (b) damages for injury to, destruction of, or loss of natural resources caused by the release or
28 threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim
29 for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were
30 specifically identified as an irreversible and irretrievable commitment of natural resources in an approved

1 final state or federal environmental impact statement or other comparable approved final environmental
2 analysis for a project or facility that was the subject of a governmental permit or license and the project
3 or facility was being operated within the terms of its permit or license.

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

8 (4) The department may initiate civil proceedings in district court to recover remedial action costs,
9 natural resource damages, or penalties under subsections (1), (2), and (3). Proceedings to recover costs
10 and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs,
11 damages, or penalties lies in the county where the release occurred or where the person liable under
12 subsection (1) resides or has its principal place of business or in the district court of the first judicial district.

13 (5) A person has a defense and is not liable under subsections (1), (2), and (3) if the person can
14 establish by a preponderance of the evidence that:

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

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

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

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

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

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

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

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

30 (e) the release or threatened release was from a facility for which a permit had been issued by the

1 department, the hazardous or deleterious substance was specifically identified in the permit, and the release
2 was within the limits allowed in the permit;

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

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

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

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

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

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

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

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

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

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

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

1 (iv) the obviousness of the presence or the likely presence of contamination on the property; and
 2 (v) the ability to detect the contamination by appropriate inspection.

3 (d) (i) ~~Nothing in subsections~~ Subsections (5)(b) and (5)(c) or in this subsection (6) may not
 4 diminish the liability of a previous owner or operator of the facility who would otherwise be liable under this
 5 part.

6 (ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge
 7 of the release or threatened release of a hazardous or deleterious substance at the facility when the person
 8 owned the real property and then subsequently transferred ownership of the property to another person
 9 without disclosing the knowledge, the previous owner is liable under subsections (1), (2), and (3) and ~~is~~
 10 a defense under subsection (5)(b) or (5)(c) is not available to that person.

11 (e) ~~Nothing in this subsection~~ Subsection (6) affects does not affect the liability under this part of
 12 a person who, by any act or omission, caused or contributed to the release or threatened release of a
 13 hazardous or deleterious substance that is the subject of the action relating to the facility.

14 (7) A person has an exclusion and is not liable under this section if:

15 (a) the person generated or disposed of only household refuse, unless the person knew or
 16 reasonably should have known that the hazardous or deleterious substance was present in the refuse;

17 (b) the person owns or operates real property where hazardous or deleterious substances have
 18 come to be located solely as a result of subsurface migration in an aquifer from a source or sources outside
 19 the person's property, provided that the following conditions are met:

20 (i) the owner or operator did not cause, contribute to, or exacerbate the release or threatened
 21 release of any hazardous or deleterious substances through any act or omission. The failure to take
 22 affirmative steps to mitigate or address contamination that has migrated from a source outside the owner's
 23 or operator's property does not, in the absence of exceptional circumstances, constitute an omission by
 24 the owner or operator.

25 (ii) the person who caused, contributed to, or exacerbated the release or threatened release of any
 26 hazardous or deleterious substance is not and was not an agent or employee of the owner or operator and
 27 is not or was not in a direct or indirect contractual relationship with the owner or operator, unless the
 28 department provides a written determination that an existing or proposed contractual relationship is an
 29 insufficient basis to establish liability under this section;

30 (iii) there is no other basis of liability under subsection (1) for the owner or operator for the release

1 or threatened release of a hazardous or deleterious substance; and

2 (iv) the owner or operator cooperates with the department and all persons conducting
 3 department-approved remedial actions on the property, including granting access and complying with and
 4 implementing all required institutional controls;

5 (c) the person owns or occupies real property of 20 acres or less for residential purposes, provided
 6 that the following conditions are met:

7 (i) the person did not cause, contribute to, or exacerbate the release or threatened release of any
 8 hazardous or deleterious substance through any act or omission;

9 (ii) the person uses or allows the use of the real property for residential purposes. This exclusion
 10 does not apply to any person who acquires or develops real property for commercial use or any use other
 11 than residential use.

12 (iii) at the time the person purchased or occupied the real property, there were no visible indications
 13 of contamination on the surface of the real property;

14 (iv) the person cooperates with the department and all persons conducting department-approved
 15 remedial actions on the property, including granting access and complying with and implementing all
 16 required institutional controls; and

17 (v) there is no other basis of liability under subsection (1) for the owner or occupier for the release
 18 or threatened release of a hazardous or deleterious substance.

19 (8) A person is liable under this section if the department provides substantial credible evidence
 20 that the person fails to satisfy any element of each exclusion in subsections (7)(a) through (7)(c).

21 ~~(7)(9)~~ The liability of a fiduciary under the provisions of this part for a release or a threatened
 22 release of a hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed
 23 the assets held in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary
 24 is liable under this part independent of the person's ownership or actions taken in a fiduciary capacity.

25 ~~(8)(10)~~ A person who holds indicia of ownership in a facility primarily to protect a security interest
 26 is not liable under subsections (1)(a) and (1)(b) for having participated in the management of a facility
 27 within the meaning of 75-10-701~~(10)(b)~~(14)(b) because of any one or any combination of the following:

28 (a) holding an interest in real or personal property when the interest is being held as security for
 29 payment or performance of an obligation, including but not limited to a mortgage, deed of trust, lien,
 30 security interest, assignment, pledge, or other right or encumbrance against real or personal property that

- 1 is furnished by the owner to ensure repayment of a financial obligation;
- 2 (b) requiring or conducting financial or environmental assessments of a facility or a portion of a
3 facility, making financing conditional upon environmental compliance, or providing environmental
4 information or reports;
- 5 (c) monitoring the operations conducted at a facility or providing access to a facility to the
6 department or its agents or to remedial action contractors;
- 7 (d) having the mere capacity or unexercised right to influence a facility's management of hazardous
8 or deleterious substances;
- 9 (e) giving advice, information, guidance, or direction concerning the administrative and financial
10 aspects, as opposed to day-to-day operational aspects, of a borrower's operations;
- 11 (f) providing general information concerning federal, state, or local laws governing the
12 transportation, storage, treatment, and disposal of hazardous or deleterious substances and concerning the
13 hiring of remedial action contractors;
- 14 (g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;
- 15 (h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or
16 undertaking other activities to protect or preserve the value of the security interest in a facility;
- 17 (i) extending or denying credit to a person owning or in lawful possession of a facility;
- 18 (j) in an emergency, requiring or undertaking activities to prevent exposure of persons to hazardous
19 or deleterious substances or to contain a release;
- 20 (k) requiring or conducting remedial action in response to a release or threatened release if prior
21 notice is given to the department and the department approves of the remedial action; or
- 22 (l) taking title to a facility by foreclosure, provided that the holder of indicia of ownership, from the
23 time the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing
24 transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest
25 itself of the property in a reasonably expeditious manner, using whatever commercially reasonable means
26 are relevant or appropriate with respect to the facility and taking all facts and circumstances into
27 consideration and provided that the holder does not:
- 28 (i) outbid or refuse a bid for fair consideration for the property or outbid or refuse a bid that would
29 effectively compensate the holder for the amount secured by the facility;
- 30 (ii) worsen the contamination at the facility;

1 (iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting
2 hazardous or deleterious substances; or

3 (iv) engage in conduct described in subsection ~~(9)~~ (11).

4 ~~(9)~~(11) The protection from liability provided in subsections ~~(7)~~ (9) and ~~(8)~~ (10) is not available to
5 a fiduciary or to a person holding indicia of ownership primarily to protect a security interest if the fiduciary
6 or person through affirmative conduct:

7 (a) causes or contributes to a release of hazardous or deleterious substances from the facility;

8 (b) allows others to cause or contribute to a release of hazardous or deleterious substances; or

9 (c) in the case of a person holding indicia of ownership primarily to protect a security interest,
10 actually participates in the management of a facility by:

11 (i) exercising decisionmaking control over environmental compliance; or

12 (ii) exercising control at a level comparable to that of a manager of the enterprise with responsibility
13 for day-to-day decisionmaking either with respect to environmental compliance or substantially all of the
14 operational, as opposed to financial or administrative, aspects of the facility."

15
16 **Section 8.** Section 75-10-719, MCA, is amended to read:

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

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

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

29 (4) Whenever practicable and in the public interest, as determined by the director of the
30 department, the department may, as promptly as possible, reach a final settlement with a potentially liable

1 ~~or liable person liable~~ under 75-10-715 in an administrative or civil action under 75-10-711 if the settlement
 2 involves only a minor portion of the ~~response~~ remedial action costs at the facility concerned and, in the
 3 judgment of the department, taking into account the toxicity of the hazardous or deleterious substances
 4 involved and the person's contribution of hazardous or deleterious substances in relation to the total volume
 5 of hazardous or deleterious substances at the facility, the conditions in ~~either~~ any of the following
 6 ~~subsection subsections (4)(a) or (4)(b) through (4)(d)~~ are met:

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

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

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

11 the person is one whose liability is based solely on 75-10-715(1)(c) or (1)(d) and who presents substantial
 12 credible evidence that the person contributed less than 0.002% of the total volume or less than 100 gallons
 13 or 200 pounds of materials containing hazardous or deleterious substances at a facility that received
 14 hazardous or deleterious substances from multiple contributors. The department may not require the
 15 payment of remedial action costs from this person.

16 (b) (i) the person is one whose liability is based solely on 75-10-715(1)(c) or (1)(d) and who
 17 presents substantial credible evidence that the person arranged for disposal or treatment of less than 5%
 18 of the total quantity of solid waste or hazardous or deleterious substances disposed of at a facility that
 19 received solid waste or hazardous or deleterious substances from multiple contributors.

20 (ii) For the purposes of subsection (5)(a) and this subsection (4)(b) only, the term "solid waste"
 21 means:

22 (A) all putrescible and nonputrescible wastes, including garbage, rubbish, refuse, or ashes;

23 (B) sludge from sewage treatment plants, water supply plants, or air pollution control facilities;

24 (C) construction and demolition wastes;

25 (D) dead animals, including offal;

26 (E) discarded home and industrial appliances; and

27 (F) wood products or wood byproducts and inert materials.

28 ~~(b)(c)~~ (i) The the person:

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

30 (B) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any

1 hazardous or deleterious substance at the facility; and

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

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

7 (d) the person presents substantial credible evidence that the person has a defense under
8 75-10-715(5).

9 (5) When reaching a settlement under subsection (4)(b), (4)(c), or (4)(d), the department may
10 require the payment of remedial action costs not to exceed two times the person's reasonably projected
11 liability for remedial action costs as determined by the department. Except as provided in subsection (6),
12 the settlement must contain a reservation of rights clause in the event that the department obtains new
13 information showing that the settling person no longer qualifies for a settlement because:

14 (a) the solid waste or hazardous or deleterious substances contributed by the person was of a
15 greater volume or toxicity than originally estimated; or

16 (b) the settlement was reached under subsection (4)(c) and, after settlement, the department finds
17 that the person had actual or constructive knowledge that the property was used for the generation,
18 transportation, storage, treatment, or disposal of any hazardous or deleterious substance.

19 (6) A person who agrees to a liability settlement may avoid the reservation of rights clause under
20 subsection (5) by paying remedial action costs in the amount of four times the person's reasonably
21 projected liability for remedial action costs as determined by the department.

22 (7) All funds received as a result of settlements under this section must be paid in the following
23 order of priority:

24 (a) to the department as reimbursement for its remedial action costs at the facility;

25 (b) to liable persons as reimbursement for remedial action costs at the facility. In the event of an
26 allocation under [sections ~~26~~ 12 through ~~36~~ 22], the reimbursement must be in proportion to each liable
27 person's share of liability as determined under the provisions of [section ~~34~~ 20 or ~~35~~ 21];

28 (c) the remainder, if any;

29 (i) to the orphan share fund provided in [section ~~27~~ 13] if the facility went through the allocation
30 process provided in [sections ~~26~~ 12 through ~~36~~ 22]; or

1 (ii) to the fund provided in 75-10-704 if the facility did not undergo the allocation process provided
 2 in [sections ~~26~~ 12 through ~~36~~ 22].

3 (8) Any person who enters into a settlement under this section may not be subject to or assigned
 4 a share in the allocation process provided in [sections ~~26~~ 12 through ~~36~~ 22].

5 ~~(5)~~(9) As part of an administrative or judicially approved settlement agreement, the department may
 6 require the liable person to provide financial assurance, in an amount determined by the department, to
 7 ensure the long-term operation and maintenance of the remedial action site. The liable person shall provide
 8 the financial assurance by any one method or combination of methods satisfactory to the department,
 9 including but not limited to insurance, guarantee, performance or other surety bond, letter of credit,
 10 qualification as a self-insurer, or other demonstration of financial capability."

11
 12 **Section 9.** Section 75-10-720, MCA, is amended to read:

13 "**75-10-720. Condemnation -- creation of state lien.** (1) Whenever the department determines that
 14 property upon which a release or threatened release of a hazardous or deleterious substance has occurred
 15 may present an imminent and substantial endangerment to the public health, safety, or welfare or the
 16 environment, the department may condemn the property for public use to mitigate the threat. The taking
 17 of the property must be conducted in accordance with the procedure set forth in Title 70, chapter 30, parts
 18 1 through 3.

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

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

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

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

3 (6) If the department expends money from the fund for orphan share remedial action costs at a
4 facility or for a facility at which a reimbursed orphan share exists, the state has a lien upon the facility for
5 the unrecovered costs. The lien:

6 (a) may not exceed the increase in fair market value of the property attributable to the unfunded
7 portion of the remedial action at the time of a subsequent sale or other disposition of the property;

8 (b) arises at the time costs are first incurred by the department with respect to a remedial action
9 at the facility;

10 (c) must be filed according to subsection (3); and

11 (d) continues until the earlier of satisfaction of the lien or recovery of all remedial action costs
12 incurred at the facility.

13 (7) Payment of any liens under this section must be deposited in one of the two accounts from
14 which the remedial action costs originated, including the fund established in 75-10-704 or the orphan share
15 fund established in [section 27 13]."

16
17 **Section 10.** Section 75-10-724, MCA, is amended to read:

18 "**75-10-724. ~~Liability apportionment and contribution~~ Private right of action.** (1) Any person who
19 receives notice under 75-10-711, who is held jointly and severally liable under 75-10-715, or who initiates
20 a voluntary cleanup under the provisions of 75-10-730 through 75-10-738 may bring a private right of
21 action, including a claim for contribution or declaratory relief, against any other person who is liable or
22 potentially liable under 75-10-715 for the recovery of remedial action costs. In resolving contribution claims,
23 the court shall allocate remedial action costs among the liable persons based on the factors set out in
24 [section 34 20]. ~~has the right at trial to have the trier of fact apportion liability among the parties as~~
25 provided in this section. ~~The burden is on each liable person to show how his liability should be~~
26 apportioned. In apportioning the liability of any person under this section, the trier of fact shall consider the
27 following:

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

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

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

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

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

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

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

13
 14 **Section 23.** ~~Section 82-4-141, MCA, is amended to read:~~

15 ~~"82-4-141. Violation -- penalty. (1) A person or operator who violates any of the provisions of this~~
 16 ~~part or rules or orders adopted under this part shall pay a civil penalty of not less than \$100 or more than~~
 17 ~~\$1,000 for the violation and an additional civil penalty of not less than \$100 or more than \$1,000 for each~~
 18 ~~day during which a violation continues and may be enjoined from continuing such the violations as provided~~
 19 ~~in this section. These penalties shall must be recoverable in any action brought in the name of the state of~~
 20 ~~Montana by the attorney general in the district court of the first judicial district of this state in and for the~~
 21 ~~county of Lewis and Clark or in the district court having jurisdiction of the defendant.~~

22 ~~(2) The attorney general shall, upon the request of the director, sue for the recovery of the~~
 23 ~~penalties provided for in this section and bring an action for a restraining order, temporary or permanent~~
 24 ~~injunction against an operator or other person violating or threatening to violate an order adopted under this~~
 25 ~~part.~~

26 ~~(3) A person who willfully violates any of the provisions of this part or any determination or order~~
 27 ~~adopted under this part which that has become final is guilty of a misdemeanor and shall be fined not less~~
 28 ~~than \$500 and not more than \$5,000. Each day on which a violation occurs constitutes a separate offense.~~

29 ~~(4) Civil penalties collected under this section must be deposited in the orphan share account in~~
 30 ~~the state special revenue fund."~~

1 ~~Section 24. Section 82-4-241, MCA, is amended to read:~~

2 ~~"82-4-241. Receipts paid into general fund. (1) Except for bond forfeiture moneys as provided in~~
 3 ~~subsection (2), all fees, penalties, and other moneys money available or paid to the department under the~~
 4 ~~provisions of this part shall must be placed in the state treasury and credited to the general fund.~~

5 ~~(2) Civil penalties paid to the department under 82-4-254 must be placed in the orphan share~~
 6 ~~account in the state special revenue fund."~~

7

8 **NEW SECTION. Section 11. Citizens suit.** (1) Any person may commence a civil action to compel
 9 compliance with ~~[sections 26 through 36]~~ by any liable or potentially liable person under 75-10-715 alleged
 10 to be in violation of a rule, notice letter, order, or department-approved remedial action required pursuant
 11 to a notice letter or order under this chapter.

12 (2) At least 60 days before commencing the action, the person shall give notice of intent to sue
 13 to all liable or potentially liable persons under 75-10-715 who are contemplated to be defendants in the
 14 proposed action.

15 (3) An action may not be commenced under subsection (1) if the liable or potentially liable person
 16 is diligently coming into compliance with the rule, notice letter, order, or department-approved remedial
 17 action plan or if the department has commenced and is diligently prosecuting an action to require
 18 compliance with the rule, notice letter, order, or department-approved remedial action plan.

19

20 **NEW SECTION. Section 12. Short title.** [Sections ~~26 12~~ through ~~36 22~~] may be cited as the
 21 "Controlled Allocation of Liability Act".

22

23 **NEW SECTION. Section 13. Orphan share state special revenue account -- reimbursement of**
 24 **claims -- payment of department costs.** (1) There is an orphan share account in the state special revenue
 25 fund established in 17-2-102 that is to be administered by the department. Money in the account is
 26 available to the department by appropriation and must be used to reimburse remedial action costs claimed
 27 pursuant to ~~[sections 26 12 through 36 22]~~ and to pay costs incurred by the department in defending the
 28 orphan share.

29 (2) There must be deposited in the orphan share account:

30 (a) money allocated from the metalliferous mines license tax pursuant to 15-37-117;

1 ~~(b) money in excess of \$250,000 per year collected by the department as provided in [section 2~~
 2 ~~of House Bill No. 284] establishing an environmental rehabilitation and prevention account;~~

3 ~~(c)(B)~~ all penalties assessed pursuant to [section ~~34(12)~~ 20(12)];

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

6 ~~(e)(D)~~ funds allocated from the resource indemnity and ground water assessment tax proceeds
 7 provided for in 15-38-106;

8 ~~(f)(E)~~ unencumbered funds remaining in the abandoned mines state special revenue account
 9 provided in section 19, Chapter 584, Laws of 1995, as of [the termination date of section 19, Chapter 584,
 10 Laws of 1995, as may be amended];

11 ~~(g)(F)~~ interest income on the account;

12 ~~(h)(G)~~ funds received from settlements pursuant to 75-10-719(7); AND

13 ~~(i)(H)~~ funds received from reimbursement of the department's orphan share defense costs pursuant
 14 to subsection (6);

15 ~~(j) fine and penalty money received pursuant to 75-2-412, 75-2-413, 75-2-427, 75-3-407,~~
 16 ~~75-5-634, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-423, 75-10-424, 75-10-542, 82-4-141, and~~
 17 ~~82-4-241; and~~

18 ~~(k) unclaimed or excess reclamation bond money received pursuant to 82-4-141 and 82-4-241.~~

19 (3) If the orphan share fund contains sufficient money, valid claims must be reimbursed
 20 subsequently in the order in which they were received by the department. If the orphan share fund does
 21 not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not
 22 be made and the orphan share fund, the department, and the state are not liable for making any
 23 reimbursement for the costs. The department and the state are not liable for any penalties if the orphan
 24 share fund does not contain sufficient money to reimburse claims, and interest may not accrue on
 25 outstanding claims.

26 (4) Except as provided in subsection (8), claims may not be submitted and remedial action costs
 27 may not be reimbursed from the orphan share fund until all remedial actions, except for operation and
 28 maintenance, are completed at a facility.

29 (5) Reimbursement from the orphan share fund must be limited to actual documented remedial
 30 action costs incurred after the date of petition provided in [section ~~29~~ 15]. Reimbursement may not be

1 made for attorney fees, legal costs, or operation and maintenance costs.

2 (6) (a) The department's costs incurred in defending the orphan share must be paid by the persons
3 participating in the allocation under [sections ~~26 12~~ through ~~36 22~~] in proportion to their allocated shares.
4 The orphan share fund is responsible for a portion of the department's costs incurred in defending the
5 orphan share in proportion to the orphan share's allocated share, as follows:

6 (i) If sufficient funds are available in the orphan share fund, the orphan share fund must pay the
7 department's costs incurred in defending the orphan share in proportion to the share of liability allocated
8 to the orphan share.

9 (ii) If sufficient funds are not available in the orphan share fund, persons participating in the
10 allocation under [sections ~~26 12~~ through ~~36 22~~] shall pay all the orphan share's allocated share of the
11 department's costs incurred in defending the orphan share in proportion to each person's allocated share
12 of liability.

13 (b) A person who pays the orphan share's proportional share of costs has a claim against the
14 orphan share fund and must be reimbursed as provided in subsection (3).

15 (7) If any money remains in the orphan share fund after [the termination date of this section] and
16 after outstanding claims are paid, the money must be deposited in the general fund.

17 (8) If the lead liable person under [section ~~30 16~~] presents evidence to the department that the
18 person cannot complete the remedial actions without partial reimbursement and that a delay in
19 reimbursement will cause undue financial hardship on the person, the department may allow the submission
20 of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not
21 eligible for early reimbursement unless the person is in substantial compliance with all department-approved
22 remedial action plans.

23 (9) A person participating in the allocation process who received funds under the mixed funding
24 pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive
25 reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot
26 program that are later attributed to the orphan share under the allocation process.

27

28 **NEW SECTION. Section 14. Eligibility -- statute of limitations.** (1) Except for a facility that is listed
29 on the national priorities list pursuant to the federal Comprehensive Environmental Response,
30 Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., a facility listed on the priority list

1 established pursuant to 75-10-702 is eligible for the allocation process under [sections ~~26~~ 12 through ~~36~~
2 22].

3 (2) Only liability for remedial action costs is eligible for allocation and reimbursement from the
4 orphan share fund. Allocation of liability and reimbursement of costs for natural resource damages is not
5 permitted under [sections ~~26~~ 12 through ~~36~~ 22].

6 (3) Remedial action costs incurred prior to the date of the potentially liable person's written petition
7 to the department as provided in [section ~~29~~ 15] are not eligible for reimbursement from the orphan share
8 fund.

9 (4) Only one allocation will be allowed for each facility unless:

10 (a) the department determines that an additional allocation is appropriate due to:

11 (i) the existence of more than one discrete unit of contamination at the facility;

12 (ii) the discovery of new releases after remedial actions at the facility are complete; or

13 (iii) other factors the department determines appropriate.

14 (b) all the liable or potentially liable persons under 75-10-715 agree in writing that an orphan share
15 does not exist for the proposed allocation and either of the conditions in subsection (4)(a)(i) or (4)(a)(ii) is
16 met.

17 (5) A liable or potentially liable person under 75-10-715 may not file a cost recovery or contribution
18 action against any person participating in the allocation process provided for in [sections ~~26~~ 12 through ~~36~~
19 22] until the allocation process is complete. The statute of limitations on the filing of cost recovery or
20 contribution actions is tolled from the first date of a petition for allocation on a facility until 30 days after
21 the submittal of the allocation report provided for in [section ~~34~~ 20], or until 30 days following the
22 expiration of the time period for appeal or the final decision on appeal.

23
24 **NEW SECTION. Section 15. Allocation of liability -- process initiation.** (1) For a facility at which
25 the department has initiated a remedial action under 75-10-711 through the issuance of a notice letter prior
26 to [the effective date of this section], any person determined to be potentially liable under 75-10-715 may
27 petition the department in writing to initiate the allocation process. The right to participate in the allocation
28 process is waived if the written petition is not provided to the department prior to the completion of
29 remedial actions, except for operation and maintenance, at the facility.

30 (2) For a facility at which the department has not initiated a remedial action through the issuance

1 of a notice letter under 75-10-711, any person potentially liable under 75-10-715 who has received
2 approval of a voluntary cleanup plan under 75-10-730 through 75-10-738 may petition the department in
3 writing to initiate the allocation process. The right to participate in the allocation process is waived if the
4 written petition is not provided to the department prior to the completion of remedial actions, except for
5 operation and maintenance, at the facility.

6 (3) For a facility at which the department initiates a remedial action through the issuance of a
7 notice letter under 75-10-711 after [the effective date of this section], any person potentially liable under
8 75-10-715 may petition the department in writing within 60 days of the date of the notice letter to initiate
9 the allocation process. Any potentially liable person under 75-10-715 who does not provide a written
10 petition to the department within this timeframe waives the right to participate in the allocation process and
11 remains liable as provided in 75-10-715. The notice letter sent by the department must advise that a failure
12 to petition the department for allocation as provided in this subsection will result in a waiver of the right
13 to participate in the allocation process.

14 (4) The allocation process may be initiated and may proceed upon written petition of one or more
15 potentially liable persons.

16 (5) Prior to the initiation of discovery as provided in [section ~~34~~ 17], all persons who participate
17 in the allocation process shall agree in writing that the allocator's decision is binding, subject only to the
18 provisions of [section ~~34(9)~~ 20(9)] and the appeal provisions of [section ~~35~~ 21].

19 (6) All liable or potentially liable persons under 75-10-715 who do not participate in the allocation
20 process under [sections ~~26~~ 12 through ~~36~~ 22] remain liable as provided in 75-10-715.

21 (7) Upon receipt of a written petition under subsections (1) or (2) or when initiating actions at a
22 facility without a prior notice letter under subsection (3), the department shall:

23 (a) conduct a good faith investigation and may use its authority in 75-10-707 to identify persons
24 who may be liable under 75-10-715; and

25 (b) issue notice letters to the persons it identifies as potentially liable under 75-10-715.

26 (8) A person who receives a notice letter may, within 60 days from the date of the notice letter,
27 petition the department in writing to participate in an allocation process and provide the department with
28 the identity of other potentially liable persons under 75-10-715 who were not noticed by the department.
29 When identifying additional potentially liable persons, the noticed person shall provide to the department
30 a statement and credible evidence showing that there is a basis in law and fact to determine that the

1 identified person is potentially liable under 75-10-715.

2 (9) Within 30 days of receipt of the information provided for in subsection (8), the department may
3 issue a notice letter to an identified person whom the department determines is a potentially liable person
4 under 75-10-715. If the department does not issue a notice letter to an identified person, the department
5 shall issue the person a nomination letter indicating that the person has been identified as potentially liable
6 under 75-10-715. The nomination letter must state that the person has the right to participate in the
7 allocation process and that if the person does not participate and is found liable, the person remains subject
8 to liability as provided in 75-10-715. If the newly noticed or nominated person chooses to participate in
9 the allocation process, the person shall provide a written petition of the person's intent to participate in the
10 allocation process to the department within 30 days of the date of the notice or nomination letter. A failure
11 to petition the department for allocation as provided in this subsection results in a waiver of the right to
12 participate in the allocation process.

13 (10) If a person nominated under subsection (9) cannot be readily located, the department shall,
14 within 30 days of receipt of the information provided for in subsection (8), publish one notice of the
15 person's nomination, along with the information contained in a nomination letter under subsection (9), in
16 a newspaper of general circulation in the county where all or a portion of the facility is located. The notice
17 must state that the person has 30 days from the date of the notice to petition the department, in writing,
18 to participate in the allocation process. A failure to petition the department for allocation as provided in
19 this subsection results in a waiver of the right to participate in the allocation process.

20 (11) If one or more potentially liable persons petition in writing for an allocation process under
21 subsection (1), (2), or (3) and the department determines that the facility has a potential orphan share, the
22 department shall:

23 (a) publish a notice and brief description of the facility in a newspaper of general circulation in the
24 area affected and provide at least 30 days for submission of public comment on the identification of
25 potentially liable persons under 75-10-715; and

26 (b) notify interested persons and the county commissioners of ~~the county where~~ EACH COUNTY
27 IN WHICH ALL OR A PORTION OF the facility is located and provide at least 30 days for submission of
28 comments on the identification of potentially liable persons under 75-10-715.

29 (12) If a nominated person participates in the allocation and the person is assigned a zero share of
30 liability by the allocator, that person's reasonable costs of participating in the allocation, including attorney

1 fees, must be borne by the person who proposed the addition of the nominated person to the allocation.

2 (13) If the department anticipates that a facility may have an orphan share, the department shall
3 represent the orphan share in the allocation process. If the state is a potentially liable person under
4 75-10-715, an agency or entity other than the department shall represent the state in the allocation
5 process.

6 (14) Except as provided in subsection (15), whenever the department is involved in allocation
7 processes on five facilities, other allocation processes may be stayed before the discovery stage provided
8 in [section ~~34~~ 17]. Upon completion of an allocation provided in [section ~~34~~ 20 or ~~35~~ 21], execution of
9 a stipulated agreement under [section ~~34~~ 20], or a default to liability as provided in 75-10-715 for one of
10 the five facilities, the department shall notify the potentially liable persons for the facility on the waiting list
11 that has the earliest date of written petition. Discovery under [section ~~34~~ 17] must begin within 10 days
12 of department notification.

13 (15) A stay on the allocation process may not occur under subsection (14) if all persons
14 participating in the allocation process agree in writing that there is no orphan share and that the state is
15 not a potentially liable person under 75-10-715. The agreement is binding upon all noticed or nominated
16 persons.

17 (16) If, after initiating the process, a potentially liable person elects to discontinue participation in
18 the process, the person remains subject to liability as provided in 75-10-715.

19
20 **NEW SECTION. Section 16. Emergency actions -- remedial action requirements -- designation of**
21 **lead person -- enforcement.** (1) If the department determines that immediate response to an imminent
22 threat to public health, safety, or welfare or the environment is necessary to avoid substantial injury or
23 damage to persons, property, or resources, the department may require any potentially liable person to take
24 remedial actions without the prior written notice required by 75-10-711(3). The department has 30 days
25 to comply with the notification requirements provided in 75-10-711(3) and [section ~~29~~ 15] when requiring
26 emergency remedial actions.

27 (2) Within 30 days of the issuance of the notice letters, the noticed persons shall designate a lead
28 person who shall conduct remedial actions at the facility. Upon request of the noticed persons and for
29 good cause shown, the department may grant a 30-day extension of time to identify the lead person.

30 (3) If the department determines that the identified lead person is financially or otherwise incapable

1 of completing remedial actions required by the department, the department shall notify all noticed persons
2 of this determination in writing and request that another lead person be designated within 15 days.

3 (4) The designated lead person shall undertake all remedial actions required by the department.

4 (5) If the noticed persons do not designate an approved lead person within the timeframes provided
5 under subsection (2) or (3), the department shall designate a lead person to undertake required remedial
6 actions.

7 (6) If the department finds that the lead person has not complied with the requirements of a notice
8 letter, order, stipulated agreement, or any department-approved remedial action plan, the department shall
9 notify all potentially liable persons of the noncompliance.

10 (7) If the noncompliance continues for 30 days after the date of the notice provided in subsection
11 (6), the potentially liable persons have not demonstrated that the noncompliance is due to good cause, and
12 the facility is a maximum or high-priority facility on the department's priority list established pursuant to
13 75-10-702, the department shall take one or more of the following actions:

14 (a) issue a unilateral order requiring the potentially liable persons to comply with the requirements
15 of the notice letter, order, stipulated agreement, or department-approved remedial action plan;

16 (b) file a civil action as provided in 75-10-711;

17 (c) conduct the required remedial actions and seek cost recovery and penalties as provided in
18 75-10-711;

19 (d) file a cost recovery action as provided in 75-10-722; or

20 (e) void approval of the voluntary cleanup plan as provided in 75-10-736.

21 (8) If the noncompliance continues for 30 days after the date of the notice provided in subsection
22 (6), the potentially liable persons have not demonstrated that the noncompliance is due to good cause, and
23 the facility is not a maximum or high-priority facility on the department's priority list, the department may
24 take one or more of the actions provided for in subsection (7).

25 (9) For purposes of subsections (7), (8), and (10), "good cause" means factors beyond a person's
26 control that include severe weather conditions, third-party interference, an act of God, or an act of war.
27 Before a person may claim good cause due to third-party interference, the person shall show that the
28 person used reasonable efforts to obtain cooperation or compliance from the third party.

29 (10) If the lead person fails to comply with the requirements of a notice letter, order, stipulated
30 agreement, or other department-approved remedial action plan, the facility and all noticed persons remain

1 subject to liability as provided in 75-10-715 unless another person assumes the lead role in implementing
 2 the ~~cleanup plan~~ REQUIRED REMEDIAL ACTIONS or the lead person can establish that the noncompliance
 3 is due to good cause.

4
 5 NEW SECTION. Section 17. Discovery. (1) Each person participating in the allocation process for
 6 a facility may conduct discovery for a period of not more than 90 days from the date of the last notice or
 7 nomination letter. Discovery requests by each person participating in the allocation process, including the
 8 orphan share representative, are limited to the following unless otherwise agreed to by all persons
 9 participating in the allocation, including the orphan share representative:

- 10 (a) 5 1-day oral depositions not to exceed 8 hours each;
 11 (b) 25 written interrogatories, including subparts;
 12 (c) 50 requests for admission; and
 13 (d) 50 requests for production of documents.

14 (2) The persons participating in the allocation process may extend the discovery period for up to
 15 30 days if all persons agree to the extension in writing.

16 (3) Any participating person who is not responsive to discovery requests or who does not
 17 participate in the subsequent allocation proceeding and is allocated a share of liability remains subject to
 18 liability as provided in 75-10-715.

19
 20 NEW SECTION. Section 18. Preallocation negotiations. (1) After discovery pursuant to [section
 21 ~~34 17~~] closes, all persons participating in the allocation process shall conduct good faith settlement
 22 negotiations for a period of 30 days.

23 (2) The participating potentially liable persons may use an impartial mediator when conducting
 24 settlement negotiations.

25 (3) If a settlement is reached under subsection (1), the persons shall execute a stipulated
 26 agreement as provided in [section ~~34 20~~].

27 (4) If a stipulated agreement is not executed as provided in [section ~~34 20~~], the persons shall select
 28 an allocator as provided in [section ~~33 19~~].

29
 30 NEW SECTION. Section 19. Allocator selection -- payment of fees. (1) If the preallocation

1 negotiations pursuant to [section ~~32~~ 18] fail to produce a stipulated agreement within the timeframe
2 provided in [section ~~32~~ 18], the participating persons shall select an allocator within 30 days after the
3 preallocation negotiations end. All participating persons shall agree on the selected allocator.

4 (2) Before selection or appointment as an allocator, a person shall disclose all conflicts of interest,
5 including whether the allocator is or has been a relative, attorney, agent, employee, creditor, or contractor
6 of, or in any manner is or has been interested financially or personally with, any person involved in the
7 allocation.

8 (3) If the participating persons are unable to agree on an allocator within the required 30 days, one
9 or more of the participating persons shall apply for judicial resolution, within 10 days, to the district court
10 in the county where the release occurred or where any potentially liable person under 75-10-715 resides
11 or has a principal place of business or in the district court of the first judicial district. If an application to
12 the district court is not made within 10 days, all persons remain subject to liability as provided in 75-10-715
13 and the allocation process ends.

14 (4) Upon selection or appointment of the allocator, the lead person shall advance, if required by
15 the allocator, up to \$5,000 toward the allocator's expenses. Any expenses accrued by the allocator for
16 legal or technical expertise must be approved in advance by all the participating persons. The allocator's
17 fees and reasonable expenses must be divided among the participating liable persons, except the orphan
18 share, in proportion to their allocated shares. The orphan share fund established in [section ~~27~~ 13] is not
19 responsible for any portion of the allocator's fees and expenses.

20
21 **NEW SECTION. Section 20. Allocating liability.** (1) Upon selection or appointment, the allocator
22 shall establish the process and schedule for determining the allocation, including the length and scope of
23 any documents to be presented.

24 (2) The participating persons shall submit to the allocator and to each other a statement of position
25 and exhibits of a factual nature. Each person's statement must identify the factors listed in subsection (5)
26 that the person believes are relevant to allocation of liability for the facility.

27 (3) The allocator may convene the participating persons as the allocator believes necessary to
28 clarify the facts and may pose additional questions, interview any person or the person's representative,
29 and impose presumptions concerning missing information. The allocator may seek department assistance
30 with information gathering pursuant to 75-10-707.

1 (4) The allocator may not engage in ex parte communications with any person or the person's
2 representative.

3 (5) The allocator shall allocate each participating and nonparticipating person's share of liability
4 based only on information presented or collected during the allocation process and, taking into account
5 facility characteristics, shall apportion liability on a percentage basis according to the following factors:

6 (a) the extent to which the person caused the release of the hazardous or deleterious substance;

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

9 (c) the amount or volume of hazardous or deleterious substance and the amount contributed by the
10 person;

11 (d) the relative hazard of the hazardous or deleterious substance contributed by the person,
12 including volatility, carcinogenicity, mobility, persistence, reactivity, and toxicity;

13 (e) the degree of past and present cooperation by the person with the government to prevent harm
14 to the public health, safety, or welfare and the environment, including participation in remedial actions
15 occurring concurrently with the allocation process and compliance and cooperation with discovery pursuant
16 to [section ~~34~~ 17];

17 (f) what the person knew or should have known of:

18 ~~(#)~~ the hazardous nature of the substance, the risk associated with that substance, and proper
19 waste disposal practices;

20 ~~(#)~~(G) the circumstances of the property acquisition, including the documented price paid and
21 discounts granted; ~~and~~

22 ~~(#)~~(H) the person's knowledge of or acquiescence to waste generation, storage, handling,
23 treatment, or disposal;

24 ~~(g)~~(I) the length of time of ownership, operation, generation, or transportation;

25 ~~(h)~~(J) any violations of or noncompliance with health and environmental regulations, including
26 permit violations or violations relating to public notification;

27 ~~(#)~~(K) the degree to which a person providing publicly owned landfill or sewer and water systems
28 had or has a reasonable ability to control disposed materials and the person's degree of care in maintaining
29 those services;

30 ~~(#)~~(L) the person's financial or economic benefit from:

- 1 (i) ownership or operation of the facility;
- 2 (ii) the generation, transportation, or disposal of the hazardous or deleterious substance; and
- 3 (iii) cleanup of the facility;
- 4 ~~+(M)~~ whether the person exercised due diligence in generating, transporting, or disposing of
- 5 hazardous or deleterious substances and the person's control over those activities; and
- 6 ~~+(N)~~ other equitable factors that are appropriate.
- 7 (6) Within 60 days of selection or appointment, the allocator shall submit to the department and
- 8 all noticed and nominated persons a written allocation report that allocates each person's share of liability
- 9 and that documents the rationale for the percentage of liability allocated to each person.
- 10 (7) The allocator or the participating persons may extend the allocation proceeding by up to 30
- 11 days if agreed to by the allocator and all the participating persons.
- 12 (8) Within 30 days of the date of the allocation report, the persons who participated in the
- 13 allocation and who were allocated a share of liability, except for the orphan share, shall prepare and sign
- 14 a stipulated agreement that contains:
- 15 (a) the percentage share of liability for each person as determined by the allocator;
- 16 (b) procedures for paying for the orphan share prior to reimbursement from the orphan share fund;
- 17 (c) a waiver of contribution rights against all persons who are potentially liable for the remedial
- 18 action as well as a waiver of any rights to challenge any settlement that the department enters into with
- 19 any other potentially liable person;
- 20 (d) covenants not to sue and provisions regarding performance or adequate assurance of
- 21 performance of remedial actions;
- 22 (e) how remedial actions will be conducted;
- 23 (f) a penalty provision in accordance with subsection (12);
- 24 (g) acknowledgment of contribution protection, consistent with 75-10-719(1), regarding matters
- 25 addressed in the settlement; and
- 26 (h) provisions detailing how the persons signing the stipulated agreement should receive
- 27 reimbursement from the orphan share fund for any remedial action costs incurred by the persons in excess
- 28 of their allocated share.
- 29 (9) If the department determines that the stipulated agreement does not satisfy the requirements
- 30 of subsection (8), the liable persons who participated in the allocation remain subject to liability as provided

1 in 75-10-715.

2 (10) A person who did not participate in the allocation but who was assigned a share of liability
3 may sign the stipulated agreement prepared according to subsection (8).

4 (11) Any liable person allocated a share of liability who does not sign the stipulated agreement
5 remains subject to liability as provided in 75-10-715.

6 (12) Any liable person who signs the stipulated agreement and fails to comply with the terms of
7 the stipulated agreement shall pay, in addition to the person's share of remedial action costs, a penalty of
8 two times the amount of the person's allocated share of liability. Any funds received must be applied to
9 the facility's orphan share and any funds in excess of the facility's orphan share amount must be deposited
10 in the orphan share fund established under [section ~~27~~ 13].

11 (13) If a liable person becomes bankrupt or defunct after the stipulated agreement is signed and
12 before remedial actions are complete at the facility, that person's share of liability becomes an orphan
13 share.

14

15 **NEW SECTION. Section 21. Appeal of allocator's decision.** (1) A person may appeal the
16 allocator's decision to district court within 30 days of the date of the allocation report. Venue lies in the
17 county where the release occurred or where the liable person resides or has a principal place of business
18 or in the first judicial district.

19 (2) The allocator's decision must be upheld unless the person appealing the decision demonstrates
20 that the decision was:

21 (a) made upon unlawful procedure;

22 (b) affected by other error of law;

23 (c) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole
24 record; or

25 (d) arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise
26 of discretion or was fraudulent.

27 (3) If the appeal is successful, the district court shall allocate the liability of the potentially liable
28 persons using the factors outlined in [section ~~34~~ 20].

29 (4) After decision on the appeal, all liable persons shall submit a stipulated agreement as provided
30 in [section ~~34~~ 20] to the department based on the court order.

1 NEW SECTION. **Section 22. Effect of termination on allocations.** (1) Persons participating in the
2 allocation process may complete the allocation process for the facility at issue and claim reimbursement
3 from the orphan share fund provided that the discovery process under [section ~~34 17~~] had been initiated
4 by [the termination date of sections ~~26 12~~ through ~~36 22~~].

5 (2) If discovery, as provided in [section ~~34 17~~], has not commenced by [the termination date of
6 sections ~~26 12~~ through ~~36 22~~], the facility and its potentially liable persons under 75-10-715 are not
7 eligible to participate in the allocation process under [sections ~~26 12~~ through ~~36 22~~] and remain subject
8 to liability as provided in 75-10-715.

9
10 **Section 23.** Section 16, Chapter 584, Laws of 1995, is amended to read:

11 **"Section 16. Criteria.** (1) The pilot program ~~must consist~~ consists of remediation of the Joslyn
12 street tailings facility, the Corbin flats facility, and the block P mill facility ~~three sites from the department~~
13 ~~of state lands' abandoned hard-rock mine priority list. The three sites must be selected from the top ten~~
14 ~~priority sites on that list as of April 1, 1995.~~

15 (2) Any site remediated under this pilot program must meet the following criteria:

16 (a) The owner of the property has, prior to May 22, 1989, purchased or entered into a lease
17 purchase agreement or an option to purchase property where the facility is located.

18 (b) The applicant has submitted a voluntary cleanup plan in accordance with the provisions of
19 [sections 7 and 8].

20 (c) The department has accepted and approved the application for a voluntary cleanup plan in
21 accordance with the provisions of [sections 6 through 10] by June 30, 1997.

22 (3) The department and the applicant shall negotiate an apportionment of the applicant's liability
23 pursuant to [section 17]. The department, as a trier of fact, shall make the final determination of the
24 applicant's apportioned liability. If the applicant disagrees with the department's determination of the
25 applicant's proportionate share of liability, the applicant may appeal the department's decision in
26 accordance with the requirements of [section 6(4)].

27 ~~(4) If more than three applicants submit voluntary cleanup plans for the highest priority sites on~~
28 ~~the department of state lands' abandoned hard-rock mine priority list and the department approves more~~
29 ~~than three plans, the department shall select three plans to incorporate into the pilot program on a priority~~
30 ~~basis as determined by the date of submittal of a complete application."~~

1 **Section 24.** Section 18, Chapter 584, Laws of 1995, is amended to read:

2 **"Section 18. Claims for and limitations on reimbursement.** (1) After completion of the voluntary
3 cleanup plan approved by the department, the applicant may apply to and must, in accordance with this
4 section, receive reimbursement from the abandoned mines state special revenue account. Reimbursement
5 must be subject to the following requirements and limitations:

6 (a) The applicant shall complete remediation prior to making a claim for reimbursement.

7 (b) The reimbursement may not exceed 90% of eligible costs up to a maximum of \$300,000 per
8 facility.

9 (c) The claim for reimbursement may not include legal fees or department costs incurred in the
10 oversight of the voluntary cleanup plan.

11 (2) For purposes of this section, "eligible costs" means costs in excess of an applicant's
12 proportionate share of total costs incurred in the remediation of the site during the 1996-97 biennium and
13 the 1998-99 biennium.

14 (3) If costs are reimbursed out of the abandoned mines state special revenue account, nothing in
15 [sections 14 through 20] prohibits the department from pursuing an action against other potentially liable
16 parties to recover those costs.

17 (4) If the abandoned mines state special revenue account does not contain sufficient money to pay
18 received claims for reimbursement, the abandoned mines state special revenue account and the department
19 are not liable for making any reimbursement at that time. All claims are subject to appropriations to the
20 abandoned mines state special revenue account."

21

22 **Section 25.** Section 27, Chapter 584, Laws of 1995, is amended to read:

23 **"Section 27. Termination.** (1) [Sections 4 through 12] terminate January 1, 2001.

24 (2) [Sections 14 through ~~21~~ 20] terminate June 30, ~~1997~~ 1999.

25 (3) [SECTION 21] TERMINATES JUNE 30, 1997."

26

27 NEW SECTION. Section 26. Codification instruction. [Sections ~~25~~ 11 through ~~36~~ 22] are intended
28 to be codified as an integral part of Title 75, chapter 10, part 7, and the provisions of Title 75, chapter 10,
29 part 7, apply to [sections ~~25~~ 11 through ~~36~~ 22].

30

1 NEW SECTION. Section 27. Coordination instructions ~~INSTRUCTION. INSTRUCTIONS.~~ (1) ~~If~~
2 Senate Bill No. 7 and [this act] are both passed and approved, ~~the amendments to 15-37-117 in~~ THEN
3 Senate Bill No. 7, ~~relating to the allocation of the metal mines license tax,~~ are IS void.

4 (2) If [this act] and House Bill No. 284 are both passed and approved and House Bill No. 284 does
5 not contain a section creating and depositing excess penalty collections into an orphan share account, then
6 [section 27 (2)(b) of this act] is void.

7 (3) If [this act] and House Bill No. 284 are both passed and approved and House Bill No. 284 does
8 contain the DEPOSIT EXCESS PENALTY COLLECTIONS IN AN orphan share account referenced in
9 subsection (2) of this section, then [sections 4 through 15, 23, 24, and 27(2)(j) of this act] are void.

10 (2) IF HOUSE BILL NO. 284 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN
11 [SECTIONS 2 AND 22(1) AND (2) OF HOUSE BILL NO. 284] ARE VOID.

13 NEW SECTION. Section 28. Severability. If a part of [sections ~~25 11~~ through ~~36 22~~] are invalid,
14 all valid parts that are severable from the invalid part remain in effect. If a part of [sections ~~25 11~~ through
15 ~~36 22~~] is invalid in one or more of its applications, the part remains in effect in all valid applications that
16 are severable from the invalid applications.

18 NEW SECTION. Section 29. Effective dates. (1) Except as provided in subsections (2) and (3),
19 [this act] is effective July 1, 1997.

20 (2) [Section ~~47 5~~ and this section] are effective on passage and approval.

21 (3) [Section 3] is effective July 1, 1999.

23 NEW SECTION. Section 30. Termination. [Sections ~~25-26 12~~ through ~~36 22~~] terminate June 30,
24 2005.

25 -END-