

SENATE BILL NO. 87

INTRODUCED BY D. ANKNEY, C. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LEGAL OBLIGATIONS OF COAL-FIRED POWER PLANT OWNERS RELATED TO PUBLIC WATER SUPPLIES; PROVIDING FOR THE ACQUISITION OF WATER RIGHTS AND PROPERTY NECESSARY TO PROVIDE A WATER SUPPLY IN A COMMUNITY WHERE A COAL-FIRED GENERATING UNIT IS LOCATED; REQUIRING PUMPING CONVEYANCE COSTS AND ADDITIONAL COSTS TO BE CONSIDERED IN ENSURING A WATER FEASIBILITY STUDY BE COMPLETED BY THE OWNERS OF A COAL-FIRED GENERATING UNIT TO ENSURE CONVEYANCE COSTS TO BE CONSIDERED IN ENSURING ACCESS TO A WATER SUPPLY AND MEETING LEGAL OBLIGATIONS FOR REMEDIATION AND MEETING LEGAL OBLIGATIONS FOR REMEDIATION; PROVIDING DEFINITIONS; AMENDING SECTIONS SECTION SECTIONS 75-8-103 AND 75-10-721 AND 75-10-721, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. SECTION 1. WATER FEASIBILITY STUDY. (1) ON OR BEFORE NOVEMBER 1, 2022, THE OWNERS OF A COAL-FIRED GENERATING UNIT SHALL COMPLETE A WATER FEASIBILITY STUDY IN ACCORDANCE WITH SUBSECTION (2). COSTS OF COMPLETING THE STUDY MUST BE SHARED AMONG THE OWNERS BASED ON EACH OWNER'S INDIVIDUAL OWNERSHIP INTEREST IN THE COAL-FIRED GENERATING UNIT.

(2) THE STUDY REQUIRED IN SUBSECTION (1) MUST INCLUDE:

(A) PLANNING TO ENSURE A LOCAL GOVERNMENT ATTENDANT TO A COAL-FIRED GENERATING UNIT IS ABLE TO ACCESS THE LOCAL GOVERNMENT'S WATER RIGHTS AND RELATED INFRASTRUCTURE IN THE EVENT OF CLOSURE OF THE COAL-FIRED GENERATING UNIT;

(B) AN ESTIMATION OF POTENTIAL CONVEYANCE COSTS THAT COULD BE INCURRED BY A LOCAL GOVERNMENT, FOR UP TO A 30-YEAR TIMELINE FOLLOWING CLOSURE OF A FACILITY; AND

(C) RECOMMENDATIONS, DEVELOPED IN CONSULTATION WITH THE COMMUNITY ATTENDANT TO A COAL-FIRED GENERATING UNIT, FOR MEETING FINANCIAL OBLIGATIONS NECESSARY TO ENSURE THE AFFECTED LOCAL GOVERNMENT

1 ~~IS ABLE TO MAINTAIN ITS WATER SUPPLY AND WATER RIGHTS;~~

2 ~~(3) THE STUDY MUST BE SUBMITTED TO THE DEPARTMENT AND INCLUDED IN REMEDIATION PLANS REQUIRED IN~~

3 ~~ACCORDANCE WITH THIS PART.~~

4

5 ~~NEW SECTION. Section 1. Coal-fired power generation -- water rights -- conveyance and costs.~~

6 (1) In accordance with 7-13-4405, a city or town where a coal-fired generating unit as defined in 75-8-103 is
7 located shall procure appropriate water rights and necessary real and personal property in accordance with this
8 section and Title 7, chapter 13, part 44, to ensure an adequate water supply is available in the event that a
9 coal-fired generating unit closes or retires, potentially jeopardizing access to a water supply.

10 (2) (a) If the operator of a coal-fired generating unit owns, operates, or both owns and operates a
11 conveyance necessary to maintain a public water supply system, as defined in 75-6-102, or owns valuable
12 water rights necessary to supply a city or town with water, the city or town may pass an ordinance notifying the
13 owners, operators, or both that it desires to purchase the conveyance, water rights, or both.

14 (b) Costs include estimates for electricity necessary to pump water per year over the lifetime of the
15 conveyance in order to utilize an adequate water supply.

16 (3) The city or town may purchase the conveyance, water rights, or both based on an agreement
17 between the parties.

18 (4) (a) If agreement between the parties is not reached, then the city or town may acquire the
19 conveyance or water supply under Title 70, chapter 30.

20 (b) A city or town acquiring property under Title 70, chapter 30, shall pay the amount of compensation
21 to the owners, operators, or both within 1 year from the date that final judgment is entered in the condemnation
22 proceedings.

23

24 **Section 1.** Section 75-8-103, MCA, is amended to read:

25 **"75-8-103. Definitions.** As used in this part, the following definitions apply:

26 (1) (a) "Affected property" means the property owned by or under the control of an owner that is
27 affected by a coal-fired generating unit, including:

28 (i) land, surface water, or ground water directly affected by the coal-fired generating unit, associated

1 impoundments, disposal and waste operations, buildings, structures, or other improvements or operations
2 infrastructure; and

3 (ii) areas affected by activities necessary to the closure and dismantling of the coal-fired generating
4 unit.

5 (b) The term does not include:

6 (i) land, water, or air affected or potentially affected by emissions from the operation of a coal-fired
7 generating unit; or

8 (ii) the mining of coal at an underground or strip mine and used at the coal-fired generating unit.

9 (2) "Applicable legal obligations" means any applicable state or federal environmental laws, including
10 but not limited to the Montana Water Quality Act, rules regarding disposal of coal combustion residuals from
11 electric utilities, the Montana Major Facility Siting Act, and other applicable laws administered by the
12 department in accordance with Title 75. The term includes:

13 (a) any consent order or settlement entered into by the department and an operator or owner
14 imposing obligations to undertake remediation actions at the coal-fired generating unit or affected property; and

15 (b) ~~compliance with remedial actions in accordance with 75-10-721~~ A WATER FEASIBILITY STUDY
16 COMPLETED IN ACCORDANCE WITH [SECTION 1] COMPLIANCE WITH REMEDIAL ACTIONS IN ACCORDANCE WITH 75-10-721.

17 (3) "Coal-fired generating unit" means an individual unit of a coal-fired electrical generating facility
18 located in Montana, where the unit has a generating capacity that is greater than or equal to 200 megawatts.

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

20 (5) "Operator" means the person engaged in operating or undertaking remediation actions at a coal-
21 fired generating unit. An operator may or may not be an owner.

22 (6) "Owner" means a person who has a legal or equitable interest in property subject to this part or
23 the person's legal representative.

24 (7) "Person" means an individual, partnership, corporation, association, or other legal entity or any
25 political subdivision of the state or federal government.

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

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

1 (b) historical and anticipated uses of a site where a coal-fired generating unit is located;

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

3 (d) relevant indications of anticipated land use from an operator or owner, or both, of a coal-fired
4 generating unit, affected property owners, and local planning officials.

5 (9) "Remediation" means all actions required by an applicable legal obligation directed exclusively
6 toward achieving a degree of cleanup required in accordance with 75-8-107.

7 (10) "Retired" or "retire" means the complete and permanent closure of a coal-fired generating unit.
8 Retirement occurs on the date that the coal-fired generating unit ceases combustion of fuel and permanently
9 ceases to generate electricity."

10

11 **Section 2.** Section 75-10-721, MCA, is amended to read:

12 ~~"75-10-721. Degree of cleanup required -- permit exemption -- financial assurance. (1) A~~

13 remedial action performed under this part or a voluntary cleanup under 75-10-730 through 75-10-738 must
14 attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release or
15 further release of that substance that assures protection of public health, safety, and welfare and of the
16 environment.

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

18 ~~(a) except as provided in subsection (4), shall require cleanup consistent with applicable state or
19 federal environmental requirements, criteria, or limitations;~~

20 ~~(b) may consider substantive state or federal environmental requirements, criteria, or limitations that
21 are relevant to the site conditions; and~~

22 ~~(c) shall select remedial actions, considering present and reasonably anticipated future uses, giving
23 due consideration to institutional controls, that:~~

24 ~~(i) demonstrate acceptable mitigation of exposure to risks to the public health, safety, and welfare and
25 the environment;~~

26 ~~(ii) are effective and reliable in the short term and the long term;~~

27 ~~(iii) are technically practicable and implementable;~~

28 ~~(iv) use treatment technologies or resource recovery technologies if practicable, giving due~~

1 consideration to engineering controls; and

2 ~~(v) in the case of remediation in accordance with Title 75, chapter 8, part 1, demonstrate lifetime~~
3 ~~conveyance costs and access to ensure a local government attendant to a coal-fired generating unit is able to~~
4 ~~maintain its water supply; and~~

5 ~~(v)(vi) are cost-effective.~~

6 ~~(3) In selecting remedial actions, the department shall consider the acceptability of the actions to the~~
7 ~~affected community, as indicated by community members and the local government.~~

8 ~~(4) The department may select a remedial action that does not meet an applicable state~~
9 ~~environmental requirement, criteria, or limitation under any one of the following circumstances:~~

10 ~~(a) The remedial action is an interim measure and will become part of a total remedial action that will~~
11 ~~attain the applicable requirement, criteria, or limitation.~~

12 ~~(b) Compliance with the applicable requirement, criteria, or limitation will result in greater risk to~~
13 ~~human health and the environment than other remedial action alternatives.~~

14 ~~(c) Compliance with the applicable requirement, criteria, or limitation is technically impracticable from~~
15 ~~an engineering perspective.~~

16 ~~(d) The remedial action will attain a standard of performance that is equivalent to that required under~~
17 ~~the otherwise applicable requirement, criteria, or limitation through use of another method or approach.~~

18 ~~(e) Compliance with the requirement would not be cost-effective.~~

19 ~~(5) For purposes of this section, cost-effectiveness must be determined through an analysis of~~
20 ~~incremental costs and incremental risk reduction and other benefits of alternatives considered, taking into~~
21 ~~account the total anticipated short term and long term costs of remedial action alternatives considered,~~
22 ~~including the total anticipated cost of operation and maintenance activities.~~

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

26 ~~(7) The department may require financial assurance from a liable person in an amount that the~~
27 ~~department determines will ensure the long-term operation and maintenance of the remedial action site. The~~
28 ~~liable person shall provide the financial assurance by any one method or combination of methods satisfactory to~~

1 the department, including but not limited to insurance, guarantee, performance or other surety bond, letter of
2 credit, qualification as a self-insurer, or other demonstration of financial capability."

3

4 ~~NEW SECTION. SECTION 3. CODIFICATION INSTRUCTION. [SECTION 1] IS INTENDED TO BE CODIFIED AS AN~~
5 ~~INTEGRAL PART OF TITLE 75, CHAPTER 8, PART 1, AND THE PROVISIONS OF TITLE 75, CHAPTER 8, PART 1 APPLY TO~~
6 ~~[SECTION 1].~~

7

8 **Section 2.** Section 75-10-721, MCA, is amended to read:

9 **"75-10-721. Degree of cleanup required -- permit exemption -- financial assurance.** (1) A

10 remedial action performed under this part or a voluntary cleanup under 75-10-730 through 75-10-738 must
11 attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release or
12 further release of that substance that assures protection of public health, safety, and welfare and of the
13 environment.

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

15 (a) except as provided in subsection (4), shall require cleanup consistent with applicable state or
16 federal environmental requirements, criteria, or limitations;

17 (b) may consider substantive state or federal environmental requirements, criteria, or limitations that
18 are relevant to the site conditions; and

19 (c) shall select remedial actions, considering present and reasonably anticipated future uses, giving
20 due consideration to institutional controls, that:

21 (i) demonstrate acceptable mitigation of exposure to risks to the public health, safety, and welfare and
22 the environment;

23 (ii) are effective and reliable in the short term and the long term;

24 (iii) are technically practicable and implementable;

25 (iv) use treatment technologies or resource recovery technologies if practicable, giving due
26 consideration to engineering controls;

27 ~~(v) in the case of remediation in accordance with Title 75, chapter 8, part 1, demonstrate lifetime~~
28 ~~conveyance costs and access to ensure a local government attendant to a coal-fired generating unit is able to~~

1 maintain its water supply; and

2 ~~(v)~~(vi) are cost-effective.

3 (3) In selecting remedial actions, the department shall consider the acceptability of the actions to the
4 affected community, as indicated by community members and the local government.

5 (4) The department may select a remedial action that does not meet an applicable state
6 environmental requirement, criteria, or limitation under any one of the following circumstances:

7 (a) The remedial action is an interim measure and will become part of a total remedial action that will
8 attain the applicable requirement, criteria, or limitation.

9 (b) Compliance with the applicable requirement, criteria, or limitation will result in greater risk to
10 human health and the environment than other remedial action alternatives.

11 (c) Compliance with the applicable requirement, criteria, or limitation is technically impracticable from
12 an engineering perspective.

13 (d) The remedial action will attain a standard of performance that is equivalent to that required under
14 the otherwise applicable requirement, criteria, or limitation through use of another method or approach.

15 (e) Compliance with the requirement would not be cost-effective.

16 (5) For purposes of this section, cost-effectiveness must be determined through an analysis of
17 incremental costs and incremental risk reduction and other benefits of alternatives considered, taking into
18 account the total anticipated short-term and long-term costs of remedial action alternatives considered,
19 including the total anticipated cost of operation and maintenance activities.

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

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

28

1 ~~NEW SECTION. Section 4. Codification instruction.~~ [Section 1] is intended to be codified as an
2 integral part of Title 7, chapter 13, part 44, and the provisions of Title 7, chapter 13, part 44, apply to [section 1].

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

7
8 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

9
10 ~~NEW SECTION. Section 5. APPLICABILITY. [THIS ACT] APPLIES TO REMEDIATION PLANS FILED ON OR~~
11 ~~AFTER [THE EFFECTIVE DATE OF THIS ACT].~~

12 - END -