

Amendment - 1st Reading-white - Requested by: Gary Parry - (H) Energy, Technology and Federal Relations

- 2023

68th Legislature 2023

Drafter: Trevor Graff, 406-444-4975

HB0737.001.001

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HOUSE BILL NO. 737

INTRODUCED BY G. PARRY, J. SCHILLINGER, K. WALSH, D. LOGE, R. FITZGERALD, B. USHER, D. BARTEL, G. KMETZ, C. SPRUNGER, J. ETCHART, R. MINER, J. KASSMIER, B. PHALEN, Z. WIRTH, N.

HASTINGS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A COAL-FIRED GENERATING UNIT OPERATOR TO PROVIDE PERPETUAL ACCESS TO WATER FOR AN ATTENDANT CITY OR TOWN; CLARIFYING THE FINANCIAL ASSURANCE NECESSARY TO PROVIDE WATER TO AN ATTENDANT CITY OR TOWN; AMENDING A DEFINITION; AND AMENDING SECTIONS 75-8-103 AND 75-10-721, MCA."

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

NEW SECTION. Section 1. Water rights supply for a city or town -- coal-fired generation -- perpetual access. (1) ~~A city or town where a coal-fired generating unit is located shall secure appropriate water rights and necessary real and personal property in accordance with Title 7, chapter 13, part 44, and this section. Subject to the provisions of subsection (2), the owner of a coal-fired generating unit shall provide the water supply for residential and commercial use of the city or town in which it is located~~ to ensure an adequate water supply is available if a coal-fired generating unit closes or retires, potentially jeopardizing access to a water supply subject to the provisions of section 2.

(2) If the operator of a coal-fired generating unit owns, operates, or both owns and operates a conveyance necessary to maintain a public water supply system, as defined in 75-6-102, ~~or owns the water rights necessary to supply a city or town with water,~~ that operator shall provide ~~perpetual~~ operation of the conveyance and access to the necessary water rights supply until contamination from the facility or its impoundments meets the department's cleanup criteria at the point of compliance pursuant to Title 75, chapter 20. Operation and access include the cost of:

(a) ~~electricity necessary to pump water over the lifetime of the conveyance to supply the necessary water supply; and~~

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1 ~~(b) — maintenance of the conveyance to supply the necessary water supply, including replacement.~~

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3 **Section 2.** Section 75-8-103, MCA, is amended to read:

4 **"75-8-103. Definitions.** As used in this part, the following definitions apply:

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

7 (i) land, surface water, or ground water directly affected by the coal-fired generating unit,
8 associated impoundments, disposal and waste operations, buildings, structures, or other improvements or
9 operations infrastructure; and

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

12 (b) The term does not include:

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

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

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

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

22 (b) a water feasibility study completed in accordance with 75-8-110; and

23 (c) compliance with remedial actions in accordance with 75-10-721.

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

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

27 (5) "Operator" means the person engaged in operating or undertaking remediation actions at a

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1 coal-fired generating unit. An operator may or may not be an owner.

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

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

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

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

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

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

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

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

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

18

19 **Section 3.** Section 75-10-721, MCA, is amended to read:

20 **"75-10-721. Degree of cleanup required -- permit exemption -- financial assurance.** (1) A

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

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

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

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

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

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

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

8 (iii) are technically practicable and implementable;

9 (iv) use treatment technologies or resource recovery technologies if practicable, giving due
10 consideration to engineering controls; ~~and~~

11 (v) in the case of remediation in accordance with Title 75, chapter 8, part 1, demonstrate the
12 financial assurance to provide ~~lifetime~~ operation and access ~~costs for the conveyance of to the~~ necessary water
13 ~~rights supply~~ to a local government attendant to a coal-fired generating unit. ~~Cost effectiveness Cost-~~
14 ~~effectiveness~~ may not be considered for maintenance of the conveyance to supply the necessary water supply,
15 including replacement pursuant to [section 1].

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

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

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

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

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

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

27 (d) The remedial action will attain a standard of performance that is equivalent to that required

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1 under the otherwise applicable requirement, criteria, or limitation through use of another method or approach.

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

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

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

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

15
16 NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an
17 integral part of Title 75, chapter 8, part 1, and the provisions of Title 75, chapter 8, part 1, apply to [section 1].

18 - END -