

HOUSE BILL NO. 88

INTRODUCED BY R. FITZGERALD

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE THIRD-PARTY WORK PLAN REQUIREMENT AT SUPERFUND ORDER SITES; REVISING A REMEDIATION REQUIREMENT FOR PERSONS NOT SUBJECT TO A JUDICIAL OR ADMINISTRATIVE ORDER AT A COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT SITE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 75-10-711, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

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

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

(b) none of the persons who are liable or potentially liable under 75-10-715(1) and who have been given the opportunity by letter to properly and expeditiously perform the appropriate remedial action will properly and expeditiously perform the appropriate remedial action. Any person liable under 75-10-715(1) shall take immediate action to contain, remove, and abate the release.

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

1 (3) Except as provided in 75-10-712, the department is authorized to draw on the fund to take
2 action under subsection (1) if it has made diligent good faith efforts to determine the identity of the person or
3 persons liable for the release or threatened release and:

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

6 (b) a person or persons determined by the department to be liable or potentially liable under 75-
7 10-715(1) have been informed in writing of the department's determination and have been requested by the
8 department to take appropriate remedial action but are unable or unwilling to take action in a timely manner;
9 and

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

13 (4) Whenever the department is authorized to act pursuant to subsection (1), it may issue to any
14 person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or
15 appropriate to protect the public health, safety, or welfare or the environment.

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

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

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

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

23 (B) any prior history of violations;

24 (C) the degree of culpability; and

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

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

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

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

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

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

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

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

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

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

18 (9) ~~A person who is not subject to an administrative or judicial order may not conduct any remedial~~
19 ~~action at any facility that is subject to an administrative or judicial order issued pursuant to this part without the~~
20 ~~written permission of the department.~~ If a state or federal administrative or judicial order is issued relative to a
21 facility, the order and any remedial activity conducted pursuant to the order may be admissible in a civil action
22 pertaining to the facility or property adjacent to or allegedly impacted by the facility provided that the reviewing
23 court in its discretion determines the order to be relevant and the probative value is not substantially
24 outweighed by the danger of unfair prejudice. Admission of this evidence does not make the department a
25 necessary party to the action. Remedial action performed in accordance with this part is intended to provide for
26 the protection of the environmental life support system from degradation and to prevent unreasonable depletion
27 and degradation of natural resources.

28 (10) The department may take remedial action pursuant to subsection (1) at a site that is regulated

1 under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public
2 Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of this
3 part.

4 (11) The department may take remedial action as provided for in 75-10-743(12)."

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6 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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