

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE HARD-ROCK MINING AND RECLAMATION
7 ACCOUNT AND THE OPENCUT MINING AND RECLAMATION ACCOUNT IN THE STATE SPECIAL
8 REVENUE FUND; ESTABLISHING AN ENVIRONMENTAL REHABILITATION AND RESPONSE ACCOUNT
9 IN THE STATE SPECIAL REVENUE FUND; DEDICATING CERTAIN FINES AND PENALTIES TO THE
10 ACCOUNT; DEDICATING CERTAIN UNCLAIMED OR EXCESS RECLAMATION BOND FUNDS TO THE
11 ACCOUNT; PROVIDING THAT FUNDS BE APPROPRIATED TO THE DEPARTMENT OF ENVIRONMENTAL
12 QUALITY FOR CERTAIN PURPOSES; AMENDING SECTIONS 75-2-401, 75-2-412, 75-2-413, 75-2-427,
13 75-2-514, 75-5-611, 75-5-634, 75-5-635, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-424,
14 75-10-542, 75-10-1223, 75-11-223, 75-11-224, 75-11-321, 75-11-516, 75-11-525, 76-4-109,
15 82-4-141, 82-4-241, 82-4-311, 82-4-424, AND 82-4-426, MCA; AND PROVIDING AN EFFECTIVE
16 DATE."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19
20 NEW SECTION. **Section 1. Environmental rehabilitation and response account.** (1) There is an
21 environmental rehabilitation and response account in the state special revenue fund provided for in
22 17-2-102.

23 (2) There must be deposited in the account:

24 (a) fine and penalty money received pursuant to 75-2-401, 75-2-412, 75-2-413, 75-2-427,
25 75-2-514, 75-2-515, 75-5-611, 75-5-631, 75-5-632, 75-5-633, 75-5-634, 75-5-635, 75-6-109,
26 75-6-114, 75-10-417, 75-10-418, 75-10-424, 75-10-542, 75-10-1223, 75-11-223, 75-11-224,
27 75-11-321, 75-11-516, 75-11-525, 76-4-109, 82-4-141, 82-4-241, 82-4-311, and 82-4-424, and other
28 funds or contributions designated for deposit to the account;

29 (b) unclaimed or excess reclamation bond money received pursuant to 82-4-241, 82-4-311,
30 82-4-424, and 82-4-426; and

1 (c) interest earned on the account.

2 (3) Money in the account is available to the department of environmental quality by appropriation
3 and must be used to pay for:

4 (a) reclamation and revegetation of land affected by mining activities, research pertaining to the
5 reclamation and revegetation of land, and the rehabilitation of water affected by mining activities;

6 (b) reclamation and revegetation of unreclaimed mine lands for which the department may not
7 require reclamation by, or obtain costs of reclamation from, a legally responsible party;

8 (c) remediation of sites containing hazardous wastes or hazardous substances for which the
9 department may not recover costs from a legally responsible party; or

10 (d) response to an imminent threat of substantial harm to the environment, to public health, or to
11 public safety for which no funding or insufficient funding is available pursuant to 75-1-1101.

12 (4) Any unspent or unencumbered money in the account at the end of a fiscal year must remain
13 in the account until spent or appropriated by the legislature.

14

15 **Section 2.** Section 75-2-401, MCA, is amended to read:

16 **"75-2-401. Enforcement -- notice -- order for corrective action -- administrative penalty.** (1) When
17 the department believes that a violation of this chapter, a rule adopted under this chapter, or a condition
18 or limitation imposed by a permit issued pursuant to this chapter has occurred, it may cause written notice
19 to be served personally or by certified mail on the alleged violator or the violator's agent. The notice must
20 specify the provision of this chapter, the rule, or the permit condition or limitation alleged to be violated
21 and the facts alleged to constitute a violation. The notice may include an order to take necessary
22 corrective action within a reasonable period of time stated in the order or an order to pay an administrative
23 penalty, or both. The order becomes final unless, within 30 days after the notice is received, the person
24 named requests in writing a hearing before the board. On receipt of the request, the board shall schedule
25 a hearing.

26 (2) If, after a hearing held under subsection (1), the board finds that violations have occurred, it
27 shall issue an appropriate order for the prevention, abatement, or control of the emissions involved or for
28 the taking of other corrective action or assess an administrative penalty, or both. As appropriate, an order
29 issued as part of a notice or after a hearing may prescribe the date by which the violation must cease; time
30 limits for particular action in preventing, abating, or controlling the emissions; or the date by which the

1 administrative penalty must be paid. If, after a hearing on an order contained in a notice, the board finds
2 that a violation has not occurred or is not occurring, it shall rescind the order.

3 (3) (a) An action initiated under this section may include an administrative civil penalty of not more
4 than \$10,000 for each day of each violation, not to exceed a total of \$80,000. If an order issued by the
5 board under this section requires the payment of an administrative civil penalty, the board shall state
6 findings and conclusions describing the basis for its penalty assessment.

7 (b) Administrative penalties collected under this section must be deposited in the ~~state general~~
8 ~~fund~~ environmental rehabilitation and response account in the state special revenue fund provided for in
9 [section 1].

10 (c) Penalties imposed by an administrative order under this section may not be assessed for any
11 day of violation that occurred more than 12 months prior to the issuance of the initial notice and order by
12 the department under subsection (1).

13 (d) In determining the amount of penalty to be assessed for an alleged violation under this section,
14 the department or board, as appropriate, shall consider:

15 (i) the alleged violator's ability to pay and the economic impact of the penalty on the alleged
16 violator;

17 (ii) the alleged violator's full compliance history and good faith efforts to comply;

18 (iii) the duration of the violation as established by any credible evidence, including evidence other
19 than the applicable test method;

20 (iv) payment by the violator of penalties previously assessed for the same violation;

21 (v) the economic benefit of noncompliance;

22 (vi) the seriousness of the violation; and

23 (vii) other matters as justice may require.

24 (4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter
25 4, part 6, apply to a hearing conducted under this section.

26 (5) Instead of issuing the order provided for in subsection (1), the department may either:

27 (a) require that the alleged violators appear before the board for a hearing at a time and place
28 specified in the notice and answer the charges complained of; or

29 (b) initiate action under 75-2-412 or 75-2-413.

30 (6) This chapter does not prevent the board or department from making efforts to obtain voluntary

1 compliance through warning, conference, or any other appropriate means.

2 (7) In connection with a hearing held under this section, the board may and on application by a
3 party shall compel the attendance of witnesses and the production of evidence on behalf of the parties."

4

5 **Section 3.** Section 75-2-412, MCA, is amended to read:

6 **"75-2-412. Criminal penalties -- injunction preserved.** (1) A person is guilty of an offense under
7 this section if that person knowingly:

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

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

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

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

15 (3) Fines collected under this section, except fines collected by an approved local air pollution
16 control program, must be deposited in the ~~state general fund~~ environmental rehabilitation and response
17 account in the state special revenue fund provided for in [section 1].

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 4.** 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~~ for each violation. Each day of each violation constitutes a separate
27 violation. The department may institute and maintain in the name of the state any enforcement
28 proceedings under this section. Upon request of the department, the attorney general or the county
29 attorney of the county of violation shall petition the district court to impose, assess, and recover the civil
30 penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412, except for civil

1 penalties for violation of the operating permit program required by Subchapter V of the federal Clean Air
2 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
9 of a violation and if the department makes a prima facie showing that the conduct or events giving rise
10 to the 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 ~~state general fund~~ environmental
17 rehabilitation and response account in the state special revenue fund provided for in [section 1]. This
18 subsection does not apply to money collected by an approved local air pollution control program."
19

20 **Section 5.** 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
24 have been deducted by the department for costs attributable to implementation of 75-2-421 through
25 75-2-429 and for contract costs incurred pursuant to 75-2-422(3), if any. After a final determination has
26 been made and additional payments or refunds have been made, the penalty money remaining ~~shall~~ must
27 be transferred to the ~~state general fund~~ environmental rehabilitation and response account in the state
28 special revenue fund provided for in [section 1]."
29

30 **Section 6.** Section 75-2-514, MCA, is amended to read:

1 **"75-2-514. Civil penalties -- disposition of civil penalties.** (1) A district court may assess a civil
 2 penalty of not more than \$25,000 a day upon a person that violates any provision of this part, a rule
 3 adopted under this part, or a permit or order issued under this part. In the case of a continuing violation,
 4 each day the violation continues constitutes a separate violation.

5 (2) An action under this section is not a bar to enforcement by injunction or other appropriate civil
 6 or administrative remedies.

7 (3) Civil penalties collected under this part must be deposited in the environmental rehabilitation
 8 and response account in the state special revenue fund provided for in [section 1]."

9

10 **Section 7.** Section 75-5-611, MCA, is amended to read:

11 **"75-5-611. Violation of chapter -- administrative actions and penalties -- notice and hearing.** (1)
 12 When the department has reason to believe that a violation of this chapter, a rule adopted under this
 13 chapter, or a condition of a permit or authorization required by a rule adopted under this chapter has
 14 occurred, it may have a written notice letter served personally or by certified mail on the alleged violator
 15 or the violator's agent. The notice letter must state:

16 (a) the provision of statute, rule, permit, or approval alleged to be violated;

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

18 (c) the specific nature of corrective action that the department requires;

19 (d) as applicable, the amount of the administrative penalty that will be assessed by order under
 20 subsection (2) if the corrective action is not taken within the time provided under subsection (1)(e); and

21 (e) as applicable, the time within which the corrective action is to be taken or the administrative
 22 penalty will be assessed. For the purposes of this chapter, service by certified mail is complete on the date
 23 of receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until
 24 the provisions of subsection (1) have been complied with.

25 (2) (a) The department may issue an administrative notice and order in lieu of the notice letter
 26 provided under subsection (1) if the department's action:

27 (i) does not involve assessment of an administrative penalty; or

28 (ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or
 29 is violating 75-5-605.

30 (b) A notice and order issued under this section must meet all of the requirements specified in

1 subsection (1).

2 (3) In a notice and order given under subsection (1), the department may require the alleged
3 violator to appear before the board for a public hearing and to answer the charges. The hearing must be
4 held no sooner than 15 days after service of the notice and order, except that the board may set an earlier
5 date for hearing if it is requested to do so by the alleged violator. The board may set a later date for
6 hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

7 (4) If the department does not require an alleged violator to appear before the board for a public
8 hearing, the alleged violator may request the board to conduct the hearing. The request must be in writing
9 and must be filed with the department no later than 30 days after service of a notice and order under
10 subsection (2). If a request is filed, a hearing must be held within a reasonable time. If a hearing is not
11 requested within 30 days after service upon the alleged violator, the opportunity for a contested case
12 appeal to the board under Title 2, chapter 4, part 6, is waived.

13 (5) If a contested case hearing is held under this section, it must be public and must be held in
14 the county in which the violation is alleged to have occurred or in Lewis and Clark County.

15 (6) (a) After a hearing, the board shall make findings and conclusions that explain its decision.

16 (b) If the board determines that a violation has occurred, it shall also issue an appropriate order
17 for the prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.

18 (c) If the order requires abatement or control of pollution, the board shall state the date or dates
19 by which a violation must cease and may prescribe timetables for necessary action in preventing, abating,
20 or controlling the pollution.

21 (d) If the order requires payment of an administrative penalty, the board shall explain how it
22 determined the amount of the administrative penalty.

23 (e) If the board determines that a violation has not occurred, it shall declare the department's
24 notice void.

25 (7) The alleged violator may petition the board for a rehearing on the basis of new evidence, which
26 petition the board may grant for good cause shown.

27 (8) Instead of issuing an order, the board may direct the department to initiate appropriate action
28 for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.

29 (9) (a) An action initiated under this section may include an administrative penalty of not more
30 than \$10,000 for each day of each violation; however, the maximum penalty may not exceed \$100,000

1 for any related series of violations.

2 (b) Administrative penalties collected under this section must be deposited in the ~~general fund~~
3 environmental rehabilitation and response account in the state special revenue fund provided for in [section
4 1].

5 (c) In determining the amount of penalty to be assessed to a person, the department and board
6 shall consider the criteria stated in 75-5-631(4) and rules promulgated under 75-5-201.

7 (d) The contested case provisions of the Montana Administrative Procedure Act, provided for in
8 Title 2, chapter 4, part 6, apply to a hearing conducted under this section."
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 ~~state general fund~~
13 environmental rehabilitation and response account in the state special revenue fund provided for in [section
14 1]."
15

16 **Section 9.** Section 75-5-635, MCA, is amended to read:

17 **"75-5-635. Costs and expenses -- recovery by department.** (1) In a civil action initiated by the
18 department under this chapter, the department may ask for and the court is authorized to assess a violator
19 for the cost of the investigation or monitoring survey that led to the establishment of the violation and any
20 expense incurred by the state in removing, correcting, or terminating any of the adverse effects upon
21 water quality resulting from the unauthorized discharge of pollutants.

22 (2) Any costs and expenses recovered by the department under the provisions of subsection (1)
23 must be deposited in the ~~state general fund~~ environmental rehabilitation and response account in the state
24 special revenue fund provided for in [section 1]."
25

26 **Section 10.** Section 75-6-109, MCA, is amended to read:

27 **"75-6-109. Administrative enforcement.** (1) If the department believes that a violation of this part,
28 a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve
29 written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice
30 must specify the provision of this part, the rule, or the condition of approval alleged to have been violated

1 and the facts alleged to constitute a violation. The notice must include an order to take necessary
2 corrective action within a reasonable period of time. The time period must be stated in the order. Service
3 by mail is complete on the date of filing.

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

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

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

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

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

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

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

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

18 (6) (a) An action initiated under this part may include an administrative penalty not to exceed:

19 (i) \$1,000 for each day of a violation pertaining to a public water system, other than a water
20 hauler or a water bottling plant, that serves a population of more than 10,000; and

21 (ii) \$500 for each day of violation for other violations.

22 (b) Administrative penalties collected under this section must be deposited in the ~~state general~~
23 ~~fund~~ environmental rehabilitation and response account in the state special revenue fund provided for in
24 [section 1].

25 (7) In determining the amount of penalty to be assessed to a person, the department or the board,
26 as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under
27 75-6-103(2)(i).

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

30

1 **Section 11.** Section 75-6-114, MCA, is amended to read:

2 **"75-6-114. Civil penalty.** (1) In an action initiated by the department to collect civil penalties
3 against a person who is found to have violated this part or a rule, order, or condition of approval issued
4 under this part, the person is subject to a civil penalty not to exceed \$10,000.

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

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

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

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

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

15 (5) Civil penalties collected pursuant to this section must be deposited in the ~~state general fund~~
16 environmental rehabilitation and response account in the state special revenue fund provided for in [section
17 1]."

18

19 **Section 12.** Section 75-10-417, MCA, is amended to read:

20 **"75-10-417. Civil penalties.** (1) ~~Any A~~ person who violates any provision of this part, a rule
21 adopted under this part, an order of the department or the board, or a permit is subject to a civil penalty
22 not to exceed \$10,000 ~~per~~ for each violation. Each day of violation constitutes a separate violation.

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

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

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

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

1 (4) Money collected under this section ~~shall~~ must be deposited in the ~~state general fund~~
2 environmental rehabilitation and response account in the state special revenue fund provided for in [section
3 1]."

4

5 **Section 13.** Section 75-10-418, MCA, is amended to read:

6 **"75-10-418. Criminal penalties.** (1) A person is guilty of an offense under this section if the person
7 knowingly:

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

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

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

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

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

21 (2) A person who is guilty of an offense under subsection (1) is subject to a fine of not more than
22 \$25,000 ~~per~~ for each violation or imprisonment for a period not to exceed 3 years, or both. Each day of
23 violation constitutes a separate violation.

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

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

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

3 (6) Money collected under this section, except money collected in a justice's court, must be
4 deposited in the ~~state general fund~~ environmental rehabilitation and response account in the state special
5 revenue fund provided for in [section 1]."

6

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

8 **"75-10-424. Administrative penalty.** (1) The department may assess a person who violates a
9 provision of this part, or a rule adopted under this part, an administrative penalty, not to exceed \$10,000
10 for each violation. Each day of violation constitutes a separate violation, but the maximum penalty may
11 not exceed \$100,000 for any related series of violations. Assessment of an administrative penalty under
12 this section must be made in conjunction with an order or administrative action authorized by this chapter.

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

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

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

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

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

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

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

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

26 (6) Administrative penalties collected under this section must be deposited in the ~~state general~~
27 ~~fund~~ environmental rehabilitation and response account in the state special revenue fund provided for in
28 [section 1]."

29

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

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

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

7 (3) Fines and penalties collected under this part, except those collected in a justice's court, must
8 be deposited in the environmental rehabilitation and response account in the state special revenue fund
9 provided for in [section 1]."

10

11 **Section 16.** Section 75-10-1223, MCA, is amended to read:

12 **"75-10-1223. Penalties and fines.** (1) A person ~~that~~ who disposes of septage in violation of
13 75-10-1210 or of the standards adopted pursuant to 75-10-1202 is guilty of a misdemeanor and upon
14 conviction shall be fined an amount not to exceed \$500.

15 (2) A person ~~that~~ who violates this part or a rule or order adopted pursuant to this part is subject
16 to a civil penalty of not more than \$500. Each day that violation of this part, a rule of the department, or
17 an order issued pursuant to this part occurs constitutes a separate violation. The department or the county
18 attorney of the county in which the violation occurred may file an action to collect the penalty.

19 (3) Penalties collected by the department under this section must be deposited in the ~~account~~
20 provided for in 75-10-1203 environmental rehabilitation and response account in the state special revenue
21 fund provided for in [section 1]. Fines and penalties collected by a county must be deposited in the general
22 fund of the county."

23

24 **Section 17.** Section 75-11-223, MCA, is amended to read:

25 **"75-11-223. Civil penalties.** (1) ~~Any~~ A person who violates any provision of this part, a rule
26 adopted under this part, or an order of the department or the board is subject to a civil penalty not to
27 exceed \$10,000 ~~per~~ for each violation. If an installer or an inspector who is an employee is in violation,
28 the employer of that installer or that inspector is the entity that is subject to the provisions of this section
29 unless the violation is the result of a grossly negligent or willful act. Each day of violation of this part, a
30 rule adopted under this part, or an order constitutes a separate violation.

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

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

6 (a) enforcement of this part, rules adopted under this part, orders of the department or the board,
 7 or terms of a license or permit by injunction or other appropriate remedy; or

8 (b) action under 75-11-224.

9 (4) Money collected under this section must be deposited in the environmental rehabilitation and
 10 response account in the state special revenue fund provided for in [section 1]."

11

12 **Section 18.** Section 75-11-224, MCA, is amended to read:

13 **"75-11-224. Criminal penalties.** (1) ~~Any~~ An owner or operator who knowingly installs or closes
 14 an underground storage tank system without a permit and either an inspection or the use of the services
 15 of a licensed installer as required in 75-11-209; ~~any~~ an installer who knowingly installs or closes an
 16 underground storage tank system without being licensed; or ~~any~~ a person who knowingly makes any false
 17 statements or representations in any application, permit, report, licensing form, or other document filed
 18 or maintained as required by this part or required by rules adopted under this part is subject to a fine not
 19 to exceed \$10,000 for each violation or imprisonment not to exceed 6 months, or both. Each day of
 20 violation constitutes a separate violation.

21 (2) A person convicted of a second or subsequent criminal violation is subject to a fine not to
 22 exceed \$20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of violation
 23 constitutes a separate violation.

24 (3) Action under this section does not bar enforcement of this part, rules adopted under this part,
 25 orders of the department or the board, or terms of a license or permit by injunction or other appropriate
 26 remedy.

27 (4) Money collected under this section must be deposited in the environmental rehabilitation and
 28 response account in the state special revenue fund provided for in [section 1]."

29

30 **Section 19.** Section 75-11-321, MCA, is amended to read:

1 **"75-11-321. Criminal penalties.** (1) A person who knowingly misrepresents the date of discovery
 2 of a release, submits or causes to be submitted a fraudulent claim or document, or makes a false
 3 statement or representation in seeking or assisting a person to seek reimbursement under this part is
 4 subject to a fine not to exceed \$10,000 for each violation or imprisonment not to exceed 6 months, or
 5 both. A person convicted of a second or subsequent violation of this section is subject to a fine not to
 6 exceed \$20,000 for each violation or imprisonment not to exceed 1 year, or both.

7 (2) Money collected under this section must be deposited in the environmental rehabilitation and
 8 response account in the state special revenue fund provided for in [section 1]."

9

10 **Section 20.** Section 75-11-516, MCA, is amended to read:

11 **"75-11-516. Civil penalties.** (1) A person who violates any provision of this part, a rule adopted
 12 under this part, or an order of the department or the board is subject to a civil penalty not to exceed
 13 \$10,000 for each violation. Each day of violation constitutes a separate violation.

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

18 (3) Action under this section does not bar enforcement of this part, rules adopted under this part,
 19 or orders of the department or the board.

20 (4) Money collected under this section must be deposited in the ~~state general fund~~ environmental
 21 rehabilitation and response account in the state special revenue fund provided for in [section 1]."

22

23 **Section 21.** Section 75-11-525, MCA, is amended to read:

24 **"75-11-525. Administrative penalties for violations -- appeals -- venue for hearings.** (1) A person
 25 who violates any of the provisions of this part or any rules promulgated under the authority of this part
 26 may be assessed and ordered by the department to pay an administrative penalty not to exceed \$500 for
 27 each violation. This limitation on administrative penalties applies only to penalties assessed under this
 28 section. Each occurrence of the violation and each day that it remains uncorrected constitutes a separate
 29 violation. The department may suspend a portion of the administrative penalty assessed under this section
 30 if the condition that caused the assessment of the penalty is corrected within a specified time. Assessment

1 of an administrative penalty under this section may be made in conjunction with any order or other
2 administrative action authorized by this chapter.

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

6 (a) the provision alleged to be violated;

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

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

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

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

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

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

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

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

26 (a) the provision allegedly violated;

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

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

30 (d) a timetable that a reasonable person would consider appropriate for compliance with the

1 alleged violations.

2 (4) The department shall publish a schedule of maximum and minimum penalties for specific
3 violations. In determining appropriate penalties for violations, the department shall consider the gravity of
4 the violations and the potential for significant harm to the public health or the environment. In determining
5 the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused
6 the penalty assessment, the department shall consider the cooperation and the degree of care exercised
7 by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant
8 harm resulted to the public health or the environment from the violation.

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

13 (6) Action under this section does not bar action under this chapter or any other remedy available
14 to the department for violations of underground storage tank laws or rules promulgated under those laws.

15 (7) Administrative penalties collected under this section must be deposited in the ~~state general~~
16 ~~fund~~ environmental rehabilitation and response account in the state special revenue fund provided for in
17 [section 1]."

18

19 **Section 22.** Section 76-4-109, MCA, is amended to read:

20 **"76-4-109. Penalties.** (1) A person violating any provision of this part, except 76-4-122(1), or any
21 rule or order issued under this part is guilty of an offense and subject to a fine of not to exceed \$1,000.

22 (2) In addition to the fine specified in subsection (1), a person who violates any provision of this
23 part or any rule or order issued under this part is subject to a civil penalty not to exceed \$1,000. Each day
24 of violation constitutes a separate violation.

25 (3) Penalties imposed under subsection (1) or (2) do not bar enforcement of this part or rules or
26 orders issued under it by injunction or other appropriate remedy.

27 (4) The purpose of this section is to provide additional and cumulative remedies.

28 (5) Money collected under this section must be deposited in the environmental rehabilitation and
29 response account in the state special revenue fund provided for in [section 1]."

30

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

2 **"82-4-141. Violation -- penalty.** (1) A person or operator who violates any of the provisions of this
3 part or rules or orders adopted under this part shall pay a civil penalty of not less than \$100 or more than
4 \$1,000 for the violation and an additional civil penalty of not less than \$100 or more than \$1,000 for each
5 day during which a violation continues and may be enjoined from continuing ~~such~~ the violations as
6 provided in this section. These penalties ~~shall be~~ are recoverable in any action brought in the name of the
7 state of Montana by the attorney general in the district court of the first judicial district of this state in and
8 for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

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

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

17 (4) Civil penalties collected under this section must be deposited in the environmental rehabilitation
18 and response account in the state special revenue fund provided for in [section 1]."

19

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

21 **"82-4-241. Receipts paid into general fund -- disposition of civil penalties and bond forfeiture**
22 **money.** (1) Except for ~~bond forfeiture moneys~~ as provided in this section, all fees, ~~penalties~~, and other
23 ~~moneys~~ money available or paid to the department under the provisions of this part ~~shall~~ must be placed
24 in the state treasury and credited to the general fund.

25 (2) Civil penalties paid to the department under 82-4-254 must be placed in the environmental
26 rehabilitation and response account in the state special revenue fund provided for in [section 1].

27 (3) Bond forfeiture money must be used to pay for expenses that the department incurs pursuant
28 to 82-4-240.

29 (4) Funds held by the department as bond or as a result of bond forfeiture that are no longer
30 needed for reclamation and for which the department is not able to locate an owner after diligent search

1 must be deposited in the state special revenue fund and credited to the environmental rehabilitation and
 2 response account provided for in [section 1]."

3

4 **Section 25.** Section 82-4-311, MCA, is amended to read:

5 **"82-4-311. ~~Hard-rock mining and reclamation account~~ Disposition of fees, fines, penalties, and**
 6 **other uncleared money.** All fees, fines, penalties, and other uncleared money that has been or will be paid
 7 to the department under the provisions of this part must be placed in the environmental rehabilitation and
 8 response account in the state special revenue fund ~~in the state treasury and credited to a special account~~
 9 ~~that is designated as the hard-rock mining and reclamation account. This account is available to the~~
 10 ~~department by appropriation and may be expended for the research, reclamation, and revegetation of land~~
 11 ~~and the rehabilitation of water affected by any mining operations provided for in [section 1]. Funds held~~
 12 ~~by the department as bond or as a result of bond forfeiture that are no longer needed for reclamation and~~
 13 ~~for which the department is not able to locate an owner after diligent search must be deposited in the~~
 14 environmental rehabilitation and response account in the state special revenue fund. ~~Any unencumbered~~
 15 ~~and any unexpended balance of this account remaining at the end of a fiscal year does not lapse but must~~
 16 ~~be carried forward for the purposes of this section until expended or until appropriated by subsequent~~
 17 ~~legislative action."~~

18

19 **Section 26.** Section 82-4-424, MCA, is amended to read:

20 **"82-4-424. Receipt and expenditure of funds -- disposition of fees, fines, penalties, and other**
 21 **money.** (1) The department may receive any federal funds, state funds, or any other funds for the
 22 reclamation of land affected by opencut mining. The department may cause the reclamation work to be
 23 done by its employees, by employees of other governmental agencies, by soil conservation districts, or
 24 through contracts with qualified persons.

25 ~~(2) Any funds of any public works programs available to the department must be expended and~~
 26 ~~used to reclaim and rehabilitate any lands that have been subject to opencut mining and that have not been~~
 27 ~~reclaimed and rehabilitated in accordance with the standards of this part.~~

28 ~~(3)(2) There is an opencut mining and reclamation account within the state special revenue fund~~
 29 ~~established in 17-2-102. There must be deposited in the account all All fees, fines, penalties, and other~~
 30 ~~money that have been or will be paid under the provisions of this part must be deposited in the~~

1 environmental rehabilitation and response account in the state special revenue fund provided for in [section
2 1]. The money in the account is available to the department through appropriation and must be spent by
3 the department for the reclamation and revegetation of land, research pertaining to the reclamation and
4 revegetation of land, and the rehabilitation of water affected by opencut mining operations and for
5 administration of this part. Funds held by the department as bond or as a result of bond forfeiture that are
6 no longer needed for reclamation and for which the department is not able to locate an owner after diligent
7 search must be deposited in the environmental rehabilitation and response account in the state special
8 revenue fund. Any unspent or unencumbered money in the account at the end of a fiscal year must
9 remain in the account until spent or appropriated by the legislature."

10

11 **Section 27.** Section 82-4-426, MCA, is amended to read:

12 **"82-4-426. Reclamation of land on which bond forfeited.** In keeping with the provisions of this
13 part, the department may reclaim any affected lands with respect to which a bond has been forfeited. If
14 the amount of the forfeited bond exceeds the cost of reclamation, the excess must be deposited in the
15 state general fund environmental rehabilitation and response account in the state special revenue fund
16 provided for in [section 1]."

17

18 NEW SECTION. Section 28. Codification instruction. [Section 1] is intended to be codified as an
19 integral part of Title 75, chapter 1, and the provisions of Title 75, chapter 1, apply to [section 1].

20

21 NEW SECTION. Section 29. Severability. If a part of [this act] is invalid, all valid parts that are
22 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
23 applications, the part remains in effect in all valid applications that are severable from the invalid
24 applications.

25

26 NEW SECTION. Section 30. Effective date. [This act] is effective July 1, 2001.

27

- END -