

MONTANA 59TH LEGISLATURE
HOUSE NATURAL RESOURCES COMMITTEE
February 2, 2005

EXHIBIT 1
DATE 2.2.05
HB 453

TESTIMONY IN SUPPORT OF HB 453

JOHN ARRIGO, ADMINISTRATOR
ENFORCEMENT DIVISION

Introduction

Mr. Chairman and members of the committee, my name is John Arrigo. I am administrator of the DEQ Enforcement Division and I am here to testify in support of HB 453. I would first like to thank Rep. Furey for sponsoring this bill.

Background

HB 453 adds a \$500 administrative penalty to the Solid Waste Management Act, the Motor Vehicle Recycling and Disposal Act, the Sanitation in Subdivisions Act and the Underground Storage Tank Installer Licensing and Permitting Act. The bill also increases the judicial penalty from \$1,000 to \$5,000 in the Solid Waste and Subdivisions Acts and increases the judicial penalty in the Junk Vehicle Law from \$50 to \$5,000.

(Handout penalty table)

The reason this bill is desired is to increase DEQ's flexibility in seeking penalties. Over the past eight years, DEQ has received almost 1,000 separate citizen complaints about junk vehicles, solid waste or subdivisions. Most of these complaints are not violations of any law or rule and are resolved informally. Some of the violators correct the problems after receiving a letter from DEQ. However 37 of these have evolved into formal enforcement cases.

Currently if DEQ wishes to seek a penalty for a violation of these laws, it must file an action in district court. In some instances we applied for a court order to require cleanup or compliance, but in some of the other cases, we asked for a penalty. Over the past 8 years, we have:

Filed 6 Junk Vehicle cases with an average penalty of \$57,000;
Filed 4 Subdivisions cases with an average penalty of \$15,000;
Filed 10 Solid Waste cases with an average penalty of \$6,000; and
Filed 1 UST Installer case with a \$12,000 penalty.

Most of these violators are individuals who do not want to comply with the laws. It has not been necessary to take enforcement actions against the municipal landfills or county junk vehicle yards because these entities do comply.

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Experience has shown that once a case is filed in court, litigation and resistance starts, a court fight ensues and the resulting penalties are high. DEQ believes that if we had the authority to assess a lower administrative penalty, we could settle some of the cases administratively and avoid going to court. The court actions and high penalties will be reserved for the significant violations and the uncooperative violators.

It is not possible to predict what violations may occur in the future and what penalties may be. However, for the purposes of the fiscal note, I assume that DEQ will issue four administrative penalty orders in FT 2006 with an average penalty of \$1,000 and eight orders in FY2007 with an average penalty of \$1,000. Mr. Chairman with that background I would like to briefly go through the amendments in HB 453.

SECTION-BY-SECTION DESCRIPTION

Page 1, Section 1, amends 75-10-227(1) in the Solid Waste Management Act to add that an order may assess an administrative penalty. 75-10-227(5) is also amended to require that any contested case must be conducted in accordance with the Montana Administrative Procedures Act.

Page 2, Section 2 amends 75-10-228(1) of the Solid Waste Act to add a \$500 administrative penalty and increase the judicial penalty to \$5,000. 75-10-228(2) is amended to clarify that a district court action must be brought in Lewis and Clark County or the district court of the county where the violation occurred.

Page 2, Section 3 amends 75-1-540(1) of the Junk Vehicle Act to add that an order may assess an administrative penalty. 75-1-540(4) is also amended to require that any contested case must be conducted in accordance with the Montana Administrative Procedures Act.

Page 3, Section 4 amends 75-1-542(2) of the Junk Vehicle Act to add a \$500 administrative penalty and to increase the judicial penalty to \$5,000. 75-1-540(3) is new language to clarify that a district court action must be brought in Lewis and Clark County or the district court of the county where the violation occurred.

Page 3, Section 5 amends 75-11-218(1) of the Underground Storage Tank Installer Licensing and Permitting Act to add that an order may assess an administrative penalty. 75-11-218(5) is new language to require that any contested case must be conducted in accordance with the Montana Administrative Procedures Act.

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Page 4, Section 6 amends 75-11-223(1) of the UST Installer Act to add a \$500 administrative penalty. 75-11-223(2) is amended to clarify that a district court action must be brought in Lewis and Clark County or the district court of the county where the violation occurred.

Page 5, Section 7 amends 76-4-108 of the Sanitation in Subdivisions Act to add that an order may assess an administrative penalty.

Page 5, Section 7 amends 76-4-109(2) of the Subdivisions Act to add a \$500 administrative penalty and increase the judicial penalty to \$5,000.

Section 9 - New Section

Section 9 is a savings clause to address penalty actions that were begun before the effective date of this act.

Section 10 - New Section

Section 10 provides an immediate effective date.