EXHIBIT 2
DATE 2.2.05
HB 453

DEPARTMENT OF ENVIRONMENTAL QUALITY

House Bill 453
Introduced by Rep. Kevin Furey
By Request of the Department of Environmental Quality
2005 MONTANA LEGISLATURE

FACT SHEET

STATUTES:
75-10-227, 75-10-228, 75-10-540, 75-10-542, 75-11-218, 75-11-223, 76-4-108, AND 76-4-109, MCA

TITLE:
A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR ADMINISTRATIVE PENALTIES UNDER THE SOLID WASTE, JUNK VEHICLE, UNDERGROUND STORAGE TANK LICENSING, AND SANITATION IN SUBDIVISION LAWS; AMENDING VENUE PROVISIONS FOR ENFORCEMENT ACTIONS; AMENDING SECTIONS 75-10-227, 75-10-228, 75-10-540, 75-10-542, 75-11-218, 75-11-223, 76-4-108, AND 76-4-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

DESCRIPTION
HB 453 amends 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 to add a $500 administrative penalty authority and to increase the judicial penalty authority to $5,000 in the first three laws identified above.

Most of the environmental laws administered by DEQ have administrative and judicial penalty authority. Administrative penalties can be assessed by the DEQ in an administrative order. A judge in a district court action awards judicial penalties. Also, administrative penalties are typically lower than judicial penalties and the administrative process is simpler and swifter than an expensive and time-consuming district court action.

Most of DEQ's enforcement is administrative in nature. However, the lack of administrative penalty authority in the four laws above requires that the DEQ file a court action to seek a penalty for violations. DEQ would prefer to take an administrative penalty action for the more typical violations, and initiate a judicial action and seek higher penalties only for severe violations and uncooperative violators. Therefore, DEQ is requesting that a $500 penalty authority be amended into these laws.

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In order to make the existing amounts for judicial penalty authority more commensurate with other laws, HB 453 also increases the judicial penalty authority in three laws. The existing $1,000 penalty under Solid Waste, the $50 penalty under the Junk Vehicle Law, and the $1,000 penalty under the Subdivisions law are all increased to $5,000 in HB 453. The bill also clarifies the venue provisions in these laws for district court actions.

SECTION-BY-SECTION DESCRIPTION

Section 1 – Amended

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.

Section 2 - Amended

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.

Section 3 - Amended

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.

Section 4 - Amended

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.

Section 5 - Amended

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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Section 6 - Amended
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.

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

Section 8 - Amended
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.

Penalties for Environmental Laws Administered by the DEQ

STATUTE	PENALTY TYPE AND AMOUNT		PENALTY ACCOUNT
	ADMINISTRATIVE	CIVIL	
1. Water Treatment Plant Operators Act, Section 37-42-101, MCA	----	----	General Fund
2. Montana Clean Air Act, Section 75-2-101, MCA	$10,000/day; maximum $80,000	$10,000/day	Alternative Energy Revolving Loan Account
3. Asbestos Control Act, Section 75-2-501, MCA	$10,000/day; maximum $80,000	$25,000/day	General Fund
4. Montana Water Quality Act, Section 75-5-101, MCA	$10,000/day; maximum $100,000	$25,000/day	General Fund
5. Montana Public Water Supply Act, Section 75-6-101, MCA	$500/day; $1,000/day for PWS serving >10,000 persons	$10,000/day	General Fund
6. Montana Solid Waste Management Act, Section 75-10-201, MCA	**$500/day – HB453**	$1,000/day **$5,000/day – HB453**	Solid Waste Management Account
7. Montana Hazardous Waste Act, Section 75-10-401, MCA	$10,000/day, not to exceed $100,000	$10,000/day	General Fund
8. Motor Vehicle Recycling and Disposal Act, Section 75-10-501, MCA	**$500/day – HB453**	$50/day **$5,000/day – HB453**	General Fund
9. Comprehensive Cleanup and Responsibility Act, Section 75-10-701, MCA	$1,000/day	$10,000/day	Environmental Quality Protection Fund
10. Montana Megalandfill Siting Act, Section 75-10-901, MCA	-----	-----	Solid Waste Management Account
11. Septage Pumper Law, Section 75-10-1201, MCA	$500/day	$500/day	Environmental Rehabilitation and Response Account
12. Montana Underground Storage Tank Installer Licensing & Permitting Act, Section 75-11-201, MCA	**$500/day – HB453**	$10,000/day	Underground Storage Tank License & Permit Account
13. Underground Storage Tank Act, Section 75-11-501, MCA	$500/day	$10,000/day	General Fund
14. Montana Major Facility Siting Act, Section 75-20-101, MCA	-----	$10,000/day	MFSA Special Revenue Account
15. Sanitation In Subdivisions Act, Section 76-4-101, MCA	**$500/day – HB453**	$1,000/day **$5,000/day – HB453**	General Fund
16. Montana Strip and Underground Mine Siting Act, Section 82-4-101, MCA	$100 to $1,000/day	----	General Fund
17. Montana Strip and Underground Mine Reclamation Act, Section 82-4-201, MCA	$100 to $5,000/day	----	General Fund
18. Metal Mine Reclamation Act, Section 82-4-301, MCA	$100 to $1,000/day Imminent danger: $5,000/day	**$5,000/day – HB428**	Environmental Rehabilitation and Response Account
19. Montana Opencut Mining Act, Section 82-4-401, MCA	$100 to $1,000/day	**$5,000/day – HB428**	Environmental Rehabilitation and Response Account