EXHIBIT 3
DATE 2.2.05
HB 428

DEPARTMENT OF ENVIRONMENTAL QUALITY

House Bill 428
Introduced by Rep. Gail Gutsche
By Request of the Department of Environmental Quality
2005 MONTANA LEGISLATURE

FACT SHEET

STATUTES:
Sections 82-4-254 (COAL), 82-4-361 (METAL MINES), AND 82-4-441 (GRAVEL PITS), MCA."

TITLE:
A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO ENFORCEMENT PROCEDURES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY UNDER THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT, THE METAL MINE RECLAMATION LAWS, AND THE OPENCUT MINING ACT; PROVIDING STANDARD PROCEDURES FOR ISSUING AND APPEALING ADMINISTRATIVE ORDERS; PROHIBITING THE DEPARTMENT FROM WAIVING A PENALTY ASSESSED UNDER THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT IF A PERSON OR OPERATOR FAILS TO ABATE THE VIOLATION IN ACCORDANCE WITH A NOTICE OR ORDER; PROVIDING FOR A WRITTEN RELEASE OF LIABILITY UNDER THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT; PROVIDING PENALTIES FOR VIOLATIONS OF THE METAL MINE RECLAMATION LAWS AND THE OPENCUT MINING ACT; AMENDING VENUE PROVISIONS UNDER METAL MINE RECLAMATION LAWS AND THE OPENCUT MINING ACT; AND AMENDING SECTIONS 82-4-254, 82-4-361, AND 82-4-441, MCA."

DESCRIPTION
When the Department of Environmental Quality (DEQ) was created in 1995, the enforcement of 19 different environmental laws was centralized under the DEQ Enforcement Division. Most of the environmental laws are in Title 75, but the reclamation laws for coal, metal mines and gravel pits are in Title 82. The administrative enforcement procedures in Title 82 require a two-step process to assess an administrative penalty. However, the procedures in Title 75 only require one step. DEQ requested this bill to make the Title 82 enforcement procedures similar to Title 75 as an effort to standardize and streamline administrative enforcement

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Existing enforcement procedures required under the Opencut Mining Act limit DEQ's ability to assess a penalty for more than one day of violation at gravel pits. HB 428 also amends 82-4-441, MCA, in the Opencut Act to allow DEQ the flexibility to assess penalties for additional days of violation at gravel pits. DEQ's enforcement under the reclamation laws is administrative in nature where the department issues compliance and penalty orders. In some cases the violations are extreme and the operators will not cooperate with the Department. A more aggressive judicial enforcement action is necessary in these instances to use the power of the courts to bring the operator into compliance and to obtain a larger penalty that is commensurate with the severity of the violation. HB 428 adds a $5,000 judicial penalty to the Metal Mine Reclamation Act and the Opencut Mining Act to provide the opportunity for DEQ to go to district court and seek higher penalties for the more egregious violations.

HB 428 also amends the venue provisions to clarify that a judicial action must be brought in the county where the violation occurred or in Lewis and Clark County if mutually agreed to by the parties.

SECTION-BY-SECTION DESCRIPTION

Section 1 - Amended

Section 1 amends 82-4-254 of the Strip and Underground Mine Reclamation Act to make the enforcement procedures similar to Title 75 and to clean up some old language.

- Amendments to (1) clarify that rules are "adopted" and orders are "issued."

- The term "civil" is replaced with "administrative" to clarify that penalties assessed by the DEQ are administrative civil penalties, in contrast to judicial civil penalties that are levied by district court.

- Amendments to (2) clarify that the DEQ may not waive a penalty if the person fails to abate or correct the violation as directed under 82-4-251. Under this section (82-4-251), violations must be abated within 90 days and the penalty may be waived for minor violations.

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- Amendments to (3)(a) are the main modifications to the enforcement process that DEQ desires. The amendments state that to assess an administrative penalty, the DEQ shall issue a notice of violation (NOV) and penalty order. The person then has 30 days to appeal the order to the Board of Environmental Review. This amendment eliminates the two-step requirement to issue a Statement of Proposed Penalty within 10 days of the NOV, and then make a Findings of Fact, and issue a written decision and order.

- Amendments to (3)(b) are minor cleanup.

- Amendments to (3)(c) and (4) clarify that the DEQ, not the attorney general, may file an action in district court to recover penalties.

- Number (10) is an amendment that adds language that requires the DEQ to issue a release of civil liability within 30 days after a penalty is paid. Under the federal strip mine act, a violation and penalty remain on the companies record for a period of 12 months after the release is issued. The release of civil liability signifies that the violation has been resolved.

Section 2 - Amended

Section 2 amends 82-4-361 in the Metal Mine Reclamation Act to make the enforcement procedures similar to Title 75, to add a $5,000 judicial penalty and to clean up some old language.

- Subsection (1) is new language that requires DEQ to send a violation letter if it believes a violation has occurred. Existing language below in 82-4-361(4) states that the DEQ shall notify the operator of the violation. The purpose of the violation letter in (1) is to satisfy this notification requirement. The violation letter also informs the person of the provision violated, the facts alleged to constitute a violation, and recommends actions that are necessary to return to compliance. The violation letter is not a prerequisite to a formal enforcement action but is intended to document the allegations and inform the violator.

- Amendments to (1) renumber the subsection to (2)(a) and clarify that the DEQ may assess an administrative penalty by issuance of an order pursuant to new (6). The amendments also clarify that a rule is adopted and an order is issued.

- Subsection (2)(c) is new language to establish that the DEQ may bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative action.

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- Subsection (3) is new language that adds a $5,000 judicial penalty authority for each day of violation.

- Amendments to (2) renumber the subsection to (4) and clarify that the district court, in addition to the DEQ, shall consider the factors when determining the penalty amount.

- Amendments to (3) renumber the subsection to (5).

- The old subsection (4) is stricken. This deletes the two-step enforcement process that requires the issuance of a Notice of Violation and Statement of Proposed Penalty, followed by a separate Findings of Fact, Decision and Order.

- Subsection (6)(a) is new language that describes the new procedures for issuing a penalty order. The amendment states that in addition to the violation letter in (1), the DEQ may issue an order. The order must specify the part violated and the facts alleged to constitute a violation. The order may require corrective action; assess a penalty, or both. The issuance of an order is discretionary to conform to the existing 82-4-361(1), which provides that the DEQ "may" assess a penalty.

- Subsection (6)(b) provides the 30-day appeal period that currently exists.

- Amendments to (5) renumber the subsection to (7) and clarify that a judicial action must be brought in the county where the violation occurred or in the first judicial district if mutually agreed to by the parties.

Section 3 – Amended

Section 3 amends 82-4-441 in the Opencut Mining Act to make the enforcement procedures similar to Title 75, to add a $5,000 judicial penalty and to clean up some old language. The amendments also modify procedures to allow the DEQ to assess penalties for multiple days of violation.

- Subsection (1) is new language that requires DEQ to send a violation letter if it believes a violation has occurred. Existing language in 82-4-441(3) below states that the DEQ shall notify the operator of the violation. The purpose of the violation letter in (1) is to satisfy this existing notification requirement. The violation letter also informs the person of the provision violated, the facts alleged to constitute a violation, and recommends actions that are necessary to return to compliance. The violation letter is not a prerequisite to a formal enforcement action but is intended to document the allegations and inform the violator.

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- Amendments to (1) renumber the subsection to (2) and clarify that the DEQ may assess an administrative penalty by issuance of an order pursuant to new subsection (5) and adds violation of an order to the list of violations that may be assessed a penalty. To conform with existing DEQ terminology, the amendments in (a) and (b) strike "civil" and replace it with "administrative."

Subsection (2)(a) states the administrative penalty is not less than $100 or more than $1,000 for the violation and (b) states an additional administrative penalty of not less than $100 or more than $1,000 may be assessed for each day during which the violation continues following service of the notice of violation. The amendments strike the phrase "following the service of the notice of violation" to provide DEQ with the ability to assess a penalty in the initial order for additional days of violation. Currently, to assess a penalty, the DEQ issues a notice of violation together with a statement of proposed penalty for the first day of violation. The NOV/SPP may be appealed but the DEQ usually settles the case for a penalty and corrective action. It is not practical to issue another statement of proposed penalty for additional days of violation while the first SPP is being settled. The result is we are able to seek penalties for only one day of violation. If this language is stricken, DEQ may seek penalties for multiple days of violation in the initial penalty order.

- Subsection (2) is renumbered to (3) and adds a $5,000 judicial penalty authority for each day of violation and states that the DEQ and district court shall consider the penalty factors in (4)

- Old subsection (3) is stricken. This deletes the two-step enforcement process that requires the issuance of a Notice of Violation and Statement of Proposed Penalty, followed by a separate Findings of Fact, Decision and Order.

- Subsection (5)(a) is new language that describes the new procedures for issuing a penalty order. The amendment states that in addition to the violation letter in (1), if the DEQ has credible information that a violation has occurred, it may issue an order. The order must specify the part violated and the facts alleged to constitute a violation. The order may require corrective action; assess a penalty, or both. The issuance of an order is discretionary to conform to the existing 82-4-361(1), which provides that the DEQ "may" assess a penalty.

- Subsection (5)(b) provides the 30-day appeal period that currently exists.

- Amendments to (4) renumber the subsection to (6) and clarify that a judicial action must be brought in the county where the violation occurred or in the first judicial district if mutually agreed to by the parties.

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Section 4 – New Section
New section 4 is a savings clause to so that this bill does not affect ongoing proceedings.

Section 5 – New Section
This new section is added in the event the U.S. Office of Surface Mining does not approve the amendments to the Strip Mine Act. If disapproval occurs, the amendments to Section 1 become void.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY

OF THE STATE OF MONTANA

IN THE MATTER OF: PWSID #03888, MONTANA COFFEE TRADERS, INC., R.C. BEAL, OWNER	NOTICE OF VIOLATION AND ADMINISTRATIVE ORDER DOCKET NO. PWS-99-05

TO: Montana Coffee Traders, Inc., R.C. Beal (Respondent), owner of Montana Coffee Traders Water System

I.

JURISDICTION

(1) This Administrative Order (Order) is issued to Montana Coffee Traders, Inc., R.C. Beal (Respondent), pursuant to the authority vested in the State of Montana, acting by and through the Department of Environmental Quality (Department) under the Montana Public Water Supply Act ("the Act"), Title 75, Chapter 6, Montana Code Annotated (MCA), and rules implementing the Act found in the Administrative Rules of Montana (ARM), Title 17, Chapter 38, Subchapter 2. The Act authorizes the Department to regulate the construction, modification, operation, and maintenance of public water supply systems and enforce requirements of the Act.

(2) The Department is an agency of the executive branch of government duly created and existing under the authority of Section 2-15-3501, MCA.

(3) The Department is charged with the administration and enforcement of the Act, and pursuant to Section 75-6-109, MCA, is specifically authorized to institute and maintain administrative enforcement proceedings under the Act, including seeking administrative penalties from public water supply systems that violate requirements of the Act (Section 75-6-109, MCA).

(4) Respondent owns and operates a water supply system (System) that serves Montana Coffee Traders, Inc., a public eating and drinking establishment, on Highway 93, near Whitefish, Flathead County, Montana. Respondent's System regularly serves water to

25 or more persons daily for at least 60 days in a calendar year. Respondent owned and operated this public water supply system at the time of the violations alleged in this Order.

(5) The Respondent's System is a "public water supply system" as defined by Section 75-6-102(16), MCA, and a "transient non-community water system" as defined by Section 75-6-102(20), MCA.

(6) Respondent is a "supplier of water" within the meaning of ARM 17.38.202(43).

(7) Therefore, the Department has jurisdiction to issue this Notice of Violation and Administrative Order.

II.

FINDINGS OF FACT

The Department hereby makes the following findings of fact:

Total Coliform Monitoring

(8) For the two-year monitoring period ending September 30, 1998, Respondent failed to submit 15 required total coliform samples. Letters were sent to the Respondent advising of the missed samples.

(9) On October 29, 1998, the Department sent the Respondent a certified letter (attached hereto as Exhibit A) advising him of the 15 missed samples. The letter also requested Respondent to enter into a formal compliance agreement with the Department within 10 days and advised Respondent of possible penalties for noncompliance.

(10) To date the Respondent has not replied to the October 29, 1998 letter.

Public Notification

(11) The Department has not received notification or verification of public notification from the Respondent for the total coliform bacteria monitoring violations noted in Paragraph 8 above.

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III.

CONCLUSIONS OF LAW

Based upon the preceding Findings of Fact, the Department makes the following Conclusions of Law:

(12) The Department is authorized under Section 75-6-109(1), MCA, to issue an administrative notice of violation and order to address violations of the Act, regulations implementing the Act, or conditions of approval issued pursuant to the Act. The Act requires that this notice include an order to take necessary corrective action within a reasonable time (Section 75-6-109(1), MCA), and may assess an administrative penalty not to exceed $500 for each day of violation (Section 75-6-109(6), MCA).

(13) Section 75-6-112(6), MCA, prohibits a person from violating any provision of Title 75, Part 6, MCA, or an administrative rule adopted to implement the Act.

Total Coliform Monitoring Violation

(14) ARM 17.38.215(1) establishes a minimum monitoring frequency for total coliform for public water supply systems. This section states that transient non-community public water systems must sample a minimum of one (1) time per month for total coliform.

(15) For the two-year monitoring period ending September 30, 1998, Respondent was required to submit one (1) total coliform sample per month for a total of 24 total coliform samples.

(16) Respondent violated Section 75-6-112(6), MCA, and ARM 17.38.215(1) of complying with the total coliform bacterial monitoring requirement by failing to sample for total coliform bacteria nine (9) months during the two-year compliance period ending September 30, 1998, as referenced in the Department's October 29, 1998 certified Violation Letter and compliance agreement (see Exhibit A).

Public Notification Violation

(17) ARM 17.38.217(4) states that "A supplier of a public water supply system that has failed to comply with a total coliform bacterial monitoring requirement, including the sanitary survey requirement stated in ARM 17.38.231, must report the monitoring

violation to the department within 10 days after the supplier discovers the violation, and notify the public in accordance with department Circular PWS-2 (1994 edition)."

(18) ARM 17.38.239(1)(a) requires the owner or supplier of a public water supply system who fails to comply with a monitoring requirement to notify persons served by the system as specified in department Circular PWS-2 (1994 edition) and submit verification of the public notice to the Department as required under ARM 17.38.217(11).

(19) Respondent violated Section 75-6-112(6), MCA, and ARMs 17.38.217(4) and 17.38.217(11) by (1) failing to report the total coliform monitoring violation to the Department with 10 days of discovery, (2) failing to notify the public of the monitoring violation within 10 days of discovery, and (3) failing to submit a copy of the public notice to the Department within 10 days of publication or distribution.

IV.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law and under the authority of Section 75-6-109, MCA, the Department hereby ORDERS the Respondent to take the following actions to comply with the Public Water Supply Act within the time specified in this Order:

(20) Total Coliform Monitoring Requirements. As required by ARM 17.38.215(1), the Respondent shall immediately sample the Montana Coffee Traders, Inc. public water supply for total coliform bacteria and submit to the Department total coliform analytical results from a certified laboratory no later than 50 days after the effective date of this Order. Thereafter, the Respondent shall sample the Montana Coffee Traders, Inc. public water supply for total coliform and submit the analytical results to the Department on a monthly basis.

(21) Public Notification Requirements. No later than 35 days after the effective date of this Order, the Respondent shall provide notification to persons served by the public water supply system as required by ARM 17.38.217(4) and Circular PWS-2 (1998 edition) for each total coliform monitoring violation addressed in this Order. Proof of said

notification shall be submitted to the Department no later than 40 days after the effective date of the Order. The public notification letter shall include the information required by department Circular PWS-2 (attached hereto as Exhibit B), Section 2.0, paragraph (E) and paragraph (F)(10) (1998 edition).

(22) Penalty. The Respondent shall pay the Department an administrative penalty of $900 (nine hundred dollars) for the violations stated in this Order.

(a) Penalty payment shall be made according to the following schedule (the dates are deadlines for payment either by date of postmark through the U.S. mail or by hand-delivery):

	Amount Due	Date Due
First Payment	$300.00	June 1, 1999
Second Payment	$300.00	July 1, 1999
Third and final Payment	$300.00	August 1, 1999

The Respondent may prepay at any time any amount of the penalty that has not been paid.

(b) Payment shall be made by cashier's check or money order payable to the "Montana Department of Environmental Quality".

(c) Payment shall be sent to:

Department of Environmental Quality
Enforcement Division
Attention: John Arrigo
P.O. Box 200901
Helena, MT 59620-0901

V.

CIVIL PENALTIES

(23) Failure to take corrective action as ordered herein constitutes a violation of the Public Water Supply Act, Title 75, Chapter 6, MCA, and may result in the assessment of civil penalties of up to $10,000 per day of violation pursuant to Section 75-6-114, MCA.

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VI.

NOTICE OF APPEAL RIGHTS

(24) Respondent is hereby notified that it may appeal this Order under Section 75-6-109(3), MCA, by filing a written request for a hearing with the Montana Board of Environmental Review no later than 30 days after the effective date of the order. If a hearing is not requested within 30 days after the effective date of the order, the opportunity for an appeal to the Montana Board of Environmental Review under Title 2, Chapter 4, Part 6, MCA, is waived. A written request for a hearing shall be submitted to:

Board of Environmental Review
Leona Holm, Secretary
P.O. Box 200901
Helena, MT 59620-0901

VII.

EFFECTIVE DATE

(25) This Order shall be effective immediately upon signature of the Department.

DATED this 3 day of ~~May~~ June, 1999.

Mark A. Simonich

MARK A. SIMONICH, Director
Department of Environmental Quality

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY

OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF NONCOMPLIANCE NO. 02-05-02 FOR VIOLATION OF THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT BY WESTMORELAND RESOURCES, INC. AT THE ABSALOKA MINE, BIG HORN COUNTY, MONTANA (FID NO. 581)	NOTICE OF VIOLATION AND STATEMENT OF PROPOSED PENALTY Docket No. SM-02-05

TO: Westmoreland Resources, Inc.
Attn: Mr. Darrel Myran, Vice President of Operations
PO Box 449
Hardin, MT 59034

NOTICE OF VIOLATION

PLEASE TAKE NOTICE that the Montana Department of Environmental Quality (Department) alleges that Westmoreland Resources, Inc. (Operator), is in violation of legal requirements under the Montana Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, Montana Code Annotated (MCA), (the Act) as follows:

1. Operator operates or has operated an area strip mine located in T1N, R38E, Section 30 and Section 29, Big Horn County, Montana, known as the Absaloka Mine, pursuant to Permit No. 85005 (Permit), issued by the Department under the Act.
2. Operator is, therefore, subject to the requirements of the Act, the administrative rules adopted under the Act (Administrative Rules of Montana (ARM), Title 17, chapter 24, Subchapter 12), and the provisions of its Permit.
3. On April 12, 2002, during a field inspection, the Department observed the following practice or condition: The Operator failed to properly regrade an area of about 40 acres in

accordance with the approved reclamation plan and post mining topography. This unapproved activity resulted in an minor revision to the Permit.

4. The Department followed up this inspection with a review of the approved Post Mining Contour Map (PMCM) (Exhibit B-8, Plate 2), in Helena, Montana, due to the failure of the Operator to have such a map at the site.

5. The Operator's failure to conduct operations as described in its Permit, and as approved by the Department, resulting in an unapproved revision to its Permit, is a violation of ARM 17.24.413(1(2) and ARM 17.24.415(1)(a) and (2).

STATEMENT OF PROPOSED PENALTY

6. Section 82-4-254, MCA, provides that, for every violation of the Act, rules or orders adopted thereunder, or terms or conditions of a permit, the Department may assess a civil penalty of not less than $100 and not more than $5,000, and an additional civil penalty within the same limits for each day during which the violation continues following the service of this Notice of Violation.

7. The Department proposes a civil penalty of $440 (four hundred forty dollars) for the violation noted above (see attached Penalty Calculation Worksheet). Pursuant to ARM 17.24.1212, the total proposed penalty is based upon the Department's consideration of the following factors: a) Seriousness of Violation; b) Degree of Negligence; c) History of Past Violations; and d) Demonstration of Good Faith.

8. The amount of the penalty is determined in accordance with the point system contained in ARM 17.24.1212. The Department has assigned points for this violation as follows*:

Recent Violation(s)	+ 1
Seriousness	+ 14

	Negligence	+ 7
	Subtotal	22
	Good Faith	0
	TOTAL	22

*See Appendix A for rationale used to determine points in each category.

9. THE OPERATOR IS HEREBY NOTIFIED that, based on the point assignment above, the Department proposes to assess a civil penalty of $440 (four hundred forty dollars) for the violation noted above. Pursuant to Section 82-4-254(3), MCA, the Operator may request an administrative contested case hearing (hearing) on whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper by submitting a written request for hearing to:

Board of Environmental Review
Attn: Board Secretary
PO Box 200901
Helena, MT 59620-0901

The request must be filed within 20 days of receipt of this Notice of Violation and the reason for the request must be stated. If no hearing request is made within 20 days, the Department may make written findings of fact and issue an order of payment to Operator for this amount. Failure to request a hearing constitutes a waiver of the Operator's right to a hearing before the Board of Environmental Review and subsequent judicial review of the violation or penalty determination. If the Operator does not wish to formally contest the assessment of this penalty, no response to this Notice of Violation is required. At any time after issuance of this Notice of Violation and before commencement of the hearing, or, if a hearing is not requested, before the issuance of findings of fact, conclusions of law and order, the Operator may confer with the Department regarding whether the

penalty proposed is proper.

10. If the Operator does not wish to contest the penalty, and intends to pay the amount prior to the issuance of the findings of fact, conclusion of law and order, please make the check or money order payable to the Department of Environmental Quality, reference Docket No. SM-02-05 on your remittance, and mail in the enclosed orange envelope to:

Department of Environmental Quality
Enforcement Division
Attn: John Arrigo
PO Box 200901
Helena, MT 59620-0901

Dated this 7th day of June 2002.

STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY

JOHN L. ARRIGO, Administrator
Enforcement Division

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BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY

OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF NONCOMPLIANCE NO. 02-05-02 FOR VIOLATION OF THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT BY WESTMORELAND RESOURCES, INC. AT THE ABSALOKA MINE, BIG HORN COUNTY, MONTANA (FID NO. 581)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER Docket No. SM-02-05

TO: Attn: Mr. Darrel Myran
Vice President of Operations
Westmoreland Resources, Inc.
PO Box 449
Hardin, MT 59034

FINDINGS OF FACT

The Department of Environmental Quality (the Department) makes the following Findings of Fact:

1. The Department is an agency of the executive branch of government, created and existing under the authority of Section 2-15-3501, Montana Code Annotated (MCA). The Department administers the Montana Strip and Underground Mine Reclamation Act (the Act), found at Title 82, Chapter 4, Part 2, MCA.

2. Westmoreland Resources, Inc. (Operator) operates or has operated an area strip mine located in T1N, R38E, Section 30 and Section 29, Big Horn County, Montana, known as the Absaloka Mine, pursuant to Permit No. 85005 (Permit), issued by the Department under the Act.

3. The Operator is, therefore, subject to the requirements of the Act, the administrative rules adopted under the Act (Administrative Rules of Montana (ARM), Title 17, Chapter 24, Subchapter 12), and the provisions of its Permit.

4. On April 12, 2002, during a field inspection, the Department observed that the Operator failed to properly regrade an area of about 40 acres in accordance with the approved reclamation plan and post-mining topography. The Operator's failure to conduct operations as described in its Permit, and as approved by the Department, resulted in an unapproved minor revision to the Operator's Permit.

5. The Department issued a Notice of Noncompliance and Order of Abatement, No. 02-05-02, on May 10, 2002, alleging the above-referenced violation. The Order of Abatement required the Operator to salvage the redistributed soil from the improperly regraded areas; regrade those areas and all subsequently regraded areas in compliance with the approved reclamation plan, permit commitments, and postmining topography; and redistribute the soil only after regrading as approved by the Department.

6. The Order of Abatement was terminated on June 27, 2002, subsequent to the Operator's timely submission to the Department of a proposed revision to the approved PMT plan for the areas noted in the Notice of Noncompliance. The proposed revision was the same as the Minor Revision 02-05-03, received and under review by the Department on May 1, 2002.

PENALTY ASSESSMENT

7. Section 82-4-254, MCA, provides that, for every violation of the Act, rules or orders adopted thereunder, or terms or conditions of a permit, the Department may assess a civil penalty of not less than $100 and not more than $5,000. The Department may also assess an additional civil penalty within the same limits for each day during which the violation continues following the service of the Notice of Violation and Statement of Proposed Penalty (NOV/SPP).

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8. In the NOV/SPP issued to the Operator by the Department on June 7, 2002, an administrative civil penalty in the amount of $440 (four hundred forty dollars) was proposed for the Operator's failure to conduct operations as described in its Permit, resulting in an unapproved minor revision to its Permit.

9. Pursuant to ARM 17.24.1212, the total proposed penalty is based upon the Department's consideration of the following factors: a) Seriousness of Violation; b) Degree of Negligence; c) History of Past Violations; and d) Demonstration of Good Faith. (See the Penalty Calculation Worksheet and NOV/SPP attached as Appendix A, and incorporated herein by reference).

10. The Operator was notified of its entitlement to an administrative hearing before the Board of Environmental Review on the alleged violation and proposed penalty. The Operator was also advised that it would waive its right to an administrative hearing and subsequent review if a request for hearing was not filed within 20 days of receipt of the NOV/SPP, as provided for in Section 82-4-254(3), MCA.

11. The Operator did not request an administrative hearing on the issues of whether the alleged violation had occurred and whether the proposed penalty was proper.

CONCLUSIONS OF LAW

Based upon the preceding Findings of Fact, the Department makes the following Conclusions of Law:

12. The Department is charged with the administration and enforcement of the Act, Title 82, Chapter 4, Part 2, MCA. Pursuant to Section 82-4-254, MCA, the Department is authorized to assess an administrative civil penalty against a person or operator who violates a provision of the Act, a rule or order adopted thereunder, or a term or condition of a permit.

13. Pursuant to ARM 17.24.413(1), and (2), and ARM 17.24.415(1)(a), and (2), the Operator is required to conduct operations as described in its Permit, and approved by the Department, and any revisions to its Permit can only be implemented after consultation with, and approval by, the Department.

14. The Operator violated ARM 17.24.413(1), and (2), and ARM 17.24.415(1)(a), and (2), by failing to properly regrade an area of about 40 acres in accordance with the approved reclamation plan and post-mining topography, resulting in an unapproved minor revision to the Permit.

15. The total administrative civil penalty in the amount of $440 (four hundred forty dollars) is a proper penalty to be assessed for this violation.

16. The Operator has forfeited its right to judicial review of the violation or penalty determination by failing to file a written request for a hearing before the Board of Environmental Review within 20 days of receipt of the NOV/SPP, as provided for in Section 82-4-254(3), MCA.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Department hereby ORDERS the Operator to pay an administrative civil penalty to the Department in the amount of $440 (four hundred forty dollars) within 30 days of receipt of this Order, for the alleged violation stated above.

IT IS SO ORDERED.

Dated this 29th day of August 2002.

STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY

JOHN L. ARRIGO, Administrator
Enforcement Division