EXHIBIT 6
DATE 2.2.05
HB 429

DEPARTMENT OF ENVIRONMENTAL QUALITY

House Bill 429
Introduced by Rep. Gail Gutsche
By Request of the Department of Environmental Quality
2005 MONTANA LEGISLATURE

FACT SHEET

STATUTES:
75-2-401, 75-2-413, 75-2-514, 75-2-515, 75-5-611, 75-5-631, 75-6-109, 75-6-114, 75-10-228, 75-10-417, 75-10-424, 75-10-542, 75-10-1222, 75-10-1223, 75-11-223, 75-11-516, 75-11-525, 75-20-408, 76-4-109, 82-4-141, 82-4-254, 82-4-361, AND 82-4-441, MCA.

TITLE:
A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO ENFORCEMENT PROCEDURES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PROVIDING UNIFORM FACTORS FOR DETERMINING PENALTIES AND UNIFORM VENUE FOR PENALTY ACTIONS; AUTHORIZING THE DEPARTMENT TO USE PRIVATE SERVICES TO COLLECT PENALTIES, FEES, LATE FEES, AND INTEREST; REVISING THE STATUTE OF LIMITATIONS FOR ADMINISTRATIVE PENALTIES FOR AIR QUALITY VIOLATIONS; AMENDING SECTIONS 75-2-401, 75-2-413, 75-2-514, 75-2-515, 75-5-611, 75-5-631, 75-6-109, 75-6-114, 75-10-228, 75-10-417, 75-10-424, 75-10-542, 75-10-1222, 75-10-1223, 75-11-223, 75-11-516, 75-11-525, 75-20-408, 76-4-109, 82-4-141, 82-4-254, 82-4-361, AND 82-4-441, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

DESCRIPTION
HB 429 amends 16 of the environmental laws administered by DEQ to standardize the factors that must be considered when calculating penalties. Some of the environmental laws list factors that must be considered for penalty calculations; however, the factors vary from statute to statute. Other statutes do not list any factors. As a result of this inconsistency, DEQ calculates penalties using a wide variety of rules or penalty policies that also vary in their methods of calculating penalties.

DEQ requested HB 429 to standardize the factors that are considered for penalty calculations under the environmental laws. DEQ believes that a standard penalty calculation process is necessary to achieve consistent and fair penalty calculations and to optimize the use of staff. If this bill passes, DEQ will develop one set of rules that will describe the penalty calculation process for all of the laws enforced by the DEQ.

HB 429

Subsection (2)(b)(ii) states that money collected by a collection service must be paid to the DEQ and deposited in the general fund or special revenue account as specified in statute, except the collection service may retain the costs of collection, or if the total debt is not collected, a portion of the money approved by DEQ.

Section 3 – New Section
Section 3 is does the same thing as Section 1 by creating a standard set of penalty factors, but the factors apply to the Title 82 reclamation laws. These are the Strip and Underground Mine Siting Act; the Strip and Underground Mine Reclamation Act; the Metal Mine Reclamation Act; and the Opencut Mining Act.

Section 4 – New Section
Section 4 does the same thing as Section 2 by authorizing the DEQ to use a collection service to collect past due penalties and fees under the Title 82 reclamation laws.

Section 5 - Amended
Section 5 amends 75-2-401 in the Clean Air Act. Subsection (2)(c) is amended to extend the statute of limitations for administrative penalties from 12 months to two years to be consistent with the other laws. Subsection (2)(d) insert a reference to the standard penalty factors in New Section 1. The remainder of (2)(d) is stricken to remove the existing penalty factors in the Clean Air Act. Subsection (2)(e) is new language to clarify that the department may bring a judicial action in Lewis and Clark County or in the county in which the violation occurred.

Section 6 - Amended
Section 6 amends 75-2-413 in the Clean Air Act to insert a reference to the standard penalty factors for judicial penalties and to clarify the venue for judicial actions.

Section 7 - Amended
Section 7 amends 75-2-514 in the Asbestos Control Act to insert a reference to the standard penalty factors for judicial penalties and clarify the venue for judicial actions.

Section 8 - Amended
Section 8 amends 75-2-515 of the Asbestos Control Act to insert a reference to the standard penalty factors for administrative penalties and to delete the existing factors.

HB 429

Subsection (2) states that after the amount of a penalty is determined under (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

Subsection (3) states that the department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.

Subsection (4) states that the section applies to penalties assessed by the department of environmental quality or the district court under Title 75, chapters 2, 5, 6, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title 76, chapter 4. These are the Clean Air Act of Montana; the Asbestos Control Act; the Water Quality Act; the Public Water Supply Laws; the Underground Storage Tank Act; the Underground Storage Tank Installer Licensing and Permitting Act; the Major Facility Siting Act; the Montana Solid Waste Act; the Hazardous Waste Act; the Motor Vehicle Recycling and Disposal Act; the Septage Pumper Disposal Act; and the Sanitation in Subdivisions Act.

Subsection (5) states that the board of environmental review and the department of environmental quality may, for the statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section. If this legislation passes, the DEQ will draft one set of rules that would describe a one standard penalty calculation process for all of the laws. The rules would also describe the process for approving Supplemental Environmental Projects to offset a cash penalty.

Section 2 – New Section

Section 2 Subsection (1) authorizes the DEQ to hire a collection agency to collect past due penalties, permit fees, late fees and interest. The debt may also be assigned to the Department of Revenue for collection.

Subsection (2)(a) states that the reasonable costs of the collection service may be added to the debt for which collection is sought.

Subsection (2)(b)(i) states that money collected by the Dept. of Revenue is deposited according to their law.

HB 429

Section 18 - Amended
Section 18 amends 75-10-1223 of the Septage Pumper Law to insert reference to the standard penalty factors for judicial penalties and to clarify venue.

Section 19 - Amended
Section 19 amends 75-11-223 in the Underground Storage Tank Installer Licensing and Permitting Act to insert a reference to the standard penalty factors for judicial penalties and to clarify venue.

Section 20 - Amended
Section 20 amends 75-11-516 in the Underground Storage Tank Act to insert a reference to the standard penalty factors for judicial penalties and to clarify venue.

Section 21 - Amended
Section 21 amends 75-11-525 in the Underground Storage Tank Act to insert a reference to the standard penalty factors for administrative penalties and to clarify venue.

Section 22 - Amended
Section 22 amends 75-20-408 in the Major Facility Siting Act to insert a reference to the standard penalty factors for judicial penalties and to clarify venue.

Section 23 - Amended
Section 23 amends 76-4-109 in the Sanitation in Subdivisions Act to insert a reference to the standard penalty factors and to clarify venue.

Section 24 - Amended
Section 24 amends 82-4-141 in the Strip and Underground Mine Siting Act to clarify that the DEQ may initiate a judicial action instead of the Attorney General and to insert a reference to the standard penalty factors for judicial penalties.

Section 25 - Amended
Section 25 amends 82-4-254 in the Strip and Underground Mine Reclamation Act to insert a reference to the standard penalty factors for administrative penalties and to clarify that the DEQ may initiate a judicial action instead of the Attorney General.

Section 26 - Amended
Section 26 amends 82-4-361 of the Metal Mine Reclamation Laws to insert a reference to the standard penalty factors for administrative penalties and to delete the existing factors.

HB 429

Section 9 - Amended
Section 9 amends 75-5-611 of the Water Quality Act to insert a reference to the standard penalty factors for administrative penalties.

Section 10 - Amended
Section 10 amends 75-5-631 of the Water Quality Act to insert a reference to the standard penalty factors for judicial penalties, to clarify venue, and to delete the existing factors.

Section 11 - Amended
Section 11 amends 75-6-109 of the Public Water Supply Law to insert a reference to the standard penalty factors for administrative penalties.

Section 12 - Amended
Section 12 amends 75-6-114 of the Public Water Supply Law to insert a reference to the standard penalty factors for judicial penalties, to clarify venue and to delete the existing penalty factors.

Section 13 - Amended
Section 13 amends 75-10-228 of the Solid Waste Management Act to insert a reference to the standard penalty factors for judicial penalties and to clarify venue.

Section 14 - Amended
Section 14 amends 75-10-417 of the Hazardous Waste Act to insert a reference to the standard penalty factors for administrative penalties and to clarify venue.

Section 15 - Amended
Section 14 amends 75-10-424 of the Hazardous Waste Act to insert a reference to the standard penalty factors for judicial penalties, to delete the existing factors and to clarify venue.

Section 16 - Amended
Section 16 amends 75-10- 542 of the Motor Vehicle Recycling and Disposal Act to insert a reference to the standard penalty factors for judicial penalties and to clarify venue.

Section 17 - Amended
Section 17 amends 75-10-1222 of the Septage Pumper Law to insert reference to the standard penalty factors for administrative penalties.

HB 429

Section 27 - Amended
Section 27 amends 82-4-441 in the Opencut Mining Act to insert a reference to the standard penalty factors for administrative penalties and to delete the existing factors.

Section 28 - New Section
Section 28 is codification instructions.

Section 29 - New Section
Section 29 is a savings clause to address penalty actions that were begun before the effective date of this act.

Section 30 - New Section
Section 30 is a contingency voidness clause in the event the U.S. Office of Surface Mining does not approve amendments to the Strip and Underground Mine Reclamation Act.

Section 31 - New Section
Section 31 provides a January 1, 2006 effective date. This delayed effective date is necessary to provide the Department and the Board of Environmental Review the opportunity to develop and promulgate rules.

EXHIBIT 6
DATE 2·2·05
HB 429

PENALTY FACTORS SPECIFIED IN STATUTE

STATUTE	Nature	Extent	Gravity	Circumstances	Seriousness	Culpability	Harm	Duration	Number	History	Good faith	Cooperation	Voluntary mitigation	Other matters	Economic Benefit	Ability to pay
HB429	X	X	X	X						X	X	X	X	X	X	X
Water Quality	X	X	X	X						X			X	X	X	X
Public Water Supply	X	X	X	X						X			X	X	X	X
Metal Mine Reclamation	X	X	X	X						X			X	X	X	
Opencut Mining	X	X	X	X						X	X		X		X	
Comprehensive Environmental Cleanup & Responsibility						X				X				X	X	X
Clean Air					X			X		X	X			X	X	X
Asbestos Control					X			X		X	X				X	X
Underground Storage Tank			X			X	X					X	X			
Hazardous Waste			X				X		X				X			
Solid Waste Management																
Megalandfill Siting																
Septage Disposal & Licensure																
UST Installer & Inspector Licensing & Permitting																
Major Facility Siting																
Sanitation in Subdivision																
Strip and Underground Mine Reclamation																
Strip and Underground Mine Siting																
Motor Vehicle Recycling & Disposal																