

Amendments to Senate Bill No. 376
3rd Reading Copy

Requested by Representative Christopher Harris

For the House Natural Resources Committee

Prepared by Joe Kolman
April 1, 2005 (11:30am)

1. Title, page 1, line 8 and line 9.

Strike: "PROVIDING" on line 8 through "COMPLETED" on line 9

Insert: "CREATING A GALLATIN RIVER ENVIRONMENTAL ASSESSMENT
ACCOUNT AND PROVIDING FUNDING FOR THE ACCOUNT"

2. Title, page 1, line 9.

Strike: "SECTION"

Insert: "SECTIONS 75-2-412, 75-2-427,"

Following: "75-5-316,"

Insert: "75-5-611, 75-5-634, 75-6-109, 75-6-114, 75-10-417, 75-
10-418, 75-10-424, 75-10-954, 75-11-516, 75-11-525, 82-4-
113, and 82-4-241,"

3. Page 1, line 29.

Strike: "1 year of [the effective date of this act]"

Insert: "2 years from the date on which deposits cease being made
pursuant to [section 3(1)(c)]"

4. Page 3, line 5.

Insert: "NEW SECTION. Section 3. Gallatin river environmental
assessment account -- limited diversion of funds -- other funding
sources. (1)(a) There is a Gallatin river environmental
assessment account in the state special revenue fund established
in 17-2-102 to be used by the department for implementing
[section 2].

(b) Subject to subsection (1)(c), there must be deposited in
this account funds collected pursuant to 75-2-412(3), 75-2-427,
75-5-611(9)(b), 75-5-634, 75-6-109(6)(b), 75-6-114(5), 75-10-
417(4), 75-10-418(6), 75-10-424(6), 75-10-954(4), 75-11-516(4),
75-11-525(7), 82-4-113, and 82-4-241(1).

(c) Deposits made pursuant to subsection (1)(b) terminate on
July 1, 2007, or when the account balance reaches \$250,000,
whichever is earlier.

(2) Private donations, public or private grants, or federal
funds also may be deposited in this account."

Insert: "Section 4. Section 75-2-412, MCA, is amended to read:

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

(a) violates a provision of this chapter or a rule, order,

or permit made or issued under this chapter;

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

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

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

(3) Fines collected under this section, except fines collected by an approved local air pollution control program, must be deposited in the state general fund, except as provided in [section 3].

(4) Action under this section is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under it by injunction or other appropriate civil or administrative remedy. The department may institute and maintain in the name of the state any enforcement proceedings."

{ Internal References to 75-2-412:

75-2-401X 75-2-413X 75-2-429X } "

Insert: "Section 5. Section 75-2-427, MCA, is amended to read:

"75-2-427. **Deposit of noncompliance penalty fees.** All noncompliance penalties collected by the department pursuant to 75-2-421 through 75-2-429 ~~shall~~ must be deposited in the state special revenue fund until a final determination and adjustment have been made as provided in 75-2-424 and amounts have been deducted by the department for costs attributable to implementation of 75-2-421 through 75-2-429 and for contract costs incurred pursuant to 75-2-422(3), if any. After a final determination has been made and additional payments or refunds have been made, the penalty money remaining ~~shall~~ must be transferred to the state general fund, except as provided in [section 3]."

{ Internal References to 75-2-427:

75-2-421X * 75-2-422X * 75-2-422 X* 75-2-423x *
75-2-424x * 75-2-424x * 75-2-427x * 75-2-427x *
75-2-428x * 75-2-429 x* 75-2-429 x* } "

Renumber: subsequent sections

5. Page 5, line 11.

Insert: "Section 7. Section 75-5-611, MCA, is amended to read:

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

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

(b) the facts alleged to constitute the violation;

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

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

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

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

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

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

(b) A notice and order issued under this section must meet all of the requirements specified in subsection (1).

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

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

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

(6) (a) After a hearing, the board shall make findings and

conclusions that explain its decision.

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

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

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

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

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

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

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

(b) Administrative Except as provided in [section 3], administrative penalties collected under this section must be deposited in the general fund.

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

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

{ Internal References to 75-5-611:

75-5-201x	75-5-307x	75-5-311x *	75-5-403x
75-5-404x	75-5-617x	75-5-617 x	75-5-621x
75-5-621x	75-5-621x}		

Insert: "Section 8. Section 75-5-634, MCA, is amended to read:

"75-5-634. Disposition of fines and civil penalties. Fines and civil penalties collected under this chapter, except those collected in a justice's court, must be deposited into the state general fund, except as provided in [section 3]."

{ Internal References to 75-5-634: None. }

Insert: "Section 9. Section 75-6-109, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Administrative Except as provided in [section 3], administrative penalties collected under this section must be deposited in the state general fund.

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

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

{ Internal References to 75-6-109:

75-6-110x 75-6-110 x 75-6-111x } "

Insert: "Section 10. Section 75-6-114, MCA, is amended to read:

"75-6-114. Civil penalty. (1) In an action initiated by the department to collect civil penalties against a person who is found to have violated this part or a rule, order, or condition of approval issued under this part, the person is subject to a

civil penalty not to exceed \$10,000.

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

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

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

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

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

(5) Civil ~~Except as provided in [section 3],~~ civil penalties collected pursuant to this section must be deposited in the state general fund."

{ Internal References to 75-6-114:

75-6-109x

75-6-109x

75-6-109x

75-6-110x

75-6-111x} "

Insert: "Section 11. Section 75-10-417, MCA, is amended to read:

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

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

(3) Action under this section does not bar:

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

(b) action under 75-10-418.

(4) ~~Money~~ Except as provided in [section 3], ~~money~~ collected under this section ~~shall~~ must be deposited in the state general fund."

{ Internal References to 75-10-417:

75-10-413x

75-10-424x *}

Insert: "Section 12. Section 75-10-418, MCA, is amended to read:

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

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

(b) treats, stores, or disposes of hazardous waste subject to regulation under this part or the rules adopted under this

part without a permit or contrary to a material permit condition;

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

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

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

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

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

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

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

(6) Money collected under this section, except money collected in a justice's court, must be deposited in the state general fund, except as provided in [section 3]."

{*Internal References to 75-10-418:*

75-10-413x 75-10-417x 75-10-424x}"

Insert: "Section 13. Section 75-10-424, MCA, is amended to read:

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

this chapter.

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

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

(a) the gravity and the number of violations;
(b) the degree of care exercised by the alleged violator;
(c) whether significant harm resulted to the public health or the environment; and

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

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

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

(6) Administrative penalties collected under this section must be deposited in the state general fund."

{Internal References to 75-10-424:

75-10-405x}"

Insert: "Section 14. Section 75-10-954, MCA, is amended to read:

"75-10-954. Megalandfill reclamation account -- deposit of funds. (1) There is a megalandfill reclamation account in the state special revenue fund provided for in 17-2-102.

(2) All forfeited bonds that have been or will be paid to the department under the provisions of 75-10-950 through 75-10-954 must be deposited in the account.

(3) Money in the account is available to the department for the reclamation, restoration, and replacement of natural resources damaged or impaired by the megalandfill. Unencumbered and unexpended money remaining in the account at the end of a fiscal year may not lapse but must be carried forward for the purposes of this subsection until appropriated by subsequent legislative action.

(4) All Except as provided in [section 3], all fees, fines, penalties, and other money paid to the department under the provisions of 75-10-950 through 75-10-954 must be deposited in the state general fund."

{Internal References to 75-10-954:

75-10-950x 75-10-953x 75-10-954x 75-10-954x}"

Insert: "Section 15. Section 75-11-516, MCA, is amended to read:

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

violation constitutes a separate violation.

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

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

(4) Money Except as provided in [section 3], money collected under this section must be deposited in the state general fund."

{Internal References to 75-11-516:
75-11-512x}"

Insert: "Section 16. Section 75-11-525, MCA, is amended to read:

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

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

(a) the provision alleged to be violated;
(b) the facts alleged to constitute the violation;
(c) the amount of the administrative penalty assessed under this section;

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

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

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

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

and

(h) that a formal proceeding may be waived.

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

(a) the provision allegedly violated;

(b) the facts that constitute the alleged violation;

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

(d) a timetable that a reasonable person would consider appropriate for compliance with the alleged violations.

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

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

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

(7) Administrative Except as provided in [section 3], administrative penalties collected under this section must be deposited in the state general fund."

{ Internal References to 75-11-525:

75-11-505x 75-11-509x 75-11-512x } "

Insert: "Section 17. Section 82-4-113, MCA, is amended to read:

"82-4-113. Receipts paid into general fund. Except for bond forfeiture moneys money, all fees, penalties, and other moneys money available or paid to the department under the provisions of this part ~~shall~~ must be placed in the state treasury and credited to the general fund, except as provided in [section 3]."

{Internal References to 82-4-113: None.}"

"Section 18. Section 82-4-241, MCA, is amended to read:

"82-4-241. Receipts paid into general fund -- disposition of bond forfeiture money. (1) Except for bond forfeiture money, all fees, penalties, and other money available or paid to the department under the provisions of this part must be placed in the state treasury and credited to the general fund, except as provided in [section 3].

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

(3) Funds held by the department as bond or as a result of bond forfeiture that are no longer needed for reclamation and for which the department is not able to locate a surety or other person who owns the funds after diligent search must be deposited in the state special revenue fund and credited to the environmental rehabilitation and response account provided for in 75-1-110."

{Internal References to 82-4-241:

75-1-110x}

Renumber: subsequent sections

6. Page 5, line 12.

Strike: "and 2"

Insert: "through 3"

7. Page 5, line 14.

Strike: "and 2"

Insert: "through 3"

- END -

