SENATE NATURAL RESOURCES
EXHIBIT NO. 9
DATE 3/11/0
BILL NO. HB 428

Amendments to House Bill No. 428
3rd Reading Copy

For the Senate Natural Resources Committee

Prepared by Valencia Lane
March 10, 2005 (5:55pm)

1. Page 8, line 15.
Following: line 14
Insert: "COORDINATION SECTION. **Section 4. Coordination instruction.** If both House Bill No. 429 and [this act] are passed and approved, then the amendments to 82-4-441 in both House Bill No. 429 and [this act] are void and 82-4-441 must read as follows:

"82-4-441. ~~Penalty~~ Administrative and judicial penalties -- enforcement. (1) When the department has reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The letter must also recommend corrective actions that are necessary to return to compliance. Issuance of a violation letter under this subsection does not limit the authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

~~(1)~~(2) By issuance of an order pursuant to subsection (5), the ~~The~~ department may assess against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a reclamation permit:

(a) ~~a civil~~ an administrative penalty of not less than $100 or more than $1,000 for the violation; and

(b) an additional ~~civil~~ administrative penalty of not less than $100 or more than $1,000 for each day during which a violation continues ~~following the service of notice of the violation~~.

(3) The department may bring a judicial action seeking a penalty of not more than $5,000 against a person who violates any of the provisions of this part, rules adopted or orders issued under this part or provisions of a permit, and a penalty of not more than $5,000 for each day that the violation continues. In determining the amount of the penalty, the district court shall consider the factors in subsection (4).

(4) Penalties assessed under this section must be determined in accordance with the penalty factors in [section 3 of House Bill No. 429].

~~(2) The department shall take into account the following factors in determining whether to institute a civil penalty~~

~~action and in determining the penalty amount:~~

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

~~(b) the violator's prior history of violations within the past 3 years;~~

~~(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;~~

~~(d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and~~

~~(e) other matters that justice may require to decrease the amount of penalty.~~

~~(3) The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty, including the penalty calculation that identifies and describes the factors considered pursuant to subsection (2), no more than 10 days after issuing the notice of violation. After a hearing provided for in 82-4-427, the board shall make findings of fact, issue a written decision as to the occurrence of the violation and, if the board finds that the violation occurred, the amount of penalty warranted, and order the payment of a penalty in that amount. If the time for requesting a hearing expires without a hearing request, the department shall make the findings of fact and issue the written decision and order. The person or operator shall remit the amount of any penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. A person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the opencut mine is located.~~

(5) (a) In addition to the violation letter sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.

(b) An order issued pursuant to subsection (5)(a) becomes

final unless, within 30 days after the order is served, the person to whom the order is issued submits to the board a written request for a hearing stating the reason for the request. Service of an order by mail is complete 3 business days after mailing. If a request for a hearing is filed, a hearing must be held within a reasonable time under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm, modify, or rescind the order.

~~(4)~~(6) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part. Actions for injunctions or penalties must be filed in the ~~district court of the first judicial district, Lewis and Clark County, or in the~~ district court of the county in which the opencut mine is located or, if mutually agreed on by the parties in the action, in the first judicial district, Lewis and Clark County.

(7) The provisions of this section do not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part.""

Renumber: subsequent sections

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