

HOUSE BILL NO. 424

INTRODUCED BY A. KNUDSEN

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT CERTAIN PENALTIES AND FINES FROM VIOLATIONS OF LAWS ADMINISTERED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY BE DEPOSITED IN THE STATE GENERAL FUND; AMENDING SECTIONS 75-2-401, 75-2-413, 75-10-228, 75-11-223, 75-11-224, 75-11-227, 75-11-321, 75-20-408, 75-25-101, 82-4-141, 82-4-361, AND 82-4-441, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-2-401, MCA, is amended to read:

"75-2-401. Enforcement -- notice -- order for corrective action -- administrative penalty. (1) When the department believes that a violation of this chapter, a rule adopted under this chapter, or a condition or limitation imposed by a permit issued pursuant to this chapter has occurred, it may cause written notice to be served personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this chapter, the rule, or the permit condition or limitation alleged to be violated and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order or an order to pay an administrative penalty, or both. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing.

(2) If, after a hearing held under subsection (1), the board finds that violations have occurred, it shall issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action or assess an administrative penalty, or both. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease; time limits for particular action in preventing, abating, or controlling the emissions; or the date by which the administrative penalty must be paid. If, after a hearing on an order contained in a notice, the board finds that a violation has not occurred or is not occurring, it shall rescind the order.

(3) (a) An action initiated under this section may include an administrative civil penalty of not more than \$10,000 for each day of each violation, not to exceed a total of \$80,000. If an order issued by the board under

1 this section requires the payment of an administrative civil penalty, the board shall state findings and conclusions
2 describing the basis for its penalty assessment.

3 (b) Administrative penalties collected under this section must be deposited in the ~~alternative energy~~
4 ~~revolving loan account established in 75-25-101~~ state general fund.

5 (c) Penalties imposed by an administrative order under this section may not be assessed for any day
6 of violation that occurred more than 2 years prior to the issuance of the initial notice and order by the department
7 under subsection (1).

8 (d) In determining the amount of penalty to be assessed for an alleged violation under this section, the
9 department or board, as appropriate, shall consider the penalty factors in 75-1-1001.

10 (e) The department may bring a judicial action to enforce a final administrative order issued pursuant
11 to this section. The action must be filed in the district court of the county in which the violation occurred or, if
12 mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark
13 County.

14 (4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part
15 6, apply to a hearing conducted under this section.

16 (5) Instead of issuing the order provided for in subsection (1), the department may either:

17 (a) require that the alleged violators appear before the board for a hearing at a time and place specified
18 in the notice and answer the charges complained of; or

19 (b) initiate action under 75-2-412 or 75-2-413.

20 (6) This chapter does not prevent the board or department from making efforts to obtain voluntary
21 compliance through warning, conference, or any other appropriate means.

22 (7) In connection with a hearing held under this section, the board may and on application by a party
23 shall compel the attendance of witnesses and the production of evidence on behalf of the parties."
24

25 **Section 2.** Section 75-2-413, MCA, is amended to read:

26 **"75-2-413. Civil penalties -- venue -- effect of action -- presumption of continuing violation under**
27 **certain circumstances.** (1) (a) A person who violates any provision of this chapter, a rule adopted under this
28 chapter, or any order or permit made or issued under this chapter is subject to a civil penalty not to exceed
29 \$10,000 for each violation. Each day of each violation constitutes a separate violation. The department may
30 institute and maintain in the name of the state any enforcement proceedings under this section. Upon request

1 of the department, the attorney general or the county attorney of the county of violation shall petition the district
 2 court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided
 3 for in 75-2-412, except for civil penalties for violation of the operating permit program required by Subchapter V
 4 of the federal Clean Air Act.

5 (b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty
 6 factors in 75-1-1001.

7 (2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order, or permit
 8 made or issued under this chapter by injunction or other appropriate civil remedies.

9 (b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or issued
 10 under this chapter may be brought in the district court of any county where a violation occurs or is threatened or,
 11 if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark
 12 County.

13 (3) If the department has notified a person operating a commercial hazardous waste incinerator of a
 14 violation and if the department makes a prima facie showing that the conduct or events giving rise to the violations
 15 are likely to have continued or recurred past the date of notice, the days of violation are presumed to include the
 16 date of the notice and every day after the notice until the person establishes that continuous compliance has been
 17 achieved. This presumption may be overcome to the extent that the person operating a commercial hazardous
 18 waste incinerator can prove by a preponderance of evidence that there were intervening days when a violation
 19 did not occur, that the violation was not continuing in nature, or that the telemetering device was compromised
 20 or otherwise tampered with.

21 (4) Money collected under this section must be deposited in the ~~alternative energy revolving loan account~~
 22 ~~established in 75-25-104~~ state general fund. This subsection does not apply to money collected by an approved
 23 local air pollution control program."
 24

25 **Section 3.** Section 75-10-228, MCA, is amended to read:

26 **"75-10-228. Civil penalties.** (1) A person who violates a provision of this part, a rule adopted or an order
 27 issued under this part, or a license provision is subject to an administrative penalty not to exceed \$250 or a civil
 28 penalty not to exceed \$1,000. Each day of violation constitutes a separate violation.

29 (2) The department may institute and maintain in the name of the state any enforcement proceedings
 30 under this section. The enforcement or collection action must be brought in the district court of the county in which

1 the violation occurred or, if mutually agreed upon by the parties, in the district court of the first judicial district,
2 Lewis and Clark County. Upon request of the department, the attorney general or the county attorney of the
3 county where the violation occurred shall petition the district court to impose, assess, and recover the civil
4 penalty.

5 (3) Penalties assessed under this section must be determined in accordance with the penalty factors
6 in 75-1-1001.

7 (4) Fines and penalties collected under this section must be deposited in the ~~solid waste management~~
8 account provided for in 75-10-117 state general fund."

9

10 **Section 4.** Section 75-11-223, MCA, is amended to read:

11 **"75-11-223. Civil and administrative penalties.** (1) (a) A person who violates a provision of this part,
12 a rule adopted under this part, or an order of the department or the board is subject to an administrative penalty
13 not to exceed \$500 for each violation or a civil penalty not to exceed \$10,000 for each violation. If an installer or
14 an inspector who is an employee is in violation, the employer of that installer or that inspector is the entity that
15 is subject to the provisions of this section unless the violation is the result of a grossly negligent or willful act. Each
16 day of violation of this part, a rule adopted under this part, or an order constitutes a separate violation.

17 (b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty
18 factors in 75-1-1001.

19 (2) The department may institute and maintain in the name of the state any enforcement proceedings
20 under this section. The enforcement or collection action must be brought in the district court of the county in which
21 the violation occurred or, if mutually agreed upon by the parties, in the district court of the first judicial district,
22 Lewis and Clark County. Upon request of the department, the attorney general or the county attorney of the
23 county where the violation occurred shall petition the district court to impose, assess, and recover the civil
24 penalty.

25 (3) Action under this section does not bar:

26 (a) enforcement of this part, rules adopted under this part, orders of the department or the board, or
27 terms of a license or permit by injunction or other appropriate remedy; or

28 (b) action under 75-11-224.

29 (4) Penalties collected under this section must be deposited in the state general fund."

30

1 **Section 5.** Section 75-11-224, MCA, is amended to read:

2 **"75-11-224. Criminal penalties.** (1) Any owner or operator who knowingly installs or closes an
3 underground storage tank system without a permit and either an inspection or the use of the services of a
4 licensed installer as required in 75-11-209; any installer who knowingly installs or closes an underground storage
5 tank system without being licensed; or any person who knowingly makes any false statements or representations
6 in any application, permit, report, licensing form, or other document filed or maintained as required by this part
7 or required by rules adopted under this part is subject to a fine not to exceed \$10,000 for each violation or
8 imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate violation.

9 (2) A person convicted of a second or subsequent criminal violation is subject to a fine not to exceed
10 \$20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of violation constitutes a
11 separate violation.

12 (3) Action under this section does not bar enforcement of this part, rules adopted under this part, orders
13 of the department or the board, or terms of a license or permit by injunction or other appropriate remedy.

14 (4) Fines and penalties collected under this section must be deposited in the state general fund."

15

16 **Section 6.** Section 75-11-227, MCA, is amended to read:

17 **"75-11-227. Underground storage tank license and permit account.** (1) There is an underground
18 storage tank license and permit account within the state special revenue fund established in 17-2-102.

19 (2) There must be paid into the account:

20 (a) revenues from permit, license, and inspection fees collected under this part; and

21 (b) revenues from ~~penalties~~ or damages collected under this part.

22 (3) Appropriations may be made from the underground storage tank license and permit account only for
23 the administration of the underground storage tank program."

24

25 **Section 7.** Section 75-11-321, MCA, is amended to read:

26 **"75-11-321. Criminal penalties.** (1) A person who knowingly misrepresents the date of discovery of a
27 release, submits or causes to be submitted a fraudulent claim or document, or makes a false statement or
28 representation in seeking or assisting a person to seek reimbursement under this part is subject to a fine not to
29 exceed \$10,000 for each violation or imprisonment not to exceed 6 months, or both. A person convicted of a
30 second or subsequent violation of this section is subject to a fine not to exceed \$20,000 for each violation or

1 imprisonment not to exceed 1 year, or both.

2 (2) Fines collected under this section must be deposited in the state general fund.

3

4 **Section 8.** Section 75-20-408, MCA, is amended to read:

5 **"75-20-408. Penalties for violation of chapter -- civil actions to enforce.** (1) (a) Whoever commences
6 to construct or operate a facility without first obtaining a certificate required under 75-20-201 or a waiver of the
7 certificate under 75-20-304(2) or, having first obtained a certificate, constructs, operates, or maintains a facility
8 not in compliance with the certificate or violates any other provision of this chapter or any rule or order adopted
9 under this chapter or knowingly submits false information in any report, 10-year plan, or application required by
10 this chapter or rule or order adopted under this chapter or causes any of the aforementioned acts to occur is liable
11 for a civil penalty of not more than \$10,000 for each violation. Penalties assessed under this section must be
12 determined in accordance with the penalty factors in 75-1-1001.

13 (b) Each day of a continuing violation constitutes a separate offense.

14 (c) Penalties are recoverable in an action brought by the department. The action must be brought in the
15 district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action,
16 in the district court of the first judicial district, Lewis and Clark County.

17 (2) Whoever purposely or knowingly violates subsection (1) shall be fined not more than \$10,000 for
18 each violation or imprisoned for not more than 1 year, or both. Each day of a continuing violation constitutes a
19 separate offense.

20 (3) In addition to any penalty provided in subsection (1) or (2), whenever the department determines that
21 a person is violating or is about to violate any of the provisions of this section, it may bring a civil action on behalf
22 of the state in the district court of the first judicial district of Montana, if mutually agreed on by the parties in the
23 action, or in the district court of the county in which the violation occurred or imminent violation will occur, for
24 injunctive or other appropriate relief against the violation and to enforce this chapter or a certificate issued under
25 this chapter. Upon a proper showing, a permanent or preliminary injunction or temporary restraining order must
26 be granted without bond.

27 (4) All fines and penalties collected under this section must be deposited in the state ~~special revenue~~
28 ~~fund for the use of the department in administering this chapter~~ general fund."

29

30 **Section 9.** Section 75-25-101, MCA, is amended to read:

1 **"75-25-101. (Temporary) Alternative energy revolving loan account.** (1) There is a special revenue
2 account called the alternative energy revolving loan account to the credit of the department of environmental
3 quality.

4 (2) The alternative energy revolving loan account consists of money deposited into the account ~~from air~~
5 ~~quality penalties from 75-2-401 and 75-2-413 and money from any other source~~ in the form of gifts, grants,
6 reimbursements, or appropriations from any source that are intended to be used for the purposes of the account.
7 Any interest earned by the account and any interest that is generated from a loan repayment must be deposited
8 into the account and used to sustain the program.

9 (3) Funds from the alternative energy revolving loan account may be used to provide loans to individuals,
10 small businesses, units of local government, units of the university system, and nonprofit organizations for the
11 purpose of building alternative energy systems, as defined in 15-32-102:

12 (a) to generate energy for their own use;

13 (b) for net metering as defined in 69-8-103; and

14 (c) for capital investments by those entities for energy conservation purposes, as defined in 15-32-102,
15 when done in conjunction with an alternative energy system.

16 (4) (a) Except as provided in subsection (4)(b), the amount of a loan may not exceed \$40,000, and the
17 loan must be repaid within 10 years.

18 (b) For loans made using money obtained by the department of environmental quality from the federal
19 government under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, the amount of a loan
20 may not exceed \$100,000 and the loan must be repaid within 15 years. The department may establish a loan limit
21 of less than \$100,000 based on the amount of money received from the federal government and the department's
22 projected number of applications and application amounts. (Terminates June 30, 2011--sec. 82, Ch. 489, L.
23 2009.)

24 **75-25-101. (Effective July 1, 2011) Alternative energy revolving loan account.** (1) There is a special
25 revenue account called the alternative energy revolving loan account to the credit of the department of
26 environmental quality.

27 (2) The alternative energy revolving loan account consists of money deposited into the account ~~from air~~
28 ~~quality penalties from 75-2-401 and 75-2-413 and money from any other source~~ in the form of gifts, grants,
29 reimbursements, or appropriations from any source that are intended to be used for the purposes of the account.
30 Any interest earned by the account and any interest that is generated from a loan repayment must be deposited

1 into the account and used to sustain the program.

2 (3) Funds from the alternative energy revolving loan account may be used to provide loans to individuals,
3 small businesses, units of local government, units of the university system, and nonprofit organizations for the
4 purpose of building alternative energy systems, as defined in 15-32-102:

5 (a) to generate energy for their own use;

6 (b) for net metering as defined in 69-8-103; and

7 (c) for capital investments by those entities for energy conservation purposes, as defined in 15-32-102,
8 when done in conjunction with an alternative energy system.

9 (4) The amount of a loan may not exceed \$40,000, and the loan must be repaid within 10 years."
10

11 **Section 10.** Section 82-4-141, MCA, is amended to read:

12 **"82-4-141. Violation -- penalty.** (1) A person or operator who violates any of the provisions of this part
13 or rules or orders adopted under this part shall pay a civil penalty of not less than \$100 or more than \$1,000 for
14 the violation and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which
15 a violation continues and may be enjoined from continuing the violations as provided in this section. These
16 penalties are recoverable in an action brought by the department in the district court of the first judicial district,
17 Lewis and Clark County, or in the district court having jurisdiction of the defendant.

18 (2) The department may bring an action for a restraining order, temporary injunction, or permanent
19 injunction against an operator or other person violating or threatening to violate an order adopted under this part.

20 (3) A person who purposely or knowingly violates any of the provisions of this part or any determination
21 or order adopted under this part that has become final is guilty of a misdemeanor and shall be fined not less than
22 \$500 and not more than \$5,000. Each day on which a violation occurs constitutes a separate offense.

23 (4) Penalties assessed under this section must be determined in accordance with the penalty factors
24 in 82-4-1001.

25 (5) Penalties collected under this section must be deposited in the state general fund."
26

27 **Section 11.** Section 82-4-361, MCA, is amended to read:

28 **"82-4-361. Violation -- penalties -- waiver.** (1) When the department has reason to believe that a
29 person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a
30 permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the

1 provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the
2 violation. The letter must also recommend corrective actions that are necessary to return to compliance. Issuance
3 of a violation letter under this subsection does not limit the authority of the department under this part to bring a
4 judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

5 (2) (a) By issuance of an order pursuant to subsection (6), the department may assess an administrative
6 penalty of not less than \$100 or more than \$1,000 for each of the following violations and an additional
7 administrative penalty of not less than \$100 or more than \$1,000 for each day during which the violation continues
8 and may bring an action for an injunction from continuing the violation against:

9 (i) a person or operator who violates a provision of this part, a rule adopted or an order issued under this
10 part, or a term or condition of a permit; or

11 (ii) any director, officer, or agent of a corporation who purposely or knowingly authorizes, orders, or
12 carries out a violation of a provision of this part, a rule adopted or an order issued under this part, or a term or
13 condition of a permit.

14 (b) If the violation created an imminent danger to the health or safety of the public or caused significant
15 environmental harm, the maximum administrative penalty is \$5,000 for each day of violation.

16 (c) This subsection does not limit the authority of the department to bring a judicial action for penalties
17 or injunctive relief prior to or instead of initiating an administrative enforcement action under this part.

18 (3) The department may bring a judicial action seeking a penalty of not more than \$5,000 for a violation
19 listed in subsection (2)(a) and a penalty of not more than \$5,000 for each day that the violation continues.

20 (4) Penalties assessed under this section must be determined in accordance with the penalty factors
21 in 82-4-1001.

22 (5) The department may bring an action for a restraining order or a temporary or permanent injunction
23 against an operator or other person violating or threatening to violate an order issued under this part.

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

30 (b) An order issued pursuant to subsection (6)(a) becomes final unless, within 30 days after the order

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

6 (7) Legal actions for penalties or injunctive relief under this section must be brought in the district court
7 of the county in which the alleged violation occurred or, if mutually agreed to by the parties to the action, in the
8 first judicial district, Lewis and Clark County.

9 (8) Penalties collected under this section must be deposited in the state general fund."

10

11 **Section 12.** Section 82-4-441, MCA, is amended to read:

12 **"82-4-441. Administrative and judicial penalties -- enforcement.** (1) When the department has reason
13 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
14 condition of a permit issued under this part, it shall send a violation letter to the person. The violation letter must
15 describe the provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute
16 the violation. The letter must also recommend corrective actions that are necessary to return to compliance.
17 Issuance of a violation letter under this subsection does not limit the authority of the department under this part
18 to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

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

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

23 (b) an additional administrative penalty of not less than \$100 or more than \$1,000 for each day during
24 which a violation continues.

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

29 (4) Penalties assessed under this section must be determined in accordance with the penalty factors
30 in 82-4-1001.

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

7 (b) An order issued pursuant to subsection (5)(a) becomes final unless, within 30 days after the order
8 is served, the person to whom the order is issued submits to the board a written request for a hearing stating the
9 reason for the request. Service of an order by mail is complete 3 business days after mailing. If a request for a
10 hearing is filed, a hearing must be held within a reasonable time under the contested case provisions of the
11 Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm, modify,
12 or rescind the order.

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

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

19 (8) Penalties collected under this section must be deposited in the state general fund."

20

21 NEW SECTION. Section 13. Effective date. [This act] is effective on passage and approval.

22

23 NEW SECTION. Section 14. Applicability. [This act] applies to department of environmental quality
24 enforcement proceedings initiated on or after [the effective date of this act].

25

- END -