



Montana Department of  
**ENVIRONMENTAL QUALITY**

Judy H. Martz, Governor

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September 10, 2003

Todd Everts / Larry Mitchell  
Legislative Environmental Policy Office  
P.O. Box 201704  
Helena, MT 59620

**RECEIVED**

SEP 11 2003

LEGISLATIVE ENVIRONMENTAL  
POLICY OFFICE

RE: DEQ Enforcement Legislation Work Group

Dear Mr. Everts and Mr. Mitchell:

The Department of Environmental Quality (Department) has organized a work group to help it draft legislation that will make enforcement more consistent and efficient. The first scoping meeting was held August 21, 2003. A brief summary of that meeting is enclosed. At the conclusion of the first meeting, the work group recommended that the Department prioritize and focus its menu of proposed ideas for legislation. The following list explains the Department's priorities for enforcement legislation and provides a preview of discussion topics for the October work group meeting.

1. Amend the Metal Mine Reclamation Act, §82-4-301, MCA, and the Opencut Mining Act, §82-4-401, MCA, to make the administrative enforcement procedures similar to Title 75.
2. Amend the Strip and Underground Mine Reclamation Act, §82-4-201, MCA, to make the administrative enforcement procedures similar to Title 75.
3. Amend the Motor Vehicle Recycling and Disposal Act, §75-10-501, MCA, the Solid Waste Management Act, §75-10-201, MCA, and the Sanitation in Subdivisions Act, 75-6-101, MCA, to add administrative penalty authority.
4. Create new law to standardize the factors that must be considered for penalty calculations.
5. Amend the Metal Mine Reclamation Act, §82-4-301, MCA, the Opencut Mining Act, §82-4-401, MCA, and the Strip and Underground Mine Reclamation Act, §82-4-201, MCA, to increase administrative penalty authority and add civil penalty authority.
6. Create new law or amend the environmental statutes to standardize administrative enforcement procedures.

EQC - Agency Oversight Subcommittee  
October 8, 2003

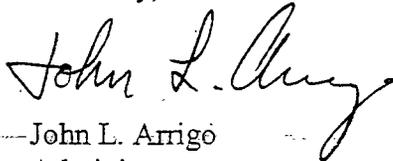
EXHIBIT #8

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The next meeting is scheduled for 1:30-4:30 PM, Tuesday, October 7, 2003, in the Metcalf Building Room 111. I am hopeful that you can attend the next work group meeting. A list of persons who received this mailing is enclosed for your information. If you have any comments or questions, please feel free to contact me.

Sincerely,



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Administrator  
DEQ Enforcement Division  
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(406) 444-5327  
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**MEETING SUMMARY**  
**DEQ Enforcement Legislation Work Group**  
**August 21, 2003**

Participants: John Arrigo, Frank Gessaman, James Madden, DEQ  
Dan Keil & George Dengel, Montana Rural Water Assoc.  
Joan Miles & Kathy Moore, Lewis & Clark Co. Environmental Health Div.  
Terry McLaughlin, Smurfit-Stone Container Corp.  
Angela Janecaro, Montana Mining Assoc.  
Chuck Hansberry, Holland & Hart  
Don Allen, Western Environmental Trade Assoc.  
Gail Abercrombie, Montana Petroleum Association  
Jeff Barber, Montana Environmental Information Center  
Dexter Busby, Montana Refining  
Larry Mitchell, Environmental Quality Council  
Ronna Christman, Montana Petroleum Marketers  
Eric Finke, Environmental Protection Agency  
Morris Elliott, Office of Surface Mining  
Erin Inman, Browning, Kaleczyc, Berry & Hoven  
Steve Brown, Garlington, Lohn & Robinson  
Tom Ebzery, Billings

The Department's goal for the work group was stated as: Draft legislation that will standardize enforcement procedures and update penalty authority. The objective of the August 21, 2003, meeting was to discuss recommendations for the scope of legislation and select work group participants.

Background information included a summary of enforcement activity and accomplishments, and an overview of statutory enforcement authorities. Past work by the Environmental Quality Council and the Legislative Auditor Division provided recommendations that enforcement should be fair and consistent. The Department has attempted to address these recommendations with the development of internal policies and rule amendments. However, statutory requirements mandate certain enforcement procedures that the Department believes lead to inconsistency and inefficiency.

The Department's problems with statutory enforcement procedures were grouped into three areas:

1. Inconsistent administrative enforcement procedures

Thirteen of the 19 environmental statutes administered by the Department are codified in Title 75. Title 75 simply states that when the Department believes a violation has occurred, it may issue a notice of violation and order. The order typically contains findings of fact, conclusions of law and a penalty assessment. Under Title 75, alleged violators have 30 days to submit an appeal to the Board of the Environmental Review (BER). Four reclamation laws administered by the Department are codified in Title 82 that contain different terminology, require additional steps and in some cases, mandate constrictive timeframes. Under Title 82, after the Department issues a notice of violation followed by a statement of proposed penalty, alleged violators have 20 or 30 days to request a hearing before the BER. If no hearing is requested or subsequent to the hearing, the Department issues findings of fact, conclusions of law and order. The procedures in Title 82 are less streamlined than Title 75 resulting in inconsistency and reduced efficiency.

## 2. Inconsistent and inefficient penalty calculation

The Department uses a different method to calculate penalties under each environmental statute, either an internal policy, EPA policy or a rule. Some statutes list factors, such as nature, extent, gravity, history of violation and voluntary mitigation, which must be considered when calculating a penalty. Other statutes do not list any penalty factors. Different penalty calculation methods make each settlement negotiation a learning experience for regulated entities that are subject to multiple statutes. It is difficult to train Department staff to be penalty specialists for one or two statutes when the Department calculates penalties under 15 different statutes. It is difficult for management to ensure penalties are consistent and fair when so many different penalty calculation methods are used. The Department believes that penalty calculations should be standardized and the process should be promulgated into rules.

## 3. Penalty amounts and authority may be inconsistent

The types and amounts of penalty authority differ between the various environmental laws. The Department believes that it is advantageous for both the Department and the regulated community to have administrative penalty authority because administrative penalty assessments are more efficient and less time consuming than filing in district court for civil penalties. The Department also believes that the maximum penalty authority in some statutes is too low and does not provide an adequate deterrent. For example, the deterrent effect of an average \$419 penalty for violations of the Strip and Underground Mine Reclamation Act assessed against large coal mining corporations is questionable.

The Department recommended a variety of options for legislation to resolve these problems. Feedback indicated that the list of options was too broad and the Department should prioritize and focus its ideas for legislation. Throughout the discussions, participants requested a variety of information and the Department agreed to provide the following.

- Numbers of self-reported and inspection-discovered complaints (not included in ENFD's FY01-03 Status Report) from DEQ's permitting programs
- Definition of criteria the Department uses to define "significant violations"
- Matrix showing various enforcement authorities for each statute
- Matrix showing penalty factors for each statute
- Options for problem resolution through rule vs. legislation

The participants were asked if they wanted to select work group members who would participate over the next twelve months. The recommendation was to include everyone in the work group at this time and decide at a later date who has an interest in a long-term work group.

The next meeting is scheduled for 1:30 -4:30, Tuesday, October 7, 2003, in Metcalf Building Room 111.

Don Allen WETA (406) 443-5541	Todd Everts / Larry Mitchell Legislative Environmental Policy Office (406) 444-3747	Jeff McCleary MT Association of Water & Sewer Systems (406) 273-3197
Gail Abercrombie MT Petroleum Association (406) 442-7582	Eric Finke U.S. EPA Region 8 Montana Office (406) 457-5026	Joan Miles / Kathy Moore Lewis & Clark City-County Health Dept (406) 457-8910
Jeff Barber MT Environmental Information Center (406) 443-2520	Leif Griffin / Terry McLaughlin Smurfit-Stone Container Corp (406) 626-4844	Jim Mockler MT Coal Council (406) 449-6628
Greg Brown Cenex Harvest States Inc (406) 628-5856	Chuck Hansberry Holland & Hart (406) 252-2166	Gordon Morris MT Association of Counties (406) 442-5209
Steve Brown Garlington Lohn & Robinson (406) 523-2500	Alec Hanson MT League of Cities and Towns (406) 442-8768	Calvin Niss TriHydro Corporation (WY) (307) 745-7474
Dexter Busby Montana Refining Company (406) 761-4100	Ann Hedges MT Environmental Information Center (406) 443-2520	Guy Padget / Morris Elliott Office of Surface Mining (307) 261-6550
Ronna Christman MT Petroleum Marketers (406) 449-4133	Cary Hegreberg MT Contractors Association (406) 442-4162	Mark Peterson Aspen Consulting & Engineering Inc (406) 457-5188
Matt Clifford Clark Fork Coalition (406) 542-0539	Angela Janecaro Montana Mining Association (406) 980-1644	Steve Pilcher MT Stockgrowers Association (406) 442-3420
Dale Cockrell 160 Heritage Way (406) 751-6003	Michael Kakuk Hoovestall & Kakuk (406) 457-0970	Ellen Porter Roseburg Forest Products (406) 728-3910
Dave DeBats ExxonMobil Billings Refinery (406) 657-5331	Dan Keil Montana Rural Water Association (406) 788-4012	Don Quander Holland & Hart (406) 252-2166
George A. Dengel MRWS / Town of Grass Range -406	Catherine Laughner / Erin Inman Browning, Kaleczyc, Berry & Hoven (406) 443-6820	Randall Richert ConocoPhillips (406) 255-2580
Tom Ebzery (406) 245-4881	Diane Lorenzen (406) 933-8179	Hal Robbins Bison Engineering Inc (406) 442-5768
Teresa Erickson Northern Plains Resource Council (406) 248-1154	Michael Machler Bison Engineering Inc (406) 896-1716	Steve Wade Browning, Kaleczyc, Berry & Hoven (406) 443-6820