

SENATE BILL NO. 233
INTRODUCED BY J. COBB

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ENVIRONMENTAL PENALTY AND FEE ALLOCATION LAWS; ESTABLISHING AN AIR QUALITY PERMIT SPECIAL REVENUE ACCOUNT; ALLOCATING A PORTION OF AIR QUALITY PENALTIES FOR FUNDING OF THE AIR QUALITY PERMITTING PROGRAM; ESTABLISHING A LEGAL DEFENSE AND BANKRUPTCY SPECIAL REVENUE ACCOUNT; ALLOCATING A PORTION OF PENALTIES AND FINES COLLECTED UNDER OTHER ENVIRONMENTAL STATUTES TO THE LEGAL DEFENSE AND BANKRUPTCY SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 75-2-221, 75-2-401, 75-2-413, 75-2-514, 75-2-515, 75-5-611, 75-5-634, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-424, 75-10-542, 75-11-516, 75-11-525, 76-4-109, AND 82-4-241, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

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

Section 1. Section 75-2-221, MCA, is amended to read:

"75-2-221. Deposit Air quality permit account -- deposit of air quality permitting fees. (1) ~~All money collected by the department pursuant to 75-2-220 must be deposited in an account in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting requirements of this chapter. There is an air quality permit account in the state special revenue fund established in 17-2-102.~~

(2) There must be deposited in the air quality permit account:

(a) permit fees collected pursuant to 75-2-220; and

(b) penalty money transferred to the account pursuant to 75-2-413.

(3) Money in the air quality permit account may be appropriated by the legislature to the department for the development and administration of the permitting requirements of this chapter.

~~(2)~~(4) Upon request, the expenditure by the department of funds in this account may be audited by a qualified auditor at the end of each fiscal year. The cost of the audit must be paid by the person requesting the audit."

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

(b) Administrative penalties collected under this section must be deposited in ~~the alternative energy revolving loan account established in 75-25-104~~ as provided in 75-2-413.

(c) Penalties imposed by an administrative order under this section may not be assessed for any day of violation that occurred more than 12 months prior to the issuance of the initial notice and order by the department under subsection (1).

(d) In determining the amount of penalty to be assessed for an alleged violation under this section, the department or board, as appropriate, shall consider:

- (i) the alleged violator's ability to pay and the economic impact of the penalty on the alleged violator;
- (ii) the alleged violator's full compliance history and good faith efforts to comply;
- (iii) the duration of the violation as established by any credible evidence, including evidence other than the applicable test method;

- (iv) payment by the violator of penalties previously assessed for the same violation;
- (v) the economic benefit of noncompliance;
- (vi) the seriousness of the violation; and
- (vii) other matters as justice may require.

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

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

- (a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or
- (b) initiate action under 75-2-412 or 75-2-413.

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

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

Section 3. Section 75-2-413, MCA, is amended to read:

"75-2-413. Civil penalties -- out-of-state litigants -- effect of action -- presumption of continuing violation under certain circumstances. (1) A person who violates any provision of this chapter, a rule adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil penalty not to exceed \$10,000 per violation. Each day of each violation constitutes a separate violation. 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. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the operating permit program required by Subchapter V of the federal Clean Air Act.

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

(b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or issued under this chapter may be brought in the district court of any county where a violation occurs or is threatened if the defendant cannot be located in Montana.

(3) If the department has notified a person operating a commercial hazardous waste incinerator of a

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

(4) Money collected under this section must be deposited in each fiscal year as follows:

(a) the first \$55,000 in the air quality permit account provided for in 75-2-221; and

(b) the remainder in the alternative energy revolving loan account established in 75-25-101. This subsection (4) does not apply to money collected by an approved local air pollution control program."

NEW SECTION. Section 4. Legal defense and bankruptcy account. (1) There is a legal defense and bankruptcy account in the state special revenue fund established in 17-2-102.

(2) Except as provided in subsection (3), there must be deposited in the legal defense and bankruptcy account penalty money collected pursuant to 75-2-514, 75-2-515, 75-5-611, 75-5-632, 75-5-633, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-424, 75-10-542, 75-11-516, 75-11-525, 76-4-109, and 82-4-241.

(3) After penalty money in the amount of \$150,000 is deposited in the legal defense and bankruptcy account, penalty money collected pursuant to 75-2-514, 75-2-515, 75-5-611, 75-5-632, 75-5-633, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-424, 75-10-542, 75-11-516, 75-11-525, 76-4-109, and 82-4-241 must be deposited in the state general fund.

(4) Money in the legal defense and bankruptcy account may be appropriated by the legislature to the department of environmental quality for defense of lawsuits filed against that agency. Money may be used for attorney fees, expert witness fees, attorney and witness travel expenses, deposition costs, and payment of attorney fees assessed against the department. The department may also use the money to prosecute bankruptcy claims.

Section 5. Section 75-2-514, MCA, is amended to read:

"75-2-514. Civil penalties -- disposition of civil penalties. (1) A district court may assess a civil penalty of not more than \$25,000 a day upon a person that violates any provision of this part, a rule adopted under this part, or a permit or order issued under this part. In the case of a continuing violation, each day the

violation continues constitutes a separate violation.

(2) Penalties collected under this section must be deposited as provided in [section 4].

~~(2)~~(3) An action under this section is not a bar to enforcement by injunction or other appropriate civil or administrative remedies."

Section 6. Section 75-2-515, MCA, is amended to read:

"75-2-515. Administrative enforcement. (1) The department may deny, suspend, or revoke the accreditation of a person that:

(a) fraudulently or deceptively obtains or attempts to obtain accreditation;

(b) fails to meet the qualifications for accreditation or fails to comply with the requirements of this part, a rule adopted under this part, or a permit or order issued under this part; or

(c) fails to meet an applicable federal or state standard for asbestos projects.

(2) When the department believes that a violation of this part, a rule adopted under this part, or a permit or order issued under this part has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or the rule, permit, or order 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 civil penalty, or both. An order becomes final unless, within 30 days after the order is received, the person that has been named requests, in writing, a hearing before the board.

(3) On receipt of a hearing request, the board shall schedule a hearing. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to any hearing conducted under this section. If, after a hearing, the board finds that a violation has not occurred or is not occurring, it shall rescind the order.

(4) (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. Any order issued by the department under this section requiring payment of an administrative civil penalty must specify the basis for the penalty assessment.

(b) A penalty may not be assessed under this section for any day of violation that occurred more than 3 years prior to the department issuing the order requiring payment of the penalty.

(c) In determining the amount of a penalty assessed to a person under this section, the department shall consider:

- (i) the seriousness of the violation;
- (ii) the duration of the violation;
- (iii) any economic benefit derived from the violation;
- (iv) the person's good faith efforts to comply with the requirements in question;
- (v) the person's compliance history;
- (vi) the person's ability to pay a penalty; and
- (vii) other matters as justice may require.

(5) In addition to or instead of issuing an order under subsection (2), 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 of hearing to answer the charges complained of; or

(b) initiate action under 75-2-514.

(6) Penalties collected under this section must be deposited as provided in [section 4]."

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 penalties collected under this section must be deposited ~~in the general fund~~ as provided in [section 4].

(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."

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~~ as provided in [section 4]."

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 penalties collected under this section must be deposited ~~in the state general fund~~ as provided in [section 4].

(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."

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 penalties collected pursuant to this section must be deposited ~~in the state general fund~~ as provided in [section 4]."

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

"75-10-417. Civil penalties. (1) Any 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 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 collected under this section ~~shall~~ must be deposited ~~in the state general fund as provided in [section 4].~~"

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 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 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~~ as provided in [section 4]."

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

"75-10-424. Administrative penalty. (1) The department may assess against 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~~ as

provided in [section 4]."

Section 14. Section 75-10-542, MCA, is amended to read:

"75-10-542. Penalties. (1) A person who willfully violates this part, except 75-10-520, is guilty of a misdemeanor and upon conviction shall be fined not to exceed \$250, imprisoned in the county jail for a term not to exceed 30 days, or both.

(2) A person who violates this part, except 75-10-520, a rule of the department, or an order issued as provided in this part ~~shall be~~ is subject to a civil penalty of not more than \$50. Each day upon which a violation of this part or a rule or order occurs is a separate violation. Penalties collected under this subsection must be deposited as provided in [section 4]."

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 collected under this section must be deposited ~~in the state general fund~~ as provided in [section 4]."

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 penalties collected under this section must be deposited ~~in the state general fund~~ as provided in [section 4]."

Section 17. Section 76-4-109, MCA, is amended to read:

"76-4-109. Penalties. (1) A person violating any provision of this part, except 76-4-122(1), or any rule or order issued under this part is guilty of an offense and subject to a fine of not to exceed \$1,000.

(2) In addition to the fine specified in subsection (1), a person who violates any provision of this part or any rule or order issued under this part is subject to a civil penalty not to exceed \$1,000. Each day of violation constitutes a separate violation. Penalties collected under this subsection must be deposited as provided in [section 4].

(3) Penalties imposed under subsection (1) or (2) do not bar enforcement of this part or rules or orders issued under it by injunction or other appropriate remedy.

(4) The purpose of this section is to provide additional and cumulative remedies."

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

"82-4-241. Receipts paid into general fund -- disposition Disposition of fees, penalties, and 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.

(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.

(4) Penalties collected under this part must be deposited as provided in [section 4]."

NEW SECTION. Section 19. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 75, and the provisions of Title 75 apply to [section 4].

NEW SECTION. Section 20. Effective date. [This act] is effective July 1, 2003.

NEW SECTION. Section 21. Termination. [Sections 4 through 18] terminate July 1, 2005.

- END -

