

SENATE BILL NO. 387

INTRODUCED BY C. SMITH

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A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING MAXIMUM PENALTIES FOR WATER QUALITY VIOLATIONS THAT DO NOT HARM OR HAVE THE POTENTIAL TO HARM HUMAN HEALTH OR THE ENVIRONMENT; AND AMENDING SECTION 75-5-611, MCA."

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

**Section 1.** 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 (1).

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

7 (4) If the department does not require an alleged violator to appear before the board for a public hearing,  
8 the alleged violator may request the board to conduct the hearing. The request must be in writing and must be  
9 filed with the department no later than 30 days after service of a notice and order under subsection (2). If a  
10 request is filed, a hearing must be held within a reasonable time. If a hearing is not requested within 30 days after  
11 service upon the alleged violator, the opportunity for a contested case appeal to the board under Title 2, chapter  
12 4, part 6, is waived.

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

15 (6) (a) After a hearing, the board shall make findings and conclusions that explain its decision.

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

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

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

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

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

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

28 (9) (a) ~~An~~ Except as provided in subsection (9)(d), an action initiated under this section may include an  
29 administrative penalty of not more than \$10,000 for each day of each violation; however, the maximum penalty  
30 may not exceed \$100,000 for any related series of violations.

1 (b) Administrative penalties collected under this section must be deposited in the general fund.

2 (c) In determining the amount of penalty to be assessed to a person, the department and board shall  
3 consider the penalty factors in 75-1-1001, ~~and~~ rules promulgated under 75-5-201, and subsection (9)(d).

4 (d) A person who commits a violation that adversely affects the department's administration of this  
5 chapter, a rule adopted pursuant to this chapter, or a condition of a permit or authorization issued under this  
6 chapter but does not harm or have the potential to harm human health or the environment may not be assessed  
7 a penalty of more than \$500 for each day of the violation, not to exceed ~~\$1,000~~ \$5,000 for all days of the same  
8 violation.

9 ~~(d)~~(e) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title  
10 2, chapter 4, part 6, apply to a hearing conducted under this section."

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