



APRIL 18, 1991

CONCURRED IN.

THIRD READING, AMENDMENTS  
CONCURRED IN.

APRIL 19, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *211*  
 2 INTRODUCED BY *HARP*

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE MAXIMUM  
 5 PENALTIES THAT MAY BE ASSESSED FOR VIOLATIONS OF TITLE 75,  
 6 CHAPTER 5, PART 6, MCA; PROVIDING THAT PENALTIES AND COSTS  
 7 RECOVERED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL  
 8 SCIENCES UNDER TITLE 75, CHAPTER 5, PART 6, MCA, MUST BE  
 9 DEPOSITED IN THE ENVIRONMENTAL QUALITY PROTECTION FUND; AND  
 10 AMENDING SECTIONS 75-5-631, 75-5-633, 75-5-634, 75-5-635,  
 11 AND 75-10-704, MCA."

12  
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 **Section 1.** Section 75-5-631, MCA, is amended to read:

15 "75-5-631. Civil penalties -- injunctions not barred.  
 16 (1) A person who violates this chapter or a rule, permit,  
 17 effluent standard, or order issued under the provisions of  
 18 this chapter shall be subject to a civil penalty not to  
 19 exceed ~~\$10,000~~ \$25,000. Each day of violation constitutes a  
 20 separate violation.

21 (2) Action under this section does not bar enforcement  
 22 of this chapter or of rules or orders issued under it by  
 23 injunction or other appropriate remedy.

24 (3) The department shall institute and maintain any  
 25 enforcement proceedings in the name of the state."

1 **Section 2.** Section 75-5-633, MCA, is amended to read:

2 "75-5-633. Penalties for false statements and  
 3 falsifying monitoring. Any person who knowingly makes any  
 4 false statement, representation, or certification in any  
 5 application, record, report, plan, or other document filed  
 6 or required to be maintained under this chapter or who  
 7 falsifies, tampers with, or knowingly renders inaccurate any  
 8 monitoring device or method required to be maintained under  
 9 this chapter shall upon conviction be punished by a fine of  
 10 not more than ~~\$10,000~~ \$25,000 or by imprisonment for not  
 11 more than 6 months, or both."

12 **Section 3.** Section 75-5-634, MCA, is amended to read:

13 "75-5-634. Fines to go to general environmental quality  
 14 protection fund. Fines collected, except those collected in  
 15 a justice's court, shall be deposited to the ~~state--general~~  
 16 environmental quality protection fund established in  
 17 75-10-704."

18 **Section 4.** Section 75-5-635, MCA, is amended to read:

19 "75-5-635. Costs and expenses -- recovery by  
 20 department. In a civil action initiated by the department  
 21 under this chapter, the department may ask for and the court  
 22 is authorized to assess a violator for the cost of the  
 23 investigation or monitoring survey which led to the  
 24 establishment of the violation and any expense incurred by  
 25 the state in removing, correcting, or terminating any of the

1 adverse effects upon water quality resulting from the  
 2 unauthorized discharge of pollutants. Costs and expenses  
 3 recovered by the department under this section must be  
 4 deposited in the environmental quality protection fund  
 5 established in 75-10-704."

6 **Section 5.** Section 75-10-704, MCA, is amended to read:

7 "75-10-704. Environmental quality protection fund. (1)

8 There is created in the state special revenue fund an  
 9 environmental quality protection fund to be administered as  
 10 a revolving fund by the department. The department is  
 11 authorized to expend amounts from the fund necessary to  
 12 carry out the purposes of Title 75, chapter 5, part 6, and  
 13 this part.

14 (2) The fund may be used by the department only to  
 15 carry out the provisions of Title 75, chapter 5, part 6, and  
 16 this part and for remedial actions taken by the department  
 17 pursuant to this part in response to a release of hazardous  
 18 or deleterious substances. The department may use money that  
 19 is deposited in the fund pursuant to subsection (4)(a) only  
 20 to carry out the purposes of this part. The department may  
 21 use money that is deposited in the fund pursuant to  
 22 subsection (4)(b) only to carry out the purposes of Title  
 23 75, chapter 5, part 6.

24 (3) The department shall:

25 (a) establish and implement a system for prioritizing

1 sites for remedial action under this part based on potential  
 2 effects on human health and the environment; and

3 (b) investigate, negotiate, and take legal action, as  
 4 appropriate under this part, to identify responsible  
 5 parties, to obtain the participation and financial  
 6 contribution of responsible parties for the remedial action,  
 7 to achieve remedial action, and to recover costs and damages  
 8 incurred by the state.

9 (4) There must be deposited in the fund:

10 (a) for the purposes of this part:

11 (i) all penalties, natural resource damages, and  
 12 remedial action costs recovered pursuant to 75-10-715;  
 13 (b)(ii) all administrative penalties assessed pursuant  
 14 to 75-10-714 and all civil penalties assessed pursuant to  
 15 75-10-711(5);

16 (c)(iii) funds appropriated to the fund by the  
 17 legislature; and

18 (d)(iv) funds received from the interest income of the  
 19 resource indemnity trust fund pursuant to 15-38-202; and

20 (b) for the purposes of Title 75, chapter 5, part 6:

21 (i) all penalties collected under Title 75, chapter 5,  
 22 part 6; and

23 (ii) all investigation and monitoring costs and  
 24 department expenses recovered pursuant to 75-5-635.

25 (5) Whenever a legislative appropriation is

1 insufficient to carry out the provisions of Title 75,  
2 chapter 5, part 6, or the provisions of this part and  
3 additional money remains in the fund, the department shall  
4 seek additional authority to spend money from the fund  
5 through the budget amendment process provided for in Title  
6 17, chapter 7, part 4.

7 (6) Whenever the amount of money in the fund is  
8 insufficient to carry out remedial action under this part,  
9 the department may apply to the governor for a grant from  
10 the environmental contingency account established pursuant  
11 to 75-1-1101.

12 (7) The department shall submit to the legislature at  
13 the beginning of each regular session a complete financial  
14 report on the fund, including a description of all  
15 expenditures made since the preceding report."

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0211, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


A bill increasing the maximum penalties that may be assessed for violations of 75-5-6, MCA, and providing that penalties and costs recovered by the Department of Health and Environmental Sciences under 75-5-6, MCA, must be deposited in the environmental quality protection fund.


ASSUMPTIONS:

1. SB0211 would not appreciably change accounting workloads.

FISCAL IMPACT:

None.

  
\_\_\_\_\_  
ROD SUNDSTED, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning      2-1-91

  
\_\_\_\_\_  
JOHN HARP, PRIMARY SPONSOR      DATE  
Fiscal Note for SB0211, as introduced.      2/2/91  
SB 211

1 SENATE BILL NO. 211  
 2 INTRODUCED BY HARP  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE MAXIMUM  
 5 PENALTIES THAT MAY BE ASSESSED FOR VIOLATIONS OF TITLE 75,  
 6 CHAPTER 5, PART 6, MCA; PROVIDING THAT PENALTIES AND COSTS  
 7 RECOVERED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL  
 8 SCIENCES UNDER TITLE 75, CHAPTER 5, PART 6, MCA, MUST BE  
 9 DEPOSITED IN THE ENVIRONMENTAL QUALITY PROTECTION FUND; AND  
 10 AMENDING SECTIONS 75-5-631, 75-5-633, 75-5-634, 75-5-635,  
 11 AND 75-10-704, MCA."

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 75-5-631, MCA, is amended to read:

15 "75-5-631. Civil penalties -- injunctions not barred.

16 (1) A person who violates this chapter or a rule, permit,  
17 effluent standard, or order issued under the provisions of  
18 this chapter shall be subject to a civil penalty not to  
19 exceed ~~\$10,000~~ \$25,000. Each day of violation constitutes  
20 MAY CONSTITUTE a separate violation.

21 (2) Action under this section does not bar enforcement  
22 of this chapter or of rules or orders issued under it by  
23 injunction or other appropriate remedy.

24 (3) The department shall institute and maintain any  
25 enforcement proceedings in the name of the state.

1 (4) IN DETERMINING THE AMOUNT OF ANY PENALTY ASSESSED  
2 PURSUANT TO THIS SECTION, THE DEPARTMENT SHALL TAKE INTO  
3 ACCOUNT:

4 (A) THE NATURE, CIRCUMSTANCES, EXTENT, AND GRAVITY OF  
5 THE VIOLATION; AND

6 (B) WITH RESPECT TO THE VIOLATOR, HIS ABILITY TO PAY,  
7 ANY PRIOR HISTORY OF SUCH VIOLATIONS, THE DEGREE OF  
8 CULPABILITY, THE ECONOMIC BENEFIT OF SAVINGS, IF ANY, TO THE  
9 VIOLATOR RESULTING FROM THE VIOLATOR'S ACTION, AND ANY OTHER  
10 MATTERS AS JUSTICE MAY REQUIRE.

11 (5) THE DEPARTMENT SHALL ESTABLISH BY RULE, PURSUANT TO  
12 75-5-201, A CLEAR AND CONCISE DESCRIPTION OF CATEGORIES OF  
13 VIOLATIONS AND THE CORRESPONDING PENALTIES THAT THE  
14 DEPARTMENT WILL SEEK UNDER THIS SECTION. THE DESCRIPTION  
15 MUST INCLUDE:

16 (A) A RANGE OF PENALTIES FOR EACH CATEGORY THAT  
17 CONSIDERS THE FACTORS IN SUBSECTION (4); AND

18 (B) A SPECIFIC LIST OF THE FACTORS TO BE CONSIDERED IN  
19 DETERMINING WHAT CONSTITUTES A SEPARATE DAY OF VIOLATION AND  
20 UNDER WHAT CIRCUMSTANCES THE DEPARTMENT WILL SEEK SEPARATE  
21 PENALTIES FOR EACH DAY OF VIOLATION.

22 (6) THE DEPARTMENT SHALL, UPON NOTIFYING ANY PERSON  
23 THAT HE IS OR MAY BE SUBJECT TO A PENALTY PURSUANT TO THIS  
24 SECTION, PROVIDE THAT PERSON WITH A COPY OF THE LIST OF  
25 PENALTIES DESCRIBED IN SUBSECTION (5)."

1       **Section 2.** Section 75-5-633, MCA, is amended to read:  
 2       "75-5-633. Penalties for false statements and  
 3 **falsifying monitoring.** Any person who knowingly makes any  
 4 false statement, representation, or certification in any  
 5 application, record, report, plan, or other document filed  
 6 or required to be maintained under this chapter or who  
 7 falsifies, tampers with, or knowingly renders inaccurate any  
 8 monitoring device or method required to be maintained under  
 9 this chapter shall upon conviction be punished by a fine of  
 10 not more than ~~\$10,000~~ \$25,000 or by imprisonment for not  
 11 more than 6 months, or both."

12       **Section 3.** Section 75-5-634, MCA, is amended to read:  
 13       "75-5-634. ~~Fines to go to general~~ environmental quality  
 14 protection fund. Fines collected, except those collected in  
 15 a justice's court, shall be deposited to the ~~state--general~~  
 16 environmental quality protection fund established in  
 17 75-10-704."

18       **Section 4.** Section 75-5-635, MCA, is amended to read:  
 19       "75-5-635. Costs and expenses -- recovery by  
 20 department. In a civil action initiated by the department  
 21 under this chapter, the department may ask for and the court  
 22 is authorized to assess a violator for the cost of the  
 23 investigation or monitoring survey which led to the  
 24 establishment of the violation and any expense incurred by  
 25 the state in removing, correcting, or terminating any of the

1 adverse effects upon water quality resulting from the  
 2 unauthorized discharge of pollutants. Costs EXCEPT AS  
 3 OTHERWISE REQUIRED BY FEDERAL LAW OR THE TERMS OF A FEDERAL  
 4 GRANT, COSTS and expenses recovered by the department under  
 5 this section must be deposited in the environmental quality  
 6 protection fund established in 75-10-704."

7       **Section 5.** Section 75-10-704, MCA, is amended to read:  
 8       "75-10-704. Environmental quality protection fund. (1)  
 9 There is created in the state special revenue fund an  
 10 environmental quality protection fund to be administered as  
 11 a revolving fund by the department. The department is  
 12 authorized to expend amounts from the fund necessary to  
 13 carry out the purposes of Title 75, chapter 5, part 6, and  
 14 this part.

15       (2) The fund may be used by the department only to  
 16 carry out the provisions of Title 75, chapter 5, part 6, and  
 17 this part and for remedial actions taken by the department  
 18 pursuant to this part in response to a release of hazardous  
 19 or deleterious substances. The department may use money that  
 20 is deposited in the fund pursuant to subsection (4)(a) only  
 21 to carry out the purposes of this part. The department may  
 22 use money that is deposited in the fund pursuant to  
 23 subsection (4)(b) only to carry out the purposes of Title  
 24 75, chapter 5, part 6.

25       (3) The department shall:



1 (a) establish and implement a system for prioritizing  
2 sites for remedial action under this part based on potential  
3 effects on human health and the environment; and

4 (b) investigate, negotiate, and take legal action, as  
5 appropriate under this part, to identify responsible  
6 parties, to obtain the participation and financial  
7 contribution of responsible parties for the remedial action,  
8 to achieve remedial action, and to recover costs and damages  
9 incurred by the state.

10 (4) There must be deposited in the fund:

11 (a) for the purposes of this part:

12 (i) all penalties, natural resource damages, and  
13 remedial action costs recovered pursuant to 75-10-715;

14 ~~(b)~~(ii) all administrative penalties assessed pursuant  
15 to 75-10-714 and all civil penalties assessed pursuant to  
16 75-10-711(5);

17 ~~(c)~~(iii) funds appropriated to the fund by the  
18 legislature; and

19 ~~(d)~~(iv) funds received from the interest income of the  
20 resource indemnity trust fund pursuant to 15-38-202; and

21 (b) for the purposes of Title 75, chapter 5, part 6:

22 (i) all penalties collected under Title 75, chapter 5,  
23 part 6; and

24 (ii) all investigation and monitoring costs and  
25 department expenses recovered pursuant to 75-5-635.

1 (5) Whenever a legislative appropriation is  
2 insufficient to carry out the provisions of Title 75,  
3 chapter 5, part 6, or the provisions of this part and  
4 additional money remains in the fund, the department shall  
5 seek additional authority to spend money from the fund  
6 through the budget amendment process provided for in Title  
7 17, chapter 7, part 4.

8 (6) Whenever the amount of money in the fund is  
9 insufficient to carry out remedial action under this part,  
10 the department may apply to the governor for a grant from  
11 the environmental contingency account established pursuant  
12 to 75-1-1101.

13 (7) The department shall submit to the legislature at  
14 the beginning of each regular session a complete financial  
15 report on the fund, including a description of all  
16 expenditures made since the preceding report."

-End-

SENATE BILL NO. 211  
INTRODUCED BY HARP

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE MAXIMUM PENALTIES THAT MAY BE ASSESSED FOR VIOLATIONS OF TITLE 75, CHAPTER 5, PART 6, MCA; PROVIDING THAT PENALTIES AND COSTS RECOVERED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES UNDER TITLE 75, CHAPTER 5, PART 6, MCA, MUST BE DEPOSITED IN THE ENVIRONMENTAL QUALITY PROTECTION FUND; AND AMENDING SECTIONS 75-5-631, 75-5-633, 75-5-634, 75-5-635, AND 75-10-704, MCA."

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

**Section 1.** Section 75-5-631, MCA, is amended to read:

"75-5-631. Civil penalties -- injunctions not barred.

(1) A person who violates this chapter or a rule, permit, effluent standard, or order issued under the provisions of this chapter shall be subject to a civil penalty not to exceed ~~\$10,000~~ \$25,000. Each day of violation constitutes ~~MAY CONSTITUTE~~ CONSTITUTES a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

(3) The department shall institute and maintain any enforcement proceedings in the name of the state.

(4) IN DETERMINING THE AMOUNT OF ANY PENALTY ASSESSED PURSUANT TO THIS SECTION, THE DEPARTMENT SHALL TAKE INTO ACCOUNT:

(A) THE NATURE, CIRCUMSTANCES, EXTENT, AND GRAVITY OF THE VIOLATION; AND

(B) WITH RESPECT TO THE VIOLATOR, HIS ABILITY TO PAY, ANY PRIOR HISTORY OF SUCH VIOLATIONS, THE DEGREE OF CULPABILITY, THE ECONOMIC BENEFIT OF SAVINGS, IF ANY, TO THE VIOLATOR RESULTING FROM THE VIOLATOR'S ACTION, AND ANY OTHER MATTERS AS JUSTICE MAY REQUIRE.

(5) THE DEPARTMENT SHALL ESTABLISH BY RULE, PURSUANT TO 75-5-201, A CLEAR AND CONCISE DESCRIPTION OF CATEGORIES OF VIOLATIONS AND THE CORRESPONDING PENALTIES THAT THE DEPARTMENT WILL SEEK UNDER THIS SECTION. THE DESCRIPTION MUST INCLUDE:

(A) A RANGE OF PENALTIES FOR EACH CATEGORY THAT CONSIDERS THE FACTORS IN SUBSECTION (4);-AND.

(B)--A-SPECIFIC-LIST-OF-THE-FACTORS-TO-BE-CONSIDERED--IN-DETERMINING-WHAT-CONSTITUTES-A-SEPARATE-DAY-OF-VIOLATION-AND-UNDER--WHAT--CIRCUMSTANCES-THE-DEPARTMENT-WILL-SEEK-SEPARATE-PENALTIES-FOR-EACH-DAY-OF-VIOLATION;

(6) THE DEPARTMENT SHALL, UPON NOTIFYING ANY PERSON THAT HE IS OR MAY BE SUBJECT TO A PENALTY PURSUANT TO THIS SECTION, PROVIDE THAT PERSON WITH A COPY OF THE LIST OF PENALTIES DESCRIBED IN SUBSECTION (5)."

1 **Section 2.** Section 75-5-633, MCA, is amended to read:

2 "75-5-633. Penalties for false statements and  
3 falsifying monitoring. Any person who knowingly makes any  
4 false statement, representation, or certification in any  
5 application, record, report, plan, or other document filed  
6 or required to be maintained under this chapter or who  
7 falsifies, tampers with, or knowingly renders inaccurate any  
8 monitoring device or method required to be maintained under  
9 this chapter shall upon conviction be punished by a fine of  
10 not more than ~~\$10,000~~ \$25,000 or by imprisonment for not  
11 more than 6 months, or both."

12 **Section 3.** Section 75-5-634, MCA, is amended to read:

13 "75-5-634. Fines to go to ~~general~~ environmental quality  
14 protection fund. Fines collected, except those collected in  
15 a justice's court, shall be deposited to the ~~state--general~~  
16 environmental quality protection fund established in  
17 75-10-704."

18 **Section 4.** Section 75-5-635, MCA, is amended to read:

19 "75-5-635. Costs and expenses -- recovery by  
20 ~~department~~. In a civil action initiated by the department  
21 under this chapter, the department may ask for and the court  
22 is authorized to assess a violator for the cost of the  
23 investigation or monitoring survey which led to the  
24 establishment of the violation and any expense incurred by  
25 the state in removing, correcting, or terminating any of the

1 adverse effects upon water quality resulting from the  
2 unauthorized discharge of pollutants. Costs EXCEPT AS  
3 OTHERWISE REQUIRED BY FEDERAL LAW OR THE TERMS OF A FEDERAL  
4 GRANT, COSTS and expenses recovered by the department under  
5 this section must be deposited in the environmental quality  
6 protection fund established in 75-10-704."

7 **Section 5.** Section 75-10-704, MCA, is amended to read:

8 "75-10-704. Environmental quality protection fund. (1)  
9 There is created in the state special revenue fund an  
10 environmental quality protection fund to be administered as  
11 a revolving fund by the department. The department is  
12 authorized to expend amounts from the fund necessary to  
13 carry out the purposes of Title 75, chapter 5, part 6, and  
14 this part.

15 (2) The fund may be used by the department only to  
16 carry out the provisions of Title 75, chapter 5, part 6, and  
17 this part and for remedial actions taken by the department  
18 pursuant to this part in response to a release of hazardous  
19 or deleterious substances. The department may use money that  
20 is deposited in the fund pursuant to subsection (4)(a) only  
21 to carry out the purposes of this part. The department may  
22 use money that is deposited in the fund pursuant to  
23 subsection (4)(b) only to carry out the purposes of Title  
24 75, chapter 5, part 6.

25 (3) The department shall:

1 (a) establish and implement a system for prioritizing  
2 sites for remedial action under this part based on potential  
3 effects on human health and the environment; and

4 (b) investigate, negotiate, and take legal action, as  
5 appropriate under this part, to identify responsible  
6 parties, to obtain the participation and financial  
7 contribution of responsible parties for the remedial action,  
8 to achieve remedial action, and to recover costs and damages  
9 incurred by the state.

10 (4) There must be deposited in the fund:

11 (a) for the purposes of this part:

12 (i) all penalties, natural resource damages, and  
13 remedial action costs recovered pursuant to 75-10-715;

14 (b)(ii) all administrative penalties assessed pursuant  
15 to 75-10-714 and all civil penalties assessed pursuant to  
16 75-10-711(5);

17 (c)(iii) funds appropriated to the fund by the  
18 legislature; and

19 (d)(iv) funds received from the interest income of the  
20 resource indemnity trust fund pursuant to 15-38-202; and

21 (b) for the purposes of Title 75, chapter 5, part 6:

22 (i) all penalties collected under Title 75, chapter 5,  
23 part 6; and

24 (ii) all investigation and monitoring costs and  
25 department expenses recovered pursuant to 75-5-635.

1 (5) Whenever a legislative appropriation is  
2 insufficient to carry out the provisions of Title 75,  
3 chapter 5, part 6, or the provisions of this part and  
4 additional money remains in the fund, the department shall  
5 seek additional authority to spend money from the fund  
6 through the budget amendment process provided for in Title  
7 17, chapter 7, part 4.

8 (6) Whenever the amount of money in the fund is  
9 insufficient to carry out remedial action under this part,  
10 the department may apply to the governor for a grant from  
11 the environmental contingency account established pursuant  
12 to 75-1-1101.

13 (7) The department shall submit to the legislature at  
14 the beginning of each regular session a complete financial  
15 report on the fund, including a description of all  
16 expenditures made since the preceding report."

-End-

HOUSE STANDING COMMITTEE REPORT

April 2, 1991  
Page 2 of 2

April 2, 1991  
Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 211 (third reading copy -- blue) be concurred in as amended .

Signed: Bob Raney  
Bob Raney, Chairman

Carried by: Rep. Wanzensried

And, that such amendments read:

1. Title, lines 6 through 9.  
Following: "MCA;" on line 6  
Strike: the remainder of line 6 through "FUND;" on line 9  
Insert: "ESTABLISHING FACTORS THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES SHALL CONSIDER IN REACHING A SETTLEMENT;"
2. Title, lines 10 and 11.  
Following: "75-5-631" on line 10  
Strike: ", "  
Insert: "AND"  
Following: "75-5-633,"  
Strike: the remainder of line 10 through "75-10-704," on line 11
3. Page 1, line 12.  
Following: line 11  
Insert: " STATEMENT OF INTENT

It is the legislature's intent that the department of health and environmental sciences develop penalty guidelines to ensure that the civil penalty provided by 75-5-631 is fairly applied by the department in reaching settlement agreements with persons who have violated Title 75, chapter 5, part 6. The legislature recognizes that the department may, in its initial filings, seek the maximum penalty of \$25,000 for each day of violation. However, it is the legislature's intent that the actual amount assessed in a settlement reflect the factors listed in 75-5-631(4) and that the department apply these factors uniformly to all violators.

This bill does not direct the department to adopt rules to ensure the uniform application of the factors listed in 75-5-631(4). The enforcement guidelines developed by the department should include a process for applying the factors to each

violator, guidance for determining the amount to request in a civil complaint, and, most importantly, a format for determining an equitable settlement value. The format may include a clear and concise description of penalty settlement ranges by type of violation. The department should complete the guidelines by October 1, 1991."

4. Page 2, lines 1 and 2.  
Following: "(4)" on line 1  
Strike: "IN" through "TO" on line 2  
Insert: "When seeking penalties under"
5. Page 2, line 3.  
Following: "ACCOUNT"  
Insert: "the following factors in determining an appropriate settlement, if any, subsequent to the filing of a complaint"
6. Page 2, lines 7 and 8.  
Following: "VIOLATIONS," on line 7  
Strike: "THE DEGREE OF CULPABILITY,"
7. Page 2, line 8.  
Strike: "OF"  
Insert: "or"
8. Page 2, lines 11 through 25.  
Strike: subsections (5) and (6) in their entirety
9. Page 3, line 12 through page 6, line 16.  
Following: line 11 on page 3  
Strike: sections 3 through 5 in their entirety

1 SENATE BILL NO. 211

2 INTRODUCED BY HARP

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE MAXIMUM  
 5 PENALTIES THAT MAY BE ASSESSED FOR VIOLATIONS OF TITLE 75,  
 6 CHAPTER 5, PART 6, MCA; ~~PROVIDING THAT PENALTIES--AND--COSTS~~  
 7 ~~RECOVERED--BY--THE--DEPARTMENT--OF--HEALTH--AND--ENVIRONMENTAL~~  
 8 ~~SCIENCES--UNDER--TITLE--75,--CHAPTER--5,--PART--6,--MCA,--MUST--BE~~  
 9 ~~DEPOSITED--IN--THE--ENVIRONMENTAL--QUALITY--PROTECTION--FUND;~~  
 10 ESTABLISHING FACTORS THAT THE DEPARTMENT OF HEALTH AND  
 11 ENVIRONMENTAL SCIENCES SHALL CONSIDER IN REACHING A  
 12 SETTLEMENT; AND AMENDING SECTIONS 75-5-631, AND 75-5-633,  
 13 75-5-634, 75-5-635, AND 75-10-704, MCA."

14  
15 STATEMENT OF INTENT

16 IT IS THE LEGISLATURE'S INTENT THAT THE DEPARTMENT OF  
 17 HEALTH AND ENVIRONMENTAL SCIENCES DEVELOP PENALTY GUIDELINES  
 18 TO ENSURE THAT THE CIVIL PENALTY PROVIDED BY 75-5-631 IS  
 19 FAIRLY APPLIED BY THE DEPARTMENT IN REACHING SETTLEMENT  
 20 AGREEMENTS WITH PERSONS WHO HAVE VIOLATED TITLE 75, CHAPTER  
 21 5, PART 6. THE LEGISLATURE RECOGNIZES THAT THE DEPARTMENT  
 22 MAY, IN ITS INITIAL FILINGS, SEEK THE MAXIMUM PENALTY OF  
 23 \$25,000 FOR EACH DAY OF VIOLATION. HOWEVER, IT IS THE  
 24 LEGISLATURE'S INTENT THAT THE ACTUAL AMOUNT ASSESSED IN A  
 25 SETTLEMENT REFLECT THE FACTORS LISTED IN 75-5-631(4) AND

1 THAT THE DEPARTMENT APPLY THESE FACTORS UNIFORMLY TO ALL  
2 VIOLATORS.

3 THIS BILL DOES NOT DIRECT THE DEPARTMENT TO ADOPT RULES  
 4 TO ENSURE THE UNIFORM APPLICATION OF THE FACTORS LISTED IN  
 5 75-5-631(4). THE ENFORCEMENT GUIDELINES DEVELOPED BY THE  
 6 DEPARTMENT SHOULD INCLUDE A PROCESS FOR APPLYING THE FACTORS  
 7 TO EACH VIOLATOR, GUIDANCE FOR DETERMINING THE AMOUNT TO  
 8 REQUEST IN A CIVIL COMPLAINT, AND, MOST IMPORTANTLY, A  
 9 FORMAT FOR DETERMINING AN EQUITABLE SETTLEMENT VALUE. THE  
 10 FORMAT MAY INCLUDE A CLEAR AND CONCISE DESCRIPTION OF  
 11 PENALTY SETTLEMENT RANGES BY TYPE OF VIOLATION. THE  
 12 DEPARTMENT SHOULD COMPLETE THE GUIDELINES BY OCTOBER 1,  
 13 1991.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 **Section 1.** Section 75-5-631, MCA, is amended to read:

17 **"75-5-631. Civil penalties -- injunctions not barred.**

18 (1) A person who violates this chapter or a rule, permit,  
 19 effluent standard, or order issued under the provisions of  
 20 this chapter shall be subject to a civil penalty not to  
 21 exceed ~~\$10,000~~ \$25,000. Each day of violation ~~constitutes~~  
 22 ~~MAY--CONSTITUTE~~ CONSTITUTES a separate violation.

23 (2) Action under this section does not bar enforcement  
 24 of this chapter or of rules or orders issued under it by  
 25 injunction or other appropriate remedy.



1 (3) The department shall institute and maintain any  
2 enforcement proceedings in the name of the state.

3 (4) IN DETERMINING THE AMOUNT OF ANY PENALTY ASSESSED  
4 PURSUANT TO WHEN SEEKING PENALTIES UNDER THIS SECTION, THE  
5 DEPARTMENT SHALL TAKE INTO ACCOUNT THE FOLLOWING FACTORS IN  
6 DETERMINING AN APPROPRIATE SETTLEMENT, IF ANY, SUBSEQUENT TO  
7 THE FILING OF A COMPLAINT:

8 (A) THE NATURE, CIRCUMSTANCES, EXTENT, AND GRAVITY OF  
9 THE VIOLATION; AND

10 (B) WITH RESPECT TO THE VIOLATOR, HIS ABILITY TO PAY,  
11 ANY PRIOR HISTORY OF SUCH VIOLATIONS, THE DEGREE OF  
12 CULPABILITY, THE ECONOMIC BENEFIT OF OR SAVINGS, IF ANY, TO  
13 THE VIOLATOR RESULTING FROM THE VIOLATOR'S ACTION, AND ANY  
14 OTHER MATTERS AS JUSTICE MAY REQUIRE.

15 (5) THE DEPARTMENT SHALL ESTABLISH BY RULE, PURSUANT TO  
16 75-5-201, A CLEAR AND CONCISE DESCRIPTION OF CATEGORIES OF  
17 VIOLATIONS AND THE CORRESPONDING PENALTIES THAT THE  
18 DEPARTMENT WILL SEEK UNDER THIS SECTION. THE DESCRIPTION  
19 MUST INCLUDE:

20 (A) A RANGE OF PENALTIES FOR EACH CATEGORY THAT  
21 CONSIDERS THE FACTORS IN SUBSECTION (4), AND;

22 (B) A SPECIFIC LIST OF THE FACTORS TO BE CONSIDERED IN  
23 DETERMINING WHAT CONSTITUTES A SEPARATE DAY OF VIOLATION AND  
24 UNDER WHAT CIRCUMSTANCES THE DEPARTMENT WILL SEEK SEPARATE  
25 PENALTIES FOR EACH DAY OF VIOLATION.

1 (6) THE DEPARTMENT SHALL, UPON NOTIFYING ANY PERSON  
2 THAT HE IS OR MAY BE SUBJECT TO A PENALTY PURSUANT TO THIS  
3 SECTION, PROVIDE THAT PERSON WITH A COPY OF THE LIST OF  
4 PENALTIES DESCRIBED IN SUBSECTION (5).

5 Section 2. Section 75-5-633, MCA, is amended to read:  
6 "75-5-633. Penalties for false statements and  
7 falsifying monitoring. Any person who knowingly makes any  
8 false statement, representation, or certification in any  
9 application, record, report, plan, or other document filed  
10 or required to be maintained under this chapter or who  
11 falsifies, tampers with, or knowingly renders inaccurate any  
12 monitoring device or method required to be maintained under  
13 this chapter shall upon conviction be punished by a fine of  
14 not more than \$10,000 \$25,000 or by imprisonment for not  
15 more than 6 months, or both."

16 Section 3. Section 75-5-634, MCA, is amended to read:  
17 "75-5-634. Fines to go to general environmental quality  
18 protection fund. Fines collected, except those collected in  
19 a justice's court, shall be deposited to the state general  
20 environmental quality protection fund established in  
21 75-10-704."

22 Section 4. Section 75-5-635, MCA, is amended to read:  
23 "75-5-635. Costs and expenses recovery by  
24 department in a civil action initiated by the department  
25 under this chapter, the department may ask for and the court

1 is authorized to assess a violator for the cost of the  
 2 investigation or monitoring survey which led to the  
 3 establishment of the violation and any expense incurred by  
 4 the state in removing, correcting, or terminating any of the  
 5 adverse effects upon water quality resulting from the  
 6 unauthorized discharge of pollutants. Costs EXCEPT AS  
 7 OTHERWISE REQUIRED BY FEDERAL LAW OR THE TERMS OF A FEDERAL  
 8 GRANT, COSTS and expenses recovered by the department under  
 9 this section must be deposited in the environmental quality  
 10 protection fund established in 75-10-704.<sup>4</sup>

11 Section 57, Section 75-10-704, MCA, is amended to read:

12 <sup>4</sup>75-10-704. Environmental quality protection fund. (1)  
 13 There is created in the state special revenue fund an  
 14 environmental quality protection fund to be administered as  
 15 a revolving fund by the department. The department is  
 16 authorized to expend amounts from the fund necessary to  
 17 carry out the purposes of Title 75, chapter 57, part 67 and  
 18 this part.

19 (2) The fund may be used by the department only to  
 20 carry out the provisions of Title 75, chapter 57, part 67 and  
 21 this part and for remedial actions taken by the department  
 22 pursuant to this part in response to a release of hazardous  
 23 or deleterious substances. The department may use money that  
 24 is deposited in the fund pursuant to subsection (4)(a) only  
 25 to carry out the purposes of this part. The department may

1 use money that is deposited in the fund pursuant to  
 2 subsection (4)(b) only to carry out the purposes of Title  
 3 75, chapter 57, part 67.

4 (3) The department shall:

5 (a) establish and implement a system for prioritizing  
 6 sites for remedial action under this part based on potential  
 7 effects on human health and the environment, and

8 (b) investigate, negotiate, and take legal action, as  
 9 appropriate under this part, to identify responsible  
 10 parties, to obtain the participation and financial  
 11 contribution of responsible parties for the remedial action,  
 12 to achieve remedial action, and to recover costs and damages  
 13 incurred by the state.

14 (4) There must be deposited in the fund:

15 (a) for the purposes of this part:

16 (i) all penalties, natural resource damages, and  
 17 remedial action costs recovered pursuant to 75-10-715;

18 (b) (ii) all administrative penalties assessed pursuant  
 19 to 75-10-714 and all civil penalties assessed pursuant to  
 20 75-10-711(5);

21 (c) (iii) funds appropriated to the fund by the  
 22 legislature; and

23 (d) (iv) funds received from the interest income of the  
 24 resource indemnity trust fund pursuant to 15-38-202; and

25 (b) for the purposes of Title 75, chapter 57, part 67.



1 ~~(1) all penalties collected under Title 75, chapter 5,~~  
2 ~~part 6, and~~

3 ~~(2) all investigation and monitoring costs and~~  
4 ~~department expenses recovered pursuant to 75-5-635.~~

5 ~~(5) Whenever a legislative appropriation is~~  
6 ~~insufficient to carry out the provisions of Title 75,~~  
7 ~~chapter 5, part 6, or the provisions of this part and~~  
8 ~~additional money remains in the fund, the department shall~~  
9 ~~seek additional authority to spend money from the fund~~  
10 ~~through the budget amendment process provided for in Title~~  
11 ~~17, chapter 7, part 4.~~

12 ~~(6) Whenever the amount of money in the fund is~~  
13 ~~insufficient to carry out remedial action under this part,~~  
14 ~~the department may apply to the governor for a grant from~~  
15 ~~the environmental contingency account established pursuant~~  
16 ~~to 75-1-1101.~~

17 ~~(7) The department shall submit to the legislature at~~  
18 ~~the beginning of each regular session a complete financial~~  
19 ~~report on the fund, including a description of all~~  
20 ~~expenditures made since the preceding report."~~

-End-