HOUSE BILL NO. 374

INTRODUCED BY EWER, RYE, WATERMAN, MCCLERNAN BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

IN THE HOUSE

JANUARY 27, 1993 INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.

FIRST READING.

FEBRUARY 16, 1993 COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 17, 1993 PRINTING REPORT.

SECOND READING, DO PASS AS AMENDED.

INTRODUCED AND REFERRED TO COMMITTEE

ON NATURAL RESOURCES.

COMMITTEE RECOMMEND BILL BE

SECOND READING, CONCURRED IN.

CONCURRED IN AS AMENDED. REPORT

FIRST READING.

FEBRUARY 18, 1993 ENGROSSING REPORT.

FEBRUARY 19, 1993 THIRD READING, PASSED. AYES, 89; NOES, 9.

FEBRUARY 22, 1993 TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 22, 1993

MARCH 30, 1993

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MARCH 31, 1993

APRIL 1, 1993

THIRD READING, CONCURRED IN. AYES, 31; NOES, 17.

ADOPTED.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 6, 1993 SECOND READING, AMENDMENTS CONCURRED IN.

APRIL 12, 1993 THIRD READING, AMENDMENTS

CONCURRED IN. SENT TO ENROLLING. REPORTED CORRECTLY ENROLLED.

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LC 0858/01

House BILL NO. 374 1 INTRODUCED BY KU 2 BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES 4 5

6 A BILL FOR AN ACT ENTITLED: PROVIDING "AN ACT AN 7 ADMINISTRATIVE PENALTY IN THE MONTANA WATER QUALITY LAWS: 8 INCREASING THE ALLOCATION TO THE WATER QUALITY 9 REHABILITATION ACCOUNT AND RENAMING THE ACCOUNT: ALLOWING FUNDS FROM THIS ACCOUNT TO BE USED FOR EDUCATIONAL PROGRAMS 10 CONCERNING WATER 11 QUALITY: AMENDING SECTIONS 75-5-201, 75-5-507, 75-5-611, AND 75-5-634, MCA: AND PROVIDING A 12 13 **RETROACTIVE APPLICABILITY DATE.***

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15 WHEREAS, it is necessary and reasonable for the 16 Department of Health and Environmental Sciences to actively enforce the provisions of Montana's water quality laws; and 17 18 WHEREAS, the use of the District Courts to achieve civil 19 penalty assessments consumes significant financial resources 20 from both the regulated public and the State of Montana; and 21 WHEREAS, many parties may wish to resolve violations of 22 Montana's water quality laws in an administrative proceeding 23 that authorizes direct payments to the State of Montana 24 without the large expenses inherent with the filing of a 25 judicial lawsuit; and



WHEREAS, the Board of Health and Environmental Sciences
 may specify situations in which the Department of Health and
 Environmental Sciences should pursue an action
 administratively; and

5 WHEREAS, in several situations, the administrative 6 assessment of civil penalties under Montana's water quality 7 laws would be a more effective deterrent than resolution of 8 cases through the District Courts; and

9 WHEREAS, the Department of Health and Environmental 10 Sciences would be able to apply its limited enforcement 11 resources to a broader array of violations; and

12 WHEREAS, the Federal Water Pollution Control Act 13 provides for a similar administrative penalty, which could 14 ultimately become a condition of primacy for state 15 administration of water quality programs in Montana; and

16 WHEREAS, the citizens and businesses of the State of 17 Montana, as well as the Department of Health and 18 Environmental Sciences, would benefit from the availability 19 of an administrative penalty in Montana's water quality 20 laws; and

21 WHEREAS, the use of money collected by assessment of 22 administrative penalties for rehabilitation of state waters 23 and for public education coincides with other purposes of 24 Montana's Water Quality Laws, including improvement and 25 preservation of state water quality.

> HB 374 ²⁻ INTRODUCED BILL

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THEREFORE, the Legislature of the State of Nontana finds
 it appropriate to authorize an administrative penalty within
 Montana's water quality laws.

STATEMENT OF INTENT

A statement of intent is provided for this bill in order 6 7 to assist the board of health and environmental sciences in 8 promulgating rules. The legislature intends that the 9 administrative penalty provided by this bill be used to 10 encourage compliance with Montana's water quality laws by 11 allowing more timely and efficient processing of certain 12 enforcement actions without the need for a higher penalty 13 sought through a district court. To promote these goals, the 14 board should develop rules that prescribe penalties for 15 specific types of violations. In doing so, the board shall 16 ensure that its rules are consistent with the criteria set 17 forth in 75-5-631(4). Further, the board and department 18 shall take measures to ensure that the rules are 19 disseminated to the regulated community.

20 The legislature also intends that the board's rules be
21 no less stringent than the federal rules and guidance
22 implementing the Federal Water Pollution Control Act.

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24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 25 Section 1. Section 75-5-201, MCA, is amended to read:

75-5-201. Board rules authorized. (1) The board shall
 adopt rules for the administration of this chapter.

3 (2) The board's rules may include a fee schedule or 4 system for assessment of administrative penalties as 5 provided under 75-5-611."

Section 2. Section 75-5-611, MCA, is amended to read: б "75-5-611. Violation of chapter -- administrative 7 actions and penalties -- notice and hearing. (1) When the 8 9 department has reason to believe that a violation of this 10 chapter, or a rule made adopted under it this chapter, or a 11 condition of a permit or authorization required by a rule adopted under this chapter has occurred, it may have a 12 written notice and order served personally or by certified 13 14 mail on the alleged violator or his the violator's agent. 15 The notice shall and order must state:

16 (a) the provision of statute, rule, permit, or approval
17 alleged to be violated;

(c) the nature of corrective action or the amount of
 the administrative penalty assessed under this section, or
 both, which that the department requires; and

(b) the facts alleged to constitute the violation r_{i}

(d) as applicable, the time within which the corrective
action is to be taken or the administrative penalty is to be
paid. For the purposes of this chapter, service by certified
mail is complete on the date of mailing.

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1 (2) In a notice and order given under subsection (1) of this--section, the department may require the alleged 2 3 violator to appear before the board for a public hearing and to answer the charges made-against-him. The hearing shall 4 5 must be held no sooner than 15 days after service of the notice and order, except that the board may set an earlier 6 7 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 8 9 request of the alleged violator if the alleged violator 10 shows good cause for delay.

11 (3) If the department does not require an alleged 12 violator to appear before the board for a public hearing, he 13 the alleged violator may request the board to conduct the 14 hearing. The request shall must be in writing and shall must be filed with the department no later than 30 days after 15 16 service of a notice under subsection (1) of-this-section. If 17 a request is filed, a hearing shall must be held within a 18 reasonable time. If a hearing is not requested within 30 days after service upon the alleged violator, the 19 opportunity for a contested case appeal to the board under 20 Title 2, chapter 4, part 6, is waived. 21

22 (4) If a contested case hearing is held under this 23 section, it shall must be public and shall musty-if-the board-considers-it-practicable; be held in a the county in 24 which the violation is alleged to have occurred or in Lewis 25

and Clark County. (5) (a) After a hearing or-on--failure--of--an--alleged violator--to--make-a-timely-request-for-a-hearing, the board may 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) It If the order requires abatement or control of pollution, the board shall state the date or dates by which a violation shall must cease and may prescribe timetables 12 for necessary action in preventing, abating, or controlling the pollution. (d) If the order requires payment of an administrative 16 penalty, the board shall explain how it determined the 17 amount of the administrative penalty. 18 (e) If the board determines that a violation has not 19 occurred, it shall declare the department's notice void. 20 (6) The alleged violator may petition the board for a rehearing on the basis of new evidence, which petition the 21 22 board may grant for good cause shown.

23 (7) In addition to or instead of issuing an order, the board may direct the department to initiate appropriate 24 action for recovery of a penalty under 75-5-631, 75-5-632, 25

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1 75-5-633. or 75-5-635. 2 (8) (a) An action initiated under this section may 3 include an administrative penalty of not more than \$10,000 for each day of each violation. 4 (b) Administrative penalties collected under this 5 6 section must be deposited as provided for under 75-5-634. 7 (c) In determining the amount of penalty to be assessed 8 to a person, the department and board shall consider the 9 criteria stated in 75-5-631(4) and rules promulgated under 10 75-5-201. 11 (d) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, 12 13 chapter 4, part 6, apply to a hearing conducted under this 14 section." 15 Section 3. Section 75-5-507, MCA, is amended to read: *75-5-507. Water quality rehabilitation and education 16 account -- use -- criteria. (1) There is a water quality 17 rehabilitation and education account within the state 18 19 special revenue fund established in 17-2-102. 20 (2) Fines and civil penalties collected for violations

of any provision of this chapter or a rule, permit, effluent standard, or order issued under the provisions of this chapter must be deposited in the water quality rehabilitation and education account pursuant to 75-5-634. The account is statutorily appropriated, as provided in 1 17-7-502, to the department.

2 (3) The department may spend funds deposited in the
3 water quality rehabilitation <u>and education</u> account for the
4 following purposes:

5 (a) to respond if wastes have been placed in a location
6 where they are likely to cause pollution of state waters;

7 (b) to respond to emergency water pollution events,
8 including spills and accidents, in an effort to repair,
9 restore, and rehabilitate the affected state waters;

10 (c) to repair, restore, and rehabilitate state waters
11 that are chronically or periodically adversely affected as a
12 result of past pollution-causing events or activities; and
13 (d) whenever the department discovers or suspects that
14 a pollution problem exists, to investigate or gather
15 information that is necessary and appropriate to identify
16 the existence, nature, origin, and extent of the pollution

17 and to identify an appropriate response; and

18 (e) to conduct or support water education programs that
19 inform the public about Montana's water quality laws and
20 regulations and ways to conserve water or prevent pollution
21 of state waters.
22 (4) The department may draw upon the account in order

to take action under subsection subsections (3)(a) through
(3)(d) only if:

25 (a) (i) wastes have been placed in a location where

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1 they are likely to cause pollution of state waters or an 2 emergency water pollution event has occurred and either the 3 department is unable to identify a responsible party or the 4 responsible party fails to clean up the wastes or to repair, 5 restore, or rehabilitate the adversely affected state waters 6 in a timely manner; and

7 (ii) the department determines that prompt action is
8 necessary to prevent pollution of state waters, protect
9 public health, minimize the extent of environmental damage,
10 or minimize the overall economic cost of appropriately
11 responding to the emergency situation; or

12 (b) the department has made diligent, good faith 13 efforts to determine the identity of the person responsible 14 for pollution resulting from past events or activities and 15 has been unable to identify the person or take enforcement 16 action as provided in Title 75, chapter 5, part 6."

17 Section 4. Section 75-5-634, MCA, is amended to read: 18 "75-5-634. Disposition of fines and civil penalties. 19 (1) Except as provided in subsections (2) and (3), fines and 20 civil penalties collected, except those collected in a 21 justice's court, must be deposited into the water quality 22 rehabilitation and education account provided for in 23 75-5-507.

24 (2) A maximum of \$20,000 in fines and civil
25 penalties may be deposited in the water quality

rehabilitation and education account in any fiscal year.
 Fines and penalties in excess of \$20,000 must be
 deposited in the general fund.

4 (3) Whenever the amount of money in the water quality
5 rehabilitation and education account exceeds \$100,000
6 \$200,000, all subsequent fines and civil penalties must be
7 deposited in the general fund."

8 <u>NEW SECTION.</u> Section 5. Retroactive applicability. 9 [This act] applies retroactively, within the meaning of 10 1-2-109, to all department of health and environmental 11 sciences' notices served on alleged violators pursuant to 12 75-5-611 beginning October 1, 1992, or on the date of 13 adoption of the board of health and environmental sciences' 14 rules under 75-2-201, whichever is earlier.

-End-

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STATE OF MONTANA - FISCAL NOTE Form BD-15 In compliance with a written request, there is hereby submitted a Fiscal Note for <u>HB0374</u>, <u>as introduced</u>.

<u>DESCRIPTION OF PROPOSED LEGISLATION</u>: This bill would amend the Water Quality Act to provide an administrative penalty, increase the allocation to the water quality rehabilitation and education account and allow funds from this account to be used for educational programs concerning water quality retroactive to October 1, 1992.

ASSUMPTIONS:

- 1. Penalty assessments pursuant to the Water Quality Act will not change during the first fiscal year after enactment.
- 2. Penalty assessments may increase slightly in the second fiscal year after enactment (approximately \$20,000 to \$30,000) owing to the more timely and efficient resolution of cases involving less complex issues and lower penalty amounts.
- 3. Allocation of penalty funds to the water quality rehabilitation and education account will increase from \$20,000 to \$50,000 as provided in the legislation.
- 4. There will be no additional expenses associated with the enactment of this legislation.

FISCAL IMPACT: This legislation is expected to result in no fiscal impact.

DAVID LEWIS, BUDGET DIRECTOR DATE Office of Budget and Program Planning

DAVID EWER, PRIMARY SPONSOR

DATE

Fiscal Note for HB0374, as introduced

HB 374

53rd Legislature

HB 0374/02

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APPROVED BY COMM. ON NATURAL RESOURCES

1	HOUSE BILL NO. 374
2	INTRODUCED BY EWER, RYE, WATERMAN, MCCLERNAN
3	BY REQUEST OF THE DEPARTMENT OF
4	HEALTH AND ENVIRONMENTAL SCIENCES

"AN ACT PROVIDING AN 6 A BILL FOR AN ACT ENTITLED: 7 ADMINISTRATIVE PENALTY IN THE MONTANA WATER QUALITY LAWS; 8 INCREASING---THE---ALLOCATION---TO---THE----WATER----OUALITY 9 REHABI LITATION--ACCOUNT--AND--RENAMING-THE-ACCOUNT--ALLOWING 10 FUNDS-PROM-THIS-ACCOUNT-TO-BE-USED-FOR-EDUCATIONAL-PROGRAMS CONCERNING--WATER--OUALITY; AMENDING SECTIONS 75-5-201; AND 11 75-5-5077 75-5-611, AND--75-5-6347 MCA7--AND--PROVIDING--A 12 13 RETROACTIVE-APPLICABILITY-BATE."

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15 it is necessary and reasonable for the WHEREAS, 16 Department of Health and Environmental Sciences to actively 17 enforce the provisions of Montana's water guality laws; and 18 WHEREAS, the use of the District Courts to achieve civil 19 penalty assessments consumes significant financial resources 20 from both the regulated public and the State of Montana; and WHEREAS, many parties may wish to resolve violations of 21 22 Montana's water quality laws in an administrative proceeding 23 that authorizes direct payments to the State of Montana 24 without the large expenses inherent with the filing of a 25 judicial lawsuit; and

WHEREAS, the Board of Health and Environmental Sciences
 may specify situations in which the Department of Health and
 Environmental Sciences should pursue an action
 administratively; and

5 WHEREAS, in several situations, the administrative 6 assessment of civil penalties under Montana's water quality 7 laws would be a more effective deterrent than resolution of 8 cases through the District Courts; and

9 WHEREAS, the Department of Health and Environmental
10 Sciences would be able to apply its limited enforcement
11 resources to a broader array of violations; and

12 WHEREAS. the Federal Water Pollution Control Act 13 provides for a similar administrative penalty, which could 14 ultimately become a condition of primacy for state 15 administration of water quality programs in Montana; and 16 WHEREAS, the citizens and businesses of the State of 17 Montana, as well as the Department of Health and 18 Environmental Sciences, would benefit from the availability 19 of an administrative penalty in Montana's water quality 20 laws;-and

21 WHEREAS7-the-use-of-money--collected--by--assessment--of 22 administrative--penalties-for-rehabilitation-of-state-waters 23 and-for-public-education-coincides-with--other--purposes--of 24 Montana¹3--Water--Quality--baws7--including--improvement-and 25 preservation-of-state-water-quality.

> -2- HB 374 SECOND READING

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THEREFORE, the Legislature of the State of Montana finds
 it appropriate to authorize an administrative penalty within
 Montana's water quality laws.

STATEMENT OF INTENT

6 A statement of intent is provided for this bill in order to assist the board of health and environmental sciences in 7 8 promulgating rules. The legislature intends that the 9 administrative penalty provided by this bill be used to encourage compliance with Montana's water quality laws by 10 11 allowing more timely and efficient processing of certain 12 enforcement actions without the need for a higher penalty 13 sought through a district court. To promote these goals, the 14 board should develop rules that prescribe penalties for 15 specific types of violations. In doing so, the board shall 16 ensure that its rules are consistent with the criteria set 17 forth in 75-5-631(4). Further, the board and department 18 shall take measures to ensure that the rules are 19 disseminated to the regulated community.

20 The legislature also intends that the board's rules be
21 no less stringent than the federal rules and guidance
22 implementing the Federal Water Pollution Control Act.

23

5

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 Section 1. Section 75-5-201, MCA, is amended to read:

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2 adopt rules for the administration of this chapter. (2) The board's rules may include a fee schedule or 3 system for assessment of administrative penalties as 4 5 provided under 75-5-611." 6 Section 2. Section 75-5-611, MCA, is amended to read: 7 "75-5-611. Violation of chapter -- administrative 8 actions and penalties -- notice and hearing. (1) When the 9 department has reason to believe that a violation of this 10 chapter, or a rule made adopted under it this chapter, or a 11 condition of a permit or authorization required by a rule 12 adopted under this chapter has occurred, it may have a written notice and order served personally or by certified 13 14 mail on the alleged violator or his the violator's agent. 15 The notice shall and order must state: 16 (a) the provision of statute, rule, permit, or approval 17 alleged to be violated; 18 (b) the facts alleged to constitute the violation; 19 (c) the nature of corrective action or the amount of 20 the administrative penalty assessed under this section, or 21 both, which that the department requires; and 22 (d) as applicable, the time within which the corrective 23 action is to be taken or the administrative penalty is to be

"75-5-201. Board rules authorized. (1) The board shall

24 paid. For the purposes of this chapter, service by certified
25 mail is complete on the date of mailing RECEIPT.

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(2) In a notice and order given under subsection (1) of 1 this--section, the department may require the alleged 2 violator to appear before the board for a public hearing and 3 to answer the charges made-against-him. The hearing shall 4 must be held no sooner than 15 days after service of the 5 6 notice and order, except that the board may set an earlier date for hearing if it is requested to do so by the alleged 7 8 violator. The board may set a later date for hearing at the 9 request of the alleged violator if the alleged violator 10 shows good cause for delay.

(3) If the department does not require an alleged 11 12 violator to appear before the board for a public hearing, he 13 the alleged violator may request the board to conduct the hearing. The request shall must be in writing and shall must 14 be filed with the department no later than 30 days after 15 16 service of a notice under subsection (1) of-this-section. If 17 a request is filed, a hearing shall must be held within a reasonable time. If a hearing is not requested within 30 18 19 days after service upon the alleged violator, the opportunity for a contested case appeal to the board under 20 21 Title 2, chapter 4, part 6, is waived.

(4) If a <u>contested case</u> hearing is held under this
section, it shell <u>must</u> be public and shall <u>musty-if-the</u>
board-considers-it-practicable, be held in a <u>the</u> county in
which the violation is alleged to have occurred <u>or in Lewis</u>

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1 and Clark County. 2 (5) (a) After a hearing or-on-failure-of-an-alleged 3 violator--to--make-a-timely-request-for-a-hearing, the board 4 may shall make findings and conclusions that explain its 5 decision. 6 (b) If the board determines that a violation has 7 occurred, it shall also issue an appropriate order for the 8 prevention, abatement, or control of pollution, the 9 assessment of administrative penalties, or both. 10 (c) #t If the order requires abatement or control of 11 pollution, the board shall state the date or dates by which 12 a violation shall must cease and may prescribe timetables 13 for necessary action in preventing, abating, or controlling 14 the pollution. 15 (d) If the order requires payment of an administrative penalty, the board shall explain how it determined the 16 17 amount of the administrative penalty. 18 (e) If the board determines that a violation has not 19 occurred, it shall declare the department's notice void. 20 (6) The alleged violator may petition the board for a 21 rehearing on the basis of new evidence, which petition the 22 board may grant for good cause shown. 23 (7) In-addition-to-or-instead INSTEAD of issuing an

order, the board may direct the department to initiate appropriate action for recovery of a penalty under 75-5-631,

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1	75-5-632, 75-5-633, or 75-5-635.
2	(8) (a) An action initiated under this section may
3	include an administrative penalty of not more than \$10,000
4	for each day of each violation; HOWEVER, THE MAXIMUM PENALTY
5	MAY NOT EXCEED \$100,000 FOR ANY RELATED SERIES OF
6	VIOLATIONS.
7	(b) Administrative penalties collected under this
8	section must be deposited as provided for under 75-5-634.
9	(c) In determining the amount of penalty to be assessed
10	to a person, the department and board shall consider the
11 -	criteria stated in 75-5-631(4) and rules promulgated under
12	75-5-201.
13	(d) The contested case provisions of the Montana
14	Administrative Procedure Act, provided for in Title 2,
15	chapter 4, part 6, apply to a hearing conducted under this
16	section."
17	Section-3Section-75-5-5877-MCAy-is-amended-to-read:
18	475-5-507Watergualityrehabilitation and-education
19	accountusecriteria;-(1)-Thereisawaterquality
20	rehabilitationandeducationaccountwithinthestate
21	special-revenue-fund-established-in-17-2-102-
22	- (2) Pines-and-civil-penalties-collected-forviolations
23	of-any-provision-of-this-chapter-or-a-rule;-permit;-effluent
24	standardyororderissuedundertheprovisions-of-this
25	chaptermustbedepositedinthewaterquality
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1	rehabilitation- <u>and-education</u> -account-pursuantto75-5-634+
2	Theaccountisstatutorilyappropriated;as-provided-in
3	17-7-5027-to-the-department.
4	(3) The-department-may-spendfundsdepositedinthe
5	waterqualityrehabilitation-and-education-account-for-the
6	following-purposes:
7	(a)to-respond-if-wastes-have-been-placed-in-a-location
8	where-they-are-likely-to-cause-pollution-of-state-waters;
9	<pre>(b)to-respond-toemergencywaterpollutionevents;</pre>
10	includingspillsandaccidents;inan-effort-to-repair;
11	restore;-and-rehabilitate-the-affected-state-waters;
12	(c)to-repair;~restore;-and-rehabilitatestatewaters
13	that-are-chronically-or-periodically-adversely-affected-as-a
14	result-of-past-pollution-causing-events-or-activities;-and
15	(d)wheneverthe-department-discovers-or-suspects-that
16	epollutionproblemexists7toinvestigateorgather
17	informationthatis~-necessary-and-appropriate-to-identify
18	the-existence;-nature;-origin;-and-extent-ofthepollution
19	and-to-identify-an-appropriate-response <u>;-and</u>
20	tetto-conduct-or-support-water-education-programs-that
21	informthepublicaboutMontana's-water-quality-laws-and
22	regulations-and-ways-to-conserve-water-or-preventpollution
23	of-state-waters.
24	(4)Thedepartmentmay-draw-upon-the-account-in-order
25	to-take-action-under-subsection subsections (3) (a)through
	-8- НВ 374

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1	<u>t3)tdj</u> -only-if+
2	<pre>ta)ti)-wasteshavebeenplacedin-a-location-where</pre>
3	they-are-likely-to-cause-pollution-ofstatewatersoran
4	emergencywater-pollution-event-has-occurred-and-either-the
5	department-is-unable-to-identify-a-responsible-party-orthe
6	responsible-party-fails-to-clean-up-the-wastes-or-to-repair;
7	restore;-or-rehabilitate-the-adversely-affected-state-waters
8	in-a-timely-manner;-and
9	(ii)-thedepartmentdeterminesthatprompt-action-is
10	necessary-to-preventpollutionofstatewatersyprotect
11	publichealthy-minimize-the-extent-of-environmental-damage;
12	or-minimizetheoveralleconomiccostofappropriately
13	responding-to-the-emergency-situation;-or
14	<pre>tb;thedepartmenthasmadediligent;goodfaith</pre>
15	efforts-to-determine-the-identity-of-the-personresponsible
16	forpollutionresulting-from-past-events-or-activities-and
17	has-been-unable-to-identify-the-person-ortakeenforcement
18	action-as-provided-in-Title-757-chapter-57-part-6-"
19	Section-4Section-75-5-6347-MCA7-is-amended-to-read
20	#75-5-634Bispositionoffinesand-civil-penalties-
21	<pre>tly-Except-as-provided-in-subsections-(2)-and-(3)y-fines-and</pre>
22	civil-penaltiescollected;exceptthosecollectedina
23	justice_scourt;mustbe-deposited-into-the-water-quality
24	rehabilitation <u>andeducation</u> accountprovided <u>for</u> in
25	7 5-5- 507.

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1	{2}-+Amaximumof\$207000 <u>\$507000</u>-in-fines-and-civil
2	penaltiesmaybedepositedinthewaterguality
3	rehabilitation <u>andeducation</u> accountin-any-fiscal-year;
4	Fines-and-penalties-in-excess-of9207000 <u>9507000</u> mustbe
5	deposited-in-the-general-fund-
6	<pre>f3}Whenevertheamount-of-money-in-the-water-guality</pre>
7	rehabilitation <u>andeducation</u> accountexceeds\$1007000
8	<u>§2007000</u> 7sllsubsequent-fines-and-civil-penalties-must-be
9	deposited-in-the-general-fund-"
10	NBW-SBCTION:Section 5Retroactiveapplicability
11	{This-act}-appliesretroactively;withinthemeaningof
12	1-2-1097toalldepartmentofhealthand-environmental
13	sciences ¹ -notices-served-on-alleged-~violatorspursuantto
14	75-5-611beginningOctober1719927oronthe-date-of
15	$adoption-of-the-board-of-health-and-environmentalsciences^+$
16	rules-under-75-2-2017-whichever-is-earlier-
	-End-

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HB 374

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53rd Legislature

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HB 0374/03

1	HOUSE BILL NO. 374
2	INTRODUCED BY EWER, RYE, WATERMAN, MCCLERNAN
3	BY REQUEST OF THE DEPARTMENT OF
4	HEALTH AND ENVIRONMENTAL SCIENCES
5	
6	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN
7	ADMINISTRATIVE PENALTY IN THE MONTANA WATER QUALITY LAWS;
8	increasingTheAlbocationToTheWaterQuality
9	Rehabilitationaccountandrenaming-the-accountallowing
10	Funds-prom-this-ac count-to-be -used-for-educationalprograms
11	CONCERNING WATER QUALITY; AMENDING SECTIONS 75-5-201; AND
12	75-5-507, 75-5-611, ANB75-5-634, MCA;ANDPROVIDINGA
13	RETROACTIVE-APPLICABILITY-DATE."
14	

15 WHEREAS, it is necessary and reasonable for the 16 Department of Health and Environmental Sciences to actively enforce the provisions of Montana's water guality laws; and 17 18 WHEREAS, the use of the District Courts to achieve civil penalty assessments consumes significant financial resources 19 20 from both the regulated public and the State of Montana; and WHEREAS, many parties may wish to resolve violations of 21 22 Montana's water quality laws in an administrative proceeding 23 that authorizes direct payments to the State of Montana without the large expenses inherent with the filing of a 24 25 judicial lawsuit; and

WHEREAS, the Board of Health and Environmental Sciences
 may specify situations in which the Department of Health and
 Environmental Sciences should pursue an action
 administratively; and

5 WHEREAS, in several situations, the administrative 6 assessment of civil penalties under Montana's water quality 7 laws would be a more effective deterrent than resolution of 8 cases through the District Courts; and

9 WHEREAS, the Department of Health and Environmental
 10 Sciences would be able to apply its limited enforcement
 11 resources to a broader array of violations; and

WHEREAS, 12 the Federal Water Pollution Control Act 13 provides for a similar administrative penalty, which could 14 ultimately become a condition of primacy for state 15 administration of water quality programs in Montana; and 16 WHEREAS, the citizens and businesses of the State of 17 Montana, as well as the Department of Health and 18 Environmental Sciences, would benefit from the availability 19 of an administrative penalty in Montana's water quality 20 laws--and

21 WHERBASy-the-use-of-money--collected--by--assessment--of 22 administrative--penalties-for-rehabilitation-of-state-waters 23 and-for-public-education-coincides-with--other--purposes--of 24 Montana's--Water--Quality--bawsy--including--improvement-and 25 preservation-of-state-water-quality.

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HB 374 THIRD READING AS AMENDED

HB 0374/03

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THEREPORE, the Legislature of the State of Montana finds it appropriate to authorize an administrative penalty within Montana's water quality laws.

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STATEMENT OF INTENT

A statement of intent is provided for this bill in order 6 to assist the board of health and environmental sciences in 7 promulgating rules. The legislature intends that the 8 administrative penalty provided by this bill be used to 9 encourage compliance with Montana's water quality laws by 10 allowing more timely and efficient processing of certain 11 enforcement actions without the need for a higher penalty 12 sought through a district court. To promote these goals, the 13 board should develop rules that prescribe penalties for 14 specific types of violations. In doing so, the board shall 15 ensure that its rules are consistent with the criteria set 16 forth in 75-5-631(4). Further, the board and department 17 shall take measures to ensure that the rules are 18 disseminated to the regulated community. 19

The legislature also intends that the board's rules be 20 no less stringent than the federal rules and guidance 21 implementing the Federal Water Pollution Control Act. 22

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 24

Section 1. Section 75-5-201, MCA, is amended to read: 25

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HB 374

"75-5-201. Board rules authorized. (1) The board shall adopt rules for the administration of this chapter. (2) The board's rules may include a fee schedule or system for assessment of administrative penalties as provided under 75-5-611." Section 2. 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, or a rule made adopted under it this chapter, or a condition of a permit or authorization required by a rule adopted under this chapter has occurred, it may have a

13 written actics and order served personally or by certified mail on the alleged violator or his the violator's agent. 14 15 The notice shall and order must state: (a) the provision of statute, rule, permit, or approval 16 17 alleged to be violated; 18 (b) the facts alleged to constitute the violation;

19 (c) the SPECIFIC nature of corrective action or--the 20 amount--of--the--administrative--penalty-assessed-under-this 21 sectiony-or-bothy which that the department requiresy; 22

(D) THE ESTIMATED COSTS OF COMPLIANCE WITH THE ACTION;

23 (E) WHERE TO RECEIVE HELP TO CORRECT THE ALLEGED 24 VIOLATION;

- 25 (F) THE AMOUNT OF THE ADMINISTRATIVE PENALTY THAT WILL
 - -4-

BE ASSESSED IF THE CORRECTIVE ACTION IS NOT TAKEN WITHIN THE 1 2 TIME PROVIDED UNDER SUBSECTION (1)(G); and 3 $dd_{f}(G)$ as applicable, the time within which the corrective action is to be taken or the administrative 4 5 penalty is--to--be--paid THAT WILL BE ASSESSED. For the 6 purposes of this chapter, service by certified mail is 7 complete on the date of mailing RECEIPT. AN ADMINISTRATIVE 8 PENALTY MAY NOT BE ASSESSED UNTIL THE PROVISIONS OF 9 SUBSECTION (1) HAVE BEEN COMPLIED WITH. 10 (2) In a notice and order given under subsection (1) of 11 this---section, the department may require the alleged 12 violator to appear before the board for a public hearing and 13 to answer the charges made-against-him. The hearing shall 14 must be held no sooner than 15 days after service of the 15 notice and order, except that the board may set an earlier 16 date for hearing if it is requested to do so by the alleged 17 violator. The board may set a later date for hearing at the 18 request of the alleged violator if the alleged violator shows good cause for delay. 19

(3) If the department does not require an alleged
violator to appear before the board for a public hearing, he
<u>the alleged violator</u> may request the board to conduct the
hearing. The request shall must be in writing and shall must
be filed with the department no later than 30 days after
service of a notice under subsection (1) of-this-section. If

a request is filed, a hearing shall 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.

6 (4) If a <u>contested case</u> hearing is held under this 7 section, it shall <u>must</u> be public and shall <u>must</u>7--if--the 8 board--considers--it-practicable7 be held in a <u>the</u> county in 9 which the violation is alleged to have occurred <u>or in Lewis</u> 10 <u>and Clark County</u>.

11 (5) (a) After a hearing or--on-failure-of-an-aileged
12 violator-to-make-a-timely-request-for-a-hearing, the board
13 may shall make findings and conclusions that explain its
14 decision.

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

19 (c) it <u>If the order requires abatement or control of</u> 20 <u>pollution, the board shall state the date or dates by which</u> 21 a violation shall <u>must</u> cease and may prescribe timetables 22 for necessary action in preventing, abating, or controlling 23 the pollution. 24 (d) If the order requires payment of an administrative

24 (d) If the order requires payment of an administrative
25 penalty, the board shall explain how it determined the

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BB 374

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amount of the administrative penalty.	1	section."
(e) If the board determines that a violation has not	2	Section-9Bection-75-5-5877-NCAy-is-amended-to-read:
occurred, it shall declare the department's notice void.	3	#75-5-507Waterqualityrehabilitation and-education
(6) The alleged violator may petition the board for a	4	accountuseCriteria(1)-Thereisawaterquality
rehearing on the basis of new evidence, which petition the	5	rehabilitationandeducationaccountwithinthestate
board may grant for good cause shown.	6	special-revenue-fund-established-in-17-2-102-
(7) Inadditiontoorinstead INSTEAD of issuing an	7	<pre>{?}Pines-and-civil-penalties-collected-forviolations</pre>
order, the board may direct the department to initiate	8	of-any-provision-of-this-chapter-or-a-ruley-permity-efficient
appropriate action for recovery of a penalty under 75-5-631,	9	standardyororderissuedundertheprovisions-of-thia
75-5-632, 75-5-633, or 75-5-635.	10	chaptermustbedepositedinthewaterquality
(8) (a) An action initiated under this section may	11	rehabilitation-and-education-account-pursuantto75-5-634.
include an administrative penalty of not more than \$10,000	12	Theaccountisstatutorilyappropriatedyas-provided-in
for each day of each violation; HOWEVER, THE NAXIMUM PENALTY	13	17-7-5027-to-the-department.
MAY NOT EXCEED \$100,000 FOR ANY RELATED SERIES OF	14	
VIOLATIONS.	15	(3)The-department-may-spendfundsdepositedinthe
(b) Administrative penalties collected under this	16	waterqualityrehabilitation-and-education-account-for-the
section must be deposited as-provided-for-under-75-5-634 IN	10	following-purposes:
THE GENERAL FUND.		<pre>ta)to-respond-if-wastes-have-been-placed-in-a-location</pre>
(c) In determining the amount of penalty to be assessed	18	where-they-are-likely-to-cause-pollution-of-state-waters;
to a person, the department and board shall consider the	19	<pre>tb;to-respond-toemergencywaterpolititionevents;</pre>
criteria stated in 75-5-631(4) and rules promulgated under	20	includingspillsandaccidentsinan-effort-to-repair,
75-5-201.	21	restorey-and-rehabilitate-the-affected-state-waters;
(d) The contested case provisions of the Montana	22	{c}to-repair;-restore;-and-rehabilitatestatewaters
Administrative Procedure Act, provided for in Title 2,	23	that-are-chronically-or-periodically-adversely-affected-as-a
chapter 4, part 6, apply to a hearing conducted under this	24	result-of-past-pollution-causing-events-or-activities;-and
chapter +, part 0, appry to a hearing conducted Under Chis	25	(d)wheneverthe-department-discovers-or-suspects-that
-7- HB 374	•.	-8- HB 374

HB 0374/03

1	epollutionproblemerists7toinvestigateorgather
2	informationthatisnecessary-and-appropriate-to-identify
3	the-existencey-naturey-originy-and-extent-ofthepollution
4	and-to-identify-an-appropriate-response <u>y-and</u>
5	(e)to-conduct-or-support-water-education-programs-that
6	informthepublicaboutMontanais-water-quality-laws-and
7	regulations-and-ways-to-conserve-water-or-preventpollution
8	of-state-waters.
9	{4}Thedepartmentmay-draw-upon-the-account-in-order
10	to-take-action-under-subsection <u>subsections+3}tatthrough</u>
11	<u>t3)td</u> -only-if+
12	{a}{i}-wasteshavebeenplacedin-a-location-where
13	they-are-likely-to-cause-pollution-ofstatewatersoran
14	emergencywater-pollution-event-has-occurred-and-aither-the
15	department-is-unable-to-identify-a-responsible-party-orthe
16	responsible-party-fails-to-clean-up-the-wastes-or-to-repair;
17	restore7-or-rehabilitate-the-adversely-affected-state-waters
18	in-a-timely-manner;-and
19	<pre>tity-thedepartmentdeterminesthatprompt-action-is</pre>
20	necessary-to-preventpolitionofstatewaters7protect
21	publichealthy-minimize-the-extent-of-environmental-damage;
22	or-minimizetheoveralleconomiccostofappropriately
23	responding-to-the-emergency-situation;-or
24	<pre>tb;thedepartmenthasmadediligent;goodfaith</pre>
25	efforts-to-determine-the-identity-of-the-personresponsible

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1	forpollutionresulting-from-past-events-or-activities-and
2	has-been-unable-to-identify-the-person-ortakeenforcement
3	action-as-provided-in-Title-757-chapter-57-part-6-
4	Section-4 Section-75-5-6347-MEA7-is-amended-to-read;
5	#75-5-634Dispositionoffinesand-civil-penalties.
6	{}}-Bxcept-as-provided-in-subsections-{2}-and-{3}7-fines-and
7	civil-penalticscollected;exceptthosecollectedina
8	justice_scourt,mustbe-deposited-into-the-water-guality
9	rehabilitation <u>andeducation</u> accountprovided <u>for</u> in
10	75-5-507-
1Ì	(2)Amaximumof\$20,000 <u>\$50,000</u> -in-fines-and-civil
12	penaltiesmaybedepositedinthewaterquality
13	rehabilitation <u>andeducation</u> accountin-any-fiscal-year.
14	Pines-and-penalties-in-excess-of9207000 §507000mustbe
15	deposited-in-the-general-fund.
16	(3)Whenevertheamount-of-money-in-the-water-quality
17	rehabilitation <u>andeducation</u> accountexceeds\$1007000
18	<u>92007000</u> 7allsubsequent-fines-and-civil-penalties-must-be
19	deposited-in-the-general-fund."
20	<u>NEW-SECTION:</u> Section-5 Retroactiveapplicability
21	{This-act}-appliesretroactively;withinthemeaningof
22	1-2-1097toalldepartmentofhealthand-environmental
23	sciencesnotices-scrwed-on-allegedwiolatorspursuantto
24	75-5-611beginningOctober1y1992yoronthe-date-of
25	adoption-of-the-board-of-health-and-environmentalsciences+

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HB 374

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rules-under-75-2-2017-whichover-is-carliert 1

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2 March 29, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 374 (third reading copy -- blue), respectfully report that House Bill No. 374 be amended as follows and as so amended be concurred in.

Signed: Senator Don Bianchi, Chair

That such amendments read:

1. Page 4, line 13. Page 4, line 15. Strike: "and order" Insert: "letter"

2. Page 4, lines 22 through 24. Strike: subsections (D) and (E) in their entirety. Renumber: subsequent subsections

3. Page 4, line 25.
Following: "(F)"
Insert: "as applicable,"

4. Page 5, line 1.
Following: "ASSESSED"
Insert: "by order under subsection (2)"

5. Page 5, line 2. Strike: "(1)(G)" Insert: "(1)(e)"

6. Page 5, line 5. Strike: "THAT"

7. Page 5, line 7.
Following: "<u>RECEIPT.</u>"
Strike: "AN"
Insert: "Except as provided in subsection (2)(a)(ii), an"

1 1

8. Page 5. Following; line 9

Insert: "(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

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Page 2 of 2 March 29, 1993

(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)." Renumber: subsequent subsections

9. Page 5, line 25. Following: "notice" Insert: "and order" Following: "subsection" Strike: "(1)" Insert: "(2)"

-END-

SENATE

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1	HOUSE BILL NO. 374	1	WHEREAS, the Boar
2	INTRODUCED BY EWER, RYE, WATERMAN, MCCLERNAN	2	may specify situation
3	BY REQUEST OF THE DEPARTMENT OF	3	Environmental Scie
4	HEALTH AND ENVIRONMENTAL SCIENCES	4	administratively; and
5		5	WHEREAS, in sev
6	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN	6	assessment of civil
7	ADMINISTRATIVE PENALTY IN THE MONTANA WATER QUALITY LAWS;	7	laws would be a more
В	Increasing	8	cases through the Dis
9	Rehabilitationaccountandrenaming-the-account;-allowing	9	WHEREAS, the De
10	Punds- fron-thi s-ac count-to-be -used-for-educationalprograms	10	Sciences would be abl
11	CONCERNINGWATERQUALITY; AMENDING SECTIONS 75-5-201; AND	11	resources to a broade
12	75-5-5077 75-5-611, AND75-5-6347 MCA7ANDPROVIDINGA	12	WHEREAS, the
13	Retroactive-Applicability-date."	13	provides for a simila
14		14	ultimately become
15	WHEREAS, it is necessary and reasonable for the	15	administration of wa
16	Department of Health and Environmental Sciences to actively	1 6	WHEREAS, the cit:
17	enforce the provisions of Montana's water quality laws; and	17	Montana, as well
18	WHEREAS, the use of the District Courts to achieve civil	18	Environmental Science
19	penalty assessments consumes significant financial resources	19	of an administrativ
20	from both the regulated public and the State of Montana; and	20	laws;-and
21	WHEREAS, many parties may wish to resolve violations of	21	WHEREAS7-the-use
22	Montana's water quality laws in an administrative proceeding	22	administrativepena
23	that authorizes direct payments to the State of Montana	23	and-for-public-educa
24	without the large expenses inherent with the filing of a	24	MontanaisWaterQu
25	iudicial lawsuit; and	25	preservation-of-stat

ana Legislative Council

WHEREAS, the Board of Health and Environmental Sciences
 may specify situations in which the Department of Health and
 Environmental Sciences should pursue an action
 administratively: and

5 WHEREAS, in several situations, the administrative 6 assessment of civil penalties under Montana's water quality 7 laws would be a more effective deterrent than resolution of 8 cases through the District Courts; and

9 WHEREAS, the Department of Health and Environmental 10 Sciences would be able to apply its limited enforcement 11 resources to a broader array of violations; and

WHEREAS, the Federal Water Pollution Control Act provides for a similar administrative penalty, which could ultimately become a condition of primacy for state administration of water quality programs in Montana; and

16 WHEREAS, the citizens and businesses of the State of 17 Montana, as well as the Department of Health and 18 Environmental Sciences, would benefit from the availability 19 of an administrative penalty in Montana's water quality 20 laws;-and

21 WHEREAS7-the-use-of-money--collected--by--assessment--of 22 administrative--penalties-for-rehabilitation-of-state-waters 23 and-for-public-education-coincides-with--other--purposes--of 24 Montana's--Water--Quality--baws7--including--improvement-and 25 preservation-of-state-water-quality.

> -2-REFERENCE BILL AS AMENDED

THEREFORE, the Legislature of the State of Montana finds
 it appropriate to authorize an administrative penalty within
 Montana's water quality laws.

4

STATEMENT OF INTENT

A statement of intent is provided for this bill in order 6 to assist the board of health and environmental sciences in 7 promulgating rules. The legislature intends that the 8 administrative penalty provided by this bill be used to 9 encourage compliance with Montana's water quality laws by 10 allowing more timely and efficient processing of certain 11 enforcement actions without the need for a higher penalty 12 sought through a district court. To promote these goals, the 13 board should develop rules that prescribe penalties for 14 specific types of violations. In doing so, the board shall 15 ensure that its rules are consistent with the criteria set 16 forth in 75-5-631(4). Further, the board and department 17 shall take measures to ensure that the rules are 18 disseminated to the regulated community. 19

20 The legislature also intends that the board's rules be 21 no less stringent than the federal rules and guidance 22 implementing the Federal Water Pollution Control Act.

23

24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 25 Section 1. Section 75-5-201, MCA, is amended to read:

HB 0374/04

1	*75-5-201. Board rules authorized. (1) The board shall
2	adopt rules for the administration of this chapter.
3	(2) The board's rules may include a fee schedule or
4	system for assessment of administrative penalties as
5	provided under 75-5-611."
6	Section 2. Section 75-5-611, MCA, is amended to read:
7	"75-5-611. Violation of chapter <u></u> administrative
8	actions and penalties notice and hearing. (1) When the
9	department has reason to believe that a violation of this
10	chapter, or a rule made adopted under it this chapter, or a
11	condition of a permit or authorization required by a rule
12	adopted under this chapter has occurred, it may have a
13	written notice <u>and-order</u> <u>LETTER</u> served personally or by
14	<u>certified</u> mail on the alleged violator or his <u>the violator's</u>
15	agent. The notice shall and order LETTER must state:
16	(a) the provision of statute, rule, permit, or approval
17	alleged to be violated z;
18	(b) the facts alleged to constitute the violation τ_i
19	(c) the <u>SPECIFIC</u> nature of corrective action <u>or-the</u>
20	amount-of-the-administrativepenaltyassessedunderthis
21	<pre>sectiony-or-bothy which that the department requires;</pre>
22	<u>{D}THB-B9TIMATED-COSTS-OP-COMPLIANCE-WITH-THE-ACTION;</u>
23	<u> </u>
24	VIOLATION;
25	$\frac{fP}{D}$ AS APPLICABLE, THE AMOUNT OF THE ADMINISTRATIVE

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HB 374

1	PENALTY THAT WILL BE ASSESSED BY ORDER UNDER SUBSECTION (2)
2	IF THE CORRECTIVE ACTION IS NOT TAKEN WITHIN THE TIME
3	PROVIDED UNDER SUBSECTION $(\frac{1}{6}, \frac{1}{6})$ and
4	$\frac{d}{d}$ (E) as applicable, the time within which the
5	corrective action is to be taken or the administrative
6	penalty is-tobepaid THAT WILL BE ASSESSED. For the
7	purposes of this chapter, service by <u>certified</u> mail is
8	complete on the date of mailing <u>RECEIPT. AN EXCEPT AS</u>
9	PROVIDED IN SUBSECTION (2)(A)(II), AN ADMINISTRATIVE PENALTY
10	MAY NOT BE ASSESSED UNTIL THE PROVISIONS OF SUBSECTION (1)
11	HAVE BEEN COMPLIED WITH.
12	(2) (A) THE DEPARTMENT MAY ISSUE AN ADMINISTRATIVE
13	NOTICE AND ORDER IN LIEU OF THE NOTICE LETTER PROVIDED UNDER
14	SUBSECTION (1) IF THE DEPARTMENT'S ACTION:
15	(I) DOES NOT INVOLVE ASSESSMENT OF AN ADMINISTRATIVE
16	PENALTY; OR
17	(II) SEEKS AN ADMINISTRATIVE PENALTY ONLY FOR AN
18	ACTIVITY THAT IT BELIEVES AND ALLEGES HAS VIOLATED OR IS
19	VIOLATING 75-5-605.
20	(B) A NOTICE AND ORDER ISSUED UNDER THIS SECTION MUST
21	MEET ALL OF THE REQUIREMENTS SPECIFIED IN SUBSECTION (1).
22	<pre>(2)(3) In a notice and order given under subsection (1)</pre>
23	of-this-section, the department may require the alleged
24	violator to appear before the board for a public hearing and
25	to answer the charges made-against-him. The hearing shall

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<u>must</u> be held no sooner than 15 days after service of the notice <u>and order</u>, 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.

7 (3)(4) If the department does not require an alleged violator to appear before the board for a public hearing, he 8 9 the alleged violator may request the board to conduct the 10 hearing. The request shall must be in writing and shall must be filed with the department no later than 30 days after 11 service of a notice AND ORDER under subsection (1) of 12 this-section. If a request is filed, a hearing shall must be 13 14 held within a reasonable time. If a hearing is not requested 15 within 30 days after service upon the alleged violator, the 16 opportunity for a contested case appeal to the board under 17 Title 2, chapter 4, part 6, is waived. t47(5) If a contested case hearing is held under this 18 19 section, it shall must be public and shall must; -- if -- the 20 board--considers--it-practicable, be held in a the county in 21 which the violation is alleged to have occurred or in Lewis 22 and Clark County. 23 (5)(6) (a) After a hearing or-on-failure-of-an-alleged 24 violator-to-make-a-timely-request-for-a-hearing, the board 25 may shall make findings and conclusions that explain its

HB 0374/04

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1	decision.	1	MAY NOT EXCEED \$100,000 FOR ANY RELATED SERIES OF
2	(b) If the board determines that a violation has	2	VIOLATIONS.
3	occurred, it shall also issue an appropriate order for the	3	(b) Administrative penalties collected under this
4	prevention, abatement, or control of pollution, the	4	section must be deposited as-provided-for-under-75-5-634 IN
5	assessment of administrative penalties, or both.	5	THE GENERAL FUND.
6	(c) If the order requires abatement or control of	6	(c) In determining the amount of penalty to be assessed
7	pollution, the board shall state the date or dates by which	7	to a person, the department and board shall consider the
8	a violation shall must cease and may prescribe timetables	8	criteria stated in 75-5-631(4) and rules promulgated under
9	for necessary action in preventing, abating, or controlling	9	75-5-201.
10	the pollution.	10	(d) The contested case provisions of the Montana
11	(d) If the order requires payment of an administrative	11	Administrative Procedure Act, provided for in Title 2,
12	penalty, the board shall explain how it determined the	12	chapter 4, part 6, apply to a hearing conducted under this
13	amount of the administrative penalty.	13	section."
14	(e) If the board determines that a violation has not	14	Section-3 Section-75-5-5077-MCA7-is-amended-to-read:
15	occurred, it shall declare the department's notice void.	15	475-5-507Water-quality-rehabilitation andeducation
16	<pre>(f) The alleged violator may petition the board for</pre>	16	accountusecriteria(1)-There-is-a-water-guality
17	a rehearing on the basis of new evidence, which petition the	17	rehabilitation <u>andeducation</u> accountwithinthestate
18	board may grant for good cause shown.	18	special-revenue-fund-established-in-17-2-102-
19	(7)<u>(8)</u> In-addition-to-or-instead <u>INSTEAD</u> of issuing an	19	(2)Finesand-civil-penalties-collected-for-violations
20	order, the board may direct the department to initiate	20	of-any-provision-of-this-chapter-or-a-rule;-permit;-effluent
21	appropriate action for recovery of a penalty under 75-5-631,	21	standardy-or-orderissuedundertheprovisionsofthis
22	75-5-632, 75-5-633, or 75-5-635.	22	chaptermustbedepositedinthewaterquality
23	$f\theta f(9)$ (a) An action initiated under this section may	23	rehabilitationandeducation-account-pursuant-to-75-5-634.
24	include an administrative penalty of not more than \$10,000	24	The-account-isstatutorilyappropriated;asprovidedin
25	for each day of each violation; HOWEVER, THE MAXIMUM PENALTY	25	17-7-5027-to-the-department.
	- 7 - HB 374		-8- HB 374
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HB 374

1	t3)The-department-may-spendfundsdepositedinthe
2	waterqualityrehabilitation- <u>and-education</u> -account-for-the
3	following-purposes:
4	<pre>ta)to-respond-if-wastes-have-been-placed-in-a-location</pre>
5	where-they-are-likely-to-cause-pollution-of-state-waters;
6	(b)to-respond-toemergencywaterpollutionevents;
7	includingspillsandaccidents,inan-effort-to-repair,
8	restore7-and-rehabilitate-the-affected-state-waters7
9	<pre>(c)to-repairy-restorey-and-rehabilitatestatewaters</pre>
10	that-are-chronically-or-periodically-adversely-affected-as-a
11	result-of-past-pollution-causing-events-or-activities;-and
12	<pre>{d}wheneverthe-department-discovers-or-suspects-that</pre>
13	apollutionproblemexistsytoinvestigateorgather
14	informationthatisnecessary-and-appropriate-to-identify
15	the-existencey-naturey-originy-and-extent-ofthepollution
16	and-to-identify-an-appropriate-response <u>;-and</u>
17	<u>{e}to-conduct-or-support-water-education-programs-that</u>
18	informthepublicaboutMontanais-water-quality-laws-and
19	regulations-and-ways-to-conserve-water-or-preventpollution
20	of-state-waters.
21	<pre>t4;Thedepartmentmay-draw-upon-the-account-in-order</pre>
22	to-take-action-under-subsection <u>subsections+3){a}through</u>
23	<u>t3}td}-only-if:</u>
24	<pre>tajtij-wasteshavebeenplacedin-a-location-where</pre>
25	they-are-likely-to-cause-pollution-ofstatewatersoran

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1	emergencywater-pollution-event-has-occurred-and-either-the
2	department-is-unable-to-identify-a-responsible-party-orthe
3	responsible-party-fails-to-clean-up-the-wastes-or-to-repair;
4	restorey-or-rehabilitate-the-adversely-affected-state-waters
5	in-a-timely-manner;-and
6	(ii)-thedepartmentdeterminesthatprompt-action-is
7	necessary-to-preventpollutionofstatewaters7protect
8	publichealthy-minimize-the-extent-of-environmental-damagey
9	or-minimizetheoveralleconomiccostofappropriately
10	responding-to-the-emergency-situation;-or
11	(b)thedepartmenthasmadediligent;goodfaith
12	efforts-to-determine-the-identity-of-the-personresponsible
13	forpollutionresulting-from-past-events-or-activities-and
14	has-been-unable-to-identify-the-person-ortakeenforcement
15	action-as-provided-in-Title-757-chapter-57-part-6-"
16	Section-4Section-75-5-6347-MEA7-is-amended-to-read
17	#75-5-634Dispositionoffinesand-civil-penalties-
18	<pre>tip-Breept-as-provided-in-subsections-t2t-and-t3tr-fines-and</pre>
19	civil-penaltiescollected;exceptthosecollectedina
20	justice-scourtymustbe-deposited-into-the-water-quality
21	rehabilitation <u>andeducation</u> accountprovided <u>for</u> in
22	75-5-507 .
23	(2)Amaximumof\$20,000 <u>\$50,000</u> -in-fines-and-civil
24	penaltiesmaybedepositedinthewaterquality
25	rehabilitation <u>andeducation</u> accountin-any-fiscal-year-

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Fines-and-penalties-in-excess-of--\$20,000 \$50,000--must--be 1 2 deposited-in-the-general-fund-(3)--Whenever--the--amount-of-money-in-the-water-quality 3 4 rehabilitation--and--education--account---exceeds---\$1007000 \$20070007--all--subsequent-fines-and-civil-penalties-must-be 5 6 deposited-in-the-general-fund-" NEW-SECTION---Section-5.-Retroactive----applicability---7 8 {This-act}-applies--retroactively7--within--the--meaning--of 9 1-2-1097--to--all--department--of--health--and-environmental 10 sciences*-notices-served-on-alleged--violators--pursuant--to 75-5-611-beginning--October--17--19927--or--on--the-date-of 11 12 adoption-of-the-board-of-health-and-environmental--sciences-13 rules-under-75-2-2017-whichever-is-earlier-

-End-