

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.
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	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 30, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 31, 1993	SECOND READING, CONCURRED IN.
APRIL 1, 1993	THIRD READING, CONCURRED IN. AYES, 31; NOES, 17.
	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.

1 House BILL NO. 374
2 INTRODUCED BY David Earl Pyle
3 Water 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 INCREASING THE ALLOCATION TO THE WATER QUALITY
9 REHABILITATION ACCOUNT AND RENAMING THE ACCOUNT; ALLOWING
10 FUNDS FROM THIS ACCOUNT TO BE USED FOR EDUCATIONAL PROGRAMS
11 CONCERNING WATER QUALITY; AMENDING SECTIONS 75-5-201,
12 75-5-507, 75-5-611, AND 75-5-634, MCA; AND PROVIDING A
13 RETROACTIVE APPLICABILITY DATE."

14
15 WHEREAS, it is necessary and reasonable for the
16 Department of Health and Environmental Sciences to actively
17 enforce the provisions of Montana's water quality 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

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

1 WHEREAS, the Board of Health and Environmental Sciences
2 may specify situations in which the Department of Health and
3 Environmental Sciences should pursue an action
4 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.

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

4
5 STATEMENT OF INTENT

6 A statement of intent is provided for this bill in order
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.

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:

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 -- 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 and order served personally or by certified
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
24 paid. For the purposes of this chapter, service by certified
25 mail is complete on the date of mailing.

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

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
 15 be filed with the department no later than 30 days after
 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
 19 days after service upon the alleged violator, the
 20 opportunity for a contested case appeal to the board under
 21 Title 2, chapter 4, part 6, is waived.

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

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) ~~It~~ 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
 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
 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 of issuing an order, the
 24 board may direct the department to initiate appropriate
 25 action for recovery of a penalty under 75-5-631, 75-5-632,

75-5-633, or 75-5-635.

(8) (a) An action initiated under this section may include an administrative penalty of not more than \$10,000 for each day of each violation.

(b) Administrative penalties collected under this section must be deposited as provided for under 75-5-634.

(c) In determining the amount of penalty to be assessed to a person, the department and board shall consider the criteria stated in 75-5-631(4) and rules promulgated under 75-5-201.

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

Section 3. Section 75-5-507, MCA, is amended to read:

"75-5-507. Water quality rehabilitation and education account -- use -- criteria. (1) There is a water quality rehabilitation and education account within the state special revenue fund established in 17-2-102.

(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

17-7-502, to the department.

(3) The department may spend funds deposited in the water quality rehabilitation and education account for the following purposes:

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

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

(c) to repair, restore, and rehabilitate state waters that are chronically or periodically adversely affected as a result of past pollution-causing events or activities; and

(d) whenever the department discovers or suspects that a pollution problem exists, to investigate or gather information that is necessary and appropriate to identify the existence, nature, origin, and extent of the pollution and to identify an appropriate response; and

(e) to conduct or support water education programs that inform the public about Montana's water quality laws and regulations and ways to conserve water or prevent pollution of state waters.

(4) The department may draw upon the account in order to take action under ~~subsection~~ subsections (3)(a) through (3)(d) only if:

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

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~~ \$50,000 in fines and civil
 25 penalties may be deposited in the water quality

1 rehabilitation and education account in any fiscal year.
 2 Fines and penalties in excess of ~~\$20,000~~ \$50,000 must be
 3 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 **NEW SECTION. 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-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0374, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: 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 2-2-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

David Ewer 2/3/93
DAVID EWER, PRIMARY SPONSOR DATE

Fiscal Note for HB0374, as introduced

HB 374

APPROVED BY COMM. ON
NATURAL RESOURCES

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3 BY REQUEST OF THE DEPARTMENT OF
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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~~
10 ~~FUNDS-FROM-THIS-ACCOUNT-TO-BE-USED-FOR-EDUCATIONAL---PROGRAMS~~
11 ~~CONCERNING---WATER---QUALITY~~; AMENDING SECTIONS 75-5-201, AND
12 75-5-507, 75-5-611, AND 75-5-634, MCA; ~~AND~~ PROVIDING ~~A~~
13 ~~RETROACTIVE-APPLICABILITY-DATE.~~
14
15 WHEREAS, it is necessary and reasonable for the
16 Department of Health and Environmental Sciences to actively
17 enforce the provisions of Montana's water quality 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
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

1 WHEREAS, the Board of Health and Environmental Sciences
2 may specify situations in which the Department of Health and
3 Environmental Sciences should pursue an action
4 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.~~

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

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5 STATEMENT OF INTENT

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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.

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:

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 -- 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 and order served personally or by certified
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
24 paid. For the purposes of this chapter, service by certified
25 mail is complete on the date of mailing RECEIPT.

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

(3) If the department does not require an alleged violator to appear before the board for a public hearing, ~~he~~ the alleged violator 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.

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

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 for necessary action in preventing, abating, or controlling the pollution.

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

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

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

(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,

75-5-632, 75-5-633, or 75-5-635.

(8) (a) An action initiated under this section may include an administrative penalty of not more than \$10,000 for each day of each violation; HOWEVER, THE MAXIMUM PENALTY MAY NOT EXCEED \$100,000 FOR ANY RELATED SERIES OF VIOLATIONS.

(b) Administrative penalties collected under this section must be deposited as provided for under 75-5-634.

(c) In determining the amount of penalty to be assessed to a person, the department and board shall consider the criteria stated in 75-5-631(4) and rules promulgated under 75-5-201.

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

Section 3. Section 75-5-507, MCA, is amended to read:--

"75-5-507. Water quality rehabilitation and education account---use---criteria. (1) There is a water quality rehabilitation and education account within the state special revenue fund established in 17-2-102.

(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 17-2-502, to the department.

(3) The department may spend funds deposited in the water quality rehabilitation and education account for the following purposes:

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

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

(c) to repair, restore, and rehabilitate state waters that are chronically or periodically adversely affected as a result of past pollution-causing events or activities; and

(d) whenever the department discovers or suspects that a pollution problem exists, to investigate or gather information that is necessary and appropriate to identify the existence, nature, origin, and extent of the pollution and to identify an appropriate response; and

(e) to conduct or support water education programs that inform the public about Montana's water quality laws and regulations and ways to conserve water or prevent pollution of state waters.

(4) The department may draw upon the account in order to take action under subsection subsections (3)(a) through

1 ~~{3}{d}~~ only if:

2 ~~{a}~~ -- ~~{i}~~ wastes have been placed in a location where
3 they are likely to cause pollution of state waters or an
4 emergency water pollution event has occurred and either the
5 department is unable to identify a responsible party or the
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}~~ the department determines that prompt action is
10 necessary to prevent pollution of state waters, protect
11 public health, minimize the extent of environmental damage,
12 or minimize the overall economic cost of appropriately
13 responding to the emergency situation; or

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

19 **Section 4.** -- Section 75-5-634, MCA, is amended to read:--

20 "75-5-634. -- Disposition of fines and civil penalties:
21 ~~{i}~~ Except as provided in subsections ~~{2}~~ and ~~{3}~~, fines and
22 civil penalties collected, except those collected in a
23 justice's court, must be deposited into the water quality
24 rehabilitation and education account provided for in
25 75-5-507.

1 ~~{2}~~ -- A maximum of \$20,000 \$50,000 in fines and civil
2 penalties may be deposited in the water quality
3 rehabilitation and education account in any fiscal year.
4 Fines and penalties in excess of \$20,000 \$50,000 must be
5 deposited in the general fund.

6 ~~{3}~~ -- Whenever the amount of money in the water quality
7 rehabilitation and education account exceeds \$100,000
8 \$200,000, all subsequent fines and civil penalties must be
9 deposited in the general fund."

10 **NEW SECTION. -- Section 5. -- Retroactive applicability. --**

11 ~~{This act}~~ applies retroactively, within the meaning of
12 1-2-109, to all department of health and environmental
13 sciences' notices served on alleged violators pursuant to
14 75-5-611 beginning October 1, 1992, or on the date of
15 adoption of the board of health and environmental sciences'
16 rules under 75-2-201, whichever is earlier.

-End-

HOUSE BILL NO. 374

INTRODUCED BY EWER, RYE, WATERMAN, MCCLERNAN

BY REQUEST OF THE DEPARTMENT OF

HEALTH AND ENVIRONMENTAL SCIENCES

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

WHEREAS, it is necessary and reasonable for the Department of Health and Environmental Sciences to actively enforce the provisions of Montana's water quality laws; and

WHEREAS, the use of the District Courts to achieve civil penalty assessments consumes significant financial resources from both the regulated public and the State of Montana; and

WHEREAS, many parties may wish to resolve violations of Montana's water quality laws in an administrative proceeding that authorizes direct payments to the State of Montana without the large expenses inherent with the filing of a 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

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

WHEREAS, the Department of Health and Environmental Sciences would be able to apply its limited enforcement 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

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

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

1 THEREFORE, the Legislature of the State of Montana finds
2 it appropriate to authorize an administrative penalty within
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16 ensure that its rules are consistent with the criteria set
17 forth in 75-5-631(4). Further, the board and department
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20 The legislature also intends that the board's rules be
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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 -- 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 and order served personally or by certified
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 SPECIFIC nature of corrective action or--the
20 amount--of--the--administrative--penalty--assessed--under--this
21 section--or--both which that the department requires;

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

1 BE ASSESSED IF THE CORRECTIVE ACTION IS NOT TAKEN WITHIN THE
 2 TIME PROVIDED UNDER SUBSECTION (1)(G); and

3 (d)(G) as applicable, the time within which the
 4 corrective action is to be taken or the administrative
 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
 19 shows good cause for delay.

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

1 a request is filed, a hearing shall must be held within a
 2 reasonable time. If a hearing is not requested within 30
 3 days after service upon the alleged violator, the
 4 opportunity for a contested case appeal to the board under
 5 Title 2, chapter 4, part 6, is waived.

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

11 (5) (a) After a hearing or--on-failure-of-an-alleged
 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 If the order requires abatement or control of
 20 pollution, the board shall state the date or dates by which
 21 a violation shall must 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
 25 penalty, the board shall explain how it determined the

amount of the administrative penalty.

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

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

(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, 75-5-632, 75-5-633, or 75-5-635.

(8) (a) An action initiated under this section may include an administrative penalty of not more than \$10,000 for each day of each violation; HOWEVER, THE MAXIMUM PENALTY MAY NOT EXCEED \$100,000 FOR ANY RELATED SERIES OF VIOLATIONS.

(b) Administrative penalties collected under this section must be deposited as provided for under 75-5-634 IN THE GENERAL FUND.

(c) In determining the amount of penalty to be assessed to a person, the department and board shall consider the criteria stated in 75-5-631(4) and rules promulgated under 75-5-201.

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

section."

Section 9.--Section 75-5-507, MCA, is amended to read:--

"75-5-507.--Water--quality--rehabilitation and education account---use---criteria--(1) There--is--a--water--quality rehabilitation---and---education--account--within--the--state special-revenue-fund-established-in-17-2-102.

(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 17-7-502,--to--the--department.

(3)--The-department-may-spend--funds--deposited--in--the water--quality--rehabilitation-and-education-account-for-the following-purposes:

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

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

(c)--to-repair, restore,--and--rehabilitate--state--waters that-are-chronically-or-periodically-adversely-affected-as-a result-of-past-pollution-causing-events-or-activities;--and

(d)--whenever--the-department-discovers-or-suspects-that

a--pollution--problem--exists,--to--investigate--or---gather
information--that--is--necessary-and-appropriate-to-identify
the-existence,--nature,--origin,--and--extent-of--the--pollution
and-to-identify-an-appropriate-response,--and

(e)--to-conduct-or-support-water-education-programs-that
inform-the-public--about--Montana's-water-quality-laws-and
regulations-and-ways-to- conserve-water-or-prevent--pollution
of-state-waters;

(4)--The--department--may-draw-upon-the-account-in-order
to-take-action-under-subsection subsections--(3)(a)--through
(3)(d)--only-if:

(a)--(i)--wastes--have--been--placed--in-a-location-where
they-are-likely-to-cause-pollution-of--state--waters--or--an
emergency--water-pollution-event-has-occurred-and-either-the
department-is-unable-to-identify-a-responsible-party-or--the
responsible-party-fails-to-clean-up-the-wastes-or-to-repair,
restore,--or-rehabilitate-the-adversely-affected-state-waters
in-a-timely-manner;--and

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

(b)--the--department--has--made--diligent,--good--faith
efforts-to-determine-the-identity-of-the-person--responsible

for--pollution--resulting-from-past-events-or-activities-and
has-been-unable-to-identify-the-person-or--take--enforcement
action-as-provided-in-Title-75,--chapter-5,--part-6."

Section 4.--Section 75-5-634, MCA, is amended to read:--

"75-5-634.--Disposition--of--fines--and-civil-penalties;
(1)--Except-as-provided-in-subsections-(2) and-(3), fines-and
civil-penalties--collected,--except--those--collected--in--a
justice's--court,--must--be-deposited-into-the-water-quality
rehabilitation--and--education--account--provided--for--in
75-5-507.

(2)--A--maximum--of--\$20,000 \$50,000 in-fines-and-civil
penalties--may--be--deposited--in--the--water--quality
rehabilitation--and--education--account--in-any-fiscal-year.
Fines-and-penalties-in-excess-of--\$20,000 \$50,000--must--be
deposited-in-the-general-fund.

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

NEW SECTION.--Section 5. Retroactive--applicability;--

{This-act}-applies--retroactively,--within--the--meaning--of
1-2-109,--to--all--department--of--health--and-environmental
sciences'-notices-served-on-alleged-violators--pursuant--to
75-5-611--beginning--October--1,--1992,--or--on--the-date-of
adoption-of-the-board-of-health-and-environmental--sciences'

HB 0374/03

1 ~~rules-under-75-2-201, whichever is earlier,~~

~~-End-~~

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 29, 1993

Page 2 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: Don Bianchi
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: "RECEIPT."
Strike: "AN"
Insert: "Except as provided in subsection (2)(a)(ii), an"

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

(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-

APV Amd. Coord.
IN Sec. of Senate

McClain
Senator Carrying Bill

701222SC.San

SENATE

HB 374

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HOUSE BILL NO. 374

INTRODUCED BY EWER, RYE, WATERMAN, MCCLERNAN

BY REQUEST OF THE DEPARTMENT OF

HEALTH AND ENVIRONMENTAL SCIENCES

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

WHEREAS, it is necessary and reasonable for the Department of Health and Environmental Sciences to actively enforce the provisions of Montana's water quality laws; and

WHEREAS, the use of the District Courts to achieve civil penalty assessments consumes significant financial resources from both the regulated public and the State of Montana; and

WHEREAS, many parties may wish to resolve violations of Montana's water quality laws in an administrative proceeding that authorizes direct payments to the State of Montana without the large expenses inherent with the filing of a 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

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

WHEREAS, the Department of Health and Environmental Sciences would be able to apply its limited enforcement 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

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

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

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

4
5 STATEMENT OF INTENT

6 A statement of intent is provided for this bill in order
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.

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:

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 -- 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 and-order LETTER served personally or by
14 certified mail on the alleged violator or his the violator's
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;

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 section-or-both; which that the department requires;

22 ~~(d) --THE ESTIMATED COSTS OF COMPLIANCE WITH THE ACTION;~~

23 ~~(e) --WHERE TO RECEIVE HELP TO CORRECT THE ALLEGED~~
24 VIOLATION;

25 ~~(f) (D) AS APPLICABLE, THE AMOUNT OF THE ADMINISTRATIVE~~

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 (1)(E); and
 4 (d)(E) as applicable, the time within which the
 5 corrective action is to be taken or the administrative
 6 penalty is-to-be-paid THAT WILL BE ASSESSED. For the
 7 purposes of this chapter, service by certified mail is
 8 complete on the date of mailing RECEIPT. AN EXCEPT AS
 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 (2)(3) In a notice and order given under subsection (1)
 23 of this section, the department may require the alleged
 24 violation to appear before the board for a public hearing and
 25 to answer the charges made against him. The hearing shall

1 must be held no sooner than 15 days after service of the
 2 notice and order, except that the board may set an earlier
 3 date for hearing if it is requested to do so by the alleged
 4 violation. The board may set a later date for hearing at the
 5 request of the alleged violator if the alleged violator
 6 shows good cause for delay.

7 (3)(4) If the department does not require an alleged
 8 violation to appear before the board for a public hearing, he
 9 the alleged violator may request the board to conduct the
 10 hearing. The request shall must be in writing and shall must
 11 be filed with the department no later than 30 days after
 12 service of a notice AND ORDER under subsection (2) of
 13 this section. If a request is filed, a hearing shall must be
 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.

18 (4)(5) If a contested case hearing is held under this
 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 violation to make a timely request for a hearing, the board
 25 may shall make findings and conclusions that explain its

1 decision.

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

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

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

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

16 (6)(7) The alleged violator may petition the board for
17 a rehearing on the basis of new evidence, which petition the
18 board may grant for good cause shown.

19 (7)(8) In addition to or instead INSTEAD of issuing an
20 order, the board may direct the department to initiate
21 appropriate action for recovery of a penalty under 75-5-631,
22 75-5-632, 75-5-633, or 75-5-635.

23 (8)(9) (a) An action initiated under this section may
24 include an administrative penalty of not more than \$10,000
25 for each day of each violation; HOWEVER, THE MAXIMUM PENALTY

1 MAY NOT EXCEED \$100,000 FOR ANY RELATED SERIES OF
2 VIOLATIONS.

3 (b) Administrative penalties collected under this
4 section must be deposited as provided for under 75-5-634 IN
5 THE GENERAL FUND.

6 (c) In determining the amount of penalty to be assessed
7 to a person, the department and board shall consider the
8 criteria stated in 75-5-631(4) and rules promulgated under
9 75-5-201.

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

14 **Section 3.--Section 75-5-507, MCA, is amended to read:--**

15 **"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 **special revenue fund established in 17-2-102.**

19 **(2)--Fines--and--civil--penalties--collected--for--violations**
20 **of--any--provision--of--this--chapter--or--a--rule,--permit,--effluent**
21 **standard,--or--order--issued--under--the--provisions--of--this**
22 **chapter--must--be--deposited--in--the--water--quality**
23 **rehabilitation--and--education--account--pursuant--to--75-5-634.**
24 **The account is--statutorily--appropriated,--as--provided--in**
25 **17-7-502,--to--the--department.**

(3)--The department may spend funds deposited in the water quality rehabilitation and education account for the following purposes:

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

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

(c)--to repair, restore, and rehabilitate state waters that are chronically or periodically adversely affected as a result of past pollution-causing events or activities; and

(d)--whenever the department discovers or suspects that a pollution problem exists, to investigate or gather information that is necessary and appropriate to identify the existence, nature, origin, and extent of the pollution and to identify an appropriate response; and

(e)--to conduct or support water education programs that inform the public about Montana's water quality laws and regulations and ways to conserve water or prevent pollution of state waters.

(4)--The department may draw upon the account in order to take action under subsection subsections (3)(a) through (3)(d) only if:

(a)--(i) wastes have been placed in a location where they are likely to cause pollution of state waters or an

emergency water pollution event has occurred and either the department is unable to identify a responsible party or the responsible party fails to clean up the wastes or to repair, restore, or rehabilitate the adversely affected state waters in a timely manner; and

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

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

Section 4.--Section 75-5-634, MCA, is amended to read:

"75-5-634. Disposition of fines and civil penalties. (1) Except as provided in subsections (2) and (3), fines and civil penalties collected, except those collected in a justice's court, must be deposited into the water quality rehabilitation and education account provided for in 75-5-507.

(2) A maximum of \$20,000 \$50,000 in fines and civil penalties may be deposited in the water quality rehabilitation and education account in any fiscal year.

1 ~~Fines and penalties in excess of--\$20,000~~ \$50,000 must be
2 deposited in the general fund.

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

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

-End-