ENATÉ BILL NO. 204 1 INTRODUCED BY (2 3 BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES 4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING EXISTING ENFORCEMENT AUTHORITY UNDER THE 5 6 PUBLIC WATER SUPPLY LAWS; REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL 7 SCIENCES TO CONSIDER ESTABLISHED CRITERIA WHEN SEEKING CIVIL OR ADMINISTRATIVE 8 PENALTIES; AND AMENDING SECTIONS 75-6-109 AND 75-6-114, MCA." 9 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 11 12 NEW SECTION. Section 1. Enforcement response. (1) Whenever, on the basis of information available to the department, the department finds that a person is in violation of this part, a rule adopted 13 under this part, or a condition, requirement of an approval, or order issued pursuant to this part, the 14 15 department shall initiate an enforcement response, which may include any of the following actions: 16 (a) issuance of a letter notifying the person of the violation and requiring compliance; 17 (b) issuance of an order requiring the person to correct the violation pursuant to 75-6-104 and 75-6-109; 18 (c) bringing a judicial action as authorized by 75-6-111; or 19 seeking administrative or judicial penalties as provided under 75-6-109, 75-6-113, and 20 (d) 75-6-114. 21 22 (2) The provisions of this part do not limit the authority of the department to bring a judicial action, which may include the assessment of penalties, prior to initiating an administrative action authorized by this 23 24 part. 25 Section 2. Section 75-6-109, MCA, is amended to read: 26 "75-6-109. Administrative enforcement. (1) If the department believes that a violation of this part, 27 a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve 28 29 written notice of the violation, by certified mail, on the alleged violator or his the violator's agent. The



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notice must specify the provision of this part, the rule, or the condition of approval alleged to have been

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2	corrective action within a reasonable period of time, which must be stated in the order. Service by mail is
3	complete on the date of filing.

- (2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order becomes final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.
- (3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:
- (a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation has occurred; or
 - (b) rescind the department's order if the board finds that a violation has not occurred.
- (4) An order issued by the department or the board may set a date by which the violation must 12 cease and set a time limit for action to correct a violation. 13
 - (5) As an alternative to issuing an order pursuant to subsection (1), the department may:
 - (a) require the alleged violator to appear before the board for a hearing, at a time and place specified in the notice, to answer the charges complained of; or
 - (b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.
 - (6) An action initiated under this part may include an administrative penalty not to exceed \$500 for each day of violation. Administrative penalties collected under this section must be deposited in the public drinking water special revenue fund established in 75-6-115.
 - (7) In determining the amount of penalty to be assessed to a person, the department or the board, as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under 75-6-103(2)(j).
 - (8) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."
 - Section 3. Section 75-6-114, MCA, is amended to read:
 - "75-6-114. Civil penalty. (1) A In an action initiated by the department to collect civil penalties against a person who is found to have violates violated this part or a rule, order, or condition of approval issued under this part, the person is subject to a civil penalty not to exceed \$10,000.



1	(2) Each day of violation constitutes a separate violation.
2	(3) Action under this section does not bar enforcement of this part or a rule, order, or condition
3	of approval issued under this part by injunction or other appropriate remedy.
4	(4) When seeking penalties under this section, the department shall take into account the following
5	factors in determining an appropriate settlement or judgment, as appropriate:
6	(a) the nature, circumstances, extent, and gravity of the violation; and
7	(b) with respect to the violator, the violator's ability to pay, prior history of violations, the economic
8	benefit or savings, if any, to the violator resulting from the violator's action, and other matters that justice
9	may require.
10	(5) Civil penalties collected pursuant to this section must be deposited in the public drinking water
11	special revenue fund established in 75-6-115."
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13	NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an
14	integral part of Title 75, chapter 6, part 1, and the provisions of Title 75, chapter 6, part 1, apply to
15	[section 1].
16	-END-

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2	INTRODUCED BY GROSFIELD, KNOX, COCCHIARELLA, DOHERTY, WELDON
3	BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
4	
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6	PUBLIC WATER SUPPLY LAWS; REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
7	SCIENCES TO CONSIDER ESTABLISHED CRITERIA WHEN SEEKING CIVIL OR ADMINISTRATIVE
8	PENALTIES; AND AMENDING SECTIONS 75-6-109 AND 75-6-114, MCA."
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10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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21	75-6-114.
22	(2) UNLESS AN ALLEGED VIOLATION REPRESENTS AN IMMINENT THREAT TO HUMAN HEALTH,
23	SAFETY, OR WELFARE OR TO THE ENVIRONMENT, THE DEPARTMENT SHALL FIRST ISSUE A LETTER
24	NOTIFYING THE PERSON OF THE VIOLATION AND REQUIRING COMPLIANCE. IF THE PERSON FAILS TO
25	RESPOND TO THE DEPARTMENT'S LETTER, THEN THE DEPARTMENT MAY TAKE FURTHER ACTION AS
26	PROVIDED IN SUBSECTION (1).
27	(2)(3) The provisions of this part do not limit the authority of the department to bring a judicial
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29	by this part.

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5	(2) Each day of violation constitutes a separate violation.
6	(3) Action under this section does not bar enforcement of this part or a rule, order, or condition
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8	(4) When seeking penalties under this section, the department shall take into account the following
9	factors in determining an appropriate settlement or judgment, as appropriate:
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12	benefit or savings, if any, to the violator resulting from the violator's action, and other matters that justice
13	may require.
14	(5) Civil penalties collected pursuant to this section must be deposited in the public drinking water
15	special revenue fund established in 75-6-115."
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20	-END-



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Section 2.	~	75.0 100	B 4 C A :-			
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-END-



HOUSE STANDING COMMITTEE REPORT

March 7, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 204 (third reading copy -- blue) be concurred in as amended.

And, that such amendments read:

Carried by: Rep. Knox

1. Page 1, line 25.

Following: "TO"

Insert: "the conditions in"

Strike: "MAY" Insert: "shall"

2. Page 3, lines 8 and 9.
Following: "account" on line 8

Strike: "AND THE COURT SHALL CONSIDER"

-END-

HOUSE 531123SC.Hdh

Committee Vote: Yes //, No //.

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