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SENATE BILL NO. 204
Grosfield Knox Beckwith Denney

INTRODUCED BY

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Weldon

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING EXISTING ENFORCEMENT AUTHORITY UNDER THE PUBLIC WATER SUPPLY LAWS; REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO CONSIDER ESTABLISHED CRITERIA WHEN SEEKING CIVIL OR ADMINISTRATIVE PENALTIES; AND AMENDING SECTIONS 75-6-109 AND 75-6-114, MCA."

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

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 under this part, or a condition, requirement of an approval, or order issued pursuant to this part, the department shall initiate an enforcement response, which may include any of the following actions:

- (a) issuance of a letter notifying the person of the violation and requiring compliance;
- (b) issuance of an order requiring the person to correct the violation pursuant to 75-6-104 and 75-6-109;
- (c) bringing a judicial action as authorized by 75-6-111; or
- (d) seeking administrative or judicial penalties as provided under 75-6-109, 75-6-113, and 75-6-114.

(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 part.

Section 2. Section 75-6-109, MCA, is amended to read:

"75-6-109. Administrative enforcement. (1) If the department believes that a violation of this part, a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or ~~his~~ the violator's agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been

1 violated and the facts alleged to constitute a violation. The notice must include an order to take necessary
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.

4 (2) If the alleged violator does not request a hearing before the board within 30 days of the date
5 of service, the order becomes final. Failure to comply with a final order may subject the violator to an action
6 commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.

7 (3) If the alleged violator requests a hearing before the board within 30 days of the date of service,
8 the board shall schedule a hearing. After the hearing is held, the board may:

9 (a) affirm or modify the department's order issued under subsection (1) if the board finds that a
10 violation has occurred; or

11 (b) rescind the department's order if the board finds that a violation has not occurred.

12 (4) An order issued by the department or the board may set a date by which the violation must
13 cease and set a time limit for action to correct a violation.

14 (5) As an alternative to issuing an order pursuant to subsection (1), the department may:

15 (a) require the alleged violator to appear before the board for a hearing, at a time and place
16 specified in the notice, to answer the charges complained of; or

17 (b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.

18 (6) An action initiated under this part may include an administrative penalty not to exceed \$500
19 for each day of violation. Administrative penalties collected under this section must be deposited in the
20 public drinking water special revenue fund established in 75-6-115.

21 (7) In determining the amount of penalty to be assessed to a person, the department or the board,
22 as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under
23 75-6-103(2)(j).

24 (8) The contested case provisions of the Montana Administrative Procedure Act, provided for in
25 Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."

26

27 **Section 3.** Section 75-6-114, MCA, is amended to read:

28 ***75-6-114. Civil penalty.** (1) A In an action initiated by the department to collect civil penalties
29 against a person who is found to have ~~violates~~ violated this part or a rule, order, or condition of approval
30 issued under this part, the person is subject to a civil penalty not to exceed \$10,000.

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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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10 of service, the order becomes final. Failure to comply with a final order may subject the violator to an action
11 commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.

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23 (6) An action initiated under this part may include an administrative penalty not to exceed \$500
24 for each day of violation. Administrative penalties collected under this section must be deposited in the
25 public drinking water special revenue fund established in 75-6-115.

26 (7) In determining the amount of penalty to be assessed to a person, the department or the board,
27 as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under
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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.

Signed: _____

Dick Knox

Dick Knox, Chair

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-

Committee Vote:
Yes 11, No 1.

SB 204
HOUSE
531123SC.Hdh

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