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House BILL NO. *284*

INTRODUCED BY *Chris Knox* *Curtiss Parnis* *Harry Tash*
MERCER *Beaudry* *Holland J. Jurgens*

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING IN THE STATE SPECIAL REVENUE FUND AN ENVIRONMENTAL REHABILITATION AND PREVENTION ACCOUNT; DEDICATING CERTAIN FINES AND PENALTIES TO THE ACCOUNT; DEDICATING CERTAIN UNCLAIMED OR EXCESS RECLAMATION BOND FUNDS TO THE ACCOUNT OR TO MINING AND RECLAMATION ACCOUNTS; PROVIDING THAT FUNDS BE APPROPRIATED TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR CERTAIN PURPOSES; AMENDING SECTIONS 70-9-301, 75-2-412, 75-2-413, 75-2-427, 75-3-407, 75-5-634, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-423, 75-10-424, 75-10-542, 82-4-141, 82-4-241, 82-4-311, 82-4-424, AND 82-4-426, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Environmental rehabilitation and prevention account. (1) There is an

environmental rehabilitation and prevention account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) fine and penalty money received pursuant to 75-2-412, 75-2-413, 75-2-427, 75-3-407, 75-5-634, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-423, 75-10-424, 75-10-542, 82-4-141, and 82-4-241;

(b) unclaimed or excess reclamation bond money received pursuant to 82-4-141 and 82-4-241;

and

(c) interest earned on the account.

(3) Money in the account is available to the department of environmental quality by appropriation and must be used to pay for:

(a) reclamation of unreclaimed mine lands for which the department may not require reclamation by, or obtain costs of reclamation from, a legally responsible party;

(b) remediation of sites containing hazardous wastes or hazardous substances for which the department may not recover costs from a legally responsible party;



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1 (c) response to an imminent threat of substantial harm to the environment, to public health, or to
2 public safety for which no funding or insufficient funding is available pursuant to 75-1-1101;

3 (d) experiments designed to improve reclamation or environmental compliance technology; or

4 (e) environmental compliance education and training of nongovernmental persons.

5 (4) Whenever the penalties and abandoned bond money deposited in the environmental
6 rehabilitation and prevention account during a fiscal year exceed \$250,000, the amount deposited in the
7 account during the fiscal year in excess of \$250,000 must, at the end of the fiscal year, be transferred to
8 the general fund.

9
10 **NEW SECTION. Section 2. Environmental rehabilitation and prevention account.** (1) There is an
11 environmental rehabilitation and prevention account in the state special revenue fund provided for in
12 17-2-102.

13 (2) There must be deposited in the account:

14 (a) fine and penalty money received pursuant to 75-2-412, 75-2-413, 75-2-427, 75-3-407,
15 75-5-634, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-423, 75-10-424, 75-10-542, 82-4-141, and
16 82-4-241;

17 (b) unclaimed or excess reclamation bond money received pursuant to 82-4-141 and 82-4-241;
18 and

19 (c) interest earned on the account.

20 (3) Money in the account is available to the department of environmental quality by appropriation
21 and must be used to pay for:

22 (a) reclamation of unreclaimed mine lands for which the department may not require reclamation
23 by, or obtain costs of reclamation from, a legally responsible party;

24 (b) remediation of sites containing hazardous wastes or hazardous substances for which the
25 department may not recover costs from a legally responsible party;

26 (c) response to an imminent threat of substantial harm to the environment, to public health, or to
27 public safety for which no funding or insufficient funding is available pursuant to 75-1-1101;

28 (d) experiments designed to improve reclamation or environmental compliance technology; or

29 (e) environmental compliance education and training of nongovernmental persons.

30 (4) Whenever penalties and abandoned bond money deposited in the environmental rehabilitation

1 and prevention account during a fiscal year exceed \$250,000, the amount deposited in the account during
2 the fiscal year in excess of \$250,000 must, at the end of the fiscal year, be placed in the orphan share
3 account in the state special revenue fund.

4
5 **Section 3.** Section 70-9-301, MCA, is amended to read:

6 **"70-9-301. Report of abandoned property -- duty to prevent abandonment prior to filing.** (1)
7 Except as provided in 70-9-203(2), 82-4-241, 82-4-311, and 82-4-424, a person holding money or other
8 property, tangible or intangible, presumed abandoned under parts 1 through 3 shall report the property to
9 the department as provided in this part.

10 (2) The report must be verified and must include:

11 (a) except with respect to travelers' checks and money orders, the name, if known, and the
12 last-known address, if any, of each person appearing from the records of the holder to be the owner of any
13 property of value of \$25 or more presumed abandoned under parts 1 through 3;

14 (b) in case of unclaimed money of life insurance corporations, the full name of the insured or
15 annuitant and the last-known address according to the life insurance corporation's records;

16 (c) the nature and identifying number, if any, or description of the property and the amount
17 appearing from the records to be due. Items less than \$25 of value each may be reported in aggregate.

18 (d) the date when the property became payable, demandable, or returnable and the date of the last
19 transaction with the owner with respect to the property; and

20 (e) other information that the department prescribes by rule as necessary for the administration of
21 parts 1 through 3.

22 (3) If the person holding property presumed abandoned is a successor to other persons who
23 previously held the property for the owner or if the holder's name has changed while holding the property,
24 the holder shall file with the report all prior known names and addresses of each holder of the property.

25 (4) The report must be filed before November 1 every year as of the preceding June 30, but the
26 reports of life insurance corporations, banking and financial organizations, and cooperatives must be filed
27 before May 1 of each year as of the preceding December 31. The department may postpone the reporting
28 date upon written request by any person required to file a report. The department shall furnish forms for
29 this report.

30 (5) Not more than 120 days before filing the report required by this section, the holder in

1 possession of property presumed abandoned and subject to custody as unclaimed property under parts 1
 2 through 3 shall send written notice to the apparent owner at the last-known address informing the apparent
 3 owner that the holder is in possession of property subject to this chapter if:

4 (a) the holder has in the holder's records an address for the apparent owner that the holder's
 5 records do not disclose to be inaccurate;

6 (b) the claim of the apparent owner is not barred by the statute of limitations; and

7 (c) the property has a value of \$100 or more.

8 (6) Verification if made by a partnership must be executed by a partner; if made by an
 9 unincorporated association or private corporation, by an officer; and if made by a public corporation, by
 10 its chief fiscal officer."

11

12 **Section 4.** Section 75-2-412, MCA, is amended to read:

13 **"75-2-412. Criminal penalties -- injunction preserved.** (1) A person is guilty of an offense under
 14 this section if that person knowingly:

15 (a) violates a provision of this chapter or a rule, order, or permit made or issued under this chapter;

16 (b) makes a false material statement, representation, or certification on a form required under this
 17 chapter or in a notice or report required by a permit under this chapter; or

18 (c) renders inaccurate a monitoring device or method required under this chapter.

19 (2) A person guilty of an offense under subsection (1) is subject to a fine of not more than \$10,000
 20 per violation or imprisonment for a period not to exceed 2 years, or both. This offense must be classified
 21 as a misdemeanor. Each day of each violation constitutes a separate violation.

22 (3) Fines collected under this section, except fines collected by an approved local air pollution
 23 control program, must be deposited in the environmental rehabilitation and prevention account in the state
 24 general special revenue fund.

25 (4) Action under this section is not a bar to enforcement of this chapter or of a rule, order, or
 26 permit made or issued under it by injunction or other appropriate civil or administrative remedy. The
 27 department may institute and maintain in the name of the state any enforcement proceedings."

28

29 **Section 5.** Section 75-2-413, MCA, is amended to read:

30 **"75-2-413. Civil penalties -- out-of-state litigants -- effect of action -- presumption of continuing**

1 violation under certain circumstances. (1) A person who violates any provision of this chapter, a rule
2 adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil
3 penalty not to exceed \$10,000 per violation. Each day of each violation constitutes a separate violation.
4 The department may institute and maintain in the name of the state any enforcement proceedings under
5 this section. Upon request of the department, the attorney general or the county attorney of the county
6 of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty
7 is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the
8 operating permit program required by Subchapter V of the federal Clean Air Act.

9 (2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order,
10 or permit made or issued under this chapter by injunction or other appropriate civil remedies.

11 (b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or
12 issued under this chapter may be brought in the district court of any county where a violation occurs or
13 is threatened if the defendant cannot be located in Montana.

14 (3) If the department has notified a person operating a commercial hazardous waste incinerator of
15 a violation and if the department makes a prima facie showing that the conduct or events giving rise to the
16 violations are likely to have continued or recurred past the date of notice, the days of violation are
17 presumed to include the date of the notice and every day after the notice until the person establishes that
18 continuous compliance has been achieved. This presumption may be overcome to the extent that the
19 person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that
20 there were intervening days when a violation did not occur, that the violation was not continuing in nature,
21 or that the telemetering device was compromised or otherwise tampered with.

22 (4) Money collected under this section must be deposited in the state ~~general~~ special revenue fund
23 and credited to the environmental rehabilitation and prevention account. This subsection does not apply
24 to money collected by an approved local air pollution control program."
25

26 **Section 6.** Section 75-2-427, MCA, is amended to read:

27 **"75-2-427. Deposit of noncompliance penalty fees.** All noncompliance penalties collected by the
28 department pursuant to 75-2-421 through 75-2-429 ~~shall~~ must be deposited in the state special revenue
29 fund until a final determination and adjustment have been made as provided in 75-2-424 and amounts have
30 been deducted by the department for costs attributable to implementation of 75-2-421 through 75-2-429

1 and for contract costs incurred pursuant to 75-2-422(3), if any. After a final determination has been made
2 and additional payments or refunds have been made, the penalty money remaining ~~shall~~ must be transferred
3 to the environmental rehabilitation and prevention account in the state general special revenue fund."

4

5 **Section 7.** Section 75-3-407, MCA, is amended to read:

6 **"75-3-407. Civil penalties -- deposit in ~~general~~ state special revenue fund -- injunctions not barred.**

7 (1) A person who violates this chapter or a rule or order issued under this chapter is subject to a civil
8 penalty not to exceed \$5,000 for each violation. For purposes of this section, each day of a violation is a
9 separate violation.

10 (2) The department shall initiate civil proceedings in district court to recover a penalty under
11 subsection (1).

12 (3) Civil penalties collected under this section must be deposited in the ~~general~~ environmental
13 rehabilitation and prevention account in the state special revenue fund.

14 (4) An action under this section does not bar enforcement of this chapter or of rules or orders
15 issued under ~~it~~ this chapter by injunction or other appropriate remedy."

16

17 **Section 8.** Section 75-5-634, MCA, is amended to read:

18 **"75-5-634. Disposition of fines and civil penalties.** Fines and civil penalties collected under this
19 chapter, except those collected in a justice's court, must be deposited into the environmental rehabilitation
20 and prevention account in the state general special revenue fund."

21

22 **Section 9.** Section 75-6-109, MCA, is amended to read:

23 **"75-6-109. Administrative enforcement.** (1) If the department believes that a violation of this part,
24 a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve
25 written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice
26 must specify the provision of this part, the rule, or the condition of approval alleged to have been violated
27 and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective
28 action within a reasonable period of time. The time period must be stated in the order. Service by mail is
29 complete on the date of filing.

30 (2) If the alleged violator does not request a hearing before the board within 30 days of the date

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

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

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

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

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

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

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

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

14 (6) An action initiated under this part may include an administrative penalty not to exceed \$500
15 for each day of violation. Administrative penalties collected under this section must be deposited in the
16 environmental rehabilitation and prevention account in the state general special revenue fund.

17 (7) In determining the amount of penalty to be assessed to a person, the department or the board,
18 as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under
19 75-6-103(2)(j).

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

22
23 **Section 10.** Section 75-6-114, MCA, is amended to read:

24 **"75-6-114. Civil penalty.** (1) In an action initiated by the department to collect civil penalties
25 against a person who is found to have violated this part or a rule, order, or condition of approval issued
26 under this part, the person is subject to a civil penalty not to exceed \$10,000.

27 (2) Each day of violation constitutes a separate violation.

28 (3) Action under this section does not bar enforcement of this part or a rule, order, or condition
29 of approval issued under this part by injunction or other appropriate remedy.

30 (4) When seeking penalties under this section, the department shall take into account the following

1 factors in determining an appropriate settlement or judgment, as appropriate:

2 (a) the nature, circumstances, extent, and gravity of the violation; and

3 (b) with respect to the violator, the violator's ability to pay, prior history of violations, the economic
4 benefit or savings, if any, to the violator resulting from the violator's action, the amounts voluntarily
5 expended by the violator to address or mitigate the violation or impacts of the violation to waters of the
6 state, and other matters that justice may require.

7 (5) Civil penalties collected pursuant to this section must be deposited in the environmental
8 rehabilitation and prevention account in the state ~~general~~ special revenue fund."

9
10 **Section 11.** Section 75-10-417, MCA, is amended to read:

11 "**75-10-417. Civil penalties.** (1) Any person who violates any provision of this part, a rule adopted
12 under this part, an order of the department or the board, or a permit is subject to a civil penalty not to
13 exceed \$10,000 per violation. Each day of violation constitutes a separate violation.

14 (2) The department may institute and maintain in the name of the state any enforcement
15 proceedings under this section. Upon request of the department, the attorney general or the county
16 attorney of the county of violation shall petition the district court to impose, assess, and recover the civil
17 penalty.

18 (3) Action under this section does not bar:

19 (a) enforcement of this part, rules adopted under this part, orders of the department or the board,
20 or permits by injunction or other appropriate remedy; or

21 (b) action under 75-10-418.

22 (4) Money collected under this section ~~shall~~ must be deposited in the environmental rehabilitation
23 and prevention account in the state ~~general~~ special revenue fund."

24
25 **Section 12.** Section 75-10-418, MCA, is amended to read:

26 "**75-10-418. Criminal penalties.** (1) A person is guilty of an offense under this section if the person
27 knowingly:

28 (a) transports any hazardous waste to an unpermitted facility;

29 (b) treats, stores, or disposes of hazardous waste subject to regulation under this part or the rules
30 adopted under this part without a permit or contrary to a material permit condition;

1 (c) omits material information or makes any false statement or representation in any application,
2 label, manifest, record, report, permit, or other document filed, maintained, or used for compliance with
3 provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste;

4 (d) generates, stores, treats, transports, disposes of, or otherwise handles any used oil or
5 hazardous waste regulated under this part or rules adopted under this part and knowingly destroys, alters,
6 conceals, or fails to file any record, application, manifest, report, or other document required to be
7 maintained or filed in compliance with the provisions of this part, an order issued under this part, or rules
8 adopted under this part; or

9 (e) transports or causes to be transported without a manifest any hazardous waste required to be
10 accompanied by a manifest.

11 (2) A person who is guilty of an offense under subsection (1) is subject to a fine of not more than
12 \$25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation
13 constitutes a separate violation.

14 (3) A person who knowingly violates any requirement of this part or any rule or material permit
15 condition issued pursuant to this part (except those violations specified in subsection (1)) regarding any
16 hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to \$5,000
17 per violation or subject to imprisonment not to exceed 6 months, or both. Each day of violation constitutes
18 a separate violation.

19 (4) Upon a second conviction for a violation of this section, the maximum penalties specified in this
20 section must be doubled.

21 (5) Action under this section does not bar enforcement of this part, rules made under this part,
22 orders of the department or the board, or permits by injunction or other appropriate remedy.

23 (6) Money collected under this section, except money collected in a justice's court, must be
24 deposited in the environmental rehabilitation and prevention account in the state general special revenue
25 fund."

26
27 **Section 13.** Section 75-10-423, MCA, is amended to read:

28 **"75-10-423. Administrative penalties for underground storage tank violations -- appeals -- venue**
29 **for hearings.** (1) A person who violates any of the underground storage tank provisions of this chapter or
30 any underground storage tank rules promulgated under the authority of this chapter may be assessed and

1 ordered by the department to pay an administrative penalty not to exceed \$500 per violation. This limitation
2 on administrative penalties applies only to penalties assessed under this section. Each occurrence of the
3 violation and each day it remains uncorrected constitutes a separate violation. The department may suspend
4 a portion of the administrative penalty assessed under this section if the condition that caused the
5 assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty
6 under this section may be made in conjunction with any order or other administrative action authorized by
7 Title 75, chapter 11, or by this chapter.

8 (2) When the department assesses an administrative penalty under this section, it must have
9 written notice served personally or by certified mail on the alleged violator or the violator's agent. For
10 purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

11 (a) the provision alleged to be violated;

12 (b) the facts alleged to constitute the violation;

13 (c) the amount of the administrative penalty assessed under this section;

14 (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused
15 the assessment of the penalty;

16 (e) the nature of any corrective action the department requires, whether or not a portion of the
17 penalty is to be suspended;

18 (f) as applicable, the time within which the corrective action is to be taken and the time within
19 which the administrative penalty is to be paid;

20 (g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and
21 nature of any hearing; and

22 (h) that a formal proceeding may be waived.

23 (3) The department shall provide each person assessed a penalty under this section an opportunity
24 for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case
25 provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply
26 to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis
27 and Clark County or the county where the alleged violation occurred. This subsection does not apply until
28 the department gives written notice, served personally or by certified mail, to the alleged violator or the
29 violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt. The
30 notice must state:

- 1 (a) the provision allegedly violated;
- 2 (b) the facts that constitute the alleged violation;
- 3 (c) the specific nature of any corrective action the department requires, estimated costs of
4 compliance with the action, and where to receive help to correct the alleged violation; and
- 5 (d) a timetable that a reasonable person would consider appropriate for compliance with the alleged
6 violations.

7 (4) The department shall publish a schedule of maximum and minimum penalties for specific
8 violations. In determining appropriate penalties for violations, the department shall consider the gravity of
9 the violations and the potential for significant harm to public health or the environment. In determining the
10 appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the
11 penalty assessment, the department shall consider the cooperation and the degree of care exercised by the
12 person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm
13 resulted to the public health or the environment from the violation.

14 (5) If the department is unable to collect an administrative penalty assessed under this section or
15 if a person fails to pay all or any portion of an administrative penalty assessed under this section, the
16 department may take action in district court to recover the penalty amount and any additional amounts
17 assessed or sought under Title 75, chapter 11, or this chapter.

18 (6) Action under this section does not bar action under Title 75, chapter 11, or this chapter, or any
19 other remedy available to the department for violations of underground storage tank laws or rules
20 promulgated under those laws.

21 (7) Administrative penalties collected under this section must be deposited in the environmental
22 rehabilitation and prevention account in the state general special revenue fund."

23

24 **Section 14.** Section 75-10-424, MCA, is amended to read:

25 **"75-10-424. Administrative penalty.** (1) The department may assess a person who violates a used
26 oil or hazardous waste provision of this part, or a used oil or hazardous waste rule adopted under this part,
27 an administrative penalty, not to exceed \$10,000 per violation. Each day of violation constitutes a separate
28 violation, but the maximum penalty may not exceed \$100,000 for any related series of violations.
29 Assessment of an administrative penalty under this section must be made in conjunction with an order or
30 administrative action authorized by this chapter.

1 (2) An administrative penalty may not be assessed under this section unless the alleged violator
2 is given notice and opportunity for a hearing before the board pursuant to Title 2, chapter 4, part 6.

3 (3) In determining the appropriate amount of an administrative penalty, the department shall
4 consider:

5 (a) the gravity and the number of violations;

6 (b) the degree of care exercised by the alleged violator;

7 (c) whether significant harm resulted to public health or the environment; and

8 (d) the degree of potential significant harm to public health or the environment.

9 (4) If the department is unable to collect the administrative penalty or if a person fails to pay all
10 or any portion of the administrative penalty as determined by the department, the department may seek
11 to recover the amount in an appropriate district court.

12 (5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other
13 appropriate remedy.

14 (6) Administrative penalties collected under this section must be deposited in the environmental
15 rehabilitation and prevention account in the state ~~general~~ special revenue fund."

16
17 **Section 15.** Section 75-10-542, MCA, is amended to read:

18 **"75-10-542. Penalties.** (1) A person who willfully violates this part, except 75-10-520, is guilty
19 of a misdemeanor and upon conviction shall be fined not to exceed \$250, imprisoned in the county jail for
20 a term not to exceed 30 days, or both.

21 (2) A person who violates this part, except 75-10-520, a rule of the department, or an order issued
22 as provided in this part shall be subject to a civil penalty of not more than \$50. Each day upon which a
23 violation of this part or a rule or order occurs is a separate violation.

24 (3) Civil penalties collected under this section must be deposited in the environmental rehabilitation
25 and prevention account in the state special revenue fund."

26
27 **Section 16.** Section 82-4-141, MCA, is amended to read:

28 **"82-4-141. Violation -- penalty.** (1) A person or operator who violates any of the provisions of this
29 part or rules or orders adopted under this part shall pay a civil penalty of not less than \$100 or more than
30 \$1,000 for the violation and an additional civil penalty of not less than \$100 or more than \$1,000 for each

1 day during which a violation continues and may be enjoined from continuing ~~such~~ the violations as provided
 2 in this section. These penalties ~~shall~~ must be recoverable in any action brought in the name of the state of
 3 Montana by the attorney general in the district court of the first judicial district of this state in and for the
 4 county of Lewis and Clark or in the district court having jurisdiction of the defendant.

5 (2) The attorney general shall, upon the request of the director, sue for the recovery of the
 6 penalties provided for in this section and bring an action for a restraining order, temporary or permanent
 7 injunction against an operator or other person violating or threatening to violate an order adopted under this
 8 part.

9 (3) A person who willfully violates any of the provisions of this part or any determination or order
 10 adopted under this part which has become final is guilty of a misdemeanor and shall be fined not less than
 11 \$500 and not more than \$5,000. Each day on which a violation occurs constitutes a separate offense.

12 (4) Civil penalties collected under this section must be deposited in the environmental rehabilitation
 13 and prevention account in the state special revenue fund."

14
 15 **Section 17.** Section 82-4-241, MCA, is amended to read:

16 **"82-4-241. Receipts paid into general and state special revenue fund funds.** (1) ~~Except for bond~~
 17 ~~forfeiture moneys as provided in this section,~~ all fees, ~~penalties,~~ and other ~~moneys~~ money available or paid
 18 to the department under the provisions of this part ~~shall~~ must be placed in the state treasury and credited
 19 to the general fund.

20 (2) Civil penalties paid to the department under 82-4-254 must be placed in the environmental
 21 rehabilitation and prevention account in the state special revenue fund.

22 (3) Bond forfeiture money must be used to pay for expenses that the department incurs pursuant
 23 to 82-4-240.

24 (4) Funds held by the department as bond or as a result of bond forfeiture that are no longer
 25 needed for reclamation, that are unclaimed under 70-9-207, and for which the department is not able to
 26 locate an owner after diligent search must be deposited in the state special revenue fund and credited to
 27 the environmental rehabilitation and prevention account."

28
 29 **Section 18.** Section 82-4-311, MCA, is amended to read:

30 **"82-4-311. Hard-rock mining and reclamation account.** All fees, fines, penalties, and other

1 uncleared money that has been or will be paid to the department under the provisions of this part must be
2 placed in the state special revenue fund in the state treasury and credited to a special account that is
3 designated as the hard-rock mining and reclamation account. Funds held by the department as bond or as
4 a result of bond forfeiture that are no longer needed for reclamation, that are unclaimed under 70-9-207,
5 and for which the department is not able to locate an owner after diligent search must be deposited in the
6 account. This account is available to the department by appropriation and may be expended for the
7 research, reclamation, and revegetation of land and the rehabilitation of water affected by any mining
8 operations. Any unencumbered and any unexpended balance of this account remaining at the end of a fiscal
9 year does not lapse but must be carried forward for the purposes of this section until expended or until
10 appropriated by subsequent legislative action."

11

12 **Section 19.** Section 82-4-424, MCA, is amended to read:

13 **"82-4-424. Receipt and expenditure of funds.** (1) The department may receive any federal funds,
14 state funds, or any other funds for the reclamation of land affected by opencut mining. The department may
15 cause the reclamation work to be done by its employees, by employees of other governmental agencies,
16 by soil conservation districts, or through contracts with qualified persons.

17 (2) Any funds of any public works programs available to the department must be expended and
18 used to reclaim and rehabilitate any lands that have been subject to opencut mining and that have not been
19 reclaimed and rehabilitated in accordance with the standards of this part.

20 (3) There is an opencut mining and reclamation account within the state special revenue fund
21 established in 17-2-102. There must be deposited in the account all fees, fines, penalties, and other money
22 that have been or will be paid under the provisions of this part. Funds held by the department as bond or
23 as a result of bond forfeiture that are no longer needed for reclamation, that are unclaimed under 70-9-207,
24 and for which the department is not able to locate an owner after diligent search, must be deposited in the
25 account. The money in the account is available to the department through appropriation and must be spent
26 by the department for the reclamation and revegetation of land, research pertaining to the reclamation and
27 revegetation of land, and the rehabilitation of water affected by opencut mining operations and for
28 administration of this part. Any unspent or unencumbered money in the account at the end of a fiscal year
29 must remain in the account until spent or appropriated by the legislature."

30

1 **Section 20.** Section 82-4-426, MCA, is amended to read:

2 **"82-4-426. Reclamation of land on which bond forfeited.** In keeping with the provisions of this
3 part, the department may reclaim any affected lands with respect to which a bond has been forfeited. If
4 the amount of the forfeited bond exceeds the cost of reclamation, the excess must be deposited in the
5 opencut mining and reclamation account in the state ~~general~~ special revenue fund."

6
7 NEW SECTION. **Section 21. Codification instruction.** [Sections 1 and 2] are intended to be
8 codified as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 and 2].

9
10 NEW SECTION. **Section 22. Coordination instructions.** (1) If ___ Bill No. ___ [LC 0759] is passed
11 and approved, and if it includes a section that creates an orphan share account in the state special revenue
12 fund, then [section 1] is void.

13 (2) If ___ Bill No. ___ [LC 0759] is not passed and approved or if it does not, as passed and
14 approved, include a section that creates an orphan share account in the state special revenue fund, then
15 [section 2] is void.

16
17 NEW SECTION. **Section 23. Severability.** If a part of [this act] is invalid, all valid parts that are
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
19 applications, the part remains in effect in all valid applications that are severable from the invalid
20 applications.

21
22 NEW SECTION. **Section 24. Effective date.** [This act] is effective July 1, 1997.

23 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0284, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

This bill establishes an environmental rehabilitation and prevention account in the state special revenue fund; dedicates certain fines and penalties to the account; dedicates certain unclaimed or excess reclamation bond funds to the account or to the mining and reclamation accounts; and provides that the funds be appropriated to the Department of Environmental Quality (DEQ) for reclamation, remediation, response to public health and safety threats, and for compliance education.

ASSUMPTIONS:

1. Three to five minor environmental rehabilitation projects will be conducted each year that will require funds from the proposed account. These smaller projects are estimated to cost less than \$10,000 each.
2. One or two major environmental rehabilitation projects will be conducted each year that will require funds from the account. These larger projects are estimated to cost between \$50,000 to \$150,000 each.
3. Existing department staff resources and site activities will be reprioritized to address these remediation and restoration activities. DEQ administrative costs will be absorbed by existing department resources.
4. The bill will make up to \$250,000 of revenue available to this new state special revenue account for these reclamation and remediation activities.
5. The amount of expenditures in any year would be limited by the balance of the fund and the legislative appropriation for that year.
6. Under present law the fees are deposited to the general fund.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
<u>Revenues:</u>	<u>Difference</u>	<u>Difference</u>
General Fund (01)	(\$250,000)	(\$250,000)
Env. Rehab. & Prev. Acct. (02)	\$250,000	\$250,000

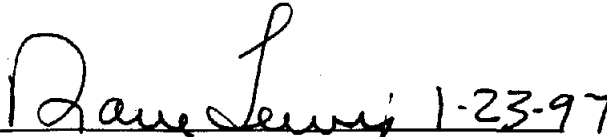
EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Rehabilitation projects will benefit local governments and all citizens by providing funds that local governments may not have available to deal with threats to public health or the environment.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Pollution prevention is cheaper than cleanup. Use of the account to address sites before they become emergencies or significant threats to human health and the environment will have the long-range effect of preventing pollution and saving money that would have been expended for long-term cleanup activities.

(Continued)


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

KARL OHS, PRIMARY SPONSOR DATE

Fiscal Note for HB0284, as introduced

HB 284

DEDICATION OF REVENUE:

a) Are there persons or entities that benefit from this dedicated revenue that do not pay? (Please explain)

Funds in the account will come from environmental fees and penalties and certain unclaimed reclamation bond funds. These funds will be used to correct environmental problems before they become emergencies or significant threats to human health or the environment. Rehabilitation projects will benefit local governments and all citizens.

b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?

Existing cleanup accounts require an emergency or imminent threat before funds can be used for cleanup. Creation of the environmental rehabilitation and prevention account in the state special revenue fund allows the department to cleanup sites that do not yet constitute an emergency or significant threat to public health.

c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended? XX Yes ___ No (if no, explain)

Fines and penalties paid for violations of environmental laws will be the source of revenue for the account. These funds will then be used to correct environmental pollution problems.

d) Does the need for this state special revenue provision still exist? XX Yes ___ No (Explain)

Existing funds that can be used for cleanup require that the situation be an emergency or significant threat to human health or the environment. Spending authority is required before the funds can be expended. If the department does not have adequate spending authority it must request a budget amendment to obtain spending authority and begin work on a project. Establishment of this account and provision of spending authority to the department will allow the department to address the sites that are not emergencies and will alleviate the need to delay and request a budget amendment.

e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)

No. The legislature must still provide spending authority for the department to expend funds from the account.

f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please explain)

The legislature has recognized the need to provide protection of public health and the environment. This account provides the department with a much needed tool to better provide that protection.

g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

This new account should have no effect.

HOUSE BILL NO. 284

INTRODUCED BY OHS, KNOX, CURTISS, RANEY, HARPER, TASH, MERCER, BEAUDRY, HOLLAND,
SWYSGOOD

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING IN THE STATE SPECIAL REVENUE FUND AN ENVIRONMENTAL REHABILITATION AND PREVENTION ACCOUNT; DEDICATING CERTAIN FINES AND PENALTIES TO THE ACCOUNT; DEDICATING CERTAIN UNCLAIMED OR EXCESS RECLAMATION BOND FUNDS TO THE ACCOUNT OR TO MINING AND RECLAMATION ACCOUNTS; PROVIDING THAT FUNDS BE APPROPRIATED TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR CERTAIN PURPOSES; AMENDING SECTIONS 70-9-301, 75-2-412, 75-2-413, 75-2-427, 75-3-407, 75-5-634, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-423, 75-10-424, 75-10-542, 82-4-141, 82-4-241, 82-4-311, 82-4-424, AND 82-4-426, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Environmental rehabilitation and prevention account. (1) There is an environmental rehabilitation and prevention account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) fine and penalty money received pursuant to 75-2-412, 75-2-413, 75-2-427, 75-3-407, 75-5-634, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-423, 75-10-424, 75-10-542, 82-4-141, and 82-4-241;

(b) unclaimed or excess reclamation bond money received pursuant to 82-4-141 and 82-4-241; and

(c) interest earned on the account.

(3) Money in the account is available to the department of environmental quality by appropriation and must be used to pay for:

(a) reclamation of unreclaimed mine lands for which the department may not require reclamation by, or obtain costs of reclamation from, a legally responsible party;

(b) remediation of sites containing hazardous wastes or hazardous substances for which the

1 department may not recover costs from a legally responsible party;

2 (c) response to an imminent threat of substantial harm to the environment, to public health, or to
3 public safety for which no funding or insufficient funding is available pursuant to 75-1-1101; OR

4 ~~(d) experiments designed to improve reclamation or environmental compliance technology; or~~

5 ~~(e)~~(D) environmental compliance education and training of nongovernmental persons.

6 (4) Whenever the penalties and abandoned bond money deposited in the environmental
7 rehabilitation and prevention account during a fiscal year exceed \$250,000, the amount deposited in the
8 account during the fiscal year in excess of \$250,000 must, at the end of the fiscal year, be transferred to
9 the general fund.

10
11 **NEW SECTION. Section 2. Environmental rehabilitation and prevention account.** (1) There is an
12 environmental rehabilitation and prevention account in the state special revenue fund provided for in
13 17-2-102.

14 (2) There must be deposited in the account:

15 (a) fine and penalty money received pursuant to 75-2-412, 75-2-413, 75-2-427, 75-3-407,
16 75-5-634, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-423, 75-10-424, 75-10-542, 82-4-141, and
17 82-4-241;

18 (b) unclaimed or excess reclamation bond money received pursuant to 82-4-141 and 82-4-241;
19 and

20 (c) interest earned on the account.

21 (3) Money in the account is available to the department of environmental quality by appropriation
22 and must be used to pay for:

23 (a) reclamation of unreclaimed mine lands for which the department may not require reclamation
24 by, or obtain costs of reclamation from, a legally responsible party;

25 (b) remediation of sites containing hazardous wastes or hazardous substances for which the
26 department may not recover costs from a legally responsible party;

27 (c) response to an imminent threat of substantial harm to the environment, to public health, or to
28 public safety for which no funding or insufficient funding is available pursuant to 75-1-1101;

29 (d) experiments designed to improve reclamation or environmental compliance technology; or

30 (e) environmental compliance education and training of nongovernmental persons.

1 (4) Whenever penalties and abandoned bond money deposited in the environmental rehabilitation
2 and prevention account during a fiscal year exceed \$250,000, the amount deposited in the account during
3 the fiscal year in excess of \$250,000 must, at the end of the fiscal year, be placed in the orphan share
4 account in the state special revenue fund.

5
6 **Section 3.** Section 70-9-301, MCA, is amended to read:

7 **"70-9-301. Report of abandoned property -- duty to prevent abandonment prior to filing.** (1)
8 Except as provided in 70-9-203(2), 82-4-241, 82-4-311, and 82-4-424, a person holding money or other
9 property, tangible or intangible, presumed abandoned under parts 1 through 3 shall report the property to
10 the department as provided in this part.

11 (2) The report must be verified and must include:

12 (a) except with respect to travelers' checks and money orders, the name, if known, and the
13 last-known address, if any, of each person appearing from the records of the holder to be the owner of any
14 property of value of \$25 or more presumed abandoned under parts 1 through 3;

15 (b) in case of unclaimed money of life insurance corporations, the full name of the insured or
16 annuitant and the last-known address according to the life insurance corporation's records;

17 (c) the nature and identifying number, if any, or description of the property and the amount
18 appearing from the records to be due. Items less than \$25 of value each may be reported in aggregate.

19 (d) the date when the property became payable, demandable, or returnable and the date of the last
20 transaction with the owner with respect to the property; and

21 (e) other information that the department prescribes by rule as necessary for the administration of
22 parts 1 through 3.

23 (3) If the person holding property presumed abandoned is a successor to other persons who
24 previously held the property for the owner or if the holder's name has changed while holding the property,
25 the holder shall file with the report all prior known names and addresses of each holder of the property.

26 (4) The report must be filed before November 1 every year as of the preceding June 30, but the
27 reports of life insurance corporations, banking and financial organizations, and cooperatives must be filed
28 before May 1 of each year as of the preceding December 31. The department may postpone the reporting
29 date upon written request by any person required to file a report. The department shall furnish forms for
30 this report.

1 (5) Not more than 120 days before filing the report required by this section, the holder in
2 possession of property presumed abandoned and subject to custody as unclaimed property under parts 1
3 through 3 shall send written notice to the apparent owner at the last-known address informing the apparent
4 owner that the holder is in possession of property subject to this chapter if:

5 (a) the holder has in the holder's records an address for the apparent owner that the holder's
6 records do not disclose to be inaccurate;

7 (b) the claim of the apparent owner is not barred by the statute of limitations; and

8 (c) the property has a value of \$100 or more.

9 (6) Verification if made by a partnership must be executed by a partner; if made by an
10 unincorporated association or private corporation, by an officer; and if made by a public corporation, by
11 its chief fiscal officer."

12
13 **Section 4.** Section 75-2-412, MCA, is amended to read:

14 **"75-2-412. Criminal penalties -- injunction preserved.** (1) A person is guilty of an offense under
15 this section if that person knowingly:

16 (a) violates a provision of this chapter or a rule, order, or permit made or issued under this chapter;

17 (b) makes a false material statement, representation, or certification on a form required under this
18 chapter or in a notice or report required by a permit under this chapter; or

19 (c) renders inaccurate a monitoring device or method required under this chapter.

20 (2) A person guilty of an offense under subsection (1) is subject to a fine of not more than \$10,000
21 per violation or imprisonment for a period not to exceed 2 years, or both. This offense must be classified
22 as a misdemeanor. Each day of each violation constitutes a separate violation.

23 (3) Fines collected under this section, except fines collected by an approved local air pollution
24 control program, must be deposited in the environmental rehabilitation and prevention account in the state
25 ~~general~~ special revenue fund.

26 (4) Action under this section is not a bar to enforcement of this chapter or of a rule, order, or
27 permit made or issued under it by injunction or other appropriate civil or administrative remedy. The
28 department may institute and maintain in the name of the state any enforcement proceedings."

29
30 **Section 5.** Section 75-2-413, MCA, is amended to read:

1 **"75-2-413. Civil penalties -- out-of-state litigants -- effect of action -- presumption of continuing**
2 **violation under certain circumstances.** (1) A person who violates any provision of this chapter, a rule
3 adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil
4 penalty not to exceed \$10,000 per violation. Each day of each violation constitutes a separate violation.
5 The department may institute and maintain in the name of the state any enforcement proceedings under
6 this section. Upon request of the department, the attorney general or the county attorney of the county
7 of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty
8 is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the
9 operating permit program required by Subchapter V of the federal Clean Air Act.

10 (2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order,
11 or permit made or issued under this chapter by injunction or other appropriate civil remedies.

12 (b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or
13 issued under this chapter may be brought in the district court of any county where a violation occurs or
14 is threatened if the defendant cannot be located in Montana.

15 (3) If the department has notified a person operating a commercial hazardous waste incinerator of
16 a violation and if the department makes a prima facie showing that the conduct or events giving rise to the
17 violations are likely to have continued or recurred past the date of notice, the days of violation are
18 presumed to include the date of the notice and every day after the notice until the person establishes that
19 continuous compliance has been achieved. This presumption may be overcome to the extent that the
20 person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that
21 there were intervening days when a violation did not occur, that the violation was not continuing in nature,
22 or that the telemetering device was compromised or otherwise tampered with.

23 (4) Money collected under this section must be deposited in the state ~~general~~ special revenue fund
24 and credited to the environmental rehabilitation and prevention account. This subsection does not apply
25 to money collected by an approved local air pollution control program."
26

27 **Section 6.** Section 75-2-427, MCA, is amended to read:

28 **"75-2-427. Deposit of noncompliance penalty fees.** All noncompliance penalties collected by the
29 department pursuant to 75-2-421 through 75-2-429 ~~shall~~ must be deposited in the state special revenue
30 fund until a final determination and adjustment have been made as provided in 75-2-424 and amounts have

1 been deducted by the department for costs attributable to implementation of 75-2-421 through 75-2-429
2 and for contract costs incurred pursuant to 75-2-422(3), if any. After a final determination has been made
3 and additional payments or refunds have been made, the penalty money remaining ~~shall~~ must be transferred
4 to the environmental rehabilitation and prevention account in the state ~~general~~ special revenue fund."

5
6 **Section 7.** Section 75-3-407, MCA, is amended to read:

7 **"75-3-407. Civil penalties -- deposit in general state special revenue fund -- injunctions not barred.**

8 (1) A person who violates this chapter or a rule or order issued under this chapter is subject to a civil
9 penalty not to exceed \$5,000 for each violation. For purposes of this section, each day of a violation is a
10 separate violation.

11 (2) The department shall initiate civil proceedings in district court to recover a penalty under
12 subsection (1).

13 (3) Civil penalties collected under this section must be deposited in the ~~general~~ environmental
14 rehabilitation and prevention account in the state special revenue fund.

15 (4) An action under this section does not bar enforcement of this chapter or of rules or orders
16 issued under ~~it~~ this chapter by injunction or other appropriate remedy."

17
18 **Section 8.** Section 75-5-634, MCA, is amended to read:

19 **"75-5-634. Disposition of fines and civil penalties.** Fines and civil penalties collected under this
20 chapter, except those collected in a justice's court, must be deposited into the environmental rehabilitation
21 and prevention account in the state ~~general~~ special revenue fund."

22
23 **Section 9.** Section 75-6-109, MCA, is amended to read:

24 **"75-6-109. Administrative enforcement.** (1) If the department believes that a violation of this part,
25 a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve
26 written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice
27 must specify the provision of this part, the rule, or the condition of approval alleged to have been violated
28 and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective
29 action within a reasonable period of time. The time period must be stated in the order. Service by mail is
30 complete on the date of filing.

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

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

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

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

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

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

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

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

15 (6) An action initiated under this part may include an administrative penalty not to exceed \$500
16 for each day of violation. Administrative penalties collected under this section must be deposited in the
17 environmental rehabilitation and prevention account in the state ~~general~~ special revenue fund.

18 (7) In determining the amount of penalty to be assessed to a person, the department or the board,
19 as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under
20 75-6-103(2)(j).

21 (8) The contested case provisions of the Montana Administrative Procedure Act, provided for in
22 Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."
23

24 **Section 10.** Section 75-6-114, MCA, is amended to read:

25 **"75-6-114. Civil penalty.** (1) In an action initiated by the department to collect civil penalties
26 against a person who is found to have violated this part or a rule, order, or condition of approval issued
27 under this part, the person is subject to a civil penalty not to exceed \$10,000.

28 (2) Each day of violation constitutes a separate violation.

29 (3) Action under this section does not bar enforcement of this part or a rule, order, or condition
30 of approval issued under this part by injunction or other appropriate remedy.

1 (4) When seeking penalties under this section, the department shall take into account the following
2 factors in determining an appropriate settlement or judgment, as appropriate:

3 (a) the nature, circumstances, extent, and gravity of the violation; and

4 (b) with respect to the violator, the violator’s ability to pay, prior history of violations, the economic
5 benefit or savings, if any, to the violator resulting from the violator’s action, the amounts voluntarily
6 expended by the violator to address or mitigate the violation or impacts of the violation to waters of the
7 state, and other matters that justice may require.

8 (5) Civil penalties collected pursuant to this section must be deposited in the environmental
9 rehabilitation and prevention account in the state ~~general~~ special revenue fund."

10
11 **Section 11.** Section 75-10-417, MCA, is amended to read:

12 **"75-10-417. Civil penalties.** (1) Any person who violates any provision of this part, a rule adopted
13 under this part, an order of the department or the board, or a permit is subject to a civil penalty not to
14 exceed \$10,000 per violation. Each day of violation constitutes a separate violation.

15 (2) The department may institute and maintain in the name of the state any enforcement
16 proceedings under this section. Upon request of the department, the attorney general or the county
17 attorney of the county of violation shall petition the district court to impose, assess, and recover the civil
18 penalty.

19 (3) Action under this section does not bar:

20 (a) enforcement of this part, rules adopted under this part, orders of the department or the board,
21 or permits by injunction or other appropriate remedy; or

22 (b) action under 75-10-418.

23 (4) Money collected under this section ~~shall~~ **must** be deposited in the environmental rehabilitation
24 and prevention account in the state ~~general~~ special revenue fund."

25
26 **Section 12.** Section 75-10-418, MCA, is amended to read:

27 **"75-10-418. Criminal penalties.** (1) A person is guilty of an offense under this section if the person
28 knowingly:

29 (a) transports any hazardous waste to an unpermitted facility;

30 (b) treats, stores, or disposes of hazardous waste subject to regulation under this part or the rules

1 adopted under this part without a permit or contrary to a material permit condition;

2 (c) omits material information or makes any false statement or representation in any application,
3 label, manifest, record, report, permit, or other document filed, maintained, or used for compliance with
4 provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste;

5 (d) generates, stores, treats, transports, disposes of, or otherwise handles any used oil or
6 hazardous waste regulated under this part or rules adopted under this part and knowingly destroys, alters,
7 conceals, or fails to file any record, application, manifest, report, or other document required to be
8 maintained or filed in compliance with the provisions of this part, an order issued under this part, or rules
9 adopted under this part; or

10 (e) transports or causes to be transported without a manifest any hazardous waste required to be
11 accompanied by a manifest.

12 (2) A person who is guilty of an offense under subsection (1) is subject to a fine of not more than
13 \$25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation
14 constitutes a separate violation.

15 (3) A person who knowingly violates any requirement of this part or any rule or material permit
16 condition issued pursuant to this part (except those violations specified in subsection (1)) regarding any
17 hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to \$5,000
18 per violation or subject to imprisonment not to exceed 6 months, or both. Each day of violation constitutes
19 a separate violation.

20 (4) Upon a second conviction for a violation of this section, the maximum penalties specified in this
21 section must be doubled.

22 (5) Action under this section does not bar enforcement of this part, rules made under this part,
23 orders of the department or the board, or permits by injunction or other appropriate remedy.

24 (6) Money collected under this section, except money collected in a justice's court, must be
25 deposited in the environmental rehabilitation and prevention account in the state general special revenue
26 fund."

27

28 **Section 13.** Section 75-10-423, MCA, is amended to read:

29 **"75-10-423. Administrative penalties for underground storage tank violations -- appeals -- venue**
30 **for hearings.** (1) A person who violates any of the underground storage tank provisions of this chapter or

1 any underground storage tank rules promulgated under the authority of this chapter may be assessed and
2 ordered by the department to pay an administrative penalty not to exceed \$500 per violation. This limitation
3 on administrative penalties applies only to penalties assessed under this section. Each occurrence of the
4 violation and each day it remains uncorrected constitutes a separate violation. The department may suspend
5 a portion of the administrative penalty assessed under this section if the condition that caused the
6 assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty
7 under this section may be made in conjunction with any order or other administrative action authorized by
8 Title 75, chapter 11, or by this chapter.

9 (2) When the department assesses an administrative penalty under this section, it must have
10 written notice served personally or by certified mail on the alleged violator or the violator's agent. For
11 purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

12 (a) the provision alleged to be violated;

13 (b) the facts alleged to constitute the violation;

14 (c) the amount of the administrative penalty assessed under this section;

15 (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused
16 the assessment of the penalty;

17 (e) the nature of any corrective action the department requires, whether or not a portion of the
18 penalty is to be suspended;

19 (f) as applicable, the time within which the corrective action is to be taken and the time within
20 which the administrative penalty is to be paid;

21 (g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and
22 nature of any hearing; and

23 (h) that a formal proceeding may be waived.

24 (3) The department shall provide each person assessed a penalty under this section an opportunity
25 for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case
26 provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply
27 to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis
28 and Clark County or the county where the alleged violation occurred. This subsection does not apply until
29 the department gives written notice, served personally or by certified mail, to the alleged violator or the
30 violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt. The

1 notice must state:

2 (a) the provision allegedly violated;

3 (b) the facts that constitute the alleged violation;

4 (c) the specific nature of any corrective action the department requires, estimated costs of
5 compliance with the action, and where to receive help to correct the alleged violation; and

6 (d) a timetable that a reasonable person would consider appropriate for compliance with the alleged
7 violations.

8 (4) The department shall publish a schedule of maximum and minimum penalties for specific
9 violations. In determining appropriate penalties for violations, the department shall consider the gravity of
10 the violations and the potential for significant harm to public health or the environment. In determining the
11 appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the
12 penalty assessment, the department shall consider the cooperation and the degree of care exercised by the
13 person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm
14 resulted to the public health or the environment from the violation.

15 (5) If the department is unable to collect an administrative penalty assessed under this section or
16 if a person fails to pay all or any portion of an administrative penalty assessed under this section, the
17 department may take action in district court to recover the penalty amount and any additional amounts
18 assessed or sought under Title 75, chapter 11, or this chapter.

19 (6) Action under this section does not bar action under Title 75, chapter 11, or this chapter, or any
20 other remedy available to the department for violations of underground storage tank laws or rules
21 promulgated under those laws.

22 (7) Administrative penalties collected under this section must be deposited in the environmental
23 rehabilitation and prevention account in the state ~~general~~ special revenue fund."

24

25 **Section 14.** Section 75-10-424, MCA, is amended to read:

26 **"75-10-424. Administrative penalty.** (1) The department may assess a person who violates a used
27 oil or hazardous waste provision of this part, or a used oil or hazardous waste rule adopted under this part,
28 an administrative penalty, not to exceed \$10,000 per violation. Each day of violation constitutes a separate
29 violation, but the maximum penalty may not exceed \$100,000 for any related series of violations.
30 Assessment of an administrative penalty under this section must be made in conjunction with an order or

1 administrative action authorized by this chapter.

2 (2) An administrative penalty may not be assessed under this section unless the alleged violator
3 is given notice and opportunity for a hearing before the board pursuant to Title 2, chapter 4, part 6.

4 (3) In determining the appropriate amount of an administrative penalty, the department shall
5 consider:

6 (a) the gravity and the number of violations;

7 (b) the degree of care exercised by the alleged violator;

8 (c) whether significant harm resulted to public health or the environment; and

9 (d) the degree of potential significant harm to public health or the environment.

10 (4) If the department is unable to collect the administrative penalty or if a person fails to pay all
11 or any portion of the administrative penalty as determined by the department, the department may seek
12 to recover the amount in an appropriate district court.

13 (5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other
14 appropriate remedy.

15 (6) Administrative penalties collected under this section must be deposited in the environmental
16 rehabilitation and prevention account in the state ~~general~~ special revenue fund."

17

18 **Section 15.** Section 75-10-542, MCA, is amended to read:

19 **"75-10-542. Penalties.** (1) A person who willfully violates this part, except 75-10-520, is guilty
20 of a misdemeanor and upon conviction shall be fined not to exceed \$250, imprisoned in the county jail for
21 a term not to exceed 30 days, or both.

22 (2) A person who violates this part, except 75-10-520, a rule of the department, or an order issued
23 as provided in this part shall be subject to a civil penalty of not more than \$50. Each day upon which a
24 violation of this part or a rule or order occurs is a separate violation.

25 (3) Civil penalties collected under this section must be deposited in the environmental rehabilitation
26 and prevention account in the state special revenue fund."

27

28 **Section 16.** Section 82-4-141, MCA, is amended to read:

29 **"82-4-141. Violation -- penalty.** (1) A person or operator who violates any of the provisions of this
30 part or rules or orders adopted under this part shall pay a civil penalty of not less than \$100 or more than

1 \$1,000 for the violation and an additional civil penalty of not less than \$100 or more than \$1,000 for each
 2 day during which a violation continues and may be enjoined from continuing ~~such~~ the violations as provided
 3 in this section. These penalties ~~shall~~ must be recoverable in any action brought in the name of the state of
 4 Montana by the attorney general in the district court of the first judicial district of this state in and for the
 5 county of Lewis and Clark or in the district court having jurisdiction of the defendant.

6 (2) The attorney general shall, upon the request of the director, sue for the recovery of the
 7 penalties provided for in this section and bring an action for a restraining order, temporary or permanent
 8 injunction against an operator or other person violating or threatening to violate an order adopted under this
 9 part.

10 (3) A person who willfully violates any of the provisions of this part or any determination or order
 11 adopted under this part which has become final is guilty of a misdemeanor and shall be fined not less than
 12 \$500 and not more than \$5,000. Each day on which a violation occurs constitutes a separate offense.

13 (4) Civil penalties collected under this section must be deposited in the environmental rehabilitation
 14 and prevention account in the state special revenue fund."

15

16 **Section 17.** Section 82-4-241, MCA, is amended to read:

17 "**82-4-241. Receipts paid into general and state special revenue fund funds.** (1) ~~Except for bond~~
 18 ~~forfeiture moneys as provided in this section~~, all fees, ~~penalties~~, and other ~~moneys~~ money available or paid
 19 to the department under the provisions of this part ~~shall~~ must be placed in the state treasury and credited
 20 to the general fund.

21 (2) Civil penalties paid to the department under 82-4-254 must be placed in the environmental
 22 rehabilitation and prevention account in the state special revenue fund.

23 (3) Bond forfeiture money must be used to pay for expenses that the department incurs pursuant
 24 to 82-4-240.

25 (4) Funds held by the department as bond or as a result of bond forfeiture that are no longer
 26 needed for reclamation, that are unclaimed under 70-9-207, and for which the department is not able to
 27 locate an owner after diligent search must be deposited in the state special revenue fund and credited to
 28 the environmental rehabilitation and prevention account."

29

30 **Section 18.** Section 82-4-311, MCA, is amended to read:

1 **"82-4-311. Hard-rock mining and reclamation account.** All fees, fines, penalties, and other
2 uncleared money that has been or will be paid to the department under the provisions of this part must be
3 placed in the state special revenue fund in the state treasury and credited to a special account that is
4 designated as the hard-rock mining and reclamation account. Funds held by the department as bond or as
5 a result of bond forfeiture that are no longer needed for reclamation, that are unclaimed under 70-9-207,
6 and for which the department is not able to locate an owner after diligent search must be deposited in the
7 account. This account is available to the department by appropriation and may be expended for the
8 research, reclamation, and revegetation of land and the rehabilitation of water affected by any mining
9 operations. Any unencumbered and any unexpended balance of this account remaining at the end of a fiscal
10 year does not lapse but must be carried forward for the purposes of this section until expended or until
11 appropriated by subsequent legislative action."

12
13 **Section 19.** Section 82-4-424, MCA, is amended to read:

14 **"82-4-424. Receipt and expenditure of funds.** (1) The department may receive any federal funds,
15 state funds, or any other funds for the reclamation of land affected by opencut mining. The department may
16 cause the reclamation work to be done by its employees, by employees of other governmental agencies,
17 by soil conservation districts, or through contracts with qualified persons.

18 (2) Any funds of any public works programs available to the department must be expended and
19 used to reclaim and rehabilitate any lands that have been subject to opencut mining and that have not been
20 reclaimed and rehabilitated in accordance with the standards of this part.

21 (3) There is an opencut mining and reclamation account within the state special revenue fund
22 established in 17-2-102. There must be deposited in the account all fees, fines, penalties, and other money
23 that have been or will be paid under the provisions of this part. Funds held by the department as bond or
24 as a result of bond forfeiture that are no longer needed for reclamation, that are unclaimed under 70-9-207,
25 and for which the department is not able to locate an owner after diligent search, must be deposited in the
26 account. The money in the account is available to the department through appropriation and must be spent
27 by the department for the reclamation and revegetation of land, research pertaining to the reclamation and
28 revegetation of land, and the rehabilitation of water affected by opencut mining operations and for
29 administration of this part. Any unspent or unencumbered money in the account at the end of a fiscal year
30 must remain in the account until spent or appropriated by the legislature."

1 HOUSE BILL NO. 284

2 INTRODUCED BY OHS, KNOX, CURTISS, RANEY, HARPER, TASH, MERCER, BEAUDRY, HOLLAND,

3 SWYSGOOD

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING IN THE STATE SPECIAL REVENUE FUND AN
6 ENVIRONMENTAL REHABILITATION AND PREVENTION ACCOUNT; DEDICATING CERTAIN FINES AND
7 PENALTIES TO THE ACCOUNT; DEDICATING CERTAIN UNCLAIMED OR EXCESS RECLAMATION BOND
8 FUNDS TO THE ACCOUNT OR TO MINING AND RECLAMATION ACCOUNTS; PROVIDING THAT FUNDS
9 BE APPROPRIATED TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR CERTAIN PURPOSES;
10 AMENDING SECTIONS 70-9-301, 75-2-412, 75-2-413, 75-2-427, 75-3-407, 75-5-634, 75-6-109,
11 75-6-114, 75-10-417, 75-10-418, 75-10-423, 75-10-424, 75-10-542, 82-4-141, 82-4-241, 82-4-311,
12 82-4-424, AND 82-4-426, MCA; AND PROVIDING AN EFFECTIVE DATE."

13

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

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

1 HOUSE BILL NO. 284

2 INTRODUCED BY OHS, KNOX, CURTISS, RANEY, HARPER, TASH, MERCER, BEAUDRY, HOLLAND,
3 SWYSGOOD
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING IN THE STATE SPECIAL REVENUE FUND AN
6 ENVIRONMENTAL REHABILITATION AND PREVENTION ACCOUNT; DEDICATING CERTAIN FINES AND
7 PENALTIES TO THE ACCOUNT; DEDICATING CERTAIN UNCLAIMED OR EXCESS RECLAMATION BOND
8 FUNDS TO THE ACCOUNT OR TO MINING AND RECLAMATION ACCOUNTS; PROVIDING THAT FUNDS
9 BE APPROPRIATED TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR CERTAIN PURPOSES;
10 AMENDING SECTIONS 70-9-301, 75-2-412, 75-2-413, 75-2-427, 75-3-407, 75-5-634, 75-6-109,
11 75-6-114, 75-10-417, 75-10-418, 75-10-423, 75-10-424, 75-10-542, 82-4-141, 82-4-241, 82-4-311,
12 82-4-424, AND 82-4-426, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."
13

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

16 **NEW SECTION. Section 1. Environmental rehabilitation and prevention account.** (1) There is an
17 environmental rehabilitation and prevention account in the state special revenue fund provided for in
18 17-2-102.

19 (2) There must be deposited in the account:

20 (a) fine and penalty money received pursuant to 75-2-412, 75-2-413, 75-2-427, 75-3-407,
21 75-5-634, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-423, 75-10-424, 75-10-542, 82-4-141, and
22 82-4-241;

23 (b) unclaimed or excess reclamation bond money received pursuant to 82-4-141 and 82-4-241;
24 and

25 (c) interest earned on the account.

26 (3) Money in the account is available to the department of environmental quality by appropriation
27 and must be used to pay for:

28 (a) reclamation of unreclaimed mine lands for which the department may not require reclamation
29 by, or obtain costs of reclamation from, a legally responsible party;

30 (b) remediation of sites containing hazardous wastes or hazardous substances for which the

1 department may not recover costs from a legally responsible party;

2 (c) response to an imminent threat of substantial harm to the environment, to public health, or to
3 public safety for which no funding or insufficient funding is available pursuant to 75-1-1101; OR

4 ~~(d) experiments designed to improve reclamation or environmental compliance technology; or~~

5 ~~(e)(D)~~ environmental compliance education and training of nongovernmental persons.

6 (4) Whenever the penalties and abandoned bond money deposited in the environmental
7 rehabilitation and prevention account during a fiscal year exceed \$250,000, the amount deposited in the
8 account during the fiscal year in excess of \$250,000 must, at the end of the fiscal year, be transferred to
9 the general fund.

10

11 **NEW SECTION. Section 2. Environmental rehabilitation and prevention account.** (1) There is an
12 environmental rehabilitation and prevention account in the state special revenue fund provided for in
13 17-2-102.

14 (2) There must be deposited in the account:

15 (a) fine and penalty money received pursuant to 75-2-412, 75-2-413, 75-2-427, 75-3-407,
16 75-5-634, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-423, 75-10-424, 75-10-542, 82-4-141, and
17 82-4-241;

18 (b) unclaimed or excess reclamation bond money received pursuant to 82-4-141 and 82-4-241;
19 and

20 (c) interest earned on the account.

21 (3) Money in the account is available to the department of environmental quality by appropriation
22 and must be used to pay for:

23 (a) reclamation of unreclaimed mine lands for which the department may not require reclamation
24 by, or obtain costs of reclamation from, a legally responsible party;

25 (b) remediation of sites containing hazardous wastes or hazardous substances for which the
26 department may not recover costs from a legally responsible party;

27 (c) response to an imminent threat of substantial harm to the environment, to public health, or to
28 public safety for which no funding or insufficient funding is available pursuant to 75-1-1101;

29 (d) experiments designed to improve reclamation or environmental compliance technology; or

30 (e) environmental compliance education and training of nongovernmental persons.

1 (4) Whenever penalties and abandoned bond money deposited in the environmental rehabilitation
2 and prevention account during a fiscal year exceed \$250,000, the amount deposited in the account during
3 the fiscal year in excess of \$250,000 must, at the end of the fiscal year, be placed in the orphan share
4 account in the state special revenue fund.

5
6 **Section 3.** Section 70-9-301, MCA, is amended to read:

7 **"70-9-301. Report of abandoned property -- duty to prevent abandonment prior to filing.** (1)
8 Except as provided in 70-9-203(2), 82-4-241, 82-4-311, and 82-4-424, a person holding money or other
9 property, tangible or intangible, presumed abandoned under parts 1 through 3 shall report the property to
10 the department as provided in this part.

11 (2) The report must be verified and must include:

12 (a) except with respect to travelers' checks and money orders, the name, if known, and the
13 last-known address, if any, of each person appearing from the records of the holder to be the owner of any
14 property of value of \$25 or more presumed abandoned under parts 1 through 3;

15 (b) in case of unclaimed money of life insurance corporations, the full name of the insured or
16 annuitant and the last-known address according to the life insurance corporation's records;

17 (c) the nature and identifying number, if any, or description of the property and the amount
18 appearing from the records to be due. Items less than \$25 of value each may be reported in aggregate.

19 (d) the date when the property became payable, demandable, or returnable and the date of the last
20 transaction with the owner with respect to the property; and

21 (e) other information that the department prescribes by rule as necessary for the administration of
22 parts 1 through 3.

23 (3) If the person holding property presumed abandoned is a successor to other persons who
24 previously held the property for the owner or if the holder's name has changed while holding the property,
25 the holder shall file with the report all prior known names and addresses of each holder of the property.

26 (4) The report must be filed before November 1 every year as of the preceding June 30, but the
27 reports of life insurance corporations, banking and financial organizations, and cooperatives must be filed
28 before May 1 of each year as of the preceding December 31. The department may postpone the reporting
29 date upon written request by any person required to file a report. The department shall furnish forms for
30 this report.

1 (5) Not more than 120 days before filing the report required by this section, the holder in
 2 possession of property presumed abandoned and subject to custody as unclaimed property under parts 1
 3 through 3 shall send written notice to the apparent owner at the last-known address informing the apparent
 4 owner that the holder is in possession of property subject to this chapter if:

5 (a) the holder has in the holder's records an address for the apparent owner that the holder's
 6 records do not disclose to be inaccurate;

7 (b) the claim of the apparent owner is not barred by the statute of limitations; and

8 (c) the property has a value of \$100 or more.

9 (6) Verification if made by a partnership must be executed by a partner; if made by an
 10 unincorporated association or private corporation, by an officer; and if made by a public corporation, by
 11 its chief fiscal officer."

12
 13 **Section 4.** Section 75-2-412, MCA, is amended to read:

14 **"75-2-412. Criminal penalties -- injunction preserved.** (1) A person is guilty of an offense under
 15 this section if that person knowingly:

16 (a) violates a provision of this chapter or a rule, order, or permit made or issued under this chapter;

17 (b) makes a false material statement, representation, or certification on a form required under this
 18 chapter or in a notice or report required by a permit under this chapter; or

19 (c) renders inaccurate a monitoring device or method required under this chapter.

20 (2) A person guilty of an offense under subsection (1) is subject to a fine of not more than \$10,000
 21 per violation or imprisonment for a period not to exceed 2 years, or both. This offense must be classified
 22 as a misdemeanor. Each day of each violation constitutes a separate violation.

23 (3) Fines collected under this section, except fines collected by an approved local air pollution
 24 control program, must be deposited in the environmental rehabilitation and prevention account in the state
 25 general special revenue fund.

26 (4) Action under this section is not a bar to enforcement of this chapter or of a rule, order, or
 27 permit made or issued under it by injunction or other appropriate civil or administrative remedy. The
 28 department may institute and maintain in the name of the state any enforcement proceedings."

29
 30 **Section 5.** Section 75-2-413, MCA, is amended to read:

1 **"75-2-413. Civil penalties -- out-of-state litigants -- effect of action -- presumption of continuing**
2 **violation under certain circumstances.** (1) A person who violates any provision of this chapter, a rule
3 adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil
4 penalty not to exceed \$10,000 per violation. Each day of each violation constitutes a separate violation.
5 The department may institute and maintain in the name of the state any enforcement proceedings under
6 this section. Upon request of the department, the attorney general or the county attorney of the county
7 of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty
8 is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the
9 operating permit program required by Subchapter V of the federal Clean Air Act.

10 (2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order,
11 or permit made or issued under this chapter by injunction or other appropriate civil remedies.

12 (b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or
13 issued under this chapter may be brought in the district court of any county where a violation occurs or
14 is threatened if the defendant cannot be located in Montana.

15 (3) If the department has notified a person operating a commercial hazardous waste incinerator of
16 a violation and if the department makes a prima facie showing that the conduct or events giving rise to the
17 violations are likely to have continued or recurred past the date of notice, the days of violation are
18 presumed to include the date of the notice and every day after the notice until the person establishes that
19 continuous compliance has been achieved. This presumption may be overcome to the extent that the
20 person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that
21 there were intervening days when a violation did not occur, that the violation was not continuing in nature,
22 or that the telemetering device was compromised or otherwise tampered with.

23 (4) Money collected under this section must be deposited in the state ~~general~~ special revenue fund
24 and credited to the environmental rehabilitation and prevention account. This subsection does not apply
25 to money collected by an approved local air pollution control program."

26
27 **Section 6.** Section 75-2-427, MCA, is amended to read:

28 **"75-2-427. Deposit of noncompliance penalty fees.** All noncompliance penalties collected by the
29 department pursuant to 75-2-421 through 75-2-429 ~~shall~~ must be deposited in the state special revenue
30 fund until a final determination and adjustment have been made as provided in 75-2-424 and amounts have

1 been deducted by the department for costs attributable to implementation of 75-2-421 through 75-2-429
 2 and for contract costs incurred pursuant to 75-2-422(3), if any. After a final determination has been made
 3 and additional payments or refunds have been made, the penalty money remaining ~~shall~~ must be transferred
 4 to the environmental rehabilitation and prevention account in the state ~~general~~ special revenue fund."

5
 6 **Section 7.** Section 75-3-407, MCA, is amended to read:

7 **"75-3-407. Civil penalties -- deposit in ~~general~~ state special revenue fund -- injunctions not barred.**

8 (1) A person who violates this chapter or a rule or order issued under this chapter is subject to a civil
 9 penalty not to exceed \$5,000 for each violation. For purposes of this section, each day of a violation is a
 10 separate violation.

11 (2) The department shall initiate civil proceedings in district court to recover a penalty under
 12 subsection (1).

13 (3) Civil penalties collected under this section must be deposited in the ~~general~~ environmental
 14 rehabilitation and prevention account in the state special revenue fund.

15 (4) An action under this section does not bar enforcement of this chapter or of rules or orders
 16 issued under ~~it~~ this chapter by injunction or other appropriate remedy."

17
 18 **Section 8.** Section 75-5-634, MCA, is amended to read:

19 **"75-5-634. Disposition of fines and civil penalties.** Fines and civil penalties collected under this
 20 chapter, except those collected in a justice's court, must be deposited into the environmental rehabilitation
 21 and prevention account in the state ~~general~~ special revenue fund."

22
 23 **Section 9.** Section 75-6-109, MCA, is amended to read:

24 **"75-6-109. Administrative enforcement.** (1) If the department believes that a violation of this part,
 25 a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve
 26 written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice
 27 must specify the provision of this part, the rule, or the condition of approval alleged to have been violated
 28 and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective
 29 action within a reasonable period of time. The time period must be stated in the order. Service by mail is
 30 complete on the date of filing.

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

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

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

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

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

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

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

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

15 (6) An action initiated under this part may include an administrative penalty not to exceed \$500
16 for each day of violation. Administrative penalties collected under this section must be deposited in the
17 environmental rehabilitation and prevention account in the state general special revenue fund.

18 (7) In determining the amount of penalty to be assessed to a person, the department or the board,
19 as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under
20 75-6-103(2)(j).

21 (8) The contested case provisions of the Montana Administrative Procedure Act, provided for in
22 Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."
23

24 **Section 10.** Section 75-6-114, MCA, is amended to read:

25 **"75-6-114. Civil penalty.** (1) In an action initiated by the department to collect civil penalties
26 against a person who is found to have violated this part or a rule, order, or condition of approval issued
27 under this part, the person is subject to a civil penalty not to exceed \$10,000.

28 (2) Each day of violation constitutes a separate violation.

29 (3) Action under this section does not bar enforcement of this part or a rule, order, or condition
30 of approval issued under this part by injunction or other appropriate remedy.

1 (4) When seeking penalties under this section, the department shall take into account the following
2 factors in determining an appropriate settlement or judgment, as appropriate:

3 (a) the nature, circumstances, extent, and gravity of the violation; and

4 (b) with respect to the violator, the violator's ability to pay, prior history of violations, the economic
5 benefit or savings, if any, to the violator resulting from the violator's action, the amounts voluntarily
6 expended by the violator to address or mitigate the violation or impacts of the violation to waters of the
7 state, and other matters that justice may require.

8 (5) Civil penalties collected pursuant to this section must be deposited in the environmental
9 rehabilitation and prevention account in the state ~~general~~ special revenue fund."

10
11 **Section 11.** Section 75-10-417, MCA, is amended to read:

12 **"75-10-417. Civil penalties.** (1) Any person who violates any provision of this part, a rule adopted
13 under this part, an order of the department or the board, or a permit is subject to a civil penalty not to
14 exceed \$10,000 per violation. Each day of violation constitutes a separate violation.

15 (2) The department may institute and maintain in the name of the state any enforcement
16 proceedings under this section. Upon request of the department, the attorney general or the county
17 attorney of the county of violation shall petition the district court to impose, assess, and recover the civil
18 penalty.

19 (3) Action under this section does not bar:

20 (a) enforcement of this part, rules adopted under this part, orders of the department or the board,
21 or permits by injunction or other appropriate remedy; or

22 (b) action under 75-10-418.

23 (4) Money collected under this section ~~shall~~ must be deposited in the environmental rehabilitation
24 and prevention account in the state ~~general~~ special revenue fund."

25
26 **Section 12.** Section 75-10-418, MCA, is amended to read:

27 **"75-10-418. Criminal penalties.** (1) A person is guilty of an offense under this section if the person
28 knowingly:

29 (a) transports any hazardous waste to an unpermitted facility;

30 (b) treats, stores, or disposes of hazardous waste subject to regulation under this part or the rules

1 adopted under this part without a permit or contrary to a material permit condition;

2 (c) omits material information or makes any false statement or representation in any application,
3 label, manifest, record, report, permit, or other document filed, maintained, or used for compliance with
4 provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste;

5 (d) generates, stores, treats, transports, disposes of, or otherwise handles any used oil or
6 hazardous waste regulated under this part or rules adopted under this part and knowingly destroys, alters,
7 conceals, or fails to file any record, application, manifest, report, or other document required to be
8 maintained or filed in compliance with the provisions of this part, an order issued under this part, or rules
9 adopted under this part; or

10 (e) transports or causes to be transported without a manifest any hazardous waste required to be
11 accompanied by a manifest.

12 (2) A person who is guilty of an offense under subsection (1) is subject to a fine of not more than
13 \$25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation
14 constitutes a separate violation.

15 (3) A person who knowingly violates any requirement of this part or any rule or material permit
16 condition issued pursuant to this part (except those violations specified in subsection (1)) regarding any
17 hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to \$5,000
18 per violation or subject to imprisonment not to exceed 6 months, or both. Each day of violation constitutes
19 a separate violation.

20 (4) Upon a second conviction for a violation of this section, the maximum penalties specified in this
21 section must be doubled.

22 (5) Action under this section does not bar enforcement of this part, rules made under this part,
23 orders of the department or the board, or permits by injunction or other appropriate remedy.

24 (6) Money collected under this section, except money collected in a justice's court, must be
25 deposited in the environmental rehabilitation and prevention account in the state general special revenue
26 fund."

27

28 **Section 13.** Section 75-10-423, MCA, is amended to read:

29 **"75-10-423. Administrative penalties for underground storage tank violations -- appeals -- venue**
30 **for hearings.** (1) A person who violates any of the underground storage tank provisions of this chapter or

1 any underground storage tank rules promulgated under the authority of this chapter may be assessed and
2 ordered by the department to pay an administrative penalty not to exceed \$500 per violation. This limitation
3 on administrative penalties applies only to penalties assessed under this section. Each occurrence of the
4 violation and each day it remains uncorrected constitutes a separate violation. The department may suspend
5 a portion of the administrative penalty assessed under this section if the condition that caused the
6 assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty
7 under this section may be made in conjunction with any order or other administrative action authorized by
8 Title 75, chapter 11, or by this chapter.

9 (2) When the department assesses an administrative penalty under this section, it must have
10 written notice served personally or by certified mail on the alleged violator or the violator's agent. For
11 purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

12 (a) the provision alleged to be violated;

13 (b) the facts alleged to constitute the violation;

14 (c) the amount of the administrative penalty assessed under this section;

15 (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused
16 the assessment of the penalty;

17 (e) the nature of any corrective action the department requires, whether or not a portion of the
18 penalty is to be suspended;

19 (f) as applicable, the time within which the corrective action is to be taken and the time within
20 which the administrative penalty is to be paid;

21 (g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and
22 nature of any hearing; and

23 (h) that a formal proceeding may be waived.

24 (3) The department shall provide each person assessed a penalty under this section an opportunity
25 for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case
26 provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply
27 to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis
28 and Clark County or the county where the alleged violation occurred. This subsection does not apply until
29 the department gives written notice, served personally or by certified mail, to the alleged violator or the
30 violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt. The

1 notice must state:

2 (a) the provision allegedly violated;

3 (b) the facts that constitute the alleged violation;

4 (c) the specific nature of any corrective action the department requires, estimated costs of
5 compliance with the action, and where to receive help to correct the alleged violation; and

6 (d) a timetable that a reasonable person would consider appropriate for compliance with the alleged
7 violations.

8 (4) The department shall publish a schedule of maximum and minimum penalties for specific
9 violations. In determining appropriate penalties for violations, the department shall consider the gravity of
10 the violations and the potential for significant harm to public health or the environment. In determining the
11 appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the
12 penalty assessment, the department shall consider the cooperation and the degree of care exercised by the
13 person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm
14 resulted to the public health or the environment from the violation.

15 (5) If the department is unable to collect an administrative penalty assessed under this section or
16 if a person fails to pay all or any portion of an administrative penalty assessed under this section, the
17 department may take action in district court to recover the penalty amount and any additional amounts
18 assessed or sought under Title 75, chapter 11, or this chapter.

19 (6) Action under this section does not bar action under Title 75, chapter 11, or this chapter, or any
20 other remedy available to the department for violations of underground storage tank laws or rules
21 promulgated under those laws.

22 (7) Administrative penalties collected under this section must be deposited in the environmental
23 rehabilitation and prevention account in the state ~~general~~ special revenue fund."

24

25 **Section 14.** Section 75-10-424, MCA, is amended to read:

26 **"75-10-424. Administrative penalty.** (1) The department may assess a person who violates a used
27 oil or hazardous waste provision of this part, or a used oil or hazardous waste rule adopted under this part,
28 an administrative penalty, not to exceed \$10,000 per violation. Each day of violation constitutes a separate
29 violation, but the maximum penalty may not exceed \$100,000 for any related series of violations.
30 Assessment of an administrative penalty under this section must be made in conjunction with an order or

1 administrative action authorized by this chapter.

2 (2) An administrative penalty may not be assessed under this section unless the alleged violator
3 is given notice and opportunity for a hearing before the board pursuant to Title 2, chapter 4, part 6.

4 (3) In determining the appropriate amount of an administrative penalty, the department shall
5 consider:

6 (a) the gravity and the number of violations;

7 (b) the degree of care exercised by the alleged violator;

8 (c) whether significant harm resulted to public health or the environment; and

9 (d) the degree of potential significant harm to public health or the environment.

10 (4) If the department is unable to collect the administrative penalty or if a person fails to pay all
11 or any portion of the administrative penalty as determined by the department, the department may seek
12 to recover the amount in an appropriate district court.

13 (5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other
14 appropriate remedy.

15 (6) Administrative penalties collected under this section must be deposited in the environmental
16 rehabilitation and prevention account in the state ~~general~~ special revenue fund."

17

18 **Section 15.** Section 75-10-542, MCA, is amended to read:

19 "**75-10-542. Penalties.** (1) A person who willfully violates this part, except 75-10-520, is guilty
20 of a misdemeanor and upon conviction shall be fined not to exceed \$250, imprisoned in the county jail for
21 a term not to exceed 30 days, or both.

22 (2) A person who violates this part, except 75-10-520, a rule of the department, or an order issued
23 as provided in this part shall be subject to a civil penalty of not more than \$50. Each day upon which a
24 violation of this part or a rule or order occurs is a separate violation.

25 (3) Civil penalties collected under this section must be deposited in the environmental rehabilitation
26 and prevention account in the state special revenue fund."

27

28 **Section 16.** Section 82-4-141, MCA, is amended to read:

29 "**82-4-141. Violation -- penalty.** (1) A person or operator who violates any of the provisions of this
30 part or rules or orders adopted under this part shall pay a civil penalty of not less than \$100 or more than

1 \$1,000 for the violation and an additional civil penalty of not less than \$100 or more than \$1,000 for each
 2 day during which a violation continues and may be enjoined from continuing ~~such the~~ violations as provided
 3 in this section. These penalties ~~shall~~ must be recoverable in any action brought in the name of the state of
 4 Montana by the attorney general in the district court of the first judicial district of this state in and for the
 5 county of Lewis and Clark or in the district court having jurisdiction of the defendant.

6 (2) The attorney general shall, upon the request of the director, sue for the recovery of the
 7 penalties provided for in this section and bring an action for a restraining order, temporary or permanent
 8 injunction against an operator or other person violating or threatening to violate an order adopted under this
 9 part.

10 (3) A person who willfully violates any of the provisions of this part or any determination or order
 11 adopted under this part which has become final is guilty of a misdemeanor and shall be fined not less than
 12 \$500 and not more than \$5,000. Each day on which a violation occurs constitutes a separate offense.

13 (4) Civil penalties collected under this section must be deposited in the environmental rehabilitation
 14 and prevention account in the state special revenue fund."

15
 16 **Section 17.** Section 82-4-241, MCA, is amended to read:

17 "**82-4-241. Receipts paid into general and state special revenue fund funds.** (1) ~~Except for bond~~
 18 ~~forfeiture moneys~~ as provided in this section, all fees, penalties, and other moneys money available or paid
 19 to the department under the provisions of this part ~~shall~~ must be placed in the state treasury and credited
 20 to the general fund.

21 (2) Civil penalties paid to the department under 82-4-254 must be placed in the environmental
 22 rehabilitation and prevention account in the state special revenue fund.

23 (3) Bond forfeiture money must be used to pay for expenses that the department incurs pursuant
 24 to 82-4-240.

25 (4) Funds held by the department as bond or as a result of bond forfeiture that are no longer
 26 needed for reclamation, that are unclaimed under 70-9-207, and for which the department is not able to
 27 locate an owner after diligent search must be deposited in the state special revenue fund and credited to
 28 the environmental rehabilitation and prevention account."

29
 30 **Section 18.** Section 82-4-311, MCA, is amended to read:

1 **"82-4-311. Hard-rock mining and reclamation account.** All fees, fines, penalties, and other
 2 uncleared money that has been or will be paid to the department under the provisions of this part must be
 3 placed in the state special revenue fund in the state treasury and credited to a special account that is
 4 designated as the hard-rock mining and reclamation account. Funds held by the department as bond or as
 5 a result of bond forfeiture that are no longer needed for reclamation, that are unclaimed under 70-9-207,
 6 and for which the department is not able to locate an owner after diligent search must be deposited in the
 7 account. This account is available to the department by appropriation and may be expended for the
 8 research, reclamation, and revegetation of land and the rehabilitation of water affected by any mining
 9 operations. Any unencumbered and any unexpended balance of this account remaining at the end of a fiscal
 10 year does not lapse but must be carried forward for the purposes of this section until expended or until
 11 appropriated by subsequent legislative action."

12

13 **Section 19.** Section 82-4-424, MCA, is amended to read:

14 **"82-4-424. Receipt and expenditure of funds.** (1) The department may receive any federal funds,
 15 state funds, or any other funds for the reclamation of land affected by opencut mining. The department may
 16 cause the reclamation work to be done by its employees, by employees of other governmental agencies,
 17 by soil conservation districts, or through contracts with qualified persons.

18 (2) Any funds of any public works programs available to the department must be expended and
 19 used to reclaim and rehabilitate any lands that have been subject to opencut mining and that have not been
 20 reclaimed and rehabilitated in accordance with the standards of this part.

21 (3) There is an opencut mining and reclamation account within the state special revenue fund
 22 established in 17-2-102. There must be deposited in the account all fees, fines, penalties, and other money
 23 that have been or will be paid under the provisions of this part. Funds held by the department as bond or
 24 as a result of bond forfeiture that are no longer needed for reclamation, that are unclaimed under 70-9-207,
 25 and for which the department is not able to locate an owner after diligent search, must be deposited in the
 26 account. The money in the account is available to the department through appropriation and must be spent
 27 by the department for the reclamation and revegetation of land, research pertaining to the reclamation and
 28 revegetation of land, and the rehabilitation of water affected by opencut mining operations and for
 29 administration of this part. Any unspent or unencumbered money in the account at the end of a fiscal year
 30 must remain in the account until spent or appropriated by the legislature."

HOUSE BILL NO. 284

INTRODUCED BY OHS, KNOX, CURTISS, RANEY, HARPER, TASH, MERCER, BEAUDRY, HOLLAND,
SWYSGOOD

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING IN THE STATE SPECIAL REVENUE FUND AN ENVIRONMENTAL REHABILITATION AND PREVENTION ACCOUNT; DEDICATING CERTAIN FINES AND PENALTIES TO THE ACCOUNT; DEDICATING CERTAIN UNCLAIMED OR EXCESS RECLAMATION BOND FUNDS TO THE ACCOUNT OR TO MINING AND RECLAMATION ACCOUNTS; PROVIDING THAT FUNDS BE APPROPRIATED TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR CERTAIN PURPOSES; AMENDING SECTIONS 70-9-301, 75-2-412, 75-2-413, 75-2-427, 75-3-407, 75-5-634, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-423, 75-10-424, 75-10-542, 82-4-141, 82-4-241, 82-4-311, 82-4-424, AND 82-4-426, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

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

NEW SECTION. **Section 1. Environmental rehabilitation and prevention account.** (1) There is an environmental rehabilitation and prevention account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) fine and penalty money received pursuant to 75-2-412, 75-2-413, 75-2-427, 75-3-407, 75-5-634, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-423, 75-10-424, 75-10-542, 82-4-141, and 82-4-241;

(b) unclaimed or excess reclamation bond money received pursuant to 82-4-141 and 82-4-241; and

(c) interest earned on the account.

(3) Money in the account is available to the department of environmental quality by appropriation and must be used to pay for:

(a) reclamation of unreclaimed mine lands for which the department may not require reclamation by, or obtain costs of reclamation from, a legally responsible party;

(b) remediation of sites containing hazardous wastes or hazardous substances for which the

1 department may not recover costs from a legally responsible party;

2 (c) response to an imminent threat of substantial harm to the environment, to public health, or to
3 public safety for which no funding or insufficient funding is available pursuant to 75-1-1101; OR

4 ~~(d) experiments designed to improve reclamation or environmental compliance technology; or~~

5 ~~(e)~~ (D) environmental compliance education and training of nongovernmental persons.

6 (4) Whenever the penalties and abandoned bond money deposited in the environmental
7 rehabilitation and prevention account during a fiscal year exceed \$250,000, the amount deposited in the
8 account during the fiscal year in excess of \$250,000 must, at the end of the fiscal year, be transferred to
9 the general fund.

10

11 NEW SECTION. Section 2. Environmental rehabilitation and prevention account. (1) There is an
12 environmental rehabilitation and prevention account in the state special revenue fund provided for in
13 17-2-102.

14 (2) There must be deposited in the account:

15 (a) fine and penalty money received pursuant to 75-2-412, 75-2-413, 75-2-427, 75-3-407,
16 75-5-634, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-423, 75-10-424, 75-10-542, 82-4-141, and
17 82-4-241;

18 (b) unclaimed or excess reclamation bond money received pursuant to 82-4-141 and 82-4-241;
19 and

20 (c) interest earned on the account.

21 (3) Money in the account is available to the department of environmental quality by appropriation
22 and must be used to pay for:

23 (a) reclamation of unreclaimed mine lands for which the department may not require reclamation
24 by, or obtain costs of reclamation from, a legally responsible party;

25 (b) remediation of sites containing hazardous wastes or hazardous substances for which the
26 department may not recover costs from a legally responsible party;

27 (c) response to an imminent threat of substantial harm to the environment, to public health, or to
28 public safety for which no funding or insufficient funding is available pursuant to 75-1-1101;

29 (d) experiments designed to improve reclamation or environmental compliance technology; or

30 (e) environmental compliance education and training of nongovernmental persons.

1 (4) Whenever penalties and abandoned bond money deposited in the environmental rehabilitation
2 and prevention account during a fiscal year exceed \$250,000, the amount deposited in the account during
3 the fiscal year in excess of \$250,000 must, at the end of the fiscal year, be placed in the orphan share
4 account in the state special revenue fund.

5
6 **Section 3.** Section 70-9-301, MCA, is amended to read:

7 **"70-9-301. Report of abandoned property -- duty to prevent abandonment prior to filing.** (1)
8 Except as provided in 70-9-203(2), 82-4-241, 82-4-311, and 82-4-424, a person holding money or other
9 property, tangible or intangible, presumed abandoned under parts 1 through 3 shall report the property to
10 the department as provided in this part.

11 (2) The report must be verified and must include:

12 (a) except with respect to travelers' checks and money orders, the name, if known, and the
13 last-known address, if any, of each person appearing from the records of the holder to be the owner of any
14 property of value of \$25 or more presumed abandoned under parts 1 through 3;

15 (b) in case of unclaimed money of life insurance corporations, the full name of the insured or
16 annuitant and the last-known address according to the life insurance corporation's records;

17 (c) the nature and identifying number, if any, or description of the property and the amount
18 appearing from the records to be due. Items less than \$25 of value each may be reported in aggregate.

19 (d) the date when the property became payable, demandable, or returnable and the date of the last
20 transaction with the owner with respect to the property; and

21 (e) other information that the department prescribes by rule as necessary for the administration of
22 parts 1 through 3.

23 (3) If the person holding property presumed abandoned is a successor to other persons who
24 previously held the property for the owner or if the holder's name has changed while holding the property,
25 the holder shall file with the report all prior known names and addresses of each holder of the property.

26 (4) The report must be filed before November 1 every year as of the preceding June 30, but the
27 reports of life insurance corporations, banking and financial organizations, and cooperatives must be filed
28 before May 1 of each year as of the preceding December 31. The department may postpone the reporting
29 date upon written request by any person required to file a report. The department shall furnish forms for
30 this report.

1 (5) Not more than 120 days before filing the report required by this section, the holder in
2 possession of property presumed abandoned and subject to custody as unclaimed property under parts 1
3 through 3 shall send written notice to the apparent owner at the last-known address informing the apparent
4 owner that the holder is in possession of property subject to this chapter if:

5 (a) the holder has in the holder's records an address for the apparent owner that the holder's
6 records do not disclose to be inaccurate;

7 (b) the claim of the apparent owner is not barred by the statute of limitations; and

8 (c) the property has a value of \$100 or more.

9 (6) Verification if made by a partnership must be executed by a partner; if made by an
10 unincorporated association or private corporation, by an officer; and if made by a public corporation, by
11 its chief fiscal officer."

12
13 **Section 4.** Section 75-2-412, MCA, is amended to read:

14 **"75-2-412. Criminal penalties -- injunction preserved.** (1) A person is guilty of an offense under
15 this section if that person knowingly:

16 (a) violates a provision of this chapter or a rule, order, or permit made or issued under this chapter;

17 (b) makes a false material statement, representation, or certification on a form required under this
18 chapter or in a notice or report required by a permit under this chapter; or

19 (c) renders inaccurate a monitoring device or method required under this chapter.

20 (2) A person guilty of an offense under subsection (1) is subject to a fine of not more than \$10,000
21 per violation or imprisonment for a period not to exceed 2 years, or both. This offense must be classified
22 as a misdemeanor. Each day of each violation constitutes a separate violation.

23 (3) Fines collected under this section, except fines collected by an approved local air pollution
24 control program, must be deposited in the environmental rehabilitation and prevention account in the state
25 general special revenue fund.

26 (4) Action under this section is not a bar to enforcement of this chapter or of a rule, order, or
27 permit made or issued under it by injunction or other appropriate civil or administrative remedy. The
28 department may institute and maintain in the name of the state any enforcement proceedings."

29
30 **Section 5.** Section 75-2-413, MCA, is amended to read:

1 **"75-2-413. Civil penalties -- out-of-state litigants -- effect of action -- presumption of continuing**
2 **violation under certain circumstances.** (1) A person who violates any provision of this chapter, a rule
3 adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil
4 penalty not to exceed \$10,000 per violation. Each day of each violation constitutes a separate violation.
5 The department may institute and maintain in the name of the state any enforcement proceedings under
6 this section. Upon request of the department, the attorney general or the county attorney of the county
7 of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty
8 is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the
9 operating permit program required by Subchapter V of the federal Clean Air Act.

10 (2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order,
11 or permit made or issued under this chapter by injunction or other appropriate civil remedies.

12 (b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or
13 issued under this chapter may be brought in the district court of any county where a violation occurs or
14 is threatened if the defendant cannot be located in Montana.

15 (3) If the department has notified a person operating a commercial hazardous waste incinerator of
16 a violation and if the department makes a prima facie showing that the conduct or events giving rise to the
17 violations are likely to have continued or recurred past the date of notice, the days of violation are
18 presumed to include the date of the notice and every day after the notice until the person establishes that
19 continuous compliance has been achieved. This presumption may be overcome to the extent that the
20 person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that
21 there were intervening days when a violation did not occur, that the violation was not continuing in nature,
22 or that the telemetering device was compromised or otherwise tampered with.

23 (4) Money collected under this section must be deposited in the state ~~general~~ special revenue fund
24 and credited to the environmental rehabilitation and prevention account. This subsection does not apply
25 to money collected by an approved local air pollution control program."
26

27 **Section 6.** Section 75-2-427, MCA, is amended to read:

28 **"75-2-427. Deposit of noncompliance penalty fees.** All noncompliance penalties collected by the
29 department pursuant to 75-2-421 through 75-2-429 ~~shall~~ must be deposited in the state special revenue
30 fund until a final determination and adjustment have been made as provided in 75-2-424 and amounts have

1 been deducted by the department for costs attributable to implementation of 75-2-421 through 75-2-429
2 and for contract costs incurred pursuant to 75-2-422(3), if any. After a final determination has been made
3 and additional payments or refunds have been made, the penalty money remaining ~~shall~~ must be transferred
4 to the environmental rehabilitation and prevention account in the state ~~general~~ special revenue fund."

5

6 **Section 7.** Section 75-3-407, MCA, is amended to read:

7 **"75-3-407. Civil penalties -- deposit in ~~general~~ state special revenue fund -- injunctions not barred.**

8 (1) A person who violates this chapter or a rule or order issued under this chapter is subject to a civil
9 penalty not to exceed \$5,000 for each violation. For purposes of this section, each day of a violation is a
10 separate violation.

11 (2) The department shall initiate civil proceedings in district court to recover a penalty under
12 subsection (1).

13 (3) Civil penalties collected under this section must be deposited in the ~~general~~ environmental
14 rehabilitation and prevention account in the state special revenue fund.

15 (4) An action under this section does not bar enforcement of this chapter or of rules or orders
16 issued under ~~it~~ this chapter by injunction or other appropriate remedy."

17

18 **Section 8.** Section 75-5-634, MCA, is amended to read:

19 **"75-5-634. Disposition of fines and civil penalties.** Fines and civil penalties collected under this
20 chapter, except those collected in a justice's court, must be deposited into the environmental rehabilitation
21 and prevention account in the state ~~general~~ special revenue fund."

22

23 **Section 9.** Section 75-6-109, MCA, is amended to read:

24 **"75-6-109. Administrative enforcement.** (1) If the department believes that a violation of this part,
25 a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve
26 written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice
27 must specify the provision of this part, the rule, or the condition of approval alleged to have been violated
28 and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective
29 action within a reasonable period of time. The time period must be stated in the order. Service by mail is
30 complete on the date of filing.

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

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

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

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

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

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

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

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

15 (6) An action initiated under this part may include an administrative penalty not to exceed \$500
16 for each day of violation. Administrative penalties collected under this section must be deposited in the
17 environmental rehabilitation and prevention account in the state ~~general~~ special revenue fund.

18 (7) In determining the amount of penalty to be assessed to a person, the department or the board,
19 as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under
20 75-6-103(2)(j).

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

23
24 **Section 10.** Section 75-6-114, MCA, is amended to read:

25 "75-6-114. **Civil penalty.** (1) In an action initiated by the department to collect civil penalties
26 against a person who is found to have violated this part or a rule, order, or condition of approval issued
27 under this part, the person is subject to a civil penalty not to exceed \$10,000.

28 (2) Each day of violation constitutes a separate violation.

29 (3) Action under this section does not bar enforcement of this part or a rule, order, or condition
30 of approval issued under this part by injunction or other appropriate remedy.

1 (4) When seeking penalties under this section, the department shall take into account the following
2 factors in determining an appropriate settlement or judgment, as appropriate:

3 (a) the nature, circumstances, extent, and gravity of the violation; and

4 (b) with respect to the violator, the violator's ability to pay, prior history of violations, the economic
5 benefit or savings, if any, to the violator resulting from the violator's action, the amounts voluntarily
6 expended by the violator to address or mitigate the violation or impacts of the violation to waters of the
7 state, and other matters that justice may require.

8 (5) Civil penalties collected pursuant to this section must be deposited in the environmental
9 rehabilitation and prevention account in the state ~~general~~ special revenue fund."

10

11 **Section 11.** Section 75-10-417, MCA, is amended to read:

12 "**75-10-417. Civil penalties.** (1) Any person who violates any provision of this part, a rule adopted
13 under this part, an order of the department or the board, or a permit is subject to a civil penalty not to
14 exceed \$10,000 per violation. Each day of violation constitutes a separate violation.

15 (2) The department may institute and maintain in the name of the state any enforcement
16 proceedings under this section. Upon request of the department, the attorney general or the county
17 attorney of the county of violation shall petition the district court to impose, assess, and recover the civil
18 penalty.

19 (3) Action under this section does not bar:

20 (a) enforcement of this part, rules adopted under this part, orders of the department or the board,
21 or permits by injunction or other appropriate remedy; or

22 (b) action under 75-10-418.

23 (4) Money collected under this section ~~shall~~ must be deposited in the environmental rehabilitation
24 and prevention account in the state ~~general~~ special revenue fund."

25

26 **Section 12.** Section 75-10-418, MCA, is amended to read:

27 "**75-10-418. Criminal penalties.** (1) A person is guilty of an offense under this section if the person
28 knowingly:

29 (a) transports any hazardous waste to an unpermitted facility;

30 (b) treats, stores, or disposes of hazardous waste subject to regulation under this part or the rules

1 adopted under this part without a permit or contrary to a material permit condition;

2 (c) omits material information or makes any false statement or representation in any application,
3 label, manifest, record, report, permit, or other document filed, maintained, or used for compliance with
4 provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste;

5 (d) generates, stores, treats, transports, disposes of, or otherwise handles any used oil or
6 hazardous waste regulated under this part or rules adopted under this part and knowingly destroys, alters,
7 conceals, or fails to file any record, application, manifest, report, or other document required to be
8 maintained or filed in compliance with the provisions of this part, an order issued under this part, or rules
9 adopted under this part; or

10 (e) transports or causes to be transported without a manifest any hazardous waste required to be
11 accompanied by a manifest.

12 (2) A person who is guilty of an offense under subsection (1) is subject to a fine of not more than
13 \$25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation
14 constitutes a separate violation.

15 (3) A person who knowingly violates any requirement of this part or any rule or material permit
16 condition issued pursuant to this part (except those violations specified in subsection (1)) regarding any
17 hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to \$5,000
18 per violation or subject to imprisonment not to exceed 6 months, or both. Each day of violation constitutes
19 a separate violation.

20 (4) Upon a second conviction for a violation of this section, the maximum penalties specified in this
21 section must be doubled.

22 (5) Action under this section does not bar enforcement of this part, rules made under this part,
23 orders of the department or the board, or permits by injunction or other appropriate remedy.

24 (6) Money collected under this section, except money collected in a justice's court, must be
25 deposited in the environmental rehabilitation and prevention account in the state general special revenue
26 fund."

27

28 **Section 13.** Section 75-10-423, MCA, is amended to read:

29 **"75-10-423. Administrative penalties for underground storage tank violations -- appeals -- venue**
30 **for hearings.** (1) A person who violates any of the underground storage tank provisions of this chapter or

1 any underground storage tank rules promulgated under the authority of this chapter may be assessed and
2 ordered by the department to pay an administrative penalty not to exceed \$500 per violation. This limitation
3 on administrative penalties applies only to penalties assessed under this section. Each occurrence of the
4 violation and each day it remains uncorrected constitutes a separate violation. The department may suspend
5 a portion of the administrative penalty assessed under this section if the condition that caused the
6 assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty
7 under this section may be made in conjunction with any order or other administrative action authorized by
8 Title 75, chapter 11, or by this chapter.

9 (2) When the department assesses an administrative penalty under this section, it must have
10 written notice served personally or by certified mail on the alleged violator or the violator's agent. For
11 purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

12 (a) the provision alleged to be violated;

13 (b) the facts alleged to constitute the violation;

14 (c) the amount of the administrative penalty assessed under this section;

15 (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused
16 the assessment of the penalty;

17 (e) the nature of any corrective action the department requires, whether or not a portion of the
18 penalty is to be suspended;

19 (f) as applicable, the time within which the corrective action is to be taken and the time within
20 which the administrative penalty is to be paid;

21 (g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and
22 nature of any hearing; and

23 (h) that a formal proceeding may be waived.

24 (3) The department shall provide each person assessed a penalty under this section an opportunity
25 for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case
26 provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply
27 to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis
28 and Clark County or the county where the alleged violation occurred. This subsection does not apply until
29 the department gives written notice, served personally or by certified mail, to the alleged violator or the
30 violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt. The

1 notice must state:

2 (a) the provision allegedly violated;

3 (b) the facts that constitute the alleged violation;

4 (c) the specific nature of any corrective action the department requires, estimated costs of
5 compliance with the action, and where to receive help to correct the alleged violation; and

6 (d) a timetable that a reasonable person would consider appropriate for compliance with the alleged
7 violations.

8 (4) The department shall publish a schedule of maximum and minimum penalties for specific
9 violations. In determining appropriate penalties for violations, the department shall consider the gravity of
10 the violations and the potential for significant harm to public health or the environment. In determining the
11 appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the
12 penalty assessment, the department shall consider the cooperation and the degree of care exercised by the
13 person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm
14 resulted to the public health or the environment from the violation.

15 (5) If the department is unable to collect an administrative penalty assessed under this section or
16 if a person fails to pay all or any portion of an administrative penalty assessed under this section, the
17 department may take action in district court to recover the penalty amount and any additional amounts
18 assessed or sought under Title 75, chapter 11, or this chapter.

19 (6) Action under this section does not bar action under Title 75, chapter 11, or this chapter, or any
20 other remedy available to the department for violations of underground storage tank laws or rules
21 promulgated under those laws.

22 (7) Administrative penalties collected under this section must be deposited in the environmental
23 rehabilitation and prevention account in the state general special revenue fund."

24

25 **Section 14.** Section 75-10-424, MCA, is amended to read:

26 **"75-10-424. Administrative penalty.** (1) The department may assess a person who violates a used
27 oil or hazardous waste provision of this part, or a used oil or hazardous waste rule adopted under this part,
28 an administrative penalty, not to exceed \$10,000 per violation. Each day of violation constitutes a separate
29 violation, but the maximum penalty may not exceed \$100,000 for any related series of violations.
30 Assessment of an administrative penalty under this section must be made in conjunction with an order or

1 administrative action authorized by this chapter.

2 (2) An administrative penalty may not be assessed under this section unless the alleged violator
3 is given notice and opportunity for a hearing before the board pursuant to Title 2, chapter 4, part 6.

4 (3) In determining the appropriate amount of an administrative penalty, the department shall
5 consider:

6 (a) the gravity and the number of violations;

7 (b) the degree of care exercised by the alleged violator;

8 (c) whether significant harm resulted to public health or the environment; and

9 (d) the degree of potential significant harm to public health or the environment.

10 (4) If the department is unable to collect the administrative penalty or if a person fails to pay all
11 or any portion of the administrative penalty as determined by the department, the department may seek
12 to recover the amount in an appropriate district court.

13 (5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other
14 appropriate remedy.

15 (6) Administrative penalties collected under this section must be deposited in the environmental
16 rehabilitation and prevention account in the state ~~general~~ special revenue fund."

17

18 **Section 15.** Section 75-10-542, MCA, is amended to read:

19 **"75-10-542. Penalties.** (1) A person who willfully violates this part, except 75-10-520, is guilty
20 of a misdemeanor and upon conviction shall be fined not to exceed \$250, imprisoned in the county jail for
21 a term not to exceed 30 days, or both.

22 (2) A person who violates this part, except 75-10-520, a rule of the department, or an order issued
23 as provided in this part shall be subject to a civil penalty of not more than \$50. Each day upon which a
24 violation of this part or a rule or order occurs is a separate violation.

25 (3) Civil penalties collected under this section must be deposited in the environmental rehabilitation
26 and prevention account in the state special revenue fund."

27

28 **Section 16.** Section 82-4-141, MCA, is amended to read:

29 **"82-4-141. Violation -- penalty.** (1) A person or operator who violates any of the provisions of this
30 part or rules or orders adopted under this part shall pay a civil penalty of not less than \$100 or more than

1 \$1,000 for the violation and an additional civil penalty of not less than \$100 or more than \$1,000 for each
2 day during which a violation continues and may be enjoined from continuing ~~such the~~ violations as provided
3 in this section. These penalties ~~shall~~ must be recoverable in any action brought in the name of the state of
4 Montana by the attorney general in the district court of the first judicial district of this state in and for the
5 county of Lewis and Clark or in the district court having jurisdiction of the defendant.

6 (2) The attorney general shall, upon the request of the director, sue for the recovery of the
7 penalties provided for in this section and bring an action for a restraining order, temporary or permanent
8 injunction against an operator or other person violating or threatening to violate an order adopted under this
9 part.

10 (3) A person who willfully violates any of the provisions of this part or any determination or order
11 adopted under this part which has become final is guilty of a misdemeanor and shall be fined not less than
12 \$500 and not more than \$5,000. Each day on which a violation occurs constitutes a separate offense.

13 (4) Civil penalties collected under this section must be deposited in the environmental rehabilitation
14 and prevention account in the state special revenue fund."

15
16 **Section 17.** Section 82-4-241, MCA, is amended to read:

17 **"82-4-241. Receipts paid into general and state special revenue fund funds.** (1) ~~Except for bond~~
18 ~~forfeiture moneys as provided in this section, all fees, penalties, and other moneys money~~ available or paid
19 to the department under the provisions of this part ~~shall~~ must be placed in the state treasury and credited
20 to the general fund.

21 (2) Civil penalties paid to the department under 82-4-254 must be placed in the environmental
22 rehabilitation and prevention account in the state special revenue fund.

23 (3) Bond forfeiture money must be used to pay for expenses that the department incurs pursuant
24 to 82-4-240.

25 (4) Funds held by the department as bond or as a result of bond forfeiture that are no longer
26 needed for reclamation, that are unclaimed under 70-9-207, and for which the department is not able to
27 locate an owner after diligent search must be deposited in the state special revenue fund and credited to
28 the environmental rehabilitation and prevention account."

29
30 **Section 18.** Section 82-4-311, MCA, is amended to read:

1 **"82-4-311. Hard-rock mining and reclamation account.** All fees, fines, penalties, and other
2 uncleared money that has been or will be paid to the department under the provisions of this part must be
3 placed in the state special revenue fund in the state treasury and credited to a special account that is
4 designated as the hard-rock mining and reclamation account. Funds held by the department as bond or as
5 a result of bond forfeiture that are no longer needed for reclamation, that are unclaimed under 70-9-207,
6 and for which the department is not able to locate an owner after diligent search must be deposited in the
7 account. This account is available to the department by appropriation and may be expended for the
8 research, reclamation, and revegetation of land and the rehabilitation of water affected by any mining
9 operations. Any unencumbered and any unexpended balance of this account remaining at the end of a fiscal
10 year does not lapse but must be carried forward for the purposes of this section until expended or until
11 appropriated by subsequent legislative action."

12

13 **Section 19.** Section 82-4-424, MCA, is amended to read:

14 **"82-4-424. Receipt and expenditure of funds.** (1) The department may receive any federal funds,
15 state funds, or any other funds for the reclamation of land affected by opencut mining. The department may
16 cause the reclamation work to be done by its employees, by employees of other governmental agencies,
17 by soil conservation districts, or through contracts with qualified persons.

18 (2) Any funds of any public works programs available to the department must be expended and
19 used to reclaim and rehabilitate any lands that have been subject to opencut mining and that have not been
20 reclaimed and rehabilitated in accordance with the standards of this part.

21 (3) There is an opencut mining and reclamation account within the state special revenue fund
22 established in 17-2-102. There must be deposited in the account all fees, fines, penalties, and other money
23 that have been or will be paid under the provisions of this part. Funds held by the department as bond or
24 as a result of bond forfeiture that are no longer needed for reclamation, that are unclaimed under 70-9-207,
25 and for which the department is not able to locate an owner after diligent search, must be deposited in the
26 account. The money in the account is available to the department through appropriation and must be spent
27 by the department for the reclamation and revegetation of land, research pertaining to the reclamation and
28 revegetation of land, and the rehabilitation of water affected by opencut mining operations and for
29 administration of this part. Any unspent or unencumbered money in the account at the end of a fiscal year
30 must remain in the account until spent or appropriated by the legislature."

1 **Section 20.** Section 82-4-426, MCA, is amended to read:

2 **"82-4-426. Reclamation of land on which bond forfeited.** In keeping with the provisions of this
3 part, the department may reclaim any affected lands with respect to which a bond has been forfeited. If
4 the amount of the forfeited bond exceeds the cost of reclamation, the excess must be deposited in the
5 opencut mining and reclamation account in the state ~~general~~ special revenue fund."

6

7 **NEW SECTION. Section 21. Codification instruction.** [Sections 1 and 2] are intended to be
8 codified as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 and 2].

9

10 **NEW SECTION. Section 22. Coordination instructions.** (1) If ___Bill No. ___ [LC 0759] is passed
11 and approved, and if it includes a section that creates an orphan share account in the state special revenue
12 fund, then [section 1] is void.

13 (2) If ___Bill No. ___ [LC 0759] is not passed and approved or if it does not, as passed and
14 approved, include a section that creates an orphan share account in the state special revenue fund, then
15 [section 2] is void.

16 **(3) IF SENATE BILL NO. 125 IS PASSED AND APPROVED AND IF IT REPEALS 70-9-207, THEN**
17 **THE PHRASE "THAT ARE UNCLAIMED UNDER 70-9-207" IN [SECTIONS 17, 18, AND 19 OF THIS ACT],**
18 **AMENDING 82-4-241, 82-4-311, AND 82-4-424, IS REPLACED BY THE PHRASE "THAT ARE PRESUMED**
19 **ABANDONED UNDER [SECTION 3 OF SENATE BILL NO. 125]".**

20

21 **NEW SECTION. Section 23. Severability.** If a part of [this act] is invalid, all valid parts that are
22 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
23 applications, the part remains in effect in all valid applications that are severable from the invalid
24 applications.

25

26 **NEW SECTION. Section 24. Effective date.** [This act] is effective July 1, 1997.

27

28 **NEW SECTION. SECTION 25. TERMINATION.** **[SECTION 1(2)], [SECTION 2(2)], AND [SECTIONS**
29 **3 THROUGH 20] TERMINATE JUNE 30, 1999.**

30

-END-