

House BILL NO. 383

INTRODUCED BY

Knox

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CIVIL PENALTY PROVISIONS OF THE METAL MINE RECLAMATION ACT AND THE OPENCUT MINING ACT; GRANTING DISCRETION TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY IN INSTITUTING CIVIL PENALTY ACTIONS; PROVIDING CRITERIA FOR EXERCISING THE DEPARTMENT'S CIVIL PENALTY ACTION DISCRETION AND FOR DETERMINING CIVIL PENALTY AMOUNTS; AMENDING SECTIONS 82-4-361 AND 82-4-441, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 82-4-361, MCA, is amended to read:

"82-4-361. Violation -- penalties -- waiver. (1) (a) ~~Except as provided in subsections (1)(b) and (2),~~ The department may assess an administrative civil penalty of not less than \$100 or more than \$1,000 for each of the following violations, and an additional administrative civil penalty of not less than \$100 or more than \$1,000 for each day during which the violation continues, and may bring an action for an injunction from continuing the violation ~~may be imposed~~ against:

(i) a person or operator who violates a provision of this part, a rule or order adopted under this part, or a term or condition of a permit; or

(ii) any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a permit.

(b) If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum penalty is \$5,000 for each day of violation.

(2) The department shall take into account the following factors in determining whether to institute a civil penalty action and in determining the penalty amount:

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

(b) the violator's ability to pay and prior history of violations;

(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;

1 (d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts
 2 of the violation; and

3 (e) other matters that justice may require.

4 ~~(2) (a) (3)~~ The department may bring an action for a restraining order or a temporary or permanent
 5 injunction against an operator or other person violating or threatening to violate an order adopted under this
 6 part.

7 ~~(b) The civil penalties provided for in this section may be waived for a minor violation if it is~~
 8 ~~determined that the violation does not represent potential harm to public health, public safety, or the~~
 9 ~~environment and does not impair the administration of this part. The board shall adopt rules to implement~~
 10 ~~and administer a procedure for waiver of a penalty under this subsection.~~

11 ~~(3)~~(4) The department shall notify the person or operator of the violation. The department shall
 12 issue a statement of proposed penalty within 30 days after notice of the violation. The person or operator,
 13 by filing a written request within 20 days of receipt of the notice of proposed penalty, is entitled to a
 14 hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to
 15 be assessed is proper. After the hearing or after the time for requesting a hearing has expired, the board
 16 shall make findings of fact and issue a written decision as to the occurrence of the violation and whether
 17 the amount of penalty is warranted. The board shall order the payment of a penalty in that amount. The
 18 person or operator shall remit the amount of the penalty or petition for judicial review within 30 days of
 19 receipt of the order. A person or operator who fails to request the hearing provided for in this subsection
 20 or who fails to petition for judicial review within 30 days of receipt of the order forfeits that person's or
 21 operator's right to seek judicial review of the violation or penalty determinations. These penalties are
 22 recoverable in an action brought by the department."
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24 **Section 2.** Section 82-4-441, MCA, is amended to read:

25 "**82-4-441. Penalty -- enforcement.** (1) A The department may assess against a person who
 26 violates any of the provisions of this part, rules adopted under this part, or provisions of a contract for
 27 reclamation:

28 (a) ~~shall pay~~ a civil penalty of not less than \$100 or more than \$1,000 for the violation; and

29 (b) ~~shall pay~~ an additional civil penalty of not less than \$100 or more than \$1,000 for each day
 30 during which a violation continues following the service of notice of the violation; ~~and~~

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27 These penalties are recoverable in an action brought by the department in the district court of the first
28 judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county
29 in which the opencut mine is located.

30 (4) The department may bring an action to enjoin an operator or other person violating or

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5 NEW SECTION. **Section 3. Applicability.** [This act] applies to proceedings begun on or after [the
6 effective date of this act].

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8 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0383, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the civil penalty provisions of the metal mine reclamation act and the open cut mining act; granting discretion to the Department of Environmental Quality in instituting civil penalty action; providing criteria for exercising the department's civil penalty action discretion and for determining civil penalty amounts.

ASSUMPTIONS:

1. On an annual basis the department may assess an administrative civil penalty for 15-20 violations of the Metal Mine Reclamation Act and 10-15 violations of the Open cut Mining Act. This bill provides more discretion and flexibility to the department and allows the department to consider whether to institute a civil action and to determine the appropriate penalty. This discretion allows the department to consider enforcement options under other environmental authorities, such as the Water Quality Act, for violations at mines permitted under the Metal Mines Reclamation Act and the Open cut Mining Act. The department assumes that the number of penalty actions initiated will remain relatively constant.
2. Assessment of administrative civil penalties under these provisions will continue to be conducted by existing department staff. No additional expense is anticipated.

FISCAL IMPACT:

There will be no fiscal impact to DEQ from this bill.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Additional discretion and flexibility will improve the department's ability to enforce the provisions of the Metal Mine Reclamation Act and the Open cut Mining Act.

Dave Lewis 2-3-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Dick Knox 2-4-97
DICK KNOX, PRIMARY SPONSOR DATE

Fiscal Note for HB0383, as introduced

HB 383

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

12
13 **Section 1.** Section 82-4-361, MCA, is amended to read:

14 **"82-4-361. Violation -- penalties -- waiver.** (1) (a) ~~Except as provided in subsections (1)(b) and~~
15 ~~(2),~~ The department may assess an administrative civil penalty of not less than \$100 or more than \$1,000
16 for each of the following violations, and an additional administrative civil penalty of not less than \$100 or
17 more than \$1,000 for each day during which the violation continues, and may bring an action for an
18 injunction from continuing the violation ~~may be imposed~~ against:

19 (i) a person or operator who violates a provision of this part, a rule or order adopted under this part,
20 or a term or condition of a permit; or

21 (ii) any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a
22 violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a
23 permit.

24 (b) If the violation created an imminent danger to the health or safety of the public or caused
25 significant environmental harm, the maximum penalty is \$5,000 for each day of violation.

26 (2) The department shall take into account the following factors in determining whether to institute
27 a civil penalty action and in determining the penalty amount:

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

29 (b) the violator's ~~ability to pay and~~ prior history of violations;

30 (c) the economic benefit or savings, if any, to the violator resulting from the violator's action;

1 (d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts
 2 of the violation; and

3 (e) other matters that justice may require.

4 ~~(2) (a)~~ (3) The department may bring an action for a restraining order or a temporary or permanent
 5 injunction against an operator or other person violating or threatening to violate an order adopted under this
 6 part.

7 ~~(b) The civil penalties provided for in this section may be waived for a minor violation if it is~~
 8 ~~determined that the violation does not represent potential harm to public health, public safety, or the~~
 9 ~~environment and does not impair the administration of this part. The board shall adopt rules to implement~~
 10 ~~and administer a procedure for waiver of a penalty under this subsection.~~

11 ~~(3)~~(4) The department shall notify the person or operator of the violation. The department shall
 12 issue a statement of proposed penalty within 30 days after notice of the violation. The person or operator,
 13 by filing a written request within 20 days of receipt of the notice of proposed penalty, is entitled to a
 14 hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to
 15 be assessed is proper. After the hearing or after the time for requesting a hearing has expired, the board
 16 shall make findings of fact and issue a written decision as to the occurrence of the violation and whether
 17 the amount of penalty is warranted. The board shall order the payment of a penalty in that amount. The
 18 person or operator shall remit the amount of the penalty or petition for judicial review within 30 days of
 19 receipt of the order. A person or operator who fails to request the hearing provided for in this subsection
 20 or who fails to petition for judicial review within 30 days of receipt of the order forfeits that person's or
 21 operator's right to seek judicial review of the violation or penalty determinations. These penalties are
 22 recoverable in an action brought by the department."

23
 24 **Section 2.** Section 82-4-441, MCA, is amended to read:

25 **"82-4-441. Penalty -- enforcement.** (1) A The department may assess against a person who
 26 violates any of the provisions of this part, rules adopted under this part, or provisions of a contract for
 27 reclamation:

28 (a) ~~shall pay~~ a civil penalty of not less than \$100 or more than \$1,000 for the violation; and

29 (b) ~~shall pay~~ an additional civil penalty of not less than \$100 or more than \$1,000 for each day
 30 during which a violation continues following the service of notice of the violation; ~~and~~

1 ~~(e) may be enjoined from continuing the violation as provided in this section.~~

2 (2) ~~The civil penalties provided for in this section may be waived for a minor violation if it is~~
3 ~~determined that the violation does not represent potential harm to public health, public safety, or the~~
4 ~~environment and does not impair the administration of this part. The board shall adopt rules to implement~~
5 ~~and administer a procedure for waiver of a penalty under this subsection. The department shall take into~~
6 ~~account the following factors in determining whether to institute a civil penalty action and in determining~~
7 ~~the penalty amount:~~

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

9 ~~(b) the violator's ability to pay and prior history OF violations;~~

10 ~~(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;~~

11 ~~(d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts~~
12 ~~of the violation; and~~

13 ~~(e) other matters that justice may require.~~

14 (3) The department shall notify the person or operator of the violation. The person or operator is
15 entitled, by filing a written request within 20 days of receipt of the notice of violation, to a hearing on the
16 issues of whether the alleged violation has occurred and whether the penalty proposed to be imposed is
17 proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of
18 violation. After the hearing or after the time for requesting a hearing has expired, the board shall make
19 findings of fact, issue a written decision as to the occurrence of the violation and the amount of penalty
20 warranted, and order the payment of a penalty in that amount. The person or operator shall remit the
21 amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review
22 of the assessment, the person or operator shall submit with the penalty a statement that the penalty is
23 being paid under protest and the department shall hold the payment in escrow until judicial review is
24 complete. A person or operator who fails to request and submit testimony at the hearing provided for in
25 this subsection or who fails to pay the assessed penalty under protest within 30 days of the order
26 assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations.
27 These penalties are recoverable in an action brought by the department in the district court of the first
28 judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county
29 in which the opencut mine is located.

30 (4) The department may bring an action to enjoin an operator or other person violating or

1 threatening to violate this part, rules adopted pursuant to this part, or a contract made pursuant to this part
2 in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in
3 the district court of the county in which the opencut mine is located."

4

5 NEW SECTION. **Section 3. Applicability.** [This act] applies to proceedings begun on or after [the
6 effective date of this act].

7

8 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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