

HOUSE BILL NO. 347

INTRODUCED BY K. WALSH, S. GIST, G. FRAZER

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ISSUE LETTERS OF WARNING FOR VIOLATIONS AND ADMINISTRATIVE DEFICIENCIES FOR HARD-ROCK MINING AND OPENCUT MINING OPERATIONS; DEFINING "ADMINISTRATIVE DEFICIENCY"; AND AMENDING SECTIONS 82-4-361 AND 82-4-441, MCA."

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) When the department has reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, an administrative deficiency notice, or a term or condition of a permit issued under this part, it shall send a letter of warning or violation letter to the person. The letter of warning or violation letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The letter must ~~also~~ recommend corrective actions ~~that are~~ necessary to return to compliance. Issuance of a letter of warning or violation letter under this subsection does not limit the authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

(2) (a) By issuance of an order pursuant to subsection (6), the department may assess an administrative penalty of not less than \$100 or more than \$1,000 for each of the following violations and an additional administrative 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 against:

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

(ii) any director, officer, or agent of a corporation who purposely or knowingly authorizes, orders, or carries out a violation of a provision of this part, a rule adopted or an order issued 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 administrative penalty is \$5,000 for each day of violation.

(c) This subsection does not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part.

(3) The department may bring a judicial action seeking a penalty of not more than \$5,000 for a violation listed in subsection (2)(a) and a penalty of not more than \$5,000 for each day that the violation continues.

(4) Penalties assessed under this section must be determined in accordance with the penalty factors in 82-4-1001.

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

(6) (a) In addition to the letter of warning or violation letter sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.

(b) An order issued pursuant to subsection (6)(a) becomes final unless, within 30 days after the order is served, the person to whom the order is issued submits to the board a written request for a hearing stating the reason for the request. Service of the order by mail is complete 3 business days after mailing. If a request for a hearing is submitted, a hearing must be held within a reasonable time under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm, modify, or rescind the order.

(7) Legal actions for penalties or injunctive relief under this section must be brought in the district court of the county in which the alleged violation occurred.

(8) For the purposes of this section, "administrative deficiency" means a deficiency in reporting, recordkeeping, fee payment, or notification that the department determines is minor in nature, nonsubstantive, and unlikely to recur."

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

3 **"82-4-441. Administrative and judicial penalties -- enforcement.** (1) When the department has
4 reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, an
5 administrative deficiency notice, or a term or condition of a permit issued under this part, it shall send a letter of
6 warning or violation letter to the person. The letter of warning or violation letter must describe the provision of
7 the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The
8 letter must ~~also~~ recommend corrective actions ~~that are~~ necessary to return to compliance. Issuance of a letter
9 of warning or violation letter under this subsection does not limit the authority of the department under this part
10 to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

11 (2) By issuance of an order pursuant to subsection (5), the department may assess against a
12 person who violates any of the provisions of this part, rules adopted or orders issued under this part, or
13 provisions of a permit:

14 (a) an administrative penalty of not less than \$100 or more than \$1,000 for the violation; and

15 (b) an additional administrative penalty of not less than \$100 or more than \$1,000 for each day
16 during which a violation continues.

17 (3) The department may bring a judicial action seeking a penalty of not more than \$5,000 against a
18 person who violates any of the provisions of this part, rules adopted or orders issued under this part, or
19 provisions of a permit and a penalty of not more than \$5,000 for each day that the violation continues. In
20 determining the amount of the penalty, the district court shall consider the factors in subsection (4).

21 (4) Penalties assessed under this section must be determined in accordance with the penalty
22 factors in 82-4-1001.

23 (5) (a) In addition to the letter of warning or violation letter sent pursuant to subsection (1), the
24 department may also issue an order if it has credible information that a violation listed in subsection (2) has
25 occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the
26 facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable
27 period of time, may assess an administrative penalty determined in accordance with this section, or both. The
28 order must be served personally or by certified mail.

1 (b) An order issued pursuant to subsection (5)(a) becomes final unless, within 30 days after the
2 order is served, the person to whom the order is issued submits to the board a written request for a hearing
3 stating the reason for the request. Service of an order by mail is complete 3 business days after mailing. If a
4 request for a hearing is filed, a hearing must be held within a reasonable time under the contested case
5 provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board
6 shall affirm, modify, or rescind the order.

7 (6) The department may bring an action to enjoin an operator or other person violating or
8 threatening to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part.
9 Actions for injunctions or penalties must be filed in the district court of the county in which the opencut operation
10 is located.

11 (7) The provisions of this section do not limit the authority of the department to bring a judicial
12 action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under
13 this part.

14 (8) For the purposes of this section, "administrative deficiency" means a deficiency in reporting,
15 recordkeeping, fee payment, or notification that the department determines is minor in nature, nonsubstantive,
16 and unlikely to recur."

17 - END -