

1 HOUSE BILL NO. 537

2 INTRODUCED BY B. MERCER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING VENUE LAWS; ELIMINATING CHOICE
5 OF VENUE IN THE FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY, IN CERTAIN
6 INSTANCES; ESTABLISHING VENUE FOR CERTAIN OUT-OF-STATE LITIGANTS IN THE FIRST JUDICIAL
7 DISTRICT COURT, LEWIS AND CLARK COUNTY; AND AMENDING SECTIONS 13-37-113, 15-1-108, 16-4-
8 411, 19-2-401, 19-20-201, 22-3-429, 25-2-126, 30-14-111, 30-14-1413, 31-1-726, 32-1-912, 32-5-402, 33-1-
9 804, 37-1-332, 37-7-1513, 50-5-112, 50-5-113, 50-6-504, 50-30-102, 53-9-131, 61-4-107, 61-8-812, 61-8-815,
10 75-1-108, 75-2-401, 75-2-413, 75-2-514, 75-5-611, 75-5-631, 75-6-114, 75-10-228, 75-10-417, 75-10-424, 75-
11 10-542, 75-10-711, 75-10-715, 75-10-1223, 75-11-223, 75-11-516, 75-11-518, 75-11-525, 76-4-109, 77-2-107,
12 82-4-142, 82-4-254, 82-4-354, 82-4-361, 82-4-427, 82-4-441, 82-15-120, 85-2-431, AND 85-6-109, MCA."

13

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

15

16 NEW SECTION. SECTION 1. VENUE GENERALLY. EXCEPT AS OTHERWISE PROVIDED BY THIS CHAPTER, ANY
17 CHALLENGE TO AN ACTION TAKEN BY THE DEPARTMENT OR TO A DECISION ISSUED BY THE BOARD PURSUANT TO THIS
18 CHAPTER MUST BE BROUGHT IN THE DISTRICT COURT IN THE COUNTY WHERE THE ACTIVITY THAT IS THE SUBJECT OF THE
19 CHALLENGE IS PROPOSED TO OCCUR. IF AN ACTIVITY IS PROPOSED TO OCCUR OR WILL OCCUR IN MORE THAN ONE
20 COUNTY, THE CHALLENGE MAY BE BROUGHT IN THE DISTRICT COURT IN ANY OF THE COUNTIES WHERE THE ACTIVITY IS
21 PROPOSED TO OCCUR OR WILL OCCUR.

22

23 SECTION 2. SECTION 2-4-702, MCA, IS AMENDED TO READ:

24 **"2-4-702. (Temporary) Initiating judicial review of contested cases.** (1) (a) Except as provided in
25 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available within the agency
26 and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this
27 chapter. This section does not limit use of or the scope of judicial review available under other means of review,
28 redress, relief, or trial de novo provided by statute.

1 (b) A party who proceeds before an agency under the terms of a particular statute may not be
2 precluded from questioning the validity of that statute on judicial review, but the party may not raise any other
3 question not raised before the agency unless it is shown to the satisfaction of the court that there was good
4 cause for failure to raise the question before the agency.

5 (2) (a) Except as provided in 75-2-211, 75-2-213, and subsections (2)(c) and (2)(e) of this section,
6 proceedings for review must be instituted by filing a petition in district court within 30 days after service of the
7 final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is
8 rendered. Except as otherwise provided by statute ~~or~~, subsection (2)(d), or subsection (2)(e), the petition must
9 be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of
10 business or where the agency maintains its principal office. Copies of the petition must be promptly served
11 upon the agency and all parties of record.

12 (b) The petition must include a concise statement of the facts upon which jurisdiction and venue are
13 based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-
14 4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which
15 the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

16 (c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court,
17 rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation
18 court in the same manner as the provisions of this part apply to the district court.

19 (d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title
20 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be
21 located or where the action is proposed to occur.

22 (e) (i) A party who is aggrieved by a final decision on an application for a permit or change in
23 appropriation right filed under Title 85, chapter 2, part 3, may petition the district court or the water court for
24 judicial review of the decision. If a petition for judicial review is filed in the water court, the water court rather
25 than the district court has jurisdiction and the provisions of this part apply to the water court in the same manner
26 as they apply to the district court. The time for filing a petition is the same as provided in subsection (2)(a).

27 (ii) If more than one party is aggrieved by a final decision on an application for a permit or change in
28 appropriation right filed under Title 85, chapter 2, part 3, the district court where the appropriation right is

1 located has jurisdiction. If more than one aggrieved party files a petition but no aggrieved party files a petition in
2 the district court where the appropriation right is located, the first judicial district, Lewis and Clark County, has
3 jurisdiction.

4 (iii) If a petition for judicial review is filed in the district court, the petition for review must be filed in the
5 district court in the county where the appropriation right is located.

6 (3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the
7 agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers
8 proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without
9 notice only if the provisions of 27-19-315 through 27-19-317 are met.

10 (4) Within 30 days after the service of the petition or within further time allowed by the court, the
11 agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding
12 under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party
13 unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs.
14 The court may require or permit subsequent corrections or additions to the record. (Terminates September 30,
15 2025--sec. 6, Ch. 126, L. 2017.)

16 **2-4-702. (Effective October 1, 2025) Initiating judicial review of contested cases.** (1) (a) Except
17 as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available
18 within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial
19 review under this chapter. This section does not limit use of or the scope of judicial review available under other
20 means of review, redress, relief, or trial de novo provided by statute.

21 (b) A party who proceeds before an agency under the terms of a particular statute may not be
22 precluded from questioning the validity of that statute on judicial review, but the party may not raise any other
23 question not raised before the agency unless it is shown to the satisfaction of the court that there was good
24 cause for failure to raise the question before the agency.

25 (2) (a) Except as provided in 75-2-211, 75-2-213, and subsection (2)(c) of this section, proceedings
26 for review must be instituted by filing a petition in district court within 30 days after service of the final written
27 decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered.
28 Except as otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for

1 the county where the petitioner resides or has the petitioner's principal place of business or where the agency
2 maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of
3 record.

4 (b) The petition must include a concise statement of the facts upon which jurisdiction and venue are
5 based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-
6 4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which
7 the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

8 (c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court,
9 rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation
10 court in the same manner as the provisions of this part apply to the district court.

11 (d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title
12 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be
13 located or where the action is proposed to occur.

14 (3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the
15 agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers
16 proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without
17 notice only if the provisions of 27-19-315 through 27-19-317 are met.

18 (4) Within 30 days after the service of the petition or within further time allowed by the court, the
19 agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding
20 under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party
21 unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs.
22 The court may require or permit subsequent corrections or additions to the record."
23

24 **Section 3.** Section 13-37-113, MCA, is amended to read:

25 **"13-37-113. Hiring of attorneys -- prosecutions.** The commissioner may hire or retain attorneys
26 who are properly licensed to practice before the supreme court of the state of Montana to prosecute violations
27 of chapter 35 of this title or this chapter. Any attorney retained or hired shall exercise the powers of a special
28 attorney general, and the attorney may prosecute, subject to the control and supervision of the commissioner

1 and the provisions of 13-35-240, 13-37-124, and 13-37-125, any criminal or civil action arising out of a violation
 2 of any provision of chapter 35 of this title or this chapter. All prosecutions must be brought in the state district
 3 court for the county in which a violation has occurred ~~or in the district court for Lewis and Clark County~~. The
 4 authority to prosecute as prescribed by this section includes the authority to:

5 (1) institute proceedings for the arrest of persons charged with or reasonably suspected of criminal
 6 violations of chapter 35 of this title or this chapter;

7 (2) attend and give advice to a grand jury when cases involving criminal violations of chapter 35 of
 8 this title or this chapter are presented;

9 (3) draw and file indictments, informations, and criminal complaints;

10 (4) prosecute all actions for the recovery of debts, fines, penalties, or forfeitures accruing to the state
 11 or county from persons convicted of violating chapter 35 of this title or this chapter; and

12 (5) do any other act necessary to successfully prosecute a violation of any provision of chapter 35 of
 13 this title or this chapter."
 14

15 **Section 4.** Section 15-1-108, MCA, is amended to read:

16 **"15-1-108. Prohibition on sales -- restrictions on certain disclosures and uses.** (1) (a) Subject to
 17 subsection (1)(b), a tax return preparer may not sell, receive any consideration for, or otherwise disclose tax
 18 return information for the benefit of the tax return preparer or of any persons controlling, controlled by, or under
 19 common control of the tax return preparer.

20 (b) The provisions of this section do not prevent the bona fide sale of a tax return preparation,
 21 accounting, or law practice in the ordinary course of business.

22 (2) A tax return preparer may not disclose return information to a tax return preparer located outside
 23 of the state unless:

24 (a) (i) the taxpayer has requested the disclosure; or

25 (ii) disclosure is required in connection with an internal audit;

26 (b) the tax return preparer located outside of the state agrees:

27 (i) not to sell or receive any consideration for the tax return information; and

28 (ii) not to otherwise disclose the tax return information for its benefit or for the benefit of any person

1 controlling, controlled by, or under common control with it; and

2 (c) the local tax return preparer indemnifies the taxpayer for the damages provided for in subsection
3 (3)(d) for any sale or disclosure by the tax return preparer located outside the state in violation of subsection
4 (2)(b).

5 (3) (a) A person whose tax return information is or will be used or disclosed in violation of subsection
6 (1) or (2) may bring an action to enjoin the violation and for the recovery of damages.

7 (b) An action under this section may be brought in Montana district court in the county where the
8 plaintiff resides or maintains its principal place of business ~~or in the Montana first judicial district.~~

9 (c) If the court finds that the defendant is violating or has violated any of the provisions of subsection
10 (1) or (2), the court shall enjoin the defendant. It is not necessary to allege or prove actual damages to the
11 plaintiff.

12 (d) In addition to injunctive relief, the plaintiff is entitled to recover from the defendant in an amount
13 that is the greater of three times the amount of actual damages sustained by the plaintiff or up to \$10,000.

14 (e) In any action brought under this section, the court may award the prevailing party reasonable
15 attorney fees incurred in prosecuting or defending the action. A person who brings an action on the person's
16 own behalf without an attorney may receive equivalent fees at the judge's discretion.

17 (4) A tax return preparer may disclose or use return information:

18 (a) for quality or peer reviews;

19 (b) when authorized to do so by Montana law;

20 (c) when required to do so by federal or state law; or

21 (d) pursuant to a court subpoena or administrative summons.

22 (5) As used in this section, the following definitions apply:

23 (a) (i) "Return information" includes a taxpayer's identity, the nature, source, or amount of the
24 taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax
25 liability, tax withheld, deficiencies, overassessments, or tax payments, or any other data received by, recorded
26 by, prepared by, furnished to, or collected by the department with respect to a return or with respect to the
27 determination of the existence or possible existence of liability or the amount of a liability of any person under
28 this title for any tax, penalty, interest, fine, forfeiture, or other imposition or any offense.

1 (ii) The term does not include data in a form that cannot be associated with or otherwise identify,
2 directly or indirectly, a particular taxpayer.

3 (b) "Tax return preparer" means:

4 (i) any person who:

5 (A) is engaged in the business of preparing tax returns;

6 (B) is engaged in the business of providing services in connection with the preparation of tax returns;

7 (C) prepares or assists in preparing or presents to the public that the person prepares or assists in
8 preparing a tax return for compensation;

9 (D) develops software used to prepare or file tax returns; or

10 (E) is an electronic return originator; and

11 (ii) an individual who, as a part of that individual's duties or employment with a person described in
12 subsection (5)(b)(i), performs services relating to:

13 (A) the preparation or filing of or the provision of services in connection with the preparation or filing of
14 a tax return; or

15 (B) the development of software used to prepare or file tax returns."
16

17 **Section 5.** Section 16-4-411, MCA, is amended to read:

18 **"16-4-411. Appeals concerning alcoholic beverages laws.** (1) Any interested party shall have the
19 right to appeal any decision of the department of revenue concerning the issuance, transfer, suspension, or
20 revocation of alcoholic beverages licenses to the district court in the county in which the issuance, transfer,
21 suspension, or revocation occurred ~~or, at the appellant's option, in the district court of the first judicial district.~~

22 (2) The appeal must be in conformity with the provisions of Title 2, chapter 4, part 7."
23

24 **Section 6.** Section 19-2-401, MCA, is amended to read:

25 **"19-2-401. Location of board -- jurisdiction and venue for judicial review -- quorum -- officers
26 and employees.** (1) The board shall maintain its office in the city of Helena. Jurisdiction and venue for judicial
27 review of final administrative decisions of the board are in the judicial district in which the appealing party
28 resides or, if the person resides outside the state, the first judicial district, Lewis and Clark County, unless

1 ~~otherwise stipulated by the parties.~~

2 (2) A quorum of the board is four members.

3 (3) The board shall elect one of its members presiding officer. The board may appoint a committee of
4 one or more of its members to perform routine acts, such as retirement of members and fixing of retirement
5 benefits, approval of death claims, and correction of records necessary in the administration of the systems in
6 accordance with the provisions of chapters 2, 3, 5 through 9, 13, 17, and 50 of this title and in accordance with
7 the rules of the board. The attorney general is the legal counsel for the board."

8

9 **Section 7.** Section 19-20-201, MCA, is amended to read:

10 **"19-20-201. Administration by retirement board -- jurisdiction and venue for judicial review. (1)**

11 The retirement board shall administer and operate the retirement system within the limitations prescribed by
12 this chapter, and it is the duty of the retirement board to:

13 (a) establish rules necessary for the proper administration and operation of the retirement system;

14 (b) approve or disapprove all expenditures necessary for the proper operation of the retirement
15 system;

16 (c) keep a record of all its proceedings, which must be open to public inspection;

17 (d) submit a report to the office of budget and program planning detailing the fiscal transactions for
18 the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and
19 securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of
20 the retirement system;

21 (e) keep in convenient form the data that is necessary for actuarial valuation of the various funds of
22 the retirement system and for checking the experience of the retirement system;

23 (f) prepare an annual valuation of the assets and liabilities of the retirement system that includes an
24 analysis of how market performance is affecting the actuarial funding of the retirement system;

25 (g) require the board's actuary to conduct and report on a periodic actuarial investigation into the
26 actuarial experience of the retirement system;

27 (h) prescribe a form for membership application that will provide adequate and necessary information
28 for the proper operation of the retirement system;

- 1 (i) annually determine the rate of regular interest as prescribed in 19-20-501;
 2 (j) establish and maintain the funds of the retirement system in accordance with the provisions of part
 3 6 of this chapter; and
 4 (k) perform other duties and functions as are required to properly administer and operate the
 5 retirement system.

6 (2) In discharging its duties, the board, or an authorized representative of the board, may conduct
 7 hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue
 8 subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence,
 9 memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104.

10 (3) The board may send retirement-related material to employers and the campuses of the Montana
 11 university system for delivery to employees. To facilitate distribution, employers and those campuses shall each
 12 provide the board with a point of contact who is responsible for distribution of the material provided by the
 13 board.

14 (4) The board shall make available to the state administration and veterans' affairs interim committee
 15 and to the legislature pursuant to 5-11-210 copies of the annual actuarial valuation and reports required
 16 pursuant to subsections (1)(d), (1)(f), and (1)(g).

17 (5) Jurisdiction and venue for judicial review of the board's final administrative decisions is the judicial
 18 district in which the appealing party resides or, if the person resides outside the state, the first judicial district,
 19 Lewis and Clark County, unless otherwise stipulated by the parties."

20

21 **Section 8.** Section 22-3-429, MCA, is amended to read:

22 **"22-3-429. Requests for consultation -- public notice -- appeal of findings.** (1) A federal or state
 23 entity that acts upon a proposed federal or state action or an application for a federal, state, or local permit,
 24 license, lease, or funding may request the views of the historic preservation officer concerning:

25 (a) the recommended eligibility for a register listing of any heritage property or paleontological
 26 remains;

27 (b) the effects of a proposed action, activity, or undertaking on heritage property or remains that are
 28 found to be eligible for register listing; and

1 (c) the appropriateness of a proposed plan for the avoidance or mitigation of effects.

2 (2) A request for comment pursuant to 16 U.S.C. 470f may be made simultaneously with a request
3 pursuant to subsection (1). The historic preservation officer shall respond in writing to a request within 30
4 calendar days of receiving the request and shall address each property in the request and each topic of the
5 request. In the event that an agency requests simultaneous consultation for two or more criteria under this
6 section, the agency and historic preservation officer may extend the 30-day review period by mutual
7 agreement. If the historic preservation officer fails to comment within that time, that failure is construed as
8 concurrence with the agency's recommendation. In the event of failure to comment on a specific undertaking,
9 the historic preservation officer may not change a finding for a heritage property at a later date.

10 (3) If the proposed finding is that a heritage property or paleontological remains are involved and that
11 a proposed activity will have an adverse impact on the property or remains, the proposed finding must address
12 all properties or remains involved and describe the characteristics that illustrate the qualities that make the
13 property or remains eligible for inclusion in the register. If the proposed finding includes a conclusion that a
14 property or remains may be eligible but additional information or study is needed to reach an eligibility finding,
15 the finding must specify the type and amount of information required in accordance with standards and
16 guidelines as provided in 22-3-428.

17 (4) At the time that the state or federal agency requests the views of the historic preservation officer
18 as provided in subsection (1), the agency shall provide notice to the applicant, affected property owners, and
19 other interested persons of the request for consultation and shall identify locations where the submitted
20 materials may be reviewed.

21 (5) The applicant and any affected property owners have 20 days in which to appeal the historic
22 preservation officer's finding to the director. The appeal notice must include a written statement of reasons for
23 the appeal and any additional supporting information.

24 (6) The director of the historical society shall issue a final finding within 30 days of the expiration of
25 the 20-day appeal period provided for under subsection (5). The issuance of this finding does not limit the rights
26 of any applicant or affected property owner to challenge a finding under an existing federal law, regulation, or
27 regulatory or administrative process.

28 (7) If the applicant or an affected property owner is not satisfied with the finding of the director of the

1 historical society concerning the eligibility of the property or remains for listing in the register or a finding of
 2 adverse effect to the property, the entity or property owner may appeal the finding to the district court in ~~either~~
 3 ~~Lewis and Clark County~~ or a county in which affected property is located. Appeal may be taken by filing a
 4 petition with the district court citing the decision by the director of the historical society and the evidence upon
 5 which the director relied. On appeal, the district court may consider any documents supporting or not supporting
 6 the finding, the written comments received by the director of the historical society, and any additional evidence
 7 that may be submitted to the court. The district court may substitute its judgment for the judgment of the director
 8 of the historical society as to the weight of the evidence.

9 (8) A state agency may not require a historical or archaeological survey as a condition of applying for
 10 or receiving a state or local permit, license, lease, or funding for a project to reconstruct or maintain an irrigation
 11 ditch or appurtenant structures or equipment when the ditch or appurtenant structures or equipment are in use
 12 or have been in use within the past 10 years, if the reconstruction or maintenance will occur within the existing
 13 ditch easement and if the project is not on land owned by the state."
 14

15 **Section 9.** Section 25-2-126, MCA, is amended to read:

16 **"25-2-126. Against state and political subdivisions.** (1) ~~The~~ Except as provided in subsection (2),
 17 the proper place of trial for an action against the state is in the county in which the claim arose or in Lewis and
 18 Clark County. In an action against the state brought by a resident of the state, the county of the plaintiff's
 19 residence is also a proper place of trial.

20 (2) For an action that challenges the issuance, approval, renewal, or denial of a permit, license,
 21 authorization, or certificate by a state agency, the action must be brought in the county in which the permitted,
 22 licensed, authorized, or certificated activity would occur. If an activity would occur in more than one county, any
 23 county in which the activity would occur is a proper place for an action.

24 ~~(2)(3)~~ The proper place of trial for an action against a political subdivision is in the county in which the
 25 claim arose or in any county where the political subdivision is located."
 26

27 **Section 10.** Section 30-14-111, MCA, is amended to read:

28 **"30-14-111. Department to restrain unlawful acts.** (1) Whenever the department has reason to

1 believe that a person is using, has used, or is about to knowingly use any method, act, or practice declared by
2 30-14-103 to be unlawful and that proceeding would be in the public interest, the department may bring an
3 action in the name of the state against the person to restrain by temporary or permanent injunction or
4 temporary restraining order the use of the unlawful method, act, or practice upon giving appropriate notice to
5 that person.

6 (2) The notice must state generally the relief sought and be served in accordance with 30-14-115 at
7 least 20 days before the hearing of the action in which the relief sought is a temporary or permanent injunction.
8 The notice for a temporary restraining order is governed by 27-19-315.

9 (3) An action under this section may be brought in the district court in the county in which a person
10 resides or has the person's principal place of business or in the district court of Lewis and Clark County if the
11 person is not a resident of this state or does not maintain a place of business in this state.

12 (4) A district court is authorized to issue temporary or permanent injunctions or temporary restraining
13 orders to restrain and prevent violations of this part, and an injunction must be issued without bond."
14

15 **Section 11.** Section 30-14-1413, MCA, is amended to read:

16 **"30-14-1413. Civil remedies -- venue -- burden of proof.** (1) The sale of any goods or services by
17 an unregistered seller or telemarketer that is required to register is void. A person obtaining a judgment for
18 damages, attorney fees, or costs against a seller or telemarketer pursuant to this section has the right to be
19 reimbursed for those damages, attorney fees, or costs from any bond or security posted by the seller or
20 telemarketer pursuant to the provisions of 30-14-1404.

21 (2) A person that suffers a loss or harm as a result of an unfair and deceptive act or practice or a
22 prohibited act or practice is entitled to recover actual damages or \$500, whichever is greater, attorney fees,
23 court costs, and any other remedies provided by law.

24 (3) In addition to the remedies provided in subsection (2), a person that suffers harm as a result of an
25 abusive act or practice is entitled to receive injunctive or declaratory relief.

26 (4) (a) The department or a county attorney, on behalf of state residents who have suffered a loss or
27 harm as a result of a violation of this part, may seek any remedy provided by Title 30, chapter 14, part 1.

28 (b) The proper place for trial for an action based on a claim of a violation of this part is the district

1 court of ~~Lewis and Clark County~~ or in the county in which the alleged violation occurred.

2 (5) In a civil proceeding alleging a violation of this part, the burden of proving an exemption under 30-
3 14-1405 or an exception to a definition contained in 30-14-1403 is on the person claiming the exemption or
4 exception."

5

6 **Section 12.** Section 31-1-726, MCA, is amended to read:

7 **"31-1-726. Investigations by department -- subpoenas -- oaths -- examination of witnesses and**
8 **evidence.** (1) The department may investigate any matter, upon complaint or otherwise, if it appears that a
9 person has engaged in or offered to engage in any act or practice that is in violation of any provision of this part
10 or any rule adopted or order issued by the department pursuant to this part.

11 (2) The department may issue subpoenas to compel the attendance of witnesses and the production
12 of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction,
13 control, or supervision pertaining to this part. The department may administer oaths and affirmations to a
14 person whose testimony is required.

15 (3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by
16 the subpoena, a judge of the district court of ~~Lewis and Clark County~~ or in the county in which the licensed
17 premises ~~are located~~ or the person's principal place of business is located or where the person resides may,
18 upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear
19 before the department to give testimony and produce evidence as may be required. The clerk of court shall
20 then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to
21 appear at the time and place designated in the subpoena.

22 (4) If a person served with a subpoena refuses to obey the subpoena or to give testimony or produce
23 evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3,
24 chapter 1, part 5.

25 (5) Failure to comply with a court-ordered subpoena is punishable pursuant to 45-7-309."

26

27 **Section 13.** Section 32-1-912, MCA, is amended to read:

28 **"32-1-912. Enforcement of notices or orders.** The director may apply to the district court of the

1 county in which the home office of the institution is located or to the district court for Lewis and Clark County if
 2 the institution does not have a home office in this state for the enforcement of any effective and outstanding
 3 notice or order issued under this part. The court has jurisdiction to require compliance therewith."
 4

5 **Section 14.** Section 32-5-402, MCA, is amended to read:

6 **"32-5-402. Investigations by department -- subpoenas -- oaths -- examination of witnesses and**
 7 **evidence.** (1) The department may at any time investigate any transaction with borrowers and may examine
 8 the books, accounts, and records to discover violations of this chapter by:

9 (a) a licensee; or

10 (b) a person who the department has reason to believe is violating or is about to violate this chapter.

11 (2) The department or the department's authorized representatives must be given free access to the
 12 offices and places of business and files of all licensees. The department may investigate any matter, upon
 13 complaint or otherwise, if it appears that a person has engaged in or offered to engage in any act or practice
 14 that is in violation of any provision of this chapter or any rule adopted or order issued by the department
 15 pursuant to this chapter.

16 (3) The department may issue subpoenas to compel the attendance of witnesses and the production
 17 of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction,
 18 control, or supervision pertaining to this chapter. The department may administer oaths and affirmations to a
 19 person whose testimony is required.

20 (4) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by
 21 the subpoena, a judge of the district court ~~of Lewis and Clark County~~ or in the county in which the licensed
 22 premises are located or in the district court of Lewis and Clark County if no licensed premises are maintained in
 23 the state may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the
 24 witness to appear before the department to give testimony and produce evidence as may be required. The clerk
 25 of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it
 26 is directed to appear at the time and place designated in the subpoena.

27 (5) If a person served with a subpoena refuses to obey the subpoena or to give testimony or produce
 28 evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3,

1 chapter 1, part 5.

2 (6) Failure to comply with the requirements of a court-ordered subpoena is punishable pursuant to 45-
3 7-309."

4

5 **Section 15.** Section 33-1-804, MCA, is amended to read:

6 **"33-1-804. Civil penalty -- civil action for collection of penalty.** (1) A health carrier or a managed
7 care organization violating 33-1-802 or 33-1-803 is subject to a civil penalty, as provided in 33-1-317, for each
8 violation. Each day of violation constitutes a separate violation for the purposes of this section.

9 (2) In addition to other enforcement methods provided by law, the commissioner may bring a civil
10 action in the district court of the first judicial district in the district court in the county in which the violation
11 occurred to collect the civil penalty provided for in subsection (1) from a person violating a provision of this part.
12 If the violation occurred in more than one county, any county in which the violation occurred is a proper venue
13 for a civil action. An amount collected by the commissioner pursuant to this section must be deposited in the
14 general fund."

15

16 **Section 16.** Section 37-1-332, MCA, is amended to read:

17 **"37-1-332. Administrative proceedings to stop unlicensed practice -- board of realty regulation**
18 **-- state electrical board -- board of plumbers.** (1) For purposes of this section, the term "board" means the
19 board of realty regulation provided for in 2-15-1757, the state electrical board provided for in 2-15-1764, or the
20 board of plumbers provided for in 2-15-1765.

21 (2) (a) After investigation under 37-1-317, the board may establish a screening panel to determine if
22 there is reasonable cause to believe a person has engaged in or is engaging in any act or practice constituting
23 unlicensed practice of a profession or occupation.

24 (b) If reasonable cause is found under subsection (2)(a), the board may initiate a contested case
25 proceeding against the person pursuant to the Montana Administrative Procedure Act in Title 2, chapter 4, part
26 6.

27 (3) Following a contested case proceeding, the board may apply any of the following sanctions to a
28 person found to have engaged in the unlicensed practice of a profession or occupation:

1 (a) impose a civil penalty not to exceed \$1,500 for each violation and not to exceed a total of \$5,000
2 for all related violations; and

3 (b) require the person to pay up to \$5,000 for the costs of the administrative proceedings, including
4 but not limited to costs allowable under Title 25, chapter 10, but excluding the costs of investigation and the
5 board's attorney fees.

6 (4) Judicial review of any contested case under this section must be filed ~~with the first judicial district~~
7 ~~or in~~ the district where the violation occurred, pursuant to the Montana Administrative Procedure Act in Title 2,
8 chapter 4, part 7.

9 (5) The remedies provided by this section are in addition to all other remedies or actions that may be
10 taken, including those authorized by 37-1-317. The remedies provided by this section may not be applied either
11 to licensees or to employees of licensees."

12

13 **Section 17.** Section 37-7-1513, MCA, is amended to read:

14 **"37-7-1513. Unlawful acts -- sanctions -- civil penalties.** (1) A pharmacist who fails to submit
15 prescription drug order information to the board as required by 37-7-1503 or who willfully submits incorrect
16 prescription drug order information must be referred to the board for consideration of administrative sanctions.

17 (2) A person or entity authorized to possess registry information pursuant to 37-7-1504 through 37-7-
18 1506 who willfully discloses or uses the registry information in violation of 37-7-1504 through 37-7-1506 or a
19 rule adopted pursuant to this part must be referred to the appropriate licensing board or regulatory agency for
20 consideration of administrative sanctions.

21 (3) In addition to the administrative sanction provided in subsection (2), a person or entity who willfully
22 discloses or uses information from the registry in violation of 37-7-1504 through 37-7-1506 or a rule adopted
23 pursuant to this part is liable for a civil penalty of up to \$10,000 for each violation.

24 (4) The board may institute and maintain in the name of the state any enforcement proceedings under
25 this section. Upon request of the department, the attorney general shall petition the district court to impose,
26 assess, and recover the civil penalty.

27 (5) An action under subsection (3) or to enforce this part or a rule adopted under this part may be
28 brought in the district court of any county where a violation occurs ~~or, if mutually agreed on by the parties in the~~

1 action, in the district court of the first judicial district.

2 (6) Civil penalties collected pursuant to this part must be deposited into the state special revenue
3 account created pursuant to 37-7-1511 and must be used to defray the expenses of the board in establishing
4 and maintaining the registry and in discharging its administrative and regulatory duties in relation to this part."
5

6 **Section 18.** Section 50-5-112, MCA, is amended to read:

7 **"50-5-112. Civil penalties.** (1) A person who commits an act prohibited by 50-5-111 is subject to a
8 civil penalty not to exceed \$1,000 for each day that a facility is in violation of a provision of part 1 or 2 of this
9 chapter or of a rule, license provision, or order adopted or issued pursuant to part 1 or 2. The department or,
10 upon request of the department, the county attorney of the county in which the health care facility in question is
11 located may petition the court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant
12 to this section is in the county in which the facility is located ~~or in the first judicial district.~~

13 (2) In determining the amount of penalty to be assessed for an alleged violation under this section,
14 the court shall consider:

15 (a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or
16 patient;

17 (b) the degree of harm to the health, safety, rights, security, or welfare of a resident or patient;

18 (c) the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this
19 chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2; and

20 (d) other matters as justice may require.

21 (3) A penalty collected under this section must be deposited in the state general fund.

22 (4) In addition to or exclusive of the remedy provided in subsection (1), the department may pursue
23 remedies available for a violation, as provided for in 50-5-108, or any other remedies available to it."
24

25 **Section 19.** Section 50-5-113, MCA, is amended to read:

26 **"50-5-113. Criminal penalties.** (1) A person is guilty of a criminal offense under this section if the
27 person knowingly conceals material information about the operation of the facility or does any of the following
28 and by doing so threatens the health or safety of one or more individuals entrusted to the care of the person:

- 1 (a) commits an act prohibited by 50-5-111;
- 2 (b) omits material information or makes a false statement or representation in an application, record,
3 report, or other document filed, maintained, or used for compliance with the provisions of part 1 or 2 of this
4 chapter or with rules, license provisions, or orders adopted or issued pursuant to part 1 or 2; or
- 5 (c) destroys, alters, conceals, or fails to file or maintain any record, information, or application
6 required to be maintained or filed in compliance with a provision of part 1 or 2 of this chapter or in compliance
7 with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.
- 8 (2) A person convicted under subsection (1) is subject to a fine of not more than \$1,000 for the first
9 offense and not more than \$2,000 for each subsequent offense for each day that a facility is in violation of a
10 provision of part 1 or 2 of this chapter or of a rule, license provision, or order adopted or issued pursuant to part
11 1 or 2.
- 12 (3) In determining the amount of penalty to be assessed for an alleged violation under this section,
13 the court shall consider:
- 14 (a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or
15 patient;
- 16 (b) the degree of harm to the health, safety, rights, security, or welfare of a resident or patient;
- 17 (c) the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this
18 chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2; and
- 19 (d) other matters as justice may require.
- 20 (4) Prosecution under this section does not bar enforcement under any other section of this chapter or
21 pursuit of any other appropriate remedy by the department.
- 22 (5) Venue for prosecution pursuant to this section is in the county in which the facility is located ~~or in~~
23 ~~the first judicial district.~~
- 24 (6) A penalty collected under this section must be deposited in the state general fund."

25

26 **Section 20.** Section 50-6-504, MCA, is amended to read:

27 **"50-6-504. Enforcement -- cessation order -- hearing -- injunction.** (1) If the department receives
28 information that an AED is being used in violation of this part or a rule adopted by the department pursuant to

1 50-6-503, it may send a written order to the entity responsible for use of the AED, as specified in the plan
 2 prepared pursuant to 50-6-502, ordering the entity to cease the violation immediately. The order is effective
 3 upon receipt by the entity, and the entity shall comply with the terms of the order. If the department receives
 4 information that the violation has been corrected, the department may rescind its order by sending a notice to
 5 that effect to the entity. The rescission is effective upon its receipt by the entity.

6 (2) The entity may request a hearing to contest an order issued by the department pursuant to
 7 subsection (1) by submitting a written request to the department within 30 days after receipt of the order. A
 8 request for a hearing does not stay the enforceability of the department's order. The hearing must be held
 9 within 30 days after the department receives the request, unless the hearings officer sets a later date for good
 10 cause. The hearing must be held pursuant to the contested case provisions of the Montana Administrative
 11 Procedure Act.

12 (3) Either the county attorney for the county in which the violation occurred or the department may
 13 bring an action in the district court of the county where the violation occurred ~~or in the district court for Lewis~~
 14 ~~and Clark County~~ to enforce the department's order or to directly enjoin a violation of this part or a rule adopted
 15 pursuant to 50-6-503."

16

17 **Section 21.** Section 50-30-102, MCA, is amended to read:

18 **"50-30-102. Definitions.** In this chapter, the following definitions apply:

19 (1) "Commerce" means all commerce within this state and subject to the jurisdiction of this state and
 20 includes the operation of any business or service establishment.

21 (2) "Court" means, ~~in 50-30-220, the district court for the first judicial district and, in 50-30-306 and 50-~~
 22 ~~30-307, the district court~~ in the district where the violation occurs.

23 (3) "Department" means the department of public health and human services provided for in 2-15-
 24 2201.

25 (4) "Person" includes an individual, partnership, corporation, or association or its legal representative
 26 or agent."

27

28 **Section 22.** Section 53-9-131, MCA, is amended to read:

1 **"53-9-131. Appeals.** After the office has made final determination concerning any matter relating to a
2 claim, if the claimant disputes the office's determination, the claimant may appeal to the district court for the
3 county in which the claimant resides ~~or Lewis and Clark County~~ for review. Review on appeal must be in
4 conformity with 2-4-701 through 2-4-704 of the Montana Administrative Procedure Act. The judge, after a
5 hearing, shall make a final determination concerning the dispute and issue an appropriate order affirming,
6 reversing, or modifying the office's determination."

7

8 **Section 23.** Section 61-4-107, MCA, is amended to read:

9 **"61-4-107. Cease and desist order.** (1) When the department has reasonable cause to believe, from
10 information furnished to it or from an investigation made by it, that a person is engaged in any business
11 regulated by this part without being licensed as required or if a dealer licensed under this part is conducting an
12 off-premises sale without a permit, as required by 61-4-123(4), it shall immediately issue and serve upon the
13 person, in person or by certified mail, a cease and desist order requiring the person to cease and desist from
14 further engaging in that business or from conducting an off-premises sale without a permit. If the person fails to
15 comply with the order, the department shall file an action in the district court of ~~Lewis and Clark County~~ the
16 county in which the conduct occurred to restrain and enjoin the person from engaging in the business. The
17 court shall proceed in the action as in other actions for injunctions.

18 (2) When the department has reasonable cause to believe, from an investigation made by it or
19 information furnished to it by a law enforcement officer, that a dealer or wholesaler has been improperly
20 licensed, has used a dealer's license in a manner other than as authorized in this title, has provided a material
21 misstatement of fact in an application for a license, is not qualified as a dealer or wholesaler under the
22 requirements of this title, or has engaged in criminal conduct that renders the dealer or wholesaler unfit for
23 licensure, the department may revoke the dealer's or wholesaler's license."

24

25 **Section 24.** Section 61-8-812, MCA, is amended to read:

26 **"61-8-812. Operation of out-of-service vehicle -- criminal and civil penalties -- suspension of**
27 **commercial driver's license.** (1) A person may not operate a commercial motor vehicle during any period in
28 which the person, the commercial motor vehicle the person is operating, or the motor carrier operation is

1 subject to an out-of-service order issued under state or federal authority.

2 (2) A violation of this section is a misdemeanor and a person convicted of a violation of this section
3 shall be fined not less than \$25 or more than \$500 for the first offense and not less than \$25 or more than
4 \$1,000 for each subsequent offense.

5 (3) (a) In addition to the misdemeanor penalties provided in subsection (2) and suspension of the
6 person's commercial driver's license as provided in subsection (4), a person who violates an out-of-service
7 order issued under state or federal authority is subject to a civil penalty not to exceed \$2,985 for a first offense
8 and a civil penalty of \$5,970 for a second or subsequent offense.

9 (b) The department or the county attorney of the county in which the violation occurred may petition
10 the district court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section
11 is in the county in which the violation occurred ~~or in the first judicial district.~~

12 (c) A civil penalty collected under this section must be deposited in the state general fund.

13 (4) Upon receipt of notice from a court of competent jurisdiction or another licensing jurisdiction that a
14 person holding a commercial driver's license has been convicted of violating an out-of-service order, the
15 department shall suspend the person's commercial driver's license for:

16 (a) 6 months for a first conviction;

17 (b) 2 years for a second conviction if the vehicle being operated by the person at the time of the
18 violation was not transporting placardable hazardous materials or was not designed or being used to transport
19 more than 15 passengers, inclusive of the driver; and

20 (c) 3 years:

21 (i) for a second conviction if the vehicle:

22 (A) being operated at the time of the violation was transporting placardable hazardous materials; or

23 (B) was designed or being used to transport more than 15 passengers, inclusive of the driver; and

24 (ii) for a third or subsequent conviction.

25 (5) For purposes of this section, an offender is considered to have been previously convicted if less
26 than 10 years have elapsed between the commission of the present offense and a previous conviction.

27 (6) A temporary or probationary commercial driver's license may not be issued while a commercial
28 driver's license is suspended under subsection (4)."

1

2 **Section 25.** Section 61-8-815, MCA, is amended to read:

3 **"61-8-815. Employer not to permit operation of commercial motor vehicle in violation of state**
4 **law or federal regulation -- criminal and civil penalties.** (1) An employer may not knowingly allow, require,

5 permit, or authorize a person to operate a commercial motor vehicle in the United States:

6 (a) during any period in which the person's commercial driver's license has been suspended, revoked,
7 or canceled by a state, the person has lost the privilege to operate a commercial motor vehicle in a state, or the
8 person has been disqualified from operating a commercial motor vehicle;

9 (b) during any period in which the person has more than one commercial driver's license;

10 (c) during any period in which the person, the commercial motor vehicle the person is operating, or
11 the motor carrier operation is subject to an out-of-service order; or

12 (d) in violation of a federal, state, or local law or regulation pertaining to railroad crossings.

13 (2) A violation of this section is a misdemeanor, and a person convicted of a violation of this section
14 shall be fined not less than \$25 or more than \$500 for the first offense and not less than \$25 or more than
15 \$1,000 for each subsequent offense.

16 (3) (a) Except as provided in subsection (3)(b), an employer who violates this section is subject to a
17 civil penalty of not less than \$2,750 or more than \$11,000.

18 (b) An employer who violates subsection (1)(d) is subject to a civil penalty of not more than \$10,000.

19 (c) The department or the county attorney of the county in which the violation occurred may petition
20 the district court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section
21 is in the county in which the violation occurred ~~or in the first judicial district.~~

22 (d) A civil penalty collected under this section must be deposited in the state general fund."
23

24 **Section 26.** Section 75-1-108, MCA, is amended to read:

25 **"75-1-108. Venue.** A proceeding to challenge an action taken pursuant to parts 1 through 3, 10, and
26 11 must be brought in the county in which the activity that is the subject of the action is proposed to occur or will
27 occur. If an activity is proposed to occur or will occur in more than one county, the proceeding may be brought
28 in any of the counties in which the activity is proposed to occur or will occur."

1

2 **Section 27.** Section 75-2-401, MCA, is amended to read:

3 **"75-2-401. Enforcement -- notice -- order for corrective action -- administrative penalty. (1)**

4 When the department believes that a violation of this chapter, a rule adopted under this chapter, or a condition
5 or limitation imposed by a permit issued pursuant to this chapter has occurred, it may cause written notice to be
6 served personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the
7 provision of this chapter, the rule, or the permit condition or limitation alleged to be violated and the facts
8 alleged to constitute a violation. The notice may include an order to take necessary corrective action within a
9 reasonable period of time stated in the order or an order to pay an administrative penalty, or both. The order
10 becomes final unless, within 30 days after the notice is received, the person named requests in writing a
11 hearing before the board. On receipt of the request, the board shall schedule a hearing.

12 (2) If, after a hearing held under subsection (1), the board finds that violations have occurred, it shall
13 issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking
14 of other corrective action or assess an administrative penalty, or both. As appropriate, an order issued as part
15 of a notice or after a hearing may prescribe the date by which the violation must cease; time limits for particular
16 action in preventing, abating, or controlling the emissions; or the date by which the administrative penalty must
17 be paid. If, after a hearing on an order contained in a notice, the board finds that a violation has not occurred or
18 is not occurring, it shall rescind the order.

19 (3) (a) An action initiated under this section may include an administrative civil penalty of not more
20 than \$10,000 for each day of each violation, not to exceed a total of \$80,000. If an order issued by the board
21 under this section requires the payment of an administrative civil penalty, the board shall state findings and
22 conclusions describing the basis for its penalty assessment.

23 (b) Administrative penalties collected under this section must be deposited in the alternative energy
24 revolving loan account established in 75-25-101.

25 (c) Penalties imposed by an administrative order under this section may not be assessed for any day
26 of violation that occurred more than 2 years prior to the issuance of the initial notice and order by the
27 department under subsection (1).

28 (d) In determining the amount of penalty to be assessed for an alleged violation under this section,

1 the department or board, as appropriate, shall consider the penalty factors in 75-1-1001.

2 (e) The department may bring a judicial action to enforce a final administrative order issued pursuant
 3 to this section. The action must be filed in the district court of the county in which the violation occurred ~~or, if~~
 4 ~~mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark~~
 5 ~~County.~~

6 (4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
 7 part 6, apply to a hearing conducted under this section.

8 (5) Instead of issuing the order provided for in subsection (1), the department may either:

9 (a) require that the alleged violators appear before the board for a hearing at a time and place
 10 specified in the notice and answer the charges complained of; or

11 (b) initiate action under 75-2-412 or 75-2-413.

12 (6) This chapter does not prevent the board or department from making efforts to obtain voluntary
 13 compliance through warning, conference, or any other appropriate means.

14 (7) In connection with a hearing held under this section, the board may and on application by a party
 15 shall compel the attendance of witnesses and the production of evidence on behalf of the parties."
 16

17 **Section 28.** Section 75-2-413, MCA, is amended to read:

18 **"75-2-413. Civil penalties -- venue -- effect of action -- presumption of continuing violation**
 19 **under certain circumstances.** (1) (a) A person who violates any provision of this chapter, a rule adopted
 20 under this chapter, or any order or permit made or issued under this chapter is subject to a civil penalty not to
 21 exceed \$10,000 for each violation. Each day of each violation constitutes a separate violation. The department
 22 may institute and maintain in the name of the state any enforcement proceedings under this section. Upon
 23 request of the department, the attorney general or the county attorney of the county of violation shall petition
 24 the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal
 25 penalty provided for in 75-2-412, except for civil penalties for violation of the operating permit program required
 26 by Subchapter V of the federal Clean Air Act.

27 (b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty
 28 factors in 75-1-1001.

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

3 (b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or issued
 4 under this chapter may be brought in the district court of any county where a violation occurs or is threatened
 5 ~~or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and~~
 6 ~~Clark County.~~

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

15 (4) Money collected under this section must be deposited in the alternative energy revolving loan
 16 account established in 75-25-101. This subsection does not apply to money collected by an approved local air
 17 pollution control program."
 18

19 **Section 29.** Section 75-2-514, MCA, is amended to read:

20 **"75-2-514. Civil penalties -- venue for actions to recover.** (1) (a) A district court may assess a civil
 21 penalty of not more than \$25,000 a day upon a person that violates any provision of this part, a rule adopted
 22 under this part, or a permit or order issued under this part. In the case of a continuing violation, each day the
 23 violation continues constitutes a separate violation.

24 (b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty
 25 factors in 75-1-1001.

26 (2) An action under this section is not a bar to enforcement by injunction or other appropriate civil or
 27 administrative remedies.

28 (3) Penalties provided for in subsection (1) are recoverable in an action brought by the department.

1 The action must be filed in the district court of the county in which the violation occurred ~~or, if mutually agreed~~
2 ~~on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County."~~

3

4 **Section 30.** Section 75-5-611, MCA, is amended to read:

5 **"75-5-611. Violation of chapter -- administrative actions and penalties -- notice and hearing. (1)**

6 When the department has reason to believe that a violation of this chapter, a rule adopted under this chapter, or
7 a condition of a permit or authorization required by a rule adopted under this chapter has occurred, it may have
8 a written notice letter served personally or by certified mail on the alleged violator or the violator's agent. The
9 notice letter must state:

10 (a) the provision of statute, rule, permit, or approval alleged to be violated;

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

12 (c) the specific nature of corrective action that the department requires;

13 (d) as applicable, the amount of the administrative penalty that will be assessed by order under
14 subsection (2) if the corrective action is not taken within the time provided under subsection (1)(e); and

15 (e) as applicable, the time within which the corrective action is to be taken or the administrative
16 penalty will be assessed. For the purposes of this chapter, service by certified mail is complete on the date of
17 receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until the
18 provisions of subsection (1) have been complied with.

19 (2) (a) The department may issue an administrative notice and order in lieu of the notice letter
20 provided under subsection (1) if the department's action:

21 (i) does not involve assessment of an administrative penalty; or

22 (ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or is
23 violating 75-5-605.

24 (b) A notice and order issued under this section must meet all of the requirements specified in
25 subsection (1).

26 (3) In a notice and order given under subsection (1), the department may require the alleged violator
27 to appear before the board for a public hearing and to answer the charges. The hearing must be held no sooner
28 than 15 days after service of the notice and order, except that the board may set an earlier date for hearing if it

1 is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the
2 alleged violator if the alleged violator shows good cause for delay.

3 (4) If the department does not require an alleged violator to appear before the board for a public
4 hearing, the alleged violator may request the board to conduct the hearing. The request must be in writing and
5 must be filed with the department no later than 30 days after service of a notice and order under subsection (2).
6 If a request is filed, a hearing must be held within a reasonable time. If a hearing is not requested within 30
7 days after service upon the alleged violator, the opportunity for a contested case appeal to the board under Title
8 2, chapter 4, part 6, is waived.

9 (5) If a contested case hearing is held under this section, it must be public and must be held in the
10 county in which the violation is alleged to have occurred ~~or in Lewis and Clark County.~~

11 (6) (a) After a hearing, the board shall make findings and conclusions that explain its decision.

12 (b) If the board determines that a violation has occurred, it shall also issue an appropriate order for
13 the prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.

14 (c) If the order requires abatement or control of pollution, the board shall state the date or dates by
15 which a violation must cease and may prescribe timetables for necessary action in preventing, abating, or
16 controlling the pollution.

17 (d) If the order requires payment of an administrative penalty, the board shall explain how it
18 determined the amount of the administrative penalty.

19 (e) If the board determines that a violation has not occurred, it shall declare the department's notice
20 void.

21 (7) The alleged violator may petition the board for a rehearing on the basis of new evidence, which
22 petition the board may grant for good cause shown.

23 (8) Instead of issuing an order, the board may direct the department to initiate appropriate action for
24 recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.

25 (9) (a) Except as provided in subsection (9)(d), an action initiated under this section may include an
26 administrative penalty of not more than \$10,000 for each day of each violation; however, the maximum penalty
27 may not exceed \$100,000 for any related series of violations.

28 (b) Administrative penalties collected under this section must be deposited in the general fund.

1 (c) In determining the amount of penalty to be assessed to a person, the department and board shall
2 consider the penalty factors in 75-1-1001, rules promulgated under 75-5-201, and subsection (9)(d).

3 (d) A person who commits a violation that adversely affects the department's administration of this
4 chapter, a rule adopted pursuant to this chapter, or a condition of a permit or authorization issued under this
5 chapter but does not harm or have the potential to harm human health, the environment, or the department's
6 ability to protect human health or the environment may not be assessed a penalty of more than \$500 for each
7 day of the violation, not to exceed \$5,000 for all days of the same violation.

8 (e) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title
9 2, chapter 4, part 6, apply to a hearing conducted under this section."

10

11 **Section 31.** Section 75-5-631, MCA, is amended to read:

12 **"75-5-631. Civil penalties -- injunctions not barred -- venue.** (1) In an action initiated by the
13 department to collect civil penalties against a person who is found to have violated this chapter or a rule, permit,
14 effluent standard, or order issued under the provisions of this chapter, the person is subject to a civil penalty not
15 to exceed \$25,000. Each day of violation constitutes a separate violation.

16 (2) Action under this section does not bar enforcement of this chapter or of rules or orders issued
17 under it by injunction or other appropriate remedy.

18 (3) The department shall institute and maintain enforcement proceedings in the name of the state.
19 Penalties are recoverable in an action brought by the department. The action must be brought in the district
20 court of the county in which the violation occurred ~~or, if mutually agreed on by the parties in the action, in the~~
21 ~~district court of the first judicial district, Lewis and Clark County.~~

22 (4) In determining the amount of penalties under this section, the district court shall take into account
23 the penalty factors in 75-1-1001."

24

25 **Section 32.** Section 75-6-114, MCA, is amended to read:

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

1 county in which the violation occurred ~~or, if mutually agreed on by the parties in the action, in the district court of~~
2 ~~the first judicial district, Lewis and Clark County.~~

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

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

6 (4) When seeking penalties under this section, the department shall take into account the penalty
7 factors in 75-1-1001 in determining an appropriate settlement or judgment, as appropriate.

8 (5) Civil penalties collected pursuant to this section must be deposited in the state general fund."
9

10 **Section 33.** Section 75-10-228, MCA, is amended to read:

11 **"75-10-228. Civil penalties.** (1) A person who violates a provision of this part, a rule adopted or an
12 order issued under this part, or a license provision is subject to an administrative penalty not to exceed \$250 or
13 a civil penalty not to exceed \$1,000. Each day of violation constitutes a separate violation.

14 (2) The department may institute and maintain in the name of the state any enforcement proceedings
15 under this section. The enforcement or collection action must be brought in the district court of the county in
16 which the violation occurred ~~or, if mutually agreed upon by the parties, in the district court of the first judicial~~
17 ~~district, Lewis and Clark County.~~ Upon request of the department, the attorney general or the county attorney of
18 the county where the violation occurred shall petition the district court to impose, assess, and recover the civil
19 penalty.

20 (3) Penalties assessed under this section must be determined in accordance with the penalty factors
21 in 75-1-1001.

22 (4) Fines and penalties collected under this section must be deposited in the solid waste management
23 account provided for in 75-10-117."
24

25 **Section 34.** Section 75-10-417, MCA, is amended to read:

26 **"75-10-417. Civil penalties.** (1) A person who violates any provision of this part, a rule adopted under
27 this part, an order of the department or the board, or a permit is subject to a civil penalty not to exceed \$10,000
28 for each violation. Each day of violation constitutes a separate violation. Penalties assessed under this section

1 must be determined in accordance with the penalty factors in 75-1-1001.

2 (2) The department may institute and maintain in the name of the state any enforcement proceedings
3 under this section. Upon request of the department, the attorney general or the county attorney of the county of
4 violation shall petition the district court to impose, assess, and recover the civil penalty. An action to recover
5 penalties must be brought in the district court of the county in which the violation occurred ~~or, if mutually agreed~~
6 ~~on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.~~

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

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

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

11 (4) Money collected under this section must be deposited in the state general fund."
12

13 **Section 35.** Section 75-10-424, MCA, is amended to read:

14 **"75-10-424. Administrative penalty.** (1) The department may assess a person who violates a
15 provision of this part or a rule adopted under this part an administrative penalty, not to exceed \$10,000 for each
16 violation. Each day of violation constitutes a separate violation, but the maximum penalty may not exceed
17 \$100,000 for any related series of violations. Assessment of an administrative penalty under this section must
18 be made in conjunction with an order or administrative action authorized by this chapter.

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

21 (3) In determining the appropriate amount of an administrative penalty, the department shall consider
22 the penalty factors in 75-1-1001.

23 (4) If the department is unable to collect the administrative penalty or if a person fails to pay all or any
24 portion of the administrative penalty as determined by the department, the department may file an action to
25 recover the amount not paid. The action must be brought in the district court of the county in which the violation
26 occurred ~~or, if mutually agreed on by the parties in the action, in the district court of the first judicial district,~~
27 ~~Lewis and Clark County.~~

28 (5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other

1 appropriate remedy.

2 (6) Administrative penalties collected under this section must be deposited in the state general fund."

3

4 **Section 36.** Section 75-10-542, MCA, is amended to read:

5 **"75-10-542. Penalties.** (1) A person who purposely or knowingly violates this part, except 75-10-520,
6 is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed \$250, be imprisoned in
7 the county jail for a term not to exceed 30 days, or both.

8 (2) A person who violates a provision of this part, except 75-10-520, a rule of the department, or an
9 order issued as provided in this part is subject to an administrative penalty of not more than \$50 or a civil
10 penalty of not more than \$250. Each day upon which a violation of this part, a rule, or an order occurs is a
11 separate violation.

12 (3) Penalties assessed under subsection (2) must be determined in accordance with the penalty
13 factors in 75-1-1001. The penalties provided for in this section are recoverable in an enforcement or collection
14 action brought by the department. An action to recover penalties must be brought in the district court of the
15 county in which the violation occurred ~~or, if mutually agreed on by the parties in the action, in the district court of~~
16 ~~the first judicial district, Lewis and Clark County."~~

17

18 **Section 37.** Section 75-10-711, MCA, is amended to read:

19 **"75-10-711. Remedial action -- orders -- penalties -- judicial proceedings.** (1) The department
20 may take remedial action whenever:

21 (a) there has been a release or there is a substantial threat of a release into the environment that may
22 present an imminent and substantial endangerment to the public health, safety, or welfare or to the
23 environment; and

24 (b) none of the persons who are liable or potentially liable under 75-10-715(1) and who have been
25 given the opportunity by letter to properly and expeditiously perform the appropriate remedial action will
26 properly and expeditiously perform the appropriate remedial action. Any person liable under 75-10-715(1) shall
27 take immediate action to contain, remove, and abate the release.

28 (2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe

1 that a release has occurred or is about to occur, the department may undertake remedial action in the form of
2 any investigation, monitoring, survey, testing, or other information gathering as authorized by 75-10-707 that is
3 necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of
4 release and the extent and imminence of the danger to the public health, safety, or welfare or to the
5 environment.

6 (3) Except as provided in 75-10-712, the department is authorized to draw on the fund to take action
7 under subsection (1) if it has made diligent good faith efforts to determine the identity of the person or persons
8 liable for the release or threatened release and:

9 (a) is unable to determine the identity of the liable person or persons in a manner consistent with the
10 need to take timely remedial action; or

11 (b) a person or persons determined by the department to be liable or potentially liable under 75-10-
12 715(1) have been informed in writing of the department's determination and have been requested by the
13 department to take appropriate remedial action but are unable or unwilling to take action in a timely manner;
14 and

15 (c) the written notice informs the person that if subsequently found liable pursuant to 75-10-715(1),
16 the person may be required to reimburse the fund for the state's remedial action costs and may be subject to
17 penalties pursuant to this part.

18 (4) Whenever the department is authorized to act pursuant to subsection (1), it may issue to any
19 person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or
20 appropriate to protect the public health, safety, or welfare or the environment.

21 (5) (a) A person who violates or fails to comply with or refuses to comply with an order issued under
22 75-10-707 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more
23 than \$10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining
24 the amount of any penalty assessed, the court may take into account:

25 (i) the nature, circumstances, extent, and gravity of the noncompliance;

26 (ii) with respect to the person liable under 75-10-715(1):

27 (A) the person's ability to pay;

28 (B) any prior history of violations;

1 (C) the degree of culpability; and

2 (D) the economic benefit or savings, if any, resulting from the noncompliance; and

3 (iii) any other matters as justice may require.

4 (b) Civil penalties collected under subsection (5)(a) must be deposited into the environmental quality
5 protection fund established in 75-10-704.

6 (6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the
7 following actions:

8 (a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;

9 (b) an action to enforce an order issued under 75-10-707 or this section;

10 (c) an action to recover a civil penalty for violation of or failure or refusal to comply with an order
11 issued under 75-10-707 or this section; or

12 (d) an action by a person to whom an order has been issued to determine the validity of the order,
13 only if the person has been in compliance and continues in compliance with the order pending a decision of the
14 court.

15 (7) In considering objections raised in a judicial action regarding orders issued under this part, the
16 court shall uphold and enforce an order issued by the department unless the objecting party can demonstrate,
17 on the administrative record, that the department's decision to issue the order was arbitrary and capricious or
18 otherwise not in accordance with law.

19 (8) Instead of issuing a notification or an order under this section, the department may bring an action
20 for legal or equitable relief in the district court of the county where the release or threatened release occurred ~~or~~
21 ~~in the first judicial district~~ as may be necessary to abate any imminent and substantial endangerment to the
22 public health, safety, or welfare or to the environment resulting from the release or threatened release.

23 (9) A person who is not subject to an administrative or judicial order may not conduct any remedial
24 action at any facility that is subject to an administrative or judicial order issued pursuant to this part without the
25 written permission of the department. If a state or federal administrative or judicial order is issued relative to a
26 facility, the order and any remedial activity conducted pursuant to the order may be admissible in a civil action
27 pertaining to the facility or property adjacent to or allegedly impacted by the facility provided that the reviewing
28 court in its discretion determines the order to be relevant and more probative than prejudicial. Admission of this

1 evidence does not make the department a necessary party to the action. Remedial action performed in
2 accordance with this part is intended to provide for the protection of the environmental life support system from
3 degradation and to prevent unreasonable depletion and degradation of natural resources.

4 (10) The department may take remedial action pursuant to subsection (1) at a site that is regulated
5 under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public
6 Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of this
7 part.

8 (11) The department may take remedial action as provided for in 75-10-743(12)."
9

10 **Section 38.** Section 75-10-715, MCA, is amended to read:

11 **"75-10-715. Liability -- reimbursement and penalties -- proceedings -- defenses and exclusions.**

12 (1) Except as provided in 70-30-323 and 75-10-742 through 75-10-751, notwithstanding any other provision of
13 law, and subject only to the defenses set forth in subsection (5) and the exclusions set forth in subsection (7),
14 the following persons are jointly and severally liable for a release or threatened release of a hazardous or
15 deleterious substance from a facility:

16 (a) a person who owns or operates a facility where a hazardous or deleterious substance was
17 disposed of;

18 (b) a person who at the time of disposal of a hazardous or deleterious substance owned or operated a
19 facility where the hazardous or deleterious substance was disposed of;

20 (c) a person who generated, possessed, or was otherwise responsible for a hazardous or deleterious
21 substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment of the substance
22 or arranged with a transporter for transport of the substance for disposal or treatment; and

23 (d) a person who accepts or has accepted a hazardous or deleterious substance for transport to a
24 disposal or treatment facility.

25 (2) A person identified in subsection (1) is liable for the following costs:

26 (a) all remedial action costs incurred by the state; and

27 (b) damages for injury to, destruction of, or loss of natural resources caused by the release or
28 threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim for

1 the injury, destruction, or loss resulting from the release, unless the impaired natural resources were specifically
2 identified as an irreversible and irretrievable commitment of natural resources in an approved final state or
3 federal environmental impact statement or other comparable approved final environmental analysis for a project
4 or facility that was the subject of a governmental permit or license and the project or facility was being operated
5 within the terms of its permit or license.

6 (3) If the person liable under subsection (1) fails, without sufficient cause, to comply with a
7 department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification by
8 the department pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to exceed
9 two times the amount of any costs incurred by the state pursuant to this section.

10 (4) The department may initiate civil proceedings in district court to recover remedial action costs,
11 natural resource damages, or penalties under subsections (1), (2), and (3). Proceedings to recover costs and
12 penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs, damages, or
13 penalties lies in the county where the release occurred or where the person liable under subsection (1) resides
14 or has its principal place of business ~~or in the district court of the first judicial district.~~

15 (5) A person has a defense and is not liable under subsections (1), (2), and (3) if the person can
16 establish by a preponderance of the evidence that:

17 (a) the department failed to provide notice to the person claiming the defense when required by 75-
18 10-711. Establishment of this defense only prohibits the department from collecting those costs incurred or
19 encumbered by the department prior to providing notice to the person and does not provide the person a
20 defense to any other liability.

21 (b) the release did not emanate from any vessel, vehicle, or facility to which the person contributed
22 any hazardous or deleterious substance or over which the person had any ownership, authority, or control and
23 was not caused by any action or omission of the person;

24 (c) the release or threatened release occurred solely as a result of:

25 (i) an act or omission of a third party other than either an employee or agent of the person; or

26 (ii) an act or omission of a third party other than one whose act or omission occurs in connection with a
27 contractual relationship, existing directly or indirectly, with the person, if the person establishes by a
28 preponderance of the evidence that the person:

1 (A) exercised due care with respect to the hazardous or deleterious substance concerned, taking into
2 consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts and
3 circumstances; and

4 (B) took precautions against foreseeable acts or omissions of a third party and the consequences that
5 could foreseeably result from those acts or omissions;

6 (d) the release or threatened release occurred solely as the result of an act of God or an act of war;

7 (e) the release or threatened release was from a facility for which a permit had been issued by the
8 department, the hazardous or deleterious substance was specifically identified in the permit, and the release
9 was within the limits allowed in the permit;

10 (f) in the case of assessment of penalties under subsection (3), factors beyond the control of the
11 person prevented the person from taking timely remedial action; or

12 (g) the person transported only household refuse, unless that person knew or reasonably should have
13 known that the hazardous or deleterious substance was present in the refuse.

14 (6) (a) For the purpose of subsection (5)(c)(ii), the term "contractual relationship" includes but is not
15 limited to land contracts, deeds, or other instruments transferring title or possession, unless the real property on
16 which the facility is located was acquired by the person after the disposal or placement of the hazardous or
17 deleterious substance on, in, or at the facility and one or more of the following circumstances is also
18 established by the person by a preponderance of the evidence:

19 (i) At the time the person acquired the facility, the person did not know and had no reason to know
20 that a hazardous or deleterious substance that is the subject of the release or threatened release was disposed
21 of on, in, or at the facility.

22 (ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or
23 through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by
24 purchase or condemnation pursuant to Title 70, chapter 30.

25 (iii) The person acquired the facility by inheritance or bequest.

26 (b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through
27 (6)(a)(iii), the person shall establish that the person has satisfied the requirements of subsection (5)(c)(i) or
28 (5)(c)(ii).

1 (c) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the person
2 must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of
3 the property consistent with good commercial or customary practice in an effort to minimize liability. For
4 purposes of assessing this inquiry, the following must be taken into account:

- 5 (i) any specialized knowledge or experience on the part of the person;
- 6 (ii) the relationship of the purchase price to the value of the property if uncontaminated;
- 7 (iii) commonly known or reasonably ascertainable information about the property;
- 8 (iv) the obviousness of the presence or the likely presence of contamination on the property; and
- 9 (v) the ability to detect the contamination by appropriate inspection.

10 (d) (i) Subsections (5)(b) and (5)(c) or this subsection (6) may not diminish the liability of a previous
11 owner or operator of the facility who would otherwise be liable under this part.

12 (ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge of
13 the release or threatened release of a hazardous or deleterious substance at the facility when the person
14 owned the real property and then subsequently transferred ownership of the property to another person without
15 disclosing the knowledge, the previous owner is liable under subsections (1), (2), and (3) and a defense under
16 subsection (5)(b) or (5)(c) is not available to that person.

17 (e) This subsection (6) does not affect the liability under this part of a person who, by any act or
18 omission, caused or contributed to the release or threatened release of a hazardous or deleterious substance
19 that is the subject of the action relating to the facility.

20 (7) A person has an exclusion and is not liable under this section if:

21 (a) the person generated or disposed of only household refuse, unless the person knew or reasonably
22 should have known that the hazardous or deleterious substance was present in the refuse;

23 (b) the person owns or operates real property where hazardous or deleterious substances have come
24 to be located solely as a result of subsurface migration in an aquifer from a source or sources outside the
25 person's property, provided that the following conditions are met:

26 (i) the owner or operator did not cause, contribute to, or exacerbate the release or threatened release
27 of any hazardous or deleterious substances through any act or omission. The failure to take affirmative steps to
28 mitigate or address contamination that has migrated from a source outside the owner's or operator's property

1 does not, in the absence of exceptional circumstances, constitute an omission by the owner or operator.

2 (ii) the person who caused, contributed to, or exacerbated the release or threatened release of any
3 hazardous or deleterious substance is not and was not an agent or employee of the owner or operator and is
4 not or was not in a direct or indirect contractual relationship with the owner or operator, unless the department
5 provides a written determination that an existing or proposed contractual relationship is an insufficient basis to
6 establish liability under this section;

7 (iii) there is no other basis of liability under subsection (1) for the owner or operator for the release or
8 threatened release of a hazardous or deleterious substance; and

9 (iv) the owner or operator cooperates with the department and all persons conducting department-
10 approved remedial actions on the property, including granting access and complying with and implementing all
11 required institutional controls;

12 (c) the person owns or occupies real property of 20 acres or less for residential purposes, provided
13 that the following conditions are met:

14 (i) the person did not cause, contribute to, or exacerbate the release or threatened release of any
15 hazardous or deleterious substance through any act or omission;

16 (ii) the person uses or allows the use of the real property for residential purposes. This exclusion does
17 not apply to any person who acquires or develops real property for commercial use or any use other than
18 residential use.

19 (iii) at the time the person purchased or occupied the real property, there were no visible indications of
20 contamination on the surface of the real property;

21 (iv) the person cooperates with the department and all persons conducting department-approved
22 remedial actions on the property, including granting access and complying with and implementing all required
23 institutional controls; and

24 (v) there is no other basis of liability under subsection (1) for the owner or occupier for the release or
25 threatened release of a hazardous or deleterious substance.

26 (8) A person is liable under this section if the department provides substantial credible evidence that
27 the person fails to satisfy any element of each exclusion in subsections (7)(a) through (7)(c).

28 (9) The liability of a fiduciary under the provisions of this part for a release or a threatened release of

1 a hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed the assets held
2 in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary is liable under this part
3 independent of the person's ownership or actions taken in a fiduciary capacity.

4 (10) A person who holds indicia of ownership in a facility primarily to protect a security interest is not
5 liable under subsections (1)(a) and (1)(b) for having participated in the management of a facility within the
6 meaning of 75-10-701(15)(b) because of any one or any combination of the following:

7 (a) holding an interest in real or personal property when the interest is being held as security for
8 payment or performance of an obligation, including but not limited to a mortgage, deed of trust, lien, security
9 interest, assignment, pledge, or other right or encumbrance against real or personal property that is furnished
10 by the owner to ensure repayment of a financial obligation;

11 (b) requiring or conducting financial or environmental assessments of a facility or a portion of a
12 facility, making financing conditional upon environmental compliance, or providing environmental information or
13 reports;

14 (c) monitoring the operations conducted at a facility or providing access to a facility to the department
15 or its agents or to remedial action contractors;

16 (d) having the mere capacity or unexercised right to influence a facility's management of hazardous or
17 deleterious substances;

18 (e) giving advice, information, guidance, or direction concerning the administrative and financial
19 aspects, as opposed to day-to-day operational aspects, of a borrower's operations;

20 (f) providing general information concerning federal, state, or local laws governing the transportation,
21 storage, treatment, and disposal of hazardous or deleterious substances and concerning the hiring of remedial
22 action contractors;

23 (g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;

24 (h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or
25 undertaking other activities to protect or preserve the value of the security interest in a facility;

26 (i) extending or denying credit to a person owning or in lawful possession of a facility;

27 (j) in an emergency, requiring or undertaking activities to prevent exposure of persons to hazardous
28 or deleterious substances or to contain a release;

1 (k) requiring or conducting remedial action in response to a release or threatened release if prior
2 notice is given to the department and the department approves of the remedial action; or

3 (l) taking title to a facility by foreclosure, provided that the holder of indicia of ownership, from the time
4 the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing transaction
5 (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the
6 property in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or
7 appropriate with respect to the facility and taking all facts and circumstances into consideration and provided
8 that the holder does not:

9 (i) outbid or refuse a bid for fair consideration for the property or outbid or refuse a bid that would
10 effectively compensate the holder for the amount secured by the facility;

11 (ii) worsen the contamination at the facility;

12 (iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting
13 hazardous or deleterious substances; or

14 (iv) engage in conduct described in subsection (11).

15 (11) The protection from liability provided in subsections (9) and (10) is not available to a fiduciary or to
16 a person holding indicia of ownership primarily to protect a security interest if the fiduciary or person through
17 affirmative conduct:

18 (a) causes or contributes to a release of hazardous or deleterious substances from the facility;

19 (b) allows others to cause or contribute to a release of hazardous or deleterious substances; or

20 (c) in the case of a person holding indicia of ownership primarily to protect a security interest, actually
21 participates in the management of a facility by:

22 (i) exercising decisionmaking control over environmental compliance; or

23 (ii) exercising control at a level comparable to that of a manager of the enterprise with responsibility for
24 day-to-day decisionmaking either with respect to environmental compliance or substantially all of the
25 operational, as opposed to financial or administrative, aspects of the facility."
26

27 **Section 39.** Section 75-10-1223, MCA, is amended to read:

28 **"75-10-1223. Penalties and fines.** (1) A person who disposes of septage in violation of 75-10-1210

1 or of the standards adopted pursuant to 75-10-1202 is guilty of a misdemeanor and upon conviction shall be
 2 fined an amount not to exceed \$500.

3 (2) (a) A person who violates this part or a rule or order adopted pursuant to this part is subject to a
 4 civil penalty of not more than \$500. Each day that violation of this part, a rule of the department, or an order
 5 issued pursuant to this part occurs constitutes a separate violation. The department or the county attorney of
 6 the county in which the violation occurred may file an action to collect the penalty.

7 (b) Penalties assessed under this subsection (2) must be determined in accordance with the penalty
 8 factors in 75-1-1001. An action to recover penalties must be brought in the district court of the county in which
 9 the violation occurred ~~or, if mutually agreed on by the parties in the action, in the district court of the first judicial~~
 10 ~~district, Lewis and Clark County.~~

11 (3) Penalties collected by the department under this section must be deposited in the environmental
 12 rehabilitation and response account in the state special revenue fund provided for in 75-1-110. Fines and
 13 penalties collected by a county must be deposited in the general fund of the county."
 14

15 **Section 40.** Section 75-11-223, MCA, is amended to read:

16 **"75-11-223. Civil and administrative penalties.** (1) (a) A person who violates a provision of this part,
 17 a rule adopted under this part, or an order of the department or the board is subject to an administrative penalty
 18 not to exceed \$500 for each violation or a civil penalty not to exceed \$10,000 for each violation. If an installer or
 19 an inspector who is an employee is in violation, the employer of that installer or that inspector is the entity that
 20 is subject to the provisions of this section unless the violation is the result of a grossly negligent or willful act.
 21 Each day of violation of this part, a rule adopted under this part, or an order constitutes a separate violation.

22 (b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty
 23 factors in 75-1-1001.

24 (2) The department may institute and maintain in the name of the state any enforcement proceedings
 25 under this section. The enforcement or collection action must be brought in the district court of the county in
 26 which the violation occurred ~~or, if mutually agreed upon by the parties, in the district court of the first judicial~~
 27 ~~district, Lewis and Clark County.~~ Upon request of the department, the attorney general or the county attorney of
 28 the county where the violation occurred shall petition the district court to impose, assess, and recover the civil

1 penalty.

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

3 (a) enforcement of this part, rules adopted under this part, orders of the department or the board, or
4 terms of a license or permit by injunction or other appropriate remedy; or

5 (b) action under 75-11-224."

6

7 **Section 41.** Section 75-11-516, MCA, is amended to read:

8 **"75-11-516. Civil penalties.** (1) (a) A person who violates any provision of this part, a rule adopted
9 under this part, or an order of the department or the board is subject to a civil penalty not to exceed \$10,000 for
10 each violation. Each day of violation constitutes a separate violation.

11 (b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty
12 factors in 75-1-1001.

13 (2) The department may institute and maintain in the name of the state any enforcement proceedings
14 under this section. Upon request of the department, the attorney general or the county attorney of the county of
15 violation shall petition the district court to impose, assess, and recover the civil penalty. Penalties are also
16 recoverable in an action brought by the department. The action must be brought in the district court of the
17 county in which the violation occurred ~~or, if mutually agreed on by the parties in the action, in the district court of~~
18 ~~the first judicial district, Lewis and Clark County.~~

19 (3) Action under this section does not bar enforcement of this part, rules adopted under this part, or
20 orders of the department or the board.

21 (4) Money collected under this section must be deposited in the state general fund."

22

23 **Section 42.** Section 75-11-518, MCA, is amended to read:

24 **"75-11-518. Venue for legal actions.** All legal actions affecting underground storage tanks or the
25 disposal of regulated substances must be brought in the county in which the underground storage tank is
26 located ~~or, if mutually agreed upon by the affected parties, in the first judicial district, Lewis and Clark County.~~

27

28 **Section 43.** Section 75-11-525, MCA, is amended to read:

1 **"75-11-525. Administrative penalties for violations -- appeals -- venue.** (1) (a) A person who
2 violates any of the provisions of this part or any rules promulgated under the authority of this part may be
3 assessed and ordered by the department to pay an administrative penalty not to exceed \$500 for each
4 violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each
5 occurrence of the violation and each day that it remains uncorrected constitutes a separate violation. The
6 department may suspend a portion of the administrative penalty assessed under this section if the condition
7 that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative
8 penalty under this section may be made in conjunction with any order or other administrative action authorized
9 by this chapter.

10 (b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty
11 factors in 75-1-1001.

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

15 (a) the provision alleged to be violated;

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

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

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

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

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

24 (g) the right to appeal or to a hearing to mitigate the penalty assessed.

25 (3) A person assessed a penalty under this section may request a hearing before the board to either
26 contest the alleged violation or request mitigation of the penalty. The contested case provisions of the Montana
27 Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this
28 section. If a hearing is held under this section, it must be held in ~~Lewis and Clark County~~ or the county in which

1 the alleged violation occurred.

2 (4) If the department is unable to collect an administrative penalty assessed under this section or if a
3 person fails to pay all or any portion of an administrative penalty assessed under this section, the department
4 may take action in district court to recover the penalty amount and any additional amounts assessed or sought
5 under this chapter. The action must be brought in the district court of the county in which the violation occurred
6 ~~or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and~~
7 ~~Clark County.~~

8 (5) Action under this section does not bar action under this chapter or any other remedy available to
9 the department for violations of underground storage tank laws or rules promulgated under those laws.

10 (6) Administrative penalties collected under this section must be deposited in the state general fund."
11

12 **Section 44.** Section 76-4-109, MCA, is amended to read:

13 **"76-4-109. Penalties.** (1) A person who violates a provision of this part, except 76-4-122(1), or a rule
14 adopted or an order issued under this part is guilty of an offense and subject to a fine in an amount not to
15 exceed \$1,000.

16 (2) (a) In addition to the fine specified in subsection (1), a person who violates any provision of this
17 part or any rule adopted or order issued under this part is subject to an administrative penalty in an amount not
18 to exceed \$250 or a civil penalty in an amount not to exceed \$1,000. Each day of violation constitutes a
19 separate violation.

20 (b) Penalties assessed under this subsection (2) must be determined in accordance with the penalty
21 factors in 76-4-1001. An action to recover penalties must be brought in the district court of the county in which
22 the violation occurred ~~or, if mutually agreed on by the parties in the action, in the district court of the first judicial~~
23 ~~district, Lewis and Clark County.~~

24 (3) Penalties imposed under subsection (1) or (2) do not bar enforcement of this part or rules or
25 orders issued under it by injunction or other appropriate remedy.

26 (4) The purpose of this section is to provide additional and cumulative remedies."
27

28 **Section 45.** Section 77-2-107, MCA, is amended to read:

1 **"77-2-107. Involvement of lessee when land subject to prior lease.** (1) Whenever any kind of
2 right-of-way easement has been granted under this part and the state land in which it is granted is under lease,
3 the party receiving the grant shall give timely notice to the lessee and shall make just settlement with the lessee
4 for any damages resulting to the lessee's improvements, crops, or leasehold interests.

5 (2) After the settlement is made, the lessee shall open or move any fences that may obstruct the
6 right-of-way over the lands under lease and otherwise cooperate in the opening of the right-of-way. Proof must
7 be filed with the board that the settlement has been made before the deed to the easement is issued.

8 (3) (a) If the lessee and the party receiving the right-of-way easement are unable to agree on the
9 value of the damages resulting from the easement, the value of the damages must be ascertained and fixed by
10 three arbitrators, one of whom must be appointed by the lessee, one by the party receiving the easement, and
11 the third by the two appointed arbitrators.

12 (b) If a party refuses to appoint an arbitrator within 15 days of being requested to do so by the director
13 of the department, the director may appoint an arbitrator for that party. An arbitrator appointed by the director
14 has the same duties and powers as if appointed by one of the parties.

15 (c) The arbitrators may fix reasonable compensation for their services. The compensation must be
16 paid in equal shares by the owner of the easement and the lessee.

17 (d) The value of the damages as ascertained and fixed by the arbitrators is binding on both parties;
18 however, if either party is dissatisfied with the valuation, the party may, within 10 days, appeal from their
19 decision to the department. The department shall examine the easements, and, except as provided in
20 subsection (3)(e), its decision on the appeal is final. The department shall collect the actual cost of the
21 reexamination from the owner of the easement and the lessee in the proportion that, in its judgment, justice
22 may demand.

23 (e) If either party is dissatisfied with the valuation fixed by the department, the party may within 30
24 days after receipt of the department's decision petition the district court in the county in which the majority of the
25 state land is located ~~or the district court in Lewis and Clark County~~ for judicial review of the decision."
26

27 **Section 46.** Section 82-4-142, MCA, is amended to read:

28 **"82-4-142. Mandamus to compel enforcement.** (1) A resident of this state who has knowledge that

1 a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee
2 whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public
3 officer or employee by a written statement under oath that must state the specific facts of the failure to enforce
4 the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to
5 penalties prescribed in 45-7-202.

6 (2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the
7 statement to enforce the requirement or rule, the resident may bring an action of mandamus ~~in the district court~~
8 ~~of the first judicial district of this state or~~ in the district court of the county in which the land is located. If the court
9 finds that a requirement of this part or a rule adopted under this part is not being enforced, it shall order the
10 public officer or employee whose duty it is to enforce the requirement or rule to perform the duties. If the officer
11 or employee fails to do so, the public officer or employee must be held in contempt of court and is subject to the
12 penalties provided by law."

13

14 **Section 47.** Section 82-4-254, MCA, is amended to read:

15 **"82-4-254. Violation -- penalty -- waiver.** (1) (a) Except as provided in subsection (2), a person or
16 operator who violates any of the provisions of this part, rules adopted or orders issued under this part, or term
17 or condition of a permit and any director, officer, or agent of a corporation who purposely or knowingly
18 authorizes, orders, or carries out a violation shall pay an administrative penalty of not less than \$100 or more
19 than \$5,000 for the violation and an additional administrative penalty of not less than \$100 or more than \$5,000
20 for each day during which a violation continues and may be enjoined from continuing the violations as provided
21 in this section. A person or operator who fails to correct a violation within the period permitted by law, rule of the
22 board, or order of the department must be assessed a penalty of not less than \$750 for each day, up to 30
23 days, during which the failure or violation continues.

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

26 (c) The period permitted for correction of a violation does not, in the case of any review proceeding
27 under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an
28 order of court ordering suspension of the abatement requirements. If the failure to abate continues for more

1 than 30 days, the department shall, within 30 days after the 30-day period, take appropriate action pursuant to
2 82-4-251(3) or request action under subsection (4) or (6) of this section.

3 (2) The department may waive the penalty for a minor violation of this part, a rule adopted or an order
4 issued under this part, or a term or condition of a permit if the department determines that the violation is not of
5 potential harm to public health, public safety, or the environment and does not impair the administration of this
6 part. The department may not waive a penalty assessed under this section if the person or operator fails to
7 abate the violation as directed under 82-4-251. The board shall adopt rules to implement and administer a
8 procedure for waiver of a penalty under this subsection.

9 (3) (a) To assess an administrative penalty under this section, the department shall issue a notice of
10 violation and penalty order to the person or operator, unless the penalty is waived pursuant to subsection (2).
11 The notice and order must specify the provision of this part, rule adopted or order issued under this part, or
12 term or condition of a permit that is violated and must contain findings of fact, conclusions of law, and a
13 statement of the proposed administrative penalty. The notice and order must be served personally or by
14 certified mail. Service by mail is complete 3 business days after the date of mailing. The notice and order
15 become final unless, within 30 days after the order is served, the person or operator to whom the order was
16 issued requests a hearing before the board. By submitting to the board a written request within 30 days of
17 service of the notice of violation, stating the reason for the request, the person or operator is entitled to a
18 hearing before the board under 82-4-206 on the issues of whether the alleged violation has occurred and
19 whether the penalty proposed to be assessed is proper. On receipt of a request, the board shall schedule a
20 hearing. After a hearing, the board shall make findings of fact and issue a written decision as to the occurrence
21 of the violation and the amount of penalty warranted. If the board finds that the violation occurred and a penalty
22 is warranted, it shall order the payment of the penalty. If the time for requesting a hearing expires without a
23 hearing request, the person or operator shall remit the amount of the penalty within 30 days of the expiration of
24 the period for requesting a hearing.

25 (b) If the person or operator to whom a final order is issued under subsection (3)(a) wishes to obtain
26 judicial review of the order, the person or operator shall submit with any assessed penalty a statement that the
27 penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is
28 complete. Any person or operator who fails to request and submit testimony at the hearing provided for in

1 subsection (3)(a) or who fails to pay any assessed penalty under protest within 30 days of the order assessing
2 the penalty forfeits the right to seek judicial review of the violation and penalty determinations.

3 (c) Penalties provided for in this section are recoverable in an action brought by the department. The
4 action must be filed in the district court of the first judicial district, Lewis and Clark County, if mutually agreed on
5 by the parties in the action, or in the district court having jurisdiction over the defendant or in the first judicial
6 district if no other district court has jurisdiction.

7 (4) The department may bring an action for a restraining order or temporary or permanent injunction
8 against an operator or other person who:

9 (a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under
10 this part;

11 (b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

12 (c) refuses to admit an authorized representative of the department to the permit area;

13 (d) refuses to permit inspection of the permit area by an authorized representative of the department;

14 (e) refuses to furnish any information or report requested by the department in furtherance of the
15 provisions of this part; or

16 (f) refuses to permit access to and copying of records that the department determines to be
17 necessary in carrying out the provisions of this part.

18 (5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or
19 final termination of all proceedings for review of relief granted under this part unless, prior to the final
20 determination, the district court granting the relief sets it aside or modifies it.

21 (6) A person who violates any of the provisions of this part or any determination or order issued under
22 this part or who purposely or knowingly violates any permit condition issued under this part is guilty of a
23 misdemeanor and shall be fined an amount not less than \$500 and not more than \$10,000 or be imprisoned for
24 not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

25 (7) A person who knowingly makes any false statement, representation, or certification or knowingly
26 fails to make any statement, representation, or certification in any application, record, report, plan, or other
27 document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of
28 not more than \$10,000 or by imprisonment for not more than 1 year, or both.

1 (8) A person who except as permitted by law purposely or knowingly resists, prevents, impedes, or
2 interferes with the department or its agents in the performance of duties pursuant to this part shall be punished
3 by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

4 (9) An employee of the department performing any function or duty under this part may not have a
5 direct or indirect financial interest in any strip- or underground-coal-mining operation. A person who knowingly
6 violates the provisions of this subsection shall upon conviction be punished by a fine of not more than \$2,500 or
7 by imprisonment of not more than 1 year, or both.

8 (10) Within 30 days after receipt of full payment of an administrative penalty assessed under this
9 section, the department shall issue a written release of civil liability for the violations for which the penalty was
10 assessed."
11

12 **Section 48.** Section 82-4-354, MCA, is amended to read:

13 **"82-4-354. Mandamus to compel enforcement.** (1) A person having an interest that is or may be
14 adversely affected, with knowledge that a requirement of this part or a rule adopted under this part is not being
15 enforced by a public officer or employee whose duty it is to enforce the requirement or rule, may bring the
16 failure to the attention of the public officer or employee by an affidavit stating the specific facts of the failure.
17 Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed for
18 false swearing, as provided in 45-7-202.

19 (2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the
20 affidavit to enforce the requirement or rule, the affiant may bring an action of mandamus in the district court of
21 the first judicial district or in the district court of the county in which the land is located. If the court finds that a
22 requirement of this part or a rule adopted under this part is not being enforced, it shall order the public officer or
23 employee to perform the duties. If the officer or employee fails to do so, the public officer or employee must be
24 held in contempt of court and is subject to the penalties provided by law.

25 (3) A person having an interest that is or may be adversely affected may commence a civil action to
26 compel compliance with this part against a person for the violation of this part or any rule, order, or permit
27 issued under it. However, an action may not be commenced:

28 (a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged

1 violator; or

2 (b) if the department has commenced and is diligently prosecuting a civil action to require compliance
3 with the provisions of this part or any rule, order, or permit issued under it. A person having an interest that is or
4 may be adversely affected may intervene as a matter of right in the civil action.

5 (4) Legal actions under subsection (3)(a) must be brought in the district court of the county in which
6 the alleged violation occurred ~~or, if mutually agreed to by the parties to the action, in any other judicial district.~~

7 (5) Nothing in this section restricts any right of any person under any statute or common law to seek
8 enforcement of this part or the rules adopted under it or to seek any other relief."

9

10 **Section 49.** Section 82-4-361, MCA, is amended to read:

11 **"82-4-361. Violation -- penalties -- waiver.** (1) When the department has reason to believe that a
12 person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a
13 permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the
14 provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the
15 violation. The letter must also recommend corrective actions that are necessary to return to compliance.
16 Issuance of a violation letter under this subsection does not limit the authority of the department under this part
17 to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

18 (2) (a) By issuance of an order pursuant to subsection (6), the department may assess an
19 administrative penalty of not less than \$100 or more than \$1,000 for each of the following violations and an
20 additional administrative penalty of not less than \$100 or more than \$1,000 for each day during which the
21 violation continues and may bring an action for an injunction from continuing the violation against:

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

24 (ii) any director, officer, or agent of a corporation who purposely or knowingly authorizes, orders, or
25 carries out a violation of a provision of this part, a rule adopted or an order issued under this part, or a term or
26 condition of a permit.

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

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

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

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

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

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

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

22 (7) Legal actions for penalties or injunctive relief under this section must be brought in the district
23 court of the county in which the alleged violation occurred ~~or, if mutually agreed to by the parties to the action,~~
24 ~~in the first judicial district, Lewis and Clark County."~~

25

26 **Section 50.** Section 82-4-427, MCA, is amended to read:

27 **"82-4-427. Hearing -- appeal -- venue.** (1) (a) Subject to subsections (1)(b) and (1)(c), a person
28 whose interests are or may be adversely affected by a final decision of the department to approve or

1 disapprove a permit application and accompanying material or a permit amendment application and
2 accompanying material under this part is entitled to a hearing before the board if a written request stating the
3 reasons for the appeal is submitted to the board within 30 days of the department's decision.

4 (b) If an application was noticed publicly as required by this part, to be eligible to file for an appeal a
5 person must have either submitted comments to the department on an application or submitted comments at a
6 public meeting held under 82-4-432.

7 (c) Subsection (1)(b) does not apply to a person filing for an appeal of an application that was not
8 required to be noticed publicly by this part.

9 (2) An operator may request a hearing before the board on:

10 (a) a final decision of the department director pursuant to 82-4-436(4) by submitting a request for a
11 hearing within 15 days of receipt of notice of the director's decision; and

12 (b) an order of suspension or revocation issued under 82-4-442 by filing a request for hearing within
13 30 days of receipt of the decision.

14 (3) The operator or the landowner may request a hearing before the board on a decision on a bond
15 release application by submitting a written request stating the reasons for the appeal within 30 days of the
16 receipt of the decision.

17 (4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
18 part 6, apply to a hearing held under this section.

19 (5) A petition for judicial review of a board decision made pursuant to this section must be brought in
20 the county in which the permitted activity is proposed to occur ~~or, if mutually agreed upon by both parties in the~~
21 ~~action, in the first judicial district, Lewis and Clark County.~~ If an activity is proposed to occur in more than one
22 county, the action may be brought in any of the counties in which the activity is proposed to occur.

23 (6) The petition for judicial review must include the party to whom the permit was issued or the
24 applicant unless otherwise agreed to by the permitholder or applicant. All judicial challenges of permits for
25 projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any
26 civil cause of a different nature pending in that court. If the court determines that the challenge was without
27 merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or
28 increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

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Section 51. Section 82-4-441, MCA, is amended to read:

"82-4-441. Administrative and judicial penalties -- enforcement. (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, or a term or condition of a permit issued under this part, it shall send a violation letter to the person. The 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 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) By issuance of an order pursuant to subsection (5), the department may assess against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a permit:

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

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

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

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

(5) (a) In addition to the 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.

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

7 (6) The department may bring an action to enjoin an operator or other person violating or threatening
 8 to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part. Actions for
 9 injunctions or penalties must be filed in the district court of the county in which the opencut operation is located
 10 or, if mutually agreed on by both parties in the action, in the first judicial district, Lewis and Clark County.

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

14

15 **Section 52.** Section 82-15-120, MCA, is amended to read:

16 **"82-15-120. Department of environmental quality to enforce prohibition on methyl tertiary butyl**
 17 **ether -- notice requirements -- hearing -- penalties.** (1) (a) Whenever the department of environmental
 18 quality believes that a violation of 82-15-110(8) or of the rules adopted pursuant to 82-15-102(3) has occurred,
 19 it may serve written notice of the violation on the alleged violator or an agent of the alleged violator.

20 (b) The notice must specify the facts alleged to constitute a violation and may include an order
 21 assessing an administrative penalty pursuant to subsection (3), an order to take necessary corrective action
 22 within a reasonable period of time stated in the order, or both.

23 (c) The order becomes final unless, within 30 days after the notice is served, the person named in the
 24 order requests in writing a hearing before the board of environmental review. Service by mail is complete on the
 25 date of mailing.

26 (d) Upon receipt of the request, the board of environmental review shall schedule a hearing. The
 27 contested case provisions of the Montana Administrative Procedure Act provided in Title 2, chapter 4, part 6,
 28 apply to a hearing conducted under this section.

1 (2) If, after a hearing held under subsection (1), the board of environmental review finds that a
2 violation has occurred, it shall either affirm or modify the order of the department of environmental quality. An
3 order issued by the department of environmental quality or by the board of environmental review may prescribe
4 the date by which the violation must cease and may prescribe time limits for a particular action. If, after hearing,
5 the board of environmental review finds no violation has occurred, it shall rescind the department of
6 environmental quality's order.

7 (3) A violation of 82-15-110(8) or of a rule adopted pursuant to 82-15-102(3) is subject to an
8 administrative penalty of up to \$1,000. Each day of violation constitutes a separate violation.

9 (4) Any person who violates 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or an order
10 issued under this section is subject to a civil penalty not to exceed \$5,000 for each violation. Each day of
11 violation constitutes a separate violation.

12 (5) The department of environmental quality is authorized to commence a civil action seeking
13 appropriate relief, including temporary and permanent injunctions and penalties under subsection (4) of this
14 section, for a violation of 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or a violation of an order
15 issued under this section. The action must be brought ~~in the district court of the first judicial district, Lewis and~~
16 ~~Clark County, or in the district court of the county in which the violation occurred."~~

17

18 **Section 53.** Section 85-2-431, MCA, is amended to read:

19 **"85-2-431. Penalty.** (1) A person who fails to comply with the requirements of 85-2-424 is liable for a
20 civil penalty of not more than \$75.

21 (2) An action to recover the penalty must be brought by the department and filed in the district court
22 ~~for the first judicial district. At the discretion of the department, the judgment may be certified to the district court~~
23 in the county where the real property is located.

24 (3) Any penalty fee collected under this section must be deposited in the water right appropriation
25 account provided for in 85-2-318."

26

27 **Section 54.** Section 85-6-109, MCA, is amended to read:

28 **"85-6-109. Operation of projects with water users' association -- definitions.** (1) As used in this

1 section, the following definitions apply:

2 (a) "Association" means a water users' association.

3 (b) "Department" means the department of natural resources and conservation provided for in Title 2,
4 chapter 15, part 33.

5 (2) Whenever the department proposes a program of maintenance, repair, operation, or alteration of a
6 project in excess of \$25,000, the cost of which will be borne by an association pursuant to the terms of a water
7 marketing contract, the association must be informed of the program and given an opportunity to comment. The
8 department shall notify the association of its decision. If the association believes the program to be
9 unnecessary or excessive in cost, it may appeal the department decision to the district court in any county
10 where all or part of the project works is located ~~or to the district court in Lewis and Clark County.~~

11 (3) If an appeal is filed under subsection (2), the court shall hold a trial de novo on the question of
12 necessity of the department program and the question of excessive costs. If the association prevails, the court
13 may award costs to the association. The court may specify an acceptable program of maintenance, repair,
14 operation, or alteration or may order the department and the association to develop a program, subject to court
15 approval.

16 (4) Whenever a program of maintenance, repair, operation, or alteration is proposed, the department
17 shall assist the association in attempting to secure sources of financing, including federal funds.

18 (5) Whenever the department proposes to abandon, sell, or otherwise dispose of a project that
19 involves a water users' association, the department shall notify the association. Before the department may
20 take further action to abandon, sell, or otherwise dispose of a project that involves a water users' association,
21 the department must receive a petition approving the abandonment, sale, or disposition. The petition must be
22 signed by stockholders of the association who represent 66 2/3% or more of the issued and outstanding stock
23 of the association. If, within 30 days of receipt of the final proposal of abandonment, sale, or other disposal,
24 stockholders of the association who represent 30% or more of the issued and outstanding stock of the
25 association file a petition of protest with the department, the project may not be abandoned, sold, or otherwise
26 disposed of without the consent of the legislature."

27
28 NEW SECTION. Section 55. CODIFICATION INSTRUCTION. [SECTION 1] IS INTENDED TO BE CODIFIED AS AN

1 INTEGRAL PART OF TITLE 75, CHAPTER 5, PART 1, AND THE PROVISIONS OF TITLE 75, CHAPTER 5, PART 1, APPLY TO

2 [SECTION 1].

3 - END -