

CHAPTER 276

HEALTH AND ENVIRONMENT

HOUSE BILL 06-1337

BY REPRESENTATIVE(S) Butcher, Gallegos, McKinley, McFadyen, Berens, Coleman, Rose, and Sullivan;
also SENATOR(S) Entz, Taylor, and Williams.

AN ACT

CONCERNING PENALTIES LEVIED AGAINST A PERSON WHO VIOLATES WATER QUALITY CONTROL PROVISIONS, AND MAKING AN APPROPRIATION THEREFOR.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 25-8-308 (2), Colorado Revised Statutes, is amended to read:

25-8-308. Additional authority and duties of the division - fee and penalties.

(2) All fees collected by the division shall be transmitted to the state treasurer for deposit to the credit of the water quality control fund created by section 25-8-502 and shall be subject to appropriation by the general assembly. ~~ALL~~ EXCEPT AS PROVIDED IN SECTION 25-8-608, ALL fines and penalties for violations of this article shall be transmitted to the state treasurer for deposit to the credit of the general fund.

SECTION 2. 25-8-608, Colorado Revised Statutes, is amended to read:

25-8-608. Civil penalties. (1) Any person who violates any provision of this article or of any permit issued under this article, or any control regulation promulgated pursuant to this article, or any final cease and desist order or clean-up order shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. ~~Any civil penalty collected under this section shall be credited to the general fund.~~ IN DETERMINING THE AMOUNT OF A PENALTY UNDER THIS PART 6, THE FOLLOWING FACTORS SHALL BE CONSIDERED:

- (a) THE POTENTIAL DAMAGE FROM THE VIOLATION;
- (b) THE VIOLATOR'S COMPLIANCE HISTORY;
- (c) WHETHER THE VIOLATION WAS INTENTIONAL, RECKLESS, OR NEGLIGENT;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(d) THE IMPACT UPON OR THREAT TO THE PUBLIC HEALTH OR ENVIRONMENT AS A RESULT OF THE VIOLATION;

(e) THE DURATION OF THE VIOLATION; AND

(f) THE ECONOMIC BENEFIT REALIZED BY THE VIOLATOR AS A RESULT OF THE VIOLATION.

(1.5) ALL PENALTIES COLLECTED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE WATER QUALITY IMPROVEMENT FUND, WHICH IS HEREBY CREATED. THE MONEYS IN SUCH FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION. ANY INTEREST EARNED ON MONEYS IN THE FUND SHALL REMAIN IN THE FUND TO BE USED FOR PURPOSES OF THIS SECTION.

(1.7) (a) THE DEPARTMENT SHALL EXPEND MONEYS IN THE WATER QUALITY IMPROVEMENT FUND FOR THE FOLLOWING PURPOSES:

(I) IMPROVING THE WATER QUALITY IN THE COMMUNITY OR WATER BODY IMPACTED BY THE VIOLATION;

(II) PROVIDING GRANTS FOR STORM WATER PROJECTS OR TO ASSIST WITH PLANNING, DESIGN, CONSTRUCTION, OR REPAIR OF DOMESTIC WASTEWATER TREATMENT WORKS; OR

(III) PROVIDING THE NONFEDERAL MATCH FUNDING FOR NONPOINT SOURCE PROJECTS UNDER 33 U.S.C. SEC. 1329.

(b) THE DIVISION MAY RETAIN FIVE PERCENT OF THE MONEYS IN THE WATER QUALITY IMPROVEMENT FUND TO COVER THE COST OF ADMINISTERING THE PROJECTS OR GRANTS UNDER PARAGRAPH (a) OF THIS SUBSECTION (1.7).

(c) THE COMMISSION SHALL PROMULGATE RULES AS MAY BE NECESSARY TO ADMINISTER THIS SUBSECTION (1.7), INCLUDING, BUT NOT LIMITED TO, RULES DEFINING WHO IS ELIGIBLE FOR GRANTS, AND WHAT CRITERIA SHALL BE USED IN AWARDING GRANTS. ANY RULES SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

(1.9) THE DIVISION SHALL INCLUDE IN A SEPARATE SECTION OF THE ANNUAL REPORT REQUIRED PURSUANT TO SECTION 25-8-305 A FULL ACCOUNTING OF ALL PROJECTS FUNDED PURSUANT TO THIS SECTION FOR THE PRECEDING YEAR.

(2) THE DIVISION MAY INSTITUTE A CIVIL ACTION OR ADMINISTRATIVE ACTION TO IMPOSE AND COLLECT PENALTIES UNDER THIS SECTION. Upon application of the division, penalties shall be determined by the executive director or his OR HER designee. ~~and may be collected by the division by action instituted in a court of competent jurisdiction for collection of such penalty.~~ The final decision of the executive director or his OR HER designee may be appealed to the commission. THE FINAL DECISION OF THE COMMISSION IS SUBJECT TO JUDICIAL REVIEW IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S. ANY PENALTY MAY BE

COLLECTED BY THE DIVISION BY ACTION INSTITUTED IN A COURT OF COMPETENT JURISDICTION FOR COLLECTION OF SUCH PENALTY. A stay of any order of the division pending judicial review shall not relieve any person from any liability under subsection (1) of this section, but the reason for the request for judicial review shall be considered in the determination of the amount of the penalty. In the event that such an action is instituted for the collection of such penalty, the court may consider the appropriateness of the amount of the penalty, if such issue is raised by the party against whom the penalty was assessed.

SECTION 3. 25-8-202 (1) (g), Colorado Revised Statutes, is amended to read:

25-8-202. Duties of the commission. (1) The commission shall develop and maintain a comprehensive and effective program for prevention, control, and abatement of water pollution and for water quality protection throughout the entire state and, in connection therewith, shall:

(g) Promulgate ~~regulations~~ RULES and adopt priority ranking for the administration of federal and other public source construction loans or grants, AND GRANTS FROM THE WATER QUALITY IMPROVEMENT FUND, which the commission or the division administers AND which ~~loans or grants~~ shall not be expended for any purpose other than that for which they were provided;

SECTION 4. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the water quality improvement fund created in section 25-8-608 (1.5), Colorado Revised Statutes, not otherwise appropriated, to the department of public health and environment, for the fiscal year beginning July 1, 2006, the sum of two hundred ninety-two thousand nine hundred ninety dollars (\$292,990), or so much thereof as may be necessary, for the implementation of this act.

SECTION 5. Effective date - applicability. This act shall take effect upon passage and shall apply to offenses committed on or after the said date.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 26, 2006