

**First Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO**

**ENGROSSED**

*This Version Includes All Amendments Adopted  
on Second Reading in the House of Introduction*

LLS NO. 09-0340.01 Christy Chase

**HOUSE BILL 09-1056**

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**HOUSE SPONSORSHIP**

**McCann,**

**SENATE SPONSORSHIP**

**Kopp,**

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**House Committees**

Health and Human Services

**Senate Committees**

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**A BILL FOR AN ACT**

101     **CONCERNING INCREASED PENALTY AUTHORITY FOR THE DEPARTMENT**  
102             **OF PUBLIC HEALTH AND ENVIRONMENT FOR VIOLATIONS OF**  
103             **SOLID WASTE DISPOSAL LAWS.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Authorizes the department of public health and environment (department) to assess an administrative penalty against a solid waste disposal site, facility, or person for violations of solid waste disposal requirements. Allows the department to issue an order assessing an administrative penalty, as well as requiring compliance with solid waste disposal requirements, without first conducting a hearing but allows the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

*Capital letters indicate new material to be added to existing statute.*

*Dashes through the words indicate deletions from existing statute.*

HOUSE  
2nd Reading Unamended  
February 2, 2009

person subject to the penalty to request a hearing.

Outlines the procedures for hearings on such orders and on motions to stay the enforcement of such orders pending the outcome of the hearing. Increases the amount of administrative, civil, and criminal penalties for violations of the solid waste disposal laws from \$2,000 to \$10,000.

Adds criteria that the department, an administrative law judge, or a court is to consider when determining the amount of an administrative or civil penalty.

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

2           **SECTION 1.** 30-20-113 (2), (4), and (5) (a), Colorado Revised  
3 Statutes, are amended, and the said 30-20-113 is further amended BY  
4 THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to  
5 read:

6           **30-20-113. Inspection - enforcement - nuisances - violations -**  
7 **civil penalty.** (2) (a) Whenever the department finds that any solid  
8 wastes disposal site and facility or any person is in violation of subsection  
9 (1) of this section, the department may issue an order requiring that ~~such~~  
10 THE site and facility or person comply with any such requirement, rule,  
11 ~~regulation,~~ or certificate of designation and may request the attorney  
12 general to bring suit for injunctive relief or for penalties pursuant to this  
13 section. THE DEPARTMENT SHALL NOT BE REQUIRED TO CONDUCT A  
14 HEARING IN ACCORDANCE WITH SECTION 24-4-105, C.R.S., BEFORE  
15 ISSUING AN ORDER PURSUANT TO THIS SUBSECTION (2).

16           (b) (I) AN ORDER ISSUED PURSUANT TO THIS SUBSECTION (2) MAY  
17 INCLUDE AN ADMINISTRATIVE PENALTY ASSESSMENT AS PROVIDED IN  
18 SUBSECTION (4) OR (5) OF THIS SECTION. IN LIEU OF IMPOSING AN  
19 ADMINISTRATIVE PENALTY ASSESSMENT FOR A VIOLATION OF SUBSECTION  
20 (1) OF THIS SECTION, THE DEPARTMENT MAY SEEK TO HAVE A CIVIL

1 PENALTY IMPOSED, AS PROVIDED IN SUBSECTION (4) OR (5) OF THIS  
2 SECTION, FOR SUCH VIOLATION. THE DEPARTMENT SHALL BRING AN  
3 ACTION FOR A CIVIL PENALTY IN THE DISTRICT COURT FOR THE JUDICIAL  
4 DISTRICT IN WHICH THE VIOLATION OCCURRED.

5 (II) IF THE DEPARTMENT ISSUES AN ORDER THAT DOES NOT  
6 CONTAIN AN ADMINISTRATIVE PENALTY ASSESSMENT, THE DEPARTMENT  
7 SHALL NOT BE PRECLUDED FROM SUBSEQUENTLY IMPOSING AN  
8 ADMINISTRATIVE PENALTY ASSESSMENT OR SEEKING A CIVIL PENALTY FOR  
9 THE VIOLATIONS DETAILED IN THE ORDER.

10 (c) THE DEPARTMENT SHALL SERVE AN ORDER ISSUED PURSUANT  
11 TO THIS SUBSECTION (2) ON THE PERSON WHO IS THE SUBJECT OF THE  
12 ORDER BY PERSONAL SERVICE OR BY CERTIFIED MAIL. IN ADDITION TO  
13 IMPOSING AN ADMINISTRATIVE PENALTY, THE ORDER MAY PROHIBIT THE  
14 PERSON FROM ENGAGING IN SPECIFIED ACTIVITY IN VIOLATION OF  
15 SUBSECTION (1) OF THIS SECTION OR MAY REQUIRE THE PERSON TO  
16 COMPLY WITH THE REQUIREMENTS OF PART 1 OR 10 OF THIS ARTICLE. THE  
17 ORDER SHALL TAKE EFFECT UPON ISSUANCE UNLESS OTHERWISE SPECIFIED  
18 IN THE ORDER.

19 (2.5) (a) A PERSON AGAINST WHOM AN ORDER HAS BEEN ISSUED,  
20 REFERRED TO IN THIS SECTION AS THE "REQUESTING PARTY", MAY SUBMIT  
21 A WRITTEN REQUEST TO THE OFFICE OF ADMINISTRATIVE COURTS IN THE  
22 DEPARTMENT OF PERSONNEL FOR A HEARING ON THE ORDER AND SHALL  
23 PROVIDE A COPY OF THE REQUEST TO THE EXECUTIVE DIRECTOR OF THE  
24 DEPARTMENT OR THE EXECUTIVE DIRECTOR'S DESIGNEE. THE REQUESTING  
25 PARTY SHALL FILE THE REQUEST FOR HEARING BY PERSONAL SERVICE OR  
26 BY CERTIFIED MAIL WITHIN THIRTY CALENDAR DAYS AFTER THE EFFECTIVE  
27 DATE OF THE ORDER. AN ADMINISTRATIVE LAW JUDGE FROM THE OFFICE

1 OF ADMINISTRATIVE COURTS SHALL CONDUCT THE HEARING IN  
2 ACCORDANCE WITH SECTION 24-4-105, C.R.S., EXCEPT AS OTHERWISE  
3 SPECIFIED IN THIS SECTION.

4 (b) IF A REQUEST FOR A HEARING IS FILED, PAYMENT OF ANY  
5 MONETARY PENALTY IS STAYED PENDING A FINAL DECISION BY THE  
6 ADMINISTRATIVE LAW JUDGE AFTER THE HEARING ON THE MERITS.  
7 ABSENT A MOTION TO STAY THE ORDER PURSUANT TO PARAGRAPH (c) OF  
8 THIS SUBSECTION (2.5), THE REQUESTING PARTY SHALL COMPLY WITH ANY  
9 OTHER REQUIREMENTS OF THE ORDER. IF THE ADMINISTRATIVE LAW  
10 JUDGE GRANTS A MOTION TO STAY THE ORDER, THE DEPARTMENT SHALL  
11 NOT BE PRECLUDED FROM IMPOSING A PENALTY AGAINST THE REQUESTING  
12 PARTY FOR SUBSEQUENT VIOLATIONS OF SUBSECTION (1) OF THIS SECTION.

13 (c) (I) THE REQUESTING PARTY MAY SUBMIT A MOTION TO THE  
14 ADMINISTRATIVE LAW JUDGE TO STAY THE ENFORCEMENT OF THE ORDER  
15 PENDING THE OUTCOME OF THE HEARING. THE ADMINISTRATIVE LAW  
16 JUDGE MAY GRANT THE MOTION TO STAY ANY PORTION OF THE ORDER IF  
17 HE OR SHE DETERMINES THAT THE BALANCE OF EQUITIES FAVORS THE  
18 REQUESTING PARTY. IN MAKING HIS OR HER DETERMINATION, THE  
19 ADMINISTRATIVE LAW JUDGE SHALL CONSIDER THE FOLLOWING FACTORS:

20 (A) THE PROBABILITY OF SERIOUS HARM TO THE REQUESTING  
21 PARTY IF THE MOTION FOR A STAY IS DENIED;

22 (B) THE PROBABILITY THAT NO SERIOUS HARM TO THE PUBLIC  
23 HEALTH OR THE ENVIRONMENT WILL OCCUR IF THE MOTION FOR A STAY IS  
24 GRANTED;

25 (C) THE MERITS OF THE REQUESTING PARTY'S CASE; AND

26 (D) THE PUBLIC INTEREST.

27 (II) IF THE ADMINISTRATIVE LAW JUDGE GRANTS A STAY OF ALL OR

1 A PORTION OF THE ORDER, THE REQUESTING PARTY SHALL NOT BE  
2 EXCUSED FROM ITS OBLIGATIONS UNDER APPLICABLE LAWS, RULES,  
3 PERMITS, AND VALID, EXISTING ORDERS.

4 (III) THE ADMINISTRATIVE LAW JUDGE SHALL EXPEDITE HEARINGS  
5 AND DETERMINATIONS ON A MOTION TO STAY AN ORDER. THE  
6 REQUESTING PARTY BEARS THE BURDEN OF PROOF IN A MOTION TO STAY  
7 AN ORDER.

8 (d) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF PARAGRAPH  
9 (c) OF THIS SUBSECTION (2.5), THE DEPARTMENT BEARS THE BURDEN OF  
10 PROOF BY A PREPONDERANCE OF THE EVIDENCE IN A HEARING PURSUANT  
11 TO THIS SUBSECTION (2.5).

12 (e) UPON THE MOTION OF A PARTY TO THE HEARING, AND IN THE  
13 DISCRETION OF THE ADMINISTRATIVE LAW JUDGE, AN ADMINISTRATIVE  
14 LAW JUDGE MAY REQUEST AN INTERPRETIVE RULE FROM THE SOLID AND  
15 HAZARDOUS WASTE COMMISSION PERTAINING TO ANY RULE THAT IS AT  
16 ISSUE IN THE HEARING, BUT ONLY IF THERE IS NO GENUINE ISSUE OF  
17 MATERIAL FACT OR THE PARTIES HAVE STIPULATED TO THE MATERIAL  
18 FACTS FOR THE PURPOSES OF THE INTERPRETIVE RULE. THE  
19 ADMINISTRATIVE LAW JUDGE MAY ADJUST THE SCHEDULE OF THE HEARING  
20 TO ACCOMMODATE THE RECEIPT OF AN INTERPRETIVE RULE.  
21 NOTWITHSTANDING SECTION 24-4-103 (1), C.R.S., IF THE ADMINISTRATIVE  
22 LAW JUDGE REQUESTS, AND THE SOLID AND HAZARDOUS WASTE  
23 COMMISSION AGREES TO ISSUE, AN INTERPRETIVE RULE, THE COMMISSION  
24 SHALL GIVE NOTICE TO THE PUBLIC OF THE INTERPRETIVE RULE-MAKING  
25 PROCEEDING IN ACCORDANCE WITH SECTION 24-4-103, C.R.S. THE  
26 COMMISSION SHALL PROVIDE THE NOTICE WITHIN FORTY-FIVE DAYS AFTER  
27 RECEIPT OF THE REQUEST. THE COMMISSION SHALL ACCEPT WRITTEN

1 MATERIAL, NOT TO EXCEED FIFTEEN PAGES IN LENGTH, FROM ANY  
2 INTERESTED PERSON IF IT IS PROVIDED WITHIN FIFTEEN DAYS AFTER THE  
3 DATE THAT NOTIFICATION IS GIVEN. THE COMMISSION SHALL ISSUE THE  
4 WRITTEN INTERPRETIVE RULE NO LATER THAN THIRTY DAYS AFTER THE  
5 DEADLINE FOR THE SUBMISSION OF WRITTEN MATERIAL. THE LEGAL  
6 EFFECT OF ANY SUCH INTERPRETIVE RULE SHALL BE DETERMINED IN  
7 ACCORDANCE WITH APPLICABLE LAW AND IS NOT PRESUMED TO BE  
8 BINDING ON ANY PARTY TO THE HEARING.

9 (f) NOTWITHSTANDING SECTION 24-4-105 (15), C.R.S., ANY  
10 APPEAL OF A DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE  
11 PURSUANT TO THIS SUBSECTION (2.5) SHALL BE FILED IN THE APPROPRIATE  
12 DISTRICT COURT IN ACCORDANCE WITH SECTION 24-4-106, C.R.S.

13 (2.7) THE DEPARTMENT SHALL BRING AN ACTION FOR A VIOLATION  
14 OF SUBSECTION (1) OF THIS SECTION WITHIN TWO YEARS AFTER THE DATE  
15 THE DEPARTMENT DISCOVERS AN ALLEGED VIOLATION OR WITHIN FIVE  
16 YEARS AFTER THE DATE THE ALLEGED VIOLATION OCCURRED, WHICHEVER  
17 DATE OCCURS EARLIER; EXCEPT THAT THE LIMITATION PERIOD IS TOLLED  
18 DURING ANY PERIOD THAT A PERSON INTENTIONALLY CONCEALS THE  
19 ALLEGED VIOLATION. FOR THE PURPOSES OF THIS SECTION,  
20 "INTENTIONALLY" SHALL HAVE THE MEANING PROVIDED FOR SUCH TERM  
21 IN SECTION 18-1-501 (5), C.R.S.

22 (4) Any person who violates paragraphs (b) and (c) of subsection  
23 (1) of this section shall be subject to a clean-up and cease-and-desist  
24 order issued by the department or by the board of county commissioners  
25 if the violation occurred in the unincorporated area of the county or by the  
26 governing body of a municipality if the violation occurred within the  
27 municipality. Any person who fails to comply with such orders shall be

1 subject to a AN ADMINISTRATIVE OR civil penalty of not more than ~~two~~  
2 TEN thousand dollars for each day of such violation. ~~Such~~ THE violation  
3 and civil penalty shall be determined and enforced by a court of  
4 competent jurisdiction upon action instituted by the board or governing  
5 body that issued the orders. THE VIOLATION AND ADMINISTRATIVE  
6 PENALTY SHALL BE DETERMINED AND ENFORCED IN ACCORDANCE WITH  
7 SUBSECTIONS (2), (2.5), AND (5.5) OF THIS SECTION. Any penalty collected  
8 shall be distributed to the county or municipality that instituted the action.

9 (5) (a) Any person who is found pursuant to subsection (2) of this  
10 section to be in violation of subsection (1) of this section or who fails to  
11 comply with an order issued by the department shall be subject to a AN  
12 ADMINISTRATIVE OR civil penalty of not more than ~~two~~ TEN thousand  
13 dollars for each day of such violation.

14 (5.5) (a) IN DETERMINING THE AMOUNT OF AN ADMINISTRATIVE OR  
15 CIVIL PENALTY IMPOSED PURSUANT TO SUBSECTION (4) OR (5) OF THIS  
16 SECTION FOR A VIOLATION OF SUBSECTION (1) OF THIS SECTION, THE  
17 DEPARTMENT, THE ADMINISTRATIVE LAW JUDGE, OR THE COURT SHALL  
18 CONSIDER THE FOLLOWING FACTORS:

- 19 (I) THE SERIOUSNESS OF THE VIOLATION;
- 20 (II) WHETHER THE VIOLATION WAS INTENTIONAL, RECKLESS, OR  
21 NEGLIGENT;
- 22 (III) THE IMPACT UPON OR THE THREAT TO PUBLIC HEALTH OR THE  
23 ENVIRONMENT AS A RESULT OF THE VIOLATION;
- 24 (IV) THE DEGREE, IF ANY, OF RECALCITRANCE OR RECIDIVISM  
25 UPON THE PART OF THE VIOLATOR;
- 26 (V) THE ECONOMIC BENEFIT REALIZED BY THE VIOLATOR AS A  
27 RESULT OF THE VIOLATION;

1 (VI) THE VOLUNTARY AND COMPLETE DISCLOSURE BY THE  
2 VIOLATOR OF THE VIOLATION IN A TIMELY MANNER AFTER DISCOVERY OF,  
3 AND PRIOR TO THE DEPARTMENT'S KNOWLEDGE OF, THE VIOLATION, AS  
4 LONG AS ALL REPORTS REQUIRED TO BE SUBMITTED UNDER STATE  
5 ENVIRONMENTAL LAWS HAVE BEEN SUBMITTED AS AND WHEN REQUIRED;

6 (VII) THE FULL AND PROMPT COOPERATION BY THE VIOLATOR  
7 FOLLOWING DISCLOSURE OF THE VIOLATION, INCLUDING, WHEN  
8 APPROPRIATE, ENTERING INTO AND IMPLEMENTING A GOOD FAITH AND  
9 LEGALLY ENFORCEABLE AGREEMENT TO UNDERTAKE COMPLIANCE AND  
10 REMEDIAL EFFORTS;

11 (VIII) THE EXISTENCE OF A REGULARIZED AND COMPREHENSIVE  
12 ENVIRONMENTAL COMPLIANCE PROGRAM OR AN ENVIRONMENTAL AUDIT  
13 PROGRAM THAT WAS ADOPTED IN A TIMELY AND GOOD FAITH MANNER AND  
14 THAT INCLUDES SUFFICIENT MEASURES TO IDENTIFY AND PREVENT FUTURE  
15 NONCOMPLIANCE; AND

16 (IX) OTHER AGGRAVATING OR MITIGATING CIRCUMSTANCES OR  
17 FACTORS.

18 (b) THE FACTORS CONTAINED IN SUBPARAGRAPHS (VI), (VII), AND  
19 (VIII) OF PARAGRAPH (a) OF THIS SUBSECTION (5.5) SHALL BE MITIGATING  
20 FACTORS AND MAY BE APPLIED, TOGETHER WITH OTHER FACTORS, TO  
21 REDUCE THE AMOUNT OF THE PENALTY.

22 **SECTION 2.** 30-20-114, Colorado Revised Statutes, is amended  
23 to read:

24 **30-20-114. Violation - penalty.** Any person who violates any  
25 provision of this part 1 is guilty of a misdemeanor and, upon conviction  
26 thereof, shall be punished by a fine of not more than ~~two~~ TEN thousand  
27 dollars, or by imprisonment in the county jail for not more than thirty

1 days, or by both such fine and imprisonment. Nothing in this part 1 shall  
2 preclude or preempt a municipality from enforcement of its local  
3 ordinances. Each day of violation shall be deemed a separate offense  
4 under this section.

5 **SECTION 3. Safety clause.** The general assembly hereby finds,  
6 determines, and declares that this act is necessary for the immediate  
7 preservation of the public peace, health, and safety.