

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

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 09-0340.01 Christy Chase

HOUSE BILL 09-1056

HOUSE SPONSORSHIP

McCann,

SENATE SPONSORSHIP

Kopp,

House Committees

Health and Human Services

Senate Committees

Health and Human Services

Finance

Appropriations

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.**

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.

SENATE
3rd Reading Unam ended
April 28, 2009

SENATE
Am ended 2nd Reading
April 27, 2009

HOUSE
3rd Reading Unam ended
February 3, 2009

HOUSE
2nd Reading Unam ended
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.

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) (I) 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. IN MAKING
21 A DETERMINATION ON A MOTION TO REQUEST AN INTERPRETIVE RULE, THE
22 ADMINISTRATIVE LAW JUDGE SHALL CONSIDER THE FOLLOWING FACTORS:

23 (A) WHETHER THE PLAIN LANGUAGE OF THE RULE IN QUESTION IS
24 CLEAR AND UNAMBIGUOUS;

25 (B) WHETHER THE PROPOSED CONSTRUCTION OF THE RULE IN
26 QUESTION WOULD LEAD TO AN ABSURD RESULT; AND

27 (C) WHETHER THE SOLID AND HAZARDOUS WASTE COMMISSION

1 HAS PREVIOUSLY ISSUED AN INTERPRETIVE RULE CONCERNING THE
2 SUBJECT OF THE REQUEST FOR AN INTERPRETIVE RULE.

3 (II) NOTWITHSTANDING SECTION 24-4-103 (1), C.R.S., IF THE
4 ADMINISTRATIVE LAW JUDGE REQUESTS, AND THE SOLID AND HAZARDOUS
5 WASTE COMMISSION AGREES TO ISSUE, AN INTERPRETIVE RULE, THE
6 COMMISSION SHALL GIVE NOTICE TO THE PUBLIC OF THE INTERPRETIVE
7 RULE-MAKING PROCEEDING IN ACCORDANCE WITH SECTION 24-4-103,
8 C.R.S. THE COMMISSION SHALL PROVIDE THE NOTICE WITHIN FORTY-FIVE
9 DAYS AFTER RECEIPT OF THE REQUEST. THE COMMISSION SHALL ACCEPT
10 WRITTEN MATERIAL, NOT TO EXCEED FIFTEEN PAGES IN LENGTH, FROM
11 ANY INTERESTED PERSON IF IT IS PROVIDED WITHIN FIFTEEN DAYS AFTER
12 THE DATE THAT NOTIFICATION IS GIVEN. THE COMMISSION SHALL ISSUE
13 THE WRITTEN INTERPRETIVE RULE NO LATER THAN THIRTY DAYS AFTER
14 THE DEADLINE FOR THE SUBMISSION OF WRITTEN MATERIAL. THE LEGAL
15 EFFECT OF ANY SUCH INTERPRETIVE RULE SHALL BE DETERMINED IN
16 ACCORDANCE WITH APPLICABLE LAW AND IS NOT PRESUMED TO BE
17 BINDING ON ANY PARTY TO THE HEARING.

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

22 (2.7) THE DEPARTMENT SHALL BRING AN ACTION FOR A VIOLATION
23 OF SUBSECTION (1) OF THIS SECTION WITHIN TWO YEARS AFTER THE DATE
24 THE DEPARTMENT DISCOVERS AN ALLEGED VIOLATION OR WITHIN FIVE
25 YEARS AFTER THE DATE THE ALLEGED VIOLATION OCCURRED, WHICHEVER
26 DATE OCCURS EARLIER; EXCEPT THAT THE LIMITATION PERIOD IS TOLLED
27 DURING ANY PERIOD THAT A PERSON INTENTIONALLY CONCEALS THE

1 ALLEGED VIOLATION. FOR THE PURPOSES OF THIS SECTION,
2 "INTENTIONALLY" SHALL HAVE THE MEANING PROVIDED FOR SUCH TERM
3 IN SECTION 18-1-501 (5), C.R.S.

4 (4) Any person who violates paragraphs (b) and (c) of subsection
5 (1) of this section shall be subject to a clean-up and cease-and-desist
6 order issued by the department or by the board of county commissioners
7 if the violation occurred in the unincorporated area of the county or by the
8 governing body of a municipality if the violation occurred within the
9 municipality. Any person who fails to comply with such orders shall be
10 subject to a AN ADMINISTRATIVE OR civil penalty of not more than ~~two~~
11 TEN thousand dollars for each day of such violation. ~~Such~~ THE violation
12 and civil penalty shall be determined and enforced by a court of
13 competent jurisdiction upon action instituted by the board or governing
14 body that issued the orders. THE VIOLATION AND ADMINISTRATIVE
15 PENALTY SHALL BE DETERMINED AND ENFORCED IN ACCORDANCE WITH
16 SUBSECTIONS (2), (2.5), AND (5.5) OF THIS SECTION. Any penalty collected
17 shall be distributed to the county or municipality that instituted the action.

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

23 (5.5) (a) IN DETERMINING THE AMOUNT OF AN ADMINISTRATIVE OR
24 CIVIL PENALTY IMPOSED PURSUANT TO SUBSECTION (4) OR (5) OF THIS
25 SECTION FOR A VIOLATION OF SUBSECTION (1) OF THIS SECTION, THE
26 DEPARTMENT, THE ADMINISTRATIVE LAW JUDGE, OR THE COURT SHALL
27 CONSIDER THE FOLLOWING FACTORS:

1 (I) THE SERIOUSNESS OF THE VIOLATION;

2 (II) WHETHER THE VIOLATION WAS INTENTIONAL, RECKLESS, OR
3 NEGLIGENT;

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

6 (IV) THE DEGREE, IF ANY, OF RECALCITRANCE OR RECIDIVISM
7 UPON THE PART OF THE VIOLATOR;

8 (V) THE ECONOMIC BENEFIT REALIZED BY THE VIOLATOR AS A
9 RESULT OF THE VIOLATION;

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

15 (VII) THE FULL AND PROMPT COOPERATION BY THE VIOLATOR
16 FOLLOWING DISCLOSURE OF THE VIOLATION, INCLUDING, WHEN
17 APPROPRIATE, ENTERING INTO AND IMPLEMENTING A GOOD FAITH AND
18 LEGALLY ENFORCEABLE AGREEMENT TO UNDERTAKE COMPLIANCE AND
19 REMEDIAL EFFORTS;

20 (VIII) THE EXISTENCE OF A REGULARIZED AND COMPREHENSIVE
21 ENVIRONMENTAL COMPLIANCE PROGRAM OR AN ENVIRONMENTAL AUDIT
22 PROGRAM THAT WAS ADOPTED IN A TIMELY AND GOOD FAITH MANNER AND
23 THAT INCLUDES SUFFICIENT MEASURES TO IDENTIFY AND PREVENT FUTURE
24 NONCOMPLIANCE; AND

25 (IX) OTHER AGGRAVATING OR MITIGATING CIRCUMSTANCES OR
26 FACTORS.

27 (b) THE FACTORS CONTAINED IN SUBPARAGRAPHS (VI), (VII), AND

1 (VIII) OF PARAGRAPH (a) OF THIS SUBSECTION (5.5) SHALL BE MITIGATING
2 FACTORS AND MAY BE APPLIED, TOGETHER WITH OTHER FACTORS, TO
3 REDUCE THE AMOUNT OF THE PENALTY.

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

6 **30-20-114. Violation - penalty.** Any person who violates any
7 provision of this part 1 is guilty of a misdemeanor and, upon conviction
8 thereof, shall be punished by a fine of not more than ~~two~~ TEN thousand
9 dollars, or by imprisonment in the county jail for not more than thirty
10 days, or by both such fine and imprisonment. Nothing in this part 1 shall
11 preclude or preempt a municipality from enforcement of its local
12 ordinances. Each day of violation shall be deemed a separate offense
13 under this section.

14 **SECTION 3.** The introductory portion to 30-20-109 (1.5) (c),
15 Colorado Revised Statutes, is amended, and the said 30-20-109 (1.5) is
16 further amended BY THE ADDITION OF A NEW PARAGRAPH, to
17 read:

18 **30-20-109. Commission to promulgate rules - definitions.**
19 (1.5) (c) EXCEPT AS PROVIDED IN PARAGRAPH (e) OF THIS SUBSECTION
20 (1.5), an EP waste disposal facility that accepted EP waste on or before
21 the effective date of this subsection (1.5) JUNE 4, 2008, and that has HAD
22 not begun closure by the effective date of this subsection (1.5) JUNE 4,
23 2008, shall:

24 (e) (I) UPON THE RECOMMENDATION OF THE DEPARTMENT, THE
25 SOLID AND HAZARDOUS WASTE COMMISSION MAY WAIVE, FOR INDIVIDUAL
26 IMPOUNDMENTS, THE REQUIREMENT IMPOSED PURSUANT TO PARAGRAPH
27 (c) OF THIS SUBSECTION (1.5) THAT AN EP WASTE DISPOSAL FACILITY THAT

1 ACCEPTED EP WASTE ON OR BEFORE JUNE 4, 2008, BUT HAD NOT BEGUN
2 CLOSURE BY THAT DATE, MUST INSTALL FABRICATED LINERS. THE
3 DEPARTMENT MAY RECOMMEND A WAIVER ONLY IF ALL OF THE
4 FOLLOWING CONDITIONS ARE MET:

5 (A) THERE HAVE BEEN NO UNPERMITTED DISCHARGES TO GROUND
6 WATER OR SURFACE WATER FROM THE OPERATION OF THE FACILITY;

7 (B) EACH IMPOUNDMENT FOR WHICH A WAIVER IS REQUESTED IS
8 LOCATED MORE THAN ONE THOUSAND FEET FROM ANY PUBLIC OR PRIVATE
9 WATER WELL OR SURFACE WATER;

10 (C) THE OWNER OR OPERATOR COMPLIES WITH MANDATORY
11 MONITORING AND REPORTING REQUIREMENTS AS DETERMINED BY THE
12 DEPARTMENT, INCLUDING, BUT NOT LIMITED TO, INDIVIDUAL
13 IMPOUNDMENT LEAK DETECTION MONITORING; AND

14 (D) THE OWNER OR OPERATOR IS NOT SUBJECT TO ANY
15 OUTSTANDING COMPLIANCE ORDERS OR ENFORCEMENT ACTIONS WITH
16 REGARD TO THE DESIGN, OPERATION, OR CLOSURE OF THE FACILITY.

17 (II) IF, AT ANY TIME, THE DEPARTMENT DETERMINES THAT ONE OR
18 MORE OF THE CONDITIONS SPECIFIED IN SUBPARAGRAPH (I) OF THIS
19 PARAGRAPH (e) ARE NO LONGER MET, THE DEPARTMENT MAY BRING THE
20 RELEVANT INFORMATION TO THE SOLID AND HAZARDOUS WASTE
21 COMMISSION WITH A RECOMMENDATION TO RESCIND THE WAIVER OF THE
22 REQUIREMENT TO INSTALL FABRICATED LINERS. IF THE SOLID AND
23 HAZARDOUS WASTE COMMISSION DETERMINES THAT ONE OR MORE OF THE
24 CONDITIONS ARE NO LONGER BEING MET, THE SOLID AND HAZARDOUS
25 WASTE COMMISSION MAY RESCIND THE WAIVER AND INSTRUCT THE
26 DEPARTMENT TO ESTABLISH A COMPLIANCE SCHEDULE FOR THE OWNER OR
27 OPERATOR TO INSTALL FABRICATED LINERS.

1 **SECTION 4. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety.