

HOUSE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

February 25, 2010

Date

Committee on Health and Human Services.

After consideration on the merits, the Committee recommends the following:

HB10-1149 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

- 1 Amend printed bill, page 9, line 14, strike "schedule" and substitute
- 2 "schedule, IN ACCORDANCE WITH SECTION 24-4-103, C.R.S.,".
- 3 Page 9, line 17, strike "BOARD;" and substitute "BOARD, WHICH FEES
- 4 SHALL BE PAID BY THE APPLICANTS OR SERVICE COMPANIES;".
- 5 Page 10, line 1, before "DIRECT" insert "ACTUAL".
- 6 Page 15, line 2, before "**cease-and-desist**" insert "**rules -**".
- 7 Page 16, strike lines 6 and 7 and substitute "SEND".
- 8 Page 16, line 11, strike "~~and~~" and substitute "and".
- 9 Page 16, line 13, strike "violated; AND" and substitute "violated.".
- 10 Page 16, strike lines 14 through 27.
- 11 Page 17, strike lines 1 though 23.
- 12 Page 18, line 5, strike "violation, ~~and~~" and substitute "violation and".
- 13 Page 18, line 6, strike everything after "CORRECTIVE" and substitute
- 14 "MEASURES.".

1 Page 18, strike line 7.

2 Page 18, strike line 14 and substitute:

3 "(IV) AFTER CONSIDERATION OF ANY".

4 Page 18, line 16, strike "VIOLATION, AND, IF" and substitute "VIOLATION."

5 Page 18, strike lines 17 and 18 and substitute "ANY REMAINING  
6 CORRECTIVE MEASURES THAT ARE NECESSARY, AND ANY ADMINISTRATIVE  
7 PENALTY DETERMINED TO BE APPROPRIATE, WILL BE INCORPORATED INTO  
8 AN ADMINISTRATIVE ORDER.

9 (c.3) IN DETERMINING THE AMOUNT OF ANY ADMINISTRATIVE  
10 PENALTY, THE DEPARTMENT SHALL CONSIDER THE FOLLOWING FACTORS:

11 (A) THE SERIOUSNESS OF THE VIOLATION;

12 (B) WHETHER THE VIOLATION WAS INTENTIONAL, RECKLESS, OR  
13 NEGLIGENT;

14 (C) THE IMPACT ON, OR THREAT TO, THE PUBLIC HEALTH OR THE  
15 ENVIRONMENT AS A RESULT OF THE VIOLATION;

16 (D) THE DEGREE OF RECALCITRANCE, IF ANY, ON THE PART OF THE  
17 VIOLATOR;

18 (E) WHETHER THE VIOLATOR IS A RECIDIVIST;

19 (F) THE ECONOMIC BENEFIT REALIZED BY THE VIOLATOR AS A  
20 RESULT OF THE VIOLATION;

21 (G) THE VIOLATOR'S VOLUNTARY, TIMELY, AND COMPLETE  
22 DISCLOSURE OF THE VIOLATION, IF PRIOR TO THE DEPARTMENT'S  
23 KNOWLEDGE OF THE VIOLATION, AND IF ALL REPORTS REQUIRED PURSUANT  
24 TO STATE ENVIRONMENTAL CONTROL LAWS HAVE BEEN SUBMITTED AS  
25 REQUIRED;

26 (H) THE VIOLATOR'S FULL AND PROMPT COOPERATION WITH THE  
27 DEPARTMENT FOLLOWING DISCLOSURE OR DISCOVERY OF A VIOLATION,  
28 INCLUDING, WHEN APPROPRIATE, ENTERING INTO AND IMPLEMENTING, IN

1 GOOD FAITH, A LEGALLY ENFORCEABLE AGREEMENT WITH THE  
2 DEPARTMENT TO UNDERTAKE COMPLIANCE AND REMEDIATION EFFORTS;

3 (I) THE EXISTENCE OF A COMPREHENSIVE REGULATORY  
4 COMPLIANCE PROGRAM OR AN AUDIT PROGRAM THAT THE VIOLATOR  
5 ADOPTED IN GOOD FAITH AND IN A TIMELY MANNER, WHICH PROGRAM  
6 INCLUDES MEASURES DETERMINED BY THE DEPARTMENT TO BE SUFFICIENT  
7 TO IDENTIFY AND PREVENT FUTURE NONCOMPLIANCE; AND

8 (J) ANY OTHER AGGRAVATING OR MITIGATING CIRCUMSTANCE.

9 (c.5) IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AND  
10 BASED UPON THE FACTORS ENUMERATED IN PARAGRAPH (c.3) OF THIS  
11 SUBSECTION (5), THE STATE BOARD SHALL ADOPT RULES FOR  
12 DETERMINING ADMINISTRATIVE PENALTIES IMPOSED UNDER THIS  
13 SUBSECTION (5).

14 (c.7) THE DEPARTMENT MAY COMPROMISE, MITIGATE, OR REMIT  
15 AN ADMINISTRATIVE PENALTY IMPOSED PURSUANT TO THIS SUBSECTION  
16 (5). THE DEPARTMENT MAY ENTER INTO A SETTLEMENT AGREEMENT  
17 REGARDING ANY PENALTY OR CLAIM RESOLVED UNDER THIS PART 1. THE  
18 SETTLEMENT AGREEMENT MAY INCLUDE THE PAYMENT OR CONTRIBUTION  
19 OF MONEYS TO STATE OR LOCAL AGENCIES FOR OTHER ENVIRONMENTALLY  
20 BENEFICIAL PURPOSES."

21 Page 18, strike line 27 and substitute "CIRCUMSTANCES WARRANT,".

22 Page 21, line 14, strike "(b.5)" and substitute "(c.3)".

23 Page 22, line 18, strike "~~including such as are~~ OR MINERALS" and  
24 substitute "including such as are".

25 Page 23, strike lines 2 through 22.

26 Renumber succeeding section accordingly.

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