

MINUTES OF THE MEETING
NATURAL RESOURCES
MONTANA STATE SENATE

March 21, 1979

The twenty-eighth meeting of the Natural Resources Committee was called to order by Senator George F. Roskie, Chairman, at 12:35 P.M., in Room 404 of the State Capitol Building.

ROLL CALL: Upon roll call all members were present with the exception of Senators Etchart, Lockrem, Story and Thiessen. Senator Etchart arrived shortly after the meeting began.

Jim Lear, Staff Attorney from the Legislative Council, was also present.

DISPOSITION OF HB 883: Chairman Roskie reminded the Committee that HB 883 had been referred to a subcommittee with Senator Brown heading it up. Senator Thiessen and Senator Lowe were also members of that subcommittee with Senator Roskie attending as an ex officio member.

Senator Brown summarized the work the subcommittee had done on HB 883 and pointed out the effects of some of the major amendments they recommended be adopted. He also pointed out some of the areas of concern expressed in the subcommittee meetings.

Chairman Roskie mentioned the other individuals that had attended the subcommittee meetings and had agreed with the proposed amendments. He stated that none of the amendments adopted by the House had been changed at all. He then summarized the areas that had been controversial and over which there had not been complete agreement in the subcommittee meetings.

Senator Jergeson moved that the first 12 amendments proposed by the subcommittee be adopted (see attachment). The motion passed unanimously.

Senator Brown moved that amendments 13-16 be adopted. All those present voted in favor of the motion with the exception of Senator Jergeson.

Senator Jergeson moved the adoption of amendments 17-25. The motion passed unanimously.

It was then pointed out that there was an error on page 5, line 26 of the proposed amendments and the committee agreed to strike "(acting singly or with the Board of Health)".

Senator Dover moved the adoption of amendments 26-36. All those present voted in favor of the motion with the exception of Senator Jergeson. Senator Brown voted no on amendment 30.

Senator Dover moved the adoption of amendments 37-41. The motion passed unanimously.

Sanna Porte, Environmental Information Center, stated that the EIC wanted to go on record as opposing the same amendments as the Northern Plains Resource Council except if otherwise stated (see attached list of amendments opposed by the Northern Plains Resource Council).

Senator Jergeson left at this time and left his vote on the remaining issues.

Senator Dover moved that amendments 42-54 be adopted. The motion carried with Senator Brown voting no on amendment 47 and Senator Jergeson voting no on 43 and 45 through 50.

Senator Dover moved the adoption of the amendments proposed by the Attorney General's office (see attachment). All those present voted in favor of the motion with the exception of Senator Jergeson.

Senator Manley moved to amend HB 883 on page 39, line 18 by striking the word "may" and inserting the word "must". Senator Dover seconded the motion. All those present voted in favor of the motion with the exception of Senators Brown and Roskie.

Chairman Roskie gave each committee member a copy of further amendments to HB 883 submitted by the Department of Natural Resources and the Montana Power Company (see attachments). Don McIntyre explained the proposed amendments from the Department of Natural Resources and John Ross explained the proposed amendments from the Montana Power Company.

Senator Dover moved the amendments submitted by John Ross be adopted (see attachment). All those present voted in favor of the motion with the exception of Senator Brown.

Senator Dover moved that HB 883 BE CONCURRED IN as Amended. All those present voted in favor of the motion with the exception of Senator Brown. Senator Jergeson had previously registered a yes vote on the motion.

Senator Dover then canvassed the Committee to see if they were in favor of a Committee Bill dealing with gasohol. Senators Etchart, Brown, Manley, Lowe, Dover, Jergeson and Roskie voted in favor of having a bill drafted dealing with gasohol.

ADJOURNMENT: There being no further business the meeting adjourned at 1:35 P.M.

John Ross

DATE 3/27/79

ROLL CALL

Natural Resources COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
ROSKIE, George F., Chairman	✓		
DOVER, Harold L., Vice-Chairman	✓		
BROWN, Steve	✓		
ETCHART, Mark	✓	✓	
JERGESON, Greg	✓		
LOCKREM, Lloyd C., Jr.		✓	
LOWE, William R.	✓		
MANLEY, John E.	✓		
STORY, Pete		✓	
THIESSEN, Cornie R.		✓	✓

Each Day Attach to Minutes.

STANDING COMMITTEE REPORT

March 21 1979

MR. President:

We, your committee on Natural Resources

having had under consideration House Bill No. 883

Respectfully report as follows: That House Bill No. 883,
third reading bill, be amended as follows:

1. Title, lines 6 and 7.

Following: "SECTIONS" on line 6

Strike: "75-2-211,"

Following: "75-20-218" on line 7

Insert: ", 75-20-220"

2. Page 2.

Following: line 15

Insert: "(5) "Board of health" means the board of health and
environmental sciences provided for in 2-15-2104."

Renumber: subsequent subsections

3. Page 3.

Following: line 19

Insert: "(9) "Department of health" means the department of health
and environmental sciences provided for in Title 2, chapter 15,
part 21."

Renumber: subsequent subsections

XDG:ASS

(continued)

4. Page 5, lines 3 through 6.

Following: "energy" on line 3

Strike: remainder of line 3 through line 6

Insert: "."

5. Page 6, lines 5 through 9.

Following: "(a) on line 5

Strike: remainder of line 5 through "information" on line 9

Insert: "An applicant shall file with the department and department of health a joint application for a certificate under this chapter and for the permits required by state air and water quality laws in such form as the board requires under applicable rules, containing the following information"

6. Page 6, line 20.

Strike: "and"

Insert: "(v) baseline data for the primary and reasonable alternate locations;

(vi) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and"

Renumber: subsequent subsection

7. Page 6, line 22.

Following: "board"

Insert: "and board of health"

Following: "department"

Insert: "and department of health"

8. Page 6, line 23.

Following: line 22

Strike: "requires"

Insert: "require"

9. Page 7.

Strike: line 17 in its entirety

Renumber: subsequent subsections

10. Page 7.

Strike: line 24 in its entirety

11. Page 8, line 19 through line 17 on page 9.

Following: "75-20-213." on line 19 of page 8

Strike: remainder of line 19 through line 17 on page 9

Insert: "Supplemental material -- amendments.

(1) The applicant may, after an application is accepted, submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide detail with respect to an item described in general terms in the original application without filing a formal application for an amendment.

(Continued)

(2) (a) The board may approve a change in the location, design, or operation of a facility described in a certificate after it is issued if it is demonstrated by the applicant that such change:

- (i) results from requests of landowners upon whose property the facility is or would be located;
- (ii) results from requirements of other government agencies;
- (iii) results from compliance with a condition in the certificate; or
- (iv) would provide less environmental impact.

(b) Such change may be approved by the Board without a formal application for an amendment which approval may be given upon such terms, conditions, or modifications as the Board considers appropriate. The Board's approval shall be made after reasonable notice.

(3) A change in an application after it is accepted, or a change in a certificate after it is issued, other than as set forth in (1) and (2) of 75-20-213 shall require a formal application for an amendment, which shall be in such form and contain such information as the department by rule or order prescribes and be accompanied by a filing fee based on the estimated cost of reviewing the application for an amendment. The Board's decision on an application for an amendment shall be made following reasonable notice and shall be made within six months following receipt of such application which may be extended for good cause."

12. Page 10, line 7.

Following: "(1)"

Insert: "(a)"

13. Page 10, lines 10 through 12.

Following: "application" on line 10

Strike: remainder of line 10 through "follows" on line 12

Insert: "as provided in this section based upon the department's estimated costs of processing the application under this chapter, but which shall not exceed the following scale based upon the estimated cost of the facility"

14. Page 10, line 13.

Strike: "(a)"

Insert: "(i)"

Redesignate: subsequent subsections accordingly

15. Page 10.

Following: line 21.

Insert: "(b) A potential applicant may receive credit against the fee payable under this section for the development of information or providing of services required hereunder or

(Continued)

required for preparation of an environmental impact statement under the Montana or National Environmental Policy Acts. The applicant may submit the information to the department together with an accounting of the expenses incurred in preparing the information; the department shall then evaluate the applicability, validity, and usefulness of the data and determine the amount which may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter."

16. Page 10, line 22 through line 8 on page 11.

Following: "(2)(a)" on line 22

Strike: remainder of line 22 through line 8 on page 11

Insert: "The applicant may enter into a contract with the department for the development of information, provision of services and payment of fees and costs required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. The amount paid under any contract shall be credited against the fee payable hereunder. Notwithstanding the provisions of subsections (2)(b) and (2)(d), the revenue derived from the filing fee must be sufficient to enable the department, the department of health, the board, the board of health, and the agencies listed in 75-20-216(4) to carry out their responsibilities under this chapter. The department will retain the authority to amend a contract, upon good cause shown, to require additional payments for necessary expenses up to the limits set forth in subsections (1)(a) and (1)(b) above upon 30 days' notice."

Renumber: subsequent subsection

17. Page 11, line 9.

Following: "If"

Strike: "an agreement"

Insert: "a contract"

Following: "entered"

Strike: "but"

18. Page 11, lines 10 and 11.

Following: line 9

Strike: "desires to" on line 10

Insert: "must"

Following: "instalments" on line 10

Strike: remainder of line 10 through "fee" on line 11

19. Page 12, lines 13 through 16.

Following: "{et}:" on line 13

Strike: remainder of line 13 through "proceedings" on line 16

(Continued)

20. Page 12, line 20.

Following: "department"

Insert: "and department of health"

21. Page 13, line 2.

Following: "department"

Insert: "and department of health"

22. Page 13, lines 5 through 11.

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

23. Page 13, line 16.

Following: line 15

Strike: "the"

Insert: "applicable"

24. Page 13, line 16.

Following: "75-20-503"

Insert: "and the department of health shall commence a study to enable it or the board of health to issue a decision, opinion, order, certification, or permit as provided in subsection (3)"

25. Page 13, line 17.

Following: "department"

Insert: "and department of health"

Following: "extent"

Strike: "it considers"

Insert: "they consider"

26. Page 13.

Following: line 19

Insert: "(3) The department of health shall within one year following the date of acceptance of an application, and the board of health, if applicable, within an additional six months, shall issue any decision, opinion, order, certification or permit required by state or federal air and water quality laws and this chapter. The department of health and the board of health shall consider air and water quality impacts and compliance with air and water quality standards and implementation plans for the primary and reasonable alternate locations in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters of air and water quality impacts under the federal and state air and water quality statutes that the department of health and board of health administer, and for the purposes of this chapter as specified in

(Continued)

75-20-503(3) and (4) where applicable; the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit and the environmental impact statement, if any, by the department of health or board of health shall be served upon the department and the board and shall be utilized as part of their final site selection process. A decision by the department of health or board of health is subject to appellate review pursuant to the air and water quality statutes administered by the department of health and board of health."

Renumber: subsequent subsections

27. Page 13, line 20.

Following: "within"

Strike: "2 years"

Insert: "18 months"

28. Page 14, lines 11 and 12.

Following: "of" on line 11

Strike: "health and environmental sciences,"

29. Page 15, lines 9 and 10.

Following: "(2)"

Strike: "If the"

Insert: "The"

Following: "department" on line 9

Strike: remainder of line 9 through "it" on line 10

30. Page 15, line 19.

Following: "hearing."

Strike: "The"

Insert: "In such a conjunctive hearing the"

31. Page 15, line 25 through line 1 on page 17.

Strike: Section 10 in its entirety

Renumber: subsequent sections

32. Page 17, lines 8 and 9.

Following: "or employee of" on line 8

Strike: "a duly authorized state air and water quality agency"

Insert: "the department of health or board of health"

33. Page 17, lines 12 and 13.

Following: "a" on line 12

Strike: "duly authorized state air and water quality agency permit hearing is required"

Insert: "conjunctive hearing is held"

(Continued)

34. Page 17, line 14.

Following: line 13

Strike: "agency"

Insert: "board of health"

35. Page 18.

Following: line 19

Insert: "(6) The hearing examiner shall allow discovery which shall be completed before the commencement of the hearing, upon good cause shown and under such other conditions as the hearing examiner shall prescribe."

Renumber: subsequent subsections

36. Page 18.

Following: line 15

Insert: "(3) All proceedings under this chapter are governed by the procedures set forth in this chapter and by rules adopted by the board. No other rules of procedure or evidence shall apply except that the contested case procedures of the Montana Administrative Procedure Act shall apply if not in conflict with the procedures set forth in this chapter."

37. Page 18, lines 16 through 24.

Strike: subsection (7) in its entirety

Insert: "(9) The hearing examiner shall adopt rules designed to exclude repetitive, redundant, or irrelevant testimony and shall adopt other rules of evidence to expedite and insure an orderly proceeding.

(10) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties, naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance, outlining the order in which the hearing shall proceed, setting forth those section 75-20-301 criteria as to which no issue of fact or law has been raised which are to be conclusively presumed and are not subject to further proof except for good cause shown, and any other special rules to expedite the hearing which the hearing examiner shall adopt with the approval of the board."

Renumber: subsequent subsections

38. Page 19, line 2.

Following: line 1

Strike: "90"

Insert: "60"

(Continued)

39. Page 19, line 1.

Following: line 2

Strike: "the duly authorized state air and water quality agency, if necessary,"

Insert: "in the case of a conjunctive hearing, within 90 days to the board and the board of health"

40. Page 19, line 11.

Following: "exceed"

Strike: "12"

Insert: "9"

41. Page 19.

Following: line 12

Insert: "(13) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections 2 through 10 of this section to expedite the hearing for facility defined in subsections (3)(b) and (3)(c) of 75-20-104."

42. Page 19, line 16.

Following: "waiver"

Strike: "-- attorney general"

43. Page 19, line 25.

Following: "organization"

Insert: "interested in and affected by the application and which is"

44. Page 20, lines 7 and 8.

Following: "person" on line 7

Strike: remainder of line 7 through "proceeding" on line 8

Insert: "affected by the application"

45. Page 20.

Strike: lines 9 and 10 in their entirety

46. Page 20, lines 19 through 25.

Strike: subsections (4) and (5) in their entirety

47. Page 21.

Strike: lines 12 through 17 in their entirety

48. Page 23, lines 14 through 20.

Following: "(h)" on line 14

Strike: remainder of line 14 through line 20

Insert: "that the department of health or board of health have issued a decision, opinion, order, certification, or permit as required by 75-20-216(4)."

(Continued)

49. Page 24, lines 11 through 24.
Strike: subsection (5) in its entirety

50. Page 26, lines 21 and 22.
Following: "authority" on line 21
Strike: remainder of line 21 through "provided," on line 22

51. Page 27, line 8.
Following: "and"
Strike: "state air and water quality agencies"
Insert: "department of health, and the board of health"

52. Page 36, line 16 through line 22 on page 36.
Strike: section 23 in its entirety

53. Page 39, line 18.
Following: "court"
Strike: "may"
Insert: "must"

54. Page 39, line 21.
Following: "board"
Insert: "; except that the cost of the bond is not chargeable
to the applicant as part of the fee"

And, as so amended,
BE CONCURRED IN

House Bill 883 Third Reading

1. Amend page 8, line 19 through page 9, line 17.

Strike: The existing language in its entirety

Insert: "75-20-213. Supplemental material -- amendments.

(1) The applicant may, after an application is accepted, submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide detail with respect to an item described in general terms in the original application without filing a formal application for an amendment.

(2) The Board may approve a change in the location, design, or operation of a facility described in a certificate after it is issued, if it is demonstrated by the applicant that such change;

(a) results from requests of landowners upon whose property the facility is or would be located;

(b) results from requirements of other government agencies;

(c) results from compliance with a condition in the certificate; or

(d) would provide less environmental impact. Such change may be approved by the Board without a formal application for an amendment which approval may be given upon such terms, conditions, or modifications as the Board considers appropriate. The Board's approval shall be made after reasonable notice.

(3) A change in an application after it is accepted, or a change in a certificate after it is issued, other than as set forth in (1) and (2) of 75-20-213 shall require a formal application for an amendment, which shall be in such form and contain such information as the department by rule or order prescribes and be accompanied by a filing fee based on the estimated cost of reviewing the application for an amendment. The Board's decision on an application for an amendment shall be made following reasonable notice and shall be made within six months following receipt of such application which may be extended for good cause."

2. Amend page 15, line 25 through page 17, line 1.

Strike: The existing language in its entirety

NORTHERN PLAINS RESOURCE COUNCIL

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POSITION OF THE NORTHERN PLAINS RESOURCE COUNCIL ON SENATE AMENDMENTS TO HOUSE BILL 883--March 23, 1979

NPRC DISAGREES WITH THE FOLLOWING AMENDMENTS CONTAINED IN THE
3-20-79 DRAFT:

#13

#14

#15

#16

#26

#27

#30
#37

#38 No position at this time

#42

#43

#44

#45

#46

#47

#48

#49

#50

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S PROPOSED
AMENDMENTS TO HOUSE BILL 883 - AMENDMENTS TO THIRD READING
COPY OF THE BILL

- (1) Page 9, lines 2 through 17

Strike: the material in its entirety

Insert: An application may be amended by an applicant at any time after an application is accepted by the department. If the proposed amendment is such that it prevents the department from carrying out its duties and responsibilities under 75-20-216, the department may require such additional filing fees as the department determines necessary, or the department may require a new application and filing fee.

- (2) Page 9, between lines 17 and 18

Insert: (3) The applicant may submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide detail with respect to an item described in the original application, without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required shall be conclusive.

- (3) On page 16, lines 3 through 25

Following: certificate

Strike: the material in its entirety

Insert: (1) Within 30 days after notice of an amendment to an application is given as set forth in 75-20-213(1) the board shall automatically grant the amendment either as applied for or upon such terms or conditions as the board considers appropriate unless a person who affirmatively demonstrates to the board that he will be adversely affected by the proposed amendment requests a hearing before the board. A requested hearing shall be held in the same manner as the hearing is held on an application for a certificate. The applicant has the burden of showing by clear and convincing evidence that the amendment should be granted.

- (4) Page 17, line 1

Strike: the material in its entirety

NAME _____ BILL NO. _____

ADDRESS _____ DATE _____

WHOM DO YOU REPRESENT _____

SUPPORT _____ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

We respectfully request that the Third Reading copy of House Bill 883 be amended as follows:

1. On page 2, lines 14, and 15, delete the present language and insert the following:

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302. "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

2. On page 3, lines 17, 18 and 19, delete the present language and insert the following:

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33. "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

3. On page 5, beginning on line 3, after the word "energy" delete the ";", insert a "." and strike all other language on lines 3, 4, 5 and 6.

4. On page 6, delete the present language of subsection (1)(a) on lines 5, 6, 7, 8 and 9, and insert the following in its place:

An applicant shall file with the department and

department of health a joint application for a certificate under this chapter and for the permits required by state air and water quality laws in such form as the board requires under applicable rules, containing the following information:

5. On page 6, line 20, strike the word "and" and between lines 20 and 21, insert two new subparagraphs:

(v) baseline data for the primary and reasonable alternate locations;

(vi) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

6. On page 6, line 21, renumber subsection "(v)" as "(vii)".

7. On page 6, line 22, following the word "board" insert the words "and board of health" and following the word "department" insert the words "and department of health".

8. On page 6, line 23, strike the word "requires" and insert the word "require".

9. On page 7, line 17, strike line 17 in its entirety and renumber the following subsections.

10. On page 10, line 7, following "(1)" insert "(a)".

11. On page 10, lines 10, 11 and 12, strike the language following "filing fee" on line 10 through the colon (":") on line 12 and insert the following:

as provided in this section based upon the department's estimated costs of processing the application under this chapter, but which shall not exceed the following

scale based upon the estimated cost of the facility:

*12. On page 10, between lines 21 and 22, insert the following new subparagraph:

(b) A potential applicant may receive credit against the fee payable under this section for the development of information or providing of services required hereunder or required for preparation of an environmental impact statement under the Montana or National Environmental Policy Acts. The applicant may submit said information to the department together with an accounting of the expenses incurred in preparing said information; the department shall then evaluate the applicability, validity and usefulness of the data and determine the amount which may be credited against the filing fee payable under this section, Upon 30 days' notice to the ^{applicant} department. This credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter.

13. On page 10, line 22, through page 11, line 8, strike the present language and insert the following subparagraph:

(2) (a) The applicant may enter into a contract with the department for the development of information, provision of services and payment of fees and costs required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. The

moneys paid under any contract shall be credited against the fee payable hereunder. Notwithstanding the provisions of (2)(b) and (d) hereof, the revenue derived from the filing fee must be sufficient to enable the department, the department of health, the board, the board of health, and the agencies listed in 75-20-216(4) to carry out their responsibilities under this chapter. The department will retain the authority to amend a contract, upon good cause shown, to require additional payments for necessary expenses up to the limits set forth in subparagraphs (1)(a) and (1)(b) above upon 30 days' notice.

14. On page 11, line 9, renumber "(c)" to "(b)" and strike the word "agreement" and insert "contract" and strike the word "but".

15. On page 11, line 10, strike the words "desires to" and insert the word "must".

16. On page 11, line 11, strike the word "may" and insert the word "will".

17. On page 12, line 20, following the word "department" insert the words "and department of health".

18. On page 13, line 2, following the word "department" insert the words "and department of health".

19. On page 13, lines 5 through 11, strike subparagraph 2 and renumber the following subparagraphs.

20. On page 13, line 6, following the word "department" insert the words "and department of health".

21. On page 13, line 10, following the word "department" insert the words "and department of health".

22. On page 13, line 11, delete the word "accepts" and insert in its place the word "accept".

23. On page 13, line 16, before the word "criteria" strike the word "the" and insert the word "applicable".

24. On page 13, line 16, strike the ".", insert a ",", and add the following language:

the department of health shall commence a study to enable it or the board of health to issue a decision, opinion, order, certification or permit as provided in subsection (4) hereof.

25. On page 13, line 17, following the word "department" insert the words "and department of health" and following the word "extent", strike the word "its" and insert the word "they" and strike the word "considers" and insert in its place the word "consider".

26. On page 13, between lines 19 and 20, insert a new subsection (4) as follows:

(4) The department of health (acting singly or with the board of health) shall within one year following the date of acceptance of an application, and the board of health, if applicable, within an additional six months, shall issue any decision, opinion, order, certification or permit required by state or federal air and water quality laws, and this chapter. The department of health and the board of health shall consider air and water quality impacts and compliance

with air and water quality standards and implementation plans for the primary and reasonable alternate locations in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters of air and water quality impacts under the federal and state air and water quality statutes that the department of health and board of health administer, and for the purposes of this chapter as specified in 75-20-503(3) and (4) where applicable; the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit and the environmental impact statement if any by the department of health or board of health shall be served upon the department and the board and shall be utilized as part of their final site selection process. A decision by the department of health or board of health is subject to appellate review pursuant to the air and water quality statutes administered by the department of health and board of health.

*27. On page 13, line 20, renumber the subparagraph as "(5)" and strike the words "2 years" and insert the words "18 months". (NOTE: DNR AGREES ON TIME, NPRC DOES NOT.)

28. On page 14, lines 11 and 12, strike "(5)" and insert "(6)", strike the words "health and environmental

sciences".

29. On page 15, line 9, strike the word "if" and capitalize the word "the" so that it would read "The" and strike everything after the word "department".

30. On page 15, line 10, strike the words "active party in a certification proceeding,".

31. On page 15, line 19, after the word "hearing." insert the words "In such a conjunctive hearing" and replace the capital "T" at the beginning of the next sentence with a lower case "t" thereby changing the word "The" to read as "the".

32. On page 17, lines 8 and 9, strike the words "a duly authorized air and water quality agency." and insert the words "the department of health or board of health."

33. On page 17, line 12, following the word "board." strike the words "duly authorized state air and water quality agency permit hearing is required" and insert the words "if a conjunctive hearing is held".

34. On page 17, line 14, strike the word "agency" and insert the words "board of health".

35. On page 18 between lines 10 and 11 insert a new subparagraph (6) as follows:

(6) The hearing examiner shall allow discovery which shall be completed before the commencement of the hearing, upon good cause shown and under such other conditions as the hearing examiner shall prescribe.

36. On page 18, line 11, renumber the subparagraph as "(7)".

*37. On page 18, between lines 15 and 16, insert a new subparagraph (8) as follows:

(8) All proceedings under this chapter are governed by the procedures set forth in this chapter and by rules adopted by the board. No other rules of procedure or evidence shall apply except that the contested case procedures of the Montana Administrative Procedure Act shall apply if not in conflict with the procedures set forth in this chapter.

38. On page 18, lines 16 through 24, strike the present language and insert two new subparagraphs as follows:

(9) The hearing examiner shall adopt rules designed to exclude repetitive, redundant, or irrelevant testimony and shall adopt other rules of evidence to expedite and insure an orderly proceeding.

(10) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties, naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance, outlining the order in which the hearing shall proceed, setting forth those section 75-20-301 criteria as to which no issue of fact or law has been raised which are to be conclusively presumed and are not subject to further proof except for good cause shown, and any other special rules to expedite the hearing which the hearing examiner shall adopt with the approval of the board.

39. On page 18, line 25, renumber "(8)" as "(11)".

40. On page 19, line 2, strike the number "90" and insert in its place the number "60".

41. On page 19, line 3, strike the words "duly authorized air and water quality agencies if necessary" and insert the words "in the case of a conjunctive hearing, within 90 days to the board and the board of health".

42. On page 19, line 6, renumber "(9)" as "(12)".

*43. On page 19, line 11, strike the number "12" and insert in its place the number "9". NPRC DISAGREES.

*44. On page 19, between lines 12 and 13, insert a new subparagraph (13):

(13) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections 2 through 10 of this section to expedite the hearing for facility defined in 75-20-104(3)(b) and (c).

*45. On page 19, line 25, following the word "organization" insert the words "interested in and affected by the application". (NOTE: NPRC DOES NOT AGREE.)

*46. On page 20, lines 7 and 8, strike the language after "person" and insert the words "affected by the application". (NPRC AND E.I.C. DO NOT AGREE.)

47. On page 20, line 9, strike the words "department; and" and renumber the last subparagraph.

*48. On page 21, delete lines 12 through 17 in their entirety. (NOTE: NPRC DISAGREES.)

*49. On page 23, strike lines 14 through 20 and insert the following new subparagraph:

(h) that the department of health or board of health have issued a decision, opinion, order, certification or permit as required by 75-20-216(4). (NOTE: NPRC DOES NOT AGREE.)

50. On page 24, delete subparagraph (5), lines 11 through 24, in its entirety.

51. On page 26, beginning at line 21, strike the language inserted in the bill and also on line 22 before the word "which".

52. On page 27, line 8, strike the words "state air and water quality agencies" and insert the words "department of health and board of health".

53. On page 36, beginning on line 16 and continuing through page 37 and ending on page 38, line 22, strike all of Section 23 of the bill.

54. On page 39, line 21, following the word "board" strike the "period" (.) and insert the following "; except that the cost of the bond is not chargeable to the applicant as part of the fee.".

ATTORNEY GENERAL:

15. On page 7, line 24, delete subsection "(i)" in its entirety.

24. On page 12, line 8, place a period (".") after the word "chapter".

25. On page 12, strike all language on lines 13, 14, 15 and 16.

47. On page 19, line 16, strike the words "attorney general".

50. On page 20, strike line 10 in its entirety.

51. On page 20, lines 19 through 25, strike subparagraphs (4) and (5) in their entirety.