

MINUTES OF THE MEETING OF THE NATURAL RESOURCES COMMITTEE
FEBRUARY 11, 1981

The House Natural Resources Committee convened in Room 104 of the Capitol Building on Wednesday, February 11, 1981, at 12:40 p.m. with CHAIRMAN DENNIS IVERSON presiding and eighteen members present.

CHAIRMAN IVERSON opened the hearing on HB 236.

HOUSE BILL 236 REP. JACK K. MOORE, sponsor, requested that the committee take action necessary to table HB 236.

CHAIRMAN IVERSON accepted REP. MOORE'S recommendation on behalf of the committee and said that proper action would be taken during Executive Session.

The hearing closed on HB 236 and opened on HB 607.

HOUSE BILL 607 REP. JOHN HARP, chief sponsor, presented the bill which would assign the burden of proof when application is made to amend a certificate of environmental compatibility and public need under the Montana Major Facility Siting Act. See Exhibit 1.

PATRICK SWEENEY, Northern Plains Resource Council, supported the bill but provided two amendments which are attached as Exhibit 2.

JOHN ROSS, Montana Power Company, supported the bill saying that the one seeking the amendment should bear the burden of proof.

GENE PHILLIPS, Pacific Power and Light Company, supported the bill.

JAMES MOCKLER, Montana Coal Council, spoke in support.

WARD SHANAHAN, a Helena attorney, supported the bill but objected to the amendments.

MIKE MALES, Environmental Information Center, supported the bill.

PETER JACKSON, Western Environmental Trade Association, spoke in support because he felt it would create jobs.

There were no OPPONENTS.

REP. HARP closed on HB 607. The hearing closed.

The hearing opened on HB 426.

HOUSE BILL 426 REP. HERB HUENNEKENS, sponsor, presented the bill which would include certain mineral processing plants under the Major Facility Siting Act. He stated that the definition of "industrial" does not include timber. We in Montana should be able to have a say in where large companies and plants locate. The Major Facility Siting Act has done its job but certain mineral processing plants should be included also.

ANDY EPPLER, a planner for Sweet Grass County, spoke in favor of the bill. He felt we need the amendment to the Major Facility Siting Act which will cover mineral processing plants because of the planned Sweet Grass Complex. The economic impact on small towns is tremendous. County services are drastically reduced when large numbers of people move into the area.

JAMES TULLEY, Chairman of School District 1 in Big Timber, testified in support of the bill. The mining activity will not pay taxes in his school district but the children will be there for school. With this bill to qualify for a permit the company has to take into consideration the small town or locality. It would make the companies more responsive to the needs of small towns.

KAREN STRICKLER, representing the Montana League of Women Voters, supported the bill. See Exhibit 3.

STEVE DOHERTY, Northern Plains Resource Council, testified in support. See Exhibit 4.

Speaking as an opponent was WARD SHANAHAN, representing Stillwater P.G.M. See Exhibit 5.

BILL HAND, Executive Secretary of the Montana Mining Association, opposed the bill.

JAMES MOCKLER, Montana Coal Council, spoke in opposition saying the companies already have many processes to pass through before getting permits and starting operations.

GEORGE JOHNSTON, ASARCO, stated that this bill provides overkill. There are already many regulations for companies to follow.

DON JENKINS, Placer Amex, said companies such as his employ many people and increase the tax base of small towns such as Whitehall where his company is located. This bill would prevent mining from developing.

Exhibit 6 was presented on behalf of Northwest Mining Association.

PETER JACKSON, Western Environmental Trade Association, spoke in opposition.

KARLA GRAY, Anaconda Company representative, said the existing regulations are adequately protecting the residents of Montana.

WES BANTA, Kaiser Cement, opposed the bill, as did JANELLE FALLAN of the Montana Chamber of Commerce.

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REP. HUENNEKENS closed on the bill. He said that he is not trying to bother the small operators with this bill but to make large plants accountable.

During questions from the committee, REP. MUELLER asked REP. HUENNEKENS if he felt the processing problems were not covered by the Hard Rock Mining Act. The answer was that he did not feel the problems were adequately covered.

REP. MUELLER asked what ASARCO had to do in order to start its mine near Troy. MR. JOHNSTON answered that permits from the Department of Natural Resources and environmental studies were required as well as bonding for reclamation.

REP. BROWN asked about the differences in mining and processing. MR. MOCKLER explained that it is all connected and all part of the process.

REP. SALES asked how this act would help the Big Timber School District. MR. TULLEY said the company would not get its permit. He further stated that if some arrangements could be made to help with the impact on small towns and schools, he would not object to a processing plant in his area.

REP. QUILICI asked if the new crusher and dryer proposed for the Butte area would come under this act. REP. HUENNEKENS said yes if the constructions costs were more than \$25,000,000.

The hearing closed on HB 426.

EXECUTIVE SESSION HOUSE BILL 236 REP. HUENNEKENS moved that the bill be INDEFINITELY POSTPONED. PASSED unanimously.

The meeting adjourned at 2:00 p.m.

Respectfully submitted,


DENNIS IVERSON, CHAIRMAN

Ellen Engstedt, Secretary

VISITORS' REGISTER

HOUSE NATURAL RESOURCES COMMITTEE

TLL AB226

Date 2/11/81

SPONSOR MOORE

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HOUSE NATURAL RESOURCES COMMITTEE

Date 2/11/81

ONSOR HUENNEKENS

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HOUSE NATURAL RESOURCES COMMITTEE

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HB 607

Date 2/11/81

NSOR HARP

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

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MR. CHAIRMAN,
MEMBERS OF THIS COMMITTEE,

MY NAME IS JOHN HARP, REPRESENTATIVE FOR DISTRICT 19.

This bill pertains to only one area, that being the present form in which an applicant of the Major Facility Siting Act is required to do if such facility needs to amend a certificate of environmental capability and public need.

Presently if an applicant wishes to amend a certificate the D.N.R. has 30 days to determine whether the proposed change would materially increase any environmental impact or substantially change all or a portion of the facility.

If the department determines that there would be a material increase in impact or substantial change of location, the board must hold a hearing and then render a decision, otherwise the board must automatically grant the amendment as proposed or with conditions.

Presently the applicant has two situations where they are assigned the burden of proof: (1) Departments initial certificate. (2) To grant an amendment to the initial certificate.

Requiring the applicant to carry the burden of proof in the second situation is unfair. The Siting Act provides no standards which the objector must meet. All they have to do is just make allegations and the applicant and the DNR is put to the expense and trouble of proving for a second time.

An example of this situation is as follows:

Let's assume that an REA wanted to build a substation

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and received a certificate from the DNR. After receiving their certificate they realized that part of the footings for the switch racks were off in the substation. Therefore, they would have to amend the original certificate because some portion of the location has changed. Granted, this is a minor change and should not have any problem with the DNR granting an amendment. But in such a case, an objector could require the DNR and the REA to reopen and justify the certificate for a second time.

I feel there is nothing wrong with the present form in how the DNR currently grants amendments. They fall under two categories: either a major or minor amendment. If it is a major amendment, a hearing should be held, input should be given, citizens should have a chance to voice their opinion. If it is a minor amendment, chances are it will not require a hearing or any additional information.

But, this bill remedies the present unfairness. It clearly indicates that if the department determines that the proposed changes will not result in any material increase in any environmental impact or will not be a substantial change in the facilities, and a hearing is required because the determination is appealed, then the objector has the burden of proof. In this circumstance, it is fair to require the objector to show the amendment should not be granted.

PROPOSED AMENDMENT TO

HB 607

- # 1. Page 2, Line 18, after the word "facility" insert:

"or if the board determines under subsection (4) of this section that the proposed change in the facility would result in any material increase in any environmental impact or would be a substantial change in the location of all or a portion of the facility"

- # 2. Page 3, line 3, after the word "the" strike the remainder of line 3 and all of line 4 and insert:

"proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility."

LEAGUE OF WOMEN VOTERS OF MONTANA

Testimony in support of HB 426: An Act to Include Certain Mineral Processing
Plants Under the Major Facility Siting Act

February 11, 1981

The League of Women Voters of Montana supports Montana's Major Facility Siting Act. It allows orderly resource development and provides for environmental review as well as citizen participation in the decision-making process.

Energy conversion plants are not the only facilities which have major impacts. Other large facilities should also undergo systematic review. The Major Facility Siting Act provides for such review.

We ask you to carefully consider this bill and we recommend you pass it.

NORTHERN PLAINS RESOURCE COUNCIL

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TESTIMONY OF THE NORTHERN PLAINS RESOURCE COUNCIL ON HB 426
HOUSE NATURAL RESOURCES COMMITTEE FEBRUARY 11, 1981

Mr. Chairman, members of the committee, for the record my name is Steve Doherty. I am presenting testimony today on behalf of the Northern Plains Resource Council and two of our affiliate groups, the Stillwater Protective Association and the Boulder Valley Association. NPRC and our affiliates are agriculturally based citizens organizations that are concerned with the effects of hard rock industrialization on rural agricultural communities.

The impetus for this type of legislation lies in the potential siting of smelters in the Stillwater and Sweet Grass County areas. The siting of such facilities in these largely rural, sparsely populated areas can mean tremendous changes in those communities. It is only right that the State, which has enacted the Major Facility Siting Act to promote the responsible development and siting of large industrial facilities, cover the siting of large hard rock mineral facilities as well. The impacts and permanent changes are almost directly translatable.

We feel that HB 426 is a good attempt to provide Montanans with a voice and determination in resolving these questions. We urge that the committee give it a do pass recommendation.

STATEMENT IN OPPOSITION TO HOUSE BILL 426

This is a statement made on behalf of Stillwater P.G.M. Resources in opposition to House Bill 426 which is a bill to include mineral processing plants under the Major Facility Siting Act. The Major Facility Siting Act was originally passed as the Montana Utility Siting Act for the primary purpose of regulating the construction of coal-fired powered generating plants and other facilities serving the public and regulated by the PSC. Colstrips Units 3 and 4 were licensed under this Act in a proceeding which took approximately seven years before the permit was issued. The Act was amended in 1975 to expand its provisions to include other coal conversion facilities and was intended to protect the State against a "assumed threat" from large gasification processes and synfuels plants. To date no gasification or synfuels plant has been built in Montana.

Now House Bill 426 is proposed to cover all industrial facilities which would produce "other products" than energy. The Act would appear to place a generous limit on the construction cost of "industrial facilities" at \$25 million. It is noteworthy that "other major facilities" are regulated if they only cost in excess of \$250,000. Thus it would appear at first blush that only very large mineral facilities would be included. However, \$25 million as industrial facilities go is a small amount. It is, for example, only 2.5% of the cost of Colstrip Units 3 & 4. This amount would

probably include additions to the East Helena Smelter or to a cement plant the size of Montana's present Ideal or Kaiser Cement plants.

The principal problem with House Bill 426 is that it fails to address the main defects in the Major Facility Siting Act which are so clearly pointed out in Senator Brown's Senate Resolution No. 14, as follows:

" WHEREAS, it is essential that the state identify the powers that may be lawfully exercised in making siting decisions in an effort to avoid confrontations with the federal government and federal laws; and

WHEREAS, it is necessary that the Legislature insure that the Montana Major Facility Siting Act is fair, reasonable, and otherwise able to withstand legal challenges to its validity; and

WHEREAS, it is necessary to make decisions under the Act within a reasonable time frame and that such decisions be based on valid and legally enforceable criteria."

In Section 75-20-102 which is the policy and legislative findings of the Major Facility Siting Act, the legislature provides:

"(2) The legislature finds that the construction of additional power or energy conversion facilities may be necessary to meet the increasing need for electricity, energy, and other products and that these facilities have an effect on the environment, and impact on population concentration, and an effect upon the welfare of the citizens of this state. Therefore, it is necessary to insure the location, construction and operation of power or energy conversion facilities will produce minimal adverse effects on the environment and upon the citizens of this state . . ."

(Emphasis added)

Metal Mines and Processing Facilities, on the other hand, are the subject of a separate legislative finding in

Section 82-4-301, MCA, which recognizes the special character of hardrock mining:

"82-4-301. Legislative Findings. The extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare health, safety, ecology and property rights of citizens of the state. Mining and exploration for minerals takes place in diverse areas where geological, topographical, climate, biological and social conditions are significantly different and reclamation specifications must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or sub-surface of the earth and without producing waste materials and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation as provided in this part will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed." (Emphasis added)

Mining as defined in Section 82-4-303 of the Hardrock Reclamation Act recognizes the various stages in the production of ore in commercial quantities for sale, beneficiation, refining, or other processing or disposition including the taking of bulk samples for metallurgical testing in excess of an aggregate 10,000 or more tons.

We quote these things to the Committee because we think they highlight deficiencies and misdirection of House Bill 426, namely:

1. That there is no wholesale degradation or "national sacrifice area" threatened because of hardrock mineral

activity in Montana and this legislature has recognized this fact in the Hardrock Mining Act. House Bill 426 ignores the unique nature of metal mining and merges control of its processing facilities with the confused requirements of the Major Facility Siting Act.

2. House Bill 426 creates a confusion in terms because an "industrial facility" will be anything that processes, smelts, produces, refines or manufactures any natural resource for sale or commercial use. This definition is so broad as to include beneficiation, refining or other processing or disposition including the taking of bulk samples for metallurgical testing. Many of these things are directly "associated" with the hardrock mining operation are already covered with the Hardrock Reclamation Act. House Bill 426 will enhance the confusion as to where the Hardrock Mining Act leaves off and the Major Facility Siting Act begins.

3. The metal and non-metal mining industries have no guaranteed market for their products and must explore, drill, sample, test and develop such mineral properties over a long period of time to create a "marketable mineral". The industry is already subject to the general NEPA and MEPA laws as well as to the specific and very stringent Montana Air and Water Pollution Acts, the Streambed Preservation Act, the Flood Plain Act, the Mine Safety and Occupational Safety Acts and the National Pollution Discharge Elimination System which requires a permit on every pipe which discharges any

liquid or chemical material from of an industrial facility. This system is administered by the Montana Department of Health and Environmental Sciences.

4. A "major new industrial facility" (which includes mining facilities) is already required by Montana law to prepay its taxes in an amount equal to three times the estimated property tax due to local government in the year the facility is completed (See Section 15-16-201, MCA). In addition, any new industrial property will not qualify for special tax classification unless the local taxing authorities waive their objections after being satisfied that a taxpayer has agreed to properly prepay its property taxes during the construction period to offset local impacts.

Thus, it can be seen, that both the metal and non-metal mining industry in Montana is very adequately regulated and controlled by Government to prevent adverse impacts. There is no need to subject this industry to crisis legislation in order to prevent social disruption. This Committee should recognize that both metal and non-metal mining in Montana is subject to market forces, unlike any which are applicable to coal or energy production. The horrendous costs imposed upon energy generation or coal gasification by the Major Facility Siting Act cannot be "passed on to the consumer". Imposition of additional regulation and political costs therefore directly affects "marketability" of the mineral in a much more drastic way.

Stillwater P.G.M. Resources is dedicated to compliance with reasonable environmental controls. We think that such regulation is already in effect in Montana. We respectfully request your recommendation that House Bill 426 DO NOT PASS.

A handwritten signature in black ink, reading "Ward Shanahan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ward A. Shanahan, Registered Lobbyist
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HB 426 - Oppose

Testimony of Wm. Sternhagen

I represent the Northwest Mining Association.

We have about 2,500 members in the mining community and about 450 of our members are Montana based.

We oppose HB 426. I must attend another hearing at this time and cannot be present at your hearing. We ask that you give your consideration to the other witnesses testifying against this bill.

Thank You

W. Sternhagen
Lobby Representative
Northwest Mining
Association