

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 2, 1987

The meeting of the Natural Resources Committee was called to order by Chairman Tom Jones on February 2, 1987, at 1:00 p.m. in Room 312 of the State Capitol.

ROLL CALL: All committee members were present with the exception of Rep. Harp who was excused.

HOUSE BILL NO. 416: Rep. Gene Donaldson, District 43, sponsor, stated this bill basically is a clarification bill that was before this committee two years ago, that deals with the underground storage tanks, and the reason the bill is here is because about 4 or 5 years ago, several wells in the Helena Valley were found to be contaminated, either from leaking storage tanks or leaking pipelines. Once this product gets into the groundwater, it is virtually impossible to clean up. He is in hopes of finding a way of preventing some of the aspects of this problem and to have some regulations as to how you can store this groundwater without it getting contaminated. Another problem he wished to address with this bill is the problem they have found with the leakage of diesel fuel to some of the storm sewers and getting into the irrigation watering systems and other water systems throughout the city. He stated this leakage, after careful studies, was clearly identifiable toward the north road, where you could actually see the settling ponds which had turned black around the perimeter. He stated these are issues we can no longer ignore, thus his reason for submitting this bill. This bill does a number of things, which he stated he does have someone from the Department here to explain.

PROPOSERS: LARRY MITCHELL representing the Department of Health and Environmental Sciences submitted testimony. (Exhibit No. 1). He stated he is currently responsible for coordinating the underground storage tank program for the state, which presently has a staff of three. He stated that during the last session the amendments were passed to the Montana Hazardous Waste Management Act which authorized the Department to implement and organize this new program. He stated he was back before the committee today with this measure to try to simplify, clarify and correct some oversights from that piece of legislation. These oversights were looked at during the biennium and it was questioned whether they really had exactly what they needed to get on with this program. With one exception, HB 416 is simply a

housekeeping measure for the legislation that passed last session. More importantly, is the required regulated substance, which you will notice has been added into three or four sections of Hazardous Waste Management Act. This is what this act was set up for, to regulate hazardous waste. The underground storage tank program is designed to prevent leaks from underground tanks and piping, which store a different type of commodity, called regulated substances, and things that will find regulated substances in state and federal law which are not waste products, they are actually products like petroleum and other chemicals which fit into a different category. They feel there is a way around the federal hazardous waste requirements, and they would like to see the phrase "regulated substance" added to those authorities already existing in the Hazardous Waste Management Act for inspection and cleanup. He stated that is perhaps the most important part of this particular legislation. Additionally there are a couple of definition changes in HB 416 which remove the redundancy in the definition of underground tanks and removes the competition in the definition of one of the exemptions. HB 416 does not add to or take away from the Department's existing rulemaking authority, with one exception. If the committee will notice a New Section (e) in the rulemaking authority, "the Department will be authorized to adopt a schedule of fees to deter future state local costs of this particular program." In other words, it would be like a backup authority to come up with some fee procedures, fee schedules, if necessary to meet existing federal requirements, and could be something as simple as a new tank inspection fee for example. Again, he stated this is a housekeeping bill, that serves to clarify, and makes existing law more clear. He urged the committee to support this bill, and made himself available for any questions the committee may have.

GEORGE OCHENSKI representing the Montana Environmental Information Center submitted testimony (Exhibit 2 and 2a). He stated many members of this committee will remember the 1985 session, when Montana's leaky underground storage Tank program was initiated with the passage of HB 676. Since that time, the state has conducted a survey of the tanks in Montana, what kind they are, where they are, and whether or not they are known to be leaking. He explained to the committee that his handouts include a list of problem sites throughout Montana where groundwater is contaminated by regulated substances. Most of the sites on the list are caused by underground tanks. He stated the problem of groundwater pollution is a concern to all Montanans, because it renders our drinking and irrigation waters unfit to drink, unfit to spray on crops, and because the solutions to polluted groundwater are both complex and expensive. So difficult are the problems caused by polluted groundwater,

that Congress appropriated half a billion dollars to fund the Underground Storage Tank portion of the new Superfund bill. He stated the committee will also hear some suggested amendments to this bill, one of which is to exempt all tanks under 1100 gallons. Clearly, the sensible approach to underground storage is a comprehensive program designed to prevent pollution before it happens. This program will actually alleviate expenses for those involved. He urged the committee's approval of HB 416.

JEANNE-MARIE SOURGINEY testifying for two statewide groups that have strong positions on the state and federal Hazardous Waste Management acts those being the Montana League of Women Voters and the Montana Chapter of the Sierra Club. She stated they support HB 416. They feel the state must address the problems of hazardous waste and regulated substances at the source of the problem, as this provides the greatest protection for the public and least cost in the long run. By minimizing the release of the regulated substances, and the cost now to do this, would be must less than the potential cost at a later date to clean up the leakage and compensate victims. The state needs timely and equitable enforcement of these rules for all categories of people with these leaks, and this bill helps to ensure that enforcement.

STAN BRADSHAW representing Trout Unlimited stated they do support HB 416. He stated while the primary focus on this bill is groundwater, TU is interested nonetheless, because when you protect the groundwater, you necessarily extend some kind of protection to surface water, which is particularly true in river valleys where you get close connection between groundwater and surface water. Because of this action it clarifies the authorities of the Department of Health in dealing with the problem. With this point of clarification, the bill is a much better bill and he urged the committee to give HB 416 a "do pass."

JANELL FALLAN, Executive Director of the Montana Petroleum Association submitted testimony (Exhibit 3). She stated there are two points in the bill she would like to address, one being the question that was raised about the fee system, and she simply stated they have no objection with that, and feel the department is taking the correct approach in simply asking for the authority to do that through the hearing process rather than trying to do something statutory at this time. She stated the one area they do have concerns about is on page 9 of the bill where it states "adopts more stringent requirements". She stated she does understand the department's reasoning in that, because regulated substances in Montana go beyond the federal act, however, it concerns them that when you are piggybacking state regulations

on top of federal regulations, you do have regulations more stringent than the federal that can cause a number of problems in terms of the research information that is available and competitive for business. She does have a suggested amendment, which would simply re-write section 3 to read "adopt requirements for the prevention of leakage from underground storage tanks not otherwise regulated under RCRA."

H.S. HANSON representing the Montana Technical Council, stated their concern's with lines 21 and 22 on page 8, where the Department of Health has the authority to develop standards and design construction regarding the installation of those tanks. He asked the committee to keep in mind presently, there are codes and various procedures and requirements already on the market place and they reside in the Fire Marshall's office. So, when the Fire Marshall develops these types of codes, our concern is that we don't have a series of locations that are developing codes and we, the designers, aren't really sure what code we should use. We would suggest that be eliminated and the Department of Health, if they wish to add to any of the existing codes, there presently are mechanisms out there that they can go and apply for, have a code hearing to increase the code, then that will apply to all of the state, however, would still have one source. He stated they recommend wholeheartedly this section be eliminated.

RUSS BROWN representing the Northern Plains Resource Council stated they do support this bill for many of the same reasons already mentioned. He wanted to merely point out to the committee that the importance of groundwater cannot be underestimated, with it being considered a prime resource in the state of Montana. He stated NPRC supports this bill with the amendment offered by the Montana Petroleum Association.

SEN. LARRY TVEIT, District 11, stated he will support the bill with the amendments and stated he did offer one amendment to the committee at this time (Exhibit 4).

OPPONENTS: BEN HAVDAHL representing the Montana Motor Carriers Association stated they are in a dilemma, as to what side of the bill to appear on. He stated, unfortunately they oppose two major changes in the underground tank program outlined in this bill. He stated the first change is to make the state standard more stringent with the appropriate requirements established under federal law. He stated this legislative body enacted the state control program and emphasized the rules and regulations to adopt it would not be more restrictive than created by the federal government. Their understanding of that proposed change for

as more restrictive program involved and included certain tanks. They also object in the establishment of authority of the Department to develop a schedule of user fees to deploy state and local costs in establishing and implementing the underground storage tank program. Because of these major concerns, they do oppose this piece of legislation.

MIKE MICONE representing the Western Environmental Trade Association stated he, like Mr. Havdahl, wasn't quite sure which way to testify, however, they do have reservations on both sides of the issue. They do take a position and have for a number of years of protecting private property rights, and it may be just a technicality, but they have a problem with section 4 which states "within any reasonable time, they inspect any property." They have a problem with a state employee being able to do this, without just cause. Because of this, they do oppose this bill.

NO FURTHER OPPONENTS

Rep. Cobb asked Mr. Mitchell how it had been proceeding, regarding how much they may have accomplished.

MR. MITCHELL stated they finally have some dollars available to take care of some of these problems. They are getting a lot of investigations underway and are able to address complaints, and just getting out there to see what's going on. They are currently doing some inspection, with all the tanks having been in, and making extreme headway in terms of prevention. They have been talking to tank owners about safety and proper procedures. He stated they have removed 80 tanks that were found to be unsafe, so they are making some progress.

REP. COBB asked whether they felt they were doing a good job now, when checking all the wells, and how much more they wanted to do.

MR. MITCHELL stated they still have a lot of tanks out there that have not been notified, and he feels there are a lot of problems that are still occurring, that they are simply not aware of yet. He feels the program really needs an established person at the local level to be able to watch at tank inspections, which is the most critical time of as tank's life, is when it is being put in, and to check to make sure these records are being kept, so we do not run into any types of disaster that may occur if these tanks are not kept up to date.

REP. HARPER stated that on page 9, language "more stringent" seems to be a red flag and seems to be out of place. He stated that as he understands under current law, the

Department is capable of not only prescribing the standards for the tanks, but all other sorts of things for any other tank under this, and he wondered if this was not the case. Mr. Mitchell stated this is correct.

REP. HARPER then stated he doesn't see the need to put words like "more stringent" in there because of the statement in section 3, with these exempt, any regulations that you make on these things are going to be stringent technically, because they are different. However, they seem to be causing an undue amount of concern, and they really don't seem to change the meaning of the wording at all. He asked Mr. Mitchell if he felt this way about the wording.

MR. MITCHELL stated this was his understanding also, with these items obviously state law, that we may be more restrictive than those rules. He stated he is not sure why that was put in there either, and felt it was revised, because they felt to reiterate the need for the rules to be more restrictive. However, he stated it does look to be redundant.

REP. ADDY asked Sen. Tveit if his amendments were not put on the bill, could he still support it, and he asked the same question to Mr. Hanson. Sen. Tveit replied no, he would not, and Mr. Hanson stated he would have the same answer, no he would not support the bill.

REP. ADDY stated for the record that Rep. Raney and himself had a bill in Taxation the other day, where people got up and testified as proponents, and when asked if they would support the bill without the amendments, they both said no, and were thus listed as opponents. He stated he would like this to happen with these two people as well.

HEARING CLOSED ON HB 416.

HOUSE BILL NO. 453: Rep. Ray Brandewie, District 49, sponsor, stated the purpose of this bill is to have someone in state government to represent tourism and the recreational industry on Flathead Lake with regard to the level of the lake. He stated basically what happened when the licensing process for Montana Power's Kerr Dam took place in the last several years, in re-negotiating, regarding how the dam would be regulated and what was going to happen to the water, the Kootenai Tribe was successful in getting an expanded discharge rate and in some cases that discharge rate could be more than the income rate at the top end of the lake. He stated the figures are not exact, but he stated it would give the committee a good idea, stating they get about 3,400 cubic foot per second discharge guaranteed, out of Kerr Dam. The other end of it is regulated by the

Bonneville Power Administration and of course, they have a lot of say on how much water is discharged when they do it. He stated what happened while all of this was going on, was someone forgot to add up the numbers, because they are so close together, if anything gets in the equation, the lake level will drop and what happens is no one bothered to add the numbers and did not take into account natural evaporation. They also didn't take into account that which was appropriated for irrigation along the river between the mouth of Badrock Canyon and where the river enters into Flathead Lake just above Big Fork. So last summer, it was a dry year, which won't happen every year, however, the input was just barely what it was suppose to be according to Bonneville Power. Consequently, the level of Flathead Lake dropped pretty abruptly during the high period of discharging the water. This in turn, left many docks in the lake adrift, causing many people problems with trying to get their boats in and out of the lake, because they could just not do it. This in turn, causes these people to seek other recreational sites, where these sorts of problems don't occur, stating Flathead is not the only big lake in the Northwest. All he is asking to do with this bill is to see that someone in state government when this is being negotiated, is there looking out for that aspect of the lake level. He stated if someone had just bothered to add the numbers up, they possibly would have figured out the problem and most likely would have been able to avoid it. He urged the committee to give this bill a do pass.

PROPOSERS: NONE

OPPOSERS: NONE

REP. MEYERS asked if this act if passed, would this enable them to deal with the Bonneville Power line regarding this.

REP. BRANDEWIE stated this would involve one more player in that group of people who sit down and try to work this all out, because there is a myriad of interests up and down this area, regarding these waters, which involve all the Bonneville Power Administration dams. Plus, the federal Fish and Wildlife interests involved as well, and it merely ends up to be a big balancing act that everyone involved goes through.

REP. HARPER stated if this bill is passed and becomes law, the law would then say, "the Department of Commerce shall represent the tourism industry and other interested persons in all matters concerning the regulation of the level of Flathead Lake." He stated that says to him that the Department would be encumbered with the responsibility of being a legal party in any suit that was filed, say by recreational facilities maybe as a class action against Kerr Dam, and

asked Rep. Brandewie if he saw it this way, stating the Department is not only going to be empowered to, but shall join the tourism industry or recreation industry in a court case determining the level of the lake management.

REP. BRANDEWIE stated he doesn't immediately go to court, because you would have to go against the federal government. Montana Power, if they were to violate their license and discharge the amount of water that they should, because they have rules to follow, and if they in fact, are following these rules, he is not trying to get the Department of Commerce in the "lawsuit business." However, he wanted to point out, that when there is negotiations going on, the Department of Commerce or some department in the state would be involved with both particular considerations in mind. He stated the Fish and Game department did not even think about it.

REP. SIMON stated it seemed to him that there would be similar concerns about other bodies of water around the state that are also regulated where the concern of the level of the lake has a great deal to do with the tourism industry, and wondered if he had taken into consideration other bodies of water that may also fall into this same category.

REP. BRANDEWIE stated no, he had not, and jokingly asked Rep. Simon if he was thinking about including Lake Elmo.

REP. GRADY stated Rep. Simon brought out the very point he was going to make, and felt we were putting the Department of Commerce in a bad spot, stating he felt they would be able to control recreation, and asked Rep. Brandewie if he felt this would put the Department of Commerce on the spot.

REP. BRANDEWIE stated he did not feel this way, because the Department of Commerce or anyone else has got the water, which Bonneville Power runs throughout the state, which we can use for irrigation and other such uses, but this is not going to give the Department of Commerce power to regulate anything because they don't have that power. What it would do is allow them to participate in hearings and to point out what consideration they would like to have the people that actually do the regulating consider. REP. GRADY asked why he had chosen the Department of Commerce and not the Department of Fish, Wildlife and Parks.

REP. BRANDEWIE stated DFWP was there, and he feels there should be somebody there for these negotiations to at least relay their concerns, because it is important for the tourism and recreational industry in this state. He then urged the committee to pass this bill.

HEARING CLOSED ON HB 453.

HOUSE BILL NO. 467: Rep. Bob Ream, District 54, sponsor, stated through federal legislation there are two significant acts that affect hazardous waste. Those being the Superfund Act which deals with disposal of waste that has resulted from spills or disposal of waste in the past, that has become a problem now. The other act is the Resource Conservation Recovery Act which has to do with the management of hazardous waste, that is as it is generated, transported and disposed of. Under both of those acts, states can take the leadership role in administering the provisions of those acts. He stated he believed Montana was the third state in the nation to participate in RCRA. In 1981, the Legislature passed the Montana Hazardous Waste Act. That legislation made it clear that Montana was to continue to maintain the federal authorization for an independent hazardous waste program that was parallel and equivalent to the federal program, but operated by the state. Some states have chosen not to take this lead, and instead have let the federal government take the lead role in hazardous waste. Last October, the U.S. Congress had some significant amendments to the federal Resource Conservation and Recovery Act relating to hazardous waste management and HB 467 has been drafted to specify some of the new program responsibilities the Health Department will have. This act then has two sections, the first deals with administrative rules and adds three provisions on page 2, section two of the act, which begins on page 3, and has two areas in the permitting process that have to do with conditions placed upon hazardous waste facilities' permits.

PROPOSERS: KATHRYN ORR, special assistant to the Attorney General and works for the Department of Health submitted testimony (Exhibit 5) she stated. This is a technical requirement that the State of Montana must adopt the changes that have been implemented on the federal level. Without these changes that have been implemented into our local program, we will no longer be authorized to administer on an independent basis the provisions of the Solid Hazardous Waste Act, and moreover, we would become ineligible for federal grant monies which are available for these independently authorized programs. She stated the bill accomplishes two things; one, it expands the state's rulemaking authority to include areas not explicitly addressed in the law and two, it implements a section which requires the state to include corrective action requirements in permits. The changes encompass amendments which are considered by Congress to be essential to an effective regulatory program. The changes in rulemaking refer to more effective requirements to insure that hazardous waste releases are contained and to insure that the public has sufficient access to

department information about hazardous waste sites and facilities. It should be noted that such access is not intended to interfere with ongoing departmental enforcement actions. The changes in the permitting section insures that the department will require as a condition of each permit issued appropriate corrective actions tailored to each permit.

ROGER THORVILSON with the Solid Management Waste Bureau stated he had nothing further to add, however, did offer to be available for any questions that may be asked.

GEORGE OCHENSKI representing the Montana Environmental Information Center stated MEIC does support this bill, and he urged the committee to give it a good recommendation.

JEANNE-MARIE SOURGINEY representing the League of Women Voters and the Montana Chapter of the Sierra Club voiced support for both organizations and urged the committee to look favorably on this piece of legislation.

STAN BRADSHAW representing Trout Unlimited stated his organization does support this measure.

OPPONENTS: none

NO QUESTIONS FROM THE COMMITTEE

IN CLOSING, REP. REAM emphasized that these are changes that have been initially mandated by changes in the federal law, sometimes we don't like to have changes like this imposed upon us, however, he feels it's better the state stays involved and have the lead role in managing such a program, than have the federal government thrown out.

HEARING CLOSED ON HOUSE BILL 467

EXECUTIVE SESSION

HOUSE BILL NO. 308: Rep. Miles moved HB 308 DO PASS. Rep. Miles pointed out to the committee that the concerns involved were legitimate, and she stated this would also help alleviate the double application process.

REP. RANEY had concerns about the monitoring of these dams, and wondered, if in fact, they would get the same type of monitoring procedures.

REP. MILES assured Rep. Raney that they must, according to the bill monitor these sites, keeping all standards up to regulation. This would be a must for Montana Power to do.

QUESTION WAS THEN CALLED, THE MOTION CARRIED UNANIMOUSLY.

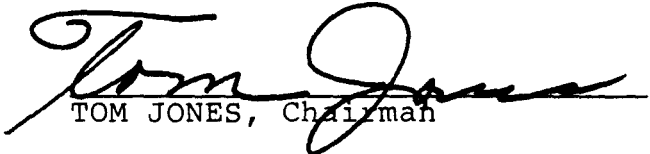
HOUSE BILL NO. 408: Rep. Smith moved HB 408 DO PASS.
Question was then called, the motion CARRIED unanimously.

HOUSE BILL NO. 467: Rep. Raney moved HB 467 DO PASS. Rep. Simon moved to amend HB 467 on page 6, line 5, by striking "an existing" and simply inserting "a". He felt this was a minor change that simply helped to clarify the bill. Question was then called on the Simon amendment, the motion CARRIED unanimously. Rep. Asay moved HB 467 DO PASS AS AMENDED. Questions was then called, the motion CARRIED unanimously. See Standing Committee Report No. 1.

HOUSE BILL NO. 328: Rep. Smith moved HB 328 DO NOT PASS. He stated he felt this bill would be very detrimental to the small landowner and that generally it was a bad bill.

REP. RANEY spoke to the do not pass motion and stated he does support this because he feels it would be lowering the competitiveness of this, and also felt it was as bad bill. Question was then called on the do not pass motion, the motion CARRIED, with Rep. Kadas voting NO.

ADJOURNMENT: There being no further business to come before this committee, the hearing was adjourned at 2:30 p.m.


TOM JONES, Chairman

DAILY ROLL CALL

NATURAL RESOURCES

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 2, 1987

NAME	PRESENT	ABSENT	EXCUSED
TOM JONES, CHAIRMAN	✓		
CLYDE SMITH, VICE CHAIRMAN	✓		
KELLY ADDY	✓		
TOM ASAY	✓		
JOHN COBB	✓		
BEN COHEN	✓		
ED GRADY	✓		
JOHN HARP			✓
HAL HARPER	✓		
MIKE KADAS	✓		
AL MEYERS	✓		
JOAN MILES	✓		
MARY LOU PETERSON	✓		
BOB RANEY	✓		
RANDE ROTH	✓		
ANGELA RUSSELL	✓		
BRUCE SIMON	✓		
BILL STRIZICH	✓		
STAFF: EQC HUGH ZACKHEIM			

STANDING COMMITTEE REPORT

FEBRUARY 2

19 57

Mr. Speaker: We, the committee on NATURAL RESOURCES

report HB 388

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. TOM JONES

Chairman

"AN ACT TO EXEMPT FACILITIES CERTIFIED UNDER THE MONTANA MAJOR FACILITY SITING ACT FROM CERTAIN PROVISIONS OF THE MONTANA DAM SAFETY ACT; AMENDING SECTION 35-15-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."


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STANDING COMMITTEE REPORT

FEBRUARY 2, 19 87

Mr. Speaker: We, the committee on NATURAL RESOURCES
report HB 467

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☒ statement of intent attached

REP. TOM JONES

Chairman

"AN ACT TO AMEND THE MONTANA HAZARDOUS WASTE ACT TO INCORPORATE,
WHERE EXPLICITLY NEEDED, CHANGES MADE IN 1984 TO THE FEDERAL
RESOURCE CONSERVATION AND RECOVERY ACT OF 1976; AND AMENDING
SECTIONS 75-10-405 AND 75-10-406, MCA."

1. Page 6, line 5.
Strike: "an existing"
Insert: "a"


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STATEMENT OF INTENT

HB Bill No. 467

In 1984, the United States Congress amended the federal Resource Conservation and Recovery Act (RCRA) to:

(1) establish requirements for corrective action within and outside of facility boundaries and for financial assurance of that corrective action;

(2) establish liability requirements for guarantors providing financial assurance;

(3) make information on hazardous waste management facilities available to the public; and

(4) ensure that facility permits contain terms and conditions necessary to protect human health and the environment.

Rulemaking authority is provided in this bill to authorize the department of health and environmental sciences to adopt rules necessary to carry out these purposes and thus to maintain the equivalence of the Montana Hazardous Waste Act with RCRA, as amended.

STANDING COMMITTEE REPORT

FEBRUARY 2

19 87

Mr. Speaker: We, the committee on NATURAL RESOURCES

report HB 408

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. TOM JONES

Chairman

"AN ACT CLARIFYING THAT WATER MAY BE RESERVED FOR EXISTING OR FUTURE BENEFICIAL USES ONLY IN THE BASIN WHERE IT IS RESERVED UNLESS WATER PROPOSED FOR A BENEFICIAL USE OUTSIDE THE BASIN WHERE THE DIVERSION OCCURS IS NOT REASONABLY AVAILABLE UNDER THE WATER LEASING PROGRAM; AND AMENDING SECTION 85-2-316, MCA."

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STANDING COMMITTEE REPORT

FEBRUARY 2

19 87

Mr. Speaker: We, the committee on NATURAL RESOURCES

report HB 328

☐ do pass
☒ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. TOM JONES

Chairman

"AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE CONTROL OF
TIMBER SLASH AND DEBRIS; AMENDING SECTIONS 76-13-401 THROUGH
76-13-403, 76-13-406 THROUGH 76-13-411, AND 76-13-413, MCA;
REPEALING SECTION 76-13-404, MCA; AND PROVIDING AN EFFECTIVE DATE."


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HB 416 -- UNDERGROUND STORAGE TANK PROGRAM AMENDMENTS

Last session, the 1985 Legislature amended the state Hazardous Waste Management Act authorizing the Department of Health and Environmental Sciences to develop and implement an underground storage tank program. With one exception, HB 416 is merely a housekeeping bill for the legislation passed last session.

The UST program is designed to address the underground storage of petroleum and many chemical products. These products are referred to in state and federal law as regulated substances. They are not wastes until they are spilled or released into the environment. At that time they may or may not be defined as hazardous wastes which then become subject to the cleanup, monitoring, sampling, inspection, and other authorities set forth in the balance of the Hazardous Waste Act in sections 410, 411, 415, and 416. Unless these regulated substances subject to the UST program are classified as hazardous wastes, there is some legal question as to whether or not the department has authority under the act to address cleanup of these materials. To make it clear that the legislature intended that the inspection, monitoring, safety, and cleanup authorities in the act also apply to the category of substances regulated by the UST program, the term "regulated substances" has been amended into these sections of the Hazardous Waste Management Act.

Secondly, some minor definition changes are included in HB 416 on pages 6 and 7 to remove a redundancy in the definition of underground tanks and a contradiction in the exclusions. When the 1985 Legislature adopted the federal definition of an underground tank, and then added to that definition any underground pipes connected to tanks, the parenthetical language in the federal definition on the top of page 6 became redundant.

Similarly, since these underground pipes are now defined in Montana as underground tanks, the federal exemption in line 6 of page 7 makes no sense and is contradictory. That is, underground pipes connected to exempt basement tanks should not be exempt if all other underground pipes have been clearly included in the program by definition.

Also, in the category of repair and clarification is the codification of the language on page 2 beginning on line 8. This new subsection of the findings and purpose section of the Montana Hazardous Waste Act is a nearly verbatim restatement of the 1985 Legislature's statement of intent when it debated and passed HB 676 which initiated the Montana UST program and incorporated it by amendment into the Hazardous Waste Act. Department attorneys have suggested that this statement of intent would be more accessible in the future by codifying it here in the findings and purpose section of the act, rather than having to search for and refer to a 1985 statement of intent.

EXHIBIT 1

DATE 2.2.87

HB 416

Lastly, the department's existing rule making authority to implement the UST program found on page 9 of HB 416 has been moved to page 8 and written as its own subsection (2) paralleling the language in subsection (1) for hazardous wastes. Presently, the tank program rule making authority is a subpart of a subsection which, paraphrased, says that the department may not adopt rules more restrictive than the federal government except in three cases, one case being the UST program regulations.

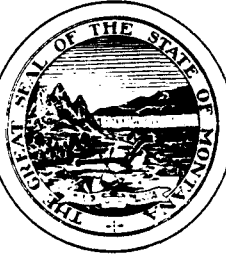
Codification was required in this manner when the Montana Legislature included three categories of tanks in Montana's UST program which are currently not covered by federal law. Montana's UST law includes heating oil tanks, all farm tanks and not just those larger than 1100 gallons, and underground pipes connected to above ground tanks like those responsible for a leak of more than 100,000 gallons of diesel fuel here in Helena last year. Federal law does not address these tank systems. Since Montana's does, our program rules will necessarily be more inclusive than the federal rules.

HB 416 does not add to or subtract from the department's existing rule making authority with one exception. This bill would authorize the department to develop a fee system to help defray state and local costs of implementing the UST program. This could be something as simple as a new tank installation fee to defray costs of local inspections or an annual or periodic tank or tank facility fee to support a leak investigation and cleanup fund. As the Federal UST program rules are developed over the next biennium, additional state funds may be necessary to match 90% federal cleanup funds expected to be released from the \$500 million UST Trust, or to comply with anticipated financial responsibility regulations for tank owners or states in lieu of tank owners, or simply to address state and local program implementation costs in excess of federal grant funds available to Montana.

As part of our current federal grant tasks, the department has recently initiated a study of alternative UST program funding mechanisms, only one of which is a fee system. In the meantime, the rule making authority in HB 416 to develop a fee schedule is viewed as standing authority to generate state funds if necessary, and after the proper public notice, hearing and review procedures set forth in the Administrative Procedures Act.

In summary, with the exception of this one additional rule making authority, HB 416 simply proposes to clarify action taken by the 1985 Legislature when it authorized the implementation of a program to protect groundwater by regulating underground storage tanks. Prevention of groundwater contamination is less costly for everyone than trying to restore a polluted aquifer. HB 416 will help in that effort. A do-pass recommendation will make the law more concise and will save the department from having to treat all fuel leaks as hazardous waste incidents.

Thank you for your consideration.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES 46

TED SCHWINDEN, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

HELENA, MONTANA 59620

HB 416 - Underground Storage Tanks
Fact Sheet - Fee Schedule

In addition to clarifying some definitions and inspection/enforcement authorities, HB 416 proposes to add a provision to the department's rule making authority to develop a "schedule of fees to defray state or local costs of establishing and implementing an underground storage tank program". This language is similar to the department's existing rule-making authority in 75-10-405 to adopt fees for hazardous waste generators.

The Underground Storage Tank program is part of a developing national effort by Congress and EPA to prevent or detect leaks from underground tanks. It is intended to be implemented by the states. Otherwise, the federal requirements will be administered by EPA in those states without tank programs. Montana's program is funded annually with a base EPA grant and matching state money.

If the program needs exceed the federal funds available, or if federal dollars are reduced, the department feels that funds must be available to support at least minimal state or local costs of implementation. One funding method is through tank fees or fees on facilities having tanks, or new tank installation or removal fees. Several states have implemented or proposed a fee system on some or all types of tanks or facilities. Other program funding methods are also available.

DHES has initiated a study to review any and all UST program funding mechanisms currently in use or proposed by other states. A fee schedule on tanks or facilities may or may not be the best method available for Montana as determined by the study. In the meantime, the authority in HB 416 will provide some method to help defray state or local costs of new tank inspections, leak investigations, and program implementation should additional funding be necessary due to a loss of federal support. Additional state funds may be necessary to match 90% federal dollars expected to become available during the biennium in the Federal UST Trust cleanup fund. Also, Montana may decide that self-insuring against leak liability is the best way to comply with anticipated federal financial responsibility requirements. A fee schedule could provide dollars for a state self-insurance fund more easily than requiring each tank owner to obtain individual pollution liability insurance.

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Any department proposal to establish a schedule of fees would be subject to the public notice, hearing, and review process of the Administrative Procedures Act. The department views the rule making authority in HB 416 simply as standing authority to be utilized if necessary and after proper public hearings and review.

For further information, contact:

Larry Mitchell
Montana Department of Health and Environmental Sciences
Solid & Hazardous Waste Bureau
Room B-201, Cogswell Building
Helena, MT 59620
(406) 444-2821

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STATEMENT OF INTENT

HOUSE BILL 676

House Natural Resources Committee

A statement of intent is required for this bill because it delegates rulemaking authority to the department of health and environmental sciences (DHES). House Bill 676 adds petroleum products and certain hazardous substances stored in underground tanks as a new category of materials which may be regulated under the Montana Hazardous Waste Act (MHWa).

The DHES has been increasingly involved in the cleanup of ground water problems caused by leaking underground tanks. At the national level, congress amended the federal Resource Conservation and Recovery Act of 1976 (RCRA) in November 1984 to include regulation of underground storage tanks and required the environmental protection agency (EPA) to develop a regulatory program for tanks. Since the DHES now administers the existing RCRA program in Montana, it is likely that the state (through DHES) will want to assume the RCRA program for underground tanks as well. Moreover, in the event that the EPA does not adopt a program adequate for Montana or fails to develop a program in a timely fashion, the DHES should have the authority to establish the state's own program to meet the needs of Montana. House Bill 676 will grant the DHES the authority to assume the EPA tank program to be developed under RCRA or to establish a state program

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independent of RCRA.

Whether DHES follows the federal RCRA program or develops its own state program, it is the intent of the legislature that administrative rules that DHES may adopt for underground storage tanks need not be equivalent to the comparable federal regulations to be developed by the EPA under RCRA. Rather, in view of the growing number and severity of environmental problems related to underground storage tanks in Montana, the legislature intends to grant DHES the authority to establish a regulatory program for underground tanks whether or not it may include elements more stringent than any federal requirements and whether or not the EPA has established a tank program under RCRA.

The legislature intends that the rules developed by DHES include requirements for:

- (1) the design, construction, and installation of underground tanks in a manner that will prevent tank leakage;
- (2) reporting by tank owners and operators;
- (3) leak prevention and detection;
- (4) corrective actions by tank owners and operators if tank leakage does occur; and
- (5) financial responsibility of tank owners and operators for corrective action and compensation to third parties for damages resulting from release of regulated substances from underground tanks.



EXHIBIT 2

DATE 2-2-87

HB 416

The Montana Environmental Information Center Action Fund

• P.O. Box 1184, Helena, Montana 59624 (406)443-2520

Mr. Chairman and Members of the Committee, for the record, my name is George Ochenski and I am representing the Montana Environmental Information Center today in support of HB 416.

Many of the members of this committee will remember back to the 1985 session, when Montana's Leaky Underground Storage Tank program was initiated with the passage of HS 676. Since that time, as you have heard, the state has conducted a survey of the tanks in Montana, what kind they are, where they are, and whether or not they are known to be leaking. Also since that time, the name of the program has been changed from LUST to UST. While the name change takes some of the fun out of lobbying the issue, the importance of this program cannot be underestimated.

My handouts include a list of problem sites throughout Montana where groundwater is contaminated by regulated substances. Most of the sites on the list are caused by underground tanks.

The problem of groundwater pollution is a concern to all Montanans. Why? Because it renders our drinking and irrigation waters unfit to drink, unfit to spray on crops, and because the solutions to polluted groundwater are both complex and expensive. So difficult are the problems caused by polluted groundwater, that Congress appropriated half a billion dollars to fund the Underground Storage Tank portion of the new Superfund bill.

Today you will here some suggested amendments to this bill. One of those amendments in particular is to exempt all tanks under 1100 gallons. My additional handout shows the tanks surveyed in Montana so far and how they break out.

Of the nearly 17,000 tanks in the state, 6,684 are regulated by the state. Of that number, the vast majority are Farm or Residential Tanks of less than 1100 gallons. Those 6,209 tanks would be exempted by the amendment that has been proposed. The question is: What is the rationale for suggesting that the majority of tanks be exempt from regulation? I submit to you that there is no logical reason, in a program to protect groundwater, to exempt these tanks.

In a conversation earlier today with Ken Kelly, he told me how he lost 400 gallons of fuel oil from one of his tanks and, in his own words, "It went directly into the groundwater." While 1100 gallon tanks are not the largest

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made, they can and do leak substantial quantities of pollutants into the groundwater.

Polluted groundwater is bad business for everyone. So bad, in fact, that recently a Burlington Northern subsidiary, Plum Creek Timber Company, (not a branch of the Montana Environmental Information Center, by the way), issued a corporate policy under the heading "Not an Option" that mandates "above ground" storage tanks for their oils.

Why are they going through the expense to change the way they do things? Well, perhaps the fact that BN has had and continues to have severe contamination problems at its sites across Montana is bringing the issue home in the most noticeable way of all...in dollars and cents. The leak in Helena last fall of over 100,000 gallons of diesel resulted in a clean-up cost to the company of 2 million dollars, by their own estimate. This cost does not cover any liabilities the company may yet incur because of damages. And that's just one site.

Clearly, the sensible approach to underground storage is a comprehensive program designed to prevent pollution before it happens. This program will actually alleviate expenses for those involved.

I thank you for your kind attention and urge your approval of HB 416.

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UNDERGROUND STORAGE TANK PROGRAM
Summary of State Regulated Tanks Exempt from Federal Law

1. Total Facilities	8,773
2. Total Tanks	16,742
3. Total State Regulated Tanks	6,684 (40%)
a. Farm or Residential Tanks (less than 1,100 gallons)	6,209
b. Heating Oil Tanks	1,100
c. Aboveground Tanks (piping only)	512

1627U/0010X

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GROUNDWATER PETROLEUM CONTAMINATION

alphabetical by city

Date	City	Product	Quantity Lost	Tank / Pipe / Spill			Anti-leak Protection	Remarks
				Size	Type	Date Installed		
1/09/86	Anaconda	Fuel Oil	unknown	all	unknown			Shorty's Garage - back hoe excavation showed fuel on water table; sampled by SHWB positive for kerosine or #1 fuel oil
12/12/83	Augusta	Heating Oil	unknown	private	above ground tank leak			Domestic spring contaminated
9/1/86	Augusta	Diesel/ Gasoline	unknown	two	above ground tanks, one heating fuel tank on Ranch			Private well on Ranch; sulfury gasoline-like smell, possible Fe Bact.
	Babb	Jet Fuel	3000 gal.	tank	on truck - valve opened			EPA followup - clean up surface
04/11/86	Belgrade	Diesel	unknown	all	unknown			Mrs. Thos. Holdsworth, 9042 Walker Rd. private well with complaint of petroleum nearby diesel/fuel oil tank for vehicle fuel pulled out of ground w/ pos. signs leak; no other known area sources.
	Bigfork	#5 Green Diesel	16000 gal+	steel	16000 gallon - corrosion			Tank replaced - some clean up of saturated soil
2/86	Big Sky	Gasoline	approx. 400 gal ?	Spring '86		Drainage system		Spike punctured line, spill into groundwater and pond.
	Billings	Diesel	unknown					Well affected - DFWP
4/9/86	Billings	Gasoline	unknown	2,000	gal			Test revealed loss 1 1/2 gal/hour.
5/22/86	Black Eagle Mt Refining Co	Gasoline	unknown	500 gal	tank with hole in tank seam; examined on 7/21/86			Fumes in city water meter manhole.
	Bonner	Diesel	16000 gal.+	surface	spill			Champion maintenance shop
1/80	Bozeman	Gasoline	unknown	tank -	steel			Town Pump, East Main-individual wells
4/26/82	Bozeman	Creosote/ Pentachloro-phenol	unknown	leaking	tie/pole treatment			Idaho Pole Co.
	Bozeman	Solvent/ Urban runoff	unknown					Drainage collected solvent & urban runoff; well contaminated
	Butte	Pentachloro-phenol	unknown	Superfund				MT Pole & Treating
	Butte	Creosote						
7/22/86	Cardwell	?	unknown	possible	heating fuel			Private well - complaint of petroleum.

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Page

Date	City	Product	Quantity Lost	Tank / Pipe / Spill			Anti-leak Protection	Remarks
				Size	Type	Date Installed		
	Missoula	Gasoline		buried	pipeline			Yellowstone Pipeline Co.
	Missoula	Gasoline	unknown	possible	tank or refinery			Champion mill
5/15/85	Missoula	Gasoline	unknown	leaking	tank			
7/24/85	Missoula	Jet Fuel	10000 gal.	fiberglass	tank	2/85		Perforated seam at Washington Constr. Hauger-Johnson-Bell field
5/6/85	Montana City	Gasoline	unknown	tank	overfilled			Montana City Store - operator used vent pipe as indicator for full tanks
	Paradise	Creosote	unknown	Superfund				RR tie plant
	Plentywood	Diesel						
8/3/83	Polson	Gasoline	unknown	pump	island accident			Repaired - fuel leaked to storm drain - entered Flathead Lake at marina
	Polson	#5 Green Diesel	10-16000 gallons	steel tank	corroded (@ 20 yrs old)			Fuel oil leaked from tank via french d to city sewer - treatment plant affect
	Polson	Gasoline	unknown					Pump island hit by car
'22/86	Polson	Diesel	225 gal	Overfill				Cleanup company hired.
12-20-85	Poplar	Regular & Unleaded	10,000 gal	April 1983				TJ's Quick Stop pipe fitting leak; repaired; gw investigation requested
12/1/83	Reed Point	Solvent	unknown	surface	spill			Furniture stripping - improper disposal
10/5/84	Snely	Diesel	unknown	unknown -	storm drain filled			Retail store suspected
3/83	Sheridan	Gasoline	unknown	pipe/coupling	1/83			Mini-Mart - high water table - fuel in sump inbasement
5/09/86	Sheridan	Gasoline	unknown	unknown				Fumes in building.
	Somers	Creosote	unknown	Superfund				RR tie plant
11/16/83	St. Mary	Gasoline	unknown	buried	steel tank			EPA project on Blackfoot Reservation
	Stanford	Heating Oil	unknown	steel	tank			
7/15/85	Townsend	Diesel	unknown					Possible leaking tank
3/25/86	Townsend	No. 2 Diesel	unknown	10,000 gal	steel below ground, possible pipe leak			Possible leakage from 20 years of filling tank and draining water from improperly designed filler pipe.

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	City	Product	Quantity Lost	Tank / Pipe / Spill			Anti-leak Protection	Remarks	Page
				Size	Type	Date Installed			
8-86	Gr Falls	Gasoline	unknown	4 steel tanks				4 old tanks removed, 2 were leakers, gasoline soaked soil present in sub-surface, possible problem with petroleum fumes in nearby motel.	
03/12/86	Gr Falls	Gasoline	unknown	all unknown				Snappy Lube Service, 526 Central Ave. 13 tanks excavated/replaced; Hwy Dept. uncovered a plume of fuel-saturated soil near site; test holes dug 25 ft. from Dept. excavation; plume had not reached that far; field investigation and meeting w/ Snappy Lube 03/24/86.	
1/13/86	Hamilton	Diesel	7,300 gal	Tanker truck wreck				Spill site in alluvial gravels 350 ft. from Bitterroot River; 3 domestic wells within 1/4 mile.	
7/2/86	Harlem	Gasoline	unknown	unknown				Fumes in storm sewer.	
10/9/85	Harrison	Reg Gas	sev hund	1,000 gal steel				Leaker abandoned, new tank installed	
	Havre	Diesel	unknown	buried tank					
1/85	Havre	Gasoline	150 gal	unknown				SuperAmerica - free gas, contaminated soil & tanks removed	
	Heart Butte	Gasoline	unknown	unknown				suspected ruptured tank Seismic activity in area	
2/23/84	Helena	Gasohol	unknown	leaking pump island				Toppers Groc. - Custer Ave - fumes in store - repaired	
	Helena	Diesel Gasoline	unknown	buried line-tank-above ground spill				BN depot - storm drain, derailment	
	Helena	Heating Oil	300 gal.	surface spill - tank ruptured					
9/3/85	Helena	Gasohol	unknown	300 gal. est				McGaffick's Auto Center	
9/3/86	Helena	Jet Fuel	unknown	two 8,000 gal tanks, 10 years old				Apparently the reported <u>leak</u> of 2,000 gal was a "short" delivery of 2,000 gal.	
9/5/86	Helena	Diesel	unknown	4-inch pipe with a 1 to 2 foot long crack				BN Depot; three discovery trenches and recovery trench dug.	
2/86	Helena (Canyon Ferry)	Diesel ?	unknown	one 200 gal above ground, with above ground lines				Fuel/chemical/organic smell, blue deposits on sinks.	
1/86	Helena	Diesel ?/ Pump oil	?	?				Old pump leaked oil and Fe bacteria present.	



MONTANA PETROLEUM ASSOCIATION
A Division of the
Rocky Mountain Oil and Gas Association

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EXHIBIT 3
DATE 2-2-87
HB 416

Proposed amendment:

Page 9, line 12 [75-10-405, 3 (c)]

(c) adopt ~~more-stringent~~ requirements for the prevention of
leakage from underground storage tanks not otherwise
regulated under RCRA.

The intent of the amendment is to allow the state to adopt regulations for those underground storage tanks included in the definition in 75-10-403 [(16)(ii)], most notably farm tanks, heating oil tanks and underground piping, that are NOT regulated under RCRA, but not to adopt more stringent regulations for those tanks already regulated under RCRA.

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HB 416

Amendment to HB 416

Senator Tweit

1. Page 6, line 9

Following: line 9

Insert: "(i) farm tanks with a storage capacity of less than 1,100
gallons;"

Renumber subsequent subsections

10.

EXHIBIT 5
DATE 2-2-87
HB 467

WITNESS STATEMENT

NAME William D. H. BILL NO. 467
ADDRESS Cocaine Building DATE 2/2/87
WHOM DO YOU REPRESENT? DHCC
SUPPORT 416 467 OPPOSE N/A AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

PREPARED TESTIMONY

BILL: ~~TO~~ TO AMEND THE MONTANA HAZARDOUS WASTE MANAGEMENT ACT AND TO
INCORPORATE WHERE NEEDED CHANGES MADE IN 1984 TO THE RE-
SOURCE CONSERVATION AND RECOVERY ACT.

PREPARED BY: Katherine A. Orr

DATE: December 31, 1986

The purpose of this bill is to incorporate changes made in the federal hazardous waste management program into the state hazardous waste program so that the state program can be "~~substan-~~ ^{fully} ~~equivalent~~" to the federal program and therefore continue to be authorized to independently administer the Montana Hazardous Waste Act provisions. Without this bill the state would lose its authorization and it would be ineligible for federal grant monies available to states which independently administer their own hazardous waste programs.

The bill accomplishes two things: it expands the state's releasing authority to include areas not explicitly addressed in the law and it implements a section which requires the state to include corrective action requirements in permits. The changes encompass procedures which are considered by Congress to be essential to an effective regulatory program.

The changes in releasing authority refer to more effective procedures to insure that hazardous waste releases are contained and to insure that the public has sufficient access to department information about hazardous waste sites and facilities. It should be noted that such access is not intended to interfere with ongoing enforcement actions.

The changes in the permitting section insures that the department will require as a condition of each permit issued appropriate corrective actions tailored to each permittee.

VISITORS' REGISTER

NATURAL RESOURCES

COMMITTEE

BILL NO. HB 416, 453, 467DATE FEB 2, 1987SPONSOR Danielson, Brandeise, Ream

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Jim Harris	301 S. Park		
Janelle Fallon	MT. Petroleum	amend 416, 467	
GEORGE OCHENSKI	MT. ENV. INF. CNTR	416, 467	
Ben Smith	Fort Hill	453, 467	
Coeng Abelin	Montana Oil & Gas	416 416	416
Duane Robertson	Helena	416, 467	
Patricia Ann	Helena	416, 467	
Lyn C. Tharion	Helena	416, 467	
Chauve-Marie Scurry	Swire Club League of Women Voters	416, 467	
Russ Brown	N. 1st & Pl. & Res. Ctr.	416, 467	
Don Williams	DHE S	416, 467	
John Titmon	Helena		
Maline	Ray, Mt	453	
Debra T. T. T.	WETOT		416
H. S. Hansen	MTC	416	amend
Lam Mitchell	Helena	416	
Ben Hardman, MMCA	Helena (MT Motor Club)		416
Larry Treit	Fairview	416 with amendment	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.