

MINUTES OF THE MEETING  
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE  
MONTANA STATE SENATE

March 18. 1987

The meeting of the Senate Public Health, Welfare and Safety Committee was called to order to Chairman Dorothy Eck on March 18, 1987, in Room 410 of the State Capitol at 1 P.M.

ROLL CALL: All members of the committee were present.

CONSIDERATION OF HOUSE BILL NO. 416: Gene Donaldson, District # 43, sponsor of the bill, stated that the intent of the bill is to change the attitude toward what is hazardous waste. A substance out of its environment can be considered to be hazardous waste. That now includes gas waste, which can affect underground water. Other common hazardous wastes include gas, oil and diesel fuels. While there are federal regulations regarding storage of hazardous wastes, this bill deals also with smaller storage tanks (on farm land and in subdivisions), which also cause severe underground pollution and are smaller than the size covered by the federal regulations. This legislation on smaller tanks needs to remain in the bill and are a section on tanks covered on Page 4, Line 16. Federal regulations also do not cover heating oil or underground pipes for underground or above ground tanks. Leaky pipes often cause flushing through canals after a heavy rain, which in turn is harmful to crops during irrigation. A third area of the bill institutes a fee system to provide some funding.

PROPOSERS: Larry Mitchell, DHES, stated that H.B. 416 is a housekeeping for legislation passed in the 1985 session. The UST program is designed to address the underground storage of petroleum and other chemical products and they are referred to as regulated substances in federal and state law. Unless these substances 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 sure that the intent of the legislature included cleanup of these substances, the term "regulated substances" has been amended into these sections of the Hazardous Wastes Management Act. Some minor definition changes have been included on pages 6 and 7 to remove contradictory language in the definition of underground pipes. The bill also addresses other underground tanks of lesser size than those under federal regulations and various underground pipes, which often cause serious underground leakage. Thus Montana's rules will be more inclusive than the federal rules. The bill institutes a fee system to help in inspection and clean-up. As the Federal regulations develop, additional state funds may be needed to match federal clean-up funds or to address state implementation costs in excess of federal funds available. The fee schedule will only be set up after proper public notice, hearing and review procedures are set forth. The bill will make the law more precise and will save the department from having to treat all fuel leaks as hazardous waste incidents.

Exhibit # 1.

George Ochensky, MEIC, stated that MEIC supports this bill and that the Federal government recognizes that underground pollution is the serious environmental problem today. America is now responding to this problem and is trying to do something with the waste products from all the products which we enjoy using. In the past, these wastes were carelessly disposed of. The bill tightens legislation passed in the last session. Montana has a serious problem with 40% of its tanks now unregulated. Some of these will be subject to EPA study this summer.

Jeanne-Marie Souvigny, League of Women Voters and the Sierra Club, stated both organizations' support for H.B. 416 which allows the state to address the problems of underground leakage which are affecting the environment of the state and to enforce the rules it makes. The state must also confront the problem at its source, the leaking tank, in order to provide the greatest protection to the public. At least 20% of Montana's tanks are over twenty years old, a time when severe leakage becomes very probable. The bill encourages use of better quality systems and better monitoring; the costs to do that are far less than to clean up hazardous leaks.

Exhibit # 2.

Rhonda Gilfeather, NPRC, stated that she is a rancher in Whitehall and Deer Lodge, an area suffering from one hundred years of pollution and contamination. This is a good bill to help with severe and on-going problems.

Joan Miles, District # 45, stated that it is the clear intent of the bill to go beyond the federal regulations and for Montana to have a program to fill its own needs. The House strongly feels that small tanks need to be regulated. New regulations need to be written for new tanks, a record needs to be kept of where private tanks are located, which now does not exist, and an effective education program needs to be started for homeowners, whose wells can be contaminated by leakage.

H.S. Hanson, Montana Tech Council, proposed several amendments to the bill because the design professions need a single source of codes to follow, probably from the DHES. A single source of codes needs to be available, rather than codes from several different agencies. The State Fire Marshall would probably be the best source (under DHES). They hope use the local fire marshalls to inspect, so they hope the source of codes will rest with the State Fire Marshall. They are also concerned about heating oil and feel that that should be left in the building codes division.

Exhibit # 3.

OPPONENTS: Janelle Fallan, Montana Petroleum Association, stated they run into problems in adopting regulations that are vastly

different from Federal regulations. The committee needs to consider the statement on Page 2, "independent of the federal program". What does that do to Montana's competitive position?

DISCUSSION OF H.B. 416: Sen. Rassmussen: Does Janelle have clarifying language?

Janelle Fallan: No.

Sen. Eck: Aren't those regulated under the Federal standards regulated the same way?

Janelle Fallan: Yes, that is correct. But Line 16 seems to be a contradiction.

Sen. Himsl: Does "vary" (Line 17, P. 9) mean to exceed federal standards or be less than federal standards?

Rep. Donaldson: That language is to allow the state to regulate tanks that are not regulated under Federal standards. This goes along with Page 2, which states that our program will be independent of the Federal program to meet Montana's needs. This way the tank size can vary, either up or down. We don't necessarily want this more "stringent" in other areas.

Karen Renne: Which varies, the standards or the tanks? Are you looking to regulate the tanks and pipes, and not the standards themselves?

Rep. Donaldson: To vary the size of the tanks, to include smaller tanks.

Sen. Williams: What about the definition of petroleum products being changed from hazardous waste to regulated substance?

Rep. Donaldson: That is so that the bill will not be providing a lot of overkill.

Sen. Williams: Will you be utilizing soil testing around the state? Do you determine how long a tank will last in the ground?

Larry Mitchell: The tanks must be installed on a site specific basis, so that should handle the "vary" language and also the type of tank that will need to be installed.

Sen. Himsl: What about the gas and petroleum products? The law says they are not a hazardous substance. The Federal superfund law exempts the above products. Where does regulated substances fall?

Rep. Donaldson: The term "regulated substances" is the language used in the federal language now. But in Montana we do need to take care of those substances because they are causing some real disposal problems.

Rep. Donaldson, in closing, stated that the bill is not intended to produce layers of laws; but, on the other hand, there is a need to address the leakage from small tanks. It can be very difficult to clean up the leakages that occur. Farmers and ranchers also don't need to be excluded; they are often the ones who suffer the most problems.

CONSIDERATION OF HOUSE BILL NO. 750: Rep. Bob Gilbert, District # 22, sponsor of the bill, stated that the bill revises the employee and community hazardous chemical information act, specifies the relationship of the act to the Federal laws, and specifies the application of the act to distributors. The bill lists several exemptions, including the exemption of sealed containers of hazardous chemicals during transportation and during temporary storage, if they are properly labeled. Employers need to distribute material safety data to employees as necessary. Section 3 has been revised to be compatible with the Federal right-to-know act dealing with emergency planning, which allows inspection of plants handling hazardous chemicals so that fire marshalls can develop emergency plans in case of an accident and can advise on community safety. He introduced an amendment to replace the effective date in Section 4 to go along with the Federal law and to be effective when the sequence is done.

PROPOSERS: Hugh Zackheim, EQC, stated that they support the bill, that the Federal act passed in 1986 is very similar to the Montana act passed in 1985, and that in April, 1987, the government will appoint an emergency response commission for the counties. His testimony also included an example of the Federal Emergency Planning and Community Right-to know Act. Exhibit # 4.

George Ochensky, MEIC, stated that the Federal Act has holes in it, that the state acts were better. Montana especially felt that its act needed to be more comprehensive. Since forty-three states passed more comprehensive acts, the Federal government passed a more comprehensive bill. The amendments to the bill clarify the effective date.

Tom McGree, Mountain Bell, stated that they feel that this is a good act and urged a do pass.

OPPOSERS: There were no opponents to the bill.

Rep. Gilbert closed by stating that this is a better bill because of the enforcement provisions.

CONSIDERATION OF HOUSE BILL NO. 729: Rep. Cal Winslow, District # 89, sponsor of the bill, stated that the bill requires a public hearing before the placing of a hazardous waste storage facility in a community and it specifies the type of posting and when that posting should occur so that communities have adequate warning. The company would have to meet with neighbors to discuss population density and other neighborhood concerns. The bill gives communities the right to an adequate hearing.

PROPOSERS: George Ochensky, MEIC, stated that this is one more addition to people knowing more about hazardous waste facilities and where they are.

Chris Cull, SRM, Billings, stated that they support 729 as an appropriate additional step toward working with local residents.

OPPONENTS: There were no opponents to the bill.

Rep. Winslow closed by stating that this is a most appropriate procedure for placing a facility in a neighborhood.

ACTION ON H.B. 729: Sen. Rassmussen moved that H.B. 729 DO PASS. The motion carried unanimously. Sen. Rassmussen will carry the bill.

CONSIDERATION OF HOUSE BILL NO. 789: Rep. Hal Harper, District # 44, sponsor of the bill, stated that the purpose of the bill is to include hazardous waste transfer facilities under the review and approval process of the Montana Hazardous Waste Management Act. The bill proposes that the state oversee the installation of such a plant and the bill fits with H.B. 729, which gives neighbors of facilities adequate input. The current plant going into operation soon, SRM, has been grandfathered out, and an additional amendment removes the need for the grandfathering provision. Tabs do need to be kept on performance standards. Amendments 1 and 2 remove hazardous waste facilities and change the bill from permitting to regulatory. Amendments 5 and 6 remove the design standards and the DHES would describe the performance standards. The next section gives the administration orders to enforce the regulations and removes the grandfather clause because all facilities will have to meet performance standards. The bill is not expected to change the operation of SRM. The Federal regulations would put a severe and expensive burden on disposal of waste for small businesses. The state has no money to build or operate such facilities, but it still needs to have a means to input on the private industries that are moving into the field, in order to ensure the public safety.

Rep. Tom Hannah, District # 86, stated that there is a need to have some oversight for these facilities. The operators of the facilities should have no difficulty in complying; but it is a very difficult and emotional issue.

PROPOSERS: Roger Thorvilson, DHES, stated that the department has participated in the drafting of H.B. 789 and supports the concept of the bill to provide environmental regulation and protection of the public health and safety. The EPA, when it promulgated regulations exempting transfer facilities, expressed some concern about doing so. By fully exempting transfer facilities, employee training, planning for hazardous waste emergencies, and designing spill containment features are left entirely to the discretion of the facility operator. H.B. 789 is an attempt to establish a middle ground where the state will inspect to be sure that various safety standards are met. The actual permitting process has emerged as a controversial issue in this bill, but the

department can implement the provisions of the bill either through the permitting process or the drafting of regulatory requirements. The DHES also supports general common carriers who carry hazardous wastes being included in the bill. They are as subject to accidents as much as any other carrier. Exhibit # 5.

George Ochensky, MEIC, stated that the bill does not address everything, but it does give fair rules for hazardous waste handling. Liability for clean-up goes back to the business and the regulatory community.

Carol Starr, Billings, stated that residents are worried that SRM will use the loophole to be unregulated, and the grandfathering makes 789 worthless on existing sites. The state should supervise and enforce rules for hazardous waste in its own state. The grandfather clause may also create an economic monopoly for SRM. SRM should not be exempt from permitting and regulating. Exhibit # 6.

Marlene Zensk, NPRC, stated that they have located their home near the SRM facility and the SRM didn't call a meeting of the neighbors, so they did. They are concerned over the impact to the area and have had no way of voicing their concerns. The company has gone right ahead with their plans. The neighbors would like the grandfather clause dropped from the bill to ensure the health and safety of the environment and residents. They are particularly concerned about the high groundwater level, the wells in the area, and the proximity to the Yellowstone River, farmland, and school. The site does impact many people and this needs to be addressed.

Mary Lee Patterson, Billings, stated that she has purchased property in the area and would like to see regulations overseeing the situation.

Tom Worrington, EPA, stated that he supports the bill and feels that it is a prudent way to handle wastes. He hopes the EPA won't be influenced in offering superfund clean-up money.

OPPONENTS: Art Whittach, Montana Power Company, stated that SRM opposes H.B. 789, but they do hope to support the amendments. They feel that it is an unnecessary bill. SRM is already heavily regulated as a transporter of hazardous wastes. The permit requirements are too strict for SRM at this stage in the game. If the bill passes, Montana will be the only state with such an agreement. EPA has stated that this is not necessary. Exhibit # 7.  
Exhibit # 8.  
Exhibit # 9.

Yellowstone Valley Citizens Council stated that they oppose the bill if the grandfather clause is not stripped from the bill. Exhibit # 10. They also feel that temporary carriers are just as likely to have accidents.

Chris Cull, SRM, Billings, stated that the SRM transfer station shouldn't cause so much fear in the community as is now being generated. SRM is, after all an environmental solution. The high cost of compliance and the high cost of services do not fit into the basic framework, but the amendments are a step in the right direction.

Kay Foster, Billings Chamber of Commerce, stated that they are in opposition to the bill, but that the amendments may change that.

Walter Bazzenella, neighbor and a fire chief, stated that he is not concerned about SRM, that they are governed now by federal and state laws. The railroads are under less enforcement in the handling of hazardous waste. More regulatory bills will make the H.W. disposal process more expensive. He himself has a problem getting rid of hazardous oil. In Butte, SRM called a community meeting and had only one opponent. He has worked with the local fire chief and has had disaster plans presented to them.

DISCUSSION OF H.B. 789: Sen. Himsl: What kind of operation seems dangerous to you?

Marlene Zentz: They have leased an already existing structure that was not specifically designed for handling of wastes, and they have leased two acres of land on Goodman Lane, which is the only road access into homes.

Sen. Himsl: Will this be a loading area, with wastes there for more than ten days?

Marlene Zentz: Yes, this will be a loading area with full loads being collected in ten days and then hauled off and more brought in.

Sen. Himsl: None of this is radioactive?

Marlene Zentz: There are no explosives or atomic devices, but there will be corrosive, ignitable material.

Sen. Rassmussen: Why is this site so close to a residential area?

Chris Cull, SRM: We initially studied thirty sites in Billings and went through many prerequisites before narrowing these down to four sites. These ranged from rural to industrial, and we considered the density of people and access to the interstate and the cleanliness of the site. We tried to work with the public, the media and city government agencies and we held a public meeting last May. The site was not picked arbitrarily, and this site is zoned controlled industrial and meets the requirements of the zoning board.

Sen. Vaughn: Is the material hauled out in the same containers that it comes in?

Chris Cull: Yes, we'll use drums that are especially sealed at the place of generation; these will be picked up by small trucks and the drums will be left on the trucks and transferred to larger vans at the site without touching the ground.

Sen. Meyer: You don't open the drums once they come in?

Chris Cull: No, we don't open the drums; these are full and sealed when we pick them up. We also will have disposal already arranged when we pick them up.

Sen. Williams: Are there facilities like these in other states?

Chris Cull: Yes, this is not an original idea. There is a site like this one near Sacramento, CA, which has been in operation for ten years with no accidents.

Sen. Eck: Mr. Worrying, could you respond to the committee about the EPA regulations.

Tom Worrying: There are degrees of difference between regulations and requiring permits. Since we are so far into the establishment of the facility, the permit process will be extremely inconvenient. We have met all of the EPA regulations, which are very similar to the permitting process; and these are designed to protect people and the environment. Rep. Harper's amendments seem to be a better balance. I've been involved in the EPA program and their regulations seem to be an appropriate way to go.

Sen. Williams: Do you have substantial bonding and insurance? Was that hard to get?

Sen. Eck: Yes, how much does high risk insurance run? Describe your insurance.

Mike Hannipan, SRM: Yes, obtaining the insurance has been a great deal of work. Most insurers do not want to cover. Firemans' Fund insurers transporters and we have to have \$1,000,000 for general liability. The FCC has mandated that transporters have to have a specific kind of coverage and that is easier to obtain. The insurance industry provides the incentive to operate in a safe manner, and we can't operate without proper coverage. This two-inch thick document is what we submitted to the insurance underwriters; it contains our training and medical programs for workers, our drivers' training and contingency plans, etc.

Sen. Eck: Does the insurance company and do an assessment?

Mike Hannipan: Each insurer has different qualifications. We have four different policies, and each company inspects. The company has to pay a going rate for this type of operation, and we hope that insurance costs go down in the future.

Sen. Meyer: What are the concerns with the containers?

Chris Cull: The worries are that the containers will rupture or leak and that there would be a danger to the soil and the groundwater. But we plan to double seal containers if necessary.

Rep. Harper closed by stating that H.B. 789 will not put SRM out of business, nor is that the intent of the bill. The bill is simply concerned about the welfare of the residents and the environment and their concerns. SRM will have to be prepared for emergencies, proper handling of drums, and any other security provisions. If

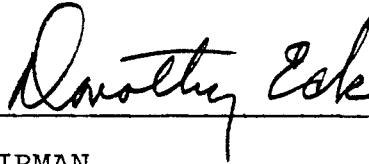


SENATE PUBLIC HEALTH, WELFARE  
AND SAFETY COMMITTEE  
MARCH 18, 1987  
Page 9

SRM can't meet the bill requirements, then it should not be in business. The bill allows the state of Montana to inspect the location of SRM and other facilities, as well. SRM will not be asked to change sites unless they are breaking the minimal requirements, which are the requirements of the Department of Transportation. There are no requirements on insurance yet. The EPA rules state that the states are in charge of establishing transfer facilities and other states are doing this. Some have insurance requirements; we don't. The bill should not cause a raise in costs. SRM is a professional company and the trip should show us that. The bill will guide SRM in developing any additional facilities in other parts of the state.

Exhibit # 11.  
Exhibit # 12.

The meeting adjourned at 3:00 P.M.



CHAIRMAN

ROLL CALL

Public Health, Welfare and Safety COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3-18-87

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NAME	PRESENT	ABSENT	EXCUSED
Dorothy Eck	X		
Bill Norman	X		
Bob Williams	X		
Darryl Meyer	X		
Eleanor Vaughn	X		
Tom Rasmussen	X		
Judy Jacobson	X		
Harry H. "Doc" McLane	X		
Matt Himsl	X		
Tom Hager	X		

Each day attach to minutes.

DATE 3-18-87

COMMITTEE ON State Public Health

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
Tom Worring	Special Resource Management	789		✓
Stacy Wright	Special Resource Mgmt	789		✓
Walter Buzzanella	Self	789		✓
Mike Hammann	Special Resource Mgmt	789		✓
Jim Jensen	MT. ENVIRON. INFO Center	789	X	
Art Wittich	SRM	789		✓
Chris Cull	SRM Inc	729	X	
AS Henson	MT. TECH. Council	416	Amend	
GEORGE OCHENSKI	MT. ENV. INF. CNTR	<del>789</del> 416 <del>789</del>	<del>X</del>	
Jean Parker	Self			
Sam Mitchell	DHE	416	✓	
Marlene Bentley	Northern Plains - Billings	789	Amend	
Merida [unclear]	YUCC - Billings	789	Amend	
Carol Starr	Billings	789	-	
Mandy Alderson	NPRC	789	Amend	
Roger Thorvilson	MTDHES	789	✓	
Northern Petroleum Marketers (Norma Chaswick)				
<del>Gail Peterson Whitehawk</del>	<del>Northern Plains</del>	<del>676</del>		
Gail Peterson Whitehawk	NPRC	416	✓	
Janelle Fallan	MT Petroleum	416		✓
Ray Foster	Billings Chamber	789		✓
Ann [unclear]	MT. Chamber of Commerce	789	Amend	
Marie Souvigney	MT Sierra Club MT League of Women Voters	416	X X	

(Please leave prepared statement with Secretary)

SENATE BILL NO. 1  
EXHIBIT NO. 1  
DATE 3-18-87  
BILL NO. H.B. 416

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.

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.

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.

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

UNDERGROUND STORAGE TANK PROGRAM  
Notification Results

Total Facilities	8,773
Number of Tanks Notifying Under Federal Law	10,058
Additional Number of Tanks Notifying under Montana Law	<u>6,684</u>
Total Tanks	16,742

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Summary of Tanks Subject to Montana Law and Presently Exempt from Federal Law:

- a. Farm or Residential Tanks (less than 1,100 gallons) 6,209
- b. Heating Oil Tanks 1,100
- c. Aboveground Tanks (piping only) 512



1985SENATE HEALTH & WELFARE  
EXHIBIT NO. 1  
DATE 3-18-87  
BILL NO. HB 676

## 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

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.

Madame Chairwoman and members of the Committee,

I am Jeanne-Marie Souvigney, testifying today for two state-wide groups that have strong positions in support of Montana's hazardous waste laws - the Montana League of Women Voters and the Montana Sierra Club - in support of HB416. Both the U.S. League of Women Voters and the National Sierra Club have taken prominent positions in supporting the federal Resource Conservation and Recovery Act of 1976, the 1984 hazardous and solid waste amendments to that act, and the federal Superfund program. And we believe that states have the right to set more stringent standards than these federal laws if they feel a need to do so.

We support HB416 which incorporates into state law provisions regarding underground storage tanks that are at least equal to the federal program. States have an obligation to address the problems associated with leaking underground storage tanks; this obligation does not end with the regulations themselves but continues with the enforcement of those regulations and the recovery of costs of the regulatory program. We feel HB416 provides for these state obligations.

We also believe that the state must confront the problem of discharge of hazardous and regulated substances at the source of the problem, as this provides the greatest protection to the public, and least cost in the long run. Leaking tanks have created a crisis across the nation, polluting hundreds of aquifers and making volumes of groundwater and drinking water unusable. The problems in Montana from leaking tanks are expected to grow more severe since 20% of the tanks are more than 20 years old - an age where leaking becomes more probable.

By minimizing leakage from underground storage tanks through better quality systems, and better monitoring, we minimize the release of the regulated substances; the costs to do that now are much less than the potential costs at a later date to clean up leakage and to compensate victims, not to mention costs in terms of health. The state needs timely and equitable enforcement of these state hazardous waste laws for all underground tanks, and this bill helps to ensure that enforcement. The risks to public health to do otherwise are far too great.

We urge your support of HB416. Thank you.

## HB 416 - UNDERGROUND STORAGE TANK PROGRAM

In 1984, Congress established a federal program to address leaks from underground storage tanks. The 1985 Legislature established the UST program in Montana.

HB 416 is primarily a housekeeping measure which corrects and clarifies that 1985 legislation.

- 1) It codifies the 1985 statement of intent in the findings and purpose section.
- 2) It corrects contradictions and removes redundancies in the definition section.
- 3) It corrects a 1985 oversight by adding the term "regulated substances" stored in underground tanks to the department's existing authority to address hazardous wastes. This will put DHES authority in line with federal EPA authority to address UST regulated substances as well as hazardous wastes. They are two separate, mutually exclusive commodities and terms by federal and state definition.

HB 416 does not change existing rule making authority except it adds the ability to develop a fee system to help defray state and local costs of implementation.

HB 416 does not add to or subtract from the type or number of tanks already subject to the UST program.

Except for the fee system, HB 416 does not impose additional regulatory burdens on tank owners beyond existing state and federal law.

Failure of HB 416 would

- 1) leave definitional flaws and contradictions in place;
- 2) leave state inspection, monitoring, clean-up, and sampling authority for tanks storing regulated substances in question or subject only to EPA action under the federal UST program;
- 3) negate any ability to generate state and local revenue needed for new tank inspections and program implementation.

## KEY REASONS NOT TO EXEMPT FARM TANKS UNDER 1,100 GALLONS

1. If these tanks are exempt from regulation, they will not be subject to installation requirements. Installation standards are the most important preventative aspect of the tank program. Moreover, regulation of installation practices can work, even for the small-tank owner, because the state can work with the tank installers to ensure they are knowledgeable about proper installation techniques.
2. If these tanks are exempt from regulation, substandard tanks may be put into the ground, thus exacerbating an already bad situation.
3. Most small farm tanks are buried in valley locations in the vicinity of the farmer/rancher's water well. Regulation of these tanks is crucial for preserving their own drinking water.
4. Certainly there will not be a heavy-handed enforcement program for small-tank owners. Rather the emphasis will be on education, and this is crucial. Montana tanks average 14 years in age, and 20% are over 20 years old, the age at which tanks can be expected to leak. There is going to be a flood of leaking tanks in this state unless we can educate people to monitor their tanks. A program that covers all tank owners, that requires them to report the age and condition of their tank, and that may educate people enough to periodically check their tanks for leaks is absolutely necessary.
5. In Montana, there has been no correlation between the size of tanks and the amount of fuel lost into the groundwater. In fact, Montana has experienced more leaks from smaller tanks and these leaks have often been of significant volumes of fuel.

Page	Report	City	Company	Product	Quantity Lost	Size	Type	Date	Installed	Protection	Remarks
		Malta		Gasoline	unknown		tank & lines				Tank accidentally filled after abandonment
		Hot Springs		Heating oil	unknown		steel tank				Several old tanks in area - well contaminated/soil saturated
		Custer		Gasoline	unknown		steel tank				vehicle hit pump
		Fairfield		Regular Gasoline	235 gal.						surface spill - tank ruptured
		Helena		Heating oil	300 gal.						
		Wolf Creek		Heating oil	unknown		steel tank - corroded				Betty's Cafe
4/25/85		Ennis		Heating oil	unknown		steel tank 2000 gal.				
		Stanford		Heating oil	unknown		steel tank				
5/6/85		Montana City		Gasoline	unknown		tank overfilled				Montana City Store - operator used vent pipe as indicator for full tanks
5/15/85		Missoula		Gasoline	unknown						leaking tank
5/17/85		Miles City		Diesel	unknown		tank & pipes leaking				General store - park area saturated; cleanup completed
6/10/85		Corvallis		Gasoline	unknown						leaking tank
6/10/85		Manhattan		Gasoline	unknown						leaking tank; well contaminated
7/15/85		Townsend		Diesel	unknown						Possible leaking tank
7/24/85		Missoula		Jet fuel	10000 gal.		fiberglass tank 2/85				Perforated seam at Washington Constr., Hauger-Johnson-Bent field

SENATE HEALTH & WELFARE  
EXHIBIT NO. 0  
DATE 3-18-87  
BILL NO. HB 876

Report  
By

Date

Tank / Pipe / Spill

Date

Size Type InstalledAnti-leak  
ProtectionQuantity  
LostProductCompanyCityRemarks

8/1/85		Great Falls		Gasoline	1400 gal.+	Gasoline	3-3000 steel New tanks 2-1000 epoxy coated	1965	2 block area affected-cleanup effort initiated by ins. co. consultant from St. Paul.
8/8/85		Great Falls		Gasoline	unknown	Gasoline	2-1000 fiberglass tanks	1979	Bison Ford - leak in vent pipe. Repairs made.
8/8/85		Great Falls		Gasoline	9000 gal +	Gasoline	20986 gal. steel		Posh Taco-used to be Husky gas station-experiencing fumes.
9/3/85		Helena		unleaded gasoline	300 gal est.	unleaded gasoline	1000 gal steel		McGaffick's Auto Center
9/30/85		Great Falls		gasoline	646 gal	gasoline	10,000 gal steel		Circle K Store #1318 Recovery system installed
10/10/85		Havre		gasoline	150 gal	gasoline	unknown		SuperAmerica, free gas, contaminated soil & tanks removed
10/28/85		Columbia Falls		regular gasoline	unknown	regular gasoline	2,000 gal steel, 1960, none		F & C Auto subsidence cracks
11/19/85		Lewistown		gas	200-300	gas	500 gal steel		C M Russell Wildlife Refuge leaker abandoned, new tank installed
12/9/85		Harrison		regular gas	several hndrd gal	regular gas	1,000 gal steel		
12/10/85		Chester		reg gas	unknown	reg gas	10,000 gal steel, 12 yrs old		leak fixed, tank back in use
12/12/85		Great Falls		reg gas	225 gal	reg gas	unknown		pipe fitting leak; repaired.
12/18/85		Livingston		gasoline	2,400 gal estimate	gasoline	unknown		Exxon Service Station pipe leak detected; gw investigation ongoing; station closed; owner deceased
12/20/85		Poplar		regular & unleaded	10,000 gal	regular & unleaded	April, 1983		TJ's Quick Stop pipe fitting leak; repaired by investigation requested.

SENATE HEALTH &amp; WELFARE

EXHIBIT NO. 0DATE 3-18-87BILL NO. HB 2116

Date	Report By	City	Company	Product	Quantity Lost	Tank / Pipe / Spill		Remarks
						Size	Type	
01/03/86		GrFalls		gasoline	unknown	4	steel tanks	Town Pump, 401 10th Ave. So., - 4 old; tanks removed, 2 were leakers; gasoline soaked soil present in subsurface; possible problem w/ petrol fumes in nearby motel.
01/09/86		Anaconda		fuel oil	unknown	unknown		Shorty's Garage, Anaconda - backhoe inves. showed fuel on water table; sampled by SMMB positive for Kerosine or #1 fuel oil.
2/20/86		Butte		Gasoline	unknown	unknown		Anonymous complaint re Barter Gas
02/24/86		E. Helena		petroleum	unknown	unknown		Complaint of petroleum in domestic well.
03/12/86		GrFalls		gasoline	unknown	all	unknown	Snappy Lube Service, 526 Central Ave. West; 3 tanks excavated/replaced; Hwy Dept. proj. uncovered a plume of fuel-saturated soil near site; test holes dug 25 ft. from Hwy excavation; plume had not reached that far; field investig and meeting with Snappy Lube 03/24/86.
04/04/86		Billings		gasoline	1,000 gal est.	20,000	gal steel	Owned by Yellowstone County

SENATE HEALTH & WELFARE  
EXHIBIT NO. 0  
DATE 3-18-87  
BILL NO. H.B. 416



Date	Report By	City	Company	Product	Quantity Lost	Tank / Pipe / Spill		Remarks
						Size	Type / Date Installed	
04/11/86		Belgrade		diesel	unknown			Mrs. Thos. Holdsworth, 9042 Walker Rd., Belgrade - private well w/ complaint of petroleum; nearby diesel/fuel oil tank for vehicle fuel pulled out of ground w/ pos. signs of leak; no other known area sources.
4/23/86		Hobson		diesel	unknown		1000 gal steel above ground	Private well contaminated.
5/06/86		Dillon		gasoline	unknown		2 4000 gal tanks replaced	Soil saturated w/ fumes, complaint of odors in nearby building.
5/09/86		Sheridan		gasoline	unknown		unknown	Fumes in building.
5/22/86		Black Eagle	ME Refining Co.	gasoline	unknown		500 gal tank w/ hole in tank seam; returned on 7/21/86	Fumes in city water meter manhole.
7/18/86		E Helena		?	unknown		unknown	Private well; complaint of petroleum.
7/22/86		Cardwell		?	unknown		possible heating fuel	Private well; complaint of petroleum.
7/22/86		Harlem		gasoline	unknown		unknown	Fumes in storm sewer.
8/26/86		Whitehall		gasoline vapors	unknown		unknown	Fumes in basement of Old Creamery Building; 5 or 6 possible sources.
8/26/86		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.
9/3/86		Helena		jet fuel	unknown		two 8,000 gal tanks, 10 years old	Apparently the reported leak of 2,000 gal was a "snort" delivery of 2,000 gal.

DATE 3-18-87  
 BY HJB/416

Date	Report By	City	Company	Product	Quantity Lost	Tank / Pipe / Spill		Remarks
						Size	Type	
9/4 and 9/5/86		Helena		diesel	unknown	4-inch pipe with a 1 to 2 foot long crack	Anti-leak Protection	BN Depot; three discovery trenches and one recovery trench dug.
9/9/86		Augusta		diesel/gasoline	unknown	two above ground tanks, one heating fuel tank on ranch		Private well on Ranch; sulfuric gasoline-like smell, possible Fe Bact.
9/12/86		Helena Canyon Ferry		diesel ?	unknown	one 200 gal above ground, with above ground lines		Fuel/chemical/organic smell, blue deposits on sinks.
9/29/86		Billings		gasoline	unknown	2,000 gal		Test revealed loss 1 1/2 gal/hour.
10/2/86	KBClark	Big Sky	Story Dist. Owners of Big Sky Exxon	Gasoline	400 gal est.	Spring '86; drainage system		Spike punctured line and spill into groundwater and pond.
10/10/86	LMitchell	miles City	Genex Gen Store	Unleaded Gasoline	80 gal est.	8000 steel		Leak discovered with Petrotite tank test on 10/10/86.
10/13/86	KBClark	Hamilton	Hornoi Trucking Co	Diesel	7,300 gal			Tanker truck wreck. Spill site in alluvial gravels 350 ft from Bitterroot River; 3 domestic wells within 1/4 mile.
10/30/86	Jarrigo	Valier	Dixon Bros Trucking	Gasoline	700 gal		Overfill	Fuel soaked into ground; soil removed and taken to a landfill.
11/7/86	KBClark	Clancy		?	?			Private well, Gruber Estate. Diesel odor to water, contaminated with Fe bacteria and pump oil.
11/18/86	KBClark	Livingston	Livingston Logging Yard	Diesel	+ 30 gal			30 gallons spilled on ground and eventually traveled down streets.

Report By: \_\_\_\_\_  
 Date: \_\_\_\_\_

Date	Report By	City	Company	Product	Quantity Lost	Tank / Pipe / Spill		Remarks
						Size	Type	
11/22/86	Pasichnyk	Polson	Town Pump	Diesel	225 gal	Overfill		Cleanup company hired to prevent gasoline from entering Flathead Lake.
12/1/86	Jarrigo	Helena		Diesel ? pump oil	?	?		Private well; old pump leaked oil and Fe bacteria present.
12/15/86	KBClark	Great Falls	Steve's Conoco	No lead gasoline	518 gal	6000 steel; 20 yrs old; line leak		Corrosion leak; 2 to 3 day leak time; all contaminated soil removed.
12/19/86	KBClark	Noxon	Noxon Exxon	Gasoline	3,940 gal	3 above ground tanks & piping; 38,000 gal		Frozen pipe break; above ground tanks leaked into dike and pumped out.
12/22/86	KBClark	Glendive	Genex Supply	Gasoline/ Diesel	?	5 steel tanks; 15 yrs old		Private home; faulty oil furnace return line.
12/31/86	Jarrigo	Bigfork		Heating Oil	50 - 250 gal	500 gal steel tank		"Sump odor" like gasoline in water, also iron bacteria-like symptoms in toilet tank.
1/8/87	KBClark	Augusta	Augusta P. O.	? Gasoline	?	Possible abandoned tanks next door		Complaint of fumes in Tradewinds Paper office adjacent to gas station.
1/21/87	KBClark	Miles City	Beacon Carter Gas	Gasoline	?	Set of 40 yr old tanks and 8 to 10 yr old tanks		

HEALTH & WELFARE  
 EXHIBIT NO. 0  
 DATE 3-18-87  
 BILL NO. HB 412

NAME: H. S. HANSON

DATE: 3/18/86

ADDRESS: HELENA

SENATE HEALTH & WELFARE  
EXHIBIT NO. 3

PHONE: \_\_\_\_\_

DATE 3-18-87  
BILL NO. HB 416

REPRESENTING WHOM? MT. TECHNICAL COUNCIL

APPEARING ON WHICH PROPOSAL: HB-416

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? L OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

THE DESIGN PROFESSIONS NEED A SINGLE SOURCE OF CODES TO FOLLOW, THIS BRINGS IN THE DEPT OF HEALTH

PAGE 8 LINE 24 ADD - "AS DEVELOPED BY THE STATE FIRE MARSHALL"

PAGE 9 LINE 14 THRU 17. "ELIMINATE" ANY POSSIBLE CONFLICT WITH BUILDING CODE SOURCE.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

OCTOBER 17, 1986

## EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT

## XI. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW (Title III)

Title III is a free-standing title (not part of CERCLA) which establishes four major authorities relating to 1) emergency planning, 2) emergency notification, 3) community right-to-know reporting on chemicals, and 4) emissions inventory. There are also other miscellaneous provisions which primarily address the administration and enforcement of this title.

**A. Emergency Planning** — Requires States to establish a State Commission, emergency planning districts, and local emergency planning committees to develop and facilitate the implementation of emergency response plans with participation of facilities who produce, use, or store extremely hazardous substances. The purpose of such plans is to prepare State/local responses to releases of chemicals.

Substances covered by this provision are those "extremely hazardous substances" published in EPA's "Chemical Emergency Preparedness Interim Guidance" (CEPP list). Owners/operators of facilities with CEPP chemicals in excess of thresholds to be published by EPA are required to notify the State Commission that they are subject to this title. The National Response Team is required to publish guidance documents on the preparation and implementation of such plans and Regional Response Teams under CERCLA are authorized to review emergency response plans upon request.

**B. Emergency Notification** — Requires owners/operators of facilities to notify the State Commission and local committees of releases of both CEPP and CERCLA reportable quantity (RQ) chemicals. This provision establishes different notification requirements for chemicals that are 1) both CEPP and RQ chemicals, 2) CEPP but not RQ chemicals and 3) RQ but not CEPP chemicals. The threshold release levels which trigger the notification requirements are either the RQ amount or an interim level in excess of 1 pound until EPA sets notification quantities. The provision identifies what information is required to be included with the notification.

**C. Community Right-To-Know Reporting** — Requires owners/operators of facilities to provide information on the manufacture, use, and storage of chemicals present at their

facilities. This information is required to be provided to the State Commission, local committees, and local fire departments and must be made available to the general public. This information is submitted in two different forms: 1) the Material Safety Data Sheets (MSDS) or a list of chemicals for which MSDS are required by the Occupational Safety and Health Act (OSHA), and 2) the Emergency and Hazardous Chemical Inventory Form which include information on the amount and location of MSDS chemicals.

**D. Toxic Chemical Release Forms (Emissions Inventory)** — Requires EPA to establish an emissions inventory. Requires owners/operators of certain facilities to submit toxic chemical release forms annually to EPA if they manufacture, process, or use specific toxic chemicals in excess of certain threshold levels. Requires EPA to compile this information and make it readily available to the public through such means as computerized data bases.

**E. Miscellaneous Provisions** —

1) **Emergency Training** — Authorizes EPA and other appropriate agencies carrying out existing programs to provide emergency training with special emphasis on hazardous chemicals. FEMA is to be appropriated money for making grants to State and local governments and universities to improve emergency response preparedness.

2) **Review of Emergency Systems** — Requires EPA to conduct a review of monitoring and detection devices present at facilities as well as a study of the status of current technological capabilities in this area.

3) **Trade Secrets, Information to Health Professionals, and Public Availability of Information** — Authorizes persons to withhold trade secret information when certain tests are met, requires owners/operators to submit information to health professionals upon request, and requires governmental entities who receive information under this title to make such information available to the general public.

4) **Enforcement and Citizen Suits** — Establishes civil, administrative, and criminal penalties for persons (owners/operators), and authorizes citizen suits against persons (owners/operators and government entities) for failure to comply with various requirements in this title.

5) **Federal Preemption** — Nothing in this title preempts State or local law, or affects any obligations or liabilities under other Federal laws (except for MSDS requirements).

6) **Mass Balance Study** — Requires EPA to arrange for the National Academy of Sciences to evaluate the efficacy of requiring mass balance reporting relating to emissions.

DHES Testimony on House Bill 789

Senate Public Health, Welfare & Safety Committee

March 18, 1987

The Department of Health and Environmental Sciences has, at the request of Representative Harper, participated in many of the discussions of HB 789 since its introduction, as well as the development of the bill's Statement of Intent and the amendments approved by the House of Representatives. We support the concept of this bill -- to provide a greater level of environmental regulation and the protection of public health and safety in the operation of "transfer facilities" by hazardous waste transporters.

The U.S. Environmental Protection Agency, when it promulgated the current exemption for transfer facilities, expressed some reservations about totally exempting these facilities from the standards applicable to longer term storage facilities and also from the more limited set of standards applicable to waste generators who store their wastes while accumulating enough for shipment. By fully exempting transfer facilities, such basic precautions as employee training, planning for hazardous waste emergencies, and designing spill containment features into the facility have been left entirely to the discretion of the facility operator.

HB 789 establishes a middle ground, where an operator who elects to establish and utilize a transfer facility as part of his transportation business will be required to take limited measures to ensure the safe and environmentally sound handling of hazardous wastes stored in that facility.

The actual permitting process, as opposed to the substantive standards which would apply to transfer facilities, has emerged as a controversial issue in consideration of this bill. The department can support and will be prepared to implement the provisions of HB 789 whether that implementation is through the development of permits or via the drafting of regulatory requirements which will apply directly to transfer facilities without the issuance of a facility permit.

As a separate matter, the department would support removal of common carriers who carry hazardous wastes from the exemption section of the bill (p. 8).<sup>3rd p</sup> Such a clarification regulating the transportation by all carriers of hazardous wastes would be more consistent from an enforcement perspective and would bring about more uniform compliance from a health and safety perspective.

The exemption was based upon the premise that a general commodity carrier cannot refuse hazardous waste shipment if offered to him. Our research has indicated that this is not the case - that transportation of hazardous waste is optional for any carrier.  
(General Council, PCC staff attorney).

Historically, the only real progress made concerning pollution has been through legislation. The most dramatic areas being water, air and solid waste pollution.

Now the Federal government has tackled hazardous waste disposal. We feel the state should supervise and enforce rules concerning pollution problems native to its own backyard.

The federal rules were intended to give trucking firms a reasonable time to get from the hazardous waste generator to the final storage site. SRM is using a loophole to establish a business which has no accountability to the state or local authorities. We feel that it is paramount that the state at least get involved in the supervision of hazardous waste transfer sites. Housebill 789 is a low cost means of doing this. As the laws now stand, the state of Montana has no legal recourse or control of these sites. Therefore, we urge the passage of Housebill 789 with one exception:

That exception is the grandfather clause which was obviously lobbied into the original bill by SRM to effectively eliminate SRM sites in Billings and Butte from coming under the jurisdiction of Housebill 789. This grandfather clause makes Housebill 789 virtually worthless as far as existing sites are concerned. The other real danger in the grandfather clause is that the siting and the rule making items in HB789 will create a virtual economic monopoly for SRM. It will obviously be more expensive for any future company to get into the hazardous waste transfer business.



Just because SRM found a loophole in the law and were quick enough to use that loophole, that doesn't mean they should be exempt from permits other businesses must obtain.

Testimony submitted by Carol Starr  
in favor of amended version of HR 789.

MEMO IV

EXISTING REGULATIONS COVERING TRANSPORTER ACTIVITIES

Transporters are presently adequately regulated, to wit:

- Registration - A transporter must register with EPA and obtain an EPA ID number (40 CFR 263.11). In addition, they must register in Montana. (ARM 16.40.502)
- Containers - All hazardous waste offered for transportation must be packaged in containers meeting all DOT specifications for that particular material. (49 CFR 173, 178, 179 and 40 CFR 262.30)
- Identification Materials - Every waste container must be marked and labeled according to DOT regulations. Every vehicle must be placarded according to DOT regulation. (49 CFR 172.300, 172.500)
- Uniform Hazardous Waste Manifest - The transporter must obtain a properly completed manifest from the generator, sign for the materials, and pass the manifest on to those who receive the material (TSD Facility). The transporter must retain a copy of the signed manifest for at least 3 years. (40 CFR 263.22 49 CFR 172.205)
- Temporary Storage - A transporter may hold containerized waste only for a period not exceeding ten days while in transit. (40 CFR 263.12)
- Emergency Action - A transporter must take immediate and appropriate action in the event of a discharge of hazardous waste to protect human health and the environment, whether during transit or at a transfer point. (40 CFR 263.30 and 49 CFR 171.3)
- Clean-up - A transporter must clean-up any discharge of hazardous waste to the satisfaction of Federal State and Local officials, whether during transit or at a transfer point. (40 CFR 263.31 and 49 CFR 171.3)

- Financial Responsibility - A transporter must have insurance or other acceptable guarantee of the ability to pay claims arising from their operation. A minimum of 1 million dollars is required for most hazardous waste. This assurance must also include coverage for environmental damage and clean-up (49 CFR 387.7 and 387.9)
- Qualifications of Drivers - DOT specifies minimum driver qualifications, written and road test requirements, and medical fitness. The company must obtain annual updates of Moving Violation Reports on all drivers. (49 CFR 391.11 and 391.25)
- Driving and Parking Rules - DOT established regulations on where and how hazardous materials are transported and restricts locations where such material may be parked. (49 CFR 397)
- Segregation and Separation of Hazardous Materials - DOT established compatibility groups of hazardous materials. Incompatible materials may not be transported or stored together. (49 CFR 177.848)
- Care of Hazardous Materials in Highway Breakdown - DOT established regulations on how such materials must be handled in case breakdown on the road. Provisions covering disposition of broken or leaking containers, and repair or over packing, of leaking containers are specified. (49 CFR 177,854)
- Accidents Involving Hazardous Materials - DOT established regulations covering warning of near by persons; prevention of fire spread; disposition of spilled materials; prevention of leakage spread; and clean-up of the vehicle. (49 CFR 856 thru 861)

**ENVIRONMENTAL PROTECTION AGENCY**

40 CFR Parts 122, 263, 264, and 265

[SW FRL 1715-5]

**Hazardous Waste Management System: Storage Requirements Applicable to Transporters of Hazardous Waste, Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities, Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities and EPA Administered Permit Program: The Hazardous Waste Permit Program**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Interim final amendments and request for comments.

**SUMMARY:** In February and May of 1980, EPA promulgated final regulations applicable to transporters of hazardous waste and to owners and operators of hazardous waste storage facilities. 45 FR 12722 (February 26, 1980) and 45 FR 33066 (May 19, 1980). These amendments supplement those regulations by clarifying when a transporter handling shipments of hazardous waste is required to obtain a storage facility permit. Under these amendments a transporter may hold a manifested shipment of hazardous waste for up to ten days without a RCRA permit and without complying with the standards applicable to hazardous waste storage facilities. If the waste is held for more than ten days, an RCRA permit is required, and the transporter must comply with the applicable storage standards and permit requirements.

**DATES:** Effective date: December 31, 1980. Comment date: EPA will accept public comments on this interim final rule until March 2, 1981.

**ADDRESS:** Comments on the amendment should be sent to the Docket Clerk (Docket 3003—Transportation Storage), Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** For general information concerning these regulations, contact Rolf P. Hill, or Carolyn Barley, (202) 755-9150, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

**I. Authority**

This interim final regulation is issued under the authority of Sections 2002(a), 3002, 3003, 3004, and 3005, of Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended. (RCRA), 42 U.S.C. 6912(a), 6923, 6924, 6925.

**II. Background Information**

**A. Introduction**

In regulations promulgated in February of 1980, EPA established standards applicable to generators and transporters of hazardous waste. 45 FR 12742 (February 26, 1980). These standards created, among other things, a manifest system which was designed to track hazardous wastes from their generation through their ultimate disposition. In addition, for the transportation of hazardous waste, EPA adopted many of the requirements of the Department of Transportation (DOT) under the Hazardous Materials Transportation Act designed to ensure the proper and safe transportation of hazardous materials. In May of 1980, DOT amended its regulations to include hazardous wastes in its regulatory program. 45 FR 34560 (May 22, 1980).

In May of 1980, EPA promulgated regulations that, among other things, set standards and permit requirements applicable to owners and operators of hazardous waste management facilities. 40 CFR Parts 264, 265 and 122. 45 FR 33220 (May 19, 1980). These regulations prescribe general operating practices for all hazardous waste management facilities as well as set specific requirements for the storage of hazardous waste. All hazardous waste management facilities must have an RCRA permit to operate or, prior to the issuance of a permit, be in "interim status".

Many transporters own or operate transfer facilities (sometimes called "break-bulk" facilities) as part of their transportation activities. At these facilities, for example, shipments may be consolidated into larger units or shipments may be transferred to different vehicles for redirecting or re-routing. Shipments generally are held at these facilities for short periods of time. The length of time may vary due to such factors as scheduling and weather, but because these facilities are intended to facilitate transportation activities, rather than storage, the time is typically as short as practicable.

In developing the hazardous waste regulations EPA recognized that in the normal course of transportation hazardous waste might be held for short periods of time in vehicles (e.g. in trucks

DATE 3-18-81  
 parked at the transporter's terminal overnight or over a weekend or at transfer facilities. The Agency did, however, clearly state that the holding of hazardous waste by a transporter incidental to transportation would not require a RCRA storage permit and compliance with the standards applicable to storage of hazardous waste. A literal application of the regulations, however, might require all transporters who hold waste during transportation or who own or operate transfer facilities to obtain RCRA permits. The transportation industry has asked EPA whether the Agency intended to require transporters to file permit applications and comply with the substantive standards for storage.

**B. Transfer Facility Requirements**

For the reasons set forth below, EPA believes that transporters who hold hazardous wastes for a short period of time in the course of transportation should not be considered to be storing hazardous wastes and should not be required to obtain a RCRA permit or interim status and comply with the standards of Parts 264 or 265. For the amendments published today, EPA allows transporters to hold wastes in the course of transportation for up to 10 days if the waste is accompanied by a manifest and remains in containers which meet the Department of Transportation (DOT) packaging requirements. These amendments relieve transporters who own or operate a transfer facility of the necessity of obtaining a RCRA permit and of complying with the substantive requirements for storage for the holding of wastes which is incidental to normal transportation practices. The term transfer facility, as used in this amendment, refers to transportation terminals (including vehicle parking areas, loading docks and other similar areas) break-bulk facilities or any other facility commonly used by transporters to temporarily hold shipments of hazardous waste during transportation.

The transportation system established by EPA's regulations should achieve adequate protection of human health and the environment. Transporters have a natural incentive to move shipments quickly and efficiently; their business, in most cases, is the movement of hazardous wastes rather than the storage of such waste. In addition, the manifest system requires that the generator receive a copy of the manifest, signed and dated by the designated facility within 35 days. To avoid the necessity of locating shipments of hazardous waste and filing Exception Reports with EPA, generators will desire

prompt transportation and delivery of hazardous waste shipments. These factors, working together, should cooperate to ensure that wastes will not be held in storage for lengthy periods by transporters.

In addition, the amended regulations set a ten day period for in-transit holding of hazardous waste. This will of course provide a further incentive for transporters to quickly move shipments of hazardous waste. EPA chose a ten day period in order to allow short term holding of waste for transfer and to account for such things as scheduling problems, weather delays, temporary closing and other factors which might cause unforeseen delays. The Agency also received information from the transportation industry indicating that shipments of hazardous waste normally take no longer than fifteen days (including both the actual transportation and the temporary holding of the shipment.) Therefore, providing ten days for in-transit storage of waste will cover almost all transportation related holding activities.

The amendments provide that the hazardous wastes being held at transfer facilities must be in containers (including tank cars and cargo tanks) which meet DOT specifications for packaging under 49 CFR 173, 178 and 179. This provision should ensure that a hazardous waste remains properly packaged during this phase of transportation. Although the Agency believes that this requirement should provide adequate protection of human health and the environment during the short period that hazardous wastes are held at a transfer facility, we solicit comments on whether additional requirements should be imposed, such as contingency plans, personnel training, and inspections. Comments are specifically requested on which, if any, of the Part 265 requirements should be placed on transporters who hold shipments of hazardous waste for ten days or less.

It is important to note that the provisions of Subpart C of Part 263, regarding transporter responsibilities in the event of a discharge, apply to transfer facilities. Specifically, a transporter is required to clean up any hazardous waste discharge and to report the discharge in accordance with the provisions of Department of Transportation's Regulations (49 CFR Part 171).

The Agency believes that adequate protection of human health and the environment can be achieved by limiting the length of in-transit holding of wastes by requiring the use of DOT containers. These simple requirements

do not have to be implemented through the issuance of RCRA permits and compliance with all the requirements for hazardous waste storage facilities. EPA further believes that the administrative burdens on both the regulated community and EPA are substantially reduced without detriment to the protection of human health and the environment.

In addition, by allowing limited in-transit storage without a RCRA permit or interim status, these amendments better serve the important purposes of the manifest system by enabling and requiring the generator to designate the ultimate treatment, storage or disposal facility, rather than a transporter transfer facility and by ensuring the prompt delivery of hazardous waste shipments to such facilities. If hazardous wastes had to be manifested to a permitted or interim status transfer facility where the wastes were held temporarily, then the generator would be unintentionally relieved of the important responsibility of designating and assuring delivery to the ultimate treatment, storage or disposal facility.

The ten day exemption only applies when a transporter is holding the manifested shipment of hazardous waste in containers which meet applicable Department of Transportation regulations for packaging. The Agency decided to exclude the holding of hazardous waste in stationary storage tanks from these amendments because the intent of this action is to accommodate those normal and routine transfer activities raised by the transportation industry. Specifically, the industry was concerned about RCRA's application to transport vehicles parked at transfer facilities and to containers which, in the course of being transferred from one vehicle to another, were held on a loading dock or other similar facility for a short period of time. The Agency specifically requests comments on whether the ten day exemption should be expanded to include temporary storage in tanks meeting the requirements of Subpart J of 40 CFR Part 265 (except § 265.193).

These amendments do not affect the manifest system established in the February and May regulations. The generator, each transporter and the designated facility are still required to sign the manifest. The Agency is, however, considering requiring additional entries on the manifest. Specifically, comments are requested on whether signatures and dates should appear on the manifest indicating when the shipment entered and left the transfer facility.

DATE 3-18-87  
BILL NO. 1612789

These amendments do not place any new requirements on transporters re packaging waste from one container to another (e.g., consolidation of wastes from smaller to larger containers) or on transporters who mix hazardous wastes at transfer facilities. The Agency solicits comments on whether regulatory controls over the consolidation of shipments and mixing of hazardous waste by transporters are warranted. Specifically, should controls similar to those in Part 265 regarding the mixing of incompatible waste be placed on transporters?

#### IV. Interim Final Regulations and Effective Date

##### A. Interim Final Regulations

EPA has determined under Section 553 of the Administrative Procedures Act, 5 U.S.C. 553, that there is good cause for promulgating these amendments without prior notice and comment. Without these amendments, transporters who own or operate transfer facilities, under a literal application of the regulations, could continue to operate such facilities on or after November 19, 1980 only if they had a permit or interim status and complied with the applicable requirements of Parts 264 or 265. We believe that it is essential to correct this and to clearly set forth the obligations of transporters.

##### B. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after promulgation. The purpose of this requirement is to allow persons handling hazardous waste sufficient lead time to prepare and to comply with major new regulatory requirements. For the amendments promulgated today, however, the Agency believes that an effective date six months after promulgation would cause substantial and unnecessary disruption in the implementation of the regulations and would not be in the public interest. Since the amendments reduce, rather than increase, the existing requirements for transporters, there is no basis for allowing a lengthy period of time for transporters to prepare for compliance. Therefore, the regulatory provisions that these amendments modify take effect immediately.

#### V. Environmental, Economic and Regulatory Impacts

These amendments reduce the economic, reporting and record-keeping impacts on transporters who own or operate transfer facilities by virtue of eliminating, in most cases, the

EXHIBIT NO. 3  
DATE 12/31/80

40 CFR Parts 262, 264, and 265  
BILL NO. 262, 264, and 265  
[SW FRL 1715-6]

requirement for applying for an individual RCRA permit and complying with the substantive requirements of Parts 264 or 265. The proposed amendments will also reduce the resource demands on the Agency by reducing the number of individual RCRA permits that otherwise would have to be issued. The Agency believes that these savings can be achieved without significantly reducing the protection of human health and environment.

**VI. Request for Comment**

The Agency invites comments on all aspects of these amendments and on all of the issues discussed in this preamble. EPA recognizes that a wide variety of situations exist and is anxious to make its regulations as reasonable and workable as possible.

All comments should be addressed to the Docket Clerk (see address above) and should contain specific documentation which supports the comment.

Dated: December 22, 1980.

Douglas M. Costle,  
*Administrator.*

Title 40 of the Code of Federal Regulations is amended as follows:

**PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL**

1. Add the following definition to § 260.10.

**§ 260.10 [Amended]**

"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

**PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE**

**§ 263.10 [Amended]**

2. Remove the note following § 263.10(c)(2)

3. Add the following section to Subpart A:

**§ 263.12 Transfer facility requirements.**

A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of § 262.30 at a transfer facility for a period of ten days or less is not subject to regulation under Parts 122, 264, and 265 of this chapter with respect to the storage of those wastes.

**Part 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES**

4. Add the following subparagraph to § 264.1(g)

**§ 264.1 [Amended]**

(g) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of 40 CFR § 262.30 at a transfer facility for a period of ten days or less.

**PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES**

5. Add the following subparagraph to § 265.1(c)

**§ 265.1 [Amended]**

(c) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of 40 CFR § 262.30 at a transfer facility for a period of ten days or less.

**PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM; THE HAZARDOUS WASTE PERMIT PROGRAM; AND THE UNDERGROUND CONTROL PROGRAM**

6. Add the following definition to § 122.3

**§ 122.3 [Amended]**

"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

7. Add the following subparagraph to § 122.21(d)(2)

**§ 122.21 [Amended]**

(vi) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of 40 CFR § 262.30 at a transfer facility for a period of ten days or less.

[FR Doc. 80-40647 Filed 12-30-80; 8:45 am]  
BILLING CODE 6560-30-M

**Hazardous Waste Management System; Standards for Generators of Hazardous Waste, and Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities and Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Interim final rule and request for comments.

**SUMMARY:** This regulation amends §§ 262.10, 264.71 and 265.71 to provide that owners or operators of hazardous waste treatment, storage, and disposal facilities must comply with the requirements of Part 262 whenever a shipment of hazardous waste is initiated at their facilities. The effect of this provision is to require owners and operators to comply with the standards applicable to generators including the preparation of manifests, all pre-transport requirements and the recordkeeping and report provisions of Part 262.

**DATES:** Effective Date: December 31, 1980. Comment Date: The Agency will accept comments on this interim final rule until March 2, 1981.

**ADDRESSES:** Comments should be sent to Docket Clerk (Docket No. 3002-Shipments from Permitted Facilities), Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** For information concerning these regulations, contact Rolf P. Hill, (202) 755-9150, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, D.C. 20460.

**SUPPLEMENTARY INFORMATION:**

**I. Authority**

This interim final rule is issued under the authority of sections 2002(a), 3002, 3003, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 USC 6912(a), 6923, 6924.

**II. Background**

Section 3004 of RCRA requires the Environmental Protection Agency (EPA) to promulgate standards for owners and operators of hazardous waste treatment, storage, and disposal facilities. EPA promulgated the initial set of these standards on May 19, 1980 45 FR 33220.

3/18/87

## TESTIMONY BEFORE THE SENATE PUBLIC HEALTH COMMITTEE

Madame Chairman and members of the committee, my name is Art Wittich and I am testifying today on behalf of Special Resource Management (SRM), a wholly owned subsidiary of The Montana Power Company. SRM opposes House Bill 789. It's bad legislation, and bad law.

Before explaining SRM's reasons for opposing 789, I feel a brief description of SRM is appropriate. Special Resource Management provides consulting, transportation and waste generator services to a variety of clients in Montana and the surrounding region. As you will see at the Billings transfer station on Saturday, SRM plans to utilize vans to pick up containerized wastes from generators (who range from wood products companies, to school districts, to paint shops) consolidate these compatible wastes from a number of generators at the transfer stations, and send the larger load in semi trucks to disposal facilities (i.e. Texas, Utah, etc) permitted to accept that particular waste. The generator's waste materials are chemically analyzed prior to transport, scheduled for transport to comply with the 10-day "window", placed in sealed containers for transport, and kept in the vans at the transfer station, until the wastes are actually loaded on the semi for the long haul. Under current federal law, these wastes will be limited to a 10-day period at the transfer station. No mixing, treatment, storage or disposal of the wastes is allowed at the transfer station.

Now, the reasons SRM is opposing HB 789

Congress enacted the Resource Conservation and Recovery Act (RCRA) in 1976 to ensure hazardous wastes were properly managed from "cradle to grave". This federal law requires the safe management of hazardous wastes by the generators of the waste, the transporters of the waste, and the operators of the ultimate permitted treatment, storage and disposal (TSD) facility. This federal scheme was established to avoid improper dumping and the consequent environmental harm. SRM, as a transporter in the

WELFARE  
DATE 3-18-84  
HB 789

federal scheme, is therefore part of the solution to the hazardous waste problem.

As a transporter, SRM is presently heavily regulated. The federal Environmental Protection Agency (EPA) has explicitly adopted the Department of Transportation (DOT) regulations concerning the transport of "hazardous materials" and has applied it to the transport of "hazardous wastes". These hazardous "wastes" are the chemical by-product of the materials, and as such make up only a small subset of the hazardous commodities being transported. Incidentally, based on a Pacific Northwest transportation study conducted by Eastern Washington University, if SRM were to handle all hazardous wastes generated in Montana - this would only amount to one tenth of one percent (0.1%) of the hazardous materials transported through the state.

HB 789, the new "Facility Siting Act", defines "hazardous waste transfer facilities" and imposes a barrier to the federal scheme by requiring a permit for such a facility. Based on the six criteria listed in statement of intent, these permit requirements can be as stringent as those imposed on fully permitted TSD facilities. The bill, however, is inconsistent since it exempts most truck terminals due to the "primary purpose" clause. Additionally, certain transporters are exempted from the permitting requirements if the transportation of hazardous wastes is only a "minor part" of their transportation activity. Therefore, the general common carrier is exempt, while the specialized carrier is subject to 789's stringent requirements.

Requiring permits for transfer facilities makes Montana unique. If HB 789 passes, Montana would be the only state with such a requirement. Contrary to the proponent's assertion that these 10-day facilities are "loop-holes", EPA fully examined the issue and decided that such permitting for 10-day facilities was unnecessary. In the Federal Register promulgating the exemption, EPA stated that:

"transporters who hold hazardous wastes for a short period of time in the course of transportation should not be considered to be storing hazardous wastes and should not be required to



obtain a RCRA permit . . . the transportation ~~BREV NO.~~ 13489  
established by EPA regulations should achieve adequate  
protection of human health and the environment."

Therefore, EPA made a conscious decision to differentiate between transfer facilities, and the permitted TSD facilities. HB 789 would blur this distinction and in effect regulate any facility holding or storing hazardous wastes.

This is bad legislation not only because it imposes unnecessary regulation on Montana transporters, but also because it discriminates among transporters within the State. The large common carriers may be satisfied with the exemptions in the bill, but such exemptions have no relationship with the supposed purposes of this bill (i.e., protection of the environment). Truckers transporting wastes as a "minor" part of their business are just as apt, if not more so, to have accidents affecting the environment. Talk about "loop-holes", the two amendments in this bill, which exempt 99.9% of the hazardous materials transported through Montana, are big enough to literally drive a semi (or even a railroad car) through, unless of course the truck is painted white and carries the SRM logo.

The bill, as amended, has a grandfather clause that exempts transfer facilities in operation as of June 30, 1987 from the permitting requirements. This grandfather clause was inserted to appease SRM's concerns with the bill (and to recognize SRM's capital outlay of \$1,900,00 to date for such facilities). We expect that an attempt will be made to strip this grandfather clause. HB 789 is bad, and stripping the grandfather clause makes it worse.

HB 789 is also bad legislation due to the high costs of compliance with the permitting requirements, which range from hundreds of thousands - to millions-of dollars. These compliance costs will not only affect transporters such as SRM, but also the waste generator customers that are desperately seeking reasonably priced waste services.

Its ironic that some of the same people appearing today as proponents have accused SRM of charging high prices for services,

resulting in the inability of small quantity generators to pay for such services. HB 789 will further increase costs to the generating public that the proponents supposedly care about.

This bill is not only bad legislation, but bad law--because it doesn't "fit" within the existing frame work of hazardous waste law. The existing federal and state program is extensive. Thousands of pages of statutes, regulations and case law exist on the current system of hazardous waste management. The primary goal of this federal scheme is the same goal asserted by HB 789's proponents, namely, the protection of human health and the environment.

HB 789 goes against this entire body of law, by requiring a permit for intermediate transportation facilities. An incentive will no longer exist for the operation of such transfer stations because transporters can simply subject themselves to a marginal increase in permitting requirements, and obtain a major increase in allowable business activity--such as that allowed by a long term storage facility. HB 789, therefore, is a barrier to existing hazardous wastes management and cuts against the federal goal of safe, expeditious transportation of hazardous wastes from the generator to disposal facility.

Even though the Federal RCRA Program allows for concurrent state regulation, I believe a legitimate claim could be made that such a state permitting requirement stands as an obstacle to the federal scheme and, therefore, is preempted by federal law. A valid claim could also be made that HB 789 imposes an excessive burden on interstate commerce.

In its decision to exempt 10-day facilities, EPA recognized that certain additional standards may be appropriate for transfer facilities, such as contingency plans, personnel training and inspections. If any regulatory "void" or "gap" exists at all, operating standards for these three issues, applicable to all transporters of hazardous waste, would be appropriate areas for additional rulemaking.

All of the members of this committee have probably received calls or letters from members of the Billings' community urging

the passage of this bill. Apparently, the SRM transfer station in Billings has some people literally fearing for their lives. There are no risks at the transfer station which should cause such fear.

SRM will not be using faulty trucks.

SRM will not be mixing or treating the wastes.

SRM will not be storing the wastes for a long period of time.

SRM will not be disposing of the wastes on site or adjacent to the station.

This fear is unfounded, as you will see on Saturday in Billings.

Some proponents of this bill have stated that HB 789 is not "aimed" at SRM. In fact, HB 789 is special target legislation to make it as difficult as possible for SRM to do business. If SRM had not responded to the demand for waste services in this state and started this business, HB 789 would never have been introduced. Lets face it. A certain special interest group wants a public waste facility in Montana. After being repeatedly told that such a facility would not be appropriate at this time, these people want to either make private facilities such as SRM so costly so as to drive them out of business, or in the alternative, control such private facilities as if they were public facilities.

In closing, I urge this committee to withhold judgement on HB 789 until after Saturdays tour of SRM's Billings transfer station. SRM is not the environmental problem, but the environmental solution. I am convinced that after you have studied this issue and observed the Billings transfer station, you will agree that HB 789 is unnecessary.

Should you have any questions, Tom Worring, an Electrical Engineer from Butte - President of SRM; Chris Cull, a Soil Scientist from Billings - SRM's Manager of Operations; Mike Hannifan, an Environmental Engineer from Billings - SRM's Safety Director; and Steve Wright, a Chemical Engineer from Great Falls - SRM's Project Manager for Transfer Stations, are all at the hearing today. I believe other opponents are also present. I apologize for this lengthy testimony, but this bill has severe

SENATE HEALTH & WELFARE

EXHIBIT NO. 9

DATE 3-18-87

BILL NO. HB 789

consequences for my client. Thank you for your attentiveness on  
this complex and important matter.

Special Resource Management, Inc.

Arthur V. Wittich

  
YELLOWSTONE VALLEY CITIZENS COUNCIL

419 Stapleton Building  
Billings, Montana 59101

Recently, the issue of hazardous waste has become a priority in the thoughts of many concerned Montanans. Realizing that our laws and documents are not as comprehensive as they could be has caused a statewide effort to incorporate more specific language in the Montana Hazardous Waste Act. Although many of these efforts have been successful, there are still some areas which have not been addressed yet. One of these areas is that of hazardous waste transportation facilities.

The Montana Hazardous Waste Act states that "no person may construct or operate a hazardous waste management facility without first obtaining a permit from the Department of Health and Environmental Sciences (DHES) for treatment, storage or disposal of any hazardous waste. One of the several groups exempted from the Montana Hazardous Waste Act is transporters storing shipments of hazardous waste at a transfer facility for a period of ten days or less.

Special Resource Management (SRM), a subsidiary of Montana Power Company, has taken advantage of this loophole by defining themselves as a "transportation facility", therefore avoiding Hazardous Waste Management (HWM) permitting and other regulations.

In order to address this problem and incorporate transfer facilities operated by hazardous waste transporters to the category of facilities that require permitting under the MHLWA, Representative Hal Harper (D, Helena) has introduced HB789. This bill will insure that proposed hazardous waste transfer facilities undergo a review and approval process before beginning waste handling activities.

The rules developed by the DHES to implement HB789 include the following:

1. Preparedness for hazardous waste emergencies;
2. Development of emergency contingency plans;
3. Training of transfer facility personnel;
4. Security provisions at transfer facilities;
5. Hazardous waste drum handling, temporary storage methods, and containment requirements that minimize the possibilities of leaks, spills, off-site releases, or similar accidents; and

REGULATION OF HAZARDOUS WASTE TRANSFER FACILITIES ~~HB 789~~

BY THE STATE OF FLORIDA

The Department of Environmental Regulation of the State of Florida has adopted regulations governing hazardous waste transfer facilities. These facilities are defined as those that keep hazardous wastes for a period of more than 1 day and not more than 10 days.

The Florida regulations governing hazardous waste transfer facilities require:

- compliance with EPA's storage facility regulations for container management, including container condition, stacking limits, and the kind of surface on which storage is allowed;
- compliance with EPA's storage facility regulations for general facility standards, including security and personnel training;
- compliance with EPA's storage facility regulations for preparedness and accident prevention and for contingency and emergency planning;
- that "hazardous wastes stored in containers or vehicles at transfer stations must be stored on a man-made surface which is capable of preventing spills or releases to the ground";
- \$1 million of insurance coverage;
- a written closure plan; and
- notification to state and local officials of the existence of the facility.

The Florida regulations do not include a permit requirement for hazardous waste transfer facilities.

There are about 12 regulated transfer facilities in Florida that specialize in hazardous waste handling. These facilities primarily serve small-quantity generators, and some provide service for household wastes.

The major difference between the regulations applicable to hazardous waste transfer facilities in Florida and those applicable to permitted storage facilities is that the permitted storage facilities are subject to EPA design specifications. These design specifications include requirements for berms, loading bays, catchments, sumps, and other features.

These notes are from a conversation on 3/17/87 with:

Raoul Clarke, Environmental Administrator  
Hazardous Waste Section  
Bureau of Waste Management  
Department of Environmental Regulation  
State of Florida  
2600 Blainstone Road  
Tallahassee, FL 32301  
(904) 488-0300

Prepared by Hugh Zackheim, EQC, by request of Representative Harper



P.O. BOX 1409  
HAMILTON, MONTANA  
59840 USA  
(406) 363-6214

SENATE HEALTH & WELFARE

March 25, 1987

EXHIBIT NO. 12  
DATE 3-18-87  
BILL NO. H.B. 789

Ms. Dorothy Eck  
Chairman, Senate Committee on Public  
Health, Welfare, and Safety  
Montana State Senate  
Capitol Station  
Helena, MT 59620

Dear Chairman Eck:

This letter concerns House Bill 789 (Revised Definition of a Hazardous Waste Management Facility), which your committee is now considering. I have enclosed copies of this letter for distribution to the members of the committee. In its present form H.B. 789 could have adverse effects on companies such as Ribi ImmunoChem Research, Inc.

If this bill is enacted into law, companies specializing in the collection and transportation of hazardous wastes in Montana would be subjected to regulations in excess of those imposed by the U.S. Environmental Protection Agency. This additional level of regulatory control would make it more difficult and expensive for these companies to operate in Montana. In addition, the regulations imposed by H.B. 789 may discourage existing carriers from handling hazardous wastes. The net effect of this bill, if enacted, would be that any Montana company which generates any amount of hazardous waste may be forced to pay considerably more to have those wastes transported to disposal facilities, as compared to companies in other states. This could place a costly and, in view of the existing EPA regulations, needless burden on Montana industries and companies such as Ribi ImmunoChem and would lessen the state's ability to attract high-technology businesses and jobs. Like all Montanans, we are deeply concerned about environmental issues and the handling of hazardous wastes, but feel that current EPA regulations adequately protect all of us.

Ms. D. Eck  
March 25, 1987  
Page 2

SENATE HEALTH & WELFARE

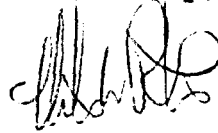
EXHIBIT NO. 12

DATE 3-18-87

BILL NO. HB 789

I urge the committee to seriously consider opposition to H.B. 789 in its current form. Thank you for your consideration. If you have any questions, please feel free to contact me directly.

Sincerely,



Nils A. Ribí  
Chairman and  
Chief Executive Officer

NAR/ip

cc: Elmer Severson



# STANDING COMMITTEE REPORT

MARCH 18

19 87

SEN. PROLOGUE

**SENATE PUBLIC HEALTH, WELFARE AND SAFETY**

Year your committee met

**SENATE BILL**

**NO. 729**

Meeting held under consideration

**THIRD**

**READING**

reading copy ( )

**SENATE PUBLIC HEALTH FOR COMMERCIAL GAS. WASTE STORAGE-TRANS. FACILITIES**

**WITNESSES (REDACTED)**

Respectfully reported as follows: That

**SENATE BILL**

**NO. 729**

REDACTED

REDACTED

REDACTED

**DONORBY BCK**

Chairman

# STANDING COMMITTEE REPORT

MARCH 13

19 87

MR. PRESIDENT

We, your committee on SENATE PUBLIC HEALTH, WELFARE AND SAFETY

having had under consideration HOUSE BILL No. 402

THIRD reading copy ( BLUE )  
color

**RECORDS RETENTION RULES FOR MENTAL HEALTH FACILITIES**

**STRIZICH (WILLIAMS)**

Respectfully report as follows: That HOUSE BILL No. 402

HE CONCURS IN

~~DO NOT PASS~~

~~DO NOT PASS~~

DOROTHY ECK

Chairman.