MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON HEALTH & HUMAN SERVICES

Call to Order: By Chairman Bradley, on February 9, 1989, at 8 a.m.

ROLL CALL

Members Present: All members were present with the exception of Sen. Hofman.

Members Excused: None

Members Absent: Sen. Hofman

Staff Present: Evan McKinney, LFA
John Huth, OBPP

Announcements/Discussion: Environmental Services Division programs; Subcommittee meetings for Mountain View School for Girls on 2-17-89 and Foster Care on 2-20-89.

Chairman Bradley called the meeting to order and announced that subcommittee members would be finishing details on SRS programs, e.g., determination of poverty level and low income energy assistance program funding, first thing on 2-17-89.

HEARING ON ENVIRONMENTAL SERVICES

William Opitz of the Department of Health & Environmental Services (H&ES) presented Larry Lloyd of the environmental services division, who discussed the bureaus within this division. (See attachment, exhibit 1). Discussion followed.

A149

Mr. Lloyd stated a need for an additional 0.5 FTE in the modified request because of program and workload growth. In answer to Rep. Cobb's inquiry as to diverting inquiries regarding the asbestos hazards to occupational health program, Mr. Lloyd said that was where this program will be transferred, but at the present time the occupational health bureau is drastically understaffed.

179

Rep. Cody was interested in how far along H&ES is in the asbestos cleanup in the school system. Mr. Lloyd stated his bureau is receiving the asbestos management plans and also receive and process applications for the grants under asbestos and school hazard abatement. Mr. Lloyd reports a bandaid

approach to monitoring the schools; H&ES haven't had the resources to tally the results but anticipated that there would be a great deal of abatement work in the schools and probably other structures within the next biennium.

Seventeen (17) schools have applied for grant assistance in the past year and this is more response from schools that we have had in the past four years altogether.

A215
Rep. Cody inquired as to why the schools haven't applied and stated that so many schools really need this service. Mr. Lloyd responded that this is not all grant money; up to 50 percent of the project can be covered by grant, the rest is an interest free loan over a period of 20 years. In order to accept that interest free loan, of course the school has to go out with a referendum. There is a lot of paperwork involved, and some of the schools with small projects to complete do not feel that it is worth it between the paperwork and having to go out with a referendum.

A240
In response to a time frame inquiry from Rep. Cody, Mr. Lloyd replied that there is not time frame on the project per se, but there is a deadline for getting their abatement management plans in. The deadline for the management plans is 10-12-88; however, for qualifying schools, there has been an extension to 5-9-89 and schools have to begin the implementation of their plans by 7-1-90.

A270
Mr. Opitz introduced Jeff Chaffee of the Air Quality Bureau, who presented a fact sheet on this bureau. Mr. Chaffee discussed program design, major accomplishments for fiscal years 1988/1989 and major goals and objectives for fiscal years 1990/1991. (See attachment, Exhibit 2).

A570
Adrian Howe of the occupational health bureau and radiological health presented testimony to the subcommittee. (See attachment, Exhibit 3). Discussion followed on the frequency of x-ray inspections of hospitals, doctors offices, clinics, dentists, etc. and the need for providing information and limited assistance to the public on radon.

A844
Rep. Cody asked for information on payment for x-ray inspections and the qualifications of individuals making the inspections.

Mr. Howe replied that the hospital or other health facility does not pay for x-ray inspection; payment comes from general fund. An x-ray technician conduct the inspections but the department has had to train individuals for this service and when the position becomes vacant, recruitment is a problem where the Montana pay scale is so much less than other

states.

A895
Jim Peterson presented a fact sheet on the Food and Consumer Safety Bureau (see attachment, Exhibit 4).

A994
The cost of initial training to 65 sanitarians employed by local health agencies is paid for by general fund, Mr. Patterson stated in reply to Rep. Cody's inquiry. In addition, field visits are conducted for program evaluation of all bureau programs to monitor accuracy, effectiveness and efficiency in providing public health protection.

Discussion followed regarding standards of jails being advanced and requests from sheriffs for an evaluation by the health department so that they can state that they are in compliance with the standards and therefore protected more from a legal suit. Mr. Peterson stated that work with jails was purely advisory; there is a law that requires health department to inspect jails but there is no authority to promulgate rules so the work we do with law enforcement officers and jails is purely advisory in nature and most of it is done by request.

A077
Dwayne Robertson discussed the solid and hazardous waste program, after which there was general discussion on the bureaus involved. (See attachment, Exhibit 5).

Concern was expressed by subcommittee members that Montana could become a landfill for the other states in America; where the use of a landfill in New Jersey could be $150 per ton, in Montana that could be $10-15 per ton. Mr. Opitz stated that the landfill regulations are not stringent enough at the present time; the legislature could develop criteria to address landfills.

B022
Mr. Robertson expressed a need by his bureau to raise the fees for junk vehicles. Rep. Cody asked why the fees have been reduced in the past legislatures. Mr. Robertson reported in 1974 when junk vehicle legislation was passed in the first place, the title transfer fee was set at $4 at that time and each reregistration was $1; so it was considerably higher in 1974 than what it is right now. What happened right after the law was passed is the price of scrap jumped from $20 to $60 a ton, so instead of the state having to pay, the bureau was able to get contractors to come in on crushing the cars and shipping them out to foundries. Therefore, we were able to set up an account which built up $1,500,000 and the next session we came in and reduced the fee down to this present level. Since 1974 we have actually been taking in less money per year than we have been sending out to the counties. The state has been eating away at that balance for the last 15 or 16 years. The 1987 legislature

transferred $500,000 to the general funds; now we need a fee increase to maintain the present level of funding for the department and the money going back to the counties.

B049
Rep. Cody stated that in Roosevelt county, the junk vehicle program did not work out because funds quit coming from the state to pursue disposal of junk vehicles. Mr. Robertson stated they have a bill in this legislature to correct this situation. Where counties can demonstrate a need for additional money, the state will provide funds for this program.

B240
Mr. Robertson presented fact sheets on the modified hazardous waste program and discussed major issues with underground storage tanks, and the mini superfund. Mr. Opitz discussed the advisability of being an advisory source, rather than an enforcing agency, for federal regulations in these areas.

B163
Chairman Bradley presented members with a handout which outlined the legislative issues in hazardous materials management. (see attachment, Exhibit 6).

ADJOURNMENT

Adjournment At: 11 a.m.

Dorothy Bradley
REP. DOROTHY BRADLEY, Chairman

DB/dib

3423.min

DAILY ROLL CALL

HUMAN SERVICES SUBCOMMITTEE

DATE 2/8-89

NAME	PRESENT	ABSENT	EXCUSED
Rep..Bradley (Chair.)	✓		
Sen. Keating (Vice Chair.)	✓		
Sen. Hofman			
Sen. Van Valkenberg	✓		
Rep. Cody	✓		
Rep. Cobb	✓		
Rep. Grinde	✓		

Form CS-30A
Rev. 1985

EXHIBIT 1
DATE 2-9-89
HB

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

ENVIRONMENTAL SCIENCES DIVISION

DIVISION ADMINISTRATION

The Environmental Sciences Division Administration oversees five bureaus with a total of 120 FTEs and a total Division budget of approximately 15 million dollars per year. The following bureaus are contained within the environmental sciences division: 1. Air Quality Bureau; 2. Food and Consumer Safety Bureau; 3. Occupational Health Bureau; 4. Solid and Hazardous Waste Bureau; and, 5. the Water Quality Bureau.

The Division Administration Office is presently staffed by 2 1/2 FTEs: Division Administrator - 1.0 FTE; Administrative Officer V 1.0 FTE, and a Secretary III - 0.5 FTE.

Although the purpose of the Division Administration Office is primarily to administer and coordinate the programs and activities of the five bureaus within the division, the delegation of unfunded Federal programs has necessitated that such programs be conducted by the Division Administration Office. Unfunded Federal programs currently being conducted by the Division Administration Office include:

1. Title III - Emergency Response and Community Right-To-Know Law (PL 96-510)
2. Asbestos Hazard Emergency Response Act (AHERA - PL 99-519)
3. Asbestos Inspection and Management Plan Assistance Program (AIMPAP)
4. Asbestos-In-Schools Hazard Abatement Act (ASHAA PL 98-377)

MODIFIED FTE REQUEST

The secretarial support in the Division Administration Office was reduced from 1.0 FTE to 0.5 FTE during the 1989 biennium. Program growth within the Division and new Federally - mandated but unfunded programs have substantially increased the workload in the Division Administration Office. An additional 0.5 FTE Secretary III is requested for the '90-'91 biennium to help absorb this increased workload.

EXHIBIT 2
DATE 2-9-89
HB

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

AIR QUALITY BUREAU
STAN STEPHENS, GOVERNOR
COGSWELL BUILDING
STATE OF MONTANA
FAX # (406) 444-2606
HELENA, MONTANA 59620
(406) 444-3454

TESTIMONY

Presented by
Air Quality Bureau
Environmental Sciences Division
Department of Health and Environmental Sciences

Jeffrey T. Chaffee, P.E., Chief

Before
Joint Appropriations Subcommittee
on
Human Services

February 9, 1989

Department of Health and Environmental Sciences
Air Quality Bureau

The Montana Department of Health and Environmental Sciences (DHES) appreciates this opportunity to offer information to the subcommittee on Montana's Air Quality Program. Our testimony will be divided into three sections: program design, major accomplishments during fiscal years 1988/1989 and major goals and objectives for 1990 and 1991.

Program Design

The Air Quality Bureau is responsible for implementation of the Montana and Federal Clean Air Acts (75-2-101 MCA and 42 USC 7401 et seq., respectively). These acts require the Department to attain and maintain air quality levels in the outdoor atmosphere considered safe to public health and welfare. The tasks necessary to accomplish this goal include:

-- Permit Review - Reviews of facilities before initiation of construction or expansion are conducted to assure implementation of appropriate air pollution control equipment and compliance with air quality standards.

-- Inspections/Enforcement - To assure continued compliance with air quality standards, a scheduled program of inspections is followed with appropriate enforcement actions where necessary.

-- Ambient Air Quality Monitoring - Continued surveillance of the air quality status across the state is provided by numerous monitoring stations.

-- State Implementation Plan (SIP) - The SIP is the primary vehicle used to develop plans to bring areas currently out of compliance with ambient air quality standards down to levels considered safe. These plans are developed in cooperation with local agencies, communities and affected facilities to assure equitable solutions to the problem.

-- Special Studies - Studies are conducted to solve or research various air quality issues. For example, a study of the Billings sulfur dioxide (SO_2) problem in cooperation with industry was undertaken in fiscal year 1988. A number of source apportionment studies in Western Montana communities to identify sources of ten micron particulate (PM-10) were also initiated during this biennium.

-- Complaint/Information Response - DHES relies on citizen comments and complaints as a way to bring air quality problems to our attention. We attempt to be as responsive to each individual complaint or request for information as possible to assure good public service.

These core tasks form the basis for the Montana Air Quality Program. We expect the Department's lead role in these areas to continue to support orderly development while protecting our precious air quality resource.

Major Accomplishments: FY 1988/1989

Major accomplishments during the past two years include the following:

1. Implementation of a New Air Quality Standard

In July, 1987, the U.S. Environmental Protection Agency promulgated a ten-micron particulate (PM-10) ambient air quality standard. This standard focuses on particulate matter less than ten microns in diameter because of public health concerns. DHES is implementing the new standard in Montana; we have adopted the new standards into Montana air regulations, we have established a statewide PM-10 monitoring network, and we are in the process of developing area-specific state implementation plans (SIPs) to bring areas exceeding the new standard into compliance. Because a significant portion of the PM-10 problem in

many Montana communities is due to area sources (i.e., wood stoves and road dust), control of this pollutant will present many challenges to DHES and local governments.

2. Billings-Laurel Air Quality Technical Committee

Formation of the Billings-Laurel Air Quality Technical Committee (BLAQTC) during 1987 represented a significant step toward resolution of the Billings-Laurel sulfur dioxide (SO_2) problem. BLAQTC, comprised of area industries, the Chamber of Commerce, the local air pollution agency, and DHES, has established the following goals:

-- Provide for improved ambient air quality monitoring for SO_2 in the Billings-Laurel area;

-- Improve the measurement and reporting of SO_2 (emissions) from the six area industries; and

-- Reduce SO_2 emissions during periods which might otherwise lead to excessive ambient SO_2 levels.

BLAQTC has made good progress on collection of ambient SO_2 data over the past twelve months, which provides a data base for evaluation of periods of elevated ambient SO_2 levels. Furthermore, work on quantifying SO_2 emissions is underway, with an emphasis on improving both timeliness and accuracy of the data. BLAQTC has made progress on the Billings-Laurel SO_2 problem because of the cooperative effort by all members; we hope that a continued group effort will further address the SO_2 problem.

3. Smoke Management Program

Montana has developed a model program to manage the air quality impacts from prescribed burning (i.e., slash burns, wildlife habitat burns, etc.). This Smoke Management Program is unique among western states because of the participation of land management agencies and

industries along with the regulatory agency. The Montana Smoke Management Group, which consists of state/federal land management agencies, private forestry industries, and DHES, operates a fall program to restrict burning to periods of acceptable dispersion/ventilation, thereby preventing the buildup of smoke in populated areas. The new PM-10 regulations have increased the emphasis on smoke management, resulting in stricter control of fall burning. Because of the program, more prescribed burning has been accomplished in recent years with less ambient air impact.

4. Forest Fire Monitoring

Although it occurred for only a short period during the summer of 1988, Montana's record forest fire season resulted in a significant effort by DHES. Air Quality Bureau personnel cooperated with federal agencies to monitor ambient air quality in the vicinity of major fires and to advise the public about potential health impacts. We put in long hours mobilizing old monitoring equipment, analyzing the data, handling public concerns and requests, and issuing news releases.

5. Maintenance of a Delegated Air Quality Program

DHES maintains a fully delegated air quality program from the U.S. Environmental Protection Agency. The advantages of having a delegated program include receipt of an annual federal grant to support Montana's air program, and control over implementation of the Federal Clean Air Act and associated regulations. An example of control is in the permitting of new air pollution sources (industries); Montana's regulations stipulate a mandatory 60-day permit review schedule whereas federal permitting schedules are open-ended. Another example is the planning effort required for areas exceeding ambient air quality standards. Instead of being completely directed to implement programs advocated by the EPA, state and local agencies have some latitude to adopt control strategies to local problems and issues. We believe state and local direction of the Montana program is preferable to federal control.

Major Goals and Objectives: FY 1990-1991

In addition to the continuation of the tasks listed in the previous section, DHES has a number of major goals and objectives to be pursued over the next two years. The majority of these objectives are necessary to meet federal requirements in Montana.

1. PM-10 SIPs

As explained earlier, state implementation plans, or SIPs, must be developed for areas in Montana that are judged to be exceeding PM-10 ambient standards. These areas include Libby, Kalispell, Columbia Falls, Polson, Ronan, Missoula, Butte and Lame Deer. DHES, EPA, local and tribal governments, and members of the public are actively working on various stages of SIP development for these communities. We anticipate that the majority of the SIPs will be prepared and submitted for EPA approval during the 1990-91 biennium. Failure to prepare an adequate SIP or to implement the control strategies could result in EPA sanctions including construction bans on new sources, withholding air grants or preparing federal plans.

2. Carbon Monoxide SIPs

Montana also has a number of communities which have monitoring data which is out of compliance with carbon monoxide (CO) ambient standards. Great Falls, Missoula and Billings fall into this category and each requires a SIP or related activities over the next several years. DHES is working with local governments (county air agencies and transportation planners) to develop revised SIPs for Great Falls and Missoula. In Billings, monitoring data and emission inventory data are needed to determine whether the area is exceeding ambient CO standards.

3. East Helena Lead SIP

An SIP call was received from the EPA in October, 1988, which informed DHES that, despite some progress, the previous SIP (submitted

in 1983) did not succeed in bringing East Helena into compliance with federal and state ambient lead standards. EPA requires submittal of a revised SIP in one year that will demonstrate attainment of the lead standard. Again, DHES is working with local industries and local government to prepare and implement an acceptable plan. Because of recent EPA policy determinations, we anticipate that this project will be controversial and time-consuming.

4. Billings-Laurel Air Quality Technical Committee

As explained in the previous section, the Billings-Laurel Air Quality Technical Committee (BLAQTC) effort toward addressing Billings-Laurel SO_2 problems involves a significant commitment for DHES. Assuming that funding is available to continue DHES involvement, we anticipate continued work towards identification and implementation of strategies to reduce ambient SO_2 levels.

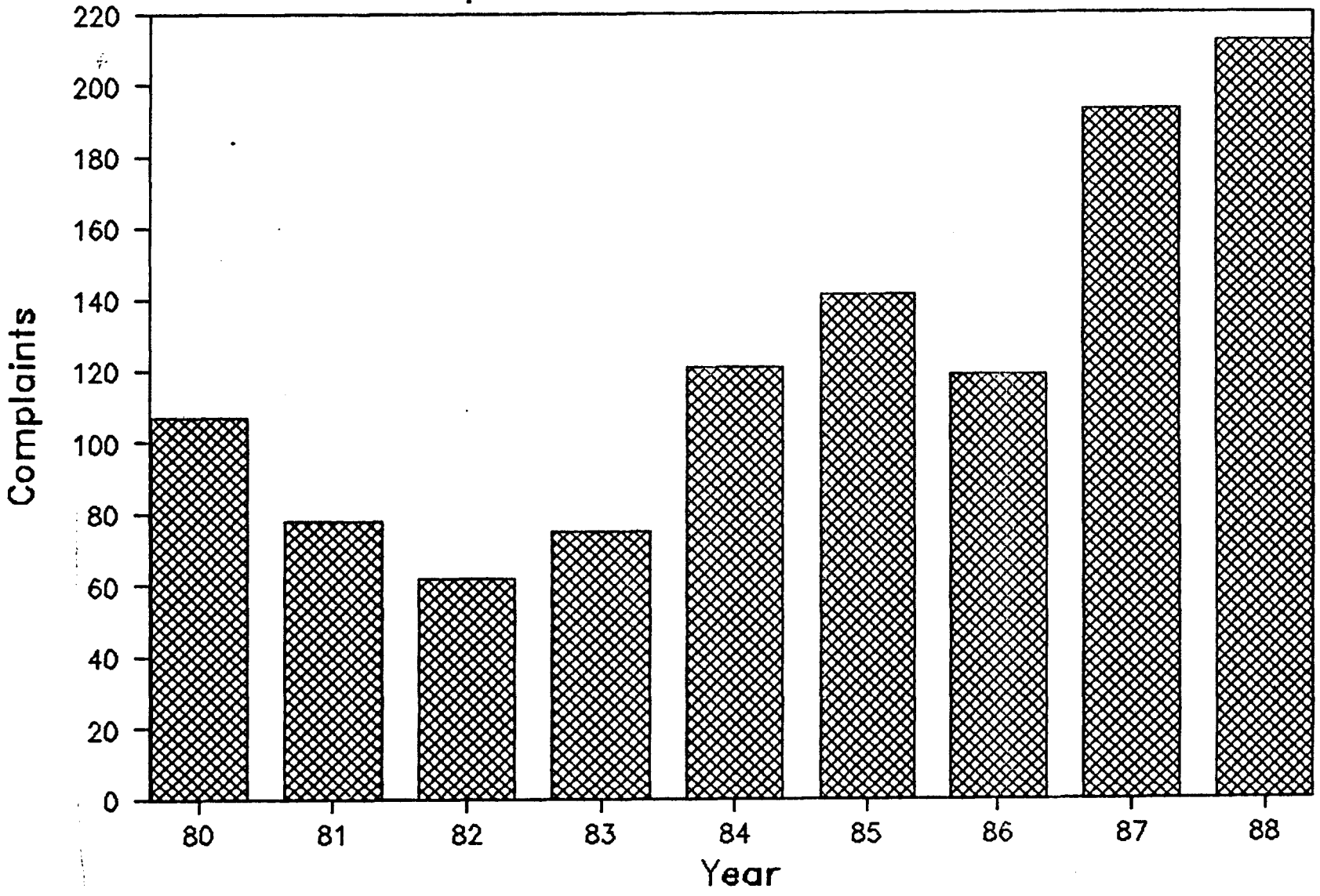
5. Montana's Compliance Program

Assuring that Montana's air quality sources are properly permitted and that they operate in compliance with applicable permit conditions and regulations will continue to be a priority activity for DHES. Stepped-up federal oversight in this area requires DHES to operate an effective permitting, inspection and enforcement program to prevent unilateral EPA compliance/enforcement actions. Emphasis will be placed on inspecting those sources contributing to ambient air problems and on achieving source compliance in an effective and reasonable manner. Furthermore, we want to maintain our responsiveness to public complaints to assure that local concerns are addressed.

DHES would be pleased to address any questions you may have on Montana's Air Quality Program.

AIR QUALITY BUREAU

Complaints Per Calendar Year



AIR QUALITY BUREAU

Permits Issued Per Calendar Year

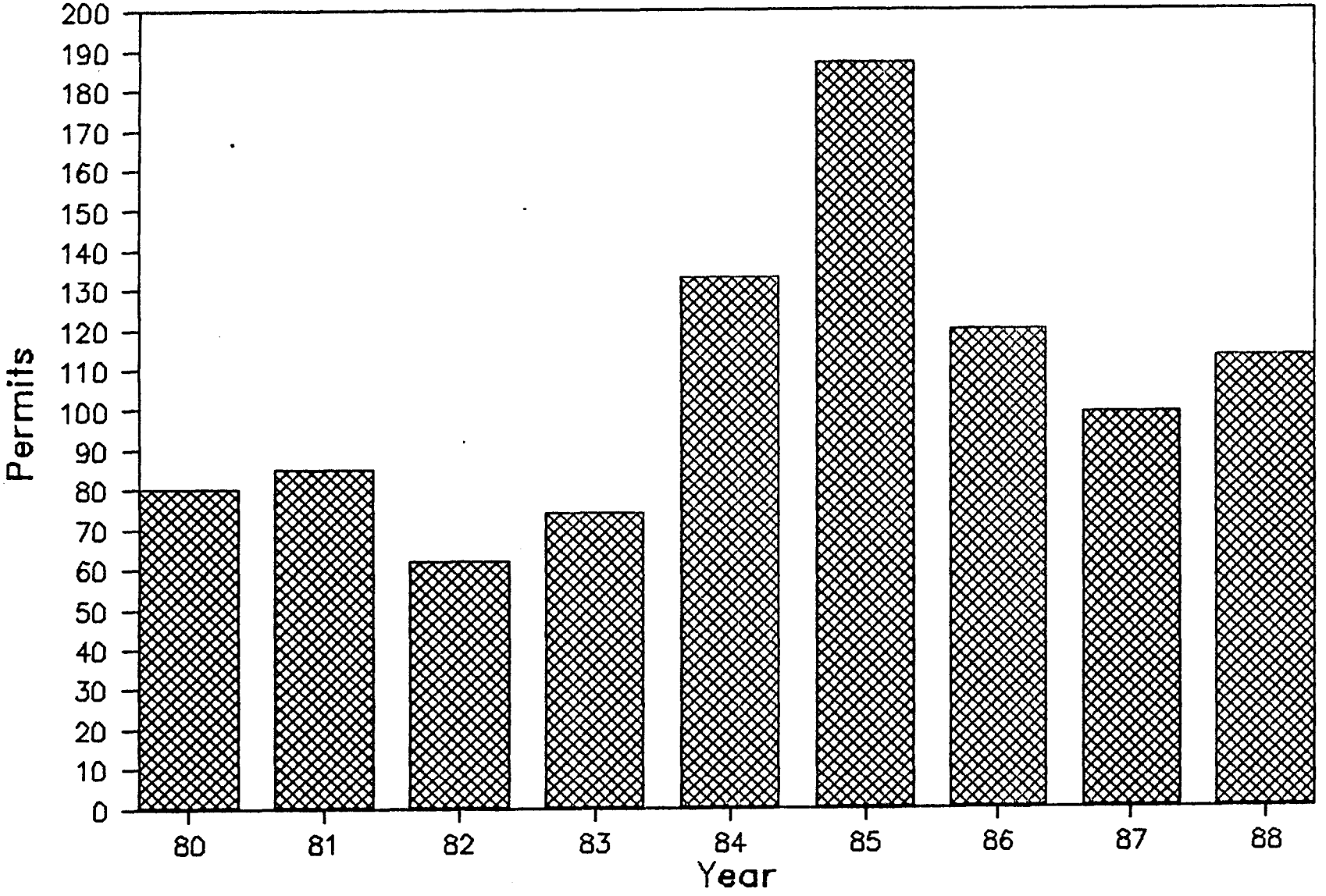


EXHIBIT 3
DATE 2-9-89
HB

OCCUPATIONAL HEALTH BUREAU

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Testimony before the Joint Appropriations Subcommittee on Human Services.

Presented by

Adrian C. Howe

The Occupational Health Bureau conducts two primary programs - Occupational Health and Radiological Health.

During the past few years there has been an ever increasing public demand for services provided by the bureau. The number of public requests for services has grown from approximately 120 per year to over 1500 per year during the past decade.(See Figure 1)

The bureau staff consists of the Bureau Chief who is a Health Physicist, a Health Physicist responsible for conducting the medical X-ray program, and an Industrial Hygienist who conducts the occupational health program, and a 0.5 FTE Administrative Assistant who provides secretarial support and assists with public information and data reduction and reporting.

The occupational health section is primarily response oriented. Of the complaints and requests received by the bureau, over 600 per year are handled by the occupational health section.

The primary goal of the occupational health section is to achieve and maintain such conditions in the workplace as will protect human health and safety.

To achieve this goal, potentially unhealthful workplaces are inspected to determine compliance with occupational health standards. Corrective action is initiated to eliminate unhealthful conditions when they are identified.

Because the occupational health section has essentially the only capabilities in the state for determining human exposure to toxic and irritating dusts, fumes, mold spores, mists, and gases, as well as asphyxiants, the bureau is frequently called upon to identify such exposures in areas other than work-

places.

The bureau is frequently called upon for emergency response assistance. When vehicles carrying hazardous materials are involved in accidents which result in spillage or potential loss of control, the Occupational Health Bureau is called upon to provide information regarding the toxicity of the material, necessary protective clothing, necessary respiratory protection, and proper clean-up and disposal procedures. When requested, occupational health personnel assist in the actual recovery and clean-up efforts for hazardous material spills.

The bureau routinely analyzes compressed breathing air supplies for carbon monoxide content. Essentially all local law enforcement agencies and fires departments using compressed breathing air participate in this program.

In addition, the occupational health section provides training and technical assistance to local health departments to assist in the development of better occupational health capabilities on the local level.

Radiological health activities in Montana were begun in 1963 with the initiation of a voluntary medical X-ray inspection program. Montana's first radiation control laws were enacted in 1967. The Radiation Control Program was staffed and state radiation control regulations were promulgated in 1969.

The goal of the radiological health program is to protect Montanans from exposure to ionizing radiation which may cause injury or cause health risks such as increased susceptibility to cancer. This program potentially effects virtualy every citizen of Montana. Ongoing programs designed to achieve this goal are:

A. Medical X-Ray Program

Currently the medical X-ray program is the primary emphasis of the radiation conrol program due to limited resources and the potential impact of the program on virtually all Montana citizens. Under the medical X-ray program all X-ray equipment in Montana is registered with the bureau. Presently 2,080 X-ray units are registered.(See Figure 2)

Through the medical X-ray program, all X-ray facilities and machines are periodically inspected for radiation safety. The calibration of each X-ray machine is also checked during the inspection. X-ray shielding is evaluated during the inspection to insure that individuals in surrounding areas (i.e. waiting rooms, reception areas, and examination rooms) are not unnecessarily exposed to X-radiation. Where necessary, facility personnel are instructed in radiation safety procedures and may also be assisted in the development of proper X-ray techniques. The emphasis on technique development is to reduce patient exposure to the lowest possible level and enhance the diagnostic quality of the radiograph to facilitate the best and earliest diagnosis.

Reports of each inspection are mailed to each facility inspected. Compliance actions are initiated where necessary.

Specific X-ray technique improvement programs are routinely conducted for the purpose of reducing patient and operator exposure to radiation and to improve the diagnostic quality of the films. Some examples of technique improvement programs the bureau is currently conducting are evaluations of CT scanners and mammography facilities.

There has been a proliferation of mammography facilities with the concern of breast cancer. In many instances these units are not set-up or calibrated properly and the techniques being used are improper for obtaining diagnostic quality radiographs capable of detecting breast cancer in an early stage. It is extremely important to inspect these units to insure proper set-up and calibration, that the facility is using the techniques which provide the very best diagnostics possible, and to insure that more breast cancers are not induced than are being detected.

There has also been an increase in CT scanners in the state in just the last two years. The bureau inspects CT Scanners with an emphasis on providing the facility with information on patient exposures for their unit and how that exposure compares to a national average. This information is important to the physicians in evaluating a risk-benefit ratio for determining the need for a CT examination. This information is also important to the facility in evaluating

the performance of their equipment and the possible need for repair or replacement.

B. Radiology Plan Evaluations

The plans for all new radiology facilities in hospitals and for most other offices are evaluated for radiation safety by the bureau. In all cases, minimum shielding requirements for each facility are calculated and provided to the individual requesting the service.

This plan evaluation programs assists in providing adequate protection at a minimum of cost and assures that the facility will be in compliance with Montana radiation control rules when inspected.

C. Emergency Response

The bureau assumes the lead role in responding to all incidents involving radiological emergencies or loss of control of radioactive materials.

During the past years there have been, on the average, two to four radiological incidents per year in which the radiological health section has assumed the lead role in protecting public health, safety, and property until control of the hazard was gained.

D. Environmental Surveillance

The radiological health section conducts limited activities pertaining to environmental radiation surveillance. During periods of atmospheric nuclear testing or incidents such as the Chernobyl incident, milk samples, air samples and precipitation samples are collected to be sent to an outside laboratory and measured for radioactivity on a daily basis.

Drinking water supplies in the Helena area have been analyzed for radioactivity. Numerous private water supplies containing radioactivity in excess of

the standards for public drinking water supplies have been located.

E. Radon

The radiological health section provides information and limited assistance to concerned individuals pertaining to radon. Due to limited staff time, activities pertaining to radon are limited to providing information when requested.

Radon in homes has been evaluated and identified in Butte and Helena with some potentially severe health impacts. Some limited testing for radon has been done in other parts of the state indicating a potential for radon health impacts in other parts of the state. There has not been any state money for radon programs since 1979 and no federal moneys available to the state for radon programs since 1983. The U.S. EPA has provided a limited number of charcoal canisters to the state for the evaluation of radon in the Helena area.

The bureau has done some limited radon mitigation research to establish generic procedures that homeowners may undertake to reduce radon concentrations in their homes. Much of this research was done on the personal time of the bureau personnel due to the lack of funds or resources available for radon research or programs.

Modified Request

The modified request is for a proposal to accredit asbestos consultants, management planners, contractors, supervisors, workers, and asbestos training courses. This program would include the issuance of permits for asbestos projects. This program is intended to insure that personnel working with asbestos are trained sufficiently to reduce deleterious health effects to themselves and building occupants.

Public Law 99-519 "Asbestos Hazard Emergency Response Act of 1986" (AHERA) requires the state to adopt a contractor accreditation plan at least as stringent as the model plan developed by the U.S. EPA within 180 day after the commencement of the first regular session of the legislature following the completion of the model plan by EPA. The "model plan" was published by EPA on

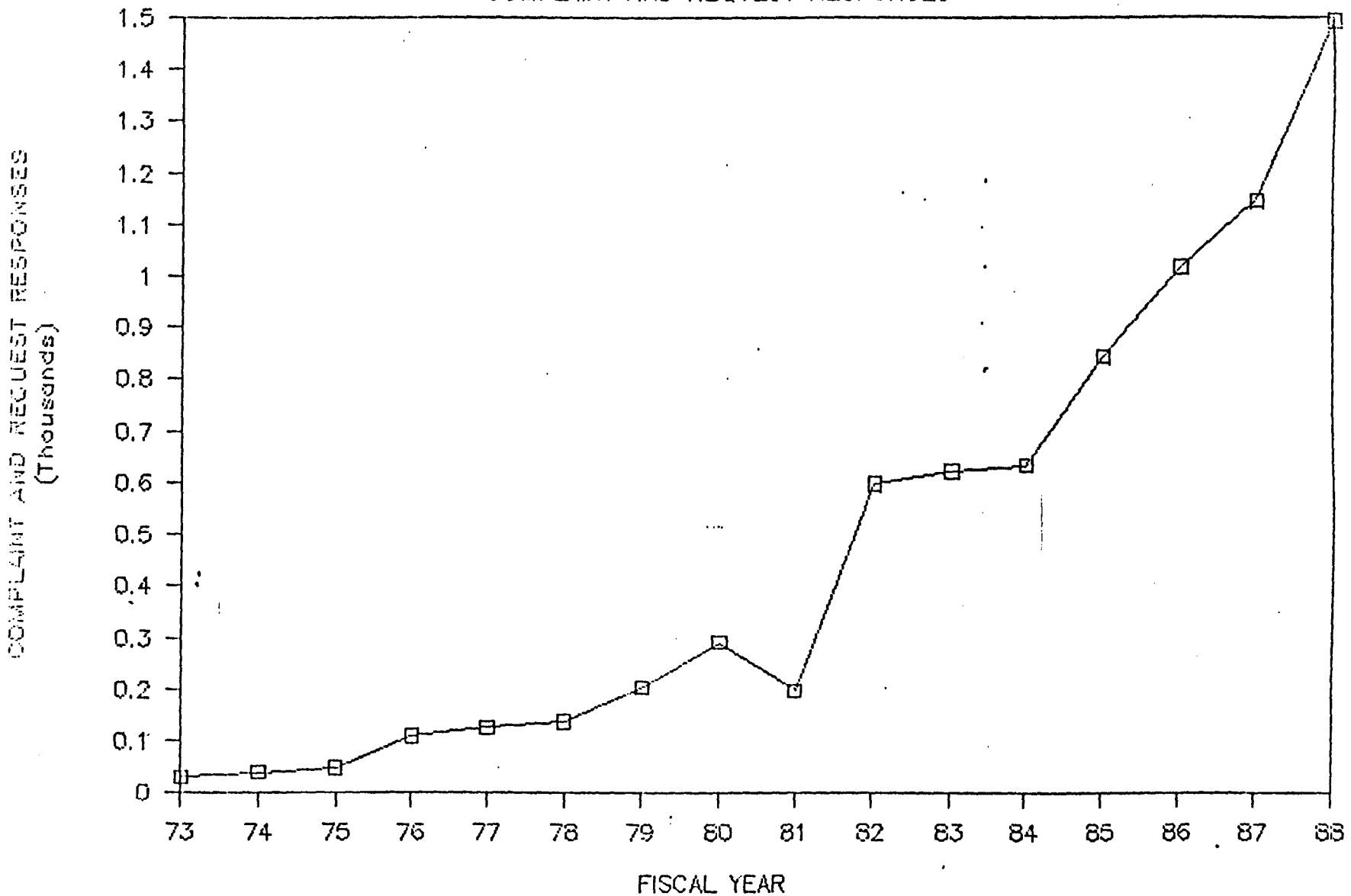
October 10, 1987.

This proposal is to be self supporting by collection of accreditation fees and asbestos project fees. For stable funding of the program, funding shall be from the Resource Indemnity Trust Fund. All fees collected shall be deposited in the RIT Fund. All fees shall be periodically evaluated and adjusted to reflect the actual cost of the program.

The modified request is for support of 1 FTE which will be a technical person to operate the program and for 0.5 FTE which will be secretarial support. The bureau is currently struggling in the area of secretarial support with the 0.5 FTE alloted to the bureau. This program will need the additional 0.5 FTE secretarial support to handle the increased workload anticipated to deal with accreditation applications and asbestos project permits.

OCCUPATIONAL HEALTH BUREAU

COMPLAINT AND REQUEST RESPONSES



(Figure 2)

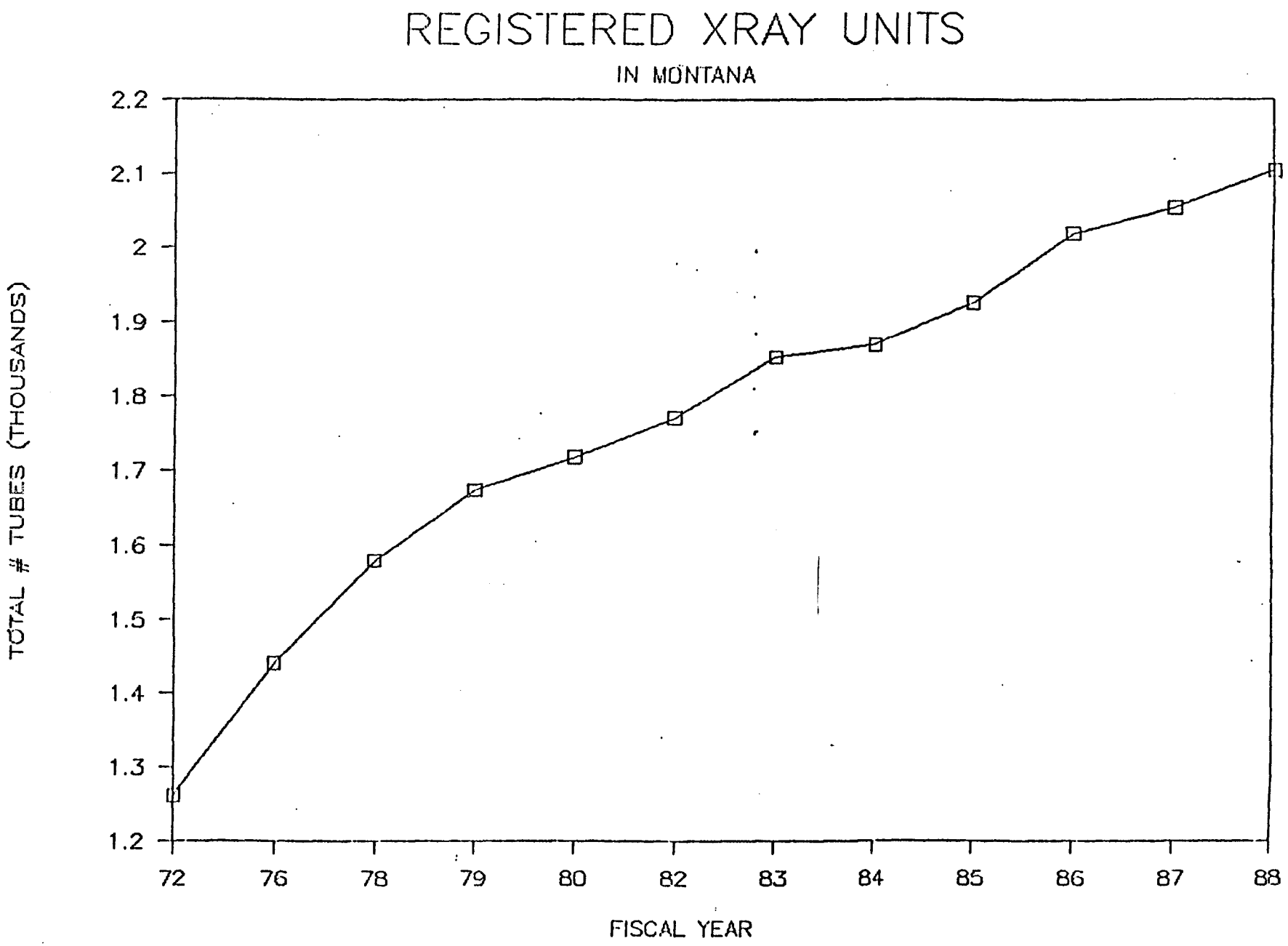

REGISTERED XRAY UNITS
IN MONTANA
TOTAL # TUBES (THOUSANDS)
2.2
2.1
2
1.9
1.8
1.7
1.6
1.5
1.4
1.3
1.2
72
76
78
79
80
82
83
84
85
86
87
88
FISCAL YEAR

EXHIBIT 1
DATE 2-9-89
HB

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

STAN STEPHENS, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

FOOD AND CONSUMER SAFETY BUREAU

The Food and Consumer Safety Bureau has a staff of eight consisting of seven professionals and one licensing and certification specialist. One of the professionals is stationed in the Billings regional office and provides service to eastern Montana.

The Bureau has a wide range of program responsibilities and maintains a close working relationship with local public health department environmental health staff and several state and federal agencies.

The Bureau is charged with the administration of 14 laws which includes the Food, Drug and Cosmetic Act, food purveyor establishments, public accommodations, trailer courts and campgrounds, swimming pools, mosquito and other vector control, schools, the Montana Indoor Clean Air Act, non-medical institutions, jails, pesticide control, septic tank and privy cleaners, public health nuisances, and general state and local health laws.

The Bureau is responsible for 15 administrative rules promulgated to carry out the intent of the cited laws. These rules are under continuous review to assure that only those rules that are necessary are kept in force. A 'unicode' is currently being considered which would apply to all categories of food purveyor. Four separate rules are currently in effect and, although generally similar, do cause some confusion within the food industry.

The Bureau is the primary provider of initial training, continuing education, field training, program evaluation, and continuing general and technical consultation to 65 sanitarians employed by 37 local health agencies that serve all Montana counties and to industry, state, and federal agency sanitarians.

Special support services includes two formal continuing educational conferences and at least two regional meetings held at five locations across the state each year.

Priority is given to the initial training provided new local sanitarians. To assure accuracy, consistency and competency on the job, one-on-one training is provided. Attachment "A" illustrates this activity.

Field visits to each local public health jurisdiction by each Bureau program manager is a major activity. These contacts are necessary for program evaluation to assure program accuracy, effectiveness, and efficiency and to determine if adequate public health protection is being provided.

The licensure of food purveyors, public accommodations and trailer courts/campgrounds is a yearly function. License year 1988 saw 7,556 establishments licensed. Attachment "B" indicates the history of this activity. The recent decline is attributable to the 1987 legislatures' amendment of the food purveyor license law which removed establishments operated by non-profit organizations from the license requirement.

The Bureau administers the Local Board Inspection Fund Account which returns a legislatively mandated 85% of all license fees to those local health agencies that deliver inspection services and generally assist is carrying out the provisions of the applicable laws and rules. In FY88, $198,000.00 was returned.

Vector control assistance, including efforts toward the biological control of mosquitos, is provided to local mosquito control districts, local health agencies, and the general public. All insect and animal disease vector problems are handled. Activities are checked to assure that there is no duplication of other agencies' efforts.

As you can see, the Food and Consumer Safety Bureau is not a single program bureau and the several programs administered are fundamental environmental health protection areas that impact all Montana citizens and the visitors to the state.

I would welcome the opportunity to answer any questions you might have.

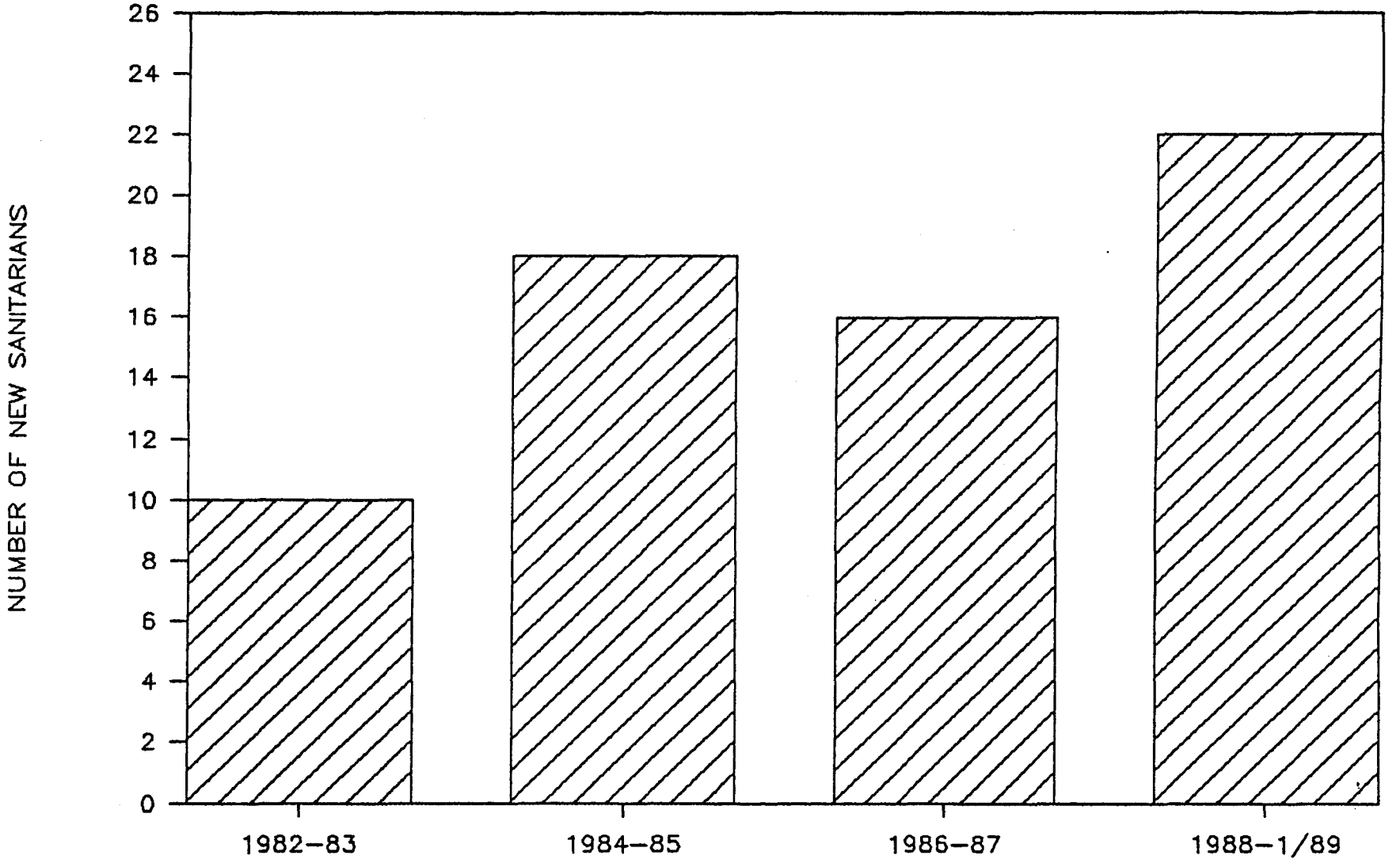
Thank you.

Prepared by:

James M. Peterson, Chief
Food and Consumer Safety Bureau
Room A-104 Cogswell Building
444-2408 January, 1989

NEW SANITARIAN TRAINING

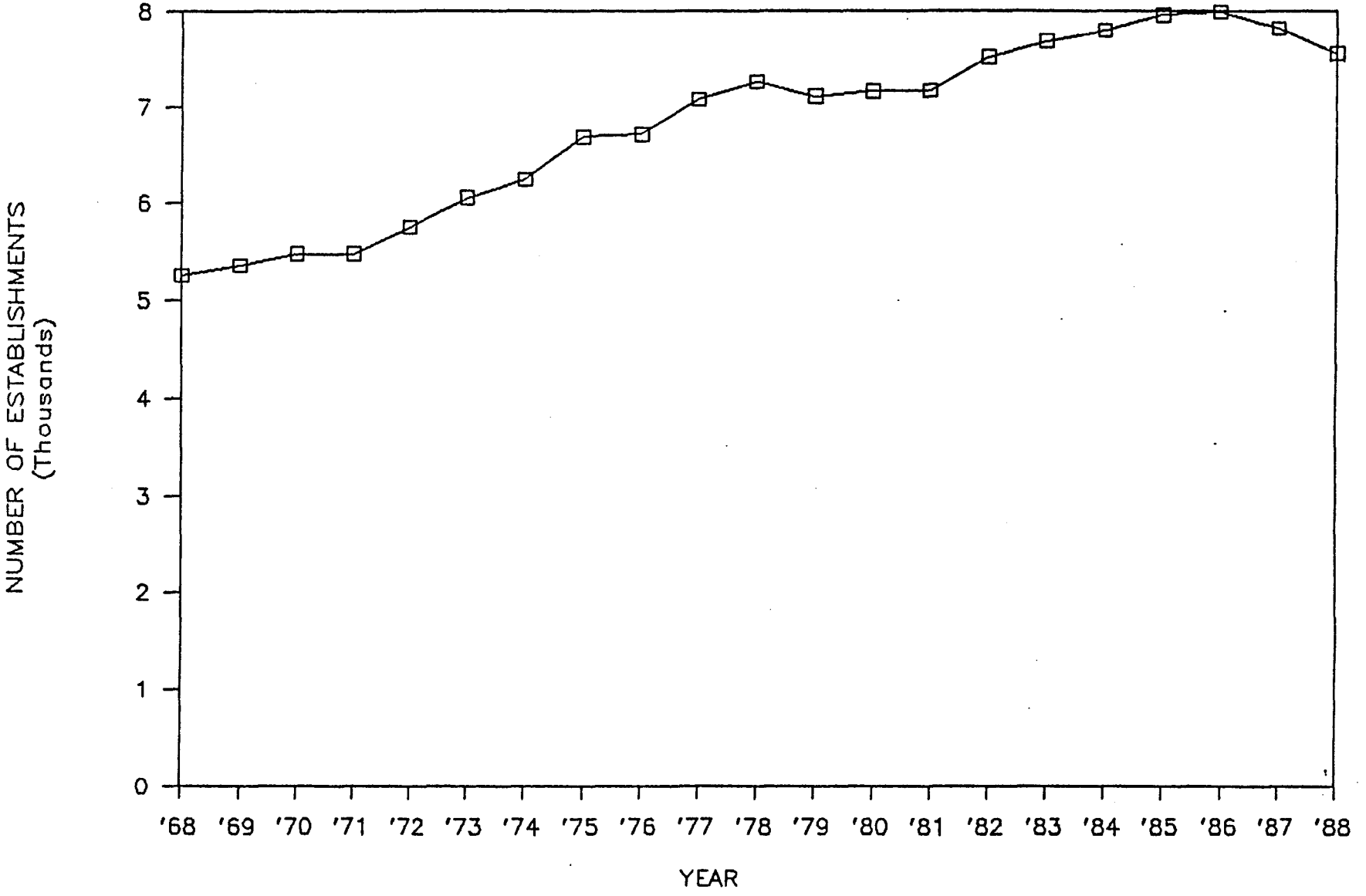
NEW SANITARIANS TRAINED PER BIENNIUM



SOURCE: FOOD AND CONSUMER SAFETY BUREAU

ATTACHMENT A

LICENSE PROGRAM TOTALS



ATTACHMENT B

LICENSE PROGRAM

YEAR	TRAILERCOURTS CAMPGROUNDS	PUBLIC ACCOMMODATIONS	FOOD PURVEYORS	TOTALS
1968	760	1000	3500	5260
1969	773	999	3590	5362
1970	825	1004	3654	5483
1971	903	981	3598	5482
1972	1036	986	3742	5764
1973	1160	1048	3852	6060
1974	1193	1025	4025	6243
1975	1315	1051	4321	6687
1976	1330	1012	4371	6713
1977	1410	1041	4628	7079
1978	1468	1012	4772	7252
1979	1460	970	4676	7106
1980	1507	947	4706	7160
1981	1493	913	4759	7165
1982	1476	932	5107	7515
1983	1482	916	5282	7680
1984	1461	919	5412	7792
1985	1458	915	5581	7954
1986	1451	910	5619	7980
1987	1430	899	5487	7816
1988	1400	869	5287	7556

**REDUCTION IN 1987 LICENSES DUE TO THE REMOVAL OF NONPROFIT ORGANIZATIONS FROM THE LICENSE REQUIREMENTS. LAW CHANGED BY THE 1987 LEGISLATURE.

EXHIBIT 5
DATE 2-9-89
HB

SOLID AND HAZARDOUS WASTE PROGRAM DESCRIPTION
FY 90-91

The Solid and Hazardous Waste Bureau administers five programs to protect public health and the environment in Montana. 40.5 employees are presently included in the Bureau's Solid Waste, Hazardous Waste, Underground Storage Tank, Superfund, and Junk Vehicle programs.

CURRENT LEVEL

Solid Waste Management Program

The Solid Waste Program is responsible for licensing, technical assistance, inspection, and enforcement for approximately 225 municipal, county, and private solid waste management systems located throughout the state. The program also provides technical assistance on related activities such as recycling and special waste management, including infectious waste, asbestos waste, etc.

Staffing in this program has been reduced from approximately 5 FTEs in the early 1980s, in part due to a loss of federal funding for solid waste management. Levels of service in the program have necessarily been reduced as well, despite the fact that program demands have increased as solid waste technology has become more of an important issue. Currently, it is felt that the program is understaffed to the point that major unchecked environmental damage may be occurring at landfill sites throughout the state.

Currently 2.09 FTEs are allocated to this program, with 1.5 of these available for field activities.

The Executive budget for FY90 is $116,681 and for FY91 is $114,578.

Junk Vehicle Program

The Junk Vehicle Program is the only statewide resource recovery program in Montana. Between 7000 and 8000 junk vehicles per year are being crushed and transported to foundries to be made into new steel products. Over 120,000 tons have been recycled since the beginning of the program in 1974. It is considered to be the finest statewide junk vehicle program in the United States, and requests are continually received from other states for information about the program. County and city governments are very supportive because adequate funds are provided to them to handle the junk vehicle problems in their areas. The fees to the citizens of Montana are currently $1.50 for a vehicle title transfer and $.50 each time a car is re-registered.

Presently, 4.59 employees are working in the program to take care of licensing 240 private wrecking yards and 56 county motor vehicle graveyards; answer complaint calls; provide technical assistance to counties, cities, and private citizens; let bids for crushing contracts; inspect county and private wrecking facilities; and enforce the provisions of the act and administrative rules. The Junk Vehicle Program is funded from a special earmarked revenue account that was established for that purpose. The fees have been reduced to the point where the program expenses exceed the income. A bill has been introduced into this Legislative session to increase the license re-registration fee from $.50 to $1.10. This increase would realign the program's revenue with expenditures. The program budget for FY90 is $1,041,399 and for FY91 is $1,057,992.

Hazardous Waste Management Program

The Resource Conservation and Recovery Act of 1976 instituted a national program to control hazardous wastes. The 47th Montana Legislature passed the current "Montana Hazardous Waste Act" which authorized the establishment of a state hazardous waste management program. Because of growing concerns nationally over the proper management of hazardous wastes, the U.S. Congress amended the Resource Conservation and Recovery Act in 1984, strengthening and expanding the scope of the federal hazardous waste program. The full effects of these 1984 amendments have not yet been felt. It is anticipated that up to 500 Montana waste generators and handlers may ultimately be regulated under the hazardous waste program as further regulatory changes are implemented.

To meet the needs of the program, the Bureau maintains a current level staff of 8.82 FTEs. Staff duties include: review of the waste manifest information and related records; review and processing of facility permit applications; inspections and sampling; preparation of enforcement actions; and reporting. Program staff provide extensive technical assistance to regulated businesses in the proper handling and disposal of hazardous wastes and in waste minimization techniques. The bureau also maintains an active role in the state emergency response team which coordinates and assists in the containment and cleanup of hazardous material spills.

The hazardous waste program is funded 75% federally and 25% by the state. The 25% state funding is provided from the RIT Interest Account. For the state to maintain the current level hazardous waste program in the 1991 biennium the following budget has been requested:

	FY90	FY91
Federal Funds	$ 323,615	$ 313,110
RIT Funds (25% State match)	107,872	104,370
RIT Funds (DMA Training	12,000	12,000
TOTAL	$ 443,487	$ 429,480

Underground Storage Tank Program

The UST leak prevention regulatory portion of the tank program is the foundation for the development and implementation of requirements designed to upgrade tank quality and prevent leaks by owners. The UST leak prevention program currently maintains a staff of 4.5 FTEs. The executive budget requests the same over the next biennium. Tasks include providing technical assistance and training to tank owners in the areas of leak detection technologies, new tank design standards, installation and removal procedures and methods to comply with recently finalized federal EPA tank leak prevention regulations. Program staff have identified over 18,000 USTs at more than 9000 locations in Montana. Future efforts involve implementing these new federal regulations until state rules are adopted and providing information to tank owners regarding compliance strategies for leak prevention and detection.

The UST regulatory program is funded with a 75% federal EPA and 25% state RIT matching grant. For FY90, the executive budget has requested $52,808 in RIT funds to match $158,423 in federal funds and in FY91 $53,030 is requested to match $159,088. However, EPA has estimated that a minimum of $162,500 will be available to Montana. Similarly, LUST Trust fund appropriations by Congress and regional allocations by EPA are only estimated values and are likely to exceed those shown in the budget request. DHES requests Legislative spending authority to apply for and obtain available federal dollars and the required 25% state RIT matching funds over the next biennium for this important program.

MODIFIED LEVEL

Hazardous Waste Program

House Bill 6, passed in 1987, directed the department to focus effort on 1) hazardous waste minimization; 2) the level of hazardous waste services offered by commercial hazardous waste management companies; and 3) small hazardous waste generators in eastern Montana. The first two were addressed through a contract with an experienced consulting firm, and the last through the addition of one staff inspector in the department's Billings office. Late in 1988 the department, through the budget amendment process, received approval to add one staff position for its hazardous waste facility permitting program element. This addition was allowed by an increased level of federal grant funding. This position has now been filled, and the agency's modified budget requests funding for both the Billings office inspector position and the Helena office permitting position as program additions for the 1991 biennium.

These two staff positions will allow the hazardous waste program to continue its focus on the waste minimization efforts of hazardous waste generators, to maintain a realistic inspection/regulatory presence in the eastern part of the state, and to accommodate the growing workload in facility permitting and facility site remediation. This staffing increase is necessary for maintaining the state's program authorization agreement with the U.S. EPA and allows the program to fully utilize available federal grant funds.

Funding for the hazardous waste/waste minimization (1 FTE and contract $) in FY88 was 100% HB6 funds. In FY89, HB6 funds are being utilized as matching dollars for federal grant funds on a 25%/75% basis. In the 1991 biennium, the RIT Interest Account funds allocated to DHES will be utilized to match federal grant funds as follows:

	FY90	FY91
Federal Funds (75%)	$ 70,780	$ 67,387
RIT Funds (25%)	23,592	22,463
TOTAL	$ 94,372	$ 89,850

Underground Storage Tank Program (LUST Trust)

The Underground Storage Tank Program is designed to address the environmental health and public safety problems that occur when underground fuel or chemical tanks leak.

Incidents of groundwater contamination and/or flammable vapor migration are reported to the department on a weekly basis. People have been displaced from homes and businesses, and water supplies have had to be replaced. The tank program has developed two program capabilities to address these problems: the LUST Trust Fund leak response and the UST leak prevention regulatory response.

The Trust Fund leak response portion of the tank program is EPA funded through a federal gas tax. These funds are used by states under federal guidelines to investigate and remediate tank leaks when the responsible party cannot be identified, when the responsible party will not act or respond quickly in an emergency situation, or when the responsible party is insolvent. The LUST Trust Fund is not a cleanup fund to benefit tank owners. It is a public response fund to protect the public and minimize damage to the environment. Under state and federal law, the responsible party is liable for all Trust Fund response costs incurred by the Department.

For the next biennium the department has requested $68,848 in state RIT funds to match an estimated $619,634 in federal EPA funds for FY90 and $78,962 to match $710,658 in EPA funds for FY91. Grant awards made after January 24, 1989 will require a 10% state match. The RIT account has been legislatively established as the source of state matching funds. The Trust Fund program proposes to continue its current FY89 modified budget staffing level of 4.5 FTEs into FY90 and add a third field hydrologist in FY91 for a total of 5.5 FTEs. A majority of the funds are budgeted for remedial action contracted services.

CERCLA (Superfund) Program

The Montana "Superfund Act" and its companion federal "Comprehensive Environmental Response, Compensation and Liabilities Act" address cleanup at sites contaminated by hazardous substances. The federal Superfund law was reauthorized in November 1986 and funded at $8.5 billion over five years. Our best estimate is that up to $25 million in FY90 and $50 million in FY91 will be spent in Montana by all parties on investigation and cleanup. EPA estimates cleanup costs may be as high as $100 million/year.

Under the Superfund program the state shares the work and responsibility with the federal government to address the problems. State program staff are assigned to specific sites as project managers and are responsible for supervision and management of all site work. Duties include data gathering, responsible party identification, cost/benefit analysis, contract management, scientific analysis, and conducting public participation activities.

If a site scores high enough for the National Priority List, investigation and cleanup of the site may be financed from the "Superfund". Either the state or EPA may use these funds for this purpose. However, if a private party responsible for the problem can be identified and is financially capable, then every effort is made to induce this party to either conduct the work or finance the effort.

The density of the population surrounding a site is a significant factor in scoring for the National Priority List. As a result, some sites in Montana with significant problems do not make the list. State resources are then required for cleanup or to induce responsible party reaction. Mini-Superfund is used for the non-NPL sites.

There are nine sites which are currently on the National Priority List. These sites are located at Milltown, Anaconda, Butte-Silver Bow, Libby, Somers, East Helena, Bozeman, and Columbus. Additionally, a site in Billings has been proposed for listing on the National Priority List. To date, over 160 sites throughout Montana have been identified as being possibly contaminated with hazardous substances. These sites may pose

public health and environmental threats. There is an ongoing program to investigate these sites to determine if they belong on the National Priority List. Up to 20 sites will be investigated in the next biennium.

The fluctuating scope of the Superfund program and the site specific accounting make it impossible to present a representative base year budget. Instead, a work-effort forecast is used to distribute the budget for the program's 14 FTEs between the "CORE" and site specific cooperative agreements with EPA. The CORE cooperative agreement provides funds for state program development, training, and management. A 5% state match is required for the CORE agreement. 5.5 FTEs are estimated for CORE activities. The remaining 8.5 FTEs are site specifically budgeted. For site specific activities, investigative work is 100% federally funded. Cleanup activities are generally 90% federally funded. After the first 10 years, operations and maintenance costs are totally the state's responsibility. If a private responsible party can be identified then state and federal response costs including legal fees are cost recoverable.

The 1987 Legislature passed a bill to set up a CERCLA/Superfund account. Money will go into the account from several sources including: a separate 12% allocation from the RIT, any unspent money remaining from the existing DHES allotment, proceeds from bond sales authorized by the bill, interest on the account itself, and any penalties and damage settlements. As a result the state should be able to fund future projects and to pay for any necessary operation and maintenance costs.

The Superfund program (excluding Mini-Superfund) is currently budgeted at $2,449,992 in each year of the biennium. The Executive budget is in the process of being increased to $6,000,000 for each fiscal year of the biennium to address the Superfund program budget needs. Of the total budgets, $12,355 is forecast for the state match requirements in each of the two fiscal years. Appropriated RIT funds will provide this match.

Mini-Superfund Program (Initiate Cleanup)

The 1985 Montana Legislature passed the Environmental Quality Protection Fund Act, commonly called the Mini-Superfund Law. This law created a legal mechanism for the Montana Department of Health and Environmental Sciences (MDHES) to investigate and clean up, or require responsible parties to investigate and clean up, all hazardous waste sites in Montana not on the federal Superfund National Priority List (NPL). There are approximately 160 hazardous waste sites in Montana not on the NPL.

The 1987 Montana Legislature passed a bill creating a delayed funding mechanism for the MDHES Mini-Superfund program that appropriates 4% of the Resource Indemnity Trust (RIT) interest monies each biennium for the program. Funding by the 4% interest will begin July 1, 1989. In the last biennium, DHES used a ranking system based on potential health and environmental impacts to prioritize the sites for Mini-Superfund program activity. In the next biennium, the program will concentrate its activity on the high priority sites. Program activity will include site investigations, responsible party research, and legal action necessary to force responsible party cleanup or to cost recover when the state funds pay for cleanup.

MDHES requested 1.5 FTE for the Mini-Superfund program in the next biennium: 1 technical person (already on staff) to administer the program, .25 lawyer to pursue responsible party cleanup, and .25 clerical staff. The majority of the sites have responsible parties; consequently, legal negotiations and orders will be required to clean up those sites.

The Mini-Superfund program budget for FY90 is $225,956, and for FY91 is $258,062.

2-9-89
Exhibit 6

LEGISLATIVE ISSUES IN HAZARDOUS MATERIALS MANAGEMENT

Environmental Quality Council

January 1989

INTRODUCTION

Over the past decade, the American public has grown increasingly concerned about the effects of hazardous substances on human health and the environment. Dozens of state and federal programs have been initiated to regulate the use, storage, transport, disposal and cleanup of hazardous substances, and these programs are grounded in a relatively new, rapidly evolving and extremely complex body of natural resource law.

Development of Montana programs has largely kept pace with national initiatives. However, the 1989 Legislature will be asked to consider legislation on a range of hazardous substance issues. Some proposals involve the fine-tuning of state programs to conform to new federal requirements, others relate to the allocation of resources to specific programs, while still others call for substantive policy decisions.

This report highlights the status and legislative outlook for five major programs dealing with the management of hazardous substances in Montana: small-quantity hazardous waste generators; regulation of underground storage tanks; mini-Superfund; regulation of landfills and infectious waste disposal; and natural resource damage claims/hazardous waste site enforcement actions.

These topics reflect subjects of intense past legislative interest and/or anticipated future lawmaking activity.

For additional background information, the reader is referred to a report prepared by the Environmental Quality Council for the 50th Montana Legislature (EQC 1987).

SMALL-QUANTITY HAZARDOUS WASTE GENERATORS

The Montana Hazardous Waste Act, administered by the Solid and Hazardous Waste Bureau of the Department of Health and Environmental Sciences, regulates the treatment, storage, transport, and disposal of hazardous wastes generated by state industries. The 1987 Legislature passed several minor amendments to the act, but the overall program direction remained unchanged and virtually identical to federal requirements.

An important issue during the 1987 legislative session was the question of whether the State should provide services for

businesses generating small quantities of hazardous waste. The 1985 Legislature had authorized the expenditure of $800,000 of Resource Indemnity Trust Fund interest earnings to establish a hazardous waste collection and transfer system, pending the findings of a report commissioned by the Department of Health and Environmental Sciences.

In late 1986 the contractors retained by DHES released their report recommending the establishment of a state-owned, privately operated system to collect hazardous wastes and ship them to licensed out-of-state commercial disposal facilities. As proposed, Montana businesses would be charged for the service, but state financial support would help keep down costs and thus encourage small businesses to comply with the stringent new waste disposal laws.

With the concurrence of the Schwinden Administration, the 1987 Legislature did not endorse the contractors' recommendations to develop a state collection and transfer facility. Instead, $212,000 of the previously allocated RIT funds was appropriated for a three-pronged effort to gather more information about the quantities of hazardous wastes produced by Montana small businesses; to determine the availability of commercial waste disposal services for these businesses; and to provide technical assistance to institute "waste minimization" programs in specific industries.

Waste Minimization Project

A report on these efforts, titled the "Montana Waste Minimization Project for Small Quantity Generators", was completed in September 1988 by Science Applications International Corporation (SAIC). In compiling the report, SAIC conducted detailed on-site audits of 114 small Montana businesses that generate hazardous wastes. These businesses fell into eight categories: laundries and dry cleaners, laboratories, printers, photographic services, metal finishing and fabrication, vehicle maintenance, pesticide applicators, and wood treaters. SAIC also interviewed companies that provide hazardous waste disposal services in Montana.

Among the report findings are the following:

* Most hazardous waste generators in Montana do not indicate a need or desire for hazardous waste management services beyond those already available. This finding is attributed to the fact that the large majority of these businesses produce such limited quantities of waste (less than 220 pounds per month) that they are classified as "conditionally exempt" and are thus not subject to most regulations.

* Seventeen companies provide commercial hazardous waste disposal services to Montana businesses, although only one (Special Resource Management west of Butte) has in-state

offices. Companies indicated they would provide hazardous waste services anywhere in the state if transportation costs could be covered.

* Hazardous wastes generated by small businesses are disposed of by the following methods: disposal in local landfills or through on-site burning and burial; discharge to community sewer or to on-site septic tank drainfields; transport off-site by regulated transporters; or recycling by on-site redistillation (used for many solvents). The legal disposal of small quantities of hazardous waste in local landfills is a potential problem, but its magnitude is not yet well defined.

* The most common method of solvent disposal is mixture with waste oils, with subsequent usage for heating fuel, oil recycling or, in some cases, road oiling. For spent solvents that are classified as hazardous wastes (as many are), these disposal methods may constitute violations of hazardous waste laws.

Based on these findings, SAIC cited a two-fold problem in Montana. First, the many conditionally exempt generators may not be aware of the need for or desirability of waste management services. Second, high transportation costs may make service to certain areas of the state unprofitable. In consideration of these factors and other report findings, SAIC recommended that:

* The Department of Health and Environmental Sciences (DHES) should not attempt to provide hazardous waste management services to Montana small businesses. Generator needs are too diverse and transportation considerations would make a single collection and transfer station ineffective.

* DHES should continue to educate small businesses on waste minimization techniques specific to their industries.

* DHES should provide all small-quantity generators with information on hazardous waste service companies active in Montana.

* Additional efforts are required to prevent the improper disposal of waste oil/solvent mixtures. Testing of waste oils should be required prior to pick-up by oil recyclers and solvent users should be informed about recycling options, including the opportunities for shared use of distillation equipment.

* The ongoing use of septic tank haulers for the disposal of "hot tank" wastes (metal-laden sludges from radiator repair shops) should be investigated, both in terms of volume handled and the environmental consequences of this virtually unregulated means of disposal.

Legislative Outlook

The Department of Health and Environmental Sciences intends to emphasize education and technical assistance to encourage Montana's small-quantity generators to further minimize their production of hazardous wastes and to dispose of wastes properly. These efforts will continue to be backed up by the regulatory structure in place under the Montana Hazardous Waste Act, and additional attention will be given to addressing the problems cited in the SAIC report.

The department has drafted legislation to amend the Montana Hazardous Waste Act to conform to 1984 amendments to the federal hazardous waste management law. The legislation would authorize DHES to order violators to cleanup off-site pollution and would allow the department to take legal action against persons who contributed to hazardous waste contamination through past illegal disposal practices.

REGULATION OF UNDERGROUND STORAGE TANKS

Regulation of underground tanks that store petroleum products and hazardous chemicals began in 1984 on the federal level and in 1985 on the state level (with the passage of House Bill 676). These laws were enacted in response to a national environmental crisis, characterized by thousands of damaged and corroded tanks leaking petroleum products and other hazardous substances into groundwater aquifers.

In recent years, the Montana Department of Health and Environmental Sciences has received scores of reports of leaking underground storage tanks, including 44 reports in the past year alone. Incidents have occurred in every major city and many smaller communities. The leaks range in magnitude from a few hundred gallons to several hundred thousand gallons, with the largest volumes generally related to railroad refueling operations. The effects have been contaminated water wells (including some drinking water supplies), hazardous vapors in homes and businesses, contaminated soil, and polluted groundwater aquifers. In most cases the leaks have been discovered and reported by persons suffering adverse effects, not by tank owners.

UST Regulations

In September 1988, the U.S. Environmental Protection Agency adopted minimum nationwide UST regulations. To detect possible leaks, tank owners must monitor fuel supplies monthly and periodically test their tanks for leaks, or conduct monthly environmental monitoring. These leak detection requirements are phased in over the next five years. Tanks over 25 years old must have leak detection in place by December 1989. Any leaks or spills must be reported immediately. New tanks must be constructed of fiberglass, fiberglass-clad steel, or steel that

is coated and "cathodically protected" against corrosion; existing bare steel tanks must be lined or provided with cathodic protection within 10 years. In addition, all tank owners must be insured for a minimum of $500,000 for spill cleanup and liability.

Montana program officials are now considering the appropriate direction for state UST rules which, under federal law, must be at least as stringent as EPA's. (If a state does not enact and enforce adequate UST regulations, EPA will administer and enforce a federal program within that state.) The Montana program will thus include requirements for leak detection, corrosion protection for new and existing tanks, and financial assurance.

Montana has the option to follow the lead of several other states and enact more stringent regulations than EPA on some specific points. Massachusetts and California, for example, require all new tank installations to include "secondary containment", which in most cases means double-walled tanks. Montana also has options for developing regulations for farm fuel and heating oil tanks with capacities under 1,100 gallons. These tanks are regulated under Montana law, but are currently exempt from the federal UST program; thus there are no applicable minimum federal requirements for this class of tanks.

Montana Situation

The initial focus of the underground storage tank (UST) program was mandatory tank registration, which began in 1986. Montanans have registered more than 18,000 tanks (out of an estimated 30,000 in the state), providing DHES with a detailed picture of the "tank population" in Montana. Most of the tanks are constructed of bare steel; tank capacity averages about 5,000 gallons; and more than 90 percent of the tanks are used to hold petroleum products. The average tank has been in the ground for 15 years, an age at which corrosion and leakage are considered likely to occur.

Recent incidents in Dillon and Cutbank illustrate the level of effort that can be required to address tank leaks and the difficulty of achieving cleanup. In Dillon, a leak was discovered in 1979 by residents whose wells were contaminated with gasoline; nine years later following extensive but inconclusive investigations, alternative water supplies have been provided but the groundwater remains unusable, the extent of the contamination is still unknown, and no cleanup efforts are contemplated (EQC 1987). In Cutbank, the basements of several homes have been contaminated by crude oil and petroleum vapors, resulting in temporary evacuations, the installation of special air ventilation systems, and one explosion. DHES has spent more than $100,000 over the past six months, drilled 23 test wells, and still has yet to pinpoint the source of the leak or leaks.

These incidents testify to both the complexity of groundwater pollution and the inadequacy of state and local resources for investigation, remedial action and followup work. The Department of Health and Environmental Sciences has only nine total positions (including support staff) in the UST program, divided between prevention (UST rules, including tank registration, testing, and installation) and response (leak detection and investigation). DHES officials expect that a large number of tank leaks will be discovered in the next few years, as tank owners comply with testing, monitoring and leak detection requirements of the new rules. In addition, the advanced age of Montana's underground tanks (including more than 2,800 registered tanks over 25 years old) is viewed as a source of hundreds or thousands of new tank leaks in the near future.

Legislative Outlook

In recognition of the magnitude of current and projected UST problems and the shortage of personnel to effectively regulate tanks or to respond to tank leaks, DHES officials considered increasing the size of the state UST program. The increase would have been funded by annual registration fees on underground tanks, with half of the fees to be distributed to city and county governments to support local oversight of tank installations and removals, testing and compliance with UST rules. UST programs in 17 other states are funded by tank registration fees.

Budget officials in the Schwinden administration, however, rejected the proposed tank registration fee. As a result, DHES will not be requesting legislation to generate funds to increase the workforce in the UST program during the 1989 legislative session (unless the Stephens administration reverses the Schwinden decision).

DHES is expected to propose a bill to require the certification of persons installing underground storage tanks. This legislation is intended to ensure that new tank installations are properly conducted and that only tanks of authorized construction are used. Permits would be required for each tank installation and closure; again, however, the Schwinden Administration rejected the concept of a fee so state program costs would have to be covered by existing revenue sources.

The department has also drafted legislation to clarify state enforcement authority for "regulated substances" -- i.e., the fuels and other chemicals stored in underground tanks. The Montana Hazardous Waste Act gives the department explicit authority to regulate underground storage tanks, but does not specifically include the term "regulated substances" in various sections of the law where it would be appropriate.

Montana's UST program is now funded through a 75 percent federal/25 percent state split, totalling about $200,000 annually. Additional funds available for leak response through

the federal LUST (leaking underground storage tank) Trust are expected to total about half a million dollars for each year of the upcoming biennium. The federal government provides 90 percent of these funds, with the remainder coming from an earmarked portion of the state Resource Indemnity Trust Fund. To remain eligible for LUST Trust funds, the state must administer an effective UST program, including aggressive efforts to recover LUST Trust expenditures from the parties responsible for tank leaks and enforcement based on rules no less stringent than federal.

The issue of leak response -- and who is going to pay for it -- is expected to surface during the 1989 Legislature. Petroleum marketers are supporting an increase in the state gasoline tax to develop a fund that would pay for leak response and that would meet EPA requirements for financial assurance. They contend that small town service stations will be unable to meet the federal requirements and will have to close without the backing of a state fund. Legislation drafted by their trade association proposes an amnesty on liability for any leaks reported in the next two years and a state-financed cleanup program after that (with the first $25,000 in response costs to be paid by the tank owner). The program would be run by DHES. Although DHES officials have not adopted a formal position on the legislation, they have indicated that any new program responsibilities must be adequately funded, in light of the department's already strained UST program resources.

Ultimately Montana legislators will be asked to face a number of difficult policy decisions related to underground storage tanks during the 1989 session. These decisions center on the adequacy of the current state program to prevent or respond to leaks; the desirability of developing and funding local government UST programs; the appropriate dividing line between state and private responsibility for leak cleanup; the allocation of any new tax burden for an expanded UST program; and the effects of the new federal UST regulations and state program responses on the structure of the fuel marketing industry in Montana.

MINI-SUPERFUND

The 1985 Montana Legislature enacted House Bill 766 (now 75-10-701 *et seq.*, MCA), authorizing the Department of Health and Environmental Sciences to take action to prevent or cleanup any releases of hazardous substances. The bill established an Environmental Quality Protection Fund (EQPF), termed the "mini-Superfund" because of its similarities to the federal Superfund. Like the federal Superfund, the EQPF:

* can be used for emergency response or to initiate long-term cleanup of a hazardous waste site;

* is intended to be used on a "cost-recovery" basis, meaning the State will seek to recover its fund expenditures from the parties responsible for the contamination; and

* invokes the possibility of damages to encourage responsible parties to undertake a cleanup. (The mini-Superfund law provides for double damages when a responsible party refuses to undertake a cleanup, while the federal Superfund has triple-damage cost recovery).

The law also states clearly that liability for cleaning up abandoned hazardous wastes sites rests with the parties responsible for releasing the hazardous wastes. There are approximately 140 uncontrolled hazardous waste sites in Montana that are not included on the federal Superfund list and that are thus subject to action under the mini-Superfund program. These sites include abandoned oil refineries, pesticide disposal sites, mine tailings, wood treatment plants, landfills, and a variety of other industrial operations.

The 1987 Legislature provided a funding source for the mini-Superfund through the passage of HB 718, which allocates four percent of the interest income from the Resource Indemnity Trust Fund to the EQPF (beginning in FY 1990). During the 1987-88 legislative interim, limited funding was provided to the department to conduct preliminary assessments of waste sites and to rank them based on the hazard posed to human health and the environment. The department is now developing a prioritized list of these sites for cleanup action under the mini-Superfund program. DHES is also conducting remedial planning to remove mine tailings at the Apex mill near Bannack; completing a site investigation and risk assessment at an oil refinery in Lewistown; and working to secure site cleanups by responsible parties at two other abandoned oil refineries in the Kevin-Sunburst area.

Legislative Outlook

Four issues related to the mini-Superfund program will probably come before the 1989 Legislature. First, DHES has developed legislation to amend the mini-Superfund law to more closely conform to the authorities provided in the federal Superfund program. The amendments would authorize DHES to issue administrative orders or to seek court orders for remedial action; would clarify that hazardous waste liability extends to past owners contributing to site contamination; and would ensure that the state has access to relevant information on hazardous waste sites.

A second mini-Superfund issue relates to program funding. Although HB 718 allocated four percent of the RIT interest to this program, the Schwinden administration's proposed budget reduces the projected biennial allocation from about $565,000 to $484,000, diverting the difference to other programs. Since the

progress of the mini-Superfund program in cleaning up hazardous waste sites will depend largely on the funds available, a cutback as proposed would reduce the number of sites that the state can address.

The third legislative issue is a proposal to grant DHES a statutory appropriation to use the mini-Superfund. Although current language in the mini-Superfund law specifies that the fund is to be administered as a revolving fund by the department, there is no specific statutory appropriation. Therefore, the department must go through the budget amendment process for most fund uses. Officials contend that this approach is cumbersome and may delay needed remedial action. Given the number and often unexpected nature of remedial action, the lack of a statutory appropriation is likely to interfere with the state's ability to effectively pursue site cleanups or negotiate with responsible parties. Direct access to the mini-Superfund through statutory appropriation, they contend, would ensure that the state can carry out remedial action (and pursue cost-recovery plus damages) when responsible parties refuse to conduct site cleanups. This option for government action -- considered key to driving private parties to undertake site cleanups under the federal Superfund program -- is also seen as crucial to the success of Montana's program.

Finally, DHES has applied for two separate $300,000 grants under the Reclamation and Development Grants Program. One application seeks funds to research the history of hazardous waste sites, to contact the potentially responsible parties, and to negotiate site cleanups. This grant -- actually seed money for legal and research costs -- would allow the state to convince responsible parties to initiate cleanups on their own. Otherwise, cleanup efforts will be limited to those few sites that can be addressed by DHES with the allocated mini-Superfund program funds. As noted in the grant application, all state funds expended in this effort are recoverable from the responsible party.

The second grant application seeks funds to investigate and cleanup pesticide wastes at two county weed districts and three airports. These projects received strong endorsements from local government officials who do not have the resources to effectively address the pesticide contamination.

The Department of Natural Resources and Conservation ranked the pesticide cleanup project fourth and the responsible party search project eleventh on its recommended funding list under the Reclamation and Development Grants program. However, in early December the Governor Schwinden's budget director determined that the projects should be dropped from funding consideration and the Governor concurred. In accordance with this direction, DNRC removed the projects from the recommended funding list prepared for the 1989 Legislature.

The administration's rationale for dropping the mini-Superfund projects was that DHES would have surplus funds available for its hazardous waste program through other earmarked RIT interest. These other funds (in a hazardous waste/CERCLA special revenue account), however, are intended to provide a state financial capability to participate in Superfund cleanups (see EQC 1987) and are not available for the proposed projects. Moreover, the Reclamation and Development Grants Program enacted by the 1987 Legislature specifically includes hazardous waste management projects within its eligibility requirements.

The 1989 Legislature will ultimately decide the fate of these projects through its appropriation process. The decision by the administration to remove them from its recommendations, however, appears to dim DHES' prospects for obtaining funds for these mini-Superfund projects.

REGULATION OF LANDFILLS AND INFECTIOUS WASTE DISPOSAL

With the nationwide shift in emphasis to hazardous waste management, programs related to solid waste management have suffered from resource cutbacks. However, recent initiatives in landfill regulation and infectious waste disposal have brought Montana's solid waste management program to the forefront.

Landfills

In August 1988, the U.S. Environmental Protection Agency released proposed minimum federal regulations for solid waste landfills. These regulations were prompted by studies demonstrating significant nationwide groundwater pollution caused by substances leaching from landfills. The EPA rules would set strict requirements for groundwater monitoring (both ongoing and for 30 years after landfill closure), financial assurance, recordkeeping and inspection of landfill loads for hazardous waste, and leak prevention for new landfills. The proposed regulations are open for comment, with final regulations anticipated in late 1989, becoming effective in early 1991.

If adopted as drafted, the EPA proposals would have major effects on the management of solid waste in Montana. The state now has 140 landfills, the large majority of which were licensed prior to the concern over groundwater contamination. Most of the landfills are operated by rural communities which have neither the financial or technical resources to conduct monitoring, inspections or recordkeeping. Only about a dozen Montana landfills have any groundwater monitoring wells in place, and in some locations groundwater pollution has been detected.

Unfortunately, the proposed regulations come at a time when the state solid waste management program is minimally staffed. DHES has only one and one-half persons working on landfills -- down from a staff of six when federal funds supported solid waste management planning efforts in the early 1980s. State officials

are already unable to meet their program responsibilities of licensing, inspecting and assisting existing landfill operations to ensure that public health concerns are met. As EPA moves toward adoption of the new landfill regulations, DHES officials anticipate that local governments will be in need of state assistance. Many landfills are likely to close rather than meet the costs associated with the new federal regulations; those that remain open -- even for one day after federal regulations become effective -- will be responsible for 30 years of water quality monitoring and for meeting various other program requirements. Communities will be looking for solid waste management alternatives, and ultimately Montana may need to develop a network of regional, environmentally sound landfills that are adequately funded and managed to meet EPA regulations.

Planning for this or any alternative system would logically be coordinated through the Department of Health and Environmental Sciences. DHES has already been contacted by dozens of communities aware of the pending EPA regulations and seeking direction for future action. Staff resources, however, are inadequate to meet the current needs for assistance, not to mention the drastically increased demands anticipated in the next year or two.

In recent months, DHES officials have also received a number of inquiries from out-of-state businesses interested in disposing of solid wastes in Montana. The situation is driven by economics, as waste disposal costs in other states commonly range from $50 to $150 per ton, compared to about $10 per ton in Montana. Even with the added shipping costs (about $35 per ton from the East Coast), Montana is a financially attractive place for solid waste disposal. Some Montana landfills are currently receiving small amounts of special wastes from out-of-state industries, including drilling muds and waste asbestos. There are no state regulations or state oversight of the importation of solid waste into Montana.

Infectious Wastes

In late 1988, the City of Livingston began preliminary discussions with an out-of-state waste disposal firm interested in burning large quantities of infectious medical waste at the Livingston incinerator. Montana is currently one of six states that has not adopted regulations governing the disposal of infectious wastes, and thus disposal here could be seen as a inexpensive alternative for out-of-state medical facilities or labs. Most medical wastes generated in Montana are burned in hospitals, but some are landfilled.

On the federal level, EPA has not adopted infectious waste regulations despite its authority to do so under hazardous waste laws. Congress recently established a demonstration project to track disposal of medical wastes in three eastern states. Any

comprehensive federal regulations, however, appear to be several years in the future.

Montana officials believe they have the authority to adopt rules to regulate the disposal of infectious medical wastes, but the solid waste program has no resources to conduct such rulemaking or to administer a regulatory program. The primary concern of state officials is that infectious wastes disposed at landfills be strictly isolated so people and equipment will not come in direct contact. There have been incidents in Montana where such contact has occurred, raising serious public health concerns.

Legislative Outlook

With the recent emphasis on hazardous waste programs and the resulting shift of federal dollars, the outlook for state programs to manage non-hazardous solid wastes is not promising. New federal landfill regulations will provide increased protection for groundwater, but will also challenge state and local governments to meet sharply increased program responsibilities with no apparent source of additional funds. Public concern over the importation of solid and infectious wastes also may generate new regulatory responsibilities. Some legislators are proposing a comprehensive state program to address infectious waste disposal.

Despite this outlook (and in consideration of state budget constraints), no expansion of the DHES solid waste management program is proposed. Potential problems -- specifically, Montana's inadequate program commitment to landfill regulation and the lack of import controls on solid and infectious wastes -- thus remain for the 1989 Legislature to consider.

NATURAL RESOURCE DAMAGE CLAIMS/HAZARDOUS WASTE SITE ENFORCEMENT ACTION

In 1983, the State of Montana filed a $50 million lawsuit against the Atlantic Richfield Company (ARCO), the purchaser of the Anaconda Company, for damage to land and water resources in the upper Clark Fork Basin (see EQC 1987 for more details). Currently, the health department and ARCO are discussing how to determine the extent of natural resource damage in the basin and how this damage should be valued. The state is preparing to retain the assistance of a natural resource economist to develop methodologies and timetables for assessing damages, including close review of the cleanup decisions reached at the various Superfund sites in the Clark Fork Basin. Natural resource damage claims are intended to reimburse the state for those resources that are not cleaned up or restored through the Superfund process.

As trustee of state resources, DHES also has the obligation under federal law to pursue natural resource damage claims at

other hazardous waste sites. In both Libby and Somers, where final cleanup decisions are pending, departmental action to establish natural resource claims would be timely. It is not clear, however, whether the appropriation requested by DHES will be adequate to pursue damage claims at these sites.

Legislative Outlook

The 1989 Legislature will be asked to appropriate $200,000 annually to pursue Montana's claims for compensation for natural resources damaged by Superfund sites. The requested appropriation would come from earmarked hazardous waste accounts, and all legal and technical costs incurred by the state would be subject to reimbursement by the responsible party.

A separate hazardous waste enforcement issue that may face the Legislature is the effort to oversee the cleanup up of diesel fuel and hazardous wastes released by Burlington Northern at its railroad operations in Livingston. Preliminary tests have indicated extensive groundwater contamination under the site and city, including an estimated one-half million gallons of diesel fuel and various industrial solvents. The municipal water supply is considered to be in jeopardy of contamination and one or more private wells have been polluted.

On December 27, 1988, the health department filed a civil suit against Burlington Northern to require the railroad to clean up the fuel and hazardous wastes spilled at the Livingston yard. The suit also asks BN to clean up wastes disposed of in unlined pits four miles east of the railroad's Mission Wye property and to pay civil penalties for violating state safe drinking water, clean water and hazardous waste laws.

Burlington Northern is also believed to be responsible for diesel fuel contamination of groundwater at about 12 other railroad refueling operations across Montana. Preliminary site investigations are underway at these locations, but some state officials have expressed frustration at the slow pace at which information is being provided and the apparent absence of remedial actions.

If negotiations proceed smoothly for the Burlington Northern sites, legislation on this issue may not come before the Legislature. There is, however, the possibility that some aspect of these issues may be brought into the legislative arena if the parties fail reach substantive agreements that will bring about site cleanups, if the department requests appropriations to pursue enforcement actions, or if the Stephens administration does not pursue the lawsuit filed against BN in the final days of the Schwinden administration.

VISITORS' REGISTER

Health & Human Services COMMITTEE

BILL NO. _____ DATE 2/9/89

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Ron Hoffman	DHES	✓	
Sandra Pierce	DHES	✓	
Jeff Chaffee	DHES	✓	
Adrian Howe	DHES	✓	
LARRY Lloyd	DHES	✓	
Vic ANDERSEN	DHES	✓	
Duane Robertson	DHES	✓	
Roger Thorvilson	DHES	✓	

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