

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRPERSON BOB RANEY**, on February 4, 1991, at 3:05 pm.

ROLL CALL

Members Present:

Bob Raney, Chairman (D)
Mark O'Keefe, Vice-Chairman (D)
Beverly Barnhart (D)
Vivian Brooke (D)
Ben Cohen (D)
Ed Dolezal (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
David Hoffman (R)
Dick Knox (R)
Bruce Measure (D)
Tom Nelson (R)
Bob Ream (D)
Jim Southworth (D)
Howard Toole (D)
Dave Wanzenried (D)

Staff Present: Gail Kuntz, Environmental Quality Council
Paul Sihler, Environmental Quality Council
Lisa Fairman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HB 382

Presentation and Opening Statement by Sponsor:

REP. CHUCK SWYSGOOD, House District 73, Dillon, stated the purpose of HB 382 is to eliminate the double jurisdiction for high hazardous dams on Federal lands. Currently, high hazard dams located on Federal lands need to meet both State and Federal regulations. HB 382 would eliminate the State regulations. The bill clarifies liability and defines capacity to be measured at normal capacity levels rather than at the top of the dam.

Proponents' Testimony:

Gary Fritz, Department of Natural Resources and Conservation (DNRC), supported HB 382. Mr. Fritz provided an overview of dam safety and the proposed legislation. EXHIBIT 1

Jo Brunner, Montana Water Resources Association, supported HB 382. She stated that clarifying the liability issue is very important.

Opponents' Testimony:

Roger White, United States Forest Service, Regional Office - Missoula, opposed HB 382. He explained why the Forest Service opposed the proposed change in regulations. EXHIBIT 2

Questions From Committee Members:

CHAIR RANEY asked Mr. Fritz to respond to the Forest Service's concerns. Mr. Fritz responded that the state and federal standards are very similar. It is redundant to have both the agencies regulate the dams. Through experiences dealing with the Forest Service on the Middle Creek Dam project, it became clear that the Forest Service would not defer jurisdiction to the state regulations but, rather, only invoke their regulations. Because of this contentious issue and for previously stated reasons, DNRC and others believed it was not necessary for the State to be involved in the regulation process. REP. ORVAL ELLISON asked Mr. White why he thought the jurisdiction is being deferred to the Federal government rather than the State. Mr. White responded that Montana state law requires high hazard dams to be inspected a minimum of once every five years. Federal regulations direct inspections to occur annually. The problems between the Forest Service and the State concerning the Middle Creek Dam project were administrative. One of the issues was the frequency of inspections. For the most part, the Forest Service and State are in agreement. REP. MARK O'KEEFE asked Mr. Fritz to clarify where the maximum normal operating pool is set. Mr. Fritz replied that the maximum operating pool is at crest of emergency spillway, approximately three feet below top of dam.

REP. O'KEEFE stated that he does not have a problem with the Federal government regulating the dams. He said his concern with the bill is over the affects on liability. He asked Mr. Fritz if owners of all of the dams not on Federal land are liable only if they are negligent. Mr. Fritz replied that is correct in regards to high hazard dams. High hazard dams are dams with more than 50 acre feet that, if failed, would cause loss of life. REP. O'KEEFE inquired how many of the 18 dams that Mr. White referred to are high hazard. Mr. Fritz answered 17 according to the State and 18 according to the Federal government. REP. O'KEEFE stated that HB 382 would significantly change the liability. Mr. Fritz disagreed stated that 17 of the dams would be under jurisdiction in Montana and the liability laws would apply to them. If the

bill does pass the liability would extend over even if they are regulated by the Federal government. REP. O'KEEFE asked if the result would be a switch from strict liability to negligent liability, or would the same type or class of liability occur. Mr. Fritz responded that the type or class of liability would not change. REP. O'KEEFE inquired if the liability will remain the same why is it necessary to change the language in the liability section of the bill. Mr. Fritz said without the new language, when the State regulatory authority is removed, the dam owners' are removed from negligent liability. Their liability status becomes unclear and is open for debate in the courts. The new wording ensures that the liability will remain the same as it is now after it switches over to Forest Service regulation.

REP. JIM SOUTHWORTH asked if water management will be affected by the passage of HB 382. Mr. Fritz replied no. The bill affects only the regulatory aspects of dam safety.

Closing by Sponsor:

REP. SWYSGOOD stated he was surprised that USFS opposed the bill. The regulations remain similar. The bill addresses concerns with liability. The number of high hazard dams that DNRC needs to review will be reduced. REP. SWYSGOOD recommended passage of HB 382.

HEARING ON HB 383

Presentation and Opening Statement by Sponsor:

REP. BOB RANEY, House District 82, Livingston, stated HB 383 addresses regulation of incinerators. EXHIBIT 3

Informational Testimony: Don Vidrine, Department of Health and Environmental Sciences, provided informational testimony on HB 383. EXHIBIT 4

Proponents' Testimony:

David Anderson, Jefferson County Commissioner, supported HB 383. EXHIBIT 5

Chris Kaufmann, Montana Environmental Information Center (MEIC), supported HB 383. She stated MEIC would like to see stricter air quality regulations than federal regulations. It is unclear what the federal regulations will be. They probably will be average standards. Average standards are not adequate to protect Montana. Wastes are currently being shipped to Montana incinerators. The Environmental Protection Agency, EPA, requires a recording procedure, called Toxic Release Inventory, for industries that generate toxic waste. The inventory states what types of wastes are generated in one's community. A huge loophole exists that allows for offsite shipment of wastes if it is going to be recycled which does not have to be reported. The

regulation states that burning wastes in a cement kiln in recycling. This loophole allows for companies not to report their wastes. The interest to ship wastes to Montana and to burn them will increase.

This large loophole is very serious and provides for some major discrepancies in the regulations. According to the regulations, burning solvents in an incinerator is called "treatment" and has to be reported. Burning wastes in a cement kiln is "recycling" and does not have to be reported. The result is Montanans will not know what is being shipped here. A company must report if they burn their wastes on site. They do not have to report the wastes if they ship the wastes off site. There may not be any opportunities to change the reporting requirements, but Montanans can regulate what happens at kilns and incinerators.

Opponents' Testimony: none

Questions From Committee Members:

REP. DAVE WANZENRIED asked what kinds of hazardous wastes have been burned in the Montana City kiln. Mr. Anderson replied that he understood that they were burning sludge from the Billings refinery and other substances such as cleaning solvents. He said he obtained some of the information from concerned employees.

REP. WANZENRIED inquired if HB 383 is enacted how will the substances be regulated if, currently, according to Ms. Kaufmann's testimony, it is not known how much and what type of substances are being burned now. Mr. Anderson replied he did not know. A great concern expressed by the people he talked with was the proximity of railroads and the possibility of derailments. He stated there is a potential for large amounts of dangerous wastes to come into Montana.

REP. VIVIAN BROOKE asked Mr. Vidrine how many industrial boilers are in the state. He replied it is difficult to estimate. Industrial boilers include cement kilns, boilers (like Colstrip), other furnaces and boilers in manufacturing places. He stated when the federal regulations go through, any boiler could burn these wastes, including boilers like those found in the Middle School. REP. BROOKE inquired if all the industrial boilers would be subjected to the permitting process because they have the potential to burn. Mr. Vidrine said no, only if they burn hazardous wastes. REP. MIKE FOSTER asked Mr. Anderson who he is representing. Mr. Anderson said he is representing his end of the county. The County Commission's philosophy does not endorse the importation of waste without careful consideration. REP. FOSTER inquired how often does incidence of incinerator particulates falling on school children occur. Mr. Anderson replied it has been going on for a while. REP. JIM SOUTHWORTH stated if sludge is being burned, it is a very serious matter as it is extremely hazardous. Mr. Anderson confirmed it was sludge and agreed that it is very serious. The employees of the plant are also concerned.

Closing by Sponsor:

REP. RANEY stated, after hearing the testimony, he is even more suspicious of the burning of hazardous wastes. There is a need to go beyond the regulation of cement furnaces. There are many unanswered questions. What temperatures are needed to safely and effectively burn the wastes? What is the new product being created? What are the byproducts? The Department needs the authority to regulate. The issues raised concerning recycling and disposal loopholes are scary and dangerous. The Livingston incinerators are examples of alarming and hazardous situations.

HEARING ON HB 414Presentation and Opening Statement by Sponsor:

REP. BEN COHEN, House District 3, Whitefish, stated a bill similar to HB 414 was killed in the Senate last session. HB 414 addresses events, such as train derailments, that have the potential to cause pollution. If the event causes damage and is on an EPA hazardous list then EPA will respond to it. If it is not on the EPA hazardous list, EPA can not respond to any clean up action. The bill provides a effective method to respond to spills in a timely manner and provides funding for the clean up effort. REP. COHEN walked through the bill, highlighting the main points of each section.

Proponents' Testimony:

Stan Bradshaw, Trout Unlimited, supported HB 414 stating the bill closes a gap in existing law that needs to be closed.

Dan Fraser, Department of Health and Environmental Sciences (DHES), supported HB 414. EXHIBIT 6

Jim Jensen, Montana Environmental Information Center, supported HB 414 for reasons previously stated.

Opponents' Testimony: noneQuestions From Committee Members:

REP. DAVID HOFFMAN asked if a fiscal note was requested. REP. COHEN responded yes, but it is not available yet. REP. HOFFMAN, referring to page 5, line 18, asked for clarification. Gail Kuntz, Committee Staff, responded she assumed that the meaning is for DHES to proceed with the collection of the civil penalties. She stated she would need to research it closer for verification. REP. HOFFMAN suggested it should be eliminated if it is not necessary. Stan Bradshaw stated that under the Water Pollution Control Act, there are fines and misdemeanors in civil penalties. The two are separate. They have to go to civil court to seek civil penalties and to the justice court to collect for misdemeanor fines. There are provisions in other part of the law

that dispense fines from the justice court to the county general fund or the court funds. The attempt was not to muck around in the county business concerning the management of funds. This is the reason for the exemption. REP. HOFFMAN asked Mr. Bradshaw if the fines and penalties discussed on page 2, line 11 refers to Chapter 5, title 75. Mr. Bradshaw replied that he assumed so. REP. HOFFMAN stated he could not find anything that refers to a misdemeanor while glancing through the chapter. Mr. Bradshaw agreed and stated that may be a legitimate point.

REP. GILBERT suggested that the justice court be left in the bill so that there won't be a reenactment of the "Milk Carton bill". The "Milk Carton Bill " reappropriated misdemeanor fines where one-half went to an entity it was never designed for. REP. COHEN stated his dislike for the "Milk Carton Bill" and would like to avoid a similar situation occurring again. He suggested that the Judiciary Committee consider this bill since it deals with fines.

REP. ED DOLEZAL asked if Mr. Fraser's concerns about preventing water degradation could be incorporated into the bill. REP. COHEN replied yes, that would be very desirable. He asked Paul Sihler, EQC, to draft an amendment if it was not already covered in the bill. REP. BOB REAM inquired if it would be funded by general funds. REP. COHEN responded yes, for initial funding to start the program. The fees collected would eventually fund the program.

Closing by Sponsor:

REP. COHEN urged support of the bill and closed.

EXECUTIVE ACTION ON HJR 10

Motion: REP. HOWARD TOOLE MOVED HJR 10 DO NOT PASS.

Discussion: REP. HOFFMAN stated there was a large amount of testimony favoring the use of snowmobiles. Snowmobiles do not adversely affect the environment other than noise pollution. It is a valued use and should be considered. He spoke against the motion. REP. O'KEEFE said state legislation is the wrong forum in which to address this issue. This legislation would change the Kootenai-Lolo Accords which would threaten their passage. The timber industry and interests are more important than snowmobilers. The Accords are vital, even if one doesn't agree with their content. They represent a process which should be respected. REP. DICK KNOX stated the land would be managed as Wilderness in the summer and would allow snowmobilers in the winter. The timber industry is a declining industry and tourism is increasing. REP. COHEN said the Ten Lakes Area is used by Whitefish residents quite often. He said he received hundreds of letter supporting the Accords and opposing HJR 10 and received none favoring the use of snowmobiles.

Motion/Vote: REP. COHEN MADE A SUBSTITUTE MOTION TO TABLE HJR
10. Motion carried 12 to 6. EXHIBIT 7

EXECUTIVE ACTION ON HB 375

Motion: REP. O'KEEFE MOVED HB 375 DO PASS.
REP. HOFFMAN moved to amend HB 375. EXHIBIT 8

Discussion: REP. HOFFMAN explained the amendments. He said the amendments include the same littering penalties found under Title 6, Sec 365, which are the highway patrol littering from a car statute. He conferred with Ms. Kuntz, who believes the amendment will clean up the bill and address REP. STELLA JEAN HANSON'S concerns. The amendments broaden the bill to include highway car littering. REP. O'KEEFE asked if the result is that the minimum of \$50 fine is replaced with an arbitrary amount, up to \$250, set by the courts and therefore, making it less stringent. REP. HOFFMAN replied yes. The minimum amount is eliminated. The Department of Justice will come up with an appropriate bond schedule. The Committee could put in a floor amount. REP. HOFFMAN asked if the 240 hours of community service applies to just the second offence or all subsequent offenses. CHAIR RANEY stated he feels it applies to all offenses. REP. HOFFMAN suggested that we amend the bill to clarify that intent.

Motion: REP. HOFFMAN moved to amend his amendment to include the conceptual amendment concerning clarification of offenses.

Discussion:

REP. BRUCE MEASURE stated that 240 hours, which is approximately six weeks, is extreme. He asked if it was a typographical error. REP. GILBERT stated the problem is not the law but rather the enforcement of the law. He said HB 375 is unnecessary and worthless. REP. ELLISON agreed with REP. GILBERT. REP. SOUTHWORTH asked REP. GILBERT what is the solution to the enforcement problem. He replied education. REP. GILBERT added that the \$100 fine is an excessive amount for the crime and for the average citizen to pay. REP. MEASURE stated a maximum fine of \$500 is reasonable but the 240 hours of service is extreme. He suggested that wardens help to enforce the bill. CHAIR RANEY responded that the suggestion may be outside the realm of the bill's title. REP. COHEN agreed with REP. GILBERT in that the \$100 fine may be excessive when dealing with the average citizen. He suggested money from the fines go into an account to help prosecute littering cases. REP. TOOLE agreed that 240 hours is excessive. He moved to amend it down to 50 hours. CHAIR RANEY clarified that a motion already existed to amend the 240 to 50 and to clarify the first, second or subsequent offenses. REP. RUSSELL FAGG spoke against the amendment stating that the judges are elected officials and are capable of deciding the appropriate sentence.

Motion/Vote: REP. HOFFMAN moved the 240 hours be amended to 50 hours. Motion carried 11-7 with Reps. Fagg, O'Keefe, Dolezal, Cohen, Brooke, Barnhart, and Ream voting no.

Motion: REP. HOFFMAN moved that the penalties apply to first, second, and all subsequent offenses.

Discussion: REP. MEASURE stated that the second and third offenses are reasonable but not the first. CHAIR RANEY stated it is up to the judge. REP. HOFFMAN agreed with 50 hours being applied to the first, second and subsequent offenses. He stated most misdemeanors are up to six months in jail and/or a \$500 fine. It is up to the judge's discretion. REP. REAM agreed with applying it to the first offence because of the low incidence of catching offenders.

Vote: Motion to have the penalties apply to first, second, and all subsequent offenses carried 11-7.

Discussion: REP. REAM asked REP. HOFFMAN to clarify 75-10-212 in the original bill. REP. HOFFMAN responded that in the original bill 75-10-233 prohibits dumping but does not include littering out of cars.

REP. REAM asked REP. HOFFMAN to clarify 75-10-212 in the original bill. He responded the statute prohibits dumping but does not include littering. The amendment adds some penalties for car littering.

Motion/Vote: REP. HOFFMAN MADE A SUBSTITUTE MOTION TO ADOPT HIS AMENDED AMENDMENTS. Motion carried 14 to 4 with Reps. Toole, Gilbert, Nelson, and Wanzenried voting no.


REP. COHEN asked REP. FAGG and REP. HOFFMAN if they would prosecute under this law as currently written. They replied yes. REP. COHEN asked if they ever have prosecuted anyone under these two sections of the law. They responded no. REP. COHEN asked if they had heard of anyone being ever being prosecuted under this section of law in Billings. They responded they hadn't heard of any one. REP. HOFFMAN added he never even had a citizen's complaint. REP. O'KEEFE asked REP. COHEN why he testified in favor of the bill and now you're saying it isn't worthwhile. REP. COHEN stated the bill doesn't do enough. There is nothing about enforcing the law. REP. ELLISON added that enforcement is the problem.

REP. FAGG stated an increase in fines may provide incentive to prosecute. REP. SOUTHWORTH stated a fine increase addresses only part of the problem. Education is needed. REP. WANZENRIED added that he wondered if the fines are deterrents or actually penalties.


Vote: REP. O'KEEFE MOVED HB 375 DO PASS AS AMENDED. Motion carried 11 to 7. EXHIBIT 9

ADJOURNMENT

Adjournment: 4:50 pm.



BOB RAMEY, Chair



LISA FAIRMAN, Secretary

BR/lf

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE Feb 4 1991

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓		
REP. BOB GILBERT	✓		
REP. BEN COHEN	✓		
REP. ORVAL ELLISON	✓		
REP. BOB REAM	✓		
REP. TOM NELSON	✓		
REP. VIVIAN BROOKE	✓		
REP. BEVERLY BARNHART	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. DAVID HOFFMAN	✓		
REP. DICK KNOX	✓		
REP. BRUCE MEASURE	✓		
REP. JIM SOUTHWORTH	✓		
REP. HOWARD TOOLE	✓		
REP. DAVE WANZENRIED	✓		
REP. BOB RANEY, CHAIRMAN	✓		

HOUSE STANDING COMMITTEE REPORT

February 5, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that House Bill 375 (first reading copy -- white) do pass as amended .

Signed: _____
Bob Raney, Chairman

And, that such amendments read:

1. Title, line 5.

Following: "REFUSE,"

Insert: "INCREASING THE PENALTY FOR PUTTING REFUSE ON A HIGHWAY,"

2. Title, line 6.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS 61-8-365 AND"

3. Page 1, line 15.

Following: "~~court~~"

Strike: "~~less~~"

Insert: "not more"

4. Page 1, line 17.

Following: "addition,"

Insert: "for each offense"

5. Page 1, line 18.

Following: "to"

Strike: "240"

Insert: "50"

6. Page 2, line 3.

Following: line 2

Insert: "Section 2. Section 61-8-365, MCA, is amended to read:

"61-8-365. Putting refuse on highway prohibited --
penalty -- enforcement. (1) No person shall throw or deposit upon
any highway any glass bottles, glass, nails, tacks, wire, cans,
paper, or any other substance likely to injure any person,
animal, or vehicle upon such highway.

(2) Any person who drops or permits to be dropped or thrown
upon any highway any destructive or injurious material shall
immediately remove the same or cause it to be removed.

(3) Any person removing a wrecked or damaged vehicle from a
highway shall remove any glass or other injurious substance
dropped upon the highway from such vehicle.

(4) A person convicted of violating this section shall be
~~fined not less than \$50~~ for a first offense be fined not more
than \$250 and for a second or subsequent offense be fined not
less than \$250 or more than \$500. In addition, for each offense
each offender shall be ordered to spend up to 50 hours removing
litter, under the supervision of a county government agency that
the court finds appropriate, in the county in which the offense
occurred. Except for the minimum fine of \$50 as fines provided in
this subsection, the penalty provisions of 61-8-711 apply to this
section."

LISA FAIRMAN

CLERICAL

HOUSE Bill No. 375

Date: 2/05/91



NATURAL RESOURCES
S / H Standing Committee

Bob Koney
(Chairman)

Time: 1:25



S / H Committee of the Whole

SBA
(Legislative Council Staff)

(Sponsor)

In accordance with the Rules of the Montana Legislature, the following clerical errors may be corrected:

Amendment #4 should read:

Insert: "for each offense,"
^

An objection to these corrections may be registered by the Secretary of the Senate, the Chief Clerk of the House, or the sponsor by filing the objection in writing within 24 hours after receipt of this notice.

Gary Fritz

EXHIBIT 1
DATE 2/4/91
HB 382

LC 910

HOUSE BILL 382

TESTIMONY OF THE DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

January 29, 1991

By request of the Department of Natural Resources and Conservation:
A Bill for an act entitled:

"An Act to generally revising the Dam Safety Act; clarifying the definitions for the terms dam and reservoir; exempting non-federal dams and reservoirs on federal lands that are subject to dam safety review by a federal agency from state dam safety review; clarifying the liability of owners for damage; amending section 85-15-106, 85-15-107, and 85-15-305, MCA; and proving an immediate effective date and a retroactive applicability provision."

Purpose

The primary purpose of this bill is to eliminate overlapping jurisdiction for dam safety on non-federal, high-hazard dams located on federal property. It also clarifies the definitions of "dam" and "reservoir," and the liability of owners for damage.

Background

The Montana Dam Safety Act was passed in 1985 to ensure that construction work on new and existing high hazard dams is designed and performed in a safe manner. It also provides a permitting process for operating existing high hazard dams.

The U.S. Army Corps of Engineers inventoried dams in Montana between 1978 and 1981. It classified 92 dams as high hazard. A high-hazard dam is defined as a dam of 50 acre-feet impoundment capacity or more and that, if failure should occur, would likely cause loss of life. The owners of high-hazard dams have until July 1, 1995 to obtain an operating permit from the Department of Natural Resources and Conservation. Three out of the 92 dams have received operating permits.

The Dam Safety Section of the Department of Natural Resources and Conservation has also evaluated an additional 83 dams and 52 proposed dams. This process identified another 13 high hazard dams, for a total of 105. The owners of these 13 dams were to have obtained operating permits by October 1, 1990. Only four dams have acquired the permits to date.

Several non-federal, high hazard dams that are located on federal lands are subject to both federal and state regulation. For example, owners of private dams on U.S. Forest Service land must obtain a special

DATE 2/4/91HB 382

Roy White Regional Dam rep R-1 - Missouri (12 years)

① After the dam failures in the late '70s, President Carter enacted an executive order to have all HIGH (and some selected MODERATE) hazard dams inspected for safety. There were some 24 permittee (and easement) dams and one Forest Service dam inspected in Phase I of this program. The 18 mentioned above were inspected under this program. *6 new breach & fixed.*

now 18 dams in FS.

② All the dams were found to have various degrees of non-compliance with the Federal Guidelines for Dam Safety. Some were fixed or breached, and certain faults found in the inspection were corrected on most dams. What is left to be done, and has been identified as a major concern, is increasing the spillway capacity and/or freeboard on these dams so that they could pass the Probable Maximum Flood without failing. A number of dams in the State have been repaired or re-built to satisfy design criteria, the State itself having a priority list of dams that it is still trying to fund for repairs.

③ Certainly some of the 18 dams affected by this bill will need the necessary design work and re-construction to meet the Guidelines. Middle Creek Dam (AKA Hylite Dam) is a State owned dam on Forest Service land scheduled for re-build to meet the Guidelines next year.

④ The National direction was to have the States develop a Dam Safety Program and staff to implement it. The Phase I inspections were handled THROUGH THE STATES, the Forest Service was a participant in the review of the reports.

⑤ *I worked with the State in revising wording in implementation - and design criteria.*

⑥ *- Criteria is not part but ^{very} similar to States.*

⑦ Were this Bill to pass, ^{FS} ~~we~~ would have to enact a program to have these 18 dams inspected by a qualified, registered, professional engineer doing a Safety Evaluation Inspection, and establish a framework for compliance. This is in essence what the State is now doing.

CK. 2
2/4/91

HB 382

^{our}
In ~~my~~ opinion, this Bill is contrary to the direction most States have gone. Most States have funded staff, as has Montana, and have developed a plan for re-design and repair of the structures both on and off Federal lands, as has Montana. The direction of this office, as has been the National direction, has been to work with the States in this process. We have not taken action on those permitted dams with problems since the State was working on a priority list of correcting it's own dams first and then was to implement State regulations on others. Which is where we are now.

(9) We see a major conflict with this bill in that the State controls the storage of water, and if we were to refuse permitting storage for dam safety non-compliance, there could be a legal issue.

(10) Another question arises concerning the three State owned dams on Forest Service land, namely who controls them?

(4) - got to him 2/4/91 (S. Sherrick)

Summary

Were the bill to pass

(1) Dualism - doing the same thing - two agencies

(2) Critera is essentially the same we have had no conflict to date with the State's critera - don't expect any.

(3) So we oppose the bill

There has been talk of the various sets of regulations of both agencies that must be complied with - but boils down to Design criteria - properly design safe dams - goal of both agencies -

Hazardous Waste Incinerators
HB 383
February 4, 1991
Bob Raney

Last fall we heard about the first proposal to import hazardous waste into Montana for the purpose of disposal.

More specifically, Montana's 2 cement manufacturers -Trident M.City have proposed to burn liquid wastes in their cement kilns. The wastes contain hazardous materials and are therefore classified as hazardous waste.

Why? the wastes are used as a fuel source, and they get paid for disposing them at the same time. Good for the bottom line.

It may well be good for the environment as well. Cement kilns burn much hotter than other furnaces. (2700 deg. F) Or it could be bad news (air pollution, concrete pollution, by product pollution). And it would certainly be bad news if not regulated to insure our health and environment are protected.

So, HB 383 - see bottom of page 5

Rules and performance standards for industrial furnaces and boilers that burn hazardous waste.

definitions are provided elsewhere in the law.

Not to be confused with solid waste - most law and rule as well as staff are in place for regulation of hazardous waste.

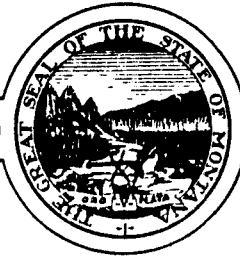
One cannot help but be suspicious of any facility that disposes of hazardous waste. Yet, we most likely cannot stop the activity from happening, and it may lead to a method of disposing of our own Montana hazardous waste.

Maybe you could ask the industry if they would consider assisting in setting up a Montana liquid hazardous waste disposal operation.

We may stand to environmentally gain by our loss of air quality.

At any rate, we must properly regulate - - and this proposed legislation help us do that. Either in the absence of the Feds, or more restrictive than the Feds.

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES



STAN STEPHENS, GOVERNOR

FAX #(406) 444-1499

STATE OF MONTANA

OFFICE 836 Front Street
LOCATION: Helena, Montana

MAILING Cogswell Building
ADDRESS: Helena, MT 59620

Solid and Hazardous Waste Bureau

February 4, 1991

DHES TESTIMONY ON HB 383

DHES has reviewed HB 383 and recognizes no problems in its implementation. This bill would allow the department to adopt regulations pertaining to the burning of hazardous waste in industrial furnaces and industrial boilers that are more stringent than federal regulations.

On December 31, 1990 the U.S. EPA administrator signed a set of regulations which will impose controls on the burning of hazardous waste in industrial boilers and furnaces similar to those now applicable to hazardous waste incinerators particularly as it pertains to permitting procedures and emission standards. To date these regulations have not been published in the Federal Register.

HB 383 would give the department flexibility in adapting the federal hazardous waste burning regulations to the specific needs of the state should it become evident that the federal regulations do not adequately protect human health and the environment. The authority to vary from the federal regulations would also be beneficial in areas where interpretation of the regulatory requirements is difficult because of terminology and language used.

Definition of Industrial Furnace (40 CFR 260.10)

Industrial furnace means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

- (1) Cement kilns
- (2) Lime kilns
- (3) Aggregate kilns
- (4) Phosphate kilns
- (5) Coke ovens
- (6) Blast furnaces
- (7) Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces)
- (8) Titanium dioxide chloride process oxidation reactors
- (9) Methane reforming furnaces
- (10) Pulpig liquor recovery furnaces
- (11) Combustion devices used in the recovery of sulfur values from spent sulfuric acid
- (12) Halogen acid furnaces for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated.
- (13) Such other devices as the Administrator may, after notice and comment, add to this list on the basis of one or more following factors:
 - (i) The design and use of the device primarily to accomplish recovery of material products;
 - (ii) The use of the device to burn or reduce raw materials to make a material product;
 - (iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;
 - (iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;
 - (v) The use of the device in common industrial practice to produce a material product; and
 - (vi) Other factors, as appropriate.

Ex. 4
2-4-91
HB 383

Definition of Boiler (40 CFR 260.10, 1990)

Boiler means an enclosed device using controlled flame combustion and having the following characteristics:

- (1)(i) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and
- (1)(ii) The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and
- (1)(iii) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and
- (1)(iv) The unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or
- (2) The unit is one which the Regional Administrator has determined, on a case-by-case basis, to be a boiler, after considering the standards in 260.32.

JEFFERSON COUNTY COMMISSIONERS
COURTHOUSE, P.O. Box H
BOULDER, MT. 59632
(406) 225-4251

EXHIBIT 3
DATE 2/4/91
HB 383

COMMENTS IN SUPPORT OF
H.B. 383
04 FEBRUARY 91

HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES

THE HONORABLE BOB RANEY, CHAIRMAN

As indicated on page 1, line 18, there are currently two cement plants in the state that are awaiting interim permitting to dispose of hazardous waste by means of incineration. One of those plants is in my district, being located in north Jefferson County, roughly three miles southeast of Helena.

Less than one mile from the cement plant is an elementary school with approximately 180 students. Even though the school yard is located uphill from and generally upwind from the plant's kiln, it is not an uncommon occurrence for the children to come in from recess and have noticeable amounts of particulates on their clothing. Obviously, these same particulates are being breathed in by the students as well as residents in the area.

During times of air inversions, the emissions from this plant tend to collect and remain in the Helena valley for days at a time, thus exposing thousands of people to whatever chemicals and gases may be present in the emissions.

With the inevitable introduction of hazardous wastes into the local fuel chain, it should be mandatory that RIGID performance standards be implemented and strictly enforced to deal with the incineration of hazardous wastes. This should be done now, before these wastes start being disposed of in the state, rather than trying to legislate after the fact.

It would not be unreasonable to consider amending out the word "may" as found on page 5, lines 14 and 17, and replacing it with the word "shall" -- to leave no doubt in anyone's mind that the safety and protection of Montana's citizens and environment will have absolute preference over any and all of the continuing attempts to make Montana the nation's dump.

I urge a "DO PASS" recommendation on House Bill 383.

DHES TESTIMONY FOR HB-414

The Department of Health and Environmental Sciences supports HB-414. It is our position that this bill fills two potential gaps that currently exist in our authority under the Environmental Quality Protection Act. Those gaps are:

1. The Environmental Quality Protection Act covers only those materials which are classified as "hazardous or deleterious substances"; substances that pose an imminent and substantial threat to public health and are either a petroleum product or listed as a hazardous substance in volume 50, Federal Register, pages 13474 through 13515.

There are other substances, not generally considered hazardous or deleterious, which could have an impact upon water quality. Organic materials such as grain or molasses would be examples of such substances which could exert a biological oxygen demand and cause water pollution problems.

2. This act appears to give the department the ability to respond more quickly to take remedial actions than does the Environmental Quality Protection Fund Act. This could be important when an immediate response would mitigate environmental damage or when such action could prevent pollution of state waters.

We would like to point out that it might be appropriate to amend Section 1 (3) and (4) such that the funds could be used to prevent pollution as well as "repair, restore, and rehabilitate." If, for example, a tanker turned over and the contaminant was on its way to the lake, it would seem to be appropriate to be able to have a contractor throw up a berm to prevent the contamination.

This bill would, however, divert up to \$20,000/year from the general fund.

Don J. Frick

EXHIBIT 1
DATE 2-4-91
~~HB~~ HJR 10

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 2-4-91 BILL NO. HJR 10 NUMBER 1

MOTION: Rep Cohen moved to Table HJR 10.

NAME	AYE	NO
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓	
REP. BOB GILBERT		✓
REP. BEN COHEN	✓	
REP. ORVAL ELLISON		✓
REP. BOB REAM	✓	
REP. TOM NELSON		✓
REP. VIVIAN BROOKE	✓	
REP. BEVERLY BARNHART	✓	
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG	✓	
REP. MIKE FOSTER		✓
REP. DAVID HOFFMAN		✓
REP. DICK KNOX		✓
REP. BRUCE MEASURE	✓	
REP. JIM SOUTHWORTH	✓	
REP. HOWARD TOOLE	✓	
REP. DAVE WANZENRIED	✓	
REP. BOB RANEY, CHAIRMAN	✓	
TOTAL	12	6

Amendments to House Bill No. 375
First Reading Copy

Requested by Rep. Hoffman
For the Committee on Natural Resources

Prepared by Gail Kuntz
February 4, 1991

1. Title, line 5.

Following: "REFUSE;"

Insert: "INCREASING THE PENALTY FOR PUTTING REFUSE ON A
HIGHWAY;"

2. Title, line 6.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS 61-8-365, 61-8-711, AND"

3. Page 1, line 15.

Following: "court"

Strike: "less"

Insert: "not more"

4. Page 2, line 3.

Following: line 2

Insert: "Section 2. Section 61-8-365, MCA, is amended to read:

"61-8-365. Putting refuse on highway prohibited --
penalty -- enforcement. (1) No person shall throw or deposit upon
any highway any glass bottles, glass, nails, tacks, wire, cans,
paper, or any other substance likely to injure any person,
animal, or vehicle upon such highway.

(2) Any person who drops or permits to be dropped or thrown
upon any highway any destructive or injurious material shall
immediately remove the same or cause it to be removed.

(3) Any person removing a wrecked or damaged vehicle from a
highway shall remove any glass or other injurious substance
dropped upon the highway from such vehicle.

(4) A person convicted of violating this section shall be
fined not less than \$50 for a first offense be fined not more
than \$250 and for a second or subsequent offense be fined not
less than \$250 or more than \$500. In addition, each offender
shall be ordered to spend up to 240 hours removing litter, under
the supervision of a county government agency that the court
finds appropriate, in the county in which the offense occurred.
Except for the ~~minimum fine of \$50 as fines~~ provided in this
subsection, the penalty provisions of 61-8-711 apply to this
section."

EXHIBIT 9
DATE 2-4-91
HB 375

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 2-4-91 BILL NO. HB 375 NUMBER _____

MOTION: Rep. O'Keefe moved HB 375 Do Pass as amended.

NAME	AYE	NO
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓	
REP. BOB GILBERT		✓
REP. BEN COHEN	✓	
REP. ORVAL ELLISON		✓
REP. BOB REAM	✓	
REP. TOM NELSON		✓
REP. VIVIAN BROOKE	✓	
REP. BEVERLY BARNHART	✓	
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG	✓	
REP. MIKE FOSTER		✓
REP. DAVID HOFFMAN	✓	
REP. DICK KNOX		✓
REP. BRUCE MEASURE	✓	
REP. JIM SOUTHWORTH	✓	
REP. HOWARD TOOLE		✓
REP. DAVE WANZENRIED		✓
REP. BOB RANEY, CHAIRMAN	✓	
TOTAL	61	7

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

dam safety

Natural Resources

COMMITTEE

BILL NO. 48 382

DATE 2-4-91

SPONSOR(S) Rep. Snyggood

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Gary Fritz	DNRC	X	
Laurence Arosky	DNRC	X	
Marvin Baber	APA	X	
Lorna Frank	Farm Bureau	X	
Kay Noenheg	WIFE	X	
Reginald White	Forest Service		X
Joe Brunner	MURA	X	

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ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources

COMMITTEE

BILL NO. HB 383

DATE 2-4-91

SPONSOR(S) Rep. Ramey

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
DAVE ANDERSON	JEFFERSON Co. COMMISS.	X	
DON VIDRINE	DHES		
Ryan Thorburn	"		
CHRIS KAUFMANN	MEIC	✓	

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources

COMMITTEE

HB 414
BILL NO. Waterhab

DATE 2-4-91

SPONSOR(S) Rep. Cohen

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Don Auer	DHES	✓	
Jim Jensen	MEIC	✓	
Stan Bradshaw	T.U.	✓	
Scott SNEZON	MT WILDLIFE FED	✓	
Janet Ellis	MT Audubon	✓	

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