

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By Senator Greg Jergeson, on January 30, 1991, at 3:00 P.M.

ROLL CALL

Members Present:

Greg Jergeson, Chairman (D)
Francis Koehnke, Vice Chairman (D)
Gary Aklestad (R)
Thomas Beck (R)
Betty Bruski (D)
Gerry Devlin (R)
Jack Rea (D)
Bernie Swift (R)
Bob Williams (D)

Members Excused: None

Staff Present: Doug Sternberg (Legislative Council).

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

Announcements/Discussion: None

HEARING ON SENATE BILL 161

Presentation and Opening Statement by Sponsor:

Senator Cecil Weeding, District 14, advised he was presenting SB 161 which came out of SJR 19 last session from a solid waste study which ECQ did in the interim. It was determined that there were many chemicals out in the countryside that were unusable for various reasons. It was felt it would be desirable to have those chemicals disposed of in a proper manner. With no mechanism in force to pick up and transport these chemicals, it was decided the first step would be to provide for a voluntary waste reporting system. The Department of Agriculture would devise a questionnaire wherein an attempt would be made to approximate the quantity of those wastes out in the field, and also, in the next two years, devise a plan for disposal of those wastes. The first section is merely an amendment of the definition section which defines "waste pesticide"; Section 2 provides for the Department of Agriculture to compile the inventory through a confidential questionnaire,

and propose a disposal program. Senator Weeding noted that Gary Gingery of the Entomology Division of the Department of Agriculture was present as a resource person.

Proponents' Testimony:

CHRIS KAUFMANN, Montana Environmental Information Center, advised that this is an age of public concern about environmental contamination and many of the farmers are sitting on a time bomb. Disposal costs for waste pesticides can run into the thousands of dollars for pesticides that cost only a few dollars to buy over the counter a few years ago. According to Ms. Kaufmann, farmers have no legal options, which they can afford, by which they can dispose of these wastes so they store them in a barn to bide time. Unfortunately, time is running out, corrosion is taking its toll on containers that were only intended to have a short-term life span, landfills will not accept these kinds of substances and banks are even starting to require on-site inspections to determine the chemical liability of a place before approving financial transactions. The response of other states has been pesticide amnesty days. These are often funded by tax on pesticides. In the Washington experience, they instituted this type plan and they estimated that there were about 42 tons of used pesticides out there. After they had completed their program in only 5 of the 37 counties in Washington, they had already reached the 42 ton estimate. She indicated that if this bill passes, it will give an idea of what is out there and hopefully allow to better prepare for some kind of program that is going to be needed here shortly. She urged passage of SB 161.

JANET ELLIS, Montana Audubon Legislative Fund, stated that ground water is a very precious resource and providing for proper disposal of waste pesticides is going to have to be dealt with. She believes this is a first step in providing for proper disposal, and she urged the committee to pass SB 161.

PAM LANGLEY, Executive Director of the Montana Agri Business Association, stated they support SB 161. She presented copies of a Pesticide Applicator/Dealer Survey which was completed in 1990. She indicated they did the survey in conjunction with the Montana Aviation Trades Association and the Montana Department of Agriculture following the 1989 session. She stated there is a problem out in the field. She pointed out that 22 percent of dealers and 14 percent of applicators do have some products awaiting disposal, but they do not know how much. She believes it is necessary to move forward in this area, and SB 161 would be an excellent first step. (Exhibit #1)

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Beck asked what the cost of this bill would be. Senator Weeding advised that the Department of Agriculture would absorb the cost of the questionnaire. Any proposed plan for disposal would create a cost in the future.

Senator Williams said it is his understanding SB 161 would allow the Department to develop the plan, not work the plan. Senator Weeding agreed, adding that it would develop an inventory of the wastes being stored. As indicated in testimony, those containers do deteriorate and will burst. It is their hope to have an orderly pick-up plan.

Senator Devlin asked what kinds of costs would be absorbed by the Department of Agriculture. Gary Gingery said the costs would involve setting up the reporting system on the computers to record the data that is generated from commercial, government and farm applicators and anyone else who has a product they want disposed. He said this would be done with existing staff. A report will then be prepared for the Legislature setting out options and costs of the programs for their consideration.

Senator Devlin asked how the notification will be sent out to the public. Mr. Gingery advised that through working with the commercial and government applicators and their associations, the farm and ranch groups, and through farm and ranch publications, he believed the information would be made available. They will also work with applicators who do most of the work in urban areas.

Senator Beck asked if there is concern for anonymity. Mr. Gingery replied that they do not need the names and addresses of individuals. They would like to know the county of origin, name of the product, and the type and volume. If the 1993 Legislature chooses to do nothing with this, the bill is addressed in such a way that the information would be destroyed.

Senator Koehnke asked if there are any plans how the program would work or how the waste would be picked up. Mr. Gingery advised that EPA is also working on this issue and chemical company registrants will be forced to do something, so they will coordinate closely with them. He believes they will look at options of a state government program or government being a monitoring agency and having private enterprise actually run the system. He added local governments may get involved. He believes the transportation part should be handled by professionals in private enterprise.

Senator Koehnke asked if there would be places in counties where the waste would be assembled. Mr. Gingery advised that much discussion has centered around satellite stations where people could bring in the waste and then those who containerize it and transport it would just have to go to those sites.

Senator Devlin asked what North and South Dakota do about this problem. Mr. Gingery informed that those states do not have a comprehensive program at this time, but they want to set up something similar to this also.

Senator Williams expressed concern about people "turning in" their neighbor. Senator Weeding stated their intent is not to get people in trouble, but rather to get the wastes out of their barnyards or off their shelves.

Senator Devlin asked for clarification regarding giving the name of the county and the substance on the questionnaire. Senator Weeding stated the intent of that requirement is so they will know "where and what" so that some sort of a pickup system can be devised.

In regard to the confidentiality concern, Senator Devlin asked how the information would be destroyed if the program is not set up. Mr. Gingery stated that would have to be dealt with based upon the law. He admitted it would be very difficult to keep all the information confidential.

Closing by Sponsor:

Senator Weeding stated that this subject is something that must be dealt with, and he feels this is one way to develop an orderly process. He urged them to support SB 161.

HEARING ON SENATE BILL 158

Presentation and Opening Statement by Sponsor:

Senator Greg Jergeson, District 8, stated for many years he had been concerned about the problems of the small towns as they declined in population, declined in economic activity, and suffered losses of implement dealerships. Every time a dealership has been lost, he has heard conversation among farmers and ranchers indicating that one of the reasons the dealership was not passed on to someone else on either the death or retirement of a dealer was that the manufacturers were not interested in seeing these small dealerships transferred. It was in the manufacturers' interest to see just a few dealers with whom they had to deal on a regular basis. It was also indicated that some dealers worked beyond the years they would have liked to work because the manufacturer would let the dealership survive only as long as the present dealer was in business. However, if he was to retire, the manufacturer would be unwilling to let someone else take over that dealership. Senator Jergeson stated his reason for requesting the drafting of this bill was to make it possible for a person who has worked his full life in a dealership to be able to enjoy the fruits of retirement without feeling obliged to stay in business so that their community would maintain a dealership. This bill would provide that a dealer

could name a successor; that the manufacturer would have to have good cause why they would deny the approval of the franchise being transferred to the successor named by the dealer. Senator Jergeson stated he was contacted by Charles Brooks of the Hardware Implement Dealers Association advising that they had some other concerns which have been suggested as amendments to the bill. Among those concerns are the amount of repayment to a dealer for the inventory in the event the dealership is canceled, and also that the inventory would be 100% and the manufacturer would pay freight to return inventory. In confirmation of his concern about the trend toward losing dealers in small towns, Senator Jergeson informed that the latest issue of "Successful Farming" contains an article about consolidation in the equipment manufacturing industry. It appears to be a worldwide trend and there is pressure on U.S. companies to reduce the number of dealers in the field, according to the article. Senator Jergeson expressed the opinion that farmers believe that there are not enough dealers in close proximity rather than too many. Traveling up to 300 miles for a part for equipment causes major problems for a producer.

Proponents' Testimony:

CHARLES BROOKS, Managing Director of the Montana Hardware and Implement Association, stated that he was offering some amendments to SB 158 (Exhibit #2). He reviewed the amendments for the committee. Mr. Brooks stated it is his belief the implement industry is going to end up with large regional implement dealers with a few satellite branches. They feel that is the wrong approach for the state of Montana in merchandising farm equipment and in serving farmers and ranchers. Mr. Brooks furnished written testimony to the committee (Exhibit #3). He urged passage of SB 158.

KEN MUNSON, Shelby, Montana, advised he has been involved in farm implement business for 13 years, and is speaking in support of SB 158. He stated he has been associated with major manufacturers as a dealer and has a good working relationship with them. He has also established a very good customer base. Up until four years ago he was never on a sales quota with any major manufacturer, when one manufacturer set their goal at \$50,000 and then kept raising it. At present their goal is set at 4 four-wheel drive units for about \$250,000 to \$300,000 volume. He has been told that there is only going to be room for one dealership in his sales area, and he was not going to be that dealer. He was told among the qualifications to remain a dealer was to have a communications system with the manufacturer at a cost of about \$3,500 plus a monthly charge. He feels that is unnecessary because they only have correspondence with the manufacturer about four to six times a month. They are expected to purchase about \$5,000 more worth of special tools, some of which are for tractors which they will never sell in their sales area. They were told to have plans for new facilities submitted in 1991, and in place in 1992. As the 1980's were mostly drought

years, it takes farmers two or more good years to make up for one drought year. Purchasing new equipment is the last thing a farmer can do. This makes it very difficult, if not impossible, to meet the quotas set by the manufacturer. This proposed legislation would help them recover a portion of their loss. He asked the committee to give SB 158 a do pass recommendation.

CLIFF HANSEN, Wolf Point, stated he is currently an operator of an implement business started by his father in 1928. He stated he is here in support of SB 158. He stated that in the past few years they have been required to purchase new signs, new computer system, numerous tools and other equipment to operate their business to satisfy their contract. Many of these things are duplicates; the sign was sufficient as they had been there enough years so that everyone knew where they were located. They invested approximately \$34,000 in computer equipment and have now been told it is practically valueless. They received a cancellation two years ago on their franchise, and the only reason given for the cancellation was that they did not meet their sales quota. No consideration was given to the drought years. He feels this is unfair. He stated that although this bill will probably not pertain to him, he is here because of his respect for his customers and his fellow dealers who will need more help down the road. He urged support of SB 158.

BOB POTTER, Glasgow, stated he has been in the implement business for 19 years, and is appearing to ask support of SB 158. He stated he has been associated with a major manufacturer of four-wheel drive tractors all of those years. He stated his relationship with the manufacturer has been good until recently. When he first became a dealer, there were no sales quotas or stipulations. Four years ago they put on a sales quota of \$50,000. Now his quota is 40% of market share or three tractors. This could amount to \$250,000 to \$350,000 depending on the size of the tractors sold. There are four dealers in his town and five major lines of tractors sold there, so he feels it is unfair to have to get a 40% market share. They have recently been advised by representatives of the company that they only want one dealer in the sales area; right now there are two and he has been asked to terminate his contract. It is hard for him to comply with requirements placed on him by the company. An increase from \$50,000 to four tractors is a substantial increase. Other requirements from the company include signs, schooling, tooling, computer, which are very hard to meet. Drought conditions and other factors have made it very difficult for him to sell tractors. If this bill passes, it will help defray some of the costs of the loss of business. He believes that since they are required to stock parts, the manufacturers should help defray some of the costs.

LYNN COBURN, owner of Pape Equipment in Billings, stated he is also the president of Montana Hardware and Implement Association, and is appearing to urge support of SB 158. After 15 years in the implement business, he has witnessed a major move

by the manufacturers to consolidate dealerships at the expense of dealers and the farmer and rancher. The industry is going to mega dealers who will be multi franchise selling several lines, and located in metropolitan areas. This eliminates the dealers in the small towns. The farmers will have to pay more freight, and drive hundreds of miles to get parts. He further stated he started business in 1976, and since that time they have lost 13 dealers in the city of Billings. In a 90 to 100 mile surrounding radius, they have lost 33 implement dealers that have gone broke, changed hands or canceled. He stated about a year ago he was notified by one of the major manufacturers that his contract was canceled. The manufacturer let it be known that they were being canceled so their business dropped almost immediately. However, on the 90th day he received a registered letter that rescinded their order. Mr. Coburn believes that it will only be a matter of time before they will find another reason to cancel on that line. He stated that they have invested over \$40,000 in a computer system which the manufacturer insisted upon; they spent \$15,000 on building a bigger parts department to handle their line, and have invested approximately \$15,000 in specialty shop tools to service and repair their brand of equipment, plus another \$5,000 in service schools and meetings to handle this line. He stated his son works in the business with him and plans to take over the business in a few years. He feels that without SB 158 this may not be possible. He believes this legislation is necessary, and he urged support of SB 158.

ORVILL NASH, Red Stone, stated he has been an implement dealer for 45 years and a farmer all his life, and wished to speak in favor of SB 158. He urged support of this bill to help offset some of the advantages taken of dealers by manufacturers. He informed that FHA records show 13 out of the last 17 years were declared disaster years. He stated he operates in Daniels and Sheridan Counties. 25% of Daniels County is in the CRP, which is the maximum allowed; 20% of Sheridan County is in CRP. Numerous auction sales have occurred and many bankruptcies. Some bankers have told farmers if they need equipment to go to an auction to buy it. He stated he was terminated by a major manufacturer and the reason given was lack of minimum sales and lack of computer. He feels the manufacturers are unfair regarding parts. In about four or five years after a new piece of equipment has come out, there will be letter in front of the part number in the price book indicating that the next year the part will be non-returnable. That would be about the time the part starts getting used. This means the major parts business is running in obsolete parts as far as the manufacturer is concerned regarding returns. In about 15 years with a major line, he had about \$110,000 worth of parts and they would accept \$60,000, leaving \$50,000 with no market. These are some of the problems of the dealers, according to Mr. Nash. He asked for 100% return on all parts, attachments and whole goods; freight collect, and any other losses to the dealer incurred by cancellation. He asked for support of SB 158.

FRANK (BUD) DANIELS, Montana Farmers Union, stated he is in support of SB 158. He stated he has a farm near Sidney, Montana, which is also in the drought area. He stated they, too, are seeing the dealers disappear. He stated during the testimony he learned a number of things he did not know. He advised that a friend who works for a consulting firm in Boston told him their firm was working for Deutz-Allis, and they were trying to decide how many dealers they needed in Montana. Their recommendation was that there be a minimum of five and a maximum of seven. This means some farmers will be an extremely long way from their dealer, as he is. Many must make overnight trips, resulting in lost time away from the farm and additional expense. He urged support of SB 158.

KAY NORENBURG, representing Wives Involved in Farm Economics, stated that group wished to support SB 158.

RANDY JOHNSON, Executive Vice-President of the Montana Grain Growers Association, stated their group also supports SB 158. He stated they are well aware of the economic condition of rural Montana in terms of producers. They also recognize that the people supplying the industry, in particular the implement dealers, have suffered most in percentages. They believe SB 158 might help and they urged passage.

DENNIS NATHE, Senate District 10, northeastern Montana, stated he supports SB 158. He is concerned that they are going to lose a whole infrastructure of support services in rural Montana. This would be one small step to slow that down. He informed from personal experience how far you have to travel for parts for Massey Ferguson. Now they are seeing other major lines also going out. He believes something must be done to maintain that infrastructure, and urged passage of SB 158.

LINDA NELSON, Representative from House District 19, located in northeastern Montana, stated she is in support of this bill, and is one of the co-sponsors. She said she is speaking as a resident of a community that is losing its implement dealerships and as a farm wife who has to be the "gopher" who runs for parts. She advised it is devastating to not have parts and machinery available. She feels this bill is very important, and asked for the committee's concurrence.

BOB WILLIAMS, Senate District 15, referred to Exhibit #3 which contains a letter from North American Equipment Dealers Association, signed by William E. Galbraith. About six years ago, the effect of the Tenneco takeover of I. H. International was taking place. He informed that Blake Wordal, of the Hardware and Implement Dealers, came and wondered if anything could be done about getting a bill introduced into the Legislature to try to do something to ward off what Tenneco was doing to some of the dealers. The deadline had passed to get a bill through; however, he and Senator Aklestad managed to get a bill out on the floor, through the House, and it was signed by the Governor on the 46th

day. He stated he wished to emphasize the fact that any action taken here in the Legislature reaches out a long way. He commended Senator Jergeson for bringing this to their attention in order to keep abreast of the major manufacturers. He strongly recommended a do pass on SB 158.

Opponents' Testimony:

RONALD WATERMAN stated he was appearing on behalf of Case Corporation in opposition to SB 158. He presented written testimony to the committee members (Exhibit #4).

Questions From the Committee:

Senator Aklestad stated he agrees with the bill but he wished to make sure they have a bill that will do what they want it to do. He asked what the effective date would be.

Senator Jergeson stated he believed they should discuss the effective date; if there were a July 1 effective date, he would not want to precipitate a rash of cancellations before July 1. Therefore, an immediate effective date would be considered.

Senator Aklestad further asked if the bill would be retroactive on old contracts.

Senator Jergeson stated he was probably making that assumption. He believed according to current law, contracts have a ninety-day notice provision, so the contracts are relatively fluid. As he understands it, the dealers have been given no opportunity to negotiate changes in the terms of those contracts. The contracts have been changing at quite a rapid pace, and believes they have an opportunity to slow the changes in those contract.

Senator Aklestad asked if they are assuming that the contracts would be retroactive without renegotiating the existing contract. Senator Jergeson stated they would probably need some legal advice on that question. Senator Aklestad also asked if there would be any conflict regarding Federal statutes. Senator Jergeson stated he is not aware of any.

Senator Devlin asked how many dealerships are in the state. Mr. Brooks advised there are approximately 178 dealers; that is an attrition of over 60% in the last few years.

Senator Devlin also asked why the Department of Commerce staff member was present. Senator Jergeson advised that the Implement Dealer Statute has been assigned to the Commerce Department for some time, which is one of reasons why the lone opponent to the bill asked why they were doing this for just one part of the community in the towns. According to Senator Jergeson, a specific part of the MCAs applies to farm dealerships and the bill must apply to that section.

Senator Devlin asked if a dealer can bring legal action. Mr. Brooks stated they can bring legal action and currently there are several dealerships involved in lawsuits. He referred to Exhibit #3 which described a lawsuit recently settled in Missouri against Massey Ferguson. He believes there will be others if the current trend continues.

Senator Devlin asked what if a dealer quits a dealership. He believed the company would be difficult to deal with to buy back all the parts. Mr. Brooks stated they would have to negotiate.

Senator Swift asked if the amendment bringing 85% to 100% is based on this recent letter, or is there a contract agreement which states the level of percent that you would get back. Mr. Brooks stated the current statute states 85% but they are trying to get the dealer's raw cost, because there are other costs which he will never be able to recover.

Senator Koehnke asked if the manufacturers have been taking any of the parts back. Mr. Brooks stated they have been taking some parts back. He referred to one testimony which indicated the dealer was able to return about 60% of his parts and recover 85% of the cost as listed in the last catalog.

Senator Beck asked if the parts are secured by a local bank loan. Mr. Brooks stated it is his understanding that those parts are brought in by the dealership and paid for by the dealership. There is some foreplanning, but there comes a time when that foreplanning stops and they have to pay for it. Senator Beck commented that there are probably many dealerships across the state that have large liabilities against their property, and if that dealership is canceled it could completely eliminate the security for the borrowing institution. He also stated he is curious about the contracts for a minimum amount of sales to be performed by a dealership. He asked if the manufacturer takes into consideration weather, economic conditions or anything of that nature. Mr. Brooks stated the main consideration is the quota system.

Senator Aklestad asked when the company comes up with new quotas, do they try to change that quota while the dealer has an existing contract. Mr. Munson said it might be called an amendment or a notification that comes out each year from the company in written form. The original contract has no quota stated. Senator Aklestad asked then if the contract is open-ended for negotiation. Mr. Munson stated there is actually no negotiation - the manufacturer tells the dealer what they are expected to perform. Senator Aklestad asked if it is above and beyond the contract that is signed, and Mr. Munson stated that was correct.

Senator Williams stated in response to Senator Devlin's concern about the legality of the bill, he would assume that it

would be legal. Because of the bill passed in 1985, it has been tested in court, and he believes it is safe.

Closing by Sponsor:

Senator Jergeson stated he would like to respond to some comments made by Mr. Waterman on behalf of Case Corporation. Mr. Waterman offered testimony that the reason dealerships are being lost and farm communities are losing population is because farm income is down. However, Senator Jergeson understands that some of the dealers who have been canceled have been making profits but they failed to meet a quota. One comment by Mr. Waterman that disturbed Senator Jergeson was that this was an anti-business bill. He stated it may be from the standpoint of Case Corporation, but trying to defend friends and neighbors in the farm implement business in this state is eminently a pro-business bill. He requested the committee to join with him in making the necessary improvements in the bill, and then passing a good effective bill out of this committee.

EXECUTIVE ACTION ON SENATE BILL 161

Motion:

Senator Williams moved that Senate Bill 161 do pass.

Discussion:

Senator Beck expressed concern about the volunteer program of reporting chemicals on an individual's property.

Senator Williams said his understanding of the bill's purpose was to compile information and then come back in two years with a program for recommendation.

Senator Devlin asked if it was possible to obtain a list of banned chemicals. Senator Jergeson said the Department of Agriculture could probably supply that information.

Senator Aklestad asked what would happen if they do nothing with the bill. Chairman Jergeson stated no inventory would be compiled and no plan for disposal would be forthcoming.

Senator Swift commented that if action is not taken now, they will be forced to do it two years from now. He believes it will cost less to look at it now.


Senator Williams stated he wished he could get a definition of the difference between hazardous waste and hazardous material, and the handling of it.

Recommendation and Vote:

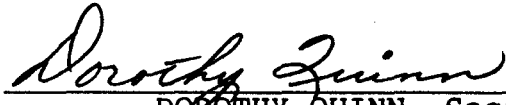
Motion was made by Senator Williams that Senate Bill 161 DO PASS. Those in favor - 9; opposed - 0. MOTION CARRIED.

ADJOURNMENT

Adjournment At: 4:55 P.M.



GREG JERGESON, Chairman



DOROTHY QUINN, Secretary

GJ/dq

ROLL CALL
AGRICULTURE COMMITTEE

DATE 1/30/91

52nd
LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SEN. JERGESON	X		
SEN. KOEHNKE	X		
SEN. AKLESTAD	X		
SEN. BECK	X		
SEN. BRUSKI	X		
SEN. DEVLIN	X		
SEN. REA	X		
SEN. SWIFT	X		
SEN. WILLIAMS	X		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 31, 1991

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration Senate Bill No. 161 (first reading copy -- white), respectfully report that Senate Bill No. 161 do pass.

Signed: _____
Greg Jergeson, Chairman

JJC 1-31-91
Ad. Coord.

107 117-3
Sec. of Senate

NEWS RELEASE

SENATE AGRICULTURE
EXHIBIT NO. #1
DATE 1/30/91
BILL NO. SB 161

Pesticide Applicator/Dealer Survey

A survey of Montana pesticide dealers and applicators showed a commitment to environmental protection, changing packaging of pesticide products, and efforts to handle them carefully. The survey results also projected needs to implement statewide programs to handle disposal of pesticide containers and pesticides, to increase educational efforts and to implement mixing/loading site rules.

Results of the survey were released by the Montana Agricultural Business Association (MABA), Montana Aviation Trades Association (MATA) and the Montana Department of Agriculture. The three organizations mailed 1,123 surveys to licensed commercial and government applicators and 529 surveys to licensed dealers. Some 300 (27 per cent) of the applicators and 130 (25 per cent) of the dealers returned the surveys.

The goal of the survey was to obtain trend information on disposal of pesticides and pesticide containers, the primary disposal issues for pesticide applicators and dealers, and related use, sale and disposal operation issues, according to Gary Gingery, head of the Environmental Management Division in the Montana Department of Agriculture.

The survey included not only dealers and applicators serving the agriculture community but also lawn and garden applicators, weed district and other government applicators.

Container Rinsing, Disposal

A significant majority of applicators, 88 per cent, reported they are triple or pressure rinsing pesticide containers. Proper and thorough rinsing converts containers from a potential hazardous waste to a solid waste and protects ground water from potential impairment at a disposal or recycling site.

The applicator survey also indicates that the majority of pesticide containers are being disposed of in public and private landfills at the present time.

Pesticide Disposal

Some 22 per cent of dealers and 14 per cent of applicators reported that they have cancelled/suspended or damaged (too old, frozen, separated, water soaked granules, etc.) pesticides stored awaiting disposal.

Pam Langley, MABA executive director, said "this indicates two things. First, these applicators and dealers are environmentally responsible--they are storing the products until

they have a way to dispose in an environmentally safe manner. Second, despite state-sponsored collection programs that were available in the past, a new program may be needed to help dispose of the products safely."

John Semple, MATA executive director, noted that it cannot be assumed from survey results that 20 per cent of all dealers and applicators have products awaiting disposal. "It could be higher, it could be lower. Our intent was to obtain trend information".

While some dealers and applicators have product awaiting disposal, more dealers (47 per cent) and applicators (23 per cent) indicated they return them to the distributors of manufacturers. Some 21 per cent of the applicators and 16 per cent of the dealers indicated that they had used past government-sponsored programs to dispose of product. Roughly 7 per cent of dealers and 9 per cent of applicators indicated they had disposed of products at hazardous waste sites.

Disposal Information

A majority of applicators, 72 per cent, and dealers, 67 per cent said pesticide product labels provide adequate information to assist in disposal. "With this source of information significant for users, companies may need to look at clarifying information on the labels so all users consider the information adequate," Gingery said.

Applicators reported that, other than labels, state agencies were their top source of disposal information, followed by company representatives, county extension agents, and federal agencies. Dealers, meanwhile, said company representatives were their first source of disposal information, followed by distributors, state agencies and federal agencies.

Pesticide Containers

The changing nature of containers was reflected in the types of containers the dealers reported they sold. The greatest number of containers was paper (37.3 per cent of the total containers sold), followed by plastic containers less than 30 gallons (32.2 per cent), metal containers less than 30 gallons (14.8 per cent), 30 and 55 gallon metal drums (6 per cent), 30 and 55 plastic drums (4.8 per cent), and the 56 gallon and larger bulk reusable containers (4.9 per cent) of the total number of containers.

Langley noted "the new bulk systems with reusable shuttles recently introduced in Montana represent a commitment to reduce the number of containers in the environment. In addition, at least one major company plans to introduce in Montana next spring packaging which dissolves in the tank. The dissolvable packaging is being tested by several companies to eliminate the need to

recycle or dispose of containers".

"Any container disposal program in the agricultural sector needs to take into account the changes in packaging that will occur in the 1990's," she said. "The industry's long-term goal is to eliminate one-way pesticide containers and some companies have set as early as 1994 and 1995 as dates to meet the goal."

Environmental Responsibility

Langley said that another indication of environmental responsibility was that, when asked what type of drums and containers they would like to purchase and sell pesticides in to minimize disposal problems, dealers preferred containers that could be recycled, refilled (less than 56 gallons), returned to distributor/manufacturer, water soluble containers or those that could contain bulk quantities (more than 56 gallons). A minority said the containers that were presently available were adequate.

Both dealers and applicators preferred pesticides in smaller size refillable containers than are now permitted by the Environmental Protection Agency (EPA). Currently, the EPA prohibits sale of less than 56 gallons of product in a refillable container.

Nearly two-thirds (64 per cent) of the applicators said that if they have excess mixed pesticide at the end of a spray project, they spray it onto a field or site the pesticide is labeled for while 32 per cent said they collect and store it for later use.

Semple noted that, because some indicated they spray it onto a non-crop site, drain it out on another site, or spray it around or drain it at the mixing/loading site, the associations and the Department of Agriculture need to reemphasize education on proper use and disposal of excess pesticides.

Mixing/Loading Sites

Less than a majority of either the dealers, 49 per cent, or the applicators, 35 per cent, said they handle, store, mix and load pesticides on an impermeable pad. Fewer individuals reported they had a berm, dike or wall to contain spills or were capable of collecting and storing these pesticide materials.

Langley said that this in a large part may be because dealers and applicators are waiting for the EPA to publish its rules on mixing and loading sites.

"Dealers and applicators cannot financially afford to construct containment when they may have to tear it out and redo it in a year to meet EPA specifications," she said. "We've had numerous questions from members about when the EPA rules will be finalized."

She noted that the associations will need to work with their members when rules are adopted to provide information to help them in constructing containment facilities which meet EPA specifications.

According to Gingery, the survey also indicates that dealers and applicators need more information about the soil type, ground water depth and flow, and potential for runoff to surface water at their dealerships and primary operation sites.

Half the applicators and 58 per cent of the dealers participating in the survey said they have a spill or emergency response plan prepared while 96 per cent of the dealers and 90 per cent of the applicators know who to contact for emergency medical assistance.

Langley said this means the associations need to work harder to insure that the dealers and applicators have emergency response plans in place and that local fire departments have access to dealer and applicator up-to-date lists of stored pesticides and their volumes.

CONTACT: Gary Gingery 444-2944
Pam Langley 443-1522
John Semple 443-7487

SENATE AGRICULTURE *
EXHIBIT NO. # 1A
DATE 1/30/91
BILL NO. # 161

SUMMARY

OF

**PESTICIDE APPLICATOR and DEALER
DISPOSAL SURVEY**

**MONTANA AGRICULTURAL BUSINESS ASSOCIATION
MONTANA AVIATION TRADES ASSOCIATION
and the
MONTANA DEPARTMENT OF AGRICULTURE**

November 1990

*

38-PAGE DOCUMENT
(SEE ORIGINAL
MINUTES.)

Senate
AGRICULTURE #2
EXHIBIT NO. _____
DATE 1/30/91
BILL NO. SB158

SUGGESTED AMENDMENTS TO SENATE BILL 158

1. PAGE 7 LINE 8 FOLLOWING THE WORD PARTS. INSERT " PLUS FREIGHT TO RETURN INVENTORY AND PARTS."
2. PAGE 8 LINE 11 FOLLOWING THE WORD ITEMS. STRIKE," EXCEPT REPAIRS PARTS"
3. PAGE 8 LINE 12 FOLLOWING CANCELLATION STRIKE THE WORD "AND" INSERT "PLUS FREIGHT TO RETURN INVENTORY."
4. PAGE 8 LINE 13 ITEM (b) STRIKE "85" INSERT "100"
5. PAGE 8 LINE 14 FOLLOWING THE WORD LIST STRIKE "OR" AND INSERT A "," FOLLOWING THE WORD CATALOG INSERT "OR LAST CATALOG, OR LAST PRICE LIST IN WHICH THE REPAIR PARTS WERE LISTED AS"
6. PAGE 8 LINE 16 FOLLOWING THE WORD CANCELLATION STRIKE THE PERIOD AND INSERT "PLUS FREIGHT TO RETURN REPAIR PARTS."
7. PAGE 9 LINE 2 SECTION (b) STRIKE "85" AND INSERT "100"
8. PAGE 9 LINE 3 FOLLOWING THE WORD LIST. STRIKE "OR" INSERT A "," FOLLOWING THE WORD CATALOG INSERT "OR LAST CATALOG, OR LAST PRICE LIST IN WHICH REPAIR PARTS WERE LISTED BY"



**MONTANA
HARDWARE &
IMPLEMENT
ASSOCIATION**

318 N. Last Chance Gulch
P.O. Box 440
Telephone 406/442-3388
Helena, Montana 59624

the advocate for Montana and Northern Wyoming retail hardware and farm implement dealers

TESTIMONY
JANUARY 30, 1991
ROOM 413-15

SENATE AGRICULTURE
EXHIBIT NO. #3
DATE 1/30/91
BILL NO. SB 158

SENATE BILL 158

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

FOR THE RECORD. I AM CHARLES BROOKS, MANAGING DIRECTOR OF THE MONTANA HARDWARE & IMPLEMENT ASSOCIATION. WE REPRESENT A NUMBER OF FARM IMPLEMENT DEALERS THROUGHOUT THE STATE. I AM HERE TODAY TO URGE YOUR SUPPORT OF SENATE BILL 158.

AS WE ALL KNOW, FOR A NUMBER OF YEARS, THE AGRICULTURE INDUSTRY IN OUR STATE ~~FOR~~ HAS BEEN UNDER ECONOMIC STRESS. LIKewise, THOSE MAIN STREET MERCHANTS WHO SERVE THIS INDUSTRY HAVE HAD VERY DIFFICULT ECONOMIC TIMES. WE ARE SEEING MAJOR CHANGES IN THE WAY MANUFACTURERS OF FARM IMPLEMENT EQUIPMENT SERVE AND HANDLE THEIR DEALER AGREEMENTS.

SOME OF THE CHANGES WE ARE SEEING IN THE INDUSTRY ARE:

1. THE RIGHT TO SUCCESSION BEING QUESTIONED AND, IN SOME CASES, THE DEALERSHIP BEING CANCELED WHEN THE CURRENT OWNER RETIRES OR IS DECEASED. THIS PRESENTS A MAJOR PROBLEM TO THE DEALER OR HIS FAMILY. IN MOST CASES THEIR MAJOR SAVINGS ARE TIED UP IN THE BUSINESS.

2. WHEN A DEALERSHIP IS TERMINATED, THEN THE QUESTION OF INVENTORY AND REPAIRS PARTS BECOMES A MAJOR QUESTION. SINCE THE DEALER HAS SPENT YEARS BUILDING THE MARKET FOR THE EQUIPMENT IN HIS AREA AND BY THE DEMANDS OF THE COMPANY, AS WELL AS PROPER SERVICE TO HIS CUSTOMERS, INVENTORIES CAN BE QUITE LARGE. WE FEEL, IF A DEALERSHIP IS CANCELED BY THE COMPANY, THEN THE DEALER SHOULD AT LEAST RECOVER HIS RAW COST FROM THE MANUFACTURER FOR INVENTORY OF EQUIPMENT AS WELL AS REPAIR PARTS.

3. MANUFACTURERS ARE DEMANDING THAT DEALERS PRODUCE A CERTAIN VOLUME EACH YEAR IN THEIR PRODUCT LINE. IF THEY DO NOT REACH THIS LEVEL OF SALES, THEN THE COMPANY VOIDS THE DEALERSHIP AGREEMENT. IN THE CASE OF DEALERS OPERATING IN AREAS THAT HAVE BEEN DECLARED A DROUGHT AREA, THEN WE FEEL WE NEED PROTECTION FROM THE MANUFACTURERS, SO THEY MAY NOT REMOVE THE DEALERSHIP AGREEMENT, UNTIL THE FARMER, RANCHER AND THE DEALERSHIP CAN RECOVER. THIS BILL ADDRESSES THIS ISSUE FAIRLY FOR BOTH THE DEALER AS WELL AS THE MANUFACTURER.

PAGE 2

4. A TREND WE SEE IN THIS INDUSTRY IS, TO ESTABLISH LARGE REGIONAL DEALERS WITH A FEW BRANCH STORES IN SELECTED AREAS. THIS WILL MEAN IN MANY CASES LESS SERVICE AND MORE COSTLY SERVICE AS THE FARMER / RANCHER WILL HAVE TO TRAVEL GREATER DISTANCES TO OBTAIN PARTS AND REPAIRS.

WE URGE YOUR SUPPORT OF SENATE BILL 158.

WE HAVE SEVERAL IMPLEMENT DEALERS HERE TODAY, WHO WOULD LIKE TO GIVE SOME BRIEF TESTIMONY. THANK YOU FOR THIS OPPORTUNITY TO APPEAR BEFORE YOU TODAY.



NORTH AMERICAN EQUIPMENT DEALERS ASSOCIATION



Serving Farm, Industrial and Outdoor Power Dealers
10877 Watson Road • St. Louis, Missouri 63127-1081 • 314/821-7220

GENERAL LETTER

G.L. S-2910

January 25, 1991

SUBJECT: **Massey Ferguson Case**
Re: Parts Return

FOR YOUR INFORMATION

TO: Association Managers

As you are aware, Massey Ferguson (MF) has continually refused to repurchase combine and four-wheel drive parts on termination of an MF dealer. The basis for MF's refusal to purchase parts was that there had been an assignment of all of the obligations to the Massey Combines Corporation (MCC) on May 9, 1986, and that MF has consistently relied on this assignment as a basis for not having an obligation to repurchase the combine and four-wheel drive tractor parts.

A recent United States District Court for the Western District of Missouri case gives former MF dealers encouragement in the case of Lewis G. Moore & Co. v. Massey Ferguson, Inc., cause number 89-0306-CV-W-8 (January 8, 1991). Until now, there have been no reported case decisions, as MF has settled before a decision by a court.

Moore was an MF dealer, terminated in November 1987, and returned parts pursuant to a letter received from MF. MF refused to pay for \$96,176 of repair parts which were returned to MF.

Moore filed suit for the value of the parts MF refused to repurchase. Moore subsequently sought a summary judgment under the Missouri Dealer Buy-back statute and breach of contract. The Court granted Moore a summary judgment in the amount of \$96,176, plus interest and attorney's fees.

The basis of the Court's decision was the purported transfer of MF's obligation to MCC in the May 9, 1986 assignment was not a novation (a substitution of parties) as argued by MF, and MF had the obligation to repurchase the parts.

The Court relied on Missouri statute in issuing the summary judgment. Interest was awarded as of May 9, 1988.

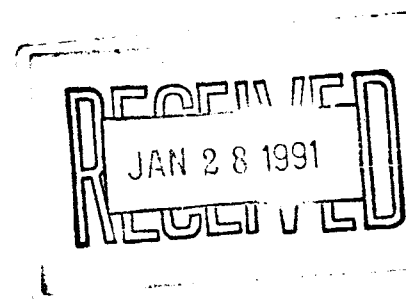
The law firm of Seigfreid, Bingham, Levy, Selzer & Gee, counsel for the Western Association, represented Moore. If you wish to receive a copy of the decision, please let Jackie Warner know and we will furnish a copy to you.

Sincerely,

William E. Galbraith
Executive Vice President

WEG:jw

cc: Board of Directors
Advisory Board



STATE AGRICULTURE
CREDIT NO. #4
DATE 1/30/91
BILL NO. SB 158

I am Ronald F. Waterman and I appear on behalf of Case Corporation., Case is a manufacturer of farm equipment with a network of dealers in Montana as well as the other 49 states. I appear today in opposition to Senate Bill 158 and urge this committee to not pass this legislation.

There are a number of reasons to support Case's opposition to this legislation. The most fundamental however is that the bill is an inappropriate means to address the unfortunate reality of events which has occurred in all rural areas of Montana, as well as all other states. What this bill attempts to do is to respond to the shrinking population in rural areas. It does so by attempting to keep one and only one type of business present in those counties.

The fact is that the populations in rural areas are shrinking. This bill will not prevent that development from continuing. I would like you to consider the information from just two counties in Montana which demonstrate this point. Daniels County has lost 16% of its population over the past 15 years. At the same time it has lost 35% of its farm proprietorships. Its total farm income has declined and in three of the last six years its farm income has been a negative figure, totalling more than \$7 million.

Sheridan County has experienced the same declines. It has suffered a population decrease of 11% and a 38% farm proprietorship decrease. Likewise, its farm income is substantially reduced.

The consequences of these population shifts and decline in farm income are that many rural areas do not have the population base to support the same number of businesses, goods and services they once did. Manufacturers who must spend money to retain dealers and to support them are forced to make difficult choices. This includes advising some dealers, who are marginal and whose population and economic base have eroded, that the dealership must be phased out and will not continue beyond the current dealer.

No one wants to make these decisions and no manufacturer is anxious to make these difficult decisions. But the fact of the matter remains the decisions must be made.

Senate Bill 158 ignores this reality and states that a dealer alone can choose to pass the dealership on to another generation or a designated successor and the manufacturer cannot refuse the designation unless there is "good cause", a showing the succession would be detrimental to the public interest or to the representation of the manufacturer. This standard is

vague and unenforceable, it fails to consider the interests of the manufacturer and essentially assures that every rejection will be challenged.

Senate Bill 158 likewise sets up an administration procedure with court review which will stretch for years during which time the manufacturer must continue the dealership regardless of how successful or unsuccessful the new dealer is and regardless of how well the dealer serves the manufacturer. This constitutes nothing more than a financial penalty imposed upon a manufacturer as it attempts to terminate or phase out a dealership.

Senate Bill 158 prevents termination for a natural disaster or for circumstances beyond the dealer's control. Again the language is vague. Moreover, the prohibition will always be invoked. I cannot think of any unsuccessful dealer who would not blame the weather or something beyond his control to prevent termination. This section says that if a dealer is a poor salesman and if other dealers are more aggressive and successful, nevertheless the manufacturer is stuck with that dealer, because after all, his inability to sell is beyond his control as he competes against other more successful salesmen.

It is basic contract law that there must be two parties willing to consent to do business with each other

before a contract can be created. This bill alters that concept and forces one party, a manufacturer, to accept another as a dealer although the manufacturer does not know and has not willingly agreed to do business with that successor dealer. Interestingly, Senate Bill 158 does not propose to make the family of a dealer liable in the event the dealer decides to quit against the wishes of the manufacturer. No one would propose such a provision because it would be unfair to force the family members to continue to engage in a business in which they had no interest. What is true for the family members is likewise true to the manufacturer.

Finally, I must advise that this bill is probably unconstitutional. It seeks to impair the obligations and terms of existing contracts and thus cannot be enforced against any existing dealership agreement. Likewise, it discriminates against the farm implement businesses making farm equipment manufacturers keep dealerships in locations while allowing automotive and other dealers to be terminated or phased out. I also question the validity of imposing both a penalty, making the violation of the statute quasi-criminal in nature and also imposing the prospect of treble damages in the event there is a termination despite the terms of this section.

The Montana legislature has frequently been accused

of being anti-business. It is legislation like this which has earned that reputation. I submit that this legislature should work to remain neutral toward business. To do so requires the defeat of SB 158.

For these reasons given above, I respectfully request that this bill receive a do not pass recommendation from this committee.

1534R

DATE

April 30, 1991

COMMITTEE ON

Agriculture

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
ANNIE BARTOS	DIVISIONS OFFICE DIR	SB 158	INFORMATION	
Charles Brooks	MT Hwd + Imp.	SB 158	✓	
Oswill NAS	Maack Equipment	SB 158	✓	
Cliff Hansen	Hansen Imp. Board	SB 158	✓	
Ken Munson	MUNSON Equipment	SB 158	✓	
Lynnon Coburn	PAPE Equipment	SB 158	✓	
BOB POTTER	TOWN & RANCH SERVICE CENTER	SB 158	✓	
Jon Waterman	Case Corp	SB 158		✓
Chris Kumpmann	METC	SB 161	✓	
Janet Ellin	MT Audubon	SB 161	✓	
Jerry George	MT. Dept. of Agric. ^{Resource Mgr.}	SB 161		
John Semple	M.A.T.A. (Aerial Applicator)	SB 161	✓	
Randy Johnson	NRBA	SB 158	✓	
Kay Norenberg	WIFE	SB 158	✓	
Bob Daniels	WFO	SB 158		
Linda Nelson	WFO 19	SB 158	✓	
Pam Langley	Montana Agri Business Assn	SB 161	✓	

(Please leave prepared statement with Secretary)

ROLL CALL VOTE

SENATE COMMITTEE AGRICULTURE

Date 1/30/91 Bill No. 161 Time 4:40

NAME	YES	NO
SEN. AKLESTAD	X	
SEN. BECK	X	
SEN. BRUSKI	X	
SEN. DEVLIN	X	
SEN. REA	X	
SEN. SWIFT	X	
SEN. WILLIAMS	X	
SEN. KOEHNKE	X	
SEN. JERGESON	X	

D. QUINN

GREG JERGESON

Secretary

Chairman

Motion: Senator Williams made a motion
that SB 161 DO PASS.
In favor 9; Opposed - 0.
MOTION CARRIED.