

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on January 27, 1993, at 1:00 p.m.

ROLL CALL

Members Present:

Sen. Don Bianchi, Chair (D)
Sen. Cecil Weeding, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Lorents Grosfield (R)
Sen. Bob Hockett (D)
Sen. Tom Keating (R)
Sen. Ed Kennedy (D)
Sen. Bernie Swift (R)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)
Sen. Jeff Weldon (D)

Members Excused: None.

Members Absent: None.

Staff Present: Paul Sihler, Environmental Quality Council
Leanne Kurtz, Committee Secretary

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

Committee Business Summary:

Hearing: SB 171, SB 196
Executive Action: SB 104

HEARING ON SB 171

Opening Statement by Sponsor:

Sen. Halligan, SD 29, said code commissioners apprise the legislature of statutes that have been declared unconstitutional. He said SB 171 is a code commissioner referral from Greg Petesch to deal with the statute 82-4-306. Sen. Halligan stated an exploration license from the Department of State Lands (DSL) is required of anyone who explores for a mineral. Sen. Halligan added under the old statute, there is a blanket confidentiality

requirement for all proprietary geological information. He said Montana's First Judicial District Court ruled that blanket confidentiality violates the constitutional right to know. The court found that blanket confidentiality did not allow DSL to weigh the public's right to know with individual privacy rights. He said SB 171 permits the DSL director or DSL staff to balance right to know with privacy rights.

Proponents' Testimony:

Gary Langley, Executive Director, Montana Mining Association (MMA) said most mining companies release environmental information to the public. He noted blanket confidentiality has been declared unconstitutional and said MMA believes SB 171 is an appropriate statute.

Jim Jensen, Executive Director, Montana Environmental Information Center (MEIC), said he favors SB 171 only if it is amended. He said MEIC sued DSL challenging the constitutionality of 82-4-306. Mr. Jensen referred to language in the title "permitting" DSL to release information, but he added the judge ruled "there is no permissive nature at all in the constitution." Mr. Jensen said the word "may" in line 25 of SB 171 should be replaced with "must". He said lines 1, 2, and 3 misstate the case and misinterpret the constitution. Mr. Jensen suggested the Committee amend the title of SB 171 to be a repealer of 82-4-306. He added DSL should adopt administrative rules to inform applicants that they must identify information in the application they believe to be proprietary.

Eric Williams, representing Pegasus Gold, said he supports SB 171, but has not yet considered any proposed amendments. He said the company's main concern is that they not be forced to relinquish any trade secrets. Mr. Williams said Pegasus Gold may have a problem with a repealer of 82-4-306.

Dennis Olsen, representing the Northern Plains Resource Council, said he supports the general intent of SB 171. He noted he has not reviewed any proposed amendments, but supports clarifying language that would ensure mandatory disclosure of application information.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Sen. Doherty asked if SB 171 was a code commissioner bill. Sen. Halligan replied it was on a Legislative Council list of bills that had been declared unconstitutional. Sen. Halligan added the University of Montana Law School drafted the bill. Sen. Doherty asked Sen. Halligan about the amendments. Sen. Halligan said he

has no problem with changing "permitting" to "requiring" or changing "may" to "must" to implement the law. He said he does not believe 82-4-306 should be repealed.

Sen. Doherty asked Eric Williams if the statute referred to all mineral exploration licenses or just small miners. Mr. Williams replied he understands the bill to apply to all miners.

Sen. Grosfield asked Mr. Jensen where proprietary rights are delineated. Mr. Jensen replied the rights are identified in article 2, section 9 of the Montana Constitution. Sen. Grosfield asked if the DSL commissioner is the appropriate individual to determine what information should be released. Mr. Jensen said DSL has not promulgated rules that outline what the duties of applicants are in order to protect their interests when they file applications for exploration permits. Mr. Jensen described what currently occurs when someone asks to look at an application, and clarified the language of amendments he wants to propose.

Chair Bianchi asked if anyone from DSL would address why the Department is not handling the application process the way Mr. Jensen suggested. John North, DSL, said DSL is handling application procedures the way Mr. Jensen suggested. He noted there are about 1,500 small miner files, dating back to 1972. He added DSL's intention is to have applicants designate which information they consider to be confidential. He said if DSL received a request for information, the Department would decide whether or not to release it, notify the parties involved, and let them go to court. Mr. North explained why DSL has not adopted administrative rules, and noted DSL's chief administrator is a commissioner, not a director as indicated in the bill.

Sen. Keating asked for an example of when the need for public disclosure would outweigh privacy rights of an applicant. Mr. North described a possible situation in which an applicant wanted a location kept confidential, but it was determined there may be a water quality violation.

Mr. North clarified the relationship between the Board of Land Commissioners and the DSL commissioner. He stated the DSL Commissioner makes all the mining and reclamation decisions, with the exception of adoption of rules, which is the responsibility of the Board of Land Commissioners.

Sen. Grosfield asked if an applicant has any input during the process in which DSL decides whether or not to release information. Mr. North said the applicant would be included in the process.

Closing by Sponsor:

Sen. Halligan said he does not believe 82-4-306 can be repealed in SB 171. He said he has no problem with changing wording in

the bill to mirror constitutional language. Sen. Halligan added proprietary information is rarely in the application for exploration, but constitutional language must be enforced in the event that there is such information.

EXECUTIVE ACTION ON SB 104

Motion/Vote: Sen. Keating MOVED SB 104 DO PASS. The motion CARRIED UNANIMOUSLY.

HEARING ON SB 196

Opening Statement by Sponsor:

Sen. Devlin said the federal Underground Storage Act did not include provisions for non-commercial tanks 1,100 gallons or less, so Montana placed state regulations on the tanks. Sen. Devlin stated people have to "jump through hoops" to remove underground tanks even if they are not leaking. He added that if a tank is not leaking the Department of Health and Environmental Sciences (DHES) should "cover the hole and be glad it's out of the ground".

Informational Testimony:

Jean Riley, executive director, Petroleum Tank Release Compensation Board, submitted written testimony (Exhibit #1).

John Geach, Underground Storage Tank Section Supervisor, DHES, also submitted a written copy of his testimony (Exhibit #2).

Proponents' Testimony:

Leonard Lundby, a farmer/rancher from Great Falls said underground storage tank laws impact him heavily, as he has 3 tanks. One of his tanks (a 500 gallon heating oil tank) is above ground, but has pipes underground, so it is classified as an underground tank. Mr. Lundby said he feels regulations have gone too far, and are cost prohibitive. He said that during the energy crisis in the 1970s, tank owners were encouraged to bury tanks underground to avoid evaporation. He added owners are digging up tanks because monitoring required by the regulations is expensive. Mr. Lundby said the last legislature took \$225,000 from the Underground Storage Tank Release Fund and placed it in the general fund to help balance the budget. He said there is currently little money left in the fund.

Dave McClure, representing the Montana Farm Bureau, read the organization's policy statement recommending that Montana underground storage tank laws be amended to conform to Environmental Protection Agency (EPA) rules concerning tanks with

less than 1,100 gallon capacity.

Tom Hopgood, Montana Association of Realtors, said SB 196 is a "logical and necessary exclusion from the act".

Opponents' Testimony:

Brian McNitt, Montana Environmental Information Center (MEIC), said regardless of ownership or size, underground storage tanks tend to leak. He noted smaller tanks leak more often than larger tanks, and soils, ground water and surface water are often contaminated. Mr. McNitt said a recent study in New York found no correlation between the size of the tank and the amount of contamination caused by a leak. He added the amount of contamination is a function of the size of the hole and how fast the tank's owner responds. Mr. McNitt passed around samples of steel used for different types of tanks. He said if SB 196 passed, tanks under 1,100 gallons would have no regulation and there would be no record of where the tanks are located or when they were installed. He said there would be no requirements on who could install the tanks and no record would be kept on age, location and condition of tanks. Mr. McNitt stated that in Montana, there are over 7,000 tanks with 1,100 gallon or less capacity.

Dave Ross, Audubon Legislative Fund, said the threat of leakage does not diminish with the size of the storage tanks. He said if the bill passes, probability of leakage will be increased, and ranchers and farmers will lose the backing of funds from the Petroleum Tank Release Compensation Board. Mr. Ross added that all the burden would be on tank owners to pay for problems that may occur through leakage. He said the provision in Section 3 of SB 196 allows anyone who owns non-commercial tanks, regardless of their size, to install them without the supervision of a licensed installer.

Stan Bradshaw, Montana Trout Unlimited, said he opposes SB 196 because ground water and surface waters are interrelated. He mentioned the Upper Blackfoot River, where water tables are high and there are a number of underground tanks.

Informational Testimony:

Beverly Gibson, Montana Association of Counties, said the Association neither supports nor opposes SB 196, but is concerned about the definition of commercial and non-commercial. Ms. Gibson noted non-commercial indicates involvement of local governments. She said there are tanks under 1,100 gallons or less on isolated refueling sites and if they are exempt from regulation, the owners will be unable to receive backing from the Petroleum Tank Release Compensation Board.

Questions From Committee Members and Responses:

Sen. Weeding asked why removal of underground storage tanks is such a complicated process. Mr. Geach described the permit process for removing tanks, noting the applications provide DHES with information on the nature of tank sites. He disagreed that DHES has been too restrictive when people wanted to remove their tanks, and added some people do not understand requirements for removing tanks. Sen. Weeding and Mr. Geach discussed the costs involved and Sen. Weeding noted some people may not admit they have tanks to avoid the costs.

Mr. Geach stated 8,000 tanks have been removed since 1985, and estimated the majority were under 1,100 gallons. He described the tank inspector's role when a tank is removed.

Sen. Tveit asked what the procedure is for filling the tank with cement or sand. Mr. Geach said requirements are the same no matter what is done to the tank. He noted tanks located under buildings have been closed by filling them with cement or sand.

Mr. Geach said the only exemption in federal law is non-commercial farm and residential tanks of 1,100 gallons or less. He said EPA felt it would be too difficult to regulate those because there are so many. Mr. Geach added tanks owned by local governments are subject to federal requirements.

Sen. Swift asked how many people are qualified to inspect underground tanks. Mr. Geach replied there are 70 licensed inspectors throughout Montana.

Sen. Grosfield and Mr. Geach discussed clean up procedures when a tank under a building leaks.

Sen. Weldon expressed concern that there would be no way to keep track of the smaller tanks. Mr. Geach said DHES has a database listing 25,000 tanks, which they provide to local officials. Sen. Weldon said a local administrator in his district is worried that passage of SB 196 would remove registration requirements on tanks under 1,100 gallons. He added the bill requires tank owners to obtain permits before removing the tanks.

Sen. Hockett and Mr. Geach discussed concerns prospective property owners have with underground storage tanks on real estate. Mr. Geach said people ask if tanks are registered with DHES, and if there are compliance records to determine whether they will be eligible for the Petroleum Tank Release Fund in case of leakage.

Sen. Doherty asked if regulations would remain the same for the 36 hour leak detection period. Mr. Geach said there are no proposals to change those rules. Mr. Geach said tank owners could maintain records themselves and contact DHES if a problem is suspected. He referred to the informational brochures DHES

provides regarding underground storage tanks (Exhibits #3 & #4). Sen. Doherty asked if DHES would be willing to expedite tank removal and inform the public of the requirements.

Jean Riley explained the history and function of the Petroleum Tank Release Compensation Fund, noting in October, 1991, the fund reached its cap at \$8 million. She said the fund currently has \$5.5 million, but it is receiving about \$3 million worth of claims per year. Ms. Riley added leaks are found in almost every tank that is removed. She said proposed legislation will keep the fund solvent by collecting fees on diesel and heating oils.

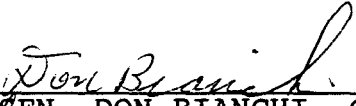
Mr. Geach discussed how different types of soil affect the cleanup process. Sen. Grosfield asked Mr. Geach if DHES rules are responsive to different types of land and different situations. Mr. Geach said the Department has no minimum clean up standards and assesses each case individually.

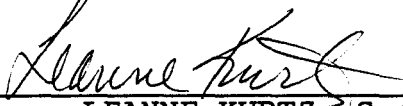
Closing by Sponsor:

Sen. Devlin stressed that he wants to get tanks out of the ground. He discussed difficulty his neighbor had testing the soil and water around a tank with equipment provided by the Petroleum Fund. He asked for DHES to allow removal of tanks without the inconvenience of state regulations.

ADJOURNMENT

Adjournment: 2:45 p.m.


SEN. DON BIANCHI, Chair


LEANNE KURTZ, Secretary

DB/lk

ROLL CALL

SENATE COMMITTEE Natural Resources

DATE 1/27

NAME	PRESENT	ABSENT	EXCUSED
Sen. Bianchi	X		
Sen. Hockett	X		
Sen. Bartlett	X		
Sen. Doherty	X		
Sen. Grosfield	X		
Sen. Keating	X		
Sen. Kennedy	X		
Sen. McClernan	X		
Sen. Swift	X		
Sen. Swysgood	X		
Sen. Treit	X		
Sen. Weeding	X		
Sen. Weldon	X		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 27, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 104 (first reading copy -- white), respectfully report that Senate Bill No. 104 do pass.

Signed: *Don Bianchi*
Senator Don Bianchi, Chair

Testimony SB 196

Jean Riley -- Executive Director
Petroleum Tank Release Compensation Board

The Petroleum Tank Release Compensation Board (Board) which administers the Petroleum Tank Release Cleanup Fund (Fund) is not in favor or opposed to this bill; however, the Board does have some concerns which they feel need to be brought to the committee's attention.

The Board has defined commercial tanks for the purpose of separating 973 program tanks. These tanks are defined as farm or residential tanks with a capacity of 1,100 gallons or less that are used for storing motor fuel for noncommercial purposes and tanks used for storing heating oil for consumptive use on the premises where stored.

The Board considers storage for commercial purposes to mean holding for resale under license from the Weights and Measures Bureau, Department of Commerce (82-15-105, MCA) or for later removal to another location where the fuel will be resold. Any other storage is presumed to be a noncommercial purpose.

The addition of the language in section 1 would exclude any noncommercial underground storage tank with a capacity of 1,100 gallons or less from the definition of underground storage tank. This results in the removal of these tanks from Fund coverage. Many noncommercial tanks are regulated by the Federal EPA. Tanks regulated by EPA are required to have financial assurance or pollution insurance. Many owners and operators in Montana rely on the Fund to meet their financial assurance requirements.

Petroleum releases are also regulated by CECRA, and owners and operators would be required to remediate or cleanup the site. The 973 tanks were brought under Fund coverage on May 15, 1991. Since that time the Board has reimbursed owners or operators of tanks with a capacity of 1,100 gallons or less \$83,076.87 at 28 different sites.

SENATE NATURAL RESOURCES
EXHIBIT NO. 31
DATE 127
BILL NO. 196

Department of Health and Environmental Sciences

Underground Storage Tank Program

Informational Testimony SB 196

SENATE NATURAL RESOURCES

EXHIBIT NO. 2

DATE 1/27

BILL NO. 196

Presented by John Geach
DHES UST Section Supervisor

The DHES appears today before this committee for informational purposes on SB 196. The Department feels the passage of this bill would have several significant impacts which this committee should be aware of.

This proposed legislation would exempt non-commercial underground storage tanks of 1,100 gallons or less capacity from current state regulation. This legislation appears to affect farm and residential tanks of 1,100 gallons or less capacity used to store motor fuels for non-commercial purposes and non-commercial heating oil tanks of 1,100 gallons or less capacity. However, since the term "non-commercial" is not defined in the proposed legislation it is unclear if this legislation would also affect tanks of 1,100 gallons or less capacity used for non-commercial purposes such as gas or diesel fuel tanks owned by schools and local governments. These types of tanks are currently subject to both federal and state underground storage tank regulations. To exclude these tanks from state regulation, would result in the Montana being less stringent than federal regulations which would affect the state's primacy for the Underground Storage Tank Program.

SB 196 would exempt 7,282 underground storage tanks or 47% of the state's 15,453 active underground storage tanks from current regulation. These tanks would not be subject to existing standards for construction, corrosion protection, structural integrity or

stored product compatibility. These tanks would also be exempt from the present requirements for installation, leak detection monitoring, repair and closure.

To date, over 1,400 leaking underground storage tanks have been reported to the DHES. Of these reported leaks, 357 or 25% have occurred from small farm, residential or heating oil tanks of 1,100 gallons or less capacity. Small non-federally regulated tanks have caused groundwater contamination in communities such as Absarkoe, Billings, Bozeman, Cutbank, Ennis, Great Falls, Hobson, Lewistown, Missoula, Sidney, and Townsend.

Tanks exempted by SB 196 would not be subject to the present state requirements for notification and permitting for installations and closures. Records concerning the installation and closure of underground storage tanks are being requested from our program on a daily basis by lending institutions, realtors and prospective buyers in real estate transactions. Without requirements for notification and documentation of underground storage tank installations and closures, records of this pertinent tank information would not be available. Tank owners could be faced with hiring professional consulting firms to provide environmental assessments of their properties which contain underground storage tanks for real estate transactions. Typical site property assessments for underground storage tanks can range from \$2,000 to \$8,000.

Several members of the Underground Storage Tank Program are present today and will be happy to provide any additional information the committee may request.

REQUIREMENTS FOR UNDERGROUND STORAGE TANK CLOSURE



SENATE NATURAL RESOURCES

EXHIBIT NO. 3

DATE 1/27

BILL NO. SB 196

A question and answer guide
on the closure of underground
storage tanks provided by the
Montana Department of Health
and Environmental Sciences

The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

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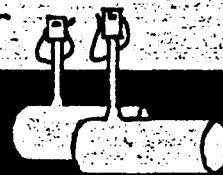
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SENATE NATURAL RESOURCES

EXHIBIT NO. 4

DATE 1/27

BILL NO. SB 196



A question and answer
guide for owners of small
underground storage tanks
provided by the Montana
Department of Health and
Environmental Sciences

The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

Senate
~~HOUSE OF REPRESENTATIVES~~
VISITOR'S REGISTER

Sen. Natural Resources COMMITTEE BILL NO. SB 196
DATE 1-27-93 SPONSOR(S) Devlin

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jean Riley - 1740 N. Montana	Petroleum Tank Release Compensation Board		
Beverly Gibson - Helena Mt. Assoc. of Co's			
John GEAR - DTHS / TECNA, MT.	DTHS (INTERNATIONAL)		
Steve Visser	Visser Petroleum		
Ronna Alexander	MT. Petroleum Marketers		
Dr. David Ross	Audubon		X
Bill Myers	APA	X	
GEORGE CICHENSKI	WMM	—	
Brian McNitt	MEIC		X
Stan Bradshaw	MTU		✓
Tom Haggard	MT. Assoc. Rebo,	✓	
Tom HARWOOD	SELF	✓	
Dave McClure	Mont Farm Bureau	✓	
Leonard Lundby	Self	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Senate

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Sen Nat. Res. COMMITTEE BILL NO. SB 171
DATE 1-27-93 SPONSOR(S) HALLIGAN

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jim Jensen	MEIC	✓ w/Amend	
John Gary Amstutz	DSL - Reclamation		
Sandi Olsen	DSL RD - HRB		
Dennis Olsen	NPRC	✓	
David Ross	Audubon Legislative Fund		
Stan Bradshaw	MT. T.H.	✓	
Eric Williams	PEGASUS Gold	X	
John North	DSL		

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