

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By DICK KNOX, CHAIRMAN, on February 10, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Rolph Tunby, Vice Chairman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Russ Fagg (R)
Rep. Gary Feland (R)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Hal Harper (D)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Howard Toole (D)
Rep. Doug Wagner (R)

Members Excused: None.

Members Absent: Reps. Brooke, Fagg, Schwinden, Swanson, Toole.

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Roberta Opel, Committee Secretary

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

Committee Business Summary:

Hearing: HB 423, HB 318, HB 395, HB 380, HB 434
Executive Action: Berkeley Pit Resolution, HB 345, HB 417,
HB 420, HB 423

HEARING ON HB 423

Opening Statement by Sponsor:

REP. BOB GILBERT, HD 22, Sidney, presented HB 423, which would clarify the hearings procedure of the Tank Release Compensation Board.

Proponents' Testimony:

Jean Riley, Executive Director, Petroleum Tank Release Compensation Board, presented testimony in support of the legislation. EXHIBIT 1

EXHIBIT 2 provides an overview of the Montana Underground Storage Tank Program.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

The committee discussed the ramifications and changes contained in the legislation.

Closing by Sponsor:

REP. GILBERT closed the hearing on HB 423.

HEARING ON HB 318

Opening Statement by Sponsor:

REP. SHEILA RICE, HD 36, Great Falls, opened the hearing and explained the legislation's intent. The bill revises the laws relating to air quality, and authorizes the Department of Health and Environmental Sciences (DHES) to administer a program for issuing and renewing air quality operating permits.

Proponents' Testimony:

Jeff Chaffee, Air Quality Bureau, DHES, presented testimony containing an overview of the legislation. EXHIBIT 3

Jan Sensibaugh, Air Quality Bureau, DHES, briefly described how the legislation would affect the Department's permitting authority and Title 5 requirements.

Tim Baker, Air Quality Bureau, DHES, explained the enforcement authority aspects of the legislation and distributed a handout delineating 42 amendments proposed by the Department. EXHIBIT 4

Ken Williams, Montana Power Company, distributed amendments for the committee's consideration. EXHIBIT 5

Janelle Fallan, Montana Petroleum Association, submitted testimony and amendments for HB 318. EXHIBITS 6, 7, 8

Dennis Olson, Northern Plains Resource Council, handed out testimony from Mort Reid, Chairman of the Yellowstone Valley Citizen's Council and highlighted the testimony. EXHIBIT 9

Ed Scott, Environmental Supervisor, Stone Container Corporation, read written testimony in support of the legislation. **EXHIBIT 10**

Brian McNitt, Montana Environmental Information Center, expressed the Center's support for the legislation.

Don Allen, Montana Wood Products Association, endorsed the amendments presented by Montana Power Company.

Mary Westwood, Director, Governmental Relations, Montana Sulphur and Chemical Company, distributed testimony in support of HB 318 with the amendments offered by the Air Quality Bureau.

EXHIBIT 11

Rex Manuel, Cenex, supported current testimony, DHES amendments, and strongly endorsed the amendments presented by Montana Power Company.

Dave Ross, Montana Audubon Council, stated support for the legislation. **EXHIBIT 12**

Bill McLane, Attorney, Conoco, stated Conoco strongly supported the bill with the amendments proposed by the DHES, but expressed concerns with stringency, and referred to amendments submitted by the Montana Power Company.

Bob Williams, Montana Mining Association, concurred with HB 318 and supported Montana Power's amendments.

Dan White, Stillwater PGM Resources, expressed the firm's backing for HB 318 and Montana Power's amendments.

Dexter Busby, Montana Refining, said his company supported the bill with DHES amendments and asked for consideration of Montana Power's amendments.

Russ Ritter, Washington Corporations, Montana Resources, and Enviro-Tron, stated support from the organizations with the amendments from Montana Power.

EXHIBIT 13 is supporting testimony from the Eastern Montana College Environmental Awareness Club.

Questions From Committee Members and Responses:

The committee questioned the proponents on their support for the amendments that had been offered to the bill. Intent of the proposed amendments was also discussed.

Closing by Sponsor:

REP. RICE closed by asking for support of the legislation and encouraged the acceptance of the amendments from the DHES. She

added the amendments offered by Montana Power required more discussion and asked for delay of executive action until dialogues could be held with the company.

HEARING ON HB 395

Opening Statement by Sponsor:

REP. MIKE FOSTER, HD 32, Townsend, began the hearing on HB 395, which closes the upper Missouri River Basin to further issuance of consumptive surface water permits until the adjudication is complete.

Proponents' Testimony:

Susan Callahan, Montana Power, urged passage of HB 395.
EXHIBIT 14

Jo Brunner, Montana Water Resources Association, expressed support for the legislation.

Mike Voleskey, Montana Association of Conservation Districts, stated his organization wanted to go on record as supporting this bill.

Opponents' Testimony:

Bob Lane, Department of Fish, Wildlife & Parks (FWP), disseminated testimony stressing the department's objections to the legislation. EXHIBIT 15

Stan Bradshaw, Trout Unlimited, submitted proposed amendments to HB 395. EXHIBIT 16

John Bloomquist, Special Assistant, Montana Stockgrowers Association, objected to the amendments that had been offered to the legislation.

Questions From Committee Members and Responses:

The committee discussed the impact of the legislation on public and private interests, the affect of the proposed amendments, and questioned the sponsor, REP. FOSTER, extensively on the bill.

Closing by Sponsor:

REP. FOSTER stressed that many points heard during the hearing were similar to those heard on the Teton Basin issue. He addressed concerns that surfaced during testimony, including those stated by FWP.

HEARING ON HB 380

Opening Statement by Sponsor:

REP DAVID EWER, HD 45, Helena, stated he was carrying this legislation on behalf of the Montana Department of Health and Environmental Sciences (DHES). The legislation affects the current law relating to air quality regulations for incinerators.

Proponents' Testimony:

Jan Sensibaugh, Air Quality Bureau, DHES, testified in support of HB 380 and provided three proposed amendments for consideration. EXHIBIT 17

Don Peoples, National Environmental Waste Technology Center (NEWTEC), Butte, testified in support of the legislation but suggested the bill be amended. He stated the moratorium would have a negative impact on the incineration of hazardous waste through high temperature technology. This project is very important to the Butte area, which will be funded with \$20 to \$25 million in federal funds and is the replacement program for the MHD project. EXHIBIT 18

Brian McNitt, Montana Environmental Information Center, stated MEIC supported the passage of HB 380 and noted two separate issues contained in the legislation: incinerators processing under 200 pounds per day and the issue of boilers and industrial furnaces (BIF) in Montana.

Jerome Anderson, Attorney, representing the Holman plant, testified as a neutral proponent to the legislation and supported amending the bill so that facilities covered by BIF regulations could be handled differently. He added the moratorium extension should not be applied to that group. He stated that definition of solid waste goes beyond that which is reasonably proper. He said language should be added to the bill to allow the processing of applications during the moratorium.

Brady Wiseman, Montanans Against Toxic Burning, expressed his organization's support of this bill.

Dave Ross, Montana Audubon, said this bill was needed to establish air and water quality.

Tom Daubert, Ashgrove Cement Company, spoke in support of the legislation and uniform regulations for small and large incinerators.

Aaron Carlson Biledeau, second grader, Montana City School, expressed concern with incinerator burnings.

Rachel Rauesirs, Montana City, stated support for the legislation.

Pamela Carlson, Montana City, testified in support of the HB 380.

Opponents' Testimony:

William Lawrence, Sure-Way Systems of Montana, defined the services provided by his company and testified on the impact this legislation would have on the company. EXHIBIT 19

Gordon Bronson, Montana Society of Hospital Engineers, proposed an amendment to HB 380. EXHIBIT 20

Don Sterhan, Western Recovery Systems, Inc, stated his company does not oppose strict standards and supported aspects of the legislation, but did oppose management by moratorium.

Questions From Committee Members and Responses:

The committee questioned the expansion of solid waste definition in the bill, the prohibition of air quality permits for incinerators, boilers, or industrial furnaces, the intent of the definition of hazardous waste, and the bill's impact on current industries in Montana, including hospitals.

Closing by Sponsor:

REP. EWER closed by stating he did not support the hospital amendment and felt none of the department's requests were unreasonable. He urged passage of the legislation.

HEARING ON HB 434

Opening Statement by Sponsor:

REP TIMOTHY WHALEN, HD 93, Billings, said the bill extends the current moratorium on the importation of hazardous waste until DHES adopts appropriate rules, and provides for a moratorium exemption to allow for regional "watershed" management.

Proponents' Testimony:

Ted Lange, Northern Plains Resource Council, provided testimony in support of HB 434. EXHIBIT 21

REP ROLPH TUNBY, HD 24, Plevna, distributed an amendment to HB 434 and expressed his support for the legislation.

Terry Cosgrove, Fallon County, stated the county can support the bill with the proposed amendments.

Don Peoples, National Environmental Waste Technology Center, Butte, stated he could back the bill if it were amended to include language proposed for HB 380 impacting his company.

Opponents' Testimony:

REPS. GILBERT AND FELAND, Natural Resource Committee Members, opposed the legislation.

Questions From Committee Members and Responses:

The committee questioned Mr. Peoples on his company's operations in Butte and his concerns with the legislation, the time-line for the adoption of DHES rules, the proposed amendments to the legislation, and the implications of the legislation.

Closing by Sponsor:

REP WHALEN requested a Do Pass recommendation for his legislation and that proposed by REP. TUNBY.

EXECUTIVE ACTION ON COMMITTEE DRAFT, HJR, REGARDING BERKELEY PIT

Discussion: CHAIRMAN KNOX, distributed draft copies of a House Joint Resolution dealing with the Berkeley Pit. EXHIBIT 23

REP. HARPER noted a handwritten addition on page two of the draft.

REP. GILBERT asked that language be drawn up to reflect DHES participation in Berkeley Pit issue. The committee discussed the technical aspects and language of the draft.

Motion/Vote: REP. GILBERT moved to amend the draft: page 2, after "levels" add ";", and delete "without scientific documentation supporting those conclusions". The motion carried unanimously.

Motion/Vote: REP. HARPER MOVED TO ADOPT THE DRAFT RESOLUTION AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 417

Motion/Vote: REP. TUNBY MOVED HB 417 DO PASS AS AMENDED. Amendments are EXHIBIT 24. Motion to accept the amendments carried unanimously.

Discussion: The committee discussed the amendments, tank sizes, fines, and governmental regulations and activities.

Motion/Vote: REP GILBERT moved to amend page 9, lines 24 and 25, strike "on the day of mailing", inserting "upon proof of receipt". Motion carried unanimously.

Motion/Vote: REP. TUNBY MOVED HB 417 DO PASS AS AMENDED The motion carried, with REPS. ORR, FELAND, AND SCOTT opposing the

bill.

EXECUTIVE ACTION ON HB 345

Motion: REP. FELAND MOVED HB 345 DO NOT PASS.

Motion/Vote: REP. GILBERT MOVED A SUBSTITUTE MOTION TO TABLE HB 345. Motion carried, with REPS. RANEY AND HARPER opposed.

EXECUTIVE ACTION ON HB 420

Motion: REP. HARPER MOVED HB 420 DO PASS.

Discussion: The committee debated the ramifications of the legislation.

Vote: The motion failed 6 - 10, with REPS. BIRD, FAGG, FELAND, FOSTER, GILBERT, ORR, STOVALL, WAGNER, TUNBY AND KNOX voting against the bill.

EXECUTIVE ACTION ON HB 423

Motion/Vote: REP. GILBERT MOVED HB 423 DO PASS. Motion carried unanimously.

ADJOURNMENT

Adjournment: The meeting was adjourned at 7:30 pm.



DICK KNOX, Chairman



ROBERTA OPEL, Secretary



GAYLE CARPENTER, Transcriber

DK/ro

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE _____

2-10-93

[illegible]

HR:1993

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CS - 09

HOUSE STANDING COMMITTEE REPORT

February 11, 1993

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that House Bill 417 (first reading copy -- white) do pass as amended .

Signed: _____
Dick Knox, Chair

And, that such amendments read:

1. Title, lines 12 and 13.

Following: "THE" on line 12

Strike: "DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES"
UNDERGROUND STORAGE TANK SPECIAL REVENUE ACCOUNT"

Insert: "STATE GENERAL FUND;"

2. Title, line 14.

Following: "AND"

Insert: "PROVIDING"

Following: "FROM"

Strike: "THAT"

Insert: "THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES"
UNDERGROUND STORAGE TANK SPECIAL REVENUE"

3. Title, line 16.

Strike: "75-10-417,"

4. Page 8, line 6, through page 9, line 3.

Strike: section 3 in its entirety

Renumber: subsequent sections.

5. Page 9, line 25.

Following: "of"

Strike: "mailing"

Insert: "receipt"

6. Page 12, lines 2 and 3.

Following: "the" on line 2

Strike: "underground storage tank special revenue account
established in 75-10-477"

Insert: "state general fund"

Committee Vote:

Yes 14, No 6.

341157SC.Hss

7. Page 12, line 10.

Following: "~~and~~"

Insert: "and"

8. Page 12, lines 13 through 16.

Following: "amended" on line 13

Strike: "; and

(c) civil penalties collected for underground storage tank
violations under 75-10-417 and administrative penalties collected
under [section 4]"

9. Page 2, line 10.

Page 5, line 7.

Page 7, line 12.

Page 13, lines 1, 3, and 7.

Strike: "4" or "4"

Insert: "3"

HOUSE STANDING COMMITTEE REPORT

February 11, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report
that House Bill 420 (first reading copy -- white) do not pass

Signed: _____
Dick Knox, Chair

Committee Vote:
Yes 10. No 1.

341220SC.Hss

HOUSE STANDING COMMITTEE REPORT

February 11, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report
that House Bill 423 (first reading copy -- white) do pass .

Signed: _____
Dick Knox, Chair

Committee Vote:
Yes 11, No ____.

341156SC.Hss

EXHIBIT 1

DATE 2-10-93

HB 423

Testimony on HB 423

Jean Riley
Petroleum Tank Release Compensation Board

The Petroleum Tank Release Compensation Board (Board) supports HB 423. This language allows the Board the option of conducting hearings as other Boards do. The Board could appoint a hearings officer to gather all pertinent information without the Board members present. The Board could then make a determination at a regular scheduled meeting after reviewing the information and recommendations. Presently all hearings have to be conducted at a Board meeting. This takes a substantial amount of time from other business such as claim reviews and eligibility determinations. The Board asks for your support on HB 423.

Thank you for your time.

OVERVIEW OF MONTANA UNDERGROUND STORAGE TANK PROGRAM

The Montana underground storage tank (UST) program has two major sub-programs, the UST leak prevention program and the leaking underground storage tank (LUST) corrective action response program. Both sub-programs work very closely with the state Petroleum Release Compensation Board to provide financial assistance to tank owners for leak response and corrective action expenses.

The UST leak prevention sub-program has the following functions:

1. UST Regulatory Program

This sub-program develops and administers the technical rules to implement the Montana Underground Storage Tank Act 75-10-405 MCA. These rules are similar to the federal EPA rules 40 CFR part 280 and outline the specifications of UST system construction, design, operation, repair and closure. They also include the requirements for tank notification, environmental site assessment, leak response and corrective action. The Montana UST rules deviate slightly from the federal requirements in that they also include heating oil tanks used for consumptive on the premises, farm and residential tanks of 1100 gallons or less used for non-commercial purposes and underground piping connected to above ground tanks. The state rules also require annual tank registration fees, provides for the issuance of registration certificates and tags and prohibits the placement of a regulated substance into an unregistered tank.

2. Permitting and Licensing of Installers and Inspectors

State law, 75-11-201 MCA requires the Department to establish a permit program for UST installations, repairs and closures. In addition, persons engaged in the business of tank installations, repairs or closures are required to obtain a license issued by the Department. The requirements for licensing require a minimum degree of UST experience and successful completion of a written examination on UST regulations and installation practices. Sixteen hours of continuing education credits (CEUs) are also required to be obtained by licensed UST installers, removers and inspectors during the three year term of their license.

Tank owners are required to obtain the services of a licensed installer/remover or may conduct their own work on their own tanks, if they have the work inspected by either a licensed local or state inspector. Licensed installers will also be spot inspected to insure their compliance with the UST rules. Permit and inspection fees are assessed to provide funding for state and local licensed inspectors to conduct these inspections. For enforcement purposes, local licensed inspectors must be employed by or contract with a local governmental unit to be eligible for reimbursement of inspection services.

2. Responsible Party (RP) Corrective Actions

Many UST owners are viable businessmen who have the financial ability to pay a reasonable amount of the costs of LUST corrective action. If a tank owner has liquid assets or capital equal to \$17,500 (homeowners - \$5,000) and have operated their UST system in compliance with state UST requirements, they are eligible to receive financial reimbursement from the Montana Petroleum Compensation (PETRO) Board. Our staff assists these RP tank owners in initiating corrective action for the remediation of their release and in preparing their financial reimbursement claims for submittal to the PETRO Board.

The functions of the Montana Petroleum Release Compensation Board

The UST/LUST program works very closely with the Petroleum Release Compensation (PETRO) Board to reimburse eligible tank owners for leak corrective action and remediation costs. State and federal UST rules requires owners of commercially used tanks to provide proof of insurance or financial responsibility coverage of either \$500,000 or \$1,000,000 to cover the costs associated with petroleum tank system releases. The Montana Petroleum Release Compensation Fund was established to assist tank owners in maintaining this level of financial responsibility coverage. The original PETRO compensation fund established in 1989 covered commercially operated underground storage tanks and aboveground petroleum storage tanks of up to 30,000 gallons. Legislation passed in the 1991 Legislative session expanded the coverage of the fund to include farm, residential and heating oil tanks. These non-commercial tanks are eligible for a maximum PETRO Fund reimbursement of \$500,000 compared to \$1,000,000 for commercial tanks. Tank owners must maintain their petroleum storage tanks in compliance with all applicable Montana statutes to be eligible for PETRO fund coverage. The leak prevention portion of the UST program assists the PETRO Board staff in determining if an applicant's UST system is in compliance with the applicable state statutes.

3. Local Governmental Units (LGUs)

Local governmental agencies such as fire departments or county health departments may apply to the Department for designation as a local implementing agency. LGUs will conduct routine compliance inspections of operational UST systems

A local governmental unit is defined by 16.45.101A (33) and 16.45.1202 (6) as "a city, town, county or fire district." A portion of the annual tank registration fees will be used to reimburse designated LGUs for inspection and enforcement services.

4. UST Data Base Management, Technical Resources, State Inspections and Enforcement

The functions of the state underground storage tank program include management of the database of all known tanks which have been notified to the Department. Information contained in this data-base includes tank ownership, contents, size, construction and release detection method installed. This database includes data on all known UST tanks and piping systems whether active, closed in place or removed. This information provides a valuable resource for property owners, insurance companies, lending institutions, planners and environmental health agencies.

The staff of the state UST program includes engineers, environmental specialists and hydrologists who are available as technical resources for tank owners and operators, the public and local governmental implementing agencies. The state staff also conducts compliance, installation, repair and closure inspections and initiates enforcement action through the program's attorney when necessary.

The LUST leak response and corrective action sub-program has the following functions:

1. LUST Trust Program

Each state is eligible to receive a portion of the federal lust trust fund to investigate and implement corrective actions of leaking underground storage tanks whose ownership is either unknown or the owner is incapable of funding the corrective action costs. These funds can only be used to investigate and remediate leaks associated with federal RCRA regulated underground storage tanks. The state staff provides both leak investigation activities and oversight of private consultants hired to conduct further leak remedial actions once the contamination source is identified. If LUST Trust funds are committed to a cleanup and a financially responsible party for the site is identified, cost recovery actions can be taken to recover the expended LUST Trust funds.

Montana Department of Health and Environmental Sciences
Air Quality Bureau

Testimony on HB 318

Before the Natural Resources : By Jeff Chaffee,
Committee of the Montana House of : Jan Sensibaugh, Tim
Representatives : Baker of the Air
Quality Bureau, MDHES

A bill for an act entitled: "An Act Generally Revising the Laws Relating to Air Quality; Authorizing the Department of Health and Environmental Sciences to Administer a Program for the Issuance and Renewal of Air Quality Operating Permits..."

Overview

Passage of the Federal Clean Air Act Amendments of 1990 has created a new era in regulating sources of air pollution. In the federal Act, Congress strengthened the role of states in assuring clean and healthful air quality. Title V of the federal Act requires all states to develop an operating permit program covering all major air pollution sources. In the 1991 Legislature, the department received approval to begin the development of an operating permit program and to establish a permit fee system for the permitting program in general. In July, 1992, the Environmental Protection Agency (EPA) adopted regulations outlining how states were to implement the required operating permit program. EPA has provided extensive guidance and training on these new regulations. Department staff have reviewed the federal regulations and guidance, and have attended the training sessions. Based upon this information, the department must receive additional statutory authority in the Montana Clean Air Act to fully implement Title V of the federal Act. HB 318 contains the needed statutory changes to allow the department to achieve this goal. Because the

department must develop and submit the required program by November, 1993, passage of HB 318 now is critical if we are to meet the mandate in the federal Act.

In addition to the requirements under federal law, there are a number of reasons for the state to want to pursue implementation of the operating permit program. Montana currently has a fully delegated pre-construction permitting program from the EPA, resulting in state control over the issuance of all air quality construction permits. Failure to implement the operating permit program would result in split authority, with sources being required to receive state permits before construction and EPA permits during operation. Further, and based upon the department's proven track record in issuing permits for new projects worth more than \$600 million in the past 12 months, we believe the department can do a better job than EPA. Unlike EPA, the department is knowledgeable and experienced in dealing with the industry in this state. Implementing the program at the state level prevents others in Denver or in Washington, D.C. from determining the importance of our air resource, or how much economic development is allowed.

Along with the positive reasons for administering the program, the federal Act mandates a number of negative consequences, or sanctions, for states that fail to meet the Title V requirements. Failure to develop the required operating permit program and meet the November 1993 deadline, or failure to subsequently fully implement the program will result in sanctions against the state within 18 months and federal takeover of the program within 24 months. The sanctions will include one or more of the following:

withholding of federal highway funds, stringent emission reductions before new industry may locate in the state, or holding back part or all of the air pollution grant to the state for the air program. The federal Act mandates that EPA collect fees from the regulated sources and run the program if the state fails to do so. The fees charged by EPA would be at the presumptive level in the federal Act, which is currently at \$28.39 per ton of air pollutant emissions. This rate is more than double the fee the department is proposing for the biennium.

The program we are proposing will impact virtually every major industrial facility, and many smaller businesses in the state. During development of the legislation and budget for the operating permit program, the department formed a Clean Air Act Advisory Committee to provide input as we prepared for the Legislature. This group was comprised of representatives from small business, environmental groups, Montana Tech, and nearly every segment of regulated industry, including utilities, wood products, oil refining, mining and smelters. The committee met over the last five months to discuss both the necessary legislation and the appropriate budget for implementing the program. Input from committee members was carefully considered and in most cases was included in the legislative and budget packages.

In order to obtain delegation for the operating permit program from EPA, the department must demonstrate to EPA that we have adequate resources and staff for proper implementation. It is a requirement of the federal Act that program funding come from the regulated community through annual permit fees. The department has

administered a fee program over the last biennium, and we have prepared a modified budget request for the collection of additional fees for program implementation over the next two years. This budget request will be presented as part of the department's budget during the appropriations process.

House Bill 318 provides the needed statutory authority to establish an operating permit program and coordinate it with the existing construction permit program, to implement a new small business assistance program, and to strengthen enforcement authority. The following sections will address these areas of the bill.

A Review of the Title V Program Requirements

The department currently operates a construction permitting program for sources of air contaminants, and has operated this program in one form or another since 1967. Those members of regulated industry on the department's advisory committee suggested that there not be any integration between the existing construction permit program and the new operating permit program. The department has incorporated this suggestion into HB 318, and this legislation does not provide for combined construction and operation permitting.

The authority for the construction permitting program, Section 4, is basically unchanged. A few amendments have been made to clarify the authority of the department to regulate the construction, reconstruction and modification of sources of hazardous air pollutants, as required by the federal Clean Air Act. Other minor amendments have been made to provide for consistency with the operating permit program, and do not change the way the

construction permit program is currently administered by the department.

Sections 9, 10 and 11 provide the Board of Health and Environmental Sciences and the department with the authority to develop and administer the operating permit program required by Title V of the federal Act. This program will require all major sources of air contaminants to obtain permits that will specify and clarify the applicable regulatory requirements for each source. The legislation provides the necessary statutory authority for the development of regulations in the following specific areas:

- Application only to sources subject to Title V;
- Provisions for general permits for numerous similar sources;
- Requirements and procedures for the following:
 - Permit and renewal applications;
 - Emissions determinations;
 - Notice to the public, contiguous states and EPA;
 - Inspection, monitoring, recordkeeping, compliance certification, compliance plans, permit transfers, suspension, modification, amendment and revocation;
 - Single permits for facilities with multiple sources;
 - An air toxics permitting program;
 - An application shield from enforcement;
 - A permit shield from enforcement; and
 - Operational flexibility consistent with Section 502(b)(10) of the federal Clean Air Act.

The permit shield provisions were added in response to the request of the regulated industry, and are not required by the federal Act.

Section 12 contains the existing authority for fee collection, which has not been substantially changed. A minor amendment has been made allowing the department to impose a late payment penalty. Section 13 establishes an account in the state special revenue fund for fee revenues, to be used for permitting and associated program activities.

Complete implementation of the federal Act will eventually result in the regulation of a number of small businesses, primarily to control toxic air emissions. Most of these small businesses have not previously been subject to air quality regulation. They frequently lack the technical expertise and financial resources necessary to evaluate the regulations and determine their compliance needs. To assist these businesses, the state must implement a Small Business Assistance Program. This program will provide technical assistance and compliance information to small businesses.

Sections 14, 15, 16, 17 and 18 establish a small business representative, advisory panel and technical program, as required by the federal Act.

The representative will be an advocate for the needs of small business, will respond to complaints from small businesses about the program and will make suggestions regarding the effectiveness of the program. We are anticipating that the representative will be located in the Department of Commerce.

HB 318

The technical program located in the Air Quality Bureau will be the permitting authority for small businesses and will provide assistance in determining applicable requirements for permit issuance.

The advisory panel will oversee the activities of the program, evaluate the effectiveness of the program, and review information for small business stationary sources to assure such information is understandable by the lay person.

Strengthened Enforcement Authority

HB 318 makes five changes to the department's air quality enforcement authority, which fall into two categories: first, changes that are necessary to obtain EPA approval for the operating permit program and, second, changes which the department is proposing in response to changes in EPA's enforcement authority under the 1990 amendments to the federal Clean Air Act.

1. Changes required for the operating permit program.

Without the following changes, the department will not obtain authorization from EPA to administer the operating permit program:

- Amendments to the existing civil penalty statute to clarify that multiple violations occurring on the same day are counted as separate days of violation. Although the department has interpreted the existing statute in this manner in the past, the amendments clarify this point.
- Amendments to the existing criminal punishment statute. Criminal violations of the Montana Clean Air Act would be subject to a maximum fine of \$10,000 per day of each

violation. Currently, the maximum penalty for criminal violations is \$1,000 per day.

2. Changes in response to EPA's strengthened enforcement authority. When the department brings an enforcement action for violations of the Montana Clean Air Act, there are often violations of requirements that are enforced by both the state and EPA. It is the department's policy to maintain the lead in resolving these violations, rather than let EPA pursue an independent judicial action. However, EPA's enforcement authority was significantly expanded under the federal Act. As a result, the department has found it increasingly difficult to maintain the lead in enforcement, and seeks to strengthen existing enforcement authority as follows:

- Under the federal Act, EPA may now issue administrative orders for civil penalties of up to \$25,000 for each day of violation, not to exceed \$200,000 total. The department is seeking administrative penalty authority of not more than \$10,000 for each day of violation, not to exceed \$80,000 total. Consistent with the federal Act, these penalty orders may not be issued for violations that are more than a year old. Appeal is to the Board of Health with judicial review. Pursuant to amendments offered today, in determining the appropriate penalty the department and board are required to consider the same factors considered under the federal Act, including good faith efforts that have been made at compliance and the alleged violator's ability to pay.

- Under the federal Act, criminal violations are now punishable by time in prison as well as substantial fines. In this bill, and as contained in the department's amendments offered today, criminal violations are punishable by up to two years in prison. This is consistent with the punishment applicable to criminal violations of other state environmental laws.
- Under the federal Act, and in certain civil cases, EPA is now entitled to a presumption of continuing violation after the source has been notified of the violation. The department is seeking similar authority.

Thank you for your patience and attention. We are available to answer questions from the committee.

Explanation of Amendments to House Bill No. 318
Introduced Bill Copy

Requested by the Department of Health
and Environmental Sciences
For the House Committee on Natural Resources

The forty-two attached amendments to HB 318 address twelve areas of concern raised by the regulated community. A short narrative summary of each area is provided below.

1. The regulated community expressed concern that the new operating permit program could serve as a basis for the imposition of new substantive emission limitations, beyond those required by the federal Clean Air Act. To address this concern, the Statement of Intent has been amended to make it clear that this is not the intention of the legislature.

2. The regulated community was concerned that the new operating permit program would not allow for operational flexibility, and specifically would not allow for what are known as "minor permit modifications" and "off-permit changes". As it stands, the current version of the bill contains a provision requiring operational flexibility. To further address this concern, the Statement of Intent has been amended to make it clear that "minor permit modifications" and "off-permit" changes are envisioned.

3. The regulated community expressed concern that the amendments to the existing construction permitting program were being expanded. The Statement of Intent indicates that these amendments are to clarify existing practice. To further address this concern, the Statement of Intent has been amended to clarify that the legislature did not intend to expand the current construction permitting program.

4. The regulated community was concerned that the bill muddled the use of the terms "air contaminants", "air pollution", and "regulated air pollutants", with the possible result being the expansion of regulation under the Act. To address this concern, amendments have been made, including the addition of a new term "air pollutants". These amendments do not result in any expansion of regulation under the Act.

5. The regulated community expressed concern that the bill created confusion between the existing construction permitting program and the new operating permit program. This in part resulted from last minute amendments to the bill during the editing process, which substantively changed the interaction of these two programs. To address this concern, amendments have been made to make clearer the separation between the two programs.

6. The regulated community was concerned that the bill would limit or abridge the right of the permit applicant to seek traditional judicial remedies to force the Department to meet the timelines contained in the bill for granting or denying a permit. This was not the intent of the legislation, which was silent on this point. To address this concern, amendments have been made to clearly state that the permit applicant may obtain relief through these traditional remedies.

7. The regulated community expressed concern that the bill was more stringent than federal law in terms of the factors that must be considered by the Board or Department in assessing administrative civil penalties. To address this concern, amendments have been made to track the federal language on this point.

8. The regulated community was concerned that the bill was more stringent than federal law in terms of the maximum criminal punishment allowed. There was also a concern that the criminal punishment statute, as drafted, did not precisely track the federal law in some critical respects. Amendments have been made to address both of these concerns.

9. The regulated community expressed concern that the bill called for criminal punishment that could be construed as a felony charge against the offender. To address this concern, amendments have been made to classify criminal violations of the Act as a misdemeanor.

10. The regulated community was concerned that the bill did not require the Department to define criteria for both determining application completeness and when additional information would be necessary after a completeness determination had been made. In addition, there was concern that the protection offered by the "application shield" was not clear. To address these concerns, amendments have been made to require the Department to adopt such criteria, and clarifying the protection offered by the "application shield" when an operating permit has expired and a timely and complete renewal application has been filed.

11. The regulated community expressed concern that the bill did not allow for representatives of small businesses to serve on the Small Business Assistance Advisory Council. To address this concern, amendments have been made to clearly allow such representation.

Amendments to House Bill No. 318
Introduced Bill Copy

Requested by the Department of Health
and Environmental Sciences
For the House Committee on Natural Resources

1. Page 4, line 3.

Strike: ", and it"

Insert: "It"

2. Page 4, line 6.

Strike: "."

Insert: ", and that the department allow for operational flexibility at those sources, including provisions for minor permit modifications and off-permit changes. The legislature does not intend that the operating permit program administered by the department serve as a basis for imposing additional emission limitations upon sources within the state, except as required by Subchapter V."

3. Page 4, line 18.

Following: "11]."

Insert: "The clarifying amendments contained in this bill are not intended to expand the current authority of the department to administer an air quality permitting program relating to construction, installation, alteration, or use."

4. Page 6, lines 1, 2 and 3.

Strike: ", including pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq."

5. Page 6, lines 4, 5 and 6.

Strike: "in the outdoor atmosphere of one or more air contaminants"

Insert: "of air pollutants"

6. Page 6, line 4.

Insert: "(3) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq."

Renumber: subsequent sections

7. Page 7, line 7.

Strike: "regulated"

8. Page 7, line 8.

Strike: "contaminants"

Insert: "pollutants"

9. Page 7, line 10.

Strike: "regulated"

10. Page 7, line 10.

Strike: "contaminants"

Insert: "pollutants"

11. Page 8, line 23.

Following: "~~pollutants~~"

Insert: "pollutants"

Strike: "contaminants"

12. Page 10, line 15.

Following: "~~pollutants~~"

Insert: "pollutants"

Strike: "contaminants"

13. Page 9, line 2.

Strike: "operation,"

14. Page 9, line 3.

Strike: "expiration,"

15. Page 9, line 4.

Strike: "amendment,"

16. Page 9, line 5.

Following: "~~issued~~"

Insert: "a permit issued"

17. Page 9, lines 5 and 6.

Strike: "operating permits as part of an operating permit program to be administered by the department"

18. Page 9, line 7.

Following: "~~part~~"

Insert: "part"

Strike: "chapter"

19. Page 16, line 16.

Following: "application."

Insert: "This does not limit or abridge the right of any person to seek available judicial remedies to require the Department to act in a timely manner."

20. Page 19, line 12 through 16.

Strike: lines 12 through 16 in their entirety.

Insert: "(i) the alleged violator's ability to pay and the economic impact of the penalty on the alleged violator;

(ii) the alleged violator's full compliance history and good faith efforts to comply;

(iii) the duration of the violation as established by any credible evidence, including evidence other than the applicable test method;

(iv) payment by the violator of penalties previously assessed for the same violation;
(v) the economic benefit of noncompliance;
(vi) the seriousness of the violation; and

21. Page 19, line 17.

Strike: "(iv)"

Insert: "(vii)"

22. Page 20, line 23.

Following: "false"

Insert: "material"

23. Page 21, line 5.

Strike: "3"

Insert: "2"

24. Page 21, line 6.

Following: "violation."

Insert: "This offense shall be classified as a misdemeanor."

25. Page 25, lines 13 and 14.

Strike: "air contaminants"

26. Page 29, line 21.

Following: "made."

Insert: "The department shall adopt rules that contain criteria for use in determining both when an application is complete and when additional information is required after a completeness determination has occurred."

27. Page 30, line 24.

Following: "."

Insert: "The applicant shall continue to be subject to the terms and conditions of the expired operating permit until the operating permit is renewed, and shall be subject to the application of subsection (9)."

28. Page 30, line 4.

Following: "application."

Insert: "This does not limit or abridge the right of any person to seek available judicial remedies to require the Department to act in a timely manner."

29. Page 32, line 19.

Strike: "contaminants"

Insert: "pollutants"

30. Page 34, line 2.

Strike: "contaminants"

Insert: "pollutants"

4
2-10-93
H3 318

31. Page 34, line 3.
Strike: "contaminants"
Insert: "pollutants"

32. Page 34, line 5.
Strike: "contaminants"
Insert: "pollutants"

33. Page 36, line 5.
Strike: "contaminants"
Insert: "pollutants"

34. Page 36, line 15.
Strike: "contaminants"
Insert: "pollutants"

35. Page 37, line 5.
Strike: "contaminants"
Insert: "pollutants"

36. Page 37, line 21.
Following: "owners"
Insert: "or representatives of owners"

37. Page 40, line 25.
Strike: "regulated"

38. Page 40, line 25.
Strike: "contaminants"
Insert: "pollutants"

39. Page 41, line 4.
Strike: "regulated"

40. Page 41, line 5.
Strike: "contaminants"
Insert: "pollutants"

41. Page 41, line 6.
Strike: "regulated"

42. Page 41, line 7.
Strike: "contaminants"
Insert: "pollutants"

February 10, 1993

PROPOSED AMENDMENTS TO HB 318
INTRODUCED BILL COPY
REQUESTED BY THE MONTANA POWER COMPANY

1. Page 4, line 6.
Following: "V."
Insert: "Further, it is the desire of the legislature that the operating permit program for those sources subject to Subchapter V of the federal Clean Air Act shall be no more stringent than required by Subchapter V."
2. Page 22, lines 18 through 25.
Delete in their entirety.
3. Page 23, lines 1 through 4.
Delete in their entirety.
4. Page 25, line 12.
Following: "chapter."
Insert: "The board must promulgate rules that are no more stringent than the requirements of Subchapter V of the federal Clean Air Act."
5. Page 26, lines 15 through 19.
Delete in their entirety and replace with: "adequate, streamlined and reasonable procedures for expeditiously determining when applications are complete; for processing such applications; and for expeditious review of permit actions, including applications, renewals or revisions;"
6. Page 34, line 1.
Following: "for"
Insert: "actual"
7. Page 34, line 25.
Following: "chapter,"
Insert: "that the amount of requested fees is appropriate,"
8. Page 35, lines 9 and 10.
Delete: "impose a penalty of not more than 50% of the fee, plus"

9. Page 37, line 13.

Following: "chapter."

Insert: "The operating permit fees and the construction permit fees must be maintained in separate subaccounts. Sources paying fees under the operating permit program shall have the right to audit the operating permit program quarterly."

Montana Petroleum Association
Janet Allan
2-10-93

EXHIBIT 6
DATE 2-10-93
HB 318

TESTIMONY BEFORE THE HOUSE NATURAL
RESOURCES COMMITTEE
Concerning
HOUSE BILL 318

Stringency

Most important - Montana program should be no more stringent than the minimum the federal government requires the state to include in its program.

Criminal Penalties

- Eliminate prison terms. The State is not required to impose prison terms or to have an enforcement program identical to the federal EPA's. EPA is not precluded from enforcing existing criminal penalties against any Montana source.
- Intentional rather than knowing violations should be required for criminal penalties to be imposed. Significant civil penalties for knowing violations are already in place.

Civil Penalties

Require that a violator's full compliance history and good faith efforts be considered when assessing the amount of civil penalties, consistent with the federal Clean Air Act.

Continuing Violations

Eliminate the subsection requiring that a permittee prove he is not guilty of continuing violations. May be unconstitutional and is not required to obtain federal approval of state's operating permit program.

Permit Shield

- Clarify that compliance with an approved operating permit is compliance with all permit requirements without express reference to those requirements on the permit.
- Separately provide that compliance with an operating permit is compliance with other applicable air quality laws if the operating permit includes those requirements or includes a determination that those requirements are not applicable.

Construction Permits

Add language consistent with the federal Clean Air Act that a construction permit is needed only for a significant increase in emissions of a regulated air pollutant.

Construction and Operating Permit Applications

- Require the Department to adopt by rule a list of all possible criteria by which an application is deemed complete.
- Delete language that state has no burden to timely approve permit applications.

Definition of Air Contaminant

Eliminate the term "air contaminant" and focus the Montana Act on "air pollutants" as defined in the federal Clean Air Act. Otherwise, the bill could also apply to inside air.

EXHIBIT 7
DATE 2-10-93
HB 318

HB 318 SUGGESTED CHANGES

Permit Shield

Section 10 (9) Compliance with an operating permit granted or renewed under (section 9) and this section is considered to be compliance with the permit requirements of this chapter, and shall be considered compliance with other requirements of this chapter if the permit expressly includes those requirements or an express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under (section 9).

Mt Petroleum Ass'n

EXHIBIT 8
DATE 2-10-93
HB 318

HB 318 SUGGESTED CHANGES

Stringency

Add conforming language throughout HB 318: "The Board may not adopt rules that are more restrictive than those a state is required to adopt under the Clean Air Act Amendments of 1990 in order to obtain approval to implement the air permit program.

Mt Petroleum Ass'n

Amendment HB 318 (Rice)

MPA = Janelle
Fuller

1. Page 33, line 2
Following: "application"
Insert: "as"
2. Page 33, line 2
Following: "required"
Strike: "under this"
3. Page 33, line 2
Insert "Pursuant to Subchapter V of
the Federal Clean Air Act"
4. Page 33, Line 3
Strike: "Chapter"

Simply clarifies that Fee assessments
are tied to Clean Air Act Amendments
of 1990.

Northern Plains Resource Council

EXHIBIT 9

DATE 2-10-93

HB 318

TESTIMONY OF THE YELLOWSTONE VALLEY CITIZEN'S COUNCIL & THE NORTHERN PLAINS RESOURCE COUNCIL ON HB 318 BEFORE THE MONTANA HOUSE NATURAL RESOURCE COMMITTEE

February 10, 1993

Mr. Chairman, members of the committee, for the record, my name is Mort Reid, and I am chair of the Yellowstone Valley Citizen's Council (YVCC), a local affiliate of the Northern Plains Resource Council (NPRC). I am testifying today on behalf of both organizations. I am sorry I cannot be here today, but I had taken the day off for the hearing on this bill scheduled earlier on January 29th which was cancelled, and I could not take another day off work.

YVCC has been involved with Yellowstone County's air pollution issue for twenty years. Our members believe that we can and should have both a healthy environment and economic prosperity.

In order to work towards an air quality program that both protects our health, and ensures a sound economic environment, YVCC has been an active participant on the State Air Quality Advisory Council. We are here today to urge your support of those sections in HB 318 that would allow the State of Montana, as authorized by the U.S. Environmental Protection Agency (EPA), to administer an operating permit fee program applicable to certain sources of air contaminants, and provide for the resources necessary to enforce that program. An air contaminant of particular concern to YVCC is sulphur dioxide (SO₂). There is a serious SO₂ pollution problem in Yellowstone County. The six major SO₂ polluting industries in the County (Exxon, Cenex, MT Power-Corlette, MT Sulphur and Chemical Co., Conoco, and Western Sugar) are responsible for emitting 31,000 tons of SO₂ into our airshed every year. When you consider that that is 31,000 tons of a gas, you can even further appreciate the amount of pollution in our airshed. Furthermore, these

31,000 tons account for 42% of Montana's entire SO2 emissions.

Background of Montana's Attempts to Address the SO2 Pollution Problem in Yellowstone County

In 1980, Montana attempted to address the state's SO2 pollution problem by establishing a one-hour standard, a 24-hour standard, and an annual standard for SO2. Unfortunately, the one-hour standard established by the State Legislature was rendered nearly useless by the Board of Health, who approved rules--against the recommendation of the Air Quality Bureau--allowing this standard to be exceeded on each monitor 18 times annually before a violation would be registered. According to State Air Quality Officials, this one-hour standard of 0.5 ppm with 18 exceedences is nearly equivalent to the federal 3-hour SO2 standard, which, for the record, was established to protect vegetation, not people. The ineffectiveness of the one-hour standard, in effect, left the citizens with only two remaining state health-based standards, i.e., the 24-hour and the annual standards.

In 1987, the SO2 pollution problem in Yellowstone County was once again avoided with the passage of House Bill 534. This bill exempted from the 24-hour, and the annual SO2 standards, any industry whose 1985 modeling data showed violations of those standards. In order to ensure the passage of this bill, the following promises were made:

First, Yellowstone County industries pledged to voluntarily reduce their emissions (see attached Montana Standard Article article).

Second, The Billings-Laurel Air Quality Technical Committee (BLAQTC) would be formed with the intent that industries would work with the state in a cooperative manner to voluntarily reduce Yellowstone County's air pollution.

Third. A health study would be conducted in the County to determine what effects such high SO2 pollution levels were having on the health of the citizens.

It has been five years since the passage of HB 534, and to date, not one of these promises has been kept. Yellowstone County industries have maintained a status quo of approximately 31,000 tons of SO2 emissions every year. YVCC members have monitored BLAQTC meetings, but we have given up any hope that BLAQTC will ever be effective in reducing pollution without outside pressure. Lastly, we are still waiting for that promised health study.

It is YVCC's position that HB 534 has utterly failed to address the state's SO2 pollution problem, and that in fact it has provided an excuse for delaying any real solutions. That failure has not only hurt the health of Billings' citizens, it has also significantly impaired our community's ability to attract new economic development. It's simple: New industries cannot obtain air quality permits, because some existing industries refuse to clean up. For example, a major brewery chose another city over Billings in which to locate, at least in part because of the uncertainty and complexity of the air pollution problem in Yellowstone County--namely, the issue of noncompliance with federal Clean Air Standards.

YVCC urges the State of Montana to pursue a more aggressive effort towards reducing the state's air pollution, both to protect the public's health, and to enhance economic prosperity. We feel that a good first step would be to authorize the Air Quality Bureau to administer an Operating Permit Fee Program through the passage of HB 318 before you today.

THE NEED FOR A STATE OPERATING PERMIT FEE PROGRAM

YVCC believes an operating permit fee program should raise enough revenue to:

(1) Ensure proper enforcement of air quality operating permits;

(2) Initiate special studies and fund dispersion modeling and monitoring in geographic areas with air quality problems--that is, in areas such as Billings & East Helena that have been found not to be in compliance with the federal Clean Air Act. Such studies are essential for identifying the degree to which individual facilities contribute to degradation of the ambient air; for determining the degree to which they need to clean up in order to meet the requirements of the law; and, if necessary, for determining who is not complying with the law so that the state can take appropriate and effective enforcement action against violators;

(3) Establish a permit program effective enough to ensure primacy for Montana under the federal Clean Air Act;

(4) Ensure Montana's eligibility for matching funds from the Environmental Protection Agency; and,

(5) Last, but not least--especially in this legislative session--minimize the Air Quality Bureau's costs to the State's General Fund.

YWCC believes that it is in the best interest of all Montanans for the State Air Quality Bureau to administer this permit fee program. If the Legislature fails to enact an adequate operating permit fee program, then control of our air quality program will be relinquished to the EPA. This would result in sanctions against the state, including the loss of federal air program funding and highway funding. Additionally, we feel it would be a great loss to the state to lose employees who have worked here in Montana in trying to effectively address air quality issues unique to our state. Yellowstone County residents would be especially distraught at the prospect of losing an air quality specialist in Billings who has effectively assisted citizens in addressing frequent air pollution problems in Yellowstone County.

The MT Standard, Butte
Saturday, March 14, 1987

Industry officials pledge continued cuts in emissions

By Steve Hattrley

Standard State Bureau

HELENA — Industry officials pledged Friday to continue efforts to reduce sulfur-dioxide emissions in the Billings area even if the Legislature weakens state SO₂ standards.

However, Health Board officials and others said they fear weaker state standards would eliminate the incentive for industry to lower emissions.

The debate took place before the state Health Board and a legislative committee considering the bill to relax state sulfur-dioxide standards.

The Health Board decided to defer action on proposals to limit the emission problem. And the Senate Natural Resources Committee didn't act immediately on House Bill 534 after hearing the testimony.

The bill, sponsored by House Majority Leader Tom Hannah, R-Billings, would relax the state's annual and 24-hour sulfur-dioxide standards for ambient air to the federal level. The state currently prohibits more than .02 parts per million of sulfur dioxide in the air on an annual average, while the federal standard is .03 ppm. The state standard on a 24-hour basis is .1 ppm while the federal one is .14 ppm.

Industries in the Billings area, including three oil refineries, a power plant, a sugar mill and a sulfur processor, exceed state standards but comply with federal ones.

The industries have said the cost of complying with the state standard could put them out of business, while environmentalists and others have said the state shouldn't give in to threats.

The groups have been working with the Health Department to hammer out a tentative agreement to reduce SO₂ levels.

On Friday, their representatives told the Health Board and Senate committee that the agreement must go hand-in-hand with Hannah's bill. They said that, even if they make voluntary reductions, they don't expect to attain state standards without making costly expenditures that would jeopardize their economic health.

"We don't see any way to get to .02 without major investments," said Henry Hubble, manager of the Exxon refinery.

For that reason, Hubble and others said, the Legislature must still weaken the state standard.

Critics, however, said weakening the standard removes an incentive for continued reduction efforts.

"There's not going to be any need for negotiations" if HB 534 passes, said state Health Board member Howard Toole.

Industry officials responded that they feel the agreement would be binding if they sign it. They also said they'll continue to negotiate and voluntarily reduce emissions because they've made public commitments to do so. "We have to live in that community too."

Robert Holtzsmith, manager of the Conoco refinery, said industry has to cooperate because if it didn't the 1990 Legislature could return to the more-stringent state standard.

Hannah said his bill won't worsen Billings' air, but will make it cleaner. He said it's had the effect of forcing the Health Department to negotiate an agreement that will reduce emissions.

Meanwhile, industry officials argued that the federal standard is adequate to protect health because it was set after extensive studies on SO₂'s health effects.

Likewise, a Billings pulmonary disease specialist, Dr. Ronald Burnam, challenged a 1981 study that showed Billings children have a harder time breathing than do children from other Montana cities because of air pollution. Burnam said there's no good medical evidence to justify a tougher state SO₂ standard.

Critics, however, maintained that clean air was important to health and the local economy.

Donald Lee of Billings said his wife Nettie died in 1985 after a severe asthmatic attack that was "certainly hastened by Billings' dirty air." He said there was a "startling correlation" between her earlier attacks and the city's bad air episodes.

"The issue involved is not how much clean air will cost, but who will pay the cost," said Ellen Morris, past president of the Yellowstone Valley Citizens Council.

Others complained that the federal standard was not 16 years ago and based on health studies now out-of-date.

Hal Hobbins, chief of the Health Department's air-quality bureau, said recent studies indicate that Montana's more-stringent 24-hour standard is needed to protect health.



HANNAH

ATTACHMENT #1

EXHIBIT 9

DATE 2-10-98

HB 318

An adequate operating permit fee program is especially needed in light of the fact that the EPA has issued a warning to Montana that the State must revise Yellowstone County's inadequate SO₂ air quality plan, formally known as a SO₂ State Implementation Plan (SIP). This warning came in response to the results of two modeling studies: one conducted by Billings-Generation, Inc. (BGI), and the other conducted by Geo-Research, Inc. (GRI). The results of both studies indicate that Yellowstone County industries are violating federal SO₂ standards, which are more lenient than the state standards. These study results confirm what YVCC has contended all along: that the health of Billings citizens is being put in jeopardy by industries who have failed to meet the minimum requirements of the law. In addition, Lewis and Clark County is also not in attainment for SO₂, and faces the prospect of a SIP revision. (Federal Register, Volume 57, October 27, 1992.)

When the EPA issues a formal SIP recall to the State, it will require the Air Quality Bureau to completely revise Yellowstone County's SO₂ compliance plan. This will require a tremendous amount of resources from the Air Quality Bureau. An adequate State-administered Operating Permit Fee program would allow the Legislature to set appropriation levels for the state to charge Yellowstone County industries to cover the amount necessary to develop and implement a new plan to ensure compliance with federal SO₂ standards. We therefore support the Department's request for adequate fees from Billings industries to pay for the SIP recall.

In conclusion, the members of YVCC and NPRC urge this committee to pass this essential legislation. Thank you for this opportunity to testify.

TESTIMONY-BRIEF

STATE IMPLEMENTATION OF FEDERAL CLEAN AIR ACT
AMENDMENTS OF 1990

Helena Montana
February 10, 1993

EXHIBIT 10
DATE 2-10-93
HB 318

Representation:

My name is Ed Scott and I am the Environmental Supervisor for Stone Container Corporation in Missoula, Montana. Stone Container Corporation presently operates a large pulp and paper mill under air permit No. 2589-03.

Testimony:

We at Stone Container wish to testify in support of the State Air Quality Bureau's effort to obtain legislative approval to implement the requirements of the Federal Clean Air Act Amendments of 1990.

Although Stone has some concerns regarding how the State Air Quality Bureau implements the program, we favor state authority in contrast to federal authority. The availability of local programs and personnel provides industry and the general public the immediacy and site-specific knowledge needed to best protect the environment and to address important issues in a contemporaneous manner.

We anticipate that the fees associated with the mill's operation will increase significantly as part of a state run program but we believe that a sound air program administered locally is very important.

Although we are supportive of state control as indicated, our major concern is that there be consistency with the federal program. Not only do we view the Clean Air Act Amendments as an environmental tool imposing significant environmental constraints and requirements on our industry but also as the basis providing us a degree of certainty regarding program elements and national consistency. We could not be fully supportive of a state program that fails to recognize safeguards contained in the Clean Air Act Amendments or one that imposes arbitrary constraints. We are confident that the State of Montana will administer the Clean Air Act Amendments in a nationally consistent and equitable manner.

Summary:

In summary, we at Stone Container contend that the state is best equipped to assure that the citizens of Montana are properly protected and that the local industry is properly heard in the permitting process.

MONTANA SULPHUR & CHEMICAL COMPANY

627 EXXON ROAD • P.O. BOX 31118
BILLINGS, MONTANA 59107-1118
OFFICE: 406-252-9324 • FAX: 406-252-8250

February 10, 1993

EXHIBIT 11
DATE 2-10-93
HB 318

TO THE MEMBERS OF THE HOUSE NATURAL RESOURCES COMMITTEE:

Montana Sulphur & Chemical appears before you today in support of House Bill 318, the statutory authorization for an air quality operating permit system in the state of Montana, as prepared and presented by the Department of Health and Environmental Sciences and the Air Quality Bureau. Montana Sulphur believes that state control of this operating permit system is at the heart of air quality control for Montana.

Montana Sulphur has its own long history of air pollution control. Since 1956, our company has served as the only independent air pollution control facility in the Yellowstone Valley. For all those years, Montana Sulphur has taken both waste gases and sulfur derived from pollution control activities at the Billings and Laurel oil refineries and has turned them into useful agricultural and industrial products which we have been able to sell at a profit. And all of this has been done without special tax incentives, government giveaways or special concessions from elected officials.

As part of its long-term planning, Montana Sulphur has also continuously improved its process to capture more and more of the sulfur which comes to it in its raw material streams. As a result of this commitment to improving its processes and equipment, Montana Sulphur has improved its recovery of sulfur from waste gas streams some 30% over its history and it presently recovers at least 95% of the sulfur in the waste gas streams it processes. With plans that are already being implemented, Montana Sulphur hopes to increase its rate of recovery to more than 99%.

And during the course of providing this steady improvement in Billings' air quality, Montana Sulphur has also provided steady high-wage employment to its workers, a solid contribution to the local and state tax structure, and economic prosperity for the local merchants it has chosen to deal with.

The factors which have allowed this small company with limited resources to succeed while larger companies with vast resources bemoan their ability to do effective air pollution control are the same factor that must be built into an air quality operating system for the state of Montana. Those factors are:

1. CONSISTENCY.
2. AGILITY.
3. ADAPTIBILITY.
4. COMMITMENT.

These air quality permits and the laws and rules governing them must be consistent in their goals, consistent in their policy and consistent in their application if they are to succeed to protecting the environment and providing for evenhanded economic growth. This means that there should be no special treatment for any entity based on power or influence, but that the rules developed under these laws would be applied equally to all regulated industries large and small, healthy and unhealthy, local or multinational. Montana Sulphur knows how difficult it can be when the laws are not applied consistently, as we experienced in our ATS Plant permitting process. This must not be allowed and it is here, at the legislative level, that you can build in the fairness that will assure the atmosphere of fair competition that stimulates business activity and promotes good relations between government and industry.

Consistent application of air quality rules and regulations also allow long-term planning to take place. The transient refinery manager who is judged on his yearly bottom line can use the rules to establish and pass on to his successor necessary plant changes that will result in air pollution reductions.

This law must also provide the Air Quality Bureau with the necessary agility to handle changes in circumstances that industry faces every day. For example, shortly after Montana Sulphur obtained its current air quality permit, it had an opportunity to add a facility we call the Monaca Unit, which provides redundant production of one of our major products. Because no increase in air pollution beyond the limits of our permit would occur, we saw no reason that we could not go ahead and put in this valuable asset. We now find ourselves in the unenviable position of to a technical citation for not including this plant in our earlier permit application. The air quality permitting system needs to have the agility to accommodate practical business decisions that do not impact air quality or take an industry outside of the parameters of its established air quality permit.

Adaptability is the main reason Montana Sulphur believes that operating permits should be handled in Helena, not left to the EPA in Denver. Small companies survive because they are adaptable. The same is true of small states. For air quality to be achieved, the officials governing the sources must be able to adapt to new evidence, to new technology and to new factors in air quality regulation. For Montana, this can best be done at a state level. We are just a small player in this region of the country and our needs would be subordinate to the needs of other states seeking advice from the Denver office of EPA. We would also oppose any efforts to limit what the state can do by saying it can be no more stringent than federal law. Others do not understand the unique character and quality of Montana's commitment to air quality and they cannot possibly make rules that would fit our circumstances.

Finally, the Legislature needs to make a commitment to air quality. Montana Sulphur understands how difficult that commitment may be to make in these tough economic times. But a commitment to effective regulation of air pollution is a commitment to the future of every man, woman and child in the State of Montana. Montana Sulphur has found great success in doing what is right for the citizens of its community and we would ask no less of our elected officials.

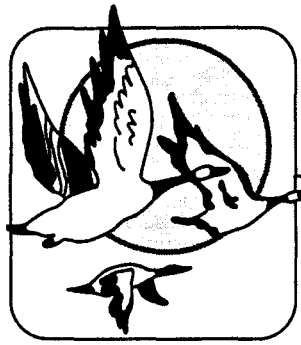
WE URGE YOU TO SUPPORT PASSAGE OF HOUSE BILL 318 AS PROPOSED AND PRESENTED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AND THE AIR QUALITY BUREAU.

Sincerely yours,



Mary E. Westwood
Director of Governmental Relations

EXHIBIT 11
DATE 2-10-93
HB 318



Montana Audubon Council

State Office: P.O. Box 595 • Helena, MT 59624 • (406) 443-3949

Chapters:

Bitterroot Audubon
Bitterroot Valley

Flathead Audubon
Flathead Valley

Five Valleys Audubon
Missoula

Last Chance Audubon
Helena

Pintlar Audubon
Southwest Montana

Rosebud Audubon
Miles City

Sacajawea Audubon
Bozeman

Upper Missouri
Breaks Audubon
Great Falls

Yellowstone Valley
Audubon
Billings

Good afternoon chairman Knox, members of the committee. My name is Dave Ross and I am here representing Montana Audubon Legislative Fund.

Audubon supports House Bill 318. We recognize that the Federal Clean Air Act has given each state the opportunity to obtain authorization for an operating permit program. It is time for the Montana Legislature to take action and allow the Department of Health and Environmental Sciences to institute and take hold of the states clean air program.

If this does not occur, the Environmental Protection Agency will step in and institute their own permit process.

The law that would be enacted by House Bill 318 would make Montana's Clean Air Act as strong, if not stronger in some places, than the Federal version. Audubon feels that this bill is needed. It is strong enough to protect the air quality in Montana.

As I stated previously, the EPA will administer the Federal Clean Air Act if the Legislature does not step forward and allow the department of Health and Environmental Sciences to enact the permitting process.

From what I understand, Industry is going to propose a number of amendments to this bill, some which might possibly benefit them and not the people of the great state of Montana. We urge you to pass this bill as it now stands.

Thank You,

Dave Ross



Recycled Paper



1500 North 30th Street, Billings, MT 59101-0298

EXHIBIT 13
DATE 2-10-93
HB 318

Environmental Awareness Club

10 February 1993

Mr. Dick Knox, Chair
Natural Resources Committee
Montana House of Representatives
Helena, Montana

Dear Mr. Knox:

We are writing to urge you and all the members of the Natural Resources Committee to support H.B. 318. As residents of the Billings community, we are particularly concerned about air quality in our area and in the state of Montana. We believe increasing the per time polluting fee is a fair means of regulating polluting industries. Corporate polluters have been allowed to exhibit a blatant disregard for the quality of the environment for far too long. By having to pay higher fees to pollute, the economic incentive to reduce emissions, etc. may become strong enough for them to finally "clean up their act", and therefore clean up the air we breathe.

So we again ask that you vote to approve H.B. 318 and thus make clean air a top priority for Montana. Thank you for your consideration.

Sincerely,

The Eastern Montana College Environmental Awareness Club

Henry D. LaFever

Henry D. LaFever
President

Stephen J. Tanner

Stephen J. Tanner
Vice-President

Niel Mullarkey

Niel Mullarkey
Secretary-Treasurer

EXHIBIT

DATE

HB

14
2-10-93
395

UPPER MISSOURI RIVER BASIN CLOSURE
Questions and Answers

Q: What is a basin closure?

A: A basin closure prevents the Department of Natural Resources and Conservation (DNRC) from issuing new water use permits in highly appropriated basins. Mont. Code Ann. § 85-2-319 allows either the legislature or DNRC to close a basin. Basin closure does not affect existing water rights nor does it affect the ability to make changes to existing water rights. Basin closure only affects new, proposed water uses.

Q: How is the Upper Missouri River Basin defined?

A: The Upper Missouri River Basin includes the Missouri River and all of its tributaries above Morony Dam near Great Falls.

Q: Why is basin closure being proposed in the Upper Missouri River Basin?

A: The basin closure proposal is largely a result of the recent water reservation process conducted in the Upper Missouri River Basin. Evidence submitted at the water reservation hearings clearly showed that the Upper Missouri River Basin is already overappropriated. The following evidence was introduced at the reservation hearings:

- * Agricultural groups introduced testimony showing that the Beaverhead, Red Rock, Big Hole, Ruby, Boulder, Jefferson, Gallatin, East Gallatin, Smith, Dearborn and Sun Rivers are all fully appropriated based on agricultural claims alone.
- * The Montana Power Company and the Bureau of Reclamation have large water rights at their dams on the Missouri River which are rarely satisfied except in occasional years during high spring flows.
- * DNRC prepared a water availability computer model which confirmed that no additional water is available in the Upper Missouri River Basin except in occasional years during high spring flows.

There is no additional water available for appropriation in the basin. Existing water right holders should not be forced to continually expend time and money to protect their water rights against new appropriations when there is no additional water.

Q: Is the basin closure proposed in the Upper Missouri River a permanent, total closure?

A: No, the closure is neither permanent nor total. The basin closure will last only until the basin has been adjudicated by the Montana Water Court. If the adjudication confirms that there is no additional water for new uses, the basin closure can be extended. During the period of the closure, groundwater wells, nonconsumptive uses of water, and storage projects utilizing high spring flows will be allowed.

Q: Will the basin closure affect the water reservations granted in the Upper Missouri River Basin?

A: The closure will suspend the water reservations granted to the Department of Fish, Wildlife and Parks (DFWP), the Department of Health and Environmental Sciences (DHES), the Bureau of Land Management (BLM), and various conservation districts. These water reservations contain a condition that the reservations "shall have no force and effect in any basin... for the period of time and for any class of uses for which permit applications are precluded."

The true value of these reservations are questionable since they have a very junior 1985 priority date. At the very best, the reservations may prevent new uses and diversions. To do so, however, the reservation holders must file objections to new permits and expend the time and money necessary to enforce their water reservations. This same objective can be accomplished in a much simpler and direct method by closing the basin. Basin closure will protect existing water users from further reductions in the water supply and will protect stream flows by preventing additional water diversions.

Prepared by Holly Franz for
The Montana Power Company
January 4, 1993
Revised February 2, 1993

HB 395
February 10, 1993

Testimony presented by Bob Lane, Dept. of Fish, Wildlife & Parks
before the House Natural Resources Committee

The Department of Fish, Wildlife & Parks believes that basin closures, in the proper circumstances, are a desirable, effective and even necessary water management tool. The Missouri River basin above Morony Dam is a prime candidate for consideration of a basin closure. Rarely is there sufficient water available for new permits in the upper basin, particularly during the irrigation season.

Under normal circumstances, the department would favor the basin closure proposed in HB 395. The closure would protect irrigation and other consumptive use rights and would normally protect the instream flow reservations of the department and the Department of Health and Environmental Sciences that were recently granted by the Board of Natural Resources and Conservation. However, because of a condition in the Board's order of June 30, 1992, the reservations granted would no longer exist for practical purposes under the present version of HB 395. This condition states:

The DFWP reservation shall have no force and effect in any basin, subbasin, drainage, subdrainage, stream, or single source of supply for the period of time and for any class of uses for which permit applications are precluded.

This condition, in conjunction with HB 395, would nullify most of the reservation process just recently completed on the Upper Missouri

River Basin above Fort Peck Dam. This basin includes approximately one-half the area and waters of the state.

Our agency spent over a half million license and federal excise tax dollars of sportsmen and women that were appropriated and approved by the legislature. The reservation process in the upper Missouri basin was supported by general fund appropriations of approximately \$1.3 million to DNRC to prepare an EIS and to conduct the extensive, lengthy and exhaustive hearing process. Of this amount, the Conservation Districts used general fund appropriations of about \$400,000 to prepare and advocate reservations for irrigation projects. Cities and towns received \$67,000.

The Board granted instream flow reservations in the upper Missouri River Basin to help protect water quality and the outstanding fishery and recreational values of the basin. Many of the rivers, including the Gallatin, Madison, Smith, Big Hole, Beaverhead and Missouri Rivers, have well deserved national and even international reputations. They are among the best in the world.

At the time the reservations were granted, the department recognized there were significant problems that the Board's condition on instream flows could cause. Now, in light of this bill and at least two other basin closure bills, the department believes that HB 395 presents another opportunity to take a careful look at the wisdom of the condition. For the following reasons, the Board's condition puts

the advocates of instream flows and consumptive water users, including irrigators, in a "Catch-22" that harms both instream values and the interests of irrigators and other consumptive water users.

First, an interpretation of the Board's condition that would nullify, at least in part, the instream reservations when they are most needed is both fundamentally unfair and unwise and flies in the face of the granting of instream reservations. The Board concluded after a three year process, following the submittal of reservation applications, that instream flows were needed and in the public interest. In total, the department spent the better part of 10 years in the process. The condition, in itself, frustrates the public's reliance and faith in a valid public process initiated by the legislature.

During the administrative hearing, holders of existing rights were concerned that their existing rights be protected, and they were. The department holds instream flow reservations on behalf of the public and asks that the public's rights be given this same recognition and protection. The public, through the department, is entitled to play a role in future water use and management issues in the basin that would affect the fisheries resource. However, the combination of this bill and the Board's order will treat instream flows in a way that no one would consider treating any other vested water rights. They will have no protection under this bill as written.

Second, and perhaps more important, the condition may harm the future hopes and expectations of present water users. Users in water short basins hope and dream of someday improving water availability and water management. Although none of us knows exactly what the future may bring, improving water availability through new storage or more efficient delivery systems can only be achieved with capital investments. It is doubtful that irrigators alone can fund such projects by themselves. For future projects to be feasible a partnership of all interests, including irrigation, fisheries and recreation, will almost inevitably be required. If state, and federal funds, are to be spent on fisheries and recreational benefits, then those benefits must be protected. The only way that instream values for fisheries and recreation can be assured of protection is through an instream flow reservation. These reservations are the one and only opportunity for recognizing and protecting instream values. If the reservations are nullified when they are most needed, this department will not be able to justify spending money in any partnership to improve storage or delivery systems.

Third, if the condition means that the instream reservations would have no force and effect against any junior consumptive use permits, there is a significant problem. Instream flows would not be protected against any junior permits issued between July 1, 1985, and the date of closure of the basin. July 1, 1985, is the priority date of the Upper Missouri River Basin reservations. Thus at the moment

of the basin closure, from a practical standpoint instream flow protection would disappear. These junior rights could then take water that had been protected by the senior instream flow reservations. The closure, in fact, would harm senior irrigation users as well as instream flows because water could be consumed that could not have been used before the closure. This turns the purpose of stream closures on its head. The Board could not have intended this result.

To give you an idea of the magnitude of this concern, there are approximately 557 permits issued or pending with a priority date after July 1, 1985, in the Upper Missouri River Basin above Fort Peck Dam.

The "no force and effect" condition in the Board's order is now proving in HB 395 that it has severe drawbacks. It prevents all of the parties with a legitimate interest from being free to consider basin closures on the merits of the closures themselves. If the Board's condition was removed, then the department supports the closure. An amendment for this purpose is attached.

Without the proposed amendment, the department would have to oppose the bill but not the concept of a closure for the Missouri Basin above Morony Dam.

PROPOSED AMENDMENT TO HB 395
FIRST (WHITE) COPY

1. Page 2, following line 21.

Insert: "NEW SECTION. **Section 3.** Validity of
Reservations. The closure in [section 2]
shall not render any instream reservation
granted by the Board of Natural Resources and
Conservation in its June 30, 1992, order of no
force and effect, notwithstanding any
condition to the contrary in that order. The
validity and existence of the instream
reservations are not affected nor diminished
during the closure in [section 2]."
Renumber: subsequent sections

EXHIBIT

DATE

HB

PROPOSED AMENDMENTS TO HB 395
Montana Trout Unlimited
February 10, 1993

Page 2, line 12, after "basin.":

insert "(2) All consumptive use reservations granted by the board of natural resources and conservation shall be suspended until the final decrees have been issued in accordance with part 2 of this chapter for all of the subbasins in the upper Missouri River basin.

(3) The basin closure described in subsections (1) and (2) of this section shall not affect a reservation to maintain a minimum flow, level, or quantity of water that was made prior to the closure."

Page (2), line 13:

delete "(2)"

insert "(4)"

Montana Department of Health and Environmental Sciences
Air Quality Bureau

Testimony on HB 380

Before the Natural Resources : By Jan P. Sensibaugh
Committee of the Montana House of : of the Air Quality
Representatives : Bureau, MDHES

A bill to amend the air quality permit requirements for incinerators and BIFs.

Mr. Chairman, members of the committee, my name is Jan Sensibaugh and I represent the Department of Health and Environmental Sciences. HB 380 makes changes to the department's air quality permitting authority for solid and hazardous waste incinerators to solve some of the problems experienced regarding permitting of incineration facilities under this statute. The changes include: elimination of the 200 lb/hour input size permitting threshold; definitions of incinerator, solid waste and hazardous waste; specific reference to boilers and industrial furnaces; and a moratorium on the issuance of permits under this statute until June 1, 1994.

The reason for eliminating the 200 lb/hour input size and requiring permitting of all new incinerators is to assure that all incineration projects are subject to an appropriate level of review before they are constructed. The department has found that there are differences of opinion on how to apply the 200 lb/hour limit and that facilities are designing their incinerators, including those for medical waste, to fall just below the 200 lb/hour input size to avoid air quality permitting. Since the public is

sensitive about impacts on public health and the environment from incinerators, the department must be able to analyze potential air quality impacts from all proposed incinerators so that concerns raised by the public are adequately responded to.

Since elimination of the size cut-off will bring under regulation small incinerators of a similar type, such as grocery store incinerators, the legislation includes language allowing the department to issue general permits for specific size and type categories of incinerators. In this way, once a general permit has been developed, a facility would only need to demonstrate that it meets the requirements for a general permit and would not need to go through extensive individual permitting review. The general permit requirements would most likely include, among other things, size restrictions, and waste and emission type limitations.

In order to clarify which sources these permitting requirements apply to, definitions of incinerator, solid waste and hazardous waste have been included in the amendments.

- The definition of incinerator focuses on the type of equipment and the combustion process used.
- The solid waste definition is similar to but more encompassing than that used in other solid waste statutes. Reference to marketable byproducts is omitted since the reason for incineration is not applicable to permit review in relation to protecting air quality, public health and the environment.
- The definition of hazardous waste is the same as that used in the hazardous waste statute.

Although the department believes that boilers and industrial furnaces are included under the existing statute, to eliminate any confusion, the changes specifically include review of these facilities.

One of the public's concerns is that the department will issue permits for facilities before adequate rulemaking, which includes public participation, has been completed. Therefore, a moratorium on the issuance of air quality permits until June 1, 1994 has been included. During that time, rules implementing the law will be developed and adopted. The same exemptions for cleanup of underground storage tanks and Superfund sites that are contained in the current moratorium statute, which expires in October 1993, are incorporated in this bill.

HB 380 clarifies the department's permitting authority for solid and hazardous waste incinerators and boilers and industrial furnaces and allows for development of a program that will protect public health and the environment.

Thank you for the opportunity to comment. I would be happy to answer any questions.

EXHIBIT 17
DATE 2-10-93
HB 380

Amendments to House Bill No. 380
Introduced Bill Copy

Requested by the Department of Health
and Environmental Sciences
For the House Committee on Natural Resources

1. Page 1, line 23.
Strike: "75-10-406"
Insert: "75-10-405"

2. Page 6, line 3.
Strike: "75-10-406"
Insert: "75-10-405"

3. Page 6, line 12.
Strike: "75-10-406"
Insert: "75-10-405"

EXHIBIT 17
DATE 2-10-93
HB 380

EXHIBIT 18
DATE 2-10-93
HB 484

Proposed Amendment to HB 484

Prepared for NEWTTEC

before House Natural Resources Committee

February 10, 1993

Page 2, line 18, insert:

to insert, change
"(c) A person may transport solid wastes to a facility in Montana that receives federal or state research funds to test and evaluate waste treatment remediation and technologies."

SURE-WAY SYSTEMS, MONTANA, INC.

PO BOX 899
DEER LODGE, MONTANA 59722
1-800-822-3929

Why Sure-Way requests either a tabling of the moratorium on incinerator licensing in the state (HB380), or an exemption for medical waste incineration from the plan:

Sure-Way Systems, Montana, Inc. is a Montana owned and operated company founded on the principles of sound and environmentally safe disposal of medical waste. Medical waste is our only concern. We do not plan to expand into any other sort of waste management.

At the present time Sure-Way is very small, but has grown in the past two years to subscribe nearly 200 accounts statewide. Our clients include dental and medical offices, clinics, nursing homes, mortuaries, hospitals, and most of the state's PHS Indian hospitals. As the April 1 deadline approaches for compliance with the Infectious Waste Management Act, the company expects an even more active interest in our services on the part of the medical community statewide.

Unlike our larger competitor, Sure-Way does not require that clients reside within a particular service area, nor do we insist that a certain number of clients sign up in a new location to be able to subscribe to our waste removal services. Thus a dentist in Glendive or a hospital in Culbertson can hope to achieve compliance with the Infectious Waste Management Act. Otherwise, many of the non-city clients who subscribe to our service will have no way to legally dispose of infectious waste generated in their facilities.

Sure-Way currently hauls infectious materials to medical waste incinerators in Washington or in North Dakota, incurring heavy trucking and incineration fees which are, naturally, reflected in charges to clients. That cost is, of course passed on to patients and their insurance companies, driving the already high cost of health care and insurance even higher.

Sure-Way's plan had always been to reach a stage of growth after which the company would locate an environmentally friendly and technologically sound incinerator in an area of the state where the impact would be minimal to both nature and the public. This plan would have made profits higher, insuring company security, and would have lowered client costs. The proposed HB380 placing a

moratorium on the issuance of incinerator licensing could very well jeopardize company stability, or at least make profitability so insecure as to weaken Sure-Way irreparably.

Consider the ramifications of the moratorium, not only to this one small company employing six Montana citizens, but also to all Montana physicians, dentists, hospitals and extended care facilities, et. al. What will happen to Sure-Way? Will it be able to continue if the state limits its opportunities to grow? What will happen to clients in remote areas? Will they continue to receive service at a reasonable price if only one giant out-of-state company has a monopoly over infectious waste removal in Montana? How long will states on our borders put up with Montana exporting its all its medical waste to their incinerators and landfills?

Will the moratorium impact the purpose of the Infectious Waste Management Act (75-10-1002)? "The purpose of this part is to protect the public health, safety, and welfare of the citizens of Montana by developing and implementing infectious waste management policies that are reasonable, cost-effective, aesthetically pleasing, and environmentally acceptable." Sure-Way clients faced with a cessation of service certainly would not find the resulting pile-up of waste aesthetically pleasing. Nor would it be environmentally acceptable, reasonable or cost-effective to switch their patronage to the other company whose non-pathological and non-chemotherapy waste is autoclaved and goes into landfills in Colorado without significant reduction in volume, while all the rest is incinerated, as required by federal regulation.

The only benefit to Montana, therefore, would be that procrastination in the face of formulation of a bill would result in the failure to face responsibility for Montana's own waste, thus foisting it off on another state. How soon would it be before our neighboring state's hospitality wears thin? Considering Colorado's activist environmental lobby, it would seem unlikely this sticky waste shuffle would remain Montana's secret for long. Involved litigation would probably allow Montana's waste back into Colorado landfills eventually, but how long would it be before the outward flow resumed? Until the waste traffic dispute could be settled, what would happen to the tons of waste produced daily that could not, by Montana law, be legally managed here in Montana? Wholesale storage of any type of waste is not a pretty sight... neither would it be reasonable, cost-effective, aesthetically pleasing, or environmentally acceptable.

Because there are currently laws on Montana's books requiring

handling and disposal of medical waste in an acceptably prudent manner, it seems illogical that the legislature should stand in the way of its own good judgment by preventing this law from being carried out as efficiently and successfully as it is currently being done. Sure-Way therefore requests that if the committee insists on sending the moratorium on as a bill, that an amendment be added to exempt medical waste incineration facilities from such a ban. To do otherwise would be an inefficient and ineffective approach to solving the Montana medical waste dilemma.

It makes no sense to continue to pollute our air, soil and water with out-dated waste management systems for the purpose of "studying the situation." Instead, the best, the newest, the most efficient technology could replace inefficient and possibly dangerous systems. It would be like the Air Quality Board refusing to allow newer, more efficient models of automobiles into the pollution control zone around Missoula until the new technology could be studied to assess benefits. Why should progress have to wait for governmental regulations to catch up? Should the citizens of Montana be deprived of a cleaner, safer environment while a committee ponders?

It is not as if the Air Quality Board has the task of re-inventing the wheel. Incineration technology has been around for a very long time, and regulation has been around nearly as long. Other states have managed to develop reasonable laws which protect both the public and the environment while remaining flexible enough for expanded scientific data and improving technology. Sure-Way has confidence that our legislators have the skill to quickly draw up fair and effective regulations.

Serious and thoughtful choices must be made, rather than knee-jerk responses to hot-topic issues. Such topics are often brought to legislators by those with a particular agenda. It is the duty of Montana's legislators to carefully review facts and weigh benefits to the advantage of all Montanans, rather than to be swept along by the hysteria of the few. In the end, the ability to recognize an issue from a particular agenda may be a key to legislative wisdom, as well as to the state's ability to expand its economy enough to compete healthily on a national level.

EXHIBIT 19
2-10-93
46 380

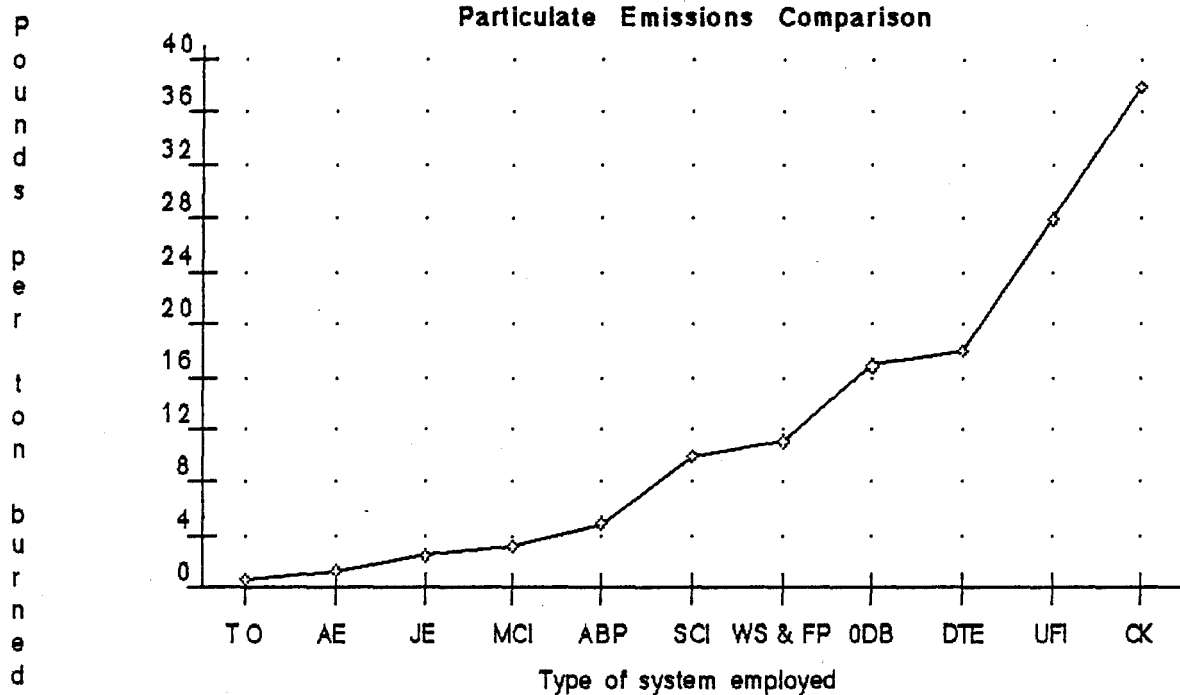
LIFE TIME RISKS FOR FAMILIAR ACTIVITIES

ACTIVITY	Life (70 year) risk Per million population
<hr/>	
Cigarette Smoking	262,000.
All Cancers	196,000.
Mining and Quarries	65,500.
Construction	42,700.
Mountain Climbing	42,000.
Agriculture	42,000.
Police killed in the line of duty	15,400.
Air pollution (Eastern U S)	14,000.
Motor Vehicle accident (traveling)	13,900.
Police killed in the line of duty by felons	9,100.
Home Accidents	7,700.
Service and government	7,000.
Manufacturing	5,740.
Frequent airline traveler	3,500.
Pedestrian hit by motor vehicle	2,940.
Alcohol (light drinker)	1,400.
Electrocution	371.
Drinking water containing Chloroform at the max. EPA level	42.
Lightning	35.
Medical waste plant	1.
Drinking .05 liters of wine	1.
Traveling by canoe for 6 minutes	1.
Traveling by bicycle for 10 miles	1.
Traveling by car 30 miles	1.
Traveling by jet 6000	1.
Cancer from cosmic rays	1.

Adapted from health risk assessment for air emissions risks are from the federal EPA, North Carolina office, Wes Snoden (American Service Associates), and M. Wilson and E.A.C. Couch, *Science*, April 17, 1987.

To date there has never been a confirmed case a medical waste worker getting any disease from the waste. *Citizens Clearing House for Hazardous Waste*, July 1990.

CHART A PARTICULATE EMISSIONS COMPARISON



	<u>lbs. per ton burned</u>	<u>lbs. per ton burned</u>
T O= Thermal Oxidizer	0.68	AE= Auto Exhaust 1.25
JE= Jet Exhaust	2.50	MCI= Multi-chamber incinerator 3.00
ABP= Asphalt Batch Plant	5.00	SCI= Single-chamber " " 10.00
WS & FP= Wood stove & FP	11.00	ODB= Open dump Burning 17.00
DTE= Diesel Truck Exhaust	17.00	UFI= Uncontrolled fuel " 28.00
CK= Cement Kiln	38.00	

19
 2-10-93
 43380

EXHIBIT 40
DATE 2-10-93
HB 380

Proposed Amendment to HB380

Prepared for Montana Hospital Association

before House Natural Resources Committee

February 10, 1993

page 8, line 8, after ".", insert:

"(7) This section does not apply to health care facilities
licensed under Title 50, Chapter 5, Part 2."

Northern Plains Resource Council

EXHIBIT 21

DATE 2-10-93

HB. 434

Testimony in support of HB 434

House Natural Resources Committee

February 10, 1993

Mr. Chairman and members of the Committee,

My name is Ted Lange, and I represent the Northern Plains Resource Council.

I'm speaking today in support of HB 434.

In November 1991, NPRC commissioned a poll by the well known and respected firm of Greenberg-Lake: The Analysis Group. NPRC's poll of 501 registered Montana voters who planned to vote in the next election, revealed that an overwhelming 87% believed that states should be allowed to prohibit waste importation from other states.

We believe this result shows that Montanans are adamantly opposed to Montana becoming a dumping ground for large volumes of waste from out-of-state urban areas.

Montanans want to live in the Big Sky State, not the Big Dump State.

We believe Montanans feel so strongly because they appreciate the potentially serious economic, social and environmental impacts of allowing their communities to become dumping grounds for others' garbage.

Currently, only an act of Congress can create an exception to the U.S. Constitution's Interstate Commerce Clause that would allow Montana to pass legislation to permanently control the flow of out-of-state waste into our state. Therefore, a temporary out-of-state waste moratorium is the best that Montana Legislators have been able to do to address their constituents' serious concerns about the impacts of imported waste. The intent of the moratorium has always been to ensure that large scale importation of urban waste cannot occur until the public health, ground and surface water, and the social and economic health of our communities is safeguarded (to the greatest possible extent), by state rules regulating garbage handling and disposal. Nearly 200

garbage dumps across the country have been declared Superfund sites and Montanans don't want to take any chances with their communities.

NPRC supports HB 434 because it ensures that the moratorium will not be lifted prematurely. The Solid Waste Bureau of the Department of Health and Environmental Sciences is getting close to having these rules drafted. But it is impossible to know exactly when the rules will be finally implemented. HB 434 guarantees that the moratorium will remain in place until that time.

Although NPRC opposes the idea of making Montana a dumping ground for out-of-state garbage, many of our members understand the practical concern of some border communities that the state border should not impede creation of the most efficient possible local waste management systems. Our members' primary concern is with large-scale importation from urban areas and they see local cross-border waste agreements as a separate issue. We view the exception to the moratorium that is included in HB 434 as a possible solution to this local importation issue. Our members are extremely concerned, however, that any exception to the moratorium should only involve small-scale importation on a local basis, and that it should in no way open the floodgates to trainloads of trash from distant urban areas.

As you may know, Rep. Tunby has introduced HB 532, which proposes an exception to the moratorium to allow for regional "wasteshed" management. We and Rep. Tunby are in the process of discussing language that would make these two bills identical. We hoped to have a consensus agreement by Thursday and would like to ask you to postpone scheduling executive action on this bill until Thursday afternoon. Thank you.

Amendments to House Bill No. 434
First Reading Copy

Requested by Rep. Tunby
For the Committee on Natural Resources

Prepared by Paul Sihler
February 10, 1993

1. Page 2, line 6.

Following: "9,"

Insert: "and the subtitle D regulations of the Resource
Conservation and Recovery Act of 1976,"

2. Page 2, line 15.

Following: "disposal"

Insert: "in a solid waste management facility that receives
25,000 tons or less of solid waste annually,"

Following: "in"

Strike: "an"

3. Page 2, lines 16 and 17.

Strike: "county" on line 16 through "Montana" on line 17

Draft Copy

Printed 1:03 pm on February 10, 1993

LC1544

*** House Joint Resolution No. ***

EXHIBIT

23

Introduced By *****

DATE

2.10.93

By Request of *****

HB

212

A Joint Resolution of the Senate and the House of Representatives of the state of Montana strongly urging the United States Environmental Protection Agency and the United States Congress to give highest priority to cleanup of the Berkeley Pit and protection of alluvial aquifers underlying the Silver Bow Creek superfund site.

WHEREAS, the Berkeley Pit, located at the headwaters of the Columbia River, is included in the nation's largest Superfund site, the Silver Bow Creek Site, and is the site of the world's largest mine flooding; and

WHEREAS, mining activity for the past 112 years has resulted in soil and water contamination and changes in the way ground water and surface water flow in and near Butte; and

WHEREAS, mining companies installed an elaborate pumping and bulkhead system during the active mining period to dewater the underground mines and the Berkeley Pit; and

WHEREAS, when active mining ended, the pumps were turned off on April 22, 1982, and the underground mines and subsequently the pit began to flood, with water rising 2,918 feet in the mines and to a depth of 774 feet in the pit; and

WHEREAS, the Berkeley Pit currently contains approximately 20 billion gallons of water and fills at an average rate of 5 to

7.5 million gallons a day; and

WHEREAS, mine flooding in the Butte area is of significant concern because the water is highly acidic and contains high concentrations of iron, manganese, arsenic, lead, cadmium, copper, zinc, and sulfates that far exceed state and federal standards, conditions that prevented water in the pit from freezing even when temperatures fell to minus 40 degrees Fahrenheit in 1989; and

WHEREAS, water in the West Camp of the Butte mining area did discharge into the Silver Bow Creek alluvium and into basements in the central Butte area when the West Camp was sealed off with bulkheads in 1959; and

WHEREAS, water in the Berkeley Pit rose 30.5 feet in 1989, 33.2 feet in 1990, 33.8 feet in 1991, and 25.2 feet in 1992, and the water in the pit is within 179 feet of contacting the alluvium on the east wall of the pit; and

WHEREAS, many citizens of Butte believe that the United States Environmental Protection Agency (EPA) has ignored preliminary documentation indicating that the surrounding aquifers may be contaminated in the near future, but the agency instead has negotiated a consent decree that sets water level targets well above previously established levels without scientific documentation supporting those conclusions; and

WHEREAS, despite these alarming developments, residents of Butte and the Silver Bow Creek drainage have been frustrated by the lack of progress by the EPA in developing a plan that will adequately treat the contaminated water and protect the

Draft Copy

Printed 1:03 pm on February 10, 1993

environment and citizens of the area from the potential threat to the alluvial aquifer surrounding Butte.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the U.S. Environmental Protection Agency and the United States Congress be strongly urged to give the Silver Bow Creek, Butte Area Superfund Site the highest priority for cleanup and action to prevent disastrous environmental damage and human health problems.

That DHES make periodic report to IEQC on Progress.

(2) That the U.S. Environmental Protection Agency and potentially responsible parties proceed with haste to develop and implement plans and design criteria for a facility to treat contaminated water before it reaches the alluvial aquifers surrounding the Berkeley Pit.

(3) That copies of this resolution be sent by the Secretary of State to the President of the United States, the Administrator of the U.S. Environmental Protection Agency, the Director of the Montana Environmental Protection Agency Office, the Governor, and the Montana Congressional Delegation.

-END-

{Todd Everts

(406) 444-3742}

EXHIBIT 23
DATE 2-10-93
HB 212

Amendments to House Bill No. 417
1st Reading Copy

Requested by Rep. Tunby
For the Committee on Natural Resources

Prepared by Todd Everts, Committee Staff
February 6, 1993

1. Title, lines 12 and 13.

Following: "THE" on line 12

Strike: "DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES'
UNDERGROUND STORAGE TANK SPECIAL REVENUE ACCOUNT"

Insert: "STATE GENERAL FUND;"

2. Title, line 14.

Following: "AND"

Insert: "PROVIDING"

Following: "FROM"

Strike: "THAT"

Insert: "THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES'
UNDERGROUND STORAGE TANK SPECIAL REVENUE"

3. Title, line 16.

Strike: "75-10-417,"

4. Page 8, line 6, through page 9, line 3.

Strike: section 3 in its entirety

Renumber: subsequent sections

5. Page 12, lines 2 and 3.

Following: "the" on line 2

Strike: "underground storage tank special revenue account
established in 75-10-477"

Insert: "state general fund"

6. Page 12, line 10.

Following: "and"

Insert: "and"

7. Page 12, lines 13 through 16.

Following: "amended" on line 13

Strike: "; and"

(c) civil penalties collected for underground storage tank
violations under 75-10-417 and administrative penalties collected
under [section 4]"

8. Page 2, line 10.
Page 5, line 7.
Page 7, line 12.
Page 13, lines 1, 3, and 7.
Strike: "4" or "4"
Insert: "3"

**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

Natural Resources

COMMITTEE

BILL NO. HB 318

DATE 2/10/93

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Bill McClain	CONOCO	318	
David Ross	Audubon Legislative Fund	318	
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Dave Williams Bill McClain	11		
GORDON BRONSON 2475 Broadway	MT. Society of Hosp. Eng.		X
Carie Vinson Environmental Bureau	MDT		
Dean Gillam U.S. Environmental Protection Agency			
William LAWRENCE PO BOX 895 Deer Lodge MT	Sure-Way Systems MT file		X HB 380
Gordon L. Larsen MDT Highway Division	MDT		
Dean R. King Petroleum Tank Release Comp. Board	PTRCB	X HB 423	
REX MANUEL	CENEX	318	
Clay O'Connor	Champion Intl. Corp.	318	
Tim Baker	DHES	(318)	
Jeff Chaffee Anderson,baugh	DHES	(318)	
Don Herhan	Western Recovery Systems, Inc.	380	380 ✓

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Pamela Carlson	FAMILY (3)	380 X	
Kathy Coleman	Self	380	
Stan Rm Dshew	MT T.U.	HB 395	
David Ross	Audubon Leg. Fund	HB 380	
Mike Volney	MT Assoc. of Cons. Dist.	HB 395	
Bob Carr	DFW & P		HB 395

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Natural Resources COMMITTEE BILL NO. _____

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Susan Callaghan 40 E. Broadway, Suite	MT. POWER CO.	X 395	
Ken Williams	MT Power/Entech	Amended 318 X	
SETHOMIE ANDERSON	HOLNAM INC.	IF AMENDED 380	
Dexter Busby	MONTANA Refining	Amended 318	
Dan WHITE	STILLWATER ALUM RESOURCES	318 AMEND	
Janelle Fallon	MT Petroleum	318 Amended	
Michelle W. Purge	Fallon County		X HB939
Eric Finkbe	EPA	318	
John August	Conoco	X	
Eric Finkbe	EPA	A	
Tom Danbert	Ash Grove Cement	amended 380	
Roger Thorvilson	DHES		
Jim Mocklee	MT Coal Council	amend 318	
DADY WISEMAN	MATB	318 380 318	

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