

**MINUTES**

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

**COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By Chair Bianchi, on February 13, 1993, at 10:45 a.m.

**ROLL CALL**

**Members Present:**

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

**Members Excused:** None.

**Members Absent:** None.

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

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

**Committee Business Summary:**

Hearing: SB 334, SB 319, SB 284  
Executive Action: SB 171, SB 296, SB 339, SB 231

**HEARING ON SB 334**

**Opening Statement by Sponsor:**

Senator Tom Beck, SD 24, said SB 334 creates a waste and pesticide container disposal program. He said annual fees for commercial and farm applicators will be increased in order to fund the program. Sen. Beck said the Department of Agriculture would administer the six year program. He distributed two sets of amendments (Exhibit #1 and #2). and discussed the sections of the bill. Sen. Beck said there may be controversy over Section

4, which places the labeling and registration program under the Department of Health and Environmental Sciences (DHES), rather than allowing local governments to handle labeling and registration.

**Proponents' Testimony:**

Leo Giacometto, director, Montana Department of Agriculture, stated SB 334 provides that the Department establish standards for pesticide storage, mixing, loading sites and bulk pesticides. He said the amendments to SB 334 allow the Department to establish equivalent criteria. Mr. Giacometto added pesticide applicators and dealers have requested that the fees be raised. He distributed a handout explaining SB 334 (Exhibit #4).

Robby Brattain, Montana Agricultural Business Association (MABA), distributed a handout of the various groups he claimed to be representing (Exhibit #3). He distributed a summary card explaining key points on development and registration of pesticide products before they hit the marketplace (Exhibit #5).

Daryl Molskness, Missoula resident, said SB 334 is a proactive, regulatory container disposal bill. He said the bill would provide additional resources for training farmers, ranchers and pesticide dealers. Mr. Molskness stated "uniform statewide pesticide regulation reinstates longtime preemptive local pesticide regulation that was assumed to be in place at the federal level until June 1991." He discussed federal pesticide regulations and regulations in other states. Mr. Molskness spoke against local control over pesticide regulation, noting uniform regulation "ensures logical, science-based policy instead of policies based on fear and emotion."

Brian McNitt, Montana Environmental Information Center (MEIC), said MEIC supports SB 334 only with an amendment striking Section 4, as that section preempts any citizen involvement in local regulation.

Chuck Merja, past president of the Montana Grain Growers Association and chair of the National Association of Wheat Growers' Conservation Committee, read from written testimony (Exhibit #7).

Russ Ritter, director of corporate relations, Montana Rail Link (MRL), said MRL supports SB 334 because uniformity in regulation would allow the railroad to apply the same principles to keeping the right-of-ways clean and weed free across Montana.

Jim Freeman, president of the Montana Mosquito and Vector Control Association, past president of the Montana Weed Control Association, and weed supervisor for the Cascade County Weed and Mosquito Management District, said SB 334 is necessary for continued safe and cost-effective application of pesticides. He

said the organizations he represents support the amendments Sen. Beck distributed.

Scott Selstead, Association of Montana Turf and Ornamental Professionals (AMTOP), said AMTOP supports Section 4 of SB 334. He said uniform statewide regulation would not stop local governments from being involved in regulation and would not impair the school districts from regulating the schools and surrounding areas. He said it would not prevent posting notice of pesticide use.

Candace Torgerson, Montana Stockgrowers Association and Montana Woolgrowers Association, expressed support for SB 334.

Jeff Wade, president, Montana Agri-Business Association, discussed the benefits of uniform statewide regulation. He stated complying with different ordinances across the state would be costly and time-consuming to businesses.

Candace Durran, Helena resident, read from written testimony (Exhibit #8).

Bill Sheets, owner/operator of Big Sandy Flying Service and president of the Montana Association of Aerial Applicators (AMAA), said he is concerned about what can happen with local ordinances.

Lorna Frank, Montana Farm Bureau, expressed support for SB 334.

Pat Keim, director of government affairs, Burlington Northern Railroad, said BN would have trouble maintaining its 2,500 miles of track if regulations differed from county to county.

Gene Phillips, Pacific Power and Light (PP & L), said uniform pesticide regulation is essential.

Larry Fasbender, Montana Council of Cooperatives, said the Council supports SB 334.

**Opponents' Testimony:**

Nancy Matheson, Alternative Energy Resources Organization (AERO), read from written testimony (Exhibit #9).

Stan Bradshaw, Montana Trout Unlimited (MTU), said MTU would support SB 334 if Section 4 was stricken.

Linda Stoll-Anderson, Lewis and Clark County Commissioner and chair of the Montana Association of Counties Resolution Committee, said she opposes SB 334 because of Section 4. She said Section 4 resulted from fear of what local governments might do. Ms. Stoll-Anderson said people would like to be informed ahead of time when pesticides will be sprayed, but Section 4 does

not allow local governments to create ordinances requiring notification. She said each community is geologically, politically and demographically different.

Cindy Hanson, Helena citizen, read from written testimony (Exhibit #10).

Loreen Folsom, Missoulians for a Clean Environment, spoke against preemption of local governments' authority to create ordinances. She discussed how local governments address local needs "long before more distant agencies can respond." Ms. Folsom said the Environmental Protection Agency (EPA) and the United States Supreme Court both recognize the value of local governments. She added Section 4 is an "industry-driven, self serving wedge which benefits only those in a position of economic gain from pesticide sale and application."

Mark Mackin, Lakeside resident, said he would support the bill if Section 4 was stricken. He said SB 334 strips away the power of local governments to regulate pesticides. Mr. Mackin said people should be allowed to manage their own affairs until they prove incapable of doing so.

Dan Stahly, Montana Public Interest Research Group (MontPIRG), submitted written testimony (Exhibit #11).

John E. Stults, chair of the Lewis and Clark County Water Quality Protection District, said SB 334 limits local governments' ability to hire expertise and apply it to the specific local resource problems. He said he would support SB 334 without Section 4.

Curtis Horton, representing the Missoula City Council, the Missoula County Commissioners, the Missoula mayor's office, the Missoula City-County Health Department and the Missoula Board of Health, said all the groups oppose SB 334 because of Section 4. He commended Sen. Beck for updating the regulations, and making it possible to dispose of the chemicals. Mr. Horton stated "ordinances are made to address local problems," and discussed potential difficulties in Missoula if local governments are preempted.

Christine Kaufman, Helena lobbyist, read the Missoula City-County Health Department's statement opposing Section 4 of SB 334 (Exhibit #12).

Amy Kelley, director of Common Cause, submitted written testimony (Exhibit #12A).

Bob Barry, Montana Alliance for Progressive Policy (MAPP), said his organization opposes Section 4, stating MAPP has faith in local Montana entrepreneurs.

Jim Barngrover submitted testimony from Al Kurki (Exhibit #13) and said SB 334 would be a good bill if Section 4 was removed.

**Questions From Committee Members and Responses:**

Senator Hockett asked if there are ways to address the concerns of local governments while providing the railroads with a uniform law. Russ Ritter said MRL favors whatever will control weeds along the tracks. He added the railroad is not concerned with the pesticide industry, MRL simply wants the same regulations to apply in each community through which the railroad passes.

Senator Bianchi stated Nancy Keenan, Superintendent of Public Instruction, submitted a letter (Exhibit #13A) to the Committee opposing SB 334 because of Section 4.

Sen. Grosfield asked Sen. Beck about the amendments he passed out earlier. He also asked Sen. Beck to explain his concept of local government. Sen. Beck referred the question to Gary Gingery, administrator of the Department of Agriculture's Agriculture and Biological Sciences Division. Mr. Gingery said the amendments would allow local governments to petition the Department of Agriculture to promulgate rules to address local pesticide issues. He added the local governments would have to document and justify the reason for the request. Mr. Gingery said the Department would have to respond to the request within 30 days, and could authorize a local government entity to enforce provisions of the Montana Pesticides Act. He said SB 334 "would not prevent a local school district from establishing a policy for use of pesticides in or around the grounds that they manage." Mr. Gingery added school districts could totally eliminate the use of pesticides on their property. Mr. Gingery said the term "local government" could apply to cities, counties and other subdivisions of government. He added SB 334 would only affect local governments attempting to regulate pesticide use off of their property.

Sen. Keating asked why people were so concerned about site-specific issues if application of pesticides was uniform. John Semple said the answer was complicated and dependant on the pesticide. Mr. Gingery said pesticides have definite labels explaining safe and proper use, and the problems stem from misuse and spillage during pesticide loading and transport. Sen. Keating asked if SB 334 would affect his spraying his own trees. Mr. Gingery stated the Department has taken action against private citizens for misusing pesticides, but there generally would not be a problem as long as a registered pesticide was used.

Sen. Weeding said local governments have had the power to adopt ordinances for years, but have not. He asked why there is suddenly a "panic" to preempt local governments. Mr. Gingery stated the supreme court ruling did not tell local governments to

set policy, it gave them the opportunity.

He stated there are provisions in the Pesticide Act allowing local governments to establish ordinances through the Department of Agriculture.

**Closing by Sponsor:**

Senator Beck expressed interest in being involved with any amendments to SB 334. He said he does not want SB 334 to result in unsafe application practices which would degrade ground water. Sen. Beck noted he sponsored last session's Groundwater Protection Act. He said SB 334 will make inter-county application simpler and reminded the Committee of the benefits of pesticides.

**HEARING ON SB 319**

**Opening Statement by Sponsor:**

Senator Bob Hockett, SD 7, said he introduced SB 319 at the request of his local unified solid waste disposal board. Sen. Hockett stated that although he is not opposed to fees for garbage disposal and landfills, people in his district have been concerned about increases in fees. He added there has also been question about the amount of services received from the Department of Health and Environmental Sciences (DHES) for the fees. Sen. Hockett discussed fees on container sites, fees for licensing and fees for each ton dumped in the landfill. He said SB 319 removes the fees on transfer stations and container sites. Sen. Hockett noted the amount of money DHES would receive does not change with SB 319. He brought the Committee's attention to a letter from the City of Helena supporting the bill (Exhibit #14), and discussed the number of transfer stations and container sites that would be affected.

**Proponents' Testimony:**

Representative Bob Bachini, HD 14, expressed support for SB 319.

Larry Broere, manager, Hill County Unified Disposal Board, distributed and read from the testimony of Clay Vincent, chair, Unified Disposal Board (Exhibit #15). Mr. Broere added his objection to allowing DHES to assess fees on specific types of solid waste.

Lloyd Wolery, Hill County Commissioner, read from written testimony (Exhibit #15A).

Charles Danreuther, Choteau County Commissioner, said he had to close a landfill because of the costs associated with operation.

He urged the Committee to pass SB 319.

Brian McNitt, Montana Environmental Information Center (MEIC), said the fees were set by the legislature last session. He said container sites do not pose much of an environmental threat, and local authorities should be allowed to maintain them. Mr. McNitt stated under SB 319, the Department would still be required to inspect the container sites, but could not charge the fee. He suggested Departmental inspections of container sites be limited, but noted that transfer stations do pose a potential environmental threat.

Senator Weeding said Treasure County wished to be on record in support of SB 319.

#### Opponents' Testimony:

John Dilliard, program manager, DHES solid waste program, submitted written testimony (Exhibit #16). He added the Department does not intend to charge fees in excess of what is needed to support the program as established by the last legislative session. Mr. Dilliard said the container site fees were established after a Departmental study of the time required to license and regulate the sites. He asked the Department be allowed to charge fees if it must continue to be responsible for inspection.

#### Questions From Committee Members and Responses:

Senator McClernan asked how much Hill County would save with passage of SB 319. Mr. Wolery stated he is most concerned about potential additional fees assessed by the Department.

Senator Bianchi asked Senator Hockett how the Department would pay for inspections if it was not allowed to assess fees. Sen. Hockett stated the Department has not been conducting most of the inspections, adding the local governments are not receiving what they pay for in fees. Sen. Bianchi asked if SB 319 could be amended to give the county sanitarian responsibility for inspections. Sen. Hockett said the county sanitarians have told him they are willing to conduct the inspections.

Senator Keating asked if container sites posed a threat to public health. Mr. Dilliard stated that container sites pose significantly less threat to public health than landfills, but added container sites are occasionally misused and can attract insects and rodents. Sen. Keating said if fees are eliminated, the Department's statutory obligation should also be removed.

The Committee discussed effects of SB 319 on transfer stations and container sites. Senator Bianchi asked Mr. Dilliard where the transfer stations are located. Mr. Dilliard stated there are

transfer stations in Helena, Sanders County, Ravalli County, Forsyth, West Yellowstone, and Roundup.

Senator Bartlett asked how a transfer site differs from a container site. Mr. Dilliard said a container site is designed to allow a private citizen to dump household garbage for eventual removal. He said transfer stations are designed to handle rural transfer containers and include large hauling trucks of garbage.

**Closing by Sponsor:**

Senator Hockett stated money is not the major problem. He said people in his district are concerned about cooperation between local and state government. Senator Hockett said he wants to save local governments money while saving the Department time on inspections.

**HEARING ON SB 284**

**Opening Statement by Sponsor:**

Senator Jeff Weldon, SD 27, said SB 284 attempts to strengthen and clarify parts of the Montana Underground Storage Tank Installer Permitting Act. He said SB 284 does the following: requires all tank installers to obtain a permit from the Department of Health and Environmental Sciences (DHES); broadens the definition of installation to include installation of leak detection monitoring equipment; and adds "tank system" to the definition of underground storage tank.

**Proponents' Testimony:**

John Geach, section supervisor, DHES Underground Storage Tank program, read from written testimony (Exhibit #17).

Brian McNitt, Montana Environmental Information Center (MEIC), said SB 284 helps clarify what is required of DHES and tank owner/operators. He said it takes some of the onus off landowners by defining who is responsible.

**Questions From Committee Members and Responses:**

Referring to page 9, lines 23 and 24, Senator Bartlett said the owner or operator must apply for a permit. She said owners and operators may not be aware that they need a permit before they install a tank. She wondered if a language change may be needed in Section 7 to conform with the intent of SB 284. Mr. Geach said the Department is trying to broaden the law, and owners and operators have to know that a permit was issued.



Senator Bianchi asked if DHES's permitting system was in place when the Church Universal and Triumphant installed their underground storage tanks near Gardiner.

Mr. Geach said the tanks were installed prior to April 1, 1990, when the permitting law became effective.

Senator McClernan asked what kind of professions would be likely to apply for an installing permit. Mr. Geach described the leak detection and cathodic leak prevention systems, noting electricians might apply for permits. He said the same people who install the tanks would be installing the leak detection and prevention systems.

Senator Grosfield noted SB 284 expands the definition of installation to cover installation and repair of leak detection and prevention devices. He asked if an owner/operator would have to hire a licensed installer to do anything to a tank. Mr. Geach stated plumbing changes and other simple modifications would not require the services of a licensed installer.

Senator Tveit discussed inspection fees and asked if owner/operators had to request inspection and pay for it themselves. Mr. Geach said a tank owner currently has the option of installing his own tank or hiring a licensed installer. He added inspection is mandatory for tanks installed by an unlicensed tank owner. He added the owners would be covered under liability.

#### Closing by Sponsor:

Senator Weldon said SB 284 helps protect tank owners by requiring tank installers to comply with state regulations, and ensuring proper permitting of leak detection system installation.

#### EXECUTIVE ACTION ON SB 171

#### Discussion:

Paul Sihler stated the Committee accepted amendments #1, #2 and #4 from the set dated January 28, 1993 (Exhibit #17A - SB17101.PCS). Senator Doherty said the rest of the amendments insert constitutional language because that is the standard to which the Department will be held accountable. He added existing language is unclear, and it provides "wiggle room" for anyone trying to interpret the law.

Senator Doherty stated Senator Halligan said he would support all of the January 28 amendments if the Committee added another set of amendments (Exhibit #17B - SB017103.PCS), putting into statute that "individual privacy concerns include competitively sensitive and proprietary geological information".

**Motion/Vote:**

Senator Doherty MOVED TO AMEND SB 171 (SB017103.PCS). The motion CARRIED with Sen. Swift and Sen. Keating voting NO.

**Discussion:**

Mr. Sihler said amendments #3 and #8 on Exhibit #17A are no longer needed because of the amendments the Committee just adopted.

**Motion:**

Senator Doherty MOVED TO AMEND SB 171 (amendment #5 - SB017101.PCS).

**Discussion:**

Senator Grosfield said he opposes the amendment because there was concern that amendment #5 went beyond the scope of the court case.

Senator McClernan asked Senator Doherty if amendment #5 conflicted with the amendments just passed. Sen. Doherty said the language does not conflict because the amendments stipulate that information is public unless individual privacy is a greater concern.

Senator Keating said Section 9 is the "right to know" section and Section 10 is the "privacy rights" section. He added privacy rights are "absolutely necessary in a free society and should not be infringed upon without a compelling reason to know." He wondered if the language could be changed so the person requesting information would have to demonstrate a compelling need to know specific information. Senator Doherty said the court considered that and decided the right to know took is a more important right than the right to privacy in this instance.

**Vote:**

The Do Pass motion CARRIED 7 to 5 with Sen. Grosfield, Sen. Keating, Sen. Swift, Sen. Swysgood, and Sen. Tveit voting NO.

**Motion:**

Senator Doherty MOVED TO AMEND SB 171 (amendments #6 and #7 -

SB017101.PCS).

**Discussion:**

Senator Doherty said the language mirrors language in the Constitution which says that once information is given to a public agency, it is public information unless the demand for individual privacy clearly exceeds the merits of public disclosure. He added the language gives direction to the DSL commissioner regarding legislative intent on individual privacy concerns.

Senator Grosfield asked for clarification on the amendments passed so far. Mr. Sihler explained the amendments. Senator Grosfield asked if SB 171 as amended would affect types of individual privacy other than competitively sensitive and proprietary geological information. Sen. Doherty stated the mining companies had concerns with disclosure of information ("trade secrets") that they spent money and time gathering.

**Vote:**

The motion to AMEND SB 171 CARRIED with Sen. Tveit, Sen. Swysgood, Sen. Keating, and Sen. Swift voting NO.

**Motion:**

Senator Doherty MOVED SB 171 DO PASS AS AMENDED.

**Discussion:**

Senator Hockett said the original bill had little or no opposition and expressed concern that SB 171 as amended may not be acceptable.

**Vote:**

The Do Pass As Amended motion CARRIED 9 to 4 with Sen. Keating, Sen. Swift, Sen. Swysgood, and Sen. Tveit voting NO.

**EXECUTIVE ACTION ON SB 231**

**Motion:**

Senator Grosfield MOVED SB 231 DO PASS.

**Discussion:**

Senator Grosfield said he received a note from Don McIntyre, DNRC legal counsel, describing preponderance of evidence (Exhibit #18).

**Vote:**

The Do Pass motion CARRIED with Sen. Swysgood and Sen. Keating voting NO.

**EXECUTIVE ACTION ON SB 296****Motion:**

Senator Grosfield MOVED SB 296 DO PASS.

**Discussion:**

Senator Grosfield stated he served as chairman of the state Water Planning Advisory Council and SB 296 is one of the bills that came out of the process. He distributed a handout from DNRC addressing concerns expressed in the hearing (Exhibit #19).

Senator Hockett said he is on the long range planning committee which reviews all the applications for money to correct water and sewage problems. He said as areas like Ravalli and Flathead counties become more congested, well drilling becomes more complicated.

Referring to page 3, line 11, Senator McClernan asked what "recently" means. Senator Grosfield said the language is rulemaking authority for the Board of Water Well Contractors, and they can define "recently" however they want. He added he does not know if a time frame has been discussed.

Senator Swysgood said testimony indicated there were few violations, and wondered how many of the violators were out of state drillers. He said he does not believe SB 296 is necessary.

Senator Tveit said the bill gives DNRC the authority to "do alot of snooping", and he asked Wes Lindsay what his main concern is regarding SB 296. Mr. Lindsay said the Board has already adopted rules regarding drillers known to have recently violated construction standards. He added violators are currently on probation for having violated the standards and the drillers object to the "new part" of the bill.

**Vote:**

The motion CARRIED 8 to 5 with Sen. Swift, Sen. Swysgood, Sen. Tveit and Sen. Keating, Sen. Doherty voting NO.

EXECUTIVE ACTION ON SB 339

Motion:

Senator Weeding MOVED SB 339 DO PASS

Discussion:

Senator Weeding said SB 339 would permit counties near magalandfill dumps or dangerous waste facilities to petition for and conduct a local referendum. He said the bill does not prevent an applicant from attempting to locate elsewhere.

Senator Swysgood said SB 339 sets a couple different standards. He referred to the bottom of page 2 which states that if a majority of votes cast in any county are against the project, it cannot proceed. Senator Swysgood added language on page 3 states a majority cast in each county must approve of the project. He said a smaller populated county could override the vote of a larger county that wanted a project. Senator Weeding said the language could be clarified, but added smaller counties may not want to be a dumping ground for out of state waste. He said counties as small as Treasure County should be able to prevent undesirable facilities from locating within the boundaries.

Referring to page 3, line 8, Sen. Swysgood asked if a facility would be prevented from locating elsewhere in the state. Mr. Sihler stated a license is particular to a location, so if a facility moved to another location there would have to be a new application and a new licensing process.

Senator Tveit said SB 339 would affect every county in Montana, and would shut down landfills and hazardous waste facilities. He added the ramifications of the bill go farther than Sen. Weeding is indicating. Senator Tveit expressed concern over mass media generated hysteria and limiting to one the referenda for licensing.

Senator McClernan asked what size city generates 200,000 tons of waste per year, and how much fly ash comes out of the Colstrip plant. Mr. Sihler stated Montana generates 700,000 to 800,000 tons per year. Billings generated near 200,000 tons last year, including garbage from numerous satellite communities and refuse from roof damage caused by a hail storm. Senator Weeding said Colstrip has its own licensed and permitted sludge ponds.

Senator Swysgood said he was concerned that only one referendum would be allowed and asked if SB 339 would have an effect on the cement companies that want to burn hazardous waste. Senator

Weeding stated the bill would affect the cement companies.

Senator Hockett also expressed concern that only one referendum would be held, as some companies may be able to make major modifications and should be given another opportunity to satisfy the public.

Senator Grosfield said he opposed SB 339 because it is bad policy. He said companies will not spend the money to apply for a permit if the process can be jeopardized at any time with a referendum. Senator Grosfield added the bill would damage Montana's business climate and set a bad precedent.

Senator Tveit asked Mr. Sihler for the definition of a dangerous waste facility. Mr. Sihler said dangerous waste would include hazardous waste facilities of any size and infectious waste incinerators. He added the bill would affect Ross Electric's proposed incinerator in Fallon County.

Senator Weeding said companies are not assured of a permit until the permitting and siting process has been completed. He said the companies already have to jump through hoops, and should know before attempting to locate in a community whether or not they have public approval.


Senator Weldon reminded the Committee that the referendum is not an automatic step; citizens must obtain signatures of 15% of the registered voters in the county.

Senator Weldon asked if language could be changed to allow one referendum for each application. Mr. Sihler suggested the language read: "only one referendum may be held on a licensed application for a particular facility." He said "facility" should be left in because it is a defined term and the bill deals with both megalandfills and dangerous waste. Mr. Sihler said many of the facilities must obtain two licenses - one for solid or hazardous waste and one for air quality. He said the Committee may not want to allow a referendum for each license applied to the same facility. Sen. Weeding offered to develop language to permit subsequent applications by companies that modify their projects to make them more acceptable to the citizens. Mr. Sihler said one of the complaints about the bill last session was that if multiple referenda were allowed, a community could keep holding referenda until the people got the answer they wanted and an application was turned down. He said the intent of the language in subsection 5 of SB 339 was to clarify that a community has one chance to keep a facility from locating in the area.

Senator Weeding and Senator Bianchi agreed to postpone action on the bill until the referendum language could be clarified. The Committee PASSED CONSIDERATION on SB 339.

**ADJOURNMENT**

**Adjournment: 1:38 p.m.**

  
\_\_\_\_\_  
SENATOR DON BIANCHI, Chair

  
\_\_\_\_\_  
LEANNE KURTZ, Secretary

DB/lk

# ROLL CALL

SENATE COMMITTEE NATURAL RESOURCES DATE 2/13/93

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



SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
February 15, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 171 (first reading copy -- white), respectfully report that Senate Bill No. 171 be amended as follows and as so amended do pass.

Signed: *Don Bianchi*  
Senator Don Bianchi, Chair

That such amendments read:

1. Title, line 4.

Strike: "PERMITTING"

Insert: "REQUIRING"

2. Title, lines 7 and 8.

Strike: "AFTER" on line 7 through "APPLICANT" on line 8

Insert: "UNLESS THE DEMANDS OF INDIVIDUAL PRIVACY CLEARLY EXCEED  
THE MERITS OF PUBLIC DISCLOSURE"

3. Page 1, lines 15 and 16.

Strike: "subsections"

Insert: "subsection"

Strike: "through 4"

4. Page 1, line 17.

Strike: "director"

Insert: "commissioner"

Strike: "director's"

Insert: "commissioner's"

5. Page 1, lines 19 through 24.

Strike: "confidential" on line 19 through "permit" on line 24

Insert: "open to public inspection"

6. Page 1, line 25.

Following: "may"

Insert: "not"

7. Page 2, lines 1 through 3.

Strike: "on" on line 1 through "director" on line 2

Insert: "if the commissioner determines"

Strike: "privacy" on line 2 through "for" on line 3.

Insert: "demands of individual privacy clearly exceed the merits  
of"

*AW* Amd. Coord.  
Sec. of Senate

370931SC.San

8. Page 2, lines 4 through 21.

Strike: "Any" on line 4 through "." on line 21

Insert: "Individual privacy concerns include competitively  
sensitive and proprietary geological information."

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 13, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 296 (first reading copy -- white), respectfully report that Senate Bill No. 296 do pass.

Signed: *Don Bianchi*  
Senator Don Bianchi, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 13, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 231 (first reading copy -- white), respectfully report that Senate Bill No. 231 do pass.

Signed:   
Senator Don Bianchi, Chair

# ROLL CALL VOTE

#5

SENATE COMMITTEE NATURAL RESOURCES BILL NO. 171

DATE \_\_\_\_\_ TIME \_\_\_\_\_ A.M. P.M.

NAME	YES	NO
Chairman Bianchi	X	
Vice Chairman Hockett	X	
Sen. Bartlett	X	
Sen. Doherty	X	
Sen. Grosfield		X
Sen. Keating		X
Sen. Kennedy		
Sen. McClellan	X	
Sen. Swift		X
Sen. Swysgood		X
Sen. Treit		X
Sen. Weeding	X	
Sen. Weldox	X	
	7	5

Leanne Kurtz  
SECRETARY

Sen. Bianchi  
CHAIR

MOTION: Adopt #5 in Amendments to 171

# ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. 171

DATE \_\_\_\_\_ TIME \_\_\_\_\_ A.M. P.M.

NAME	YES	NO
Chairman Bianchi	X	
Vice Chairman Hockett	X	
Sen. Bartlett	X	
Sen. Doherty	X	
Sen. Grosfield	X	
Sen. Keating		X
Sen. Kennedy	X	
Sen. McClellan	X	
Sen. Swift		X
Sen. Swysgood		X
Sen. Treit		X
Sen. Weeding	X	
Sen. Weldon	X	
	9	4

Leanne Kurtz  
SECRETARY

Sen. Bianchi  
CHAIR

MOTION: SB 171 As Amended

Amendment

to

SB 334

SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE 2/13/93

BILL NO. SB 334

Page 10, line 22

Following: regulation.

Insert: (1) Except as provided in subsections (2) and (3),  
the - The -

Page 11, line 3

Following: disposal.

Insert: (2) A local government entity may petition the department in writing to promulgate rules to address local pesticide issues as stated in 80-8-105(3)(a). The petition shall document and justify the reasons for the request and how the local government would administer, enforce and finance the rules under a cooperative agreement with the department. The department may establish criteria, rules or policies on adopting rules petitioned by local government. Within 30 days of receiving the petition, the department will respond to the local government entity stating:

(a) whether or not the proposed rule is appropriate to carry out the purposes and intent of this chapter on Title 80, chapter 15, and

(b) if the proposed rule is determined to be appropriate, the procedure and time frame for promulgation.

(3) The department may authorize a local government entity to enforce the provisions of this chapter and rules adopted under this chapter on a case-by-case basis. If the local government entity requests the authorization, the local government entity must present appropriate documentation to the department that a situation exists that threatens or is likely to threaten public health or environmental quality. The department may adopt rules regarding the granting of enforcement authority to local government and enter into cooperative agreements. The department, at its discretion, may require local government to adequately administer and financially support the enforcement of the rules.

amend.

## **Supporters of Uniform Statewide Pesticide Regulation**

**Montana Weed Control Association**  
**Montana Grain Growers Association**  
**Montana Farmers Union**  
**Montana Farm Bureau Federation**  
**Association of Montana Aerial Applicators**  
**Association of Montana Turf and Ornamental Professionals**  
**Montana Association of Nurserymen**  
**Peaks and Prairies Golf Course Superintendents Association**  
**Montana Grain Elevator Association**  
**Montana Seed Trade Association**  
**Montana Mining Association**  
**Monana RailLink**  
**Burlington Northern**  
**Pacific Power and Light**  
**Montana Power Company**  
**Montana Stockgrowers Association**  
**Montana Woolgrowers Association**  
**Montana Council of Coops**  
**Montana Mosquito & Vector Control Association**  
**Montana Water Resources Association**  
**Montana Agricultural Business Association**

**Montana Department of Agriculture**  
**Montana Department of Health and Environmental Sciences (with amendment)**

SENATE NATURAL RESOURCES

EXHIBIT NO. 3

DATE 2/13/93

BILL NO. SB 334



# **Pesticide Act Amendments--SB 334**

## **1. Creates a Waste Pesticide and Pesticide Container Disposal Program.**

+Provides program funding by increasing fees \$30 annually (\$45 to \$75) for government and commercial pesticide dealers and applicators, and increasing fees for farm applicators \$3 annually (\$15 to \$30 for the five-year licensing period.)

+Recognizes that the funding cannot cover all costs but is needed to establish a program and provides that a fee may be charged to persons disposing of product if needed to cover costs of disposal. As an incentive, the individual's disposal fee can be used as a credit when products or containers are brought into the disposal program.

+No new FTE's in Department of Agriculture. Program is to be contracted out.

+Program and fees to be sunsetted in six years. With changes in packaging such as water-soluble packets and minibulk returnable containers, challenge is to clean up unusable product and containers that are in the environment now.

## **2. Enables a Product Withdrawn by Company To Be Used for Six Years.**

+With EPA's costs for reregistration, companies are choosing to not support reregistration of individual products. This legislation enables farmers, ranchers and others six years to use up voluntarily canceled product in the distribution chain.

+A product important for mosquito control in Montana was not reregistered by the manufacturer in March 1991. This section would enable mosquito districts to use the product for six years, but does not authorize use of products that have been cancelled by EPA for health or environmental reasons.

## **3. Enables the Department of Agriculture to Establish Containment Rules.**

+Recognizing that containment of spills at a mixing/loading site or a storage facility is important to protect the environment, this clarifies that the Department of Agriculture has the authority to promulgate containment rules.

## **4. Changes Farm Applicator Training Requirements to be Equal to Commercial/Government Applicator Training and Provides Funding for Training.**

+EPA is requiring that farm applicator training be equal to commercial/government applicator training. This implements the EPA mandate.

+Provides for a \$20 increase in farm applicator fees for extension to develop materials and implement the training in the counties. (Farmer applicator fees would go from \$15 to \$50--\$15 increase for disposal and \$20 for education.)

## **5. Provides for Uniform Statewide Pesticide Regulation.**

+Nearly 30 states provide for uniform state pesticide regulation. Some passed it in 1992, others have had preemption for years. California is among the states with preemption as are Oregon, North Dakota, Minnesota and most farmbelt states.

+Montana farmers, commercial applicators and others would find it nearly impossible to operate with a patchwork of local regulations such as in Wisconsin.

+Control of noxious weeds or insect outbreaks could be seriously inhibited by a patchwork of local regulation.

SENATE NATURAL RESOURCES  
EXHIBIT NO. 4  
DATE 2/13/93  
BILL NO. SB 334

## WHAT THE EXPERTS SAY ABOUT PESTICIDES

"Our food supply is not only the safest, but it is the most abundant in the world and pesticides are one of the important tools that have made that abundance possible." - **Dr. C. Everett Koop**, former U.S. Surgeon General

"At the present time, I am unaware of evidence that suggests that regulated and approved pesticide residues in food contribute to the toll of human cancer in the U.S." - **Dr. Richard H. Adamson**, National Cancer Institute

"... in the case of pesticides, it is our belief, as well as that of the larger medical and scientific community, that the benefits of eating fruits and vegetables far outweigh any potential risk that may be involved in ingesting foods correctly treated with pesticides." - **Dr. Vernon N. Houk**, U.S. Centers for Disease Control

202/296-1585  
1155 Fifteenth Street, N.W., Washington, D.C. 20005  
National Agricultural Chemicals Association  
Consumer Information Program  
58334

DATE 2/13/93

EXHIBIT NO. 5

CLIMATE NATURAL RESOURCES

the safety of our food supply.  
The following factual messages can help reassure the public about their families - and they have a right to know the facts about pesticides. People are concerned about the safety of the food they eat and serve

## WHAT TO KNOW ABOUT PESTICIDES AND FOOD SAFETY

- On average, **only one in 20,000 chemicals makes it** from the chemist's laboratory to the farmer's field.
- To ensure that a product, when used properly, will not present any health or environmental concerns, **it is subjected to more than 120 separate tests.**
- Pesticide development, testing and EPA approval **takes eight to 10 years** and **costs manufacturers \$35 million to \$50 million** for each product.
  
- In addition to the federal government, state governments maintain complete pesticide regulation and monitoring systems.
- According to the **National Cancer Institute**, there is no scientific evidence that ingestion of pesticide residues on fruits and vegetables causes cancer in human beings.
- The legally allowable amount of pesticide residue that may remain is set at a level that includes wide safety margins. For example, a **150-pound adult would have to eat 3,000 heads of lettuce each day for the rest of his or her life** to ingest the amount of a pesticide found to cause health problems in laboratory mice.

AMENDMENT

TO

SENATE BILL 334

Page 11

Following: line 3

Insert: NEW SECTION. Section 5. Pesticide application,  
use and handling.

No person shall be in violation of any provision of Titles 75 and 80, MCA resulting from the application, handling or use of a pesticide, if the person is in compliance with: pesticide label directions and precautions: the provisions of Title 80, Chapters 8 and 15, MCA; and the use of the pesticide is without negligence.

A person applying, handling or using general or restricted use pesticides shall not be required to obtain any other type of approval under any state or local statute when applying, handling or using registered pesticides, except as may be required in Title 80, Chapters 8 and 15, MCA. The disposal of pesticides hazardous wastes, and the transportation of pesticides as hazardous substances is not subject to these requirements.

Renumber: subsequent sections

SENATE NATURAL RESOURCES  
EXHIBIT NO. 6  
DATE 2/13/93  
BILL NO. SB 334

Testimony of the  
Montana Grain Growers Association

before the  
Senate Natural Resources Committee

on SB 334 Amending Montana's Pesticide Act

Mr. Chairman, members of the Committee, my name is Chuck Merja. I am a farmer from Sun River, the immediate Past President of the Montana Grain Growers Association and the Chairman of the National Association of Wheat Grower's Conservation Committee. I rise in support of SB334.

This is an important bill for Montana's farmers. It will create: A Waste Pesticide Container Disposal Program; Containment Rules; upgraded farm applicator training requirements; use rules for products that have been voluntarily canceled; and fee increases to fund these improved programs. All of these things will help us to continue using pesticides on our farms in a safe and responsible manner.

More importantly, this bill provides for uniform statewide pesticide regulation. It assures farmers that regulations on pesticides and their applications will be based on scientific and technical information. It assures us that farmers and applicators from different parts of the state will not be faced with a patchwork of excessive regulations by local governments. It assures us that if local governments choose to develop regulations that are different from state or federal regulations, they will be science-based rather than based on fear and emotion.

Our national organization, the National Association of Wheat Growers, is a member of the Coalition for Sensible Pesticide Policy. We are very proud of the work of this coalition which is made up of some 150 national and state organizations working toward sensible, safe and uniform federal and state regulations of pesticides. Pesticides have played an important role in making us highly efficient producers of food. We also know that their use can pose a threat to our environment if they are not used in a consistent and safe manner. We understand that pesticide use must be highly regulated and that we must seek to develop regulations that continue to protect our environment, but those regulations must be uniform and based on scientific facts.

Chemical companies currently spend tens of millions of dollars proving to the EPA that their products are safe in every application situation covered by their label. Our own Legislature in conjunction with the DHES and DOA have spent a great deal of time developing laws that govern pesticide use and application. To think that any local government could have more expertise than the combination of these resources is absurd. In fact, attempts at stricter local regulation are simply a means for environmental activists or anti-pesticide advocates to use regulations to limit pesticide use.

Therefore, we would ask that you further amend the pesticide act to include amendment number 2 which clearly states that if a farmer or applicator follows label directions and precautions along with Montana pesticide laws he/she shall not be held liable for any damages that may occur.

This bill will join Montana with some 30 other states that have already enacted preemptive legislation and several others that are considering it. We believe this is good policy and urge you to give SB334 with the proposed amendments a do-pass recommendation.

SENATE NATURAL RESOURCES

EXHIBIT NO. 7

DATE 2/13/93

BILL NO. SB 334

TESTIMONY OF CANDACE DURRAN, HELENA  
BEFORE THE SENATE NATURAL RESOURCES COMMITTEE  
TO DELETE SECTION 4 OF SB 334  
FEBRUARY 13, 1993

Mr. Chair, members of the committee; my name is Candace Durran, and I am representing myself as a concerned citizen of the City of Helena and Lewis and Clark County.

I am in favor of establishing a waste pesticide disposal and container recycling program in Montana. However, I ~~have serious reservations about~~ <sup>am completely opposed to</sup> Section 4, which would preempt local authority to regulate pesticides. I am in support of SB 334 only if Section 4 is ~~deleted~~ from the bill.

Our neighboring state of Washington recently considered a bill similar to Section 4, preempting local authority of pesticide regulation. Washington's experience may shed some light on our own consideration of whether preemption makes sense. Last year, when the Washington Legislature took up <sup>the pesticide industry's</sup> preemption legislation, they heavily amended it because of concerns about local governments' ability to protect groundwater. The amended bill actually passed the Legislature, but was then vetoed by the governor, with concurrence from local governments. His reason for the veto: Few examples of local pesticide regulations of concern exist. There is a lack of evidence that preemption of local authority is necessary to ensure pesticide use is regulated in a balanced manner to meet agricultural, forest products and other economic needs. Proof of hardship does not exist.

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What's interesting is that Governor Gardner, in his veto language, directed the Department of Agriculture to lead an inter-agency group to sit down with all affected interests and come up with a recommendation on the degree of pesticide regulation appropriate for state and local governments. That advisory committee of very diverse interests—similar to what you see in this room—met through last year. The result: agriculture, timber, pesticide applicators, local governments, public health officials, environmental groups and state agencies all agreed, preemption is not needed and is not appropriate.

Montana should take a lesson from our neighbors. Before taking the radical action that preemption of local authority represents, I'd encourage the Legislature to make very certain the need for such action exists. Certainly the state should tailor any legislation to our specific needs here—which would include working with local jurisdictions—rather than passing blanket preemption as promoted by the chemical industry. Problems are easier to resolve at the local level than at the state level, and legislation pertaining to local pesticide regulation should reflect that.

I urge you to delete Section 4. Thank you.

TESTIMONY OF ALTERNATIVE ENERGY RESOURCES ORGANIZATION  
ON SB 334 BEFORE THE SENATE NATURAL RESOURCES COMMITTEE  
FEBRUARY 17, 1993

Mr. Chair, members of the committee: My name is Nancy Matheson, I represent the Alternative Energy Resources Organization, or AERO.

AERO is sorry to have to stand in opposition to this bill today. We like the portions of this bill that create a waste pesticide disposal program and pesticide container recycling, and have been committed all along to supporting them. These programs are needed in Montana, and this bill would do the job. Unfortunately, the benefits of pesticide disposal and container recycling are outweighed by the damage that Section 4 of this bill would do to local governments and their citizens. Our members feel strongly about protecting citizen participation and local control, so much so that we can only support this bill if it is amended to delete Section 4.

Section 4's proponents talk about "establishing uniformity of pesticide regulation in the state," but this bill says nothing about how uniformity will be accomplished. This bill preempts local solutions to local pesticide problems, taking existing authority away from local communities and concentrating that power in the state.

Preemption of local authority is not needed in Montana. The national chemical industry is behind this proposal—not Montanans. It is part of industry's strategy to use the state legislatures to reverse a 1991 U.S. Supreme Court ruling that upheld existing local governmental authority to regulate pesticides. The chemical industry drafted model state legislation immediately following the Supreme Court ruling and has been systematically going from state legislature to state legislature ever since, trying strip local governments of their power.

Industry has also taken this campaign to the Congress, where so far it has failed. A bill to preempt local authority was defeated just three weeks ago by our neighbors in Wyoming. Wyoming conservatives helped defeat this bill because it would have concentrated power in the state, stripping local control from local citizens. Such a provision runs contrary to the values of those who defend against the long arm of government in local affairs.

You may have seen a list, circulated by industry supporters of this section, of pesticide regulations passed by local governments in Wisconsin. This list is meant to show what can happen when localities exercise their authority to regulate pesticides. The message here is that certainly such a patchwork must be unwieldy

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and a barrier to users and marketers of pesticides. I'd like to point out that the State of Wisconsin does not consider such local regulation to be a problem. It was, after all, the State of Wisconsin that went clear to the Supreme Court to defend the right of its local governments to exercise their authority.

But suppose for the sake of argument, the list from Wisconsin were a problem. Suppose it represented the dreaded patchwork industry claims is coming. Why in the world would the Montana Legislature pass a law addressing a problem in Wisconsin? Why aren't we looking at Montana? Montana local governments have had the very same authority to regulate pesticides as Wisconsin's have, yet, Montana's list is blank (or nearly so)!

We've got to look at the need for preempting local authority in Montana before we buy in to proponents' predictions that the sky is falling. It's not. But if at some point in the future, our local governments do start passing a flood of conflicting regulations, we should look then at solutions. For example, we might consider a state registry of local pesticide regulations so that users who work in several jurisdictions know what is expected of them. And if at some point several jurisdictions address the same problem using inconsistent language, then the state could step in to help draft uniform language on an issue-by-issue basis that localities with similar solutions could adopt. My point is, there are less drastic solutions than stripping all local authority as proposed in Section 4. Rather than passing industry's legislation, Montana should decide for itself the degree of pesticide regulation appropriate for state and local governments and be sure we're balancing the needs of all affected interests. We would be much better off to fashion a less radical, more targeted solution to any problems that may emerge with local pesticide regulation.

I think it might be useful to look at what kind of local ordinances and regulations we might expect from local governments in the future, all of which would be preempted under this section. Based on the relatively few local governments in the nation that have enacted pesticide ordinances, what we've seen is this: Many of them are not regulatory at all. Typically, they only control municipal use of pesticides, such as on school grounds and in parks, or require posting of treated areas. Of the few that don't fall into these categories, they primarily are for water quality protection, which is mandated by local governments.

Again, as far as we know, there are no local ordinances in Montana related to pesticides. But as we begin to look more at our groundwater and be more aware of the full range of local public health needs, such as chemically-hypersensitive populations and children, and establish local wellhead protection programs and local water quality districts such as in Missoula and Lewis and Clark Counties, problems may emerge that we're not currently aware of. Section 4 goes against

the spirit of the local, state and federal partnership called for under the Safe Drinking Water Act, wellhead protection, and FIFRA—the federal pesticide act. This bill would discourage those partnerships when we should be nurturing them.

I'd also like to point out on behalf of AERO's agriculture committee, our largest member group, agriculture is not in jeopardy. First of all, most of Montana's rural governing boards are made up of reasonable people, including farmers and ranchers. There's not a single county commission in rural Montana that would adopt a resolution to take away the tools Montana's number one industry depends on. Dire predictions by the chemical industry of "noxious weed and insect outbreaks," and claims that farmers and pesticide applicators will "find it nearly impossible to operate" are absurd. These are scare tactics designed to bring agricultural interests in line behind the chemical industry. Yet, most pesticide-related ordinances in other parts of the country pertain to urban, not rural, settings.

Farmers and ranchers that I represent feel strongly about local control when it comes to solving problems. After all, local governments are going to be in a much better position to respond to the needs of the local community, including agriculture, than the state or federal governments are, especially when it comes to prevention. If a local problem with pesticides occurs, farmers and ranchers darn well want to be involved in deciding what action will be taken. It's in agriculture's interests to be on top of potential problems with pesticides, and to protect themselves and the ag industry's image by making sure potential problems are prevented and don't, in fact, turn into real problems. The local community is in the best position to do that. After all, local officials know where the wells are, which way the wind blows, where the school yard is, which streams drain which areas. I urge this committee to resist concentrating power in the state, especially with no accompanying appropriation.

To be blunt, preemption is not needed; it's an attack on local authority; it conflicts with existing federal programs, and it prevents local governments from deciding for themselves how best to prevent threats to public health and water quality. I hope you'll consider carefully the implications of this radical proposal and see through the scare tactics foisted on us by slick, well-funded strategists from outside our state.

Please delete Section 4. Thank you.

TESTIMONY OF CINDY HANSON ON SB 334  
BEFORE THE SENATE NATURAL RESOURCES COMMITTEE  
FEBRUARY 17, 1993

Mr. Chair, members of the committee: My name is Cindy Hanson. I am a citizen of Helena and am representing myself.

If amended to delete Section 4, I would support Senate Bill 334.

Local governments have a mandate to protect the health, safety and environment of their citizens. While Section 4 does not remove that mandate, it does remove local governments' authority to fulfill it where pesticides are concerned. If Section 4 were to become law, where would the liability for <sup>local governments</sup> not protecting the public's health, safety and environment fall? Still with local governments? Probably. Or would it shift to the state? Maybe. This is a critical question I'd think the Legislature would want answered before embracing this proposal.

Section 4 makes no provision for increased capacity of the state to step into the gap left by preemption of local authority. What will cause the state to respond to local need? This section provides no trigger for state action.

Where is the necessary appropriation to support the state's expanded role? Neither the Departments of Agriculture nor Health are equipped to fill the gap this provision creates by removing local governments' ability to act. Neither department has fulfilled it's full obligations under Montana's 1989 Agrichemical Groundwater Protection Act, and now we're considering giving them even greater responsibility!

The proponents claim that all they want is uniform state regulation of pesticides. But without increased state capacity or a triggering mechanism, what we'll get with Section 4 is no regulation at the local level at all. With local governments out of the picture, and the state unable to pick up the slack, the burden for finding solutions tailored to unique local problems could well shift to the courts.

The state Department of Agriculture, which regulates pesticides in Montana, is particularly unable to respond to local communities wanting to adopt preventive measures. The agrichemical groundwater law provides only reactive triggering mechanisms; they kick in after groundwater has been polluted. The groundwater law has no preventive action trigger. Its scope is narrow. Then there's surface water. Here again, the departments are ill-equipped to provide preventive measures. Out of necessity, they concentrate on reacting to pollution. For most local governments, that is too late.

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In the real world, if Section 4 as written were to become law, how would it work? Say a community wants to prohibit storage of chemicals near a vulnerable water source. Will that community have to wait until there are three or four other communities that have a similar problem before the state will come up with a uniform regulation? Or will the state respond to every local request? What if a uniform state regulation doesn't address a unique situation in a specific local community? Will that community have to take the state to court to force action?

In addition to the above questions about how state action would be triggered, how will the state develop uniform regulations? Through rulemaking? Through legislation? Local governments aren't assured of how much opportunity for input local people will have to guide state action or the timeliness of that action. These are important questions raised by Section 4. It doesn't answer them, which opens the door to litigation, something state and local governments ought to avoid.

I strongly urge the committee to take seriously these questions of liability, and state agencies' capacity to take on new responsibilities with no appropriation and with no new mandate. This section only says what local governments can't do; it doesn't say what the state must do in their absence. Please amend this bill to delete Section 4. There are too many questions that need answering before the Legislature can justify such drastic action as depriving local people control over their own affairs.

Thank you.

# MontPIRG

## Montana Public Interest Research Group

360 Corbin Hall □ Missoula, MT 59812 □ (406)243-2907

2/13/93

### Testimony Against Senate Bill 334

Chairman Bianchi and Members of the Senate  
Natural Resources Committee:

For the record, my name is Dan Stahly and I'm a student board member of MontPIRG.

The Montana Public Interest Research Group (MontPIRG) is a non-profit, non-partisan research and advocacy organization located on the University of Montana campus. MontPIRG represents 2500 student members and 1500 community members statewide.

We strongly oppose Senate Bill 334 because of section 4 which preempts local authority to regulate pesticides. There are two main reasons why we oppose this section.

First, the section flies in the face of a 1991 decision of the U.S. Supreme Court upholding local government rights to regulate. Centralizing the power to control pesticide use is not the answer safe pesticide use.

Second, every county in Montana is different and has widely varying needs. For example, Missoula may need to take a more careful approach with the use and disposal of pesticides because of threats to the sole source aquifer. Taking authority away from the local government to regulate could be hazardous to public health and would be uncalled for.

MontPIRG urges you to vote "Do Not Pass" on Senate Bill 334, or to completely delete section four.

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*Students and citizens working for educated consumers, a clean environment and a more responsible government.*



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**Testimony of Missoula City-County Health Department  
For Senate Natural Resources Committee  
Regarding Senate Bill 334**

prepared by Peter Nielsen, Environmental Health Supervisor

The Missoula City-County Health Department opposes Section 4 of Senate Bill 334, because it would restrict our ability to protect drinking water supplies in the Missoula Valley. If amended to delete section 4, our department would support passage of Senate Bill 334.

About 70,000 people in the Missoula Valley now get their drinking water from a large underground reservoir of water, known as the Missoula Valley aquifer. The aquifer extends throughout the valley from Hellgate Canyon on the east, to Huson on the west, to Lolo on the south, and is bordered by the surrounding hills and mountains.

The aquifer is the only source of drinking water for nearly all of the people living in the valley. It has been designated as a sole source aquifer by the U.S. Environmental Protection Agency, which means it provides at least 50% of the area's drinking water and that there is no economically practical alternative water supply available in the valley.

An aquifer is a layer of earth or porous rock that contains water underground, much like an underground reservoir. Our aquifer is unconfined, meaning it has no barrier between the land surface and the water table to protect groundwater from pollution. We have learned from a variety of pollution episodes in recent years that our aquifer is very vulnerable to pollution. Among these incidents are at least two significant pollution episodes caused by improper disposal of pesticides.

Missoula County and the City of Missoula recently joined together to form the Missoula Valley Water Quality District, to give local government the tools needed to protect our only source of drinking water. Later this year, the Missoula City Council will consider adoption of a local ordinance to

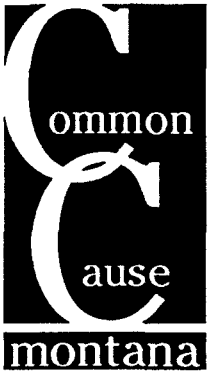
SENATE NATURAL RESOURCES  
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protect water quality in the "Wellhead Protection Areas" surrounding public drinking water well. The wells we seek to protect supply water to city residents as well as numerous schools, churches, restaurants and small homeowners' associations. Section 4 of Senate Bill 334 threatens to seriously impair the ability of local government to protect the health and welfare of its citizens through the water quality district and wellhead protection programs.

For example, Missoula's wellhead protection program, to be proposed later this year, would regulate the handling, storage and distribution of all hazardous and toxic chemicals in zones of contribution to public drinking water wells. This regulation will not apply exclusively to pesticides, and it will not regulate the application of pesticides by licensed applicators or homeowners. The intent of the ordinance would be to prevent contamination of drinking water supplies by requiring management plans of facilities that handle polluting chemicals in the recharge zones of public supply wells, requiring inventories and emergency response plans, and possibly by restricting or prohibiting activities such as chemical storage or transfer facilities in critical recharge zones near drinking water wells. Section 4 of Senate Bill 334 would preclude local government from preventing pollution from a class of chemicals which have caused pollution of groundwater in this community in the recent past.

The Missoula City-County Health Department is also concerned about the potential of Section 4 of SB334 to restrict the ability of the recently formed Missoula Valley Water Quality District to obtain authority to enforce provisions of the Montana Water Quality Act for incidents related to pesticides. The legislature authorized the creation of local water quality districts in its last legislative session so that local governments could more efficiently and effectively solve local pollution problems. Water Quality Districts may be delegated the authority to enforce the Montana Water Quality Act in response to pollution incidents, such as a truck or train spill involving pesticides. Section 4 of SB334 seems to contradict the legislature's intent in authorizing creation of water quality districts, because it limits the ability of local governments to regulate one class of chemicals that may cause pollution of drinking water.

Thank you for your consideration of our concerns.



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EXHIBIT NO. 12A  
DATE 2/13/93  
BILL NO. SB 334

P.O. Box 623  
Helena, MT  
59624  
406/442-9251

**COMMON CAUSE TESTIMONY  
IN OPPOSITION TO SB 334  
FEBRUARY 13, 1993**

Mister Chairman, members of the Senate Natural Resources Committee, for the record my name is Amy Kelley, Executive Director of Common Cause/Montana.

Common Cause/Montana is a nonpartisan citizen group of more than 800 members working to promote open and accessible government and to increase citizen involvement in our government process. While SB 334 deals with an issue that is not generally in our purview, we must stand in opposition to Section 4 of this bill, which directly inhibits citizen involvement.

Common Cause strongly believes that the Legislature should never be in a position of passing legislation limiting or restricting citizens' rights to establish their own laws -- particularly in regards to public health, safety, and the environment.

Section 4 of this bill would do precisely that. We see no compelling reason why citizens should be prevented from passing local ordinances regarding pesticide regulation. In fact, the recent ballot campaign by Missoula citizens to establish a city ordinance requiring posted notification of pesticide use shows that citizens have a strong interest in retaining that local control.

Section 4 of SB 334 is simply bad public policy. We urge this committee to strike the section from this bill.



**Testimony of Al Kurki  
Before the Senate Natural Resources Committee  
in opposition to SB 334  
February 13, 1993**

Mr. Chairman and members of the committee, I am Al Kurki of Helena. I work for the Alternative Energy Resources Organization but am representing only myself today. I'm also a landowner near Canyon Ferry Lake and have a keen interest in weed management.

I cannot appear before you because of a previous commitment for fire fighter training, but I do want to urge you to delete section 4 of SB 334. This is otherwise a good bill that is seriously tainted by the pre-emption language in section four.

During the course of trying to build support for the pre-emption of local authority, the Montana Agri-Business Association (MABA) lobbyist, Pam Langley, handed out a list of local "regulations" in Wisconsin. From this she argues that applicators face confusing and burdensome regulation.

I urge you to take a very close look at that list. Six are non-issues or incomplete information (T-Scott, T-Dairyland, Douglas County, LaCrosse, T-King, T-Trego). The list gets shorter when you eliminate those.

Langley's case gets weaker still if you consider Wisconsin's unique geography, soils, climate and population. I grew up in Wisconsin, and am very familiar with the northern third of the state, which has a great number of lakes, rivers, streams and small watersheds. As I looked at the list, I noticed that in 12 cases (T-Barnes, T-Bayfield, T-Clover, T-Dairyland, T-Cable, T-Delta, T-Trego, T-Washburn, DNR, and two Douglas County cases) protecting surface water quality was the primary reason and logic behind the local decisions for action. In one of those cases—DNR—the use of Roundup is prohibited within 15 feet of Pattison Park, which is literally the headwaters of the Nemadji River, a major river feeding into western Lake Superior.

I would argue that a majority (not all) of those left on the list are reasonable when one considers the local situation. The State of Wisconsin argued that concentrating power in the hands of the state to deal with local pesticide issues is bad idea, and the U.S. Supreme Court upheld Wisconsin communities' right to make those decisions themselves. Montana's communities should have the same right.

Please vote to delete Section 4 of SB 334. Thank you.

SENATE NATURAL RESOURCES  
EXHIBIT NO. 13  
DATE 2/13/93  
BILL NO. SB 334

*FVI - Here's what's possible with local pesticide registration -*

LOCAL PESTICIDE RESTRICTIONS

(If you are aware of other restrictions, please send us a copy.)

County	Municipality	Pesticide	Notes
			- Barron Rural Electric Co-op members vote not to use herbicides.
	T-Barnes	Brush killing chemicals	Application by utility companies prohibited on roads and town property, and only with permission on private property.
Wayfield	T-Wayfield	Herbicides	8/14/84 resolution prohibits spraying of chemical herbicides along powerline rights-of-way. Does not apply to agricultural applications of approved chemicals on home, farm or orchard lands.
	T-Bell	Herbicides	Prohibits use on town owned roadways and rights-of-way.
	T-Clover	Herbicides	Prohibit the use of herbicides on all easements, i.e. roads, power lines, telephone lines, pipelines, and for conifer release or improvement of wildlife habitat. (Use by farmers for other agricultural purposes o.k.) On 5/8/85, a variance was granted which allowed a one-time demonstration of the use of a herbicide for conifer release on 154 acres. Area must be posted and town given a 10-day advance notice.
Trout	T-Union	Tordon or similar herbicides	- Total prohibition \$100 to \$1000 fine plus court costs.
	T-Scott	?	Similar to Union?
	C-Madison		Reduce use of pesticides in city parks, etc.
Waukegan	County	Tordon	- Requires 6 months advance notice in local papers.
	County	Pesticides	8/85 - Resolution adopted to have a committee study the need for an ordinance requiring public notice prior to application. The County Corporation Council recommended no action pending settlement of Casey lawsuit. (See Washburn County T-Casey).
	T-Dairyland	Herbicides	Prohibition except farm use may apply for exemptions.
	DNR	ROUNDUP	The DNR Board amended an earlier approved plan and now will not use ROUNDUP to clear a 15-foot perimeter around Patison Park.
Waukesha Co., WI	County	Herbicides	Unanimous vote by County Board to oppose use of herbicides on county property by pipeline company.
Kenosha	T-Kenensky	Herbicides P.R.	Prohibits any kind of spraying to control growing plants, etc., on town rights-of-way.
	T-Garfield	Herbicides	Electors and town board voted unanimously at 4/86 annual meeting that "chemical brushing" will no longer be permitted.
Cross		1 Ag Herbicide	Resolution adopted 7/17/86 to ban. <u>Rescinded 1/87.</u>
Polk	T-Birch	Pesticides	Requires published notice prior to application on public lands, roadways, private lands without permission (Birch also rights-of-way easements). <u>Bradley ordinance rescinded 4/13/85.</u>
	T-Bradley	Pesticides	
	T-King	Herbicides	Banned by Township.

Mackinac	MI County		Since early 70's, use on Road Commission rights-of-way has been prohibited.
Marquette	Constock Lake Property Owner Association	Pesticides	Resolution to forbid aerial application in watershed.
Oneida	T-Lake Tomahawk	Defoliant	Prohibited near utility lines.
Portage	C-Stevens Point	2,4-D	No use in city parks, school grounds, playgrounds, etc.
Price	T-Georgetown		Resolution 4/7/81 banned use of "Picloram" (trade name: Gordon 100) in the town. Any chemical application on public lands allowed only with a written permit from the town board.
	T-Kennan	All Chemicals or Herbicides	Prohibition on town lands including rights-of-way.
Vilas	T-Manitowish Waters	Pesticides	6/21/83 letter to WI Electric Power & DNR requesting no application.
Washburn	T-Bass Lake	Phenoxy Herbicides	Phenoxyes, other than private use on private lands are banned until proven safe.
	T-Beaver Brook		<u>Asks REC</u> for advance notice to town and private landowners.
	T-Cable	Pesticides	Because of a petition filed by taxpayers, prohibited all commercial spraying on any land or right-of-way within the Town of Cable.
	T-Casey	Pesticides	Ban in 1981. Ordinance passed 6/83 amended 8/83. A new ordinance drafted by Wisconsin's Public Intervenor's office was adopted 7/19/84. It requires a permit before applying herbicides on lands subject to public use or any aerial application of pesticides. Town may impose "reasonable requirements" such as prior notice, ground rather than aerial application, etc. Permitting process could take as long as 180 days. Placarding required.  Revised 9/10/85 to include all pesticides. Permit application must include pending EPA actions.
	T-Delta	Herbicides	As of June 1980, prohibited any person to use any defoliant or herbicide within the confines of the said town. A fine of \$100 to \$500 or 90-day jail sentence.
	T-Frog Creek	Herbicides	Adopted 5/14/84. Requires a hearing prior to use of "aerial sprayed herbicide" for proof and evidence on non-toxic effect. Residents may petition for election to vote on allowing aerial spray.
	T-Long Lake	Herbicides	Prohibits on town property where electric transmission lines are located.
	T-Madge	Chemical	No chemical spraying on public property. Private property owners must give permission prior to application by electric co., etc.
	T-Trego	2,4-D	Questionnaires sent to users. Additional action unknown.
	T-Washburn	Herbicides	To protect lands enjoyed by members of the public for their scenic, recreational and wild food-producing characters, and because of possible soil erosion, prohibits "any person to use chemical herbicides in any form on roadways, powerlines, telephone lines, pipelines or other easements granted by the Town of Washburn." The resolution was adopted in May of 1983 and contains a \$100 fine.

# The Office of Public Instruction

Nancy Keenan  
State Superintendent



State Capitol  
Helena, Montana 59620  
(406) 444-3095

February 12, 1993

Dear Chairman Bianchi,

I would like to take this opportunity to express my serious concern about section four of SB 334. It appears that section four would "preempt local government ordinances that would regulate or prohibit the registration, labeling, distribution, sale, handling, usage, application, notification or disposal of pesticides."

My concern is two-fold. First, local government is not defined and could under other interpretation of local government entities include school districts. This then has the potential to prohibit local school boards from adopting policies to control the spraying of pesticides near playgrounds or school facilities. Secondly, since many of our rural schools depend on well water as their main source of water any potential disposal, application or usage of pesticides in an area near schools could impact wells and the health of the students and staff working in those schools.

We in Montana cherish local control. Local control of our city and county governments and local control of our schools. I would encourage the Senate Natural Resource Committee to review carefully section four of this bill and leave those most critical decisions of regulating pesticides with those who are closest to the issue, local governments and school boards.

Thanks you for your time and consideration of my concerns.

Sincerely,

*Nancy Keenan*

SENATE NATURAL RESOURCES  
EXHIBIT NO. 13A  
DATE 2/13/93  
BILL NO. SB 334

Commissioners  
Kay McKenna, Mayor  
Margaret Crennen  
Tom Huddleston  
Colleen McCarthy  
Mike Murray



City-County  
Administration Building  
316 North Park  
Helena, MT 59623  
Phone: 406/447-8000

William J. Verwolf  
City Manager

## City of Helena

February 11, 1993

Senator Don Bianchi, Chairman  
Senate Natural Resources Committee  
Montana State Senate  
State Capitol  
Helena, MT 59620

Dear Senator Bianchi:

Listed below is my testimony and 20 copies for committee members for Senate Bill #319.

MR. CHAIRMAN AND MEMBERS OF THE SENATE NATURAL RESOURCES COMMITTEE. MY NAME IS RICHARD A. NISBET, DIRECTOR OF PUBLIC WORKS FOR THE CITY OF HELENA, MONTANA.

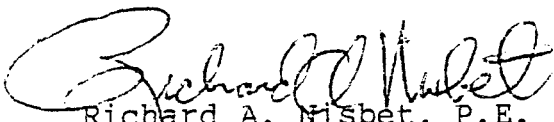
THE CITY OF HELENA IS IN SUPPORT OF SENATE BILL #319.

DURING THE LAST LEGISLATIVE SESSION A FEE WAS ENACTED TO HELP FINANCE THE SOLID WASTE BUREAU. THE CITY OF HELENA AND OTHERS WERE ASSURED THAT TRANSFER STATIONS WOULD NOT BE ASSESSED A DISPOSAL FEE AND THAT THIS WOULD BE TAKEN CARE OF DURING THE ADMINISTRATIVE RULE PROCESS. SOMEHOW, DURING THE PROCESS THIS DID NOT OCCUR. THIS BILL WILL CLARIFY THE ORIGINAL INTENT OF THE PREVIOUS LEGISLATURE.

CURRENTLY, THE CITY OF HELENA AND LEWIS AND CLARK COUNTY HAVE A COOPERATIVE EFFORT IN THE UTILIZATION OF A TRANSFER STATION THAT WOULD TRANSPORT GARBAGE TO A JOINT CITY/COUNTY LANDFILL. THIS BILL WOULD CLARIFY THE LAW, WHEREBY WE WOULD NOT BE PAYING DOUBLE FEES ON THE SAME SOLID WASTE.

THE CITY OF HELENA WOULD URGE A DUE PASS RECOMMENDATION FOR SENATE BILL #319.

THANK YOU.

  
Richard A. Nisbet, P.E.  
Director of Public Works  
City of Helena

SENATE NATURAL RESOURCES  
EXHIBIT NO. 14  
DATE 2/13/93  
BILL NO. SB 319

# Unified Disposal Board

Hill County Courthouse • Havre, Montana 59501 • (406) 265-5481 ext. 66

SENATE BILL - 319

SENATE NATURAL RESOURCES

EXHIBIT NO. 15

DATE 2/13/93

BILL NO. SB 319

Submitted by Clay Vincent:  
Chairman Unified Disposal Board/Sanitarian

Approximately two years ago the Montana Legislature passed a bill that allowed the Solid and Hazardous Waste Bureau to set-up a program to charge solid waste fees along with a .31 cent per ton fee on all garbage put in landfills.

Hearings were held around the state on fee schedules with a large amount of opposition to many of the Bureau set fees. Even with this type of opposition, basically no changes were made. The Solid Waste Bureau has consistently tried not to listen to the people who are paying the bills.

Over the last two years several additional meetings were attended by myself and other board members trying to understand what the actual workload was of this Bureau.

Montana needs a solid waste plan, but those individuals developing this plan must walk before they run. They must be able to justify their program needs before being given a blank checkbook.

The main question at this time is to drop the container site fee schedule because many feel that it is not justified. Container sites are collection areas for garbage only, with nothing left at the site. All garbage is hauled to a landfill site.

The license fee for our 14 sites is approximately \$1000.00 dollars per year. I'm not sure what this fee covers because the sites are already in place, they cost local users about \$25,000 dollars each when first built and local trash compliants are normally handled by the local Health Departments. It's hard to believe that a local resident would call Helena and get the Solid Waste Bureau to come out and clean up blowing litter.

If the fees were for plans and development you would think that the Bureau would hire an engineer on staff who legally can review them and discuss them with the private engineer. The Bureau has felt that an engineer on staff would be too expensive and has opted to hire basic field staff while sending landfill plans out of state to be reviewed.

Montana local Health Departments located around the State could do exactly what this Bureau's field staff is doing with a little training and do it much less expensive. Local Health Departments already do inspections of restaurants, motels, trailer courts, while providing information on wastewater disposal, communicable diseases, and many other areas. It seems to me that the Solid

Waste Bureau has been allowed to develop a large program without having to justify its existence to anyone.

The program needs to center in on landfill development and design. The bureau needs an engineer to review these plans which must be drawn up by a registered engineer and paid for by local taxpayers already. This Bureau creates very little, but can only approve or deny a plan. All information must be submitted to them, not gathered or found by field staff.

The Bureau must have someone on staff to work with the private companies and the Montana Legislature to develop recycling programs. Once again the incentives and markets are needed by local county groups, not the actual work done. Local people will do the actual work of recycling.

The Bureau needs one person that knows what the federal requirements are and can give this to local officials when questions are asked.

A field representative is needed to cover problems that need direct state assistance. Most problems can be handled on the phone with needed written information submitted by mail.

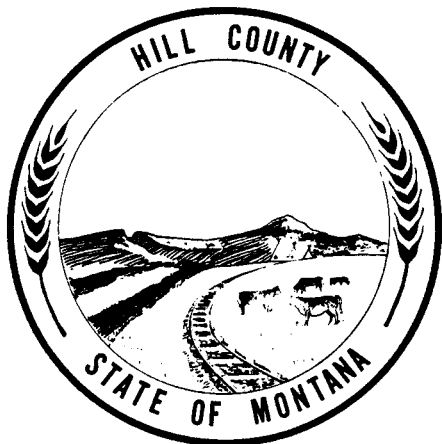
The Bureau must walk before it runs. It must justify where taxpayer moneys are spent. It must try to use local or already available resources before it creates jobs that are unnecessary and wasteful.

I believe that charging a fee for containers sites is not right and unjustified. I also believe that raising the per ton charge to make up for lost revenue is ridiculous. Estimated revenue being received by the Solid Waste Bureau from current fees is over \$400,000/year. This is an estimate only. This is new money generated only in the last two years. Unified Disposal currently pays between \$8-10,000 a year for a license. This money is lost to the local area and nothing is returned. We hire our own engineers, haul our own garbage, handle 99% of the problems that develop, and must be responsible to the local users and payers of the system. The \$8-10,000 gives us a piece of paper and hopefully one inspection and the rest is up to us. I realize all landfills are different but the same information must be gathered (by local users and hired engineers) for each and a plan developed or no license is given by the State.

Times are currently tough in Montana for local taxpayers and all fees especially new ones must be justified to all involved.

# COUNTY OF HILL

STATE OF MONTANA  
Havre, Montana 59501



Kathy Bessette, **Chairman**  
Nora Nelson, **Commissioner**  
Lloyd Wolery, **Commissioner**

[406]265-5481 Ext. 27

February 13, 1993

To: Members of the Natural Resources Committee

Submitted By: Lloyd Wolery, Hill County Commissioner

Legislation was approved two years ago that allowed the Solid and Hazardous Waste Bureau to set up a program to charge license fees, plus charging a per ton charge on all garbage put in landfills.

As a Commissioner, I have been closely associated with our landfill operations and have been very impressed with the quality and professionalism. We have complied with all regulations with little or no assistance from the bureau.

In the past two years we have paid in fees, an amount of approximately \$18,000.00 Also, in this time we have received one inspection which we felt was of little or no benefit to us. During this same period we also spent approximately \$33,000.00 for our own engineer, which we feel should be shared by the bureau if they are going to charge licensing fees on annual basis.

When our plan was submitted to the bureau they had no one there that was qualified to review and approve the plans so they had to send them to a firm in California, at I am sure, a large expense.

I am aware that at the present time the bureau is working with an engineer in State, but feel there certainly should be somebody on board that could offer guidance and make decisions on important issues.

SENATE NATURAL RESOURCES

EXHIBIT NO. 15A

DATE 2/13/93

BILL NO. SB 319

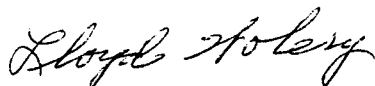


Page 2  
Natural Resources Committee

I am in support of SB-319 which dis-allows fees on our container sites of about \$1,000.00 a year of which I feel that we will reap no benefit. Our sites are all designed and in place and any maintenance will have to be done by our local firm.

I ask that you support this bill as written, without amendments and thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Lloyd Wolery".

Lloyd Wolery,  
Hill County Commissioner

DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL SCIENCES

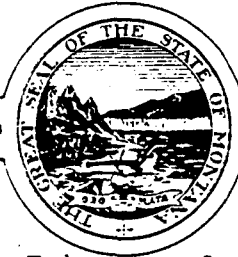
Solid and Hazardous Waste Bureau

Solid Waste Program

(406) 444-1430

MARC RACICOT, GOVERNOR

FAX # (406) 444-1499



STATE OF MONTANA

OFFICE LOCATION 836 Front Street  
Helena, Montana

MAILING ADDRESS: Cogswell Building  
Helena, MT 59620

February 9, 1993

DHES TESTIMONY ON SENATE BILL 319  
"AN ACT CLARIFYING THE FEES FOR SOLID WASTE MANAGEMENT"

In 1991 Senate Bill 209 directed the Department to collect "fees related to the review of solid waste management system license applications; and the renewal of solid waste management system licenses..". This is what the Department did. Since container sites and transfer stations are parts of solid waste management systems or are systems in themselves that require licensing and inspection, they were included in the new fees. Senate Bill 319, before you today asks you to exempt solid waste container sites and transfers stations from paying the fees, but does not remove their requirement to be licensed and inspected by the Department. Basically, this bill will require the Department to continue to commit time and resources to license and regulate these solid waste systems without being able to recover any of the expenses through application or licensing fees. As a result, other solid waste management systems that are licensed and must pay the fees will be supporting Department activities for those licensed facilities that do not pay fees.

As a solid waste storage facility and solid waste handling system, the Department believes that container sites and transfer stations should remain licensed and regulated. As licensed and regulated facilities that consume Department time and resources, we believe that container sites and transfer stations should pay their fees in support of the program as other licensed facilities must.

SENATE NATURAL RESOURCES  
EXHIBIT NO. 16  
DATE 2/13/93  
BILL NO. SB 319

DHES SUPPORTING TESTIMONY SB 284

SENATE NATURAL RESOURCES

EXHIBIT NO. 17

DATE 2/13/93

BILL NO. SB 284

The Department of Health and Environmental Sciences supports SB 284.

We believe that passage of this bill will provide a greater degree of protection for the public's health and safety, the state's groundwater resources and its environment by insuring that all underground storage tank system installation, closures, repairs and modifications are properly reviewed and permitted. It will also ensure that individuals and firms are properly installing cathodic protection and external release detection equipment.

Currently, the Montana Underground Storage Tank Installer and Licensing Act requires that only the tank owner or operator must obtain a permit prior to beginning tank installations, closures, repairs or modifications. During the past two years, the Department has documented several instances where underground storage tank systems have been removed by individuals other than the owner or the operator without a permit. In these instances, the Department's pursuit of legal remedy has been frustrated by the language of existing statute which limits the responsibility for obtaining a permit to the tank owner or operator. Because passage of this bill will extend the permitting requirement to any person who undertakes a tank handling operation, the Department will, not only be able to prosecute those who disregard the law, but be able to better provide assurance that all underground storage tank systems are installed, closed, repaired or modified in compliance with duly adopted regulations.

We also believe that passage of this bill will assure that the installation of corrosion prevention and release detection equipment external to the tank is adequate to protect the tank system from corrosion and effectively detect releases. A number of inquiries from the tank owners and operators and complaints from qualified equipment suppliers, as well as our own observation, indicates that a number of individuals and firms are attempting to install these complex, technical systems without appropriate competency or experience.

Further, since a number of regional states have begun regulating these activities, the Department has received a number of inquiries from individuals who apparently could not obtain licensure in those states about Montana's regulations and our market for their services. Our inability to regulate these activities, not only reduces our effectiveness to prevent and timely detect releases, but allows the continued installation of ineffective equipment on Montana's underground storage tanks.

Upon passage of this bill, the Department proposes to adopt and promulgate licensing requirements for individuals and firms engaged in the business of installing field-installed cathodic protection system and external release detection equipment. The regulations would require applicants to provide evidence of experience and demonstrate their competency by examination before being issued a license. Continuing education requirements would also be promulgated.

Thank you for your time and support.

Amendments to Senate Bill No. 171  
First Reading Copy

Requested by Senator Doherty  
For the Committee on Natural Resources

Prepared by Paul Sihler  
January 28, 1993

1. Title, line 4.

Strike: "PERMITTING" *8/5*

Insert: "REQUIRING"

2. Title, lines 7 and 8.

Strike: "AFTER" on line 7 through "APPLICANT" on line 8

Insert: "UNLESS THE DEMANDS OF INDIVIDUAL PRIVACY CLEARLY EXCEED  
THE MERITS OF PUBLIC DISCLOSURE" *8/5*

3. Page 1, lines 15 and 16.

Strike: "through" on line 15 through "(4)" on line 16

4. Page 1, line 17.

Strike: "director" *VP*

Insert: "commissioner"

Strike: "director's"

Insert: "commissioner's"

5. Page 1, lines 19 through 24.

Strike: "confidential" on line 19 through "permit" on line 24

Insert: "open to public inspection"

6. Page 1, line 25.

Following: "may"

Insert: "not"

7. Page 2, lines 1 through 3.

Strike: "on" on line 1 through "director" on line 2

Insert: "if the commissioner determines"

Strike: "privacy" on line 2 through "for" on line 3.

Insert: "demands of individual privacy clearly exceed the merits  
of"

8. Page 2, lines 4 through 21.

Strike: subsections 3 through 5 in their entirety.

*Halligan 2/28/93*

Amendments to Senate Bill No. 171  
First Reading Copy

Requested by Senator Doherty  
For the Committee on Natural Resources

Prepared by Paul Sihler  
February 8, 1993

1. Page 1, lines 15 and 16.

Strike: "subsections"

Insert: "subsection"

Strike: "through 4"

2. Page 2, lines 4 through 21.

Strike: "Any" on line 4 through "." on line 21

Insert: "Individual privacy concerns include competitively  
sensitive and proprietary geological information."

SENATE NATURAL RESOURCES  
EXHIBIT NO. 17B  
DATE 2/13/93  
BILL NO. SB 171

Burden of proof has essentially two elements as explained below:

BURDEN OF PROOF

The burden of proof embodies two concepts as an evidentiary standard: (1) the burden of production -- the burden of going forward with evidence to convince the decision maker that you should be believed; and,

(2) the burden of persuasion -- the burden of convincing the decision maker that you should ultimately win the case because your evidence meets the requisite standard of proof.

NOTE: The burden of production shifts from one party to the other depending on whose duty it is to present the evidence [for example, once a plaintiff has completed his case the burden shifts to the defendant to produce evidence to establish the defense]. The burden of persuasion never shifts [for example, the plaintiff is required to convince the judge by some set standard (see standards below) that he should prevail, if he doesn't meet the standard the plaintiff loses].

In modern judicial proceedings, three standards of proof are recognized:

(1) preponderance of the evidence -- this standard is used in most every civil case [evidence which, when fairly considered produces the stronger impression, and has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition, but does not necessarily mean the greater number of witnesses];

(2) clear and convincing evidence -- this standard is reserved to protect particularly important interests in a limited number of civil cases [a high standard requiring strong evidence that produces in the mind of the court a firm belief or conviction, but is less than conclusive]; and,

(3) beyond a reasonable doubt -- this standard is used exclusively in criminal cases [Highest standard of proof].

Confusion exists in the Montana water law because the standard "substantial credible evidence" is used. Terms such as substantial and substantial credible are generally terms used by a reviewing court. For example, the Montana Supreme Court reviews decisions of a district court and upholds the district court if there exists substantial evidence in the record of the district court to uphold the decision. Remember, however, that the district court in making its decision used the standard of a preponderance of the evidence (in most civil cases). The standards of substantial credible and preponderance of the evidence serve two different functions-- substantial credible to review a case on appeal, and preponderance to weigh the conflicting evidence by the initial decision maker. Unfortunately, the standard for the decision maker in the water laws has been set as "substantial credible" (the reviewing

standard) therefore, the question naturally arises as to whether substantial credible is higher or lower than preponderance of the evidence. It appears that arguments may be made on both sides of the issue, but the department in dealing with the issue in water permitting matters is utilizing "preponderance of evidence" as being embodied in the "substantial credible" standard.



**DNRC's Response to SB 296 hearing comments:**

Assertion 1: This measure places an extreme hardship on the drillers.

Response: For those drillers following construction standards, the added burden is a phone call prior to drilling for a limited duration on a random schedule. For those drillers found in violation, they will have a similar burden of a phone call to a regional field office; however, it will be required of all violators and not just select violators.

Assertion 2: This bill increases the authority of DNRC or the Board to take punitive action against drillers.

Response: No. This bill does not increase the authority of the Board, which already has exclusive authority to take disciplinary action against water well drillers, nor does it grant DNRC any authority in this area. It merely provides for a notification system that would allow for more effective, proactive enforcement of the Board's existing authority. DNRC is not, nor does it desire to serve as, the policeman over water well drilling activities. It can only serve as the eyes and ears of the Board.

Assertion 3: Only qualified well inspectors are able to properly investigate professional well drillers construction work.

Response: We agree. Currently, the Board of Water Well Contractors relies on complaints from citizens who are supposed to ascertain whether their well is constructed according to standards. This accounts for the small number (1%) of complaints and violations identified by the Board. This proposal would allow experienced regional field office staff, who the Board currently relies upon to investigate complaints, to perform unannounced inspections on behalf of citizens.

Assertion 4: The Board of Water Well Contractors already has the authority to require prior notification.

Response: The current Board authority only allows them to require prior notification as a disciplinary action after a written complaint is filed. Most verified well construction violations are dealt with by requiring the driller to go back and correct work on that one particular well. After repeated validated complaints, the Board requires prior notification to check on well construction during drilling. Only 3 drillers have been put on a prior notification system.

Assertion 5: This enforcement measure would be prohibitively costly.

Response: Other options would require additional well inspector positions, but it was clear that the state budget could not justify additional employees. In 1991, 1,329 hours of regional field office staff time were dedicated to well investigations. This staff would be more efficient and effectively utilized with a prior notification system, thus avoiding the costs associated with similar programs in other states.

Assertion 6: This bill does not provide for random inspections.

Response: Other states require all drillers to provide prior notification of drilling sites for all wells. As a compromise with drillers arguing that such a system would be burdensome, this bill proposes a rotating notification system for drillers with no record of recent violations. Unannounced inspections will be possible for all drillers on a rotating basis.

SENATE NATURAL RESOURCES

EXHIBIT NO. 19

DATE 2/13/93

BILL NO. SB 296

53rd LEGISLATIVE SESSION

NATURAL RESOURCES COMMITTEE

I, Senator John Ed Kennedy Jr. do hereby submit my vote to Chairman Bianchi as follows:

BILL NUMBER SB 171

MOTION

Do Pass

Yes X

No \_\_\_\_\_

Do Not Pass

Yes \_\_\_\_\_

No \_\_\_\_\_

Indefinitely Postponed

Yes \_\_\_\_\_

No \_\_\_\_\_

Tabled

Yes \_\_\_\_\_

No \_\_\_\_\_

John Ed Kennedy Jr.  
Signature

2-13-93  
Date

*unless amended - if amendments are OK = Sponsor, I still vote yes*

53rd LEGISLATIVE SESSION

NATURAL RESOURCES COMMITTEE

I, Senator \_\_\_\_\_ do hereby submit my vote to Chairman Bianchi as follows:

BILL NUMBER SB 171

MOTION

Do Pass

Yes X

No \_\_\_\_\_

*unless amended then*

No

Do Not Pass

Yes \_\_\_\_\_

No \_\_\_\_\_

Indefinitely Postponed

Yes \_\_\_\_\_

No \_\_\_\_\_

Tabled

Yes \_\_\_\_\_

No \_\_\_\_\_

*Keating*  
Signature

\_\_\_\_\_  
Date

*No to all amendments  
if amended - I vote No  
on "do pass" motion*

53rd LEGISLATIVE SESSION

NATURAL RESOURCES COMMITTEE

I, Senator John Ed Kennedy do hereby submit my vote to Chairman Bianchi as follows:

BILL NUMBER SB 231

MOTION

Do Pass  
Yes X unless amended - if amendments are ok as sponsor I still vote yes  
No \_\_\_\_\_

Do Not Pass  
Yes \_\_\_\_\_ No \_\_\_\_\_

Indefinitely Postponed  
Yes \_\_\_\_\_ No \_\_\_\_\_

Tabled  
Yes \_\_\_\_\_ No \_\_\_\_\_

John Ed Kennedy  
Signature

2-13-93  
Date

53rd LEGISLATIVE SESSION

NATURAL RESOURCES COMMITTEE

I, Senator KEATING do hereby  
submit my vote to Chairman Bianchi as follows:

BILL NUMBER SB 231

MOTION

Do Pass  
Yes \_\_\_\_\_ No X

Do Not Pass  
Yes X No \_\_\_\_\_

Indefinitely Postponed  
Yes \_\_\_\_\_ No \_\_\_\_\_

Tabled  
Yes \_\_\_\_\_ No \_\_\_\_\_

2-13-93  
Date

Keating  
Signature

53rd LEGISLATIVE SESSION

NATURAL RESOURCES COMMITTEE

I, Senator John Ed Kennedy Jr. do hereby submit my vote to Chairman Bianchi as follows:

BILL NUMBER SB 296

MOTION

Do Pass

Yes

*yes if amendments are OIC sponsor or no amendments unless amended*

No

Do Not Pass

Yes

No

Indefinitely Postponed

Yes

No

Tabled

Yes

No

John Ed Kennedy Jr.  
Signature

2-13-93  
Date

53rd LEGISLATIVE SESSION

NATURAL RESOURCES COMMITTEE

I, Senator KEATING do hereby submit my vote to Chairman Bianchi as follows:

BILL NUMBER SB 296

MOTION

Do Pass

Yes \_\_\_\_\_

No X

Do Not Pass

Yes X

No \_\_\_\_\_

Indefinitely Postponed

Yes \_\_\_\_\_

No \_\_\_\_\_

Tabled

Yes X

No \_\_\_\_\_

2-13-93  
Date

Keating  
Signature

53rd LEGISLATIVE SESSION  
NATURAL RESOURCES COMMITTEE

PROXY VOTE

I, Senator Swift do hereby  
grant my proxy vote to Chairman Bianchi or Secretary Kurtz as  
follows:

BILL NUMBER SB 339

MOTION

Do Pass  
Yes \_\_\_\_\_ No \_\_\_\_\_

Do Not Pass  
Yes X \_\_\_\_\_ No \_\_\_\_\_

Indefinitely Postponed  
Yes \_\_\_\_\_ No \_\_\_\_\_

or  
Tabled  
Yes X \_\_\_\_\_ No \_\_\_\_\_

Bernie Swift  
Signature

2/13/93  
Date



53rd LEGISLATIVE SESSION

NATURAL RESOURCES COMMITTEE

I, Senator KEATING do hereby submit my vote to Chairman Bianchi as follows:

BILL NUMBER SB 339

MOTION

Do Pass  
Yes \_\_\_\_\_ No X

Do Not Pass  
Yes X No \_\_\_\_\_

Indefinitely Postponed  
Yes \_\_\_\_\_ No \_\_\_\_\_

Tabled  
Yes X No \_\_\_\_\_

Keating  
Signature

2-13-93  
Date

# Senate Natural Resources

DATE 2/13/93

SENATE COMMITTEE ON SB 334, SB 319, SB 284

BILLS BEING HEARD TODAY: \_\_\_\_\_

Name	Representing	Bill No.	Check One	
			Support	Oppose
Curtis Horton	Missoula City Council, County Commissioners, Mayors office, Health Dept, Board of Health	334		<input checked="" type="checkbox"/>
Loreen Folsom	Missoula office for Clean Environment	334		<input checked="" type="checkbox"/>
Will SNOODGRASS	MCF	334		<input checked="" type="checkbox"/>
David Bunch	Mt. Weed Control Assoc.	334	<input checked="" type="checkbox"/>	
CAROLE MACKIN	SELF	334		<input checked="" type="checkbox"/>
Pat Keim	Bearington Brothers	334	<input checked="" type="checkbox"/>	
Candace Durman	Self	334	<input checked="" type="checkbox"/>	with amendments
Andy Hanson	Self	334	<input checked="" type="checkbox"/>	with amendments
Chuck Merga	Mount Rainier Growers		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
JAMES S. FRIEDMAN	MWCA MWCA = CASCADE CONEX	334	<input checked="" type="checkbox"/>	
AMY KELLEY	COMMON CAUSE			<input checked="" type="checkbox"/>
Bill Shurts	AMAA	334	<input checked="" type="checkbox"/>	
Jim Helder	AMAA	334	<input checked="" type="checkbox"/>	<del>with amendments</del>
Mike Biggerstaff	AMAA	334	<input checked="" type="checkbox"/>	
Brad Coker	AMTOP, Peds to Parties, MAU	334	<input checked="" type="checkbox"/>	
Scott Selstad	AMTOP	334	<input checked="" type="checkbox"/>	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2/13/93

SENATE COMMITTEE ON SB 334, SB 319, SB 284

BILLS BEING HEARD TODAY: \_\_\_\_\_

Name	Representing	Bill No.	Check One	
			Support	Oppose
Dennis M. Roberts	AMTOP	334	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ken Travis	AMTOP	334	<input checked="" type="checkbox"/>	<input type="checkbox"/>
John Semple	AMAA	334	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mark Machin	Self	334	<input type="checkbox"/>	<input checked="" type="checkbox"/>
JOHN E. STULTS	LXC Co. Junior Oral Protection Dist.	334	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Linda Stall-Anderson	Mt Assn of Counties	334	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Carole Torrance	Mt Stock Growers Mt Wood Growers	334	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lorna Frank	Mt. Farm Bureau	334	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Nancy Mathews	AERO	334	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dennis Kelly	CIBA	334	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Daryl Miskross	MABA	334	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DAVE STAHL	MOUNTAIN PIR (S)	334	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Larry Jasbender	Mt. Council of Crops	334	<input checked="" type="checkbox"/>	<input type="checkbox"/>
EOB BRATTAIN	MABA	334	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stan Bradshaw	MT. TIL	334	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Jim Sampson	Self		<input type="checkbox"/>	<input checked="" type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2/13/93

SENATE COMMITTEE ON SB 334, SB 319, SB 284

BILLS BEING HEARD TODAY: Natural Resources

Name Representing Bill No. Check One Support Oppose

Name	Representing	Bill No.	Support	Oppose
GENE PHILLIPS	PP&L	SB334	X	
Bob Barry	MAPP	SB 334		✓
JEFF WADE	M.A.B.A.	SB334	X	
Leo Giacometto	Dept of Agriculture	334	X	

VISITOR REGISTER

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DATE 2/13/93

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 319, SB 334, SB 284

Name	Representing	Bill No.	Check One	
			Support	Oppose
<u>Larry Broere mgr</u>	<u>Unified Disposal Board Havre MT</u>	<u>SB319</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Charles Dannerth</u>	<u>Blount County</u>	<u>SB319</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>loyd Wolery</u>	<u>Hill County</u>	<u>SB319</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY