

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN DICK KNOX**, on February 15, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

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

Members Excused: Rep. Feland

Members Absent: None

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

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

Committee Business Summary:

Hearing: HB 503, HB 448, HB 419, HB 571, HB 532,
HB 512, HB 407 and HB 567
Executive Action: HB 488, HB 379 HB 395, HB 454 and HB 434

HEARING ON HB 571

Opening Statement by Sponsor:

REP. DAVE BROWN, HD 72, Butte, stated HB 571 was drafted at the

request of the Butte Water Company and will allow short term exemptions from water quality standards.

Proponents' Testimony:

Kevin Keenan, Manager, Water Quality Bureau, said HB 571 allows for environmental remediation. EXHIBIT 1

Jack Lynch, Chief Executive, Butte Silver-Bow, stated twenty-eight million dollars has been spent in reconstruction of the Butte water system. Adding a ruling relating to copper sulfate could add an additional ten million dollars to the cost of the rehabilitation system in Butte-Silver-Bow. The Department of Health and Environmental Sciences (DHES) endorses this bill.

Steve Huntington, Silver Bow Water, Inc., stated that without finances to treat Butte water for algae bloom, water would have to be filtered at a cost of about ten million dollars.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. BROWN said that failure to pass HB 571 will result in costs between eight and 10 million dollars.

HEARING ON HB 419

Opening Statement by Sponsor:

REP. ED GRADY, HD 47, Canyon Creek, presented HB 419, an act providing an administrative penalty for Montana Hazardous Underground Storage Tank Act violations. He presented amendments which will place a one hundred thousand dollar cap on this penalty. EXHIBIT 2

Proponents' Testimony:

Don Vidrine, Manager, Hazardous Waste Division, Department of Health and Environmental Sciences, (DHES), testified in support of HB 419. EXHIBIT 3

REP. SWANSON distributed amendments to HB 419 to clarify violations of hazardous waste management and assess administrative penalties. EXHIBIT 4

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. SWANSON asked REP. GRADY if penalties are routed to the general fund. REP. GRADY answered that fees collected by DHES are deposited in the general fund.

Closing by Sponsor:

REP. GRADY closed by saying the bill was without opposition.

HEARING ON HB 503

Opening Statement by Sponsor:

REP. BOB REAM, HD 54, Missoula, said HB 503 simply strikes "and" and inserts "for" into bill language regarding the Stream-side Management Zone (SMZ).

Proponents' Testimony:

Jeff Jahnke, Department of State Lands (DSL), said the bill will eliminate any uncertainty associated with Stream-side Management Zones.

Stan Bradshaw, Trout Unlimited, spoke in support of the bill and on behalf of Janet Ellis, Montana Audubon Legislative Fund.

Don Allen, Montana Wood Products, said they support HB 503.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. REAM declined to close.

HEARING ON HB 448

Opening Statement by Sponsor:

REP. SCOTT ORR, HD 2, said the bill will require that a sewage well cannot be sited less than 500 feet from a water well. Variances have been granted by DHES, he noted.

Proponents' Testimony: None

Opponents' Testimony:

Steve Mandeville, Montana Association of Realtors, said land near a well will be rendered useless if this legislation is adopted. He stated that, according to this bill, eighteen acres are necessary to determine a lagoon is safe.

Questions From Committee Members and Responses:

REP. STOVALL asked REP. ORR to address the handout regarding geometric progression. EXHIBIT 5 REP. ORR replied that sewage begins at an open pit made of either clay or concrete. Existing lagoons are grandfathered into HB 448.

Closing by Sponsor:

REP. ORR told the committee he closed.

HEARING ON HB 567

Opening Statement by Sponsor:

REP. Mike FOSTER, HD 32, Townsend, stated that HB 567 deals with a proposal to build a medical waste incinerator in Ringling. In order to keep dioxins and furans from developing in these incinerators, there must be intense heat, little oxygen and a long burn period. HB 567 will require that residents nearby an incinerator be shown emission dispersal data. REP. FOSTER also proposed amendments to the bill. EXHIBIT 6

Proponents' Testimony:

John Hamill, White Sulphur Springs, asked the committee what will be done with medical waste.

Elizabeth Brewer, speaking for her family, said she will support HB 567.

Rebecca Johnston, White Sulphur Springs rancher, offered support for the bill.

Richard Parks, Northern Plains Resource Council, testified that HB 567 is an important piece of legislation to keep medical waste burning under control.

Opponents' Testimony:

Don Sterhan, lobbyist, Western Recovery System, noted that HB 567 encompasses sensitive issues that present roadblocks to medical waste proposed sites in Montana. These emissions are allowed in hospital incinerators but exempted in HB 567. Montana is not in the business of waste disposal, he emphasized. An Environmental

Impact Statement (EIS) is necessary as the bill is ill-conceived and creates as many problems as it solves.

William Laurence, SURE-WAY Systems, said medical waste is rendered non-infectious before it enters a landfill. The bill fails to discuss incinerator size, he pointed out. SURE-WAY presently services over 200 accounts, including hospitals, who have voluntarily shut down due to air pollution. EXHIBIT 7

Questions From Committee Members and Responses:

REP. RANEY asked **Mr. Vidrine** if it was accurate, as **Mr. Laurence** stated, that waste cannot be made noninfectious. **Mr. Vidrine, DHES**, replied that current law does not limit new technology for medical waste incineration and allows for steam sterilization of this waste.

REP. RANEY asked if it was true that after these wastes are autoclaved, steamed or microwaved and rendered noninfectious, they can go to a landfill. **Mr. Vidrine** replied, yes.

REP. RANEY said that medical infectious waste generated in Montana can end up in a landfill without being incinerated. **Mr. Vidrine** answered, yes, it can.

REP. SWANSON asked **Mr. Vidrine** to describe how existing medical waste in hospitals is currently being managed. She also asked if we are close to law proposed in HB 567. **Mr. Vidrine** said many Montana hospitals have their own incinerators or autoclaves to treat waste. Montana does not currently have a large commercial unit that can handle its infectious medical waste.

REP. SWANSON asked if Montana facilities burning medical waste are well regulated. **Jeff Chaffee, Air Quality Bureau**, said that from an air quality perspective, most Montana hospitals are well regulated. There is one incinerator in the state currently which has an air permit.

REP. FELAND asked **Mr. Chaffee** if there is an incinerator in Montana that will meet the requirements of HB 567. **Mr. Chaffee** replied this was a difficult question to answer. To be truly effective, the best technology to control air emissions has to be applied to Montana's medical waste incineration.

REP. FELAND asked if there is an incinerator in Montana that could be dangerous. **Mr. Chaffee** replied that according to standards incorporated into the bill, there isn't an incinerator in Montana that could be dangerous.

REP. TUNBY asked if waste materials generated by hospitals will have fuel benefits. **Mr. Chaffee** answered, yes, medical waste incineration is a new revenue source.

REP. RANEY asked **Jon Dilliard, DHES**, if there is an autoclave in

Montana that is off-site. Mr. Dilliard replied that currently there are no commercial autoclaves in Montana other than those previously noted.

REP. RANEY asked if BFI has current plans for commercial autoclaving. Mr. Dilliard responded that BFI does not have plans to install an infectious medical waste treatment system in Montana. They do, however, plan to pick up and ship waste out of state.

CHAIRMAN KNOX asked Mr. Sterhan what fuel source is currently in use. Mr. Sterhan replied that natural gas is presently used.

Closing by Sponsor:

REP. FOSTER said HB 567 addresses the how-to's associated with medical waste incineration plants and the related costs. Incineration is the best way to dispose of medical waste, he noted, and it is important for the legislature to look at public health factors associated with this disposal.

HEARING ON HB 407

Opening Statement by Sponsor:

REP. ED DOLEZAL, HD 34, Great Falls, said HB 407 is the final attempt this session to eliminate the \$5 recreational license fee. This bill expands the definition regarding who is given access to state lands.

Proponents' Testimony:

Jim McDermand, Medicine River Canoe Club, Great Falls, spoke in support of HB 407. EXHIBIT 8

Tony Schoonen, on behalf of the State Lands Coalition for Appropriate Management of State School Lands, testified in support of the bill, EXHIBIT 9, and distributed a fact sheet explaining how taxpayers are indirectly compensating the school trust. EXHIBITS 10 and 11.

Bill Holdorf, Skyline Sportsmen's Association, said the Association favors elimination of the \$5 fee.

Dave Ross, Audubon Legislative Fund, said Audubon strongly supports this legislation.

Bill Fairhurst, Public Lands Access Association, supports HB 407.

REP. DOUG WAGNER, HD 8, Hungry Horse, said he is a proponent of the bill.

Alan Rollo, Great Falls, submitted written testimony. EXHIBIT 12

Opponents' Testimony:

Jeff Hagener, Administrator, Land Administration Division, Department of State Lands (DSL), said he opposes HB 407 as it allows general recreational use of state lands without compensation. EXHIBIT 13

John Bloomquist, on behalf of the Montana Stockgrowers Association, said school trust lands must be compensated for their use. Elimination of the \$5 fee is not supported by the Montana Constitution or the Montana Enabling Act. EXHIBIT 14

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. DOLEZAL said HB 407 has been heard in several differing forms and further emphasizes there is no question regarding who has the right to recreate. Hunters and fishermen do not want to be treated differently than other recreationists.

HEARING ON HB 512

Opening Statement by Sponsor:

REP. BOB GILBERT, HD 22, Sidney, presented HB 512, a bill which will provide financial incentive for installation of double-walled petroleum tanks. This bill will offer reimbursement to replace tanks if there is an accidental petroleum tank discharge.

Proponents' Testimony:

Brian McNitt, Montana Environmental Information Center, strongly supports double-walled petroleum tanks. The bill provides incentive for their use.

John Geach, supervisor, Underground Storage Tank Division, Department of Health and Environmental Sciences (DHES), said passage of HB 512 will lessen accidental tank release liability. EXHIBIT 15

Ronna Alexander, Montana Petroleum Marketers, noted that double-walled tanks produce double costs.

Bob Robinson, Director, DHES, testified in support of the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. BROOKE asked REP. GILBERT if the fund was being rapidly depleted. REP. GILBERT said another bill will infuse additional funds.

REP. RANEY asked Mr. Robinson if a leaking tank is removed, will DHES pay for a double-walled replacement tank. REP. GILBERT replied no, DHES will not directly pay for a new double-walled tank. Rather than paying 50% of the eligible costs or \$17,000, the fund will pay 100% of the eligible costs up to \$35,000.

REP. BROOKE asked how many will take advantage of this incentive. REP. GILBERT responded that the program should be well utilized.

Closing by Sponsor:

REP. GILBERT closed the hearing by saying the environment is worth protecting and, therefore, urges passage of HB 512.

HEARING ON HB 532

Opening Statement by Sponsor:

REP. ROLPH TUNBY, HD 24, Plevna, said HB 532 represents the third in a series of landfill legislation by providing exceptions to the moratorium on importation of solid waste. The bill extends the moratorium until the final mega-landfill rules are set. Both HB 532 and HB 434 should be passed. He proposed amendments to HB 532. EXHIBIT 15a

Proponents' Testimony:

Terry Cosgrove, on behalf of Fallon County residents, said HB 532 allows border counties to bring waste to Montana now rather than waiting for expiration of the moratorium. Smaller Montana counties should be allowed participation in the garbage business

Opponents' Testimony:

Chris Gallos, NEWTEC, Butte, said NEWTEC supports exclusions to the moratorium.

Dennis Olson, Northern Plains Resource Council (NPRC), said NPRC's meeting with REP. TUNBY was designed to place HB 434 and HB 532 in agreement. He stated NPRC does not want to keep the doors to mega-landfills open until legislation is in place.

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. TUNBY closed on HB 532.

EXECUTIVE ACTION ON HB 434

Motion: REP. TUNBY proposed amendments to HB 434. EXHIBIT 16

Motion: REP. TUNBY moved to adopt numbers two and three of the amendments.

Discussion: Michael Kakuk, legal counsel, explained the amendments to the committee.

REP. RANEY asked Mr. Kakuk if an incinerator is regarded as a solid waste management facility. Mr. Kakuk replied a solid waste incinerator is a management facility but it is not a disposal facility.

Jon Dilliard, Program Manager, Solid Waste Division, Department of Health and Environmental Sciences, confirmed the difference between a solid waste incinerator and a management facility.

Vote: TO ADOPT NUMBERS TWO AND THREE OF REP. TUNBY'S AMENDMENTS. Motion carried unanimously.

Motion: REP. GILBERT moved to adopt amendments to the bill which will define research and development facilities. EXHIBIT 17

Discussion: REP. HARPER said he would like to insert "noncommercial research".

REP. GILBERT said he will oppose inserting this language in the bill.

REP. SCHWINDEN said inserting research and development is appropriate and presented additional amendments. EXHIBIT 18

REP. RANEY proposed the phrase, "from solid waste to a research and development facility in Montana."

Vote: TO ADOPT AMENDMENTS TO HB 434. Motion carried unanimously.

Motion: REP. TUNBY moved to adopt his amendment number 1 for HB 434.

Discussion: REP. RANEY asked when the federal Subtitle D regulation will be in place.

REP. TUNBY stated that Subtitle D regulations concerning closure are already in place. Additional regulations regarding siting and operation of landfills will be effective October 9, 1993.

Vote: TO ADOPT REP. TUNBY AMENDMENT NUMBER 1 TO HB 434. Motion carried with REPS. FELAND, GILBERT and FOSTER opposing the motion.

Motion: MOTION MADE THAT HB 434 DO PASS AS AMENDED.

Discussion: Mr. Kakuk noted that if both HB 434 and HB 532 are passed, the moratorium is extended.

REP. GILBERT said he opposes the motion that HB 434 Do Pass as amended. The bill merely extends an unconstitutional moratorium, he said.

Vote: Motion failed on a tie vote.

EXECUTIVE ACTION ON HB 395

Motion: REP. FOSTER MOVED THAT HB 395 DO PASS.

Discussion: REP. FOSTER said he will not pursue an amendment dealing with water reservations on the Teton and Missouri rivers.

REP. RANEY proposed amendments to the bill that will place FWP back in the reservation and establish instream flow for the department.

REP. FAGG said the amendment is unnecessary as it does not preserve reservations. He asked Michael Kakuk, legal counsel, to comment on the amendment. Mr. Kakuk responded that the proposed amendment attempts to codify DNRC's decision.

REP. RANEY noted that the bill, as amended, refers to the entire Missouri river above Great Falls.

Mr. Kakuk said the bill encompasses all reservations to the confluence near Three Forks.

REP. RANEY asked if the Dearborn River is included in this reservation. Bob Lane, FWP attorney, replied that all tributaries above the Morony Dam, Great Falls, will be included in the reservation, as well as some reservations below the dam. Any tributaries of the Missouri below the dam are, therefore, unaffected by this closure.

REP. FAGG asked if the bill affects current reservations. REP. RANEY responded that the bill will affect all reservations as it is an effective closure.

REP. BROOKE asked Holly Franz, Helena attorney, to comment on HB 395. Ms. Franz said the reservations have been accurately represented by Mr. Lane. When the order comes into affect, FWP cannot object to any new consumptive water use permits.

REP. HARPER stated the irony is that HB 395 is designed to protect against consumptive uses.

Motion/Vote: REP. SCHWINDEN MOVED TO ADOPT REP. RANEY'S AMENDMENT. Motion failed 10 to 6 with REPS. BIRD, FAGG, FELAND, FOSTER, GILBERT, ORR, STOVALL, WAGNER, TUNBY and KNOX opposing the motion.

Vote: HB 395 DO PASS. Motion carried 11 to 5 with REPS. BROOKE, RANEY, SCHWINDEN, SWANSON and TOOLE opposing the motion.

EXECUTIVE ACTION ON HB 488

Motion: REP. BROOKE MOVED THAT HB 488 DO PASS.

Motion/Vote: REP. WAGNER moved to amend HB 488. EXHIBIT 20 Motion carried unanimously.

Motion: REP. SCHWINDEN moved to amend HB 488. EXHIBIT 21

Discussion: REP. BIRD asked if the amendment will change "may" to "shall." REP. RANEY replied no, it will not.

Vote: TO ADOPT AMENDMENTS TO HB 488, EXHIBIT 21. Motion carried unanimously.

Discussion: REP. RANEY said that HB 488 is a "feel-good" bill that costs \$2,000 and accomplishes nothing. DSL said they will not be doing anything differently if this bill passes.

REP. GILBERT said if DSL can be directed to utilize standing dead timber, a positive step is being taken.

REP. BIRD noted that timber at Lookout Pass should be salvaged as it presents a fire danger.

Motion/Vote: HB 488 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 379

Discussion: REP. RANEY commented that according to previous testimony on HB 379, costs will be \$300,000. Perhaps the bill should be sent to appropriations, he added.

REP. FOSTER said the amendments, EXHIBITS 21a, b and c, will define detection limits and clarify that standards adopted by the board will not be less than detection limits.

REP. FAGG asked Michael Kakuk, legal counsel, if the amendment will change the fiscal note.

Mr. Kakuk explained that the amendment will void the fiscal note. The fiscal note is based only on standards adopted specifically to Montana, he said.

REP. SCHWINDEN asked Abe Horpestad, Water Quality Bureau, DHES, for his opinion on the amendments.

REP. RANEY stated that the amendment could not set a standard less than the federal level.

REP. FELAND asked if federal regulations were less stringent than state regulations. Mr. Horpestad said state standards are not stricter than federal standards. The only area where EPA allows rule variation is in regard to non-degradation requirements.

REP. ORR said EPA safe drinking water standards concerning nitrates are at 10 parts per million for children, 20 parts for adults. Montana has adopted standards for nitrates at one part per million. This may be a degradation, but it is not unsafe.

REP. GILBERT said that current EPA standards will not be harmful to Montanans. Mr. Horpestad said there are various standards regarding safe drinking water including surface water standards as well as standards to protect water uses in the stream. There isn't a current standard to protect life within these streams. Drinking water standards are higher than ambient standards.

REP. FAGG said non-degradation and Montana water issues should be studied for an 18 month period by the Environmental Quality Council and state water planning process.

REP. GILBERT said the water we drink can be 10 times more contaminated than stream water. Mr. Horpestad replied, yes, this is true.

REP. SWANSON emphasized that the non-degradation review process introduced in HB 379 allows that a .0001 increase is insignificant.

REP. ORR suggested that the committee is speaking about risk and hazard assessment when dealing with non-degradation issues.

REP. BROOKE concurred with REP. FAGG that additional non-degradation studies are needed.

REP. GILBERT suggested the bill be either tabled or killed.

Motion Vote: REP. RANEY MOVED TO TABLE HB 379. Motion failed 9 to 7 with REPS. BIRD, FAGG, FELAND, FOSTER, GILBERT, ORR, STOVALL, WAGNER and KNOX opposing the motion.

Motion/Vote: MOTION WAS MADE TO ADOPT AMENDMENTS TO HB 379. Motion carried with REPS. BROOKE, HARPER, RANEY, SCHWINDEN and TUNBY opposing the motion.

Motion/Vote: REP. ORR MOVED HB 379 DO PASS AS AMENDED. Motion failed 8 to 8.

EXECUTIVE ACTION ON HB 454

Motion: REP. GILBERT moved to amend HB 454. EXHIBIT 22

Discussion: REP. GILBERT told the committee that the primary amendment, number 5, addresses the Billings landfill which will not become a mega-landfill until they accept in excess of 300,000 tones of solid waste per year at a cost of 20 cents per ton.

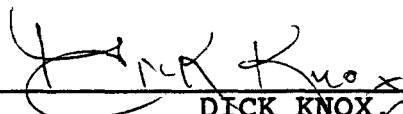
REP. FAGG reiterated that Billings receives waste from areas outside the city.

Vote: Motion to amend HB 454 carried with REPS. HARPER and RANEY voting no.

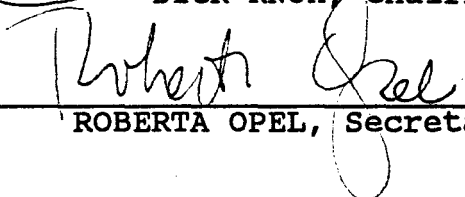
Motion/Vote: REP. GILBERT MOVED HB 454 DO PASS AS AMENDED. Motion carried with REPS. HARPER, RANEY and BROOKE voting no.

ADJOURNMENT

Adjournment: 7:50 p.m.



DICK KNOX, Chairman



ROBERTA OPEL, Secretary

DK/ro

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE

2/15/93

| NAME | PRESENT | ABSENT | EXCUSED |
|---------------------------------|---------|--------|---------|
| REP. DICK KNOX, CHAIRMAN | ✓ | | |
| REP. ROLPH TUNBY, VICE CHAIRMAN | ✓ | | |
| REP. JODY BIRD | ✓ | | |
| REP. VIVIAN BROOKE | ✓ | | |
| REP. RUSS FAGG | ✓ | | |
| REP. GARY FELAND | ✓ | | |
| REP. MIKE FOSTER | ✓ | | |
| REP. BOB GILBERT | ✓ | | |
| REP. HAL HARPER | ✓ | | |
| REP. SCOTT ORR | ✓ | | |
| REP. BOB RANEY | ✓ | | |
| REP. DORE SCHWINDEN | ✓ | | |
| REP. JAY STOVALL | ✓ | | |
| REP. EMILY SWANSON | ✓ | | |
| REP. HOWARD TOOLE | ✓ | | |
| REP. DOUG WAGNER | ✓ | | |
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HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that House Bill 488 (first reading copy -- white) do pass as amended .

Signed: _____
Dick Knox, Chair

And, that such amendments read:

1. Page 3, lines 1 through 3.

Strike: "The" on line 1 through "lost." on line 3

Insert: "The department shall, to the extent practicable, harvest dead and dying timber before there is substantial wood decay and value loss."

2. Page 3, lines 11 and 12.

Strike: "76, chapter 13, part 3,"

Insert: "77, chapter 5,"

Committee Vote:
Yes , No .

3910206C.Hss

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report
that House Bill 395 (first reading copy -- white) do pass .

Signed: _____
Dick Knox, Chair

Committee Vote:
Yes ☐ , No ☒ .

391013SC.Hss

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that House Bill 454 (first reading copy -- white) do pass as amended .

Signed: _____
Dick Knox, Chair

And, that such amendments read:

1. Title, line 5 through line 7.

Strike: "CHANGING" on line 5 through "YEAR;" on line 7

Insert: "CLARIFYING THE DEFINITION OF "MEGALANDFILL";"

Strike: "75-10-902," on line 7

1. Page 1, line 11 through page 2, line 8.

Strike: section 1 in its entirety

Renumber: subsequent sections

2. Page 3, line 16.

Following: "(7)"

Insert: "(a)"

Following: "means"

Insert: ", except as provided in subsection (7) (b) ,"

3. Page 3, line 18.

Strike: "300,000".

Insert: "200,000"

4. Page 3.

Following: line 20

Insert: "(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid waste."

5. Page 5, line 7.

Strike: "300,000"

Insert: "200,000"

Following: "tons"

Insert: "for a new or existing megalandfill or facility not subject to 75-10-903(7) (b); or

(iii) 20 cents per ton of waste over 300,000 tons for an existing megalandfill or facility pursuant to 75-10-903(7) (b)"

Committee Vote:
Yes , No .

391033SC.Hss

6. Page 7, line 22.

Following: "(4)"

Insert: "(a)"

Following: "means"

Insert: ", except as provided in subsection (4) (b) ,"

7. Page 7, line 24.

Strike: "300,000"

Insert: "200,000"

8. Page 8.

Following: line 1

Insert: "(b) An existing solid waste landfill facility that
accepted 100,000 tons a year of solid waste as of December
31, 1991, is not considered a megalandfill or facility until
it accepts more than 300,000 tons a year of solid waste."

EXHIBIT 1

DATE 2-18-93

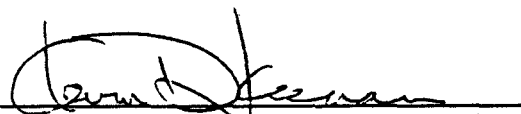
HB 571

**MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
SCIENCES' TESTIMONY ON HB 571**

**"AN ACT CLARIFYING THE TERM "POLLUTION";
AUTHORIZING SHORT-TERM EXEMPTIONS FROM THE
WATER QUALITY STANDARDS; AND AMENDING
SECTION 75-5-103, MCA."**

The department supports the passage of HB 571 because it provides clear authority for short-term authorizations which are now provided in Montana and nation-wide. Though it can be argued that authority currently exists in the general rule-making provisions of the Water Quality Act, we would prefer that the act be amended to make that authority clear and specific. Some of the short-term authorizations that would be provided for by this act include:

- *Exemptions from the turbidity standard for purpose of construction activities in or near state waters (irrigation diversions, bridges, culverts, etc.).*
- *Environmental remediation which could include removal of trucks, trains and spills of contaminants from state waters.*
- *Pesticide applications including the application of pesticides for mosquito control.*
- *Elimination of undesirable fish species by the Department of Fish Wildlife and Parks.*
- *Treatment of public water systems' water storage facilities with copper sulphate for the purpose of controlling algae blooms and the associated tastes, odors and disinfection by-product precursors.*



**Kevin D. Keenan, Manager
Enforcement and Legal Support, WQB, DHES**

Amendments to House Bill No. 419
First Reading Copy

Requested by Rep. Grady
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 10, 1993

1. Page 1, line 16.
Following: "with"
Insert: "the hazardous waste sections of"
2. Page 1, line 18.
Following: "to"
Insert: "the hazardous waste sections of"
3. Page 5, line 14.
Following: "violates a"
Insert: "hazardous waste"
4. Page 5, line 15.
Following: "or a"
Insert: "hazardous waste"

DHES TESTIMONY IN SUPPORT OF HB 419
ADMINISTRATIVE PENALTIES FOR HAZARDOUS WASTE VIOLATIONS

EXHIBIT 3

DATE 2-15-93

HB 419

Montana law provides the Department of Health and Environmental Sciences with the authority and the responsibility of protecting public health and the environment from the harmful effects of improperly managed hazardous waste. Hazardous wastes are generated from various sources in Montana including dry cleaners, automotive service centers, petroleum refineries, schools, and a variety of manufacturing, service and other industries. Some hazardous wastes are extremely toxic and persistent in the environment causing them to be a significant threat to public health and to critical environmental resources, such as groundwater, if mismanaged.

The Department has adopted administrative rules which are intended to provide proper hazardous waste management from the point of generation to the point of final disposition. These rules are preventive in nature. They include such things as proper identification, storage, transportation and disposal of hazardous waste. Compliance with these requirements increases public health and environmental protection and decreases the risk that new Superfund sites will be created in the state.

During its recent adoption of rules pertaining to the burning of hazardous waste in boilers and industrial furnaces, the Department received many comments from the public expressing an expectation that the Department would initiate effective enforcement actions which would include fines for hazardous waste

management violations. This bill is responsive to those public comments.

It has been the Department's experience that most individuals in the state affected by hazardous waste management requirements voluntarily comply with those requirements. The Hazardous Waste Program has been very successful in working with hazardous waste handlers to assist them in understanding the requirements and allowing violators an opportunity to gain compliance without having to initiate formal enforcement actions. However, we know from experience that there is a small percentage of individuals who will not comply with the regulations unless they believe there is a risk of monetary penalty for noncompliance.

Initiation of enforcement actions to correct violations and to minimize economic gain from noncompliance is an important element of the Hazardous Waste Program. Penalties for serious violations of the laws and regulations play a key role in enforcement by acting as a deterrent to violators and by ensuring that regulated entities are treated fairly and consistently, with no one gaining a competitive advantage by violating hazardous waste management requirements.

The only mechanism currently available to the Department for the assessment of penalties for hazardous waste management violations is the filing of lawsuits notwithstanding the severity of the violations. Use of the judicial system to collect penalties is a very slow and extremely resource intensive process. Consequently, the Program is forced to seek penalties from violators only in extreme circumstances and must defer from seeking

penalties in cases that should otherwise merit penalties. This inability to seek penalties in some cases fails to provide a deterrence to continued noncompliance and provides some violators with an unfair advantage over competing businesses who expend resources and money to properly manage their hazardous waste.

HB 419 would allow the Department to seek penalties in cases where administrative actions such as warning letters or orders have been ineffective in gaining compliance. Administrative penalty authority would allow the Department greater discretion in choosing administrative versus judicial routes as tools for enforcement.

HB 419 has been designed to allow the Department to consider the seriousness of the violation in concert with the degree of care exercised by the violator in seeking penalties. Assessment of penalties must be made in conjunction with an order or other administrative action. Penalties collected will be deposited in the State General Fund. The Program intends that no administrative penalty will be assessed without prior Department Director approval.

In conclusion, administrative penalty authority will allow the Hazardous Waste Program to better utilize its limited resources and be more effective in the enforcement of hazardous waste management requirements which in turn translates into greater protection of public health and the environment. The Department requests your favorable consideration of this bill.

EXHIBIT 3
DATE 2-15-93
HB 419

Amendments to House Bill No. 419
First Reading Copy

Requested by Rep. Grady
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 15, 1993

1. Title, line 8.
Strike: "SECTION"
Insert: "SECTIONS"

2. Title, line 9.
Following: "75-10-405"
Insert: "AND 75-10-413"

3. Page 6.
Following: line 17
Insert:

"Section 3. Section 75-10-413, "MCA, is amended to read:

"75-10-413. **Administrative enforcement.** (1) When the department believes that a violation of this part, a rule adopted under this part, or a permit provision has occurred, it may serve written notice of the violation by certified mail on the alleged violator or his agent. The notice must specify the provision of this part, the rule, or the permit provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order previously issued. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds no violation has occurred, it shall rescind the department's order.

(3) Instead of or in addition to issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board or department, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to provide information regarding the alleged violation or its actual or potential impact on public health and welfare or the environment; or

(b) initiate action under 75-10-414, 75-10-417, or 75-10-418.

(4) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a hearing or investigation before the board or

the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.

(5) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means."

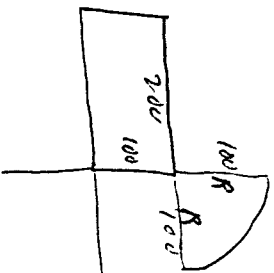
{ Internal References to 75-10-413:

x 75-10-402 x*75-10-532 }

Renumber: subsequent section

EXHIBIT 5
 DATE 2-15-93
 HB 448

Geometric progression of distance
 from point - acres



$$\frac{R}{100'}$$

$$\pi R^2 = 31,400^2 \text{ or } \underline{.72 \text{ Ac}}$$

$$\frac{200'}{100'}$$

$$\pi R^2 = 125,600^2 \text{ or } \underline{2.88 \text{ Ac}}$$

$$\frac{300'}{200'}$$

$$\pi R^2 = 282,600^2 \text{ or } \underline{6.49 \text{ Ac}}$$

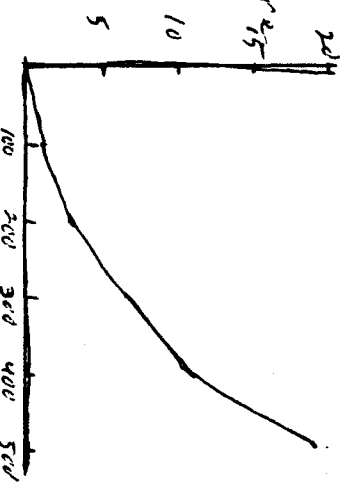
$$\frac{400'}{300'}$$

$$\pi R^2 = 502,400^2 \text{ or } \underline{11.53 \text{ Ac}}$$

$$\frac{500'}{400'}$$

$$\pi R^2 = 785,000^2 \text{ or } \underline{18.02 \text{ Ac}}$$

Acres



Amendments to House Bill No. 567
First Reading Copy

Requested by Rep. Foster
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 15, 1993

1. Page 15, line 24.

Following: "dioxins"

Strike: "and"

Insert: ", "

Following: "furans,"

Insert: "and heavy metals,"

2. Page 16, line 9.

Following: "dioxins"

Strike: "and"

Insert: ", "

Following: "furans"

Insert: ", and heavy metals"

3. Page 18, line 24.

Following: "[section 5];"

Insert: "and"

4. Page 19, lines 2 through 4.

Strike: ";" on line 2 through "principal" on line 4

Non-Burn Technology

EXHIBIT

7

DATE

2-15-93

HB

567

Sherdder / Autoclave / Sterilizer

Stationary or mobile unit

The unit produces no harmful air emission or liquid discharges and reduces the waste volume by approximately 80%.

The sterilized waste is unrecognizable and ready for disposal in landfills, for recycling or material recovery.

recycling the plastic - several items

①. medical waste containers

②.

Plastics comprised 52-54%

Paper

20-23%

glass

9-21%

metal

1-2%

Mayo Clinic 3 unit

Medicine River Canoe Club
Great Falls, Montana

EXHIBIT 8
DATE 2-15-93
HB 407

February 15, 1993

House Natural Resources Committee
State Capitol
Helena, Montana

Chairman Knox and Members of the Committee:

My name is Jim McDermid and I am speaking today for the Medicine River Canoe Club in Great Falls.

Since the passage in 1991 of House Bill 778 and the ensuing rules regulating recreational use, I have heard testimony from both sides regarding this issue. The one common agreement that I have heard was that HB 778 was a compromise. With this, I fully agree! I believe that the legislators, sportsmen, and the agricultural community who cooperated in passing that legislation, addressed the concerns of all parties fairly, and that it truly was a compromise. I myself participated in the legislative process and felt that way.

Recently I have heard testimony, and you will hear it again today, that says HB 778 is working and that it should be given more time.

To this I say -- BUNK! -- Why? Because what controls the recreational use of state land today is not HB 778! --- It is the overly restrictive and narrow interpretation of this law, imposed upon us through the rule making process, by the Department of State Lands. To have one department of our state government so obviously biased and influenced by the agricultural community is an injustice to our democratic system. The rules that have been adopted by this department are unfair and contrary to the intent of the 1991 legislature who passed the bill. To the sportsmen who tried to work within the system, the rule making process was a lesson in futility and frustration! The process and the resulting rules not only infer that the recreationists in our state are irresponsible but they also ignore the conclusions of the 1991 Legislature.

Let me site you some examples:

Lines 21 through 24 from page 4 of HB 778 read, "CONSISTENT WITH THE PROVISIONS OF THIS BILL, IT IS INTENDED THAT THE PUBLIC RECREATIONAL USE OF STATE LANDS BE ACCOMPLISHED TO THE FULLEST EXTENT POSSIBLE".

Restricting general recreational use to only hunting and fishing, certainly does not comply with this statement.

Line 25 on page 7, and lines 1 thru 3 on page 8 states:

"GENERAL RECREATIONAL USE INCLUDES NONCOMMERCIAL AND NON-CONCENTRATED HUNTING, FISHING, AND OTHER ACTIVITIES DETERMINED BY THE BOARD TO BE COMPATIBLE WITH THE USE OF STATE LANDS."

It is ludicrous to imply that bird watching, horseback riding, photography, and many other activities are not compatible with the use of state lands.

The quotes that I have just made were mandated by the law. Why then do we have such restrictive rules imposed on us that do not follow these mandates?

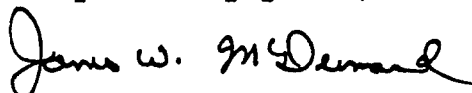
It has been implied that if the hunters and fishermen who can now recreate on state land under these restrictive rules, prove themselves responsible and abide by the law, then maybe at some future date the rules could be expanded to include other recreation.--- An analogy of this logic would be that only those of you who drive Fords can use the Capitol parking lots this year. If you use them as intended, don't park on the lawn, and don't drive through the flower beds, then Chevrolet owners may also get to use the parking lots next year.--- Ridiculous, you bet it is, but it is the same logic that has been applied to general recreational use of state lands.

Page 9, lines 3 thru 9 of HB 778 states: "The board shall administer this trust to secure the largest measure of legitimate and reasonable advantage to the state. It is consistent with the powers and duties provided in subsection (1) that the people are entitled to general recreational use of state lands to the extent that the trusts are compensated for the value of the recreation". --- Again it appears that this important mandate of the bill and its monetary benefit to the State School Trust has been ignored. It is inconsistent for the Dept. of State Lands to stress the need for compensation to the Trust, yet substantially reduce the amount of fees collected by limiting recreation to only hunting and fishing.

Our club members do not object to payment of a reasonable fee for the right to recreate on our state lands. We would support an amendment to that affect if general recreation as defined in HB 407 was adopted.

I urge this committee to pass HB 407 because it specifically defines general recreational use as it was intended and meant to be in HB 778.

Respectfully yours,



James W. McDermand, Spokesman
Medicine River Canoe Club
3805 4th Ave. South
Great Falls , MT 59405

H.B. 407 - Rep. Ed Dolezal.

Mr. Chairman - members of the Natural Resources Committee:

I am Tony Schoonen, Secretary, Treasurer of State Lands Coal.

I am here today representing the Coalition for Appropriate Management of State School Lands.

I appeared before you a few weeks ago on Rep. Molnar's bill which dealt with expanding recreational uses of school trust lands and simplifying the administrative rules. The rules are too narrow and too complicated; the rules intimidate the people of Montana as well as discriminate against many users.

Our groups are again requesting that you consider other compatible uses of school trust lands while still meeting the mandates of compensating the school trust for future generations of school children in the state. Those people that do not hunt or fish are discriminated against under the present rules, even the hiking, photography, bird watching, limited camping etc. are all compatible uses.

These casual recreational uses do not interfere with the vast majority of school trust lands or nearly 4.3 million acres.

Remember the leases only leases the grass. These casual uses that are referred to in Rep. Dolezal's bill will not interfere with grazing. Citizens of this state should

They are allowed casual recreational use of their school trust lands, they are willing to pay 28¢ and compensate the trust, but the present rules discourage any attempts to do this.

Remember these citizens are paying higher mill levies & property taxes because grazing leases, agricultural leases, oil & gas are not paying their fair share to the school trust. The Dussick Study released recently - emphasized this. These citizens are also paying for weed control on their real property cars homes etc. They should be allowed to use their public lands.

I am passing around a brief fact sheet that further emphasizes the taxpayers of this state are indirectly compensating the school trust, yet they are not allowed on their own public lands. Some opponents will try to tell you that state lands are not public lands but the 1972 Constitution states that they are - The multiple use act of 1969 also refers to state lands as public lands and also emphasizes that state lands be managed in that combination best meeting the needs of the people and the beneficiaries of the trust. We are not doing that now, nor have we done it for several decades.

You as lawmakers must see that the intent of past laws are not shaped to fit a small special interest group as has happened

... August, representatives of hunting and fishing groups came before the Land Board to suggest a program in which people could pay

follow and disregard the requirements of the Montana Constitution and the Montana Environmental Policy Act," Goetz wrote.

Little Montana 02-26-83

Analyst says low lease rates cost schools millions

By Dan Carter
Standard Staff Writer

Montana's public schools are being shorted between \$3.5 million and \$5.2 million because the Department of State Lands does not achieve fair market value on its grazing leases, according to a recent report from the Legislative Fiscal Analyst.

"The Board of Land Commissioners has not implemented a policy of assessing a fair market value from each parcel of grazing land as required by the (state) constitution," according to the report written by Senior Fiscal Analyst Carl Schweitzer. "The constitution requires the board to achieve a fair market value on each grazing lease it negotiates."

The report, released to the Legislative Finance Committee in mid-January, was done to determine the net income earned from state trust land and examine alternatives to increase it.

The department's policy on leasing state grazing land is also a main issue in a lawsuit filed Thursday against the Board of Land Commissioners and department by the Montana Coalition for Access on Public State Lands.

The report noted that the state could be charging twice what it is now for grazing leases and still be within the fair market rates determined for private and federal land.

Schweitzer wrote in his report that there are three indicators to suggest that.

First, he said, the Department of Agriculture said in 1987 that average rental rate for privately leased grazing land in Montana was \$7.94 per animal-unit-month (AUM), which is the amount of natural feed available for one cow, horse or five

sheep one month.

Secondly, he said, the Bureau of Indian Affairs has reported that the current fair market price for Indian land is between \$8 and \$7 per AUM.

And third, Schweitzer wrote, a 1984 appraisal of Forest Service and Bureau of Land Management Land indicated that the market value of federal grazing land in Montana to be \$7.60 per AUM.

In fiscal 1988, the state's minimum rental rate was \$3.27 per AUM. It is estimated that over 90 percent of the state's grazing land lessees pay no more than the minimum rate.

"If the fair market value of state grazing lands was raised to within the range of \$6 to \$7.60 per AUM, the income to trust recipients would be increased between \$3.7 million and \$5.6 million per year," the analyst's report said.

Because about 93.5 percent of grazing income funds the state equalization payment, he said, raising the rental rates would increase school funding between \$3.5 million and \$5.2 million a year.

Attorney General Mike Greely issued an opinion in 1983 that recommended raising rates to fair market value, Schweitzer said, but "the Board of Land Commissioners has not changed."

The report also notes that the state could earn up to \$56 million more a year if it sold its 5.1 million acres of state-owned land and invested the proceeds.

That, however, would require amendments to state law, the report said, which prohibits the sale of timber lands, lands with oil, gas, coal or valuable minerals and land adjacent to lakes and navigable streams.

EXHIBIT 10

DATE 2-15-93
HB 407

STATE LAND

--MULTIPLE USE AND ACCESS ON--

1. Multiple Use 77-1-203 is law but the law is not being implemented. This has been highlighted by Judge Sherlock's opinion and order, ADV 88-114, June 1990, and Legislative Performance Auditor Jim Pellegrini, June, 1983 - March, 1990.
2. Access on State land is open to the public in Wyoming, Idaho, North Dakota, South Dakota, Utah, Washington, Oregon, California, Nevada, Arizona, New Mexico, BUT NOT MONTANA. Governor Mike Sullivan of Wyoming says since opening State land "there are fewer access problems in recent memory". They pay no access fee either!
3. Are the people of Montana less worthy? If we were not meant to have multiple use, why did we enact the multiple use law in 1969? The Montana Rangeland Resource Act also addresses recreation, date 1947.
4. The people of Montana do not noticeably damage the BLM and USFS public land. They will not destroy their public State land. The public can be trusted, don't you think?
5. The goal of the trust IS to raise money for public schools. But Legislative Performance Auditor Jim Pellegrini says the State is not collecting full market value on grazing and agriculture? Shouldn't something be done to correct this?
6. At this time 50% of the State land budget is paid for out of the General Fund! 100% for land administration is paid out of the General Fund. Yet the public does not have equality, despite our multiple use law. The hunters and fishermen who pay the bills, with tax money, are deprived of multiple use!
7. Only 12% of all State land is used for growing crops.
8. Maps showing State land are available from any BLM or USFS office.
9. Crossing private land is not an issue. In fact, 80% of all State land is touched by roads, trails, and waterways and is connected to USFS and BLM public land. Very little is truly isolated amid private land!
10. Fire control on State land is already funded by the Federal Clark-McNary Act of 1924 and with reciprocal agreements between DSL, BLM, USFS, and county fire departments. In 1990, \$770,000 in Federal funds were deposited in budget for fire control.
11. Weed control--according to Cooperative Extension Service, Montana State University Circular 311, knapweed was magnified by large shipments of weed-contaminated hay from western to eastern Montana because of drought in 1984-85. Hay trucks still travel on back roads and highways without being covered. Logging trucks go unchecked into undeveloped areas daily.
12. Private land must be respected but State land is public land according to Montana's 1972 Constitution and the Enabling Act.
13. Vehicle use on State land must be limited to existing roads and trails with no unauthorized expansion of off-road vehicle use.
14. Lessees are protected from liability claims through existing laws.
15. Governor Stephens, Attorney General Racicot, Mike Cooney, and other Land Board members agree something must be done to permit public access on State land.

Surveys done by the Department of State Lands show 86% of Montanans want to open access. That is a lot of interest.

15 February 1993

House Natural Resources Committee

SUBJECT: HB 407

Mr. Chairman and committee members,

I am Alan Rollo from Great Falls and I am here in support of HB 407. I would like to address this bill in relationship to the existing law and rules covering state land access.

The primary statement you will hear today is the existing law is too new, that it is working, so don't change it. But it is NOT working. The state is not receiving full benefit of the use of this land due to numerous "recreationists" that are not allowed to use it or are too scared and confused to use it.

So let me state the key problems to the present law and rules that prohibit proper use of this land:

1. "General Recreation" is labeled as only hunting and fishing, which prevents many other compatible forms of recreation from using the land and contributing to the school trust fund
2. Most landowners do not allow access for other recreation or it is almost impossible to find the lessee of that section to ask for access for other recreational purposes
3. Numerous sections of land were wrongfully marked with orange paint as if it were private property, even though we had the right to access the section
4. Request for closures were given or considered that were not even relevant to the issue of access, such as protection of their children from the BAD hunters.
5. All roads were closed unless otherwise designated, which went further than the intent of the law
6. The trespass conditions went way farther than existing trespass laws, which are adequate
7. Rules were so complicated that even those that are to enforce the rules don't understand them

I want to acknowledge that there are alot of good ranchers that are helpful, but there are also those that are not as considerate. There are leasees that harm the land far more than do recreationists by improper use or overgrazing but we do not eliminate all state leases -(right?). So why then do we eliminate most recreation just because of the FEAR of what some individuals MAY do. This same fear was stated as the problem for not considering stream access, but those problems did not materialize as was predicted.

This bill will allow for changes that will reduce conflicts, not cause them. Let us change the law now so we do not have to spend alot of money on more State Land Board hearings across the state trying to see what people THINK will happen.

Let us all be considered as good Montana's that should be allowed to use one of our limited resources and reduce the pressure from private land. Please consider this bill on it's own merit, not on the unfounded fear that some individuals have. Lets pass HB407 now and put the issue behind us.

Thankyou.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan Rollo". The signature is stylized with a large, looped "A" and a cursive "Rollo".

Alan Rollo
808 52nd Street South
Great Falls, Montana 59405

EXHIBIT 12
DATE 2-15-93
HB 407

TESTIMONY OF JEFF HAGENER
ADMINISTRATOR, LAND ADMINISTRATION DIVISION
DEPARTMENT OF STATE LANDS

On

House Bill 407

House Natural Resources Committee

Monday, February 15, 1993

House Bill 407 would eliminate the recreational use license and the \$5.00 license fee for the general recreational use of state lands. It would allow general recreational use of state lands without compensation. Passage of this bill would have adverse economic and legal consequences for the state and violates federal law and the Montana Constitution.

First, the economic consequences. Last year the Department received \$145,000 in license revenues. This figure would probably increase in future years as the availability of the license becomes better known. Of this \$145,000, \$87,000 goes to the school equalization account and \$43,500 goes to reimburse lessees for damages caused by recreationists, to control weed infestation, and to pay for administration of the recreational use program.

Although the bill eliminates the income from general recreational use of state lands, it retains the Department's duty to administer a recreational use program. These administrative

duties include processing of closure and restrictions, petitions, processing open road designation requests, investigating and prosecuting violations of the recreational use restrictions, paying damage compensation to state lessees suffering damages to improvements, and paying for control of noxious weeds caused by recreational use. In other words, most of DSL's costs will continue.

Thus, the fiscal impact of this bill has a direct \$130,500 impact on the general fund, because the \$87,000 loss in income to the school equalization account and the \$43,500 in expenses would have to be offset with general fund appropriations.

Second, this bill has a serious legal defect. The lands administered by the Department of State Lands were granted to the state of Montana in 1889 under the Montana Enabling Act, which is the federal law under which Montana became a state. The federal courts and the Montana Supreme Court have held that the Enabling Act and the state's acceptance of these lands creates a trust in favor of the trust beneficiaries, which are the state public schools and other state institutions.

With respect to these trusts, the United States Supreme Court and the Montana Supreme Court have held:

- (1) That the state is held to the same standards as the trustee of a private trust.

- (2) That the land must be administered solely for the benefit of the trust beneficiaries.
- (3) That the trust land must be administered so as to achieve the largest legitimate monetary return for the trust beneficiaries.
- (4) That the state cannot adopt a law in violation of the trust responsibilities.
- (5) That any time an interest in the land is given up, the state must receive full market value for that interest.

Thus it follows that in this day and age when private landowners charge for the right to hunt on their land and hunters and sportsmen pay for that use, the granting of the comparable right to recreate on state lands requires compensation. Therefore, by allowing a valuable use of these lands without requiring compensation, this bill violates the trust responsibility and full market value requirements of the Montana Enabling Act and the Montana Constitution.

Another potential fiscal consequence stems from this legal analysis. Should this bill pass, it is entirely possible that the department could find itself in an lawsuit alleging violation of the duties previously described. Defense of this lawsuit could be costly and would in all likelihood be unsuccessful.

As you all well know, the recreational use access license has only been instituted for one season. While proponents may contend massive problems with the system -- it is important to keep in perspective that the actual reported complaints were quite minimal in relation to the leased acreage and the number of sportsmen who utilized these lands.

In respect to the recreational fee of \$5.00, it is pertinent that the committee be informed that the results of the recently completed economic study of surface uses of state lands indicated that the \$5.00 fee is substantially less than full market value. The study recommended fees of \$25.00 for residents and \$50.00 for nonresidents.

HB 407 also expands the definition of general recreational use to include, "camping, hiking, photography, berry picking, mushroom picking, bicycling, and similar activities not commonly associated with motorized vehicle use." The current statutes and rules allow these types of non-commercial recreational activities on state lands that are unleased without any license. These activities are also allowed on unposted leased tracts or with lessee permission on posted tracts. Additionally, ARM 26.3.197(5) allows for expansion of the definition of general recreational use by the Land Board through a petition process.

HB 407 also requires the Department to post the boundaries of each state land leasehold. The department is not opposed to this requirement but feels it necessary to make you aware of the

costs of such an effort. Please refer to the fiscal note regarding this posting. That fiscal note estimated \$1.4 million to accomplish the posting as soon as possible. This estimate was based on the assumption that boundaries would be estimated and not by legal survey. If legal surveys are to be required, there would be additional costs of several million dollars to pay for such surveys. You may also wish to review the proceedings of the hearings regarding HB 183 in the House Agriculture, Livestock and Irrigation Committee. The issue of marking of leasehold interests was the subject of that bill and it was discussed extensively in that committee.

In conclusion, it is important to remember that HB-778, which established the general recreational use license and fee, was an artfully negotiated bill in which neither proponents or opponents were granted all their requests. But rather a delicate compromise that brought both parties closer and provided an implementable process to move forward on this issue.

For all of these reasons the Department of State Lands respectfully requests a DO NOT PASS on HB-407.

TESTIMONY ON HOUSE BILL 407
AN ACT REVISING THE DEFINITION OF GENERAL RECREATIONAL USE AS APPLIED
TO RECREATIONAL USE OF STATE LAND; ELIMINATING THE
RECREATIONAL USE LICENSE; REQUIRING THE DEPARTMENT OF STATE LANDS TO
MARK BOUNDARIES OF CERTAIN STATE LEASEHOLDS.

HOUSE NATURAL RESOURCE COMMITTEE
FEBRUARY 15, 1993

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, FOR THE RECORD MY NAME IS JOHN BLOOMQUIST AND I AM TESTIFYING ON BEHALF OF THE MONTANA STOCKGROWERS ASSOCIATION. THE MONTANA STOCKGROWERS ASSOCIATION RISE IN OPPOSITION TO H.B. 407.

THIS BILL REPRESENTS SEVERAL RECENT ATTEMPTS IN THIS LEGISLATURE TO ELIMINATE THE NEED OF THE \$5 RECREATIONAL FEE REQUIRED FOR THE RECREATIONAL USE OF STATE LANDS IN MONTANA. AS HAS BEEN STATED MANY TIMES PREVIOUSLY, THE SCHOOL TRUST LANDS MUST BE COMPENSATED FOR THEIR USE AND ELIMINATION OF THE \$5 FEE IS NOT SUPPORTED BY THE MONTANA CONSTITUTION OR THE MONTANA ENABLING ACT. LIKE THE OTHER PROVISIONS WHICH HAVE BEEN INTRODUCED IN THIS LEGISLATURE TO DO AWAY WITH THE \$5 FEE, THIS BILL SHOULD LIKEWISE BE DISMISSED.

THIS BILL ALSO ASKS THAT THE DEFINITION OF GENERAL RECREATIONAL USE BE CHANGED TO INCLUDE OTHER RECREATIONAL USES SUCH AS CAMPING, HIKING, BERRY PICKING, ETC., NOT COMMONLY ASSOCIATED WITH MOTORIZED VEHICLE USE. OTHER BILLS, SPECIFICALLY H.B. 352, OFFERED BY REP. MOLNAR, ATTEMPTED TO DO THE SAME THING TO THE DEFINITION OF GENERAL RECREATIONAL USE AND WAS DEFEATED BY THIS COMMITTEE. AGAIN IT SHOULD BE NOTED THAT SHOULD USERS OF STATE LANDS DESIRE TO EXPAND GENERAL RECREATIONAL USE, PROVISIONS ARE AVAILABLE WITHIN THE RECREATIONAL USE RULES PROMULGATED BY THE STATE LAND BOARD TO EXPAND SUCH USES UPON PROPER PETITION. THE MONTANA STOCKGROWERS ASSOCIATION FEELS THAT THE PETITIONING PROCESS IS THE MOST REASONABLE MEANS TO EXPAND RECREATIONAL USE SHOULD A PARTICULAR PARCEL AND THE USES OF THE PARTICULAR PARCEL, WARRANT SUCH EXPANSION.

SECTION 5 OF THE BILL ON PAGE 7 AND 8, WILL REQUIRE THE DEPARTMENT OF STATE LANDS TO POST THE BOUNDARIES OF EACH STATE LEASEHOLD SUBJECT TO BEING OPEN TO

GENERAL RECREATIONAL USE. POSTING WOULD BE ACCOMPLISHED THROUGH THE USE OF SIGNING THE LANDS WHICH WOULD NEED TO BE PLACED IN A MANNER TO INFORM THE RECREATIONAL USER OF THE ENTIRE BOUNDARY OF EACH STATE LEASEHOLD. A SIMILAR PROVISION WAS OFFERED BY REP. ENDY IN H.B. 183 WHICH WAS TABLED IN THE HOUSE AGRICULTURAL COMMITTEE. DURING TESTIMONY TO THAT BILL, THE DEPARTMENT OF STATE LANDS TESTIFIED THAT THE COSTS ASSOCIATED WITH POSTING THE BOUNDARIES OF STATE LEASEHOLDS WOULD BE PROHIBITORY AND THE COSTS ASSOCIATED WITH IDENTIFYING THE EXACT BOUNDARIES OF CERTAIN STATE LANDS WOULD BE VERY DIFFICULT. THE COSTS ASSOCIATED WITH IDENTIFYING THE EXACT BOUNDARIES OF VARIOUS STATE LANDS WOULD INCLUDE EXPENSIVE SURVEYING AND BOUNDARY CHECKS.

FOR THE REASONS SET FORTH ABOVE, THE MONTANA STOCKGROWERS ASSOCIATION STRONGLY URGES A VOTE OF DO NOT PASS ON H.B. 407. THANK YOU FOR THE OPPORTUNITY TO TESTIFY BEFORE YOU TODAY.

DHES SUPPORTING TESTIMONY HB 512

EXHIBIT 15
DATE 5/2 5
HB 2-15-93 2

The Department of Health and Environmental Sciences supports HB 512. The Department believes that the passage of this bill will provide owners and operators of underground storage tanks with an incentive to voluntarily upgrade their facilities with double-walled tank systems which will provide a safer and healthier environment for the citizens of Montana.

Double wall underground storage tank systems provide a greater degree of protection from the release of stored product than single wall tank systems. A double wall tank system is essentially a single wall system totally encapsulated by a secondary outer wall. The interstitial space between the two walls can be monitored for indications of leakage from either the inner or outer walls. If the inner tank wall containing the stored petroleum product should fail, the released material would be contained and detected within the interstitial space and the outer wall. Current technology is available to provide continuous monitoring of the interstitial space and both inner and outer walls.

This legislation would amend current statutes to increase the percentage of allowable costs that could be reimbursed from the Petroleum Tank Release Compensation Fund (PTRCF) if an environmental release occurred when the tank and piping system involved is of a double-walled design. For tanks used for

commercial purposes, the law now provides that 50% of the initial \$35,000 of eligible leak investigation and remediation costs shall be reimbursed for the fund. The Fund also covers 50% of the first \$10,000 in eligible costs for release investigations and remediations from farm and residential tanks of 1,100 gallons or less capacity used to store motor fuels for non-commercial purposes and all tanks used to store heating oil for consumptive use on the premises where stored.

This proposed legislation would encourage the installation of double walled UST systems by waving the owner's Petroleum Tank Release Cleanup Fund deductible in the event of a tank release. In essence this wavier would be worth up to \$17,500 for commercial tanks and \$5,000 for small non-commercial and heating oil tanks which should offset the additional cost of a double wall tank system.

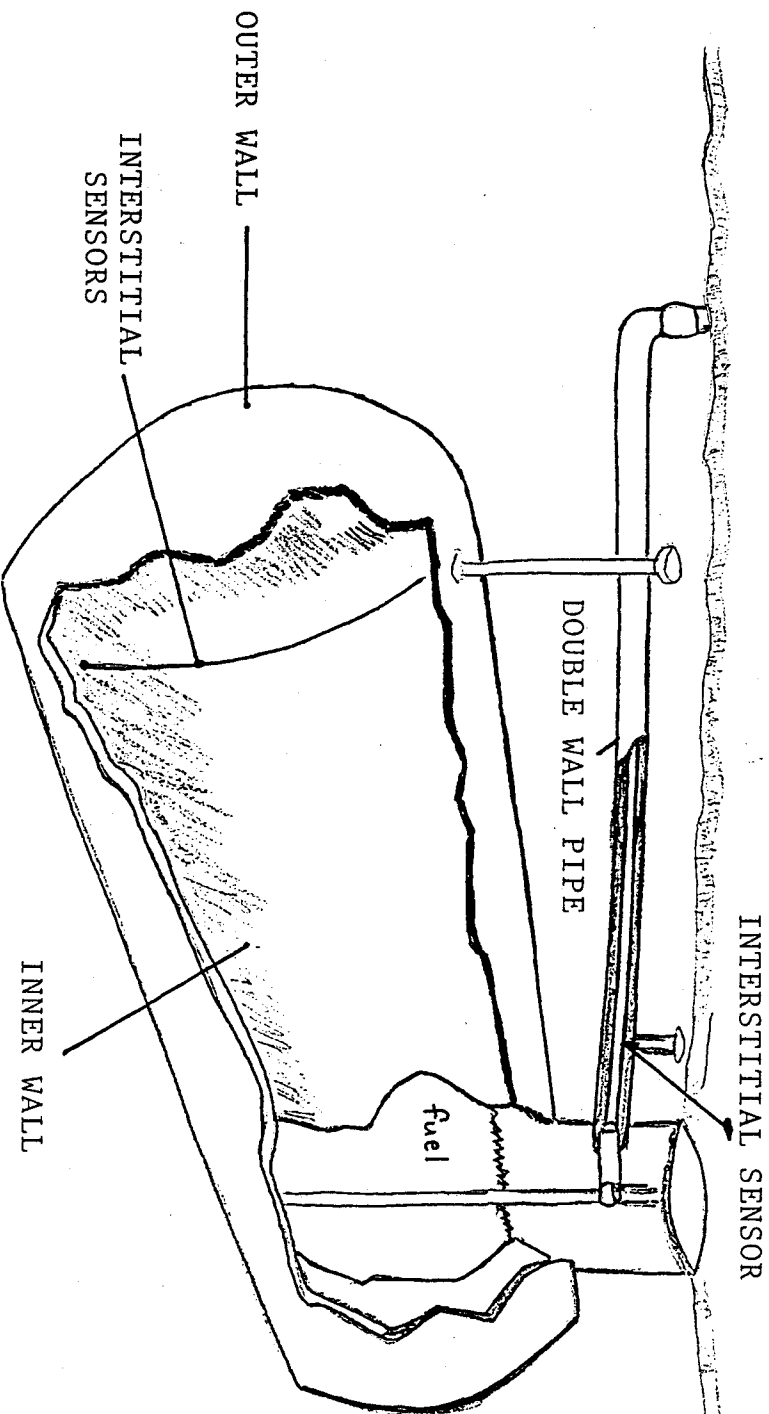
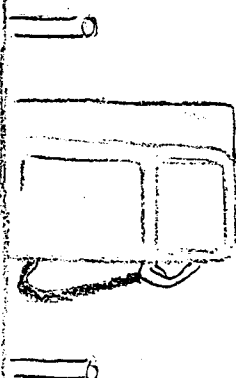
The passage of this legislation would also lessen the liability fears of potential property buyers and lending institutions enabling individuals to obtain financing more easily for properties with double wall tank systems. Currently the concern of assuming an unknown liability for property with existing underground storage tanks is hindering many real estate sales.

Research and experience has shown that double-walled storage tank and piping systems are much less likely to leak. Because of the increased liability protection provided by double wall tank

systems, many companies such as Conoco, Shell Oil, US West, and the US Postal Service have made it a policy to install double-walled underground storage tank systems.

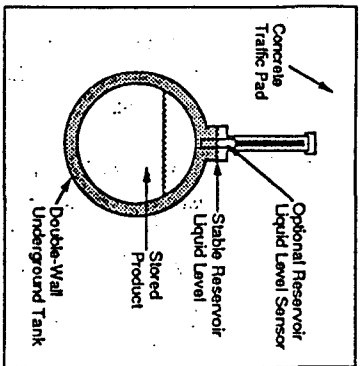
Since the probability of a release from a double wall system is greatly reduced from that of a single wall system, the increased liability to the PTRCF would be very minimal. Finally, the decreased risk of petroleum release is of incalculable benefit to public health, safety and the environment.

EXHIBIT 15
DATE 2-15-93
HB 512



DOUBLE WALLED UNDERGROUND STORAGE TANK WITH DOUBLE WALLED PIPE

EXHIBIT 15
DATE 2-15-93
4/3 512



Normal Conditions

The reservoir liquid level will be stable if both the inner and outer tank are tight.

The optional reservoir sensor will activate an alarm if the reservoir drains or overfills.

Amendments to House Bill No. 532
First Reading Copy

Requested by Rep. Tunby
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 15, 1993

1. Page 2, lines 8 through 16.

Strike: subsection (4) in its entirety

Insert: "(4) Notwithstanding the provisions of subsection (3), a person may transport into Montana solid waste generated in Idaho, North Dakota, South Dakota, or Wyoming for disposal in a solid waste management facility that receives 25,000 tons or less of solid waste annually."

Amendments to House Bill No. 434
First Reading Copy

Requested by Rep. Tunby
For the Committee on Natural Resources

Prepared by Paul Sihler
February 10, 1993

1. Page 2, line 6.

Following: "9,"

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

2. Page 2, line 15.

Following: "disposal"

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

Following: "in"

Strike: "an"

3. Page 2, lines 16 and 17.

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

EXHIBIT 17
DATE 2-15-93
HB 434

Amendments to House Bill No. 434
1st Reading Copy

Requested by Rep. Gilbert
For the Committee on Natural Resources

Prepared by Todd Everts, Committee Staff
February 13, 1993

1. Page 2, line 14.

Strike: "A"

Insert: "Notwithstanding subsection (3)(a), a"

EXHIBIT 18
DATE 2-15-93
HB 434

Amendments to House Bill No. 434
1st Reading Copy

Requested by Rep. Schwinden
For the Committee on Natural Resources

Prepared by Todd Everts, Committee Staff
February 12, 1993

1. Page 2.

Following: line 17

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

EXHIBIT 17
DATE 2-15-93
HB 395

Amendments to House Bill No. 395
First Reading Copy

Requested by Rep. Raney
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 13, 1993

1. Title, line 7.
Following: "PROJECTS;"
Insert: "PROTECTING CERTAIN RESERVATIONS;"

2. Page 2.
Following: line 21
Insert: "

NEW SECTION. Section 3. Validity of reservations. The closure under [section 2] does not render an instream reservation granted by the board in its June 30, 1992, order of no force and effect, notwithstanding any condition to the contrary in that order. The reservations are not affected or diminished during the closure under [section 2]."

Renumber: subsequent sections

3. Page 2, line 23.
Following: "1"
Strike: "and 2"
Insert: "through 3"

4. Page 3, line 1.
Following: "1"
Strike: "and 2"
Insert: "through 3"

EXHIBIT 70
DATE 2-15-93
HB 488

Amendments to House Bill No. 488
1st Reading Copy

Requested by Rep. Wagner
For the Committee on Natural Resources

Prepared by Todd Everts, Committee Staff
February 13, 1993

1. Page 3, lines 11 and 12.
Strike: "76, chapter 13, part 3,"
Insert: "77, chapter 5,"

Amendments to House Bill No. 488
1st Reading Copy

Requested by Rep. Schwinden
For the Committee on Natural Resources

Prepared by Todd Everts, Committee Staff
February 13, 1993

1. Page 3, lines 1 through 3.

Strike: "The" on line 1 through "lost." on line 3

Insert: "The department shall, to the extent practicable, harvest
dead and dying timber before there is substantial wood decay
and value loss."

Amendments to House Bill No. 379
First Reading Copy

EXHIBIT

DATE

HB

Requested by Rep. Grady
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 12, 1993.

1. Title, line 5.

Following: "STANDARDS;"

Insert: "DEFINING "DETECTION LIMIT";"

Strike: "SECTION"

Insert: "SECTIONS"

2. Title, line 6.

Following: line 5

Insert: "75-5-103 and"

3. Page 1.

Following: line 8

Insert:

"Section 1. Section 75-5-103, "MCA, is amended to read:

"75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(5) "Detection limit" means the lowest concentration of a substance that can be reliably detected by an EPA-approved analytical method using natural water samples and performed in an EPA-certified commercial laboratory.

~~(5)(6)~~ (6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(6)(7)~~ (7) "Effluent standard" means any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into state waters.

~~(7)(8)~~ (8) "Industrial waste" means any waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(8)(9)~~ (9) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(9)(10)~~ (10) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal,

night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(10)~~ (11) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a point source.

~~(11)~~ (12) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(12)~~ (13) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(13)~~ (14) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge, seepage, drainage, infiltration, or flow of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration or flow which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

~~(14)~~ (15) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(15)~~ (16) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(16)~~ (17) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

~~(17)~~ (18) "State waters" means any body of water, irrigation system, or drainage system, either surface or underground; however, this subsection does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters.

~~(18)~~ (19) "Treatment works" means works installed for treating or holding sewage, industrial wastes, or other wastes."

{Internal References to 75-5-103:

x 75-5-106

x 75-5-304

x 75-5-605

x 75-5-615

x 80-15-102}

Renumber: subsequent sections

4. Page 1, line 23 through page 2, line 1.

Following: "(1)"

Strike: ":" on page 1, line 23 through "(b)" on page 2, line 1.

EXHIBIT 219
DATE 2-15-93
L H3 379

CLASSIFICATIONS, STANDARDS AND NONDEGRADATION

THE FOLLOWING DISCUSSION LISTS THE REQUIREMENTS OF THE FEDERAL CLEAN WATER ACT AND THE MONTANA WATER QUALITY ACT.

CLASSIFICATIONS

BOTH ACTS REQUIRE THAT ALL WATERS IN THE STATE BE CLASSIFIED ACCORDING TO THEIR PRESENT AND POTENTIAL BENEFICIAL USES SUCH AS DRINKING WATER, SUPPORT OF TROUT AND ASSOCIATED SPECIES, AGRICULTURAL USES ETC.

AMBIENT WATER QUALITY STANDARDS

THESE ARE STANDARDS WHICH ARE DEVELOPED TO PROTECT THE USES LISTED IN THE CLASSIFICATIONS. THESE STANDARDS APPLY ALL TO THE WATERS IN THE STATE INCLUDING STREAMS, LAKES, PONDS ETC. AND GROUND WATER. BOTH ACTS REQUIRE STANDARDS FOR SURFACE WATER BUT ONLY THE STATE ACT REQUIRES STANDARDS FOR GROUND WATER.

MONTANA HAS ADOPTED THE AMBIENT STANDARDS "SUGGESTED" BY EPA FOR AMBIENT WATERS. THE STATE COULD DEVELOP DIFFERENT STANDARDS. HOWEVER SUCH STANDARDS MUST BE SCIENTIFICALLY DEFENSIBLE AND APPROVED BY THE EPA. DEVELOPMENT OF SUCH ALTERNATIVE AMBIENT STANDARDS WOULD BE VERY EXPENSIVE AS NOTED IN THE FISCAL NOTE FOR HB379. IN ADDITION, IT IS UNLIKELY THAT SUCH ALTERNATE STANDARDS WOULD BE APPRECIABLY LESS STRINGENT THAN THE PRESENT STANDARDS. THE PRESENT STANDARDS ARE NOT MORE RESTRICTIVE THAN REQUIRED BY THE EPA!

TREATMENT STANDARDS

IN ADDITION TO THE AMBIENT STANDARDS BOTH ACTS REQUIRE THAT THE STATE ADOPT STANDARDS FOR DISCHARGES. THESE APPLY TO THE ACTUAL DISCHARGE REGARDLESS OF THE DISCHARGE'S AFFECT ON THE RECEIVING WATER. THESE ARE OFTEN CALLED PERFORMANCE STANDARDS. THEY ARE LISTED IN 40 CFR PARTS 125, 129, 133, AND 400 THROUGH 471. THESE FEDERAL REQUIREMENTS CONTAIN LIMITS FOR MANY BUT NOT ALL PARAMETERS. FOR THOSE DISCHARGES WHERE FEDERAL REQUIREMENTS DO NOT EXIST THE STATE ACT REQUIRES DEVELOPMENT OF TREATMENT STANDARDS.

NONDEGRADATION

BOTH ACTS REQUIRE THE DEVELOPMENT AND IMPLEMENTATION OF NON- OR ANTI-DEGRADATION LIMITS OR PROCEDURES. BOTH ACTS REQUIRE THAT DISCHARGE LIMITS OR BEST PRACTICAL TREATMENT AND BMPS BE APPLIED TO DEGRADING ACTIVITIES AND IF THE ACTIVITY WOULD STILL CAUSE DEGRADATION SUCH DEGRADATION CAN ONLY BE ALLOWED AFTER A PUBLIC DEMONSTRATION THAT THE DEGRADATION IS JUSTIFIED BY IMPORTANT ECONOMIC OR SOCIAL DEVELOPMENT. THE PRESENT STATE ACT IS MORE RESTRICTIVE THAN PRESENT FEDERAL REQUIREMENTS. THE PRESENT MONTANA ACT REQUIRES APPLICATION OF THE NONDEGRADATION REQUIREMENTS TO ANY CHANGE IN WATER QUALITY REGARDLESS OF THE MAGNITUDE OF THE CHANGE. IN OTHER WORDS IF IT CAN BE CALCULATED THAT A GIVEN DISCHARGE WILL CHANGE THE CONCENTRATION OF LEAD IN A STREAM FROM 0.0001 PARTS PER BILLION TO 0.0001000001 PARTS PER BILLION THE NONDEGRADATION REQUIREMENTS OF THE ACT AND THE RULES APPLY!

DHES HAS DRAFTED CHANGES TO THE ACT WHICH WOULD ALLOW THE DEPARTMENT TO IGNORE NONSIGNIFICANT CHANGES. HOWEVER, AS A SAFEGUARD, NONSIGNIFICANT CHANGES COULD ONLY BE DETERMINED THROUGH THE RULE MAKING PROCESS.

States have not yet adopted such design flows, the criteria promulgated today would be implemented appropriately. The TSD also recommends the use of three dynamic models to perform wasteload allocations. Dynamic wasteload models do not generally use specific steady state design flows but accomplish the same effect by factoring in the probability of occurrence of stream flows based on the historical flow record. For simplicity, only steady state conditions will be discussed here. Clearly, if the criteria were implemented using inadequate design flows, the resulting toxics controls would not be fully effective, because the resulting ambient concentrations would exceed EPA's criteria.

In the case of aquatic life, more frequent violations than the once in 3 years assumed exceedences would result in diminished vitality of stream ecosystems characteristics by the loss of desired species such as sport fish. Numeric water quality criteria should apply at all flows that are equal to or greater than flows specified below. The low flow values are:

Aquatic Life

acute criteria (CMC) 1 Q 10 or 1 B

3

chronic criteria (CCC) 7 Q 10 or 4 B

3

Human Health

non-carcinogens 30 Q 5

carcinogens harmonic mean flow

Where:

1 Q 10 is the lowest one day flow with an average recurrence frequency of once in 10 years determined hydrologically;

1 B 3 is biologically based and indicates an allowable exceedence of once every 3 years. It is determined by EPA's computerized method (DFLOW model);

7 Q 10 is the lowest average 7 consecutive day low flow with an average recurrence frequency of once in 10 years determined hydrologically;

4 B 3 is biologically based and indicates an allowable exceedence for 4 consecutive days once every 3 years. It is determined by EPA's computerized method (DFLOW model);

30 Q 5 is the lowest average 30 consecutive day low flow with an average recurrence frequency of once in 5 years determined hydrologically; and

the harmonic mean flow is a long term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows.

EPA is promulgating the harmonic mean flow to be applied with human health criteria for carcinogens. The concept of a harmonic mean is a standard statistical data analysis technique. EPA's model for human health effects assumes that such effects occur because of a long-term exposure to low concentration of a toxic pollutant. For example, two liters of water per day for seventy years. To estimate the concentrations of the toxic pollutant in those two liters per day by withdrawal from streams with a high daily variation in flow, EPA believes the harmonic mean flow is the correct statistic to use in computing such design flows rather than other averaging techniques.²

All waters, whether or not suitable for such hydrologic calculations but included in this rule (including lakes, estuaries, and marine waters), must attain the criteria promulgated today. Such attainment must occur at the end of the discharge pipe, unless the State has a mixing zone regulation. If the State has a mixing zone regulation, then the criteria would apply at the locations stated in that regulation. For example, the chronic criteria (CCC) must apply at the geographically defined boundary of the mixing zone. Discussion of and guidance on these factors are included in the revised TSD in chapter 4.

EPA is aware that the criteria promulgated today for some of the priority toxic pollutants are at concentrations less than EPA's current analytical detection limits. Analytical detection limits have never been an acceptable basis for setting standards since they are not related to actual environmental impacts. The environmental impact of a pollutant is based on a scientific determination, not a measuring technique which is subject to change. Setting the criteria at levels that reflect adequate protection tends to be a forcing mechanism to improve analytical detection methods. (See 1985 Guidelines, page 21.) As the methods improve, limits closer to the actual criteria necessary to protect aquatic life and human health became measurable. The Agency does not believe it is appropriate to promulgate criteria that are not sufficiently protective.

EPA does believe, however, that the use of analytical detection limits are appropriate for determining compliance with NPDES permit limits. This view of the role of detection limits was recently articulated in guidance for translating

dioxin criteria into NPDES permit limits which is the principal method used for water quality standards enforcement.³ This guidance presents a model for addressing toxic pollutants which have criteria recommendations less than current detection limits. This guidance is equally applicable to other priority toxic pollutants with criteria recommendations less than current detection limits. The guidance explains that standard analytical methods may be used for purposes of determining compliance with permit limits, but not for purposes of establishing water quality criteria or permit limits. Under the Clean Water Act analytical methods are appropriately used in connection with NPDES permit limit compliance determinations. Because of the function of water quality criteria, EPA has not considered the sensitivity of analytical methods in deriving the criteria promulgated today.

EPA has added provisions in paragraph (c)(3) to determine when fresh water or saltwater aquatic life criteria apply. In response to comments, this provision was expanded to incorporate a time parameter to better define the critical condition. The structure of the paragraph is to establish presumptively applicable rules and to allow for site-specific exceptions where the rules are not consistent with actual field conditions. Because a distinct separation generally does not exist between fresh water and marine water aquatic communities, EPA is establishing the following: (1) The fresh water criteria apply at salinities of 1 part per thousand and below at locations where this occurs 95% or more of the time; (2) marine water criteria apply at salinities of 10 parts per thousand and above at locations where this occurs 95% more of the time; and (3) at salinities between 1 and 10 parts per thousand the more stringent of the two apply unless EPA approves the application of the freshwater or saltwater criteria based on a biological assessment. The percentiles included here were selected to minimize the chance of overlap, that is, one site meeting both criteria. Determination of these percentiles can be done by any reasonable means such as interpolation between points with measured data or by the application of calibrated and verified mathematical models (or hydraulic models). It is not EPA's intent

² For a description of harmonic means see "Design Stream Flows Based on Harmonic Means," Lewis A. Rossmann, J. of Hydraulics Engineering, Vol. 118, No. 7, July, 1990. This article is contained in the record for this proposal.

³ Strategy for the Regulation of Discharges of PHDDs and PHDFs from Pulp and Paper Mills to Waters of the United States, memorandum from the Assistant Administrator for Water to the Regional Water Management Division Directors and NPDES State Directors, May 21, 1990.

Amendments to House Bill No. 454
1st Reading Copy

Requested by Rep. Gilbert
For the Committee on Natural Resources

Prepared by Todd Everts, Committee Staff
February 13, 1993

1. Title, line 5 through line 7.

Strike: "CHANGING" on line 5 through "YEAR;" on line 7

Insert: "CLARIFYING THE DEFINITION OF "MEGALANDFILL";"

Strike: "75-10-902," on line 7

2. Page 1, line 11 through page 2, line 8.

Strike: section 1 in its entirety

Renumber: subsequent sections

3. Page 3, line 16.

Following: "(7)"

Insert: "(a)"

Following: "means"

Insert: ", except as provided in subsection (7)(b),"

4. Page 3, line 18.

Strike: "300,000".

Insert: "200,000"

5. Page 3.

Following: line 20

Insert: "(b) An existing solid waste landfill facility that
accepted 100,000 tons a year of solid waste as of December
31, 1991, is not considered a megalandfill or facility until
it accepts more than 300,000 tons a year of solid waste."

6. Page 5, line 7.

Strike: "300,000"

Insert: "200,000"

Following: "tons"

Insert: "for a new or existing megalandfill or facility not
subject to 75-10-903(7)(b); or

(iii) 20 cents per ton of waste over 300,000 tons for an
existing megalandfill or facility pursuant to 75-10-903(7)(b)"

7. Page 7, line 22.

Following: "(4)"

Insert: "(a)"

Following: "means"

Insert: ", except as provided in subsection (4)(b),"

8. Page 7, line 24.

Strike: "300,000"

Insert: "200,000"

9. Page 8.

Following: line 1

Insert: "(b) An existing solid waste landfill facility that
accepted 100,000 tons a year of solid waste as of December
31, 1991, is not considered a megalandfill or facility until
it accepts more than 300,000 tons a year of solid waste."

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources

COMMITTEE

BILL NO. 407

DATE 7/5/93

SPONSOR(S) DOLEZAL

PLEASE PRINT

PLEASE PRINT

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| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|--------------------------------------|---------------------------|---------|--------|
| <u>HARRISON, MT.</u> WARD JACKSON | SW. MT. STOCKMEN'S ASSOC. | | ✓ |
| ALAN RILLO | Self | ✓ | |
| John Hanewald | Self Family | ✓ | |
| Jim McDermant | Medicine River Canoe Club | ✓ | |
| BILL FAIRHURST | Public Lands Group | ✓ | |
| Don Bennett | Self | ✓ | |
| Bill Holdorf | Shyline Sportsman | ✓ | |
| Tony Schioma | Coz / itra Stetchind | ✓ | |
| Jim Reshais | MWF | ✓ | |
| Jake Cummings | MT FARMERS | | ✓ |
| David Ross | Audubon Legislative Fund | ✓ | |
| John Blomquist | MT. Stockmen | | ✓ |
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources

COMMITTEE

BILL NO. HB 419

DATE 2-15-93 SPONSOR(S) Grady

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| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|------------------|--------------------------|---------|--------|
| Don Vidrine | DHES | ✓ | |
| Mark Stahly | DHES | ✓ | |
| Roger Tharverson | DHES | ✓ | |
| David Ross | Audubon Legislative Fund | ✓ | |
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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

H. N. Res COMMITTEE BILL NO. 448
DATE 2-15-93 SPONSOR(S) ORR

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PLEASE PRINT

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| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|-------------------|-------------------|---------|--------|
| Steve Manderville | MT Assoc Realtors | | X |
| Tom Haggard | " " " | | X |
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ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

VISITOR'S REGISTER

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|--------------------------|------------------------|---------------------|
| <u>Natural Resources</u> | COMMITTEE | BILL NO. <u>503</u> |
| DATE <u>2/15/93</u> | SPONSOR(S) <u>RGAM</u> | |

DATE 2/5/93 SPONSOR(S) RGAM

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[illegible]

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources

COMMITTEE

BILL NO. 512

DATE 2/15/93

SPONSOR(S) Gilbert

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| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|------------------------------|---------------------------|---------|--------|
| Arthur David Ross | Aviation Legislative Fund | ✓ | |
| John Smith | D/tee | ✓ | |
| Bonnie Alexander | mt Pet. Marketing | ✓ | |
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. 532
DATE 2/15/93 SPONSOR(S) Turby

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|------------------|--------------------------|---------|--------|
| David Ross | Audubon Legislative Fund | ✓ | |
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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources

COMMITTEE

BILL NO. HB 567

DATE 2-15-93 SPONSOR(S) Foster

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|------------------|--------------|---------|--------|
| Richard C. Proby | NPRC | ✓ | |
| Elizabeth Brewer | Family | ✓ | |
| REBECCA Johnston | Family | ✓ | |
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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. 571
DATE 2/15/93 SPONSOR(S) DAVE BOON

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|------------------|------------------------|---------|--------|
| DAVE BOON | Sponsor-HR #72 | X | |
| Stan Bradshaw | M. T. U. | ✓ | |
| MIKE SUEA | BUTTE-SILVER BOW | ✓ | |
| Jack Lynch | BUTTE-SILVER BOW | ✓ | |
| Jim Johnston | B. H. - Silver Bow | ✓ | |
| Stan Huntington | Silver Bow Waketon, Ia | ✓ | |
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