

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON SB 401

Call to Order: By Senator Weeding, on March 15, 1993, at 6:20 p.m.

ROLL CALL

Members Present:

Sen. Bernie Swift (R)
Sen. Larry Tveit (R)
Sen. Cecil Weeding (D)

Members Excused: Sen. Steve Doherty (D)

Members Absent: None.

Staff Present: Michael Kakuk, Environmental Quality Council
Leanne Kurtz, Committee Secretary

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

Committee Business Summary:

Hearing: None.
Executive Action: None.

DISCUSSION ON WORKING GROUP'S PROGRESS

Bob Robinson, director, Department of Health and Environmental Sciences (DHES) and moderator of the SB 401 working group, reported the group has arrived at agreement on some modifications to SB 401. He said the group discussed at length the definition of "interested person", adding the group agreed that an interested person should be someone who has been part of the process for some time. Mr. Robinson stated the working group did not reach agreement on mixing zones, the definition of high quality water or the definition of degradation. He said additional language was developed requiring that mixing zones granted by the Department be specifically identified. Mr. Robinson said the environmental groups did not agree to mixing zones, but if mixing zones were incorporated in SB 401, they want to include language requiring DHES to specifically identify the zones. He said the group discussed mitigation and alternate mitigation and how it would be weighed in the application process. Mr. Robinson stated the environmental groups do not trust the Board of Health to set the criteria by which nondegradation exemptions would be granted. The language

settled upon stipulates that criteria must be established in a manner that: 1) "equates with the significance for the potential harm to human health or the environment;" 2) considers the quantity, strength, and character of the pollutant; and 3) considers the length of time that degradation will occur. Mr. Robinson stated this language would codify broad standards in statute. He said DHES is primarily concerned with settling areas of conflict in the bill so the Department and industry can move forward and the environmental community can make sure that guideposts exist by which everyone can be evaluated in the process.

Mona Jamison, Michaelson Land Company, said she agrees with the language defining degradation and "interested person". She discussed her continuing opposition to mixing zones, adding it is the most objectionable part of the bill. Ms. Jamison said to allow groundwater standards to be violated, as mixing zones do, is unconstitutional. She said mitigation appears to the environmental groups as "pollution trading", adding no agreement has been reached on that issue. Ms. Jamison said the rewritten version of the nondegradation policy is not completely acceptable because it allows for degradation by new and increased sources "even if the technology is there." She said the environmental community cannot concede on the new nondegradation language as well as the language on mixing zones, adding they will then have achieved nothing. She said everyone in the working group agrees on process and procedure.

Ted Doney, representing the proponents to SB 401, said they agree with the mitigation provision as it gives the applicant the opportunity to help direct the mitigation. He commented the definition of high quality waters is too broad, and expressed support for including mixing zones in the bill. He noted mixing zones are necessary so they should be defined in statute. Mr. Doney said there are arguments on both sides of the constitutionality issue, but he would rather it be argued in court.

Dennis Olson, Northern Plains Resource Council (NPRC), stressed NPRC is not prepared to approve all the changes that have been discussed. He said the definition of "nonsignificant" is a policy issue that needs to be settled. He added NPRC is concerned about the Department's rules, as they exclude a list of point sources for groundwater degradation. He said SB 401 does nothing to lift those exclusions and apply nondegradation to other sources. Mr. Olson said NPRC believes existing sources of pollution should be allowed mixing zones if they were eligible for mixing zones prior to 1971.

QUESTIONS

Senator Bianchi asked if DHES has the authority to allow violation of water quality standards. Dan Fraser said most of

the dischargers use secondary treatment technology, but that treatment is not sufficient to meet water quality standards. He said mixing zones have been a part of the way DHES does business for years.

Mona Jamison said whether or not mixing zones can allow for violation of water quality standards is a matter of constitutional law. She reminded the Committee that some provisions in the Montana Constitution are more stringent than those at the federal level.

Abe Horpstead, DHES, said a mixing zone includes "all of the area from the pipe to the point where all of the effluent is mixed with the receiving water." He said if standards at the discharge pipe cannot be violated, then many things cannot be discharged. Mr. Horpstead added the major impact on groundwater quality in Montana comes from septic tanks.

Senator Bianchi asked for a definition of water quality standards. Mr. Horpstead said the standards are based on the uses designated for a particular water body.

Senator Weeding asked what kind of parameters DHES places on mixing zones. Mr. Horpstead said DHES has been remiss in not defining mixing zones in the permitting process. He said DHES has ruled that there can be no acute toxicity in a mixing zone.

Senator Weeding asked if surface and ground water should be treated differently. Ms. Jamison said the working group discussed the possibility of separating the two types of water. She said pollution in surface water can be flushed out quickly, but ground water is slower-moving and more difficult to clean.


Dennis Olson said disallowing mixing zones for surface water will not shut down municipalities, mines, and other existing sources that have been eligible for an exemption since 1971. He discussed EPA standards for surface and ground water.

Dan Fraser said the DHES's real focus is the nondegradation policy and DHES contends that it does not make sense for the policy to apply to anything but new or increased sources. He said mixing zones are absolutely necessary if a new source is allowed to degrade the water. Mr. Fraser stated there may be cases where technology does not exist to prevent violation of water quality standards.


Senator Weeding asked the working group to meet again to discuss mixing zones, the definition of high quality water, and the rewriting of the nondegradation policy.

ADJOURNMENT

Adjournment: 7:30 p.m.



SENATOR STEVE DOHERTY, Chair



LEANNE KURTZ, Secretary

SD/lk

ROLL CALL

SENATE COMMITTEE SB 401 SUBCOMMITTEE DATE 3/15/93

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Attach to each day's minutes