MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Vice Chair Hockett, on March 24, 1993, at 3:21 p.m.

ROLL CALL

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

Members Excused: Sen. Don Bianchi, Chair (D), Sen. Chuck Swysgood (R)

Members Absent: None.

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

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

Committee Business Summary:
Hearing: HB 423, HB 512, HB 599, HB 318
Executive Action: None.

HEARING ON HB 423

Opening Statement by Sponsor:

Representative Bob Gilbert, House District 22, said HB 423 would clarify that the Petroleum Tank Release Compensation Board will have hearings. Currently the board does not have Montana Environmental Protection Act (MEPA) hearings.

Proponents' Testimony:

Gene Reily, Executive Director of the Petroleum Tank Release Compensation Board, spoke from written testimony (Exhibit #1).

Brian McNitt, Montana Environmental Information Center (MEIC), said that the petroleum release program was very well run, and added that MEIC would support any effort to make the program better. He said HB 423 would accomplish this goal.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

Representative Gilbert closed on HB 423.

HEARING ON HB 512

Opening Statement by Sponsor:

Representative Bob Gilbert, House District 22, said HB 512 was an incentive bill for those who deal with underground storage tanks. He said that House amendments struck the word "underground" and inserted "petroleum". He said petroleum compensation covered both underground and above ground petroleum tanks that did not exceed 30,000 gallons. HB 512 provides that a person who installs a double walled tank which leaks would be compensated by the petroleum board at 100 percent of the loss rather than the normal compensation rate of 50 percent of the first $35,000. He said this would provide incentive for people to install these tanks. He noted HB 512 would also change the reimbursement for small tanks from 50 percent of the first $35,000 to 50 percent of the first $10,000, and 100 percent of the subsequent cost to match a reimbursement of $495,000.

Proponents' Testimony:

Frank Gessaman, Montana Department of Health and Environmental

Sciences (DHES), spoke from written testimony (Exhibit #2).

Brian McNitt, MEIC, said MEIC believes HB 512 to be protective of the environment and would give people incentive to be so as well.

Ronna Alexander, the Petroleum Marketers' Association, said double walled tanks cost double the price. She said the Committee should not believe that single walled tanks are unsafe, because new equipment in the industry had made it easier to detect problems with tanks more quickly.

Dave Ross, Montana Audubon Legislative Fund, rose in support of HB 512.

Lance Clark, Montana Association of Realtors, rose in support of HB 512.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Weeding asked if there was a fiscal note on HB 512. Representative Gilbert said there was no fiscal note because there was no way of telling how many storage tanks would be affected. He said the benefits paid would be small, and thus the impact would be small.

Senator Weeding said picking up 100 percent reimbursement at $10,000 instead of at $35,000 might cause fiscal repercussions in HB 512. Representative Gilbert said there would not be that much of an impact if more double walled tanks were installed. He said neither double nor single walled tanks were unsafe.

Senator McClernan asked Gene Reily if the reimbursement rate changes would affect the Petroleum Tank Release Compensation Board. Ms. Reily answered the effects would be minimal.

Senator Hockett asked Representative Gilbert if the piping and fixtures on the double walled tanks were included in the 100 percent reimbursement benefits. Representative Gilbert said that "double walled tank system" means the tank and associated piping.

Closing by Sponsor:

Representative Gilbert said the concern is the high rate of reimbursement, but pointed out that the change would be very little because after the first $35,000, 100 percent is usually paid anyway. He said the bill is a simple incentive to get people to use double walled tanks.

HEARING ON HB 599

Opening Statement by Sponsor:

Representative Duane Grimes, House District 75, sad HB 599 clarifies that the Department of State Lands (DSL) may not prepare an Environmental Impact Statement (EIS) for an operating permit which would neither be modified by mitigation requirements agreed to by an applicant, nor significantly affect the quality of the human environment. He said HB 599 clarified items in the hard rock mining statues to prevent misunderstandings. He said the original intent of HB 599 had not been changed by House amendments, but rather had been clarified.

Proponents' Testimony:

Sandy Wilson, Chief of the Hard Rock Bureau, DSL, said DSL has authority to administer the Environmental Policy Act with respect to Montana's Mine Land Reclamation Program. She said the Hard Rock Bureau participates in an average of six EIS's per year. Most mining projects occur on a mixture of federal and private lands, and most studies are completed with cooperation of the Forest Service and the Bureau of Land Management (BLM). She said under the Montana Environmental Protection Act (MEPA), DSL was completing mitigated environmental assessments (EAs), and EISs. Ms. Wilson said mitigated EA's may be prepared where an applicant through mitigation has reduced impacts below the level of significance. She added MEPA regulations allow DSL to prepare at its discretion an EIS instead of a mitigated EA under these circumstances. HB 599 as amended removes this discretion and requires DSL under the Metal Mine Reclamation Act to complete an EA for operating permits where impacts will not be significant unless an applicant waives that right. As originally drafted, HB 599 applied to all environmental impact statutes. She said agencies do not have the authority to charge EA fees, however HB 599 as amended would resolve funding issues and give DSL authority to charge for an EA.

Fess Foster, Chief Geologist and Permit Coordinator, Golden Sunlight Mines, Inc., spoke from written testimony in favor of HB 599 (Exhibit #3).

Terry Grotbo, Director of Mine Services, Chen-Northern, Inc, spoke in favor of HB 599 from written testimony (Exhibit #4).

Tammy Johnson, Citizens United for a Realistic Environment (C.U.R.E.), spoke as a proponent of HB 599 from written testimony (Exhibit # 5).

Eric Williams, Pegasus Gold, Inc., rose in support of HB 599.

Bob Williams, Montana Mining Association, rose in favor of HB 599.

Opponents' Testimony:

Kim Wilson, Clark Fork-Pondera Coalition, and an attorney in Helena, said HB 599 could be improved. He said currently the state is often in a dual permitting situation in which it works with the federal government and private land owners. He said under this provision of the Hard Rock Act, DSL would not have to conduct an EIS. He said in working with MEPA, the agencies may not know until the end of the EA process if mitigation is available or if the impact was below the level of significance. If a mitigated EA is allowed, then a statutory requirement that the EA needs to analyze how that mitigation affects impacts below the level of significance is necessary. Mr. Wilson questioned how HB 599 would be amending MEPA through the Hard Rock Act. He requested that page 1, line 17 "or some form of environmental review" be stricken because the purpose of HB 599 was to require a mitigated EA, and no other form of environmental review was applicable in the context of the provisions in the bill.

Dennis Olson, Northern Plains Resource Council (NPRC), said HB 599 placed in statute a policy of abuses that DSL has followed for several years since the use of mitigated EA's was authorized through rulemaking. He sad NPRC had not been invited to participate in the consensus process on HB 599. He said references were made about insignificant permit adjustments and boundary adjustments. Mr. Olson stated the Golden Sunlight Mine was a six-fold expansion of a huge tailings impoundment. He said the Stillwater mine expansions caused eight amendments to the mine permit, one being a new mine built on the other side of the valley that doubled the production of the mine, and had the same amount of impact as the original mine. He said this was done under an EA, and added Stillwater had received an exemption to the nondegradation policy of the Water Quality Act until NPRC threatened under the EPA to sue the Forest Service. He said an EIS was finally conducted on that subject. Mr. Olson said the biggest objection NPRC had with mitigated EAs was the time frame; DSL interprets the time frame deadline, and once it deems a permit complete, it has 30 days to issue a permit. DSL views that as a substantive law over MEPA, and cuts short the public comment period. Mr. Olson said he would refute Tammy Johnson's claim that HB 599 was good for workers. He explained that both the Golden Sunlight and the Stillwater Mines were now involved in lawsuits. He stated the Mineral Hill Mine in Gardiner was expanding and had voluntarily agreed to an EIS. He said that

this mine had agreed to appoint a citizens advisory council to help identify impact issues. Mr. Olson said this was better for the mining industry in the long run than circumventing the process as HB 599 seeks to do.

Brian McNitt, MEIC, said that if an EA was done, and possible significant impacts are found, an EIS would perhaps be in order.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator McClernan asked Sandy Olsen to explain the difference between an EA and a mitigated EA. Ms. Olsen said when DSL or any other agency prepares an EA, a determination is made as to whether the impacts identified in the assessment could be significant. She said DSL is not allowed to write an EA if there is significant impact. A mitigated EA is an analysis of a proposal which would have significant impacts if mitigation is not applied.

Senator Doherty said the rationale for HB 599 is appealing in that it allows DSL to do an EA on a minor change. He asked Sandy Olsen how many times in the last few years there had been an EIS done for a minor change. Ms. Olsen said she was not familiar with any situation where DSL had done a full EIS on a clearly minor change.

Senator Doherty asked Representative Grimes if he knew of any situation in which DSL was required to do a full EIS on a clearly minor change. Representative Grimes said he could not specifically point out any applicable situations, because DSL was doing a very good job. He said if the Golden Sunlight Mine were to be reevaluated, then an EIS would probably be done, but HB 599 would not apply to anything that large. He said HB 599 was dealing with legitimate concerns about the Golden Sunlight incident.

Senator Doherty asked Representative Grimes if he was aware that to save money for Montana, the applicant fees for an EIS would overtake the costs for the EAs. Representative Grimes said there had been some cost concerns with the original form of HB 599, but added those had been taken out.

Senator Doherty asked DSL to provide the Committee with a copy of the regulations. He said if HB 599 was codifying regulations, he would like to see those regulations dealing with the circumstances under which EAs and EISs were conducted.

Senator Doherty said subsection 2 of HB 599 said DSL could not do

an EIS when it affects the quality of the human environment. He said this was MEPA law. He asked John North, DSL chief legal counsel, how DSL would interpret and use the "as modified by mitigation requirements agreed to by the applicant" language. Senator Doherty said part of the reason for going through an EIS or an EA was to discover the impacts. He asked how the timing would work under HB 599. John North answered that if DSL believed there would be no significant impact, or that the impact would be mitigatable, it would begin preparing an EA, and switch to an EIS if the impact at some point seemed to be significant. Mr. North said if DSL thought the impact would be significant from the beginning, then it would conduct an EIS. If the impact was discovered to be mitigatable, then DSL would simply switch to a mitigated EA. He said the Hard Rock Act grants fee authority for EAs.

Senator Doherty asked about the time limits Hard Rock Act sets forth for preparing an EA. John North answered that under the Hard Rock Act, once an application is prepared, DSL has 30 days to make a permit decision, which could then be extended by an additional 365 days.

Senator Hockett asked John North to clarify who would pay for the EIS or EA. Mr. North said under the Environmental Policy Act, the agencies have the authority to impose the fee bill and charge the cost of the preparation to the applicant. He said this applied across all state agencies for EISs, but not to EAs in MEPA. In the Hard Rock Act, DSL has the authority to charge for preparation of EAs.

Senator Weeding said he did not understand the reasoning behind HB 599. He said all HB 599 does is codify what DSL is currently doing. He asked John North if there was a reason to have the practices put into statute. Mr. North said in MEPA rules, if a situation arises which could cause significant impact that could be mitigated, DSL has the option of either preparing an EIS or an EA. He said HB 599 would remove the discretionary authority from DSL, and require that the Department conduct a mitigated EA unless the applicant agrees to an EIS. Senator Weeding said HB 599 was making a mitigated EA out of something that should not be. Mr. North said when the applicant's proposal does not mitigate impacts below the level of significance, the mitigated EA would come into effect.

Senator Weldon asked Sandy Olsen if DSL had ever charged for an EA. Ms. Olsen answered that DSL had charged for EAs. She added that DSL could only charge for contractor costs and employee expenses beyond the Department's normal operating expenses. She said DSL had charged both the Stillwater and Southfield companies for EAs, and noted the charges had been about $50,000 each.

Senator Weldon asked if the instances with Stillwater and Southfield would now call for an EIS. Ms. Olsen answered yes.

Senator Grosfield asked John North if DSL had a policy to abuse the things HB 599 aimed to codify, such as NPRC had suggested. Mr. North said a philosophical rift exists between NPRC and some of the MEPA rules in terms of mitigated EAs - when one should be prepared, and when an EIS should be prepared. He said the conflict between NPRC and DSL was not about the rules, but rather about whether or not mitigation has occurred.

Senator Keating asked John North if DSL would still have the option to determine whether an EIS or an EA should be done. Mr. North answered that in a case of a mitigated EA this was true.

Senator Keating said under MEPA all major actions require EISs. He asked if the DSL could be challenged in court if it decided to conduct an EA or a mitigated EA first, and HB 599 did not contain language that specified DSL was to do a mitigated EA first. Mr. North answered there are two potential challenges under MEPA. He said if an EIS was conducted, the challenge would be whether or not the EIS was adequate. If an EIS was not prepared, then the challenge would be that an EIS should have been done. He said it would be more difficult to defend the decision not to do an EIS than it would be to defend a challenge of an EIS's adequacy.

Senator Keating said this removed DSL's option to decide whether to do an EIS, and specifies statutorily that DSL will do a mitigated EA first, and then if an EIS should be done, DSL has the authority to make that decision. He said this would remove the possibility of a challenge to a DSL decision that a mitigated EA is sufficient. Mr. North responded that there could still be a challenge to that decision under the provisions of HB 599.

Senator Bartlett asked Mr. North to comment on Mr. Wilson's concern about a possible conflict with federal law if HB 599 was put into Montana law. Mr. North said there may be situations where DSL was bound by statute to prepare a mitigated EA. Federal agencies having discretion, might decide to do an EIS. In this situation the federal and state agencies would either have no problems with this, or DSL would tell the applicant there needed to be a joint document. Under subsection b, the applicant could allow a joint document to be prepared.

Senator Bartlett asked Representative Grimes if he would oppose striking language on page 1, line 17 "or some form of environmental review". Representative Grimes said he would not like to strike that because of categorical exclusions that could occur in the process.

Closing by Sponsor:

Representative Grimes said the Committee should concur in HB 599 because it would allow companies to make minor changes without having to fear a strict review. He said placing HB 599 in statute would allow for the process to run with less ambiguity.

He said if the language on page 1, line 17 was stricken, there could be a laundry list of other environmental reviews. He said HB 599 would allow a company to request an EIS if reason existed. HB 599 would not affect dual-permitting situations because federal law supercedes state law. He said DSL would still have the discretion of doing a mitigated EA, an EA, or an EIS. Representative Grimes said HB 599 was a housecleaning bill that would avoid long-term repercussions and problems.

HEARING ON HB 318

Opening Statement by Sponsor:

Representative Sheila Rice, House District 36, said HB 318 was patterned after the federal Clean Air Act. She said without HB 318, default regulations would occur in Montana's industries, and the federal government, not Montana, would be the authority over Montana's air. She said HB 318 would also prevent split authority where the state regulates some aspects of an act, and the federal government regulates others. Representative Rice said HB 318 created a small business assistance center for industries that are newly regulated under the federal and state clean air acts. Representative Rice said HB 318 was self-supporting, raising fees on industries. She handed out amendments to HB 318 (Exhibit #6).

Proponents' Testimony:

Jeff Chaffee, Jan Sensibaugh, and Tim Baker, Montana Department of Health and Environmental Sciences (DHES), Air Quality Bureau, spoke in the order listed from the written testimony provided in Exhibit #7.

Rex Manuel, CENEX in Laurel, told the Committee CENEX supports HB 318 with the amendments offered by Representative Rice, but with no other amendments that would be offered.

Mary Westwood, Montana Sulphur and Chemical Company, spoke from written testimony in favor of HB 318 (Exhibit #8).

Brian McNitt, Montana Environmental Information Center (MEIC), said MEIC had been involved in developing HB 318. He said MEIC supports HB 318, but is concerned with the issue of presumption. He explained that if DHES tested a company on Monday, and found it to be out of compliance, tested it again on Friday and found it was still out of compliance, the presumption would be that the company was out of compliance for the whole week. He said that under HB 318, DHES would not be able to presume this.

Dave Ross, Audubon Legislative Authority, rose in support of HB 318.

Susan Callahan, Montana Power Company (MPC), said MPC supports HB 318 with the amendments offered by Representative Rice. MPC is confident that HB 318 would take care of Montana's needs by putting a permanent standard into statute.

Don Allen, Montana Wood Products Association, rose in support of HB 318 with the amendments offered by Representative Rice. He said HB 318 with the amendments would be carefully balanced, adding he opposes any further amendments.

Mike Micone, Conoco, rose in support of HB 318, and discussed Conoco's efforts to keep Montana's air clean. He said Conoco supports the amendments offered by Representative Rice.

Janelle Fallan, Montana Petroleum Association (MPA), said MPA supports HB 318 with the amendments offered by Representative Rice. She said provisions in HB 318 are similar to federal laws. Ms. Fallan said she opposes any amendments other than those of Representative Rice. She handed out a letter to the Committee that addressed Exxon's feelings toward HB 318 (Exhibit #9).

Bob Williams, Montana Mining Association (MMA), said HB 318 would be helpful.

Opponents' Testimony:

Dennis Olson, Northern Plains Resource Council (NPRC), and Yellowstone Valley Citizens Council (YVCC), told the Committee YVCC had worked on air quality issues in Billings for the last 20 years. He said both NPRC and YVCC are both concerned that the industry amendments placed in HB 318 in House Natural Resources Committee would severely weaken the permitting program. He said NPRC and YVCC were part of the air quality advisory committee that was set up by DHES. He said NPRC raised issues in the meetings of the council before the Legislative Session that had not been addressed. There was no consultation before MPC proposed 46 amendments in the House. He said he wanted to clarify there was not a consensus process once HB 318 was introduced. He said NPRC and YVCC believed an adequate permit program should ensure proper enforcement of air quality operating permits and should be able to initiate special studies and fund dispersion modeling and monitoring in geographical areas with air quality problems. He said such a program should also establish a permitting program effective enough to ensure privacy under the Montana and Federal Clean Air Acts. It should also ensure Montana's ability for matching funds from the Environmental Protection Agency, and should minimize the Air Quality Bureau's cost to the State General Fund. He said the industry amendments might jeopardize the Department's capabilities to ensure the goals of an adequate permitting program as outlined above.

Dennis Olson suggested amendments that would allow DHES the flexibility it would need to handle SIP recall in Yellowstone

County in order to deal with the sulfur dioxide problems. He said page 4, line 6 restricted the state to a certain degree, and it would be better if it were removed. He said the alternative amendments offered by Representative Rice with the Department of Health was an improvement over the House amendment. He said page 19, line 21 was the administrative fee provision, adding the EPA Clean Air Act provision for this was $25,000 per day, with a $200,000 maximum payment. He urged the Committee to put that language back in HB 318 to make the bill as stringent as federal standards. He said the presumption language on page 23 and 24 should be removed, so the burden would shift back to the Department to prove there were violations. He said the enforcement provisions were very important for Billings, because the city is having a difficult time meeting even federal air quality standards.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Keating asked Bob Robinson, DHES, if he agreed with the NPRC amendments that would increase the stringency of HB 318. Mr. Robinson answered that the penalty provisions in HB 318 are significant enough to get the attention of any possible violator. He said DHES had decided not to push for a higher penalty level, but rather maintain the $10,000 provision. He said this would allow the state to work with the industry, putting the burden on the industry to cooperate with DHES rather than risking having the EPA over-file the state and impose the higher penalty. Senator Keating asked Jeff Chaffee to what extent the elected emissions had exceeded the federal standards in the Yellowstone Valley. Mr. Chaffee answered the federal SIT call was based upon modeled violations of the federal ambient air quality standards, rather than of emissions standards. He said though the standards had exceeded the federal standards, there was not a problem with emission compliance in the current state plan.

Senator Keating asked Mr. Chaffee if the EPA, upon finding it could not prove sulfur dioxide to be a threat to public health, had reenacted the current standards. Mr. Chaffee answered that current information DHES had from the EPA showed that EPA had studied whether or not to revise the federal ambient air quality standards for sulfur dioxide. A proposal was drafted, but was not finalized. Information in the study indicated there were health concerns based upon short-term exposure to ambient sulfur dioxide, but there was no final action on the study.

Senator Keating asked Jeff Chaffee if in his estimation HB 318 would be within the budget of DHES. Mr. Chaffee answered yes, that the purpose of HB 318 is to implement a new operating permit

program, then put into the program requirements which would allow DHES to ensure that industries meet the standards.

Senator McClernan asked Dennis Olson, NPRC, if there is a constitutional objection to HB 318 similar to that of SB 401. Mr. Olson answered in 1979, a bill had exempted Yellowstone County from the Montana air quality standards. This was done to allow for some breathing room for companies that needed time to clean their emissions but at the same time could not afford fines for noncompliance. He said he believes this was unconstitutional on the part of the Legislature, because it denied equal protection to the people of Billings, and bypassed their right to a healthful and clean environment. Mr. Olson noted this was never tested in court. He stated there may have been some progress, but in the 5 years after exempting Billings from Montana standards, there has been a degradation of the air in Yellowstone County.

Senator McClernan said HB 318 provides for issuing air quality construction permits throughout Montana, not just Billings. Mr. Olson said NPRC supports the permitting program.

Senator Grosfield asked Bob Robinson if he could clarify HB 318 where it states that each day of each violation constitutes a second offense. Mr. Robinson said this would require DHES to declare a day of violation only for actual measured and documented violations. He said this would change the presumption provisions.

Senator Grosfield said language on page 19, line 21 stating "$10,000 for each day for each violation not to exceed a total of $80,000" was original language in HB 318. He said this could also be interpreted as "$10,000 for each day for each violation". He asked if this was right. Mr. Robinson said this could not exceed a total of $80,000.

Senator Grosfield asked if this was $80,000 per day. Tim Baker said it was each day of each violation, and this would allow for numerous violations occurring on the same day to be counted as separate days of violation. He said if a company violated 5 separate things on the same day, this would be 5 separate days of violation, each of which would be subject to a maximum $10,000 fine. Mr. Baker said the amendments offered by Representative Rice clarify the bill. He said the $80,000 cap was a cap on DHES's ability to use an administrative order to seek a penalty, rather than on the ability to seek penalties. He said if the Department found a situation where the potential liability of the alleged violator could exceed $80,000, then DHES could choose to go to court.

Closing by Sponsor:

Representative Rice said that HB 318 is the product of a

consensus process. She said the bill's stringency had been compromised in the House, but that was addressed in the amendments she offered. She said the penalty remaining at $10,000 was advantageous to Montana because it encouraged industry to work with the state. She noted presumption was a new concept even in federal law, so it would be better to wait a couple of years, and then put it in law if necessary. She said the Billings situation was completely separate from HB 318.

ADJOURNMENT

Adjournment: 5:22 p.m.

Don Bianchi
DON BIANCHI, Chair

Leanne Kurtz
KELSEY CHAPMAN, Secretary

DB/ksc

ROLL CALL

SENATE COMMITTEE Natural Resources DATE 3/24/93

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

FC8

Attach to each day's minutes

Testimony on HB 423

Jean Riley
Petroleum Tank Release Compensation Board

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

Thank you for your time.

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 3-24-93
BILL NO. HB 423

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 3-24-93
BILL NO. HB 512

DHES SUPPORTING TESTIMONY HB 512

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 intersticial 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

EXHIBIT #2
DATE 3-24-93
HB-512

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.

GOLDEN SUNLIGHT MINES, INC.

February 17, 1993

TESTIMONY CONCERNING HB 599, AN ACT AMENDING THE MONTANA METAL MINES RECLAMATION ACT, BEFORE THE SENATE NATURAL RESOURCES COMMITTEE

Fess Foster, Ph.D.
Chief Geologist/Permit Coordinator
Golden Sunlight Mines, Inc.
453 Highway 2 East
Whitehall, Montana 59759

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 3-24-93
BILL NO. HB 599

Dear Mr. Chairman and Members of the Committee:

I would like to begin by stating what this proposed amendment to the Montana Metal Mines Reclamation Act, or MMRA, does not do. It does not reduce the already strict environmental standards required of the mining industry. Rather, it clarifies the statute to prevent misunderstandings.

It is important to understand the difference between Environmental Impact Statements and Environmental Assessments for the purpose of this discussion. Environmental Impact Statements are required for projects which would significantly affect the environment, and can be quite lengthy and expensive. By lengthy and expensive, I mean up to four or five years of preparation time, and costs in the millions of dollars range. On the other hand, Environmental Assessments are used for projects which will not significantly affect the environment, and can be completed as quickly as 30 days or possibly take two or three years, depending upon the complexity of the project.

The Administrative Rules of Montana state that Environmental Assessments can be prepared for actions which will not cause significant impact. However, current statutes only state that Environmental Impact Statements are necessary if a project will be significant; they do not clarify the fact that Environmental Impact Statements are unnecessary if a project will not significantly affect the environment.

Further, the Administrative Rules allow state agencies to attach "stipulations" to Environmental Assessments. Stipulations are specific measures which must be undertaken to assure that no significant impacts occur. In fact, a major Environmental Assessment with stipulations can be as comprehensive as an Environmental Impact Statement. This proposed amendment to MMRA would simply place these Administrative Rules into statute, and make it clear that the state agencies can continue to do their job as they have in the past.

It is impossible to predict the precise design of a mine complex upon its inception. Our estimates of ore reserves are simply that --- estimates. As mining commences, we often find that the grade and location of the ore is somewhat different than initially predicted. This often requires us to make minor changes to our open pit and waste dump designs. Changes in metal prices can have the same effect.

In hard rock mining, Environmental Assessments are used to permit changes in our operating plans. Small revisions are routinely required as a mine is developed. They include such actions as modifying a road design, or constructing a diversion ditch to prevent erosion. State agencies prefer to use Environmental Assessments to approve such changes and eliminate both undue paperwork and unnecessary staff time. Businesses need the flexibility to allow projects which are in progress to be modified, without causing unnecessary delays. The proposed amendment to MMRA would allow this practice to continue.

The ability to make these changes rapidly is also an incentive for us to make design improvements which benefit the environment. Golden Sunlight engineers are constantly researching environmentally enhanced designs. For example, we decide to increase the volume capacity of our surface diversion ditches so they could contain an even larger storm event. If we have to go through a lengthy permit process to implement even these minor modifications, it becomes a disincentive for us to improve our designs.

Over the past several years, the Department of State Lands has required Environmental Impact Statements for significant changes to our operating plans, and we have no problem with that. At issue here is the fact that it is impossible for us to predict in advance, all of the minor changes that are a necessary part of any mining operation. We simply want to be able to continue making these changes through Environmental Assessments, so that they do not burden both the operation and the state agencies with costly delays and unnecessary paperwork.

I appreciate the opportunity to speak before the committee. Thank you.

Huntingdon
Consulting Engineers Environmental Scientists

Chen-Northern, Inc.
1610 B Street
Box 4699
Helena, Montana 59604
(406) 443-5210
Fax: (406) 449-3729

TESTIMONY CONCERNING HB 599, AN ACT AMENDING THE METAL MINE RECLAMATION ACT, BEFORE THE SENATE NATURAL RESOURCES COMMITTEE

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 3-24-93
BILL NO. HB 599

Terry Grotbo
Director of Mine Services
Chen-Northern, Inc.
P.O. Box 4699
Helena, MT 59604

Dear Mr. Chairman and Members of the Committee:

My name is Terry Grotbo and I am currently the Director of Mine Services for the Helena office of Chen-Northern, Inc. Chen-Northern is a consulting firm which provides scientific and engineering services to a wide range of private and public clients in the Western US. In the past, I have been employed by the Montana DSL and have served as the Chief of the Hard Rock Bureau. In that position, I was responsible for administration and enforcement of the Metal Mine Reclamation Act and was involved in the review and analysis of several hard rock mining operations across the state.

HB 599 would provide for statutory recognition of what has been in past years an administrative policy. That is, minor modification or revisions to mine plans were reviewed with analysis of whether or not the modification or revision would result in a "significant impact to the human environment". If the agency determined that a particular permit modification did not result in a significant impact or the modification did not result in an impact which had not been addressed under previous environmental documents, then an EA would be completed for that revision.

I have been involved in both the regulatory side of mine permitting and on preparing permit applications and I have yet to see a situation where a mining company does not need to make minor changes in a plan, design, or in some cases, the location of a facility. These changes are usually the result of new information obtained during construction or operation of the mine. The information typically requires that modification in the design, construction, or placement of the facility is needed. For the most part, as long as the modification meets or exceeds the original design specifications for the facility, the change is considered to be minor and will not require a lengthy environmental review. This legislation would allow DSL personnel the flexibility to accommodate minor changes in mine planning, construction, and operation within the context of previous environmental reviews.

The determination as to whether a specific modification requires an EA or a more formalized public disclosure (EIS) still rests with the regulatory agency - DSL. The level of environmental protection would remain as required by statute.

CURE
Citizens United For A Realistic Environment

P.O. Box 856 • Whitehall, Montana 59759

SENATE NATURAL RESOURCES
EXHIBIT NO. 5
DATE 3-24-93
BILL NO. HB 599

TESTIMONY OF TAMARA J. JOHNSON
CONCERNING HB #599

Mr. Chairman and Members of the Committee:

By way of introduction, my name is Tamara (Tammy) J. Johnson. I am a wife, a mother of two and a member of C.U.R.E. (Citizens United for a Realistic Environment). We have over 300 members in our group and are growing daily. We organized with the purpose of promoting a balance between environmental protection and economic development. We strongly support solutions which will protect both the environment and the worker. This is, in our opinion, very critical for our state and it's people, especially now, when our state is facing tough economic times and at the same time, are trying to protect our lands, water and air.

Minor changes are continually needed in a mining operation plan. As a matter of fact, any business, not just mining, needs to evaluate their plans and make modifications on a regular basis. In mining, sometimes these changes are necessary to protect the employees, the environment or to become cost effective, which is extremely important these days. An example of these types of changes could be that a high wall in a pit has become unstable and a haul road needs to be rerouted to protect the safety of employees or an engineer determines that there is a better way to construct a diversion dam or perhaps the gold prices have made a big jump and the mine decides it is now profitable to extract some lower grade ore by making a minor change in the open pit. These changes will have no significant impact on the human environment and could actually enhance the environment and should be allowed to be done with a quick review by the Department of State Lands.

This legislation would enable the DSL to make a relatively quick review of these types of changes by using an Environmental Assessment and the mining operation can make the changes necessary without experiencing undue delays or added costs. The DSL is also saving in staff time and paperwork and therefore saving tax dollars. I would like to add that this is the current practice of the Department because the Administative Rules state that Environmental Assissments can be used for the types of changes that I have illustrated.

If a change in an operating plan may harm the environment, those changes would still have to undergo environmental review but again, common sense tells us that if an administrative office needs to be moved to another location, this should be able to be accomplished without a great deal of time or expense to the mine or to our State agencies. Both of them will benefit from the clearer definition that HB #599 provides. The worker will always benefit when their employer saves time and money and the State of Montana an all its' people benefit when agencies save time and tax dollars.

In conclusion, C.U.R.E. supports HB #599 and encourages you to do the same. Thank you for your time and for your consideration of this testimony.

Tamara J. Johnson
P.O. Box 624
Whitehall, MT 59759
287-3012

Explanation of Amendments to House Bill No. 318
Requested by Representative Rice
For the Committee on Natural Resources
March 19, 1993

Basically, the thirteen amendments address three areas of concern, as follows:

A. Amendments one through nine replace the "stringency" language put into this bill by the House. During consideration, the House added language to the effect that the Title V operating permit program developed and administered under this legislation could not be "any more stringent than" required by the federal regulations. The Department was concerned that the House "stringency" language represented an unduly restrictive limitation upon the implementation of the Title V operating permit program. The regulated community was concerned that the Department would seek to use this legislation as a "springboard" for the development of new substantive emissions, monitoring or reporting requirements, or that the Department would use its discretion allowed under the federal regulations to implement the strictest program possible.

After a great deal of discussion and debate, the regulated community and the Department have agreed on the amendments now being offered. These amendments remove the "stringency" limitation, which allows the Department to operate within the discretion allowed in the federal regulations. These amendments also strengthen the legislature's intent that: the Department not use this legislation as a means for imposing new substantive emissions, monitoring or reporting requirements, unless required by Title V; the Department act consistently with the operating permit framework and guidelines outlined in Title V and implementing regulations, and; that the operating program developed and administered by the Department, when viewed as a whole, should not be either a "bare bones" program or the strictest program allowed under the federal regulations.

B. Amendment ten addresses the basis for assessing fees, and the distinction between application and annual fees. Annual fees are based on actual emissions. This amendment clarifies that application fees are based on estimated actual emissions.

C. Amendments eleven through fourteen address the creation of separate fee subaccounts, and the provision for an outside audit of the expenditure of funds in these accounts. These amendments are routine and for clarification. The creation of separate subaccounts will not occur until July 1, 1994. A person may, at their own expense, use a qualified auditor to review the expenditure of funds by the Department from the subaccounts.

Amendments to House Bill No. 318
Third Reading Copy

Requested by Representative Rice
For the Committee on Natural Resources

Prepared by Paul Sihler
March 19, 1993

1. Page 4, line 9.
Strike: "THAT"

2. Page 4, line 10.
Following: "DEPARTMENT"
Insert: "to"
Following: "FOR"
Strike: "IMPOSING"
Insert: "imposition of any"

3. Page 4, line 11.
Following: "LIMITATIONS"
Insert: ", monitoring or reporting requirements, or other substantive requirements"

4. Page 4, line 12.
Following: "SUBCHAPTER V"
Insert: "and implementing regulations"

5. Page 4, line 13.
Strike: "DESIRE"
Insert: "intent"
Following: "PROGRAM"
Insert: "administered by the department"

6. Page 4, line 15.
Strike: "NO MORE STRINGENT THAN REQUIRED BY"
Insert: "consistent with the operating permit framework and guidelines outlined in"

7. Page 4, line 16.
Following: "SUBCHAPTER V"
Insert: "and implementing regulations. The legislature further intends that the operating permit program authorized by this bill, when viewed as a whole, should not invariably be limited to the minimum federal requirements but also should not invariably impose the strictest optional alternatives allowable under Subchapter V and implementing regulations"

8. Page 26, line 25 through page 27, line 2.
Strike: "NO" on page 26, line 25 through "OF" on page 27, line 2
Insert: "consistent with the operating permit framework and guidelines outlined in"

EXHIBIT #6
DATE 3-24-93
HB-318

9. Page 27, line 2.
Following: "ACT"
Insert: "and implementing regulations"

10. Page 36, line 7.
Following: "assess"
Strike: "fees for"
Insert: "an application fee based on estimated actual emissions or an annual fee based on"

11. Page 39, line 21.
Following: "**fees.**"
Insert: "(1)"

12. Page 40, lines 1 through 4.
Strike: "THE" on line 1 through "." on line 4
Insert: "(2) The operating permit fees and the construction permit fees must be maintained in separate accounts within the state special revenue fund.

(3) Upon request, the expenditure by the department of funds in these accounts may be audited by a qualified auditor at the end of each fiscal year. The cost of the audit must be borne by the person requesting the audit."

13. Page 52, lines 3, 5, and 7.
Strike: "13"
Insert: "12, 13(1) and (3),"

14. Page 52.
Following: line 8
Insert: "(3) [Section 13(2)] is effective July 1, 1994."

Montana Department of Health and Environmental Sciences
Air Quality Bureau

Testimony on HB 318

SENATE NATURAL RESOURCES
EXHIBIT NO. 7
DATE 3-24-93
BILL NO. HB 318

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

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

Overview

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

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

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

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

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

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

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

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

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

A Review of the Title V Program Requirements

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

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

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construction permit program is currently administered by the department.

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

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

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

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

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

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

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

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

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

Obviously, the real nuts and bolts of implementing this program will take place in rules to be proposed by the department for consideration and adoption by the Board of Health and Environmental Sciences. It is our intent to solicit as much outside input as possible during this process, and we will provide our draft rules to interested parties for review and comment even before the final draft rules are officially proposed. Although we cannot say with certainty what the final program will look like at this time, we are not setting out to propose a Title V program that is either "bare bones" or "as stringent as can be." Rather, we intend to put together a program that meets the needs of our state, taking into account the interests of all involved.

Strengthened Enforcement Authority

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

1. Changes required for the operating permit program. Without the following changes, the department will not obtain authorization from EPA to administer the operating permit program:

-- Amendments to the existing civil penalty statute to clarify that multiple violations occurring on the same day are counted as separate days of violation. Although the department has interpreted the existing statute in this manner in the past, the amendments clarify this point.

-- Amendments to the existing criminal punishment statute. Criminal violations of the Montana Clean Air Act would be subject to a maximum fine of $10,000 per day of each violation. Currently, the maximum penalty for criminal violations is $1,000 per day.

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

-- Under the federal Act, EPA may now issue administrative orders for civil penalties of up to $25,000 for each day

EXHIBIT 7
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xceed $200,000 total. The
n strative penalty authority of
each day of violation, not to
stent with the federal Act,
not be issued for violations
d. Appeal is to the Board of
iew. In determining the
partment and board are required
considered under the federal
efforts that have been made at
violator's ability to pay.
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n. This is consistent with
n the punishment applicable
er state environmental laws.

attention. We are available
ee.

& CHEMICAL COMPANY

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SENATE NATURAL RESOURCES
EXHIBIT NO. 8
DATE 3-24-93
BILL NO. HB 318

24, 1993

S COMMITTEE MEMBERS:

ur & Chemical Company has been actively
ity in Billings and the Yellowstone
es waste refinery gases and removes
ce useful agricultural and industrial
000 tons of potential sulfur dioxide
t year. That number represents about
as was emitted by the Billings-Laurel

pendent company, we support HB 318 as
f Health & Environmental Sciences and
bill, which establishes an operating
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tie our operating permit program to
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than many other locations in the nation.
protect the quality of that air from
ide it for the quick profit.

used its innovative entrepreneurial
for the citizens of the Yellowstone
is in the best tradition of Montana's
ask that you would join us in supporting
sion of HB 318 to provide a program that
ontana's clean air and flexibility for
will make us a leading force in the

ideration of our position.

Sincerely yours,

Mary E. Westwood

Mary E. Westwood
Director of Governmental Relations

SENATE NATURAL RESOURCES
EXHIBIT NO. 9
DATE 3-24-93
BILL NO. HB 318

EXXON COMPANY, U.S.A.
POST OFFICE BOX 1163 • BILLINGS, MONTANA 59103-1163

REFINING DEPARTMENT
BILLINGS REFINERY

March 24, 1993

The Honorable Don Bianchi
Chairman, Senate Natural Resources Committee

Dear Mr. Chairman:

The following comments are presented on behalf of the Exxon Co. U. S. A.'s Billings Refinery. These comments are in support of HB 318 as amended by the Department of Health and Environmental Sciences.

New amendments included in the bill represent the good faith implementation of a balance between minimum and maximum options defined in the federal Clean Air Act Amendments of 1990 (CAA).

The Department has requested that the references to stringency contained in the Statement of Intent, as well as Section 9, of HB 318 be revised. The Department has expressed the concern that the present language may overly restrict their application of this program. In light of this, Exxon is agreeable to the alternative language proposed by the state which requires that the provisions of the Montana program be "consistent" with federal requirements. We share with the Department the understanding that the revised language does not require or authorize the Department to adopt the stricter, optional alternatives adopted or recommended by EPA in its own regulations or in non-mandatory guidelines. In addition, we rely on the good faith assertion of the Department that other Exxon concerns regarding state implementation of the federal CAA program, including construction permit issues, will be addressed through the cooperative development of state rules and regulations.

Based on this interpretation, we support the requested changes. The intent of Subchapter V of the CAA is to create the framework for an operating permit program and not to impose new requirements. The Department has indicated plans to honor this intent by not seeking to impose new requirements or expand upon existing requirements through this program. We believe it is important this interpretation be part of the record.

Thank you for allowing us to comment.

Regards,

T. Evan Smith

T. Evan Smith,
Acting Refinery Manager

TES(TNS):dhh
cc: Committee Members

DATE 3/24/93

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB 423, HB 512, HB 599, HB 318

Name	Representing	Bill No.	Check One: Support	Oppose
Rex Manuel	GENEX	HB318	✓	
Dexter Busby	Montana Refining	HB318	✓	
Susan Callaghan	Mont. Power	HB318	✓	
Jeff Chaffee/Hon Sensibaugh/Tim Baker	DHES - Air Quality Bureau	HB318	✓	
Lance Clark	MT Assn Realtors	HB512	✓	
Frank Gassaway	DHES	HB512	✓	
Brian McNitt	MEIC	HB 423 HB 512 HB 318	X	
Jim Mockler	MT. Coal Council	HB318	✓	
Janelle Fallan	MT Petroleum	HB318	✓	
Tammy Johnson	CURE	HB599	✓	
Eric Williams	Peggas Gold	HB 318 HB599	X	
Ronna Alexander	MT. Pet. Marketers	HB512	X	
Mike Micone	Conoco	HB318	X	
David Ross	MT Audubon Legislative	HB 318	X	
"	"	HB 512	X	
Terry Tatsch	Chem-Northern, Inc.	HB 599	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-24-93

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB 423, HB512, HB599, HB318

Name	Representing	Bill No.	Check One: Support	Oppose
Fess Foster	Golden Sunlight Mine	HB599	X	
Mary Westwood	Montana Sulphur	HB318	w/Dept. Amends.	
Sandra Olsen	DSL	HB599	X	
Tom Ebzery	Exxon	HB318	X	
Bob Williams	Mont Mining Assn	HB599		
Don Allen	MT Wood Products Assn	HB318	X	
Kim Wilson	Clark Fork Coal	HB599		✓
John North	DSL	HB599	✓	
Dennis Olson	NPRC	HB599		✓
"	"	HB318		✓
Bob Williams	Mt Mining Assn	HB318	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

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