

MINUTES

**MONTANA
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Rep. Dick Knox, Chairman, on April 5, 1995, at 3:00 pm.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

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

Committee Business Summary:

Hearing: None
Executive Action: SB 382 Be Concurred In As Amended
SB 366 Be Concurred In As Amended

Tape 1, Side A

EXECUTIVE ACTION ON SB 382

Motion: REP. BILL TASH MOVED SB 382 BE CONCURRED IN.

Motion: REP. TASH MOVED SEN. HARP'S AMENDMENTS TO SB 382.

Discussion:

REP. TASH reviewed the amendments with the committee. EXHIBIT 1
REP. TASH withdrew his motion on the amendments until more copies could be made.

Motion: REP. JON ELLINGSON MOVED HIS AMENDMENTS TO SB 382.

Discussion:

REP. ELLINGSON explained his amendments. EXHIBIT 2

REP. TASH asked REP. ELLINGSON if he had discussed the amendments with SEN. HARP and the Department of Health and Environmental Sciences (DHES). REP. ELLINGSON said he hadn't because the amendments were more for clarification. REP. TASH questioned the necessity of amendment 1 because the word there is reference to local government on page 15, line 15 of the bill. REP. ELLINGSON said the amendments were suggested by the local health officer in Missoula because he was concerned that the local governments would be left out of the process.

REP. TASH asked Mr. Bob Robinson, Director, DHES, for his comments on the amendments. Mr. Robinson said the department wouldn't oppose the amendments, but didn't necessarily support them. If "local" was inserted in page 15, line 2, the department would have to consider local standards when it considered its cleanup remedy. It wouldn't necessarily bring local government into the decision making process. REP. TASH asked Mr. Robinson if there would be any primacy concerns if local standards were different than state standards. Mr. Robinson said he didn't think there would be any primacy concerns. The department would find out if the local government had an environmental standard that would be affected.

REP. AUBYN CURTISS said she was against the amendment because it expands the scope of the bill and should be approved by the sponsor.

REP. TASH asked Leo Berry, Attorney, Montana Mining Association, how he interpreted REP. ELLINGSON's amendment 4. Mr. Berry said amendment 4 makes a substantial change in the bill and the proponents wouldn't support it. Amendment 3 is repetitious, but there wouldn't necessarily be any objection to it.

REP. TASH said he was against REP. ELLINGSON's amendments, particularly amendment 4 because it appears to defeat the purpose of SB 382.

REP. ELLINGSON asked Mr. Berry if he had any problems with the first three amendments. Mr. Berry said he did. Currently, the local governments do not have input in the Superfund process at either the federal or state level. The bill provides that input. By adding "local" there could be many different local requirements depending on the municipality.

Tape 1, Side B

Motion: Voice vote was taken. Motion on REP. ELLINGSON's amendment failed 11 to 6.

Motion: REP. ELLINGSON MOVED AN AMENDMENT TO SB 382.

Discussion:

REP. ELLINGSON explained the amendment. EXHIBIT 3

Vote: Voice vote was taken. Motion carried unanimously.

Motion: REP. TASH MOVED SEN. HARP'S AMENDMENTS TO SB 382.

Discussion:

Martha Colhoun, EQC, explained the amendments. (See Exhibit 1)

REP. LILA TAYLOR asked Mr. Robinson if the Board of Health and Environmental Sciences will still exist after the reorganization. Mr. Robinson said the board won't exist. The board's functions will be carried out by the Board of Environmental Review and will be attached to the new Department of Environmental Quality.

REP. BOB RANEY referred to the amendment on page 3 (d) "relevant indications of anticipated land use from the owner of the facility and local planning officials." REP. RANEY said he was concerned about the adjacent land owners who also have anticipated land use and would have a lot to do with how well the site was cleaned up. They should also be considered. "Area land owners" should be added. REP. TASH said area land owners are already included in the permit criteria. Adjacent land would be protected in regards to any remedial actions. REP. RANEY agreed that the land would be protected, but the land value wouldn't be protected. The value of adjacent land is highly determined by the level of the cleanup of the polluted property and adjacent land owners will not have any input.

REP. ROBERT STORY said he didn't agree with REP. RANEY's reasoning because any level of cleanup would be better than before and would have to improve the property value of adjacent land owners.

Vote: Voice vote was taken. Motion on SEN. HARP'S amendments carried unanimously.

Motion: REP. TASH MOVED SB 382 BE CONCURRED IN AS AMENDED.

Tape 2, Side A

Discussion:

REP. EWER asked Mr. Robinson if he would object to adding a four year sunset provision to the bill. Mr. Robinson said the department discussed a sunset provision, but decided that if there were serious problems, the department would try to get them fixed during the 1997 legislative session.

REP. RANEY said the purpose of the bill is to make it cheaper to clean up a polluted site and to clean up on a lesser level. Citizens should be able to appeal a voluntary cleanup. The citizen's participation in the whole process has been significantly reduced intentionally. The consensus group that drew up all the amendments was compiled of the department and the proponents. There were no opponents through the entire process of the bill. REP. TASH said there was an opponent during the hearing, but the opponent seemed to automatically oppose the bill without any merit. A proponent, who was a Butte attorney dealing with environmental laws, made the statement that there are many sites that are environmental nightmares in the state, including some of the patented mining claims and without the incentive to clean up those sites, nothing will be done.

Motion: REP. EWER MOVED AN AMENDMENT TO INCLUDE A SUNSET PROVISION ENDING JANUARY 1, 1999, IN SB 382.

Discussion:

REP. EWER said he would support the bill if the sunset amendment passes.

REP. TASH said at the risk of losing REP. EWER's support, he resisted the amendment. A sunset provision would dilute some of the incentive to clean up sites.

REP. STORY asked REP. EWER if the bill were to sunset in four years would the people that had clean-up plans have to redo them or would they be grandfathered in. REP. EWER said the sunset wouldn't necessarily have to be for four years, it could be for six years to allow more time for those individuals to complete their cleanup process. The people that were still involved in the cleanup process would be grandfathered in under the sunset law.

Substitute Motion: REP. EWER MOVED AN AMENDMENT TO INCLUDE A SUNSET PROVISION WITH A GRANDFATHER CLAUSE, ENDING JANUARY 1, 2001 IN THE BILL.

Discussion:

REP. SCOTT ORR said he was against the sunset amendment. If the proponents to the bill, feel the bill isn't working, they will seek to remedy any problems with another bill.

REP. TASH said he was against the amendment for the same reasons that REP. ORR stated.

REP. STORY agreed with the amendment.

REP. DANIEL FUCHS said he was in favor of the amendment.

Tape 2, Side B

Vote: Roll call vote was taken. REP. EWER's substitute motion carried 11 to 7.

Motion: REP. EWER MOVED SB 382 BE CONCURRED IN AS AMENDED.

Voice vote was taken. Motion carried 14 to 4. REP. TUSS, REP. HARPER, REP. RANEY and REP. ELLINGSON voted no.

HEARING ON SB 366

Motion: REP. KARL OHS MOVED SB 366 BE CONCURRED IN.

Discussion:

REP. HAL HARPER said there has been some concern that the bill would take the Department of Natural Resources and Conservation (DNRC) out of the Federal Energy Regulatory Commission (FERC) review process where it concerns water users and other water uses. The agreement that Governor Racicot will send the bill back as an amendatory veto, will solve that concern and won't have any bearing on the problem that the bill was intended to solve. Therefore, there isn't any reason to try to amend the bill.

REP. EWER said he was against the bill. There is only one project that the bill will help. That project got \$118 million worth of tax exempt bonds from the state. It is getting a lower cost of financing and is saving about two percent a year. The tax breaks on the bonds cost the taxpayers money. The original project was designed for more than 50 megawatts. There were a lot of public hearings and no opponents attended. The Facility Siting Act decides what site is best. DNRC has waived the actual site as far as the criteria in complying with the Facility Siting Act is concerned. The project hasn't shown good faith in complying with the Act. The project site is right next to Exxon and is a good site. DNRC has worked hard to get the project through the Facility Siting Act. DNRC has sited and permitted

several projects under the Facility Siting Act and has never lost a case. There was an agreement between the project and DNRC that three modifications would be made in order to get financing. The project agreed to comply as rapidly as possible with the Facility Siting Act. Now the project is trying to gut the Facility Siting Act.

REP. BILL TASH said if the bill doesn't pass, companies will locate out of state. The Facility Siting Act, in its present state, is discouraging companies from locating in Montana.

REP. LILA TAYLOR supported SB 366.

Vote: Roll call vote was taken. **Motion carried 12 to 6.**

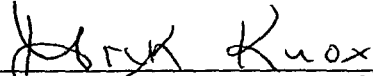
NATURAL RESOURCES COMMITTEE

April 5, 1995

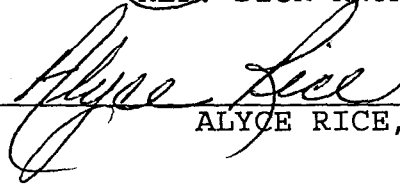
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ADJOURNMENT

Adjournment: 5:30 pm



REP. DICK KNOX, Chairman



ALYCE RICE, Secretary

DK/ar

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 4-5-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		



HOUSE STANDING COMMITTEE REPORT

April 6, 1995

Page 1 of 7

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 382 (third reading copy -- blue) be concurred in as amended.

Signed: *Dick Knox*
Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Story

1. Title, line 5.

Strike: "DEGREE OF"

Insert: "METHOD OF SELECTING"

2. Title, line 9.

Strike: "SECTION"

Insert: "SECTIONS 75-10-701 AND"

3. Title, line 10.

Following: "~~DATE AND~~"

Insert: "AN IMMEDIATE EFFECTIVE DATE AND"

4. Title, line 10.

Strike: "AN"

Strike: "DATE"

Insert: "DATES AND A TERMINATION DATE"

5. Page 13.

Following: line 23

Insert: "

Section 1. Section 75-10-701, MCA, is amended to read:

"75-10-701. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

Committee Vote:
Yes 14, No 7.

791045SC.Hdh

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

(2) "Director" means the director of the department of health and environmental sciences.

(3) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.

(4) (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located.

(b) The term does not include any consumer product in consumer use.

(5) "Fund" means the environmental quality protection fund established in 75-10-704.

(6) "Hazardous or deleterious substance" means a substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare or the environment and is:

(a) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14), as amended;

(b) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261; or

(d) any petroleum product.

(7) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other such resources within the state of Montana owned, managed, held in trust or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

(8) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for a release or threatened release under 75-10-715(1).

(9) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.

(10) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(11) "Reasonably anticipated future uses" means likely future land or resource uses that take into consideration:

(a) local land and resource use regulations, ordinances, restrictions, or covenants;

(b) historical and anticipated uses of the facility;

(c) patterns of development in the immediate area; and

(d) relevant indications of anticipated land use from the owner of the facility and local planning officials.

~~(11)~~ (12) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance), but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers

Insert: "; or

(e) a facility that is the subject of pending action under this part because the facility has been issued a notice commencing a specified period of negotiations on an administrative order on consent."

10. Page 20, line 7.

Following: "THROUGH"

Strike: "(1) (D)"

Insert: "(1)(e)"

11. Page 20, line 16.

Following: "(4)"

Strike: "EXCEPT" through "(2), IF"

Insert: "If"

12. Page 20, line 17.

Following: "DECISION"

Insert: "to reject the filing of the application"

13. Page 20, line 18.

Following: "UNDER"

Strike: "THIS SECTION"

Insert: "subsection (1) or (3)"

Following: "MAY"

Insert: ", within 30 days of receipt of the department's written decision pursuant to [section 9],"

14. Page 20, line 19.

Following: "SCIENCES."

Insert: "In reviewing a department decision to reject an application under subsection (1) or (3), the board shall apply the standards of review specified in 2-4-704."

15. Page 20, line 21.

Following: "BOARD"

Insert: ", the department,"

16. Page 20, line 23.

Following: "7."

Insert: "A hearing before the board may not be requested regarding a decision of the department made pursuant to subsection (2)."

17. Page 21, lines 2, 4 and 17.

Strike: "6"

Insert: "7"

18. Page 21, line 23.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

19. Page 23, lines 15 and 24.

Strike: "8(1)"

Insert: "9(1)"

20. Page 23, line 30.

Following: "SATISFY THE"

Insert: "public participation"

21. Page 25, line 9.

Strike: "6"

Insert: "7"

22. Page 26, line 2.

Strike: "4(3)"

Insert: "5(3)"

23. Page 26, line 16.

Strike: "10(2)(B)"

Insert: "11(2)(b)"

24. Page 26, lines 24 through 27.

Strike: subsection (14) in its entirety

Insert: "

(14) Immunity from liability under this section does not apply to a release that is caused by conduct that is negligent or grossly negligent or that constitutes intentional misconduct."

25. Page 27, line 9.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

26. Page 28, line 3.

Following: "FOR"

Strike: "THE"

Insert: "[insert"

Following: "IDENTIFIED"

Insert: "]"

27. Page 30, line 13.

Page 30, lines 14 and 15.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

28. Page 30, line 17.

Following: "Applicability."

Insert: "(1)"

29. Page 30, line 18.

Strike: "OR ADMINISTRATIVE"

30. Page 30, lines 19 through 21.

Following: "."

Strike: "CLAIMS" on line 19 through "." on line 21

31. Page 30.

Following: line 21

Insert: "(2) [Sections 2 through 10] apply after January 1, 2001, to voluntary cleanup plans approved by the department of health and environmental sciences between [the effective date of this act] and January 1, 2001."

32. Page 30.

Following: line 23

Insert: "

NEW SECTION. Section 15. Termination. [Sections 2 through 10] terminate January 1, 2001."

33. Page 30.

Following: line 23

Insert: "NEW SECTION. Section 16. Effective date. [This act] is effective on passage and approval."

-END-



HOUSE STANDING COMMITTEE REPORT

April 6, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 366 (third reading copy -- blue) be concurred in.

Signed: Dick Knox
Dick Knox, Chair

Carried by: Rep. Holland

Committee Vote:
Yes 12, No 6.

791100SC.Hdh

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Natural Resources

DATE 4-5-95 BILL NO SB 366 NUMBER

MOTION: SB 366 BE CONCURRED IN

NAME	AYE	NO
Rep. Dick Knox, Chairman	✓	
Rep. Bill Tash, Vice Chairman, Majority	✓	
Rep. Bob Raney, Vice Chairman, Minority		✓
Rep. Aubyn Curtiss	✓	
Rep. Jon Ellingson		✓
Rep. David Ewer		✓
Rep. Daniel Fuchs	✓	
Rep. Hal Harper		✓
Rep. Karl Ohs	✓	
Rep. Scott Orr	✓	
Rep. Paul Sliter	✓	
Rep. Robert Story	✓	
Rep. Jay Stovall	✓	
Rep. Emily Swanson		✓
Rep. Lila Taylor	✓	
Rep. Cliff Trexler	✓	
Rep. Carley Tuss		✓
Rep. Doug Wagner	✓	

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Natural Resources

DATE 4-5-95 BILL NO. SB 382 NUMBER

MOTION: Rep. Ewer's 6 year Sunset Amendment

NAME	AYE	NO
Rep. Dick Knox, Chairman		✓
Rep. Bill Tash, Vice Chairman, Majority		✓
Rep. Bob Raney, Vice Chairman, Minority	✓	
Rep. Aubyn Curtiss		✓
Rep. Jon Ellingson	✓	
Rep. David Ewer	✓	
Rep. Daniel Fuchs	✓	
Rep. Hal Harper	✓	
Rep. Karl Ohs	✓	
Rep. Scott Orr		✓
Rep. Paul Sliter		✓
Rep. Robert Story	✓	
Rep. Jay Stovall		✓
Rep. Emily Swanson	✓	
Rep. Lila Taylor	✓	
Rep. Cliff Trexler	✓	
Rep. Carley Tuss	✓	
Rep. Doug Wagner		✓

Amendments to Senate Bill No. 382
Second Reading Copy

Requested by Sen. Harp
For the Committee on Natural Resources

Prepared by Martha Colhoun
March 31, 1995

1. Title, line 5.

Strike: "DEGREE OF"

Insert: "METHOD OF SELECTING"

2. Title, line 9.

Strike: "SECTION"

Insert: "SECTIONS 75-10-701 AND"

3. Title, line 10.

Following: "DATE AND"

Insert: "AN IMMEDIATE EFFECTIVE DATE AND"

4. Page 13.

Following: line 23

Insert: "

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(4) (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous or deleterious substance has been deposited; stored, disposed of, placed, or otherwise come to be located.

(b) The term does not include any consumer product in consumer use.

(5) "Fund" means the environmental quality protection fund established in 75-10-704.

(6) "Hazardous or deleterious substance" means a substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare or the

environment and is:

(a) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14), as amended;

(b) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261; or

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(8) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for a release or threatened release under 75-10-715(1).

(9) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.

(10) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(11) "Reasonably anticipated future uses" means likely future land or resource uses that take into consideration:

(a) local land and resource use regulations, ordinances, restrictions, or covenants;

(b) historical and anticipated uses of the facility;

(c) patterns of development in the immediate area; and

(d) relevant indications of anticipated land use from the owner of the facility and local planning officials.

~~(11)~~ (12) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance), but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers as defined in 80-10-101(2) when applied as part of accepted agricultural practice.

~~(12)~~ (13) "Remedial action" includes all notification, investigation, administration, monitoring, cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action, health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or threatened release.

~~(13)~~ (14) "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or request issued by the department, the United States, or any federal agency, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.

~~(14)~~ (15) "Remedial action contractor" means:

(a) any person who enters into and is carrying out a remedial action contract; or

(b) any person who is retained or hired by a person described in subsection ~~(14)~~(a) (15)(a) to provide services relating to a remedial action.

~~(15)~~ (16) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies.""

Renumber: subsequent sections

5. Page 13, line 27.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

6. Page 19, lines 1 and 5.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

7. Page 19, line 24.
Following: "ELIGIBLE"
Strike: "TO FOLLOW"
Insert: "for"

8. Page 20, line 6.
Following: the second "ACT"
Strike: "."
Insert: "; or

(e) a facility that is the subject of pending action under this part because the facility has been issued a notice commencing a specified period of negotiations on an administrative order on consent."

9. Page 20, line 7.
Following: "THROUGH"
Strike: "(1) (D)"
Insert: "(1) (e)"

10. Page 20, line 16.
Following: "(4)"
Strike: "EXCEPT" through "(2), IF"
Insert: "If"

11. Page 20, line 17.
Following: "DECISION"
Insert: "to reject the filing of the application"

12. Page 20, line 18.
Following: "UNDER"
Strike: "THIS SECTION"
Insert: "subsection (1) or (3)"
Following: "MAY"
Insert: ", within 30 days of receipt of the department's written decision pursuant to [section 9],"

13. Page 20, line 19.
Following: "SCIENCES."
Insert: "In reviewing a department decision to reject an application under subsection (1) or (3), the board shall apply the standards of review specified in 2-4-704."

14. Page 20, line 21.
Following: "BOARD"
Insert: ", the department,"

15. Page 20, line 23.
Following: "7."
Insert: "A hearing before the board may not be requested regarding a decision of the department made pursuant to subsection (2)."

16. Page 21, lines 2, 4 and 17.

Strike: "6"

Insert: "7"

17. Page 21, line 23.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

18. Page 23, lines 15 and 24.

Strike: "8(1)"

Insert: "9(1)"

19. Page 25, line 9.

Strike: "6"

Insert: "7"

20. Page 26, line 2.

Strike: "4(3)"

Insert: "5(3)"

21. Page 26, line 16.

Strike: "10(2)(B)"

Insert: "11(2)(b)"

22. Page 26, lines 24 through 27.

Strike: subsection (14) in its entirety

Insert: "

(14) Immunity from liability under this section does not apply to a release that is caused by conduct that is negligent or grossly negligent or that constitutes intentional misconduct."

23. Page 27, line 9.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

24. Page 28, line 3.

Following: "FOR"

Strike: "THE"

Insert: "[insert"

Following: "IDENTIFIED"

Insert: "]"

25. Page 30, line 13.

Page 30, lines 14 and 15.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

26. Page 30, line 18.

Strike: "OR ADMINISTRATIVE"

27. Page 30, lines 19 through 21.

Following: "."

Strike: "CLAIMS" on line 19 through "." on line 21

28. Page 30.

Following: line 23

Insert: "NEW SECTION. Section 16. Effective date. [This act]
is effective on passage and approval."

Amendments to Senate Bill No. 382
Second Reading Copy

EXHIBIT 2
DATE 4-5-95
SB 382

Requested by Rep. Ellingson
For the Committee on Natural Resources

Prepared by Martha Colhoun
April 3, 1995

1. Page 15, line 2.

Following: "STATE"

Insert: ", local,"

2. Page 15, line 10.

Following: the second "TECHNOLOGIES"

Insert: "as the primary means of remediation"

3. Page 16, line 1.

Following: "BENEFITS"

Insert: "and costs"

4. Page 16, line 2.

Following: "ACCOUNT"

Insert: "the benefits and costs related to public health, safety,
and welfare and the environment and to the local tax base,
neighboring property tax values, and community economic
development opportunities and taking into account"

EXHIBIT 3
DATE 4-5-95
SB. 382

Amendments to Senate Bill No. 382
Second Reading Copy

Requested by Rep. Ellingson
For the Committee on Natural Resources

Prepared by Martha Colhoun
April 4, 1995

1. Page 23, line 30.
Following: "SATISFY THE"
Insert: "public participation"