

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Rep. Dick Knox, Chairman on February 10, 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: SB 203, HB 403
Executive Action: HB 338 DO PASS AS AMENDED
HB 351 DO PASS AS AMENDED
HB 350 TABLED
SB 48 DO CONCUR
HB 411 DO PASS

Tape 1, Side A

HEARING ON SB 203Opening Statement by Sponsor:

SENATOR LORENTS GROSFIELD, Senate District 13, Big Timber, said SB 203 is a water rights compact between the State of Montana and the National Park Service. The reserved water rights compact commission was created in 1979 by the Montana Legislature. The Compact Commission is authorized to negotiate settlements with federal agencies and Indian tribes that claim federal reserve water rights in Montana. The Compact Commission operates with negotiating teams. The compact process is an exercise of Montana jurisdiction over the adjudication of federal and tribal water rights. In the negotiations all existing Montana water rights are fully protected. **SEN. GROSFIELD** distributed a summary of the water rights compact proposal. **EXHIBIT 1** The compact was approved unanimously by the negotiating team and unanimously by the compact commission. It went through the Senate Judiciary Committee and was approved unanimously and was then approved by the Senate 49-0. All the negotiating sessions are open to the public. There were public meetings at Crow Agency, Lodge Grass and Billings. There was significant concern expressed by the Crow Tribe so they were included in all of the sessions. The compact does not conflict with the current or future water rights of the Crow Tribe. In the compact, the federal government has agreed that the Crow Tribal rights will be superior to anything in the compact.

Proponents' Testimony:

Chris Tweeten, Chairman, Reserved Water Rights Compact Commission, said this compact deals with the Little Bighorn National Battlefield and the Bighorn Canyon National Recreation Area and recognizes small consumptive uses of water for the facilities of the Park Service. It also recognizes instream flow rights for the Little Bighorn National Battlefield and on several minor streams and springs at the Bighorn Canyon National Recreation Area. **Mr. Tweeten** urged the committee's favorable consideration of SB 203.

Barbara Cosens, Legal Counsel, Reserved Water Rights Compact Commission, said the Compact Commission went to great lengths to involve the public. It sent out notices to over 200 people about every meeting. **Ms. Cosens** distributed and read a letter from **Clara Nomee, Chair, Crow Tribal Council.** **EXHIBIT 2**

Owen Williams, National Park Service, Water Rights Branch.
Written testimony. **EXHIBIT 3**

Mark Simonich, Director, Department of Natural Resources and Conservation (DNRC), on behalf of Governor Racicot, said the compact is a very important step in helping the State of Montana reach the final adjudication of its streams. The department supports SB 203. When the compact is adopted the additional work

that the department will be involved in will be able to be done with the existing staff.

Harley Harris, Assistant Attorney General. Written testimony.
EXHIBIT 4

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. JAY STOVALL asked **Ms. Cosens** if the State of Montana represents non-Indian water right holders on reservations under the compact. **Ms. Cosens** said the commission has always taken the position that it does not represent individual water users. It represents the state as a whole.

Tape 1, Side B

REP. DOUG WAGNER asked **Ms. Cosens** what would happen if there was growth in the area and the districts had already met the water use available to them under the compact. **Ms. Cosens** said water users in the area would still go through the same process that everyone else does which would be to go to DNRC for a permit. The condition on the permit, if it is for consumptive use of surface flow from the Little Bighorn or one of its tributaries, would say "this is subject to the instream flow rights of the National Park Service and subject to administration by DNRC." It would also have a requirement that a controllable headgate must be installed and records kept when the headgate is opened and closed.

REP. AUBYN CURTISS asked **Ms. Cosens** if negotiations are being done basin by basin or agency by agency. **Ms. Cosens** said the commission is negotiating agency by agency. **REP. CURTISS** asked **Ms. Cosens** if it was possible that the compact could be challenged later on by the Crow Tribe. **Ms. Cosens** pointed out that the letter she distributed said that the Crow Tribe does not object to the negotiations. Politics are such that that opinion could change. Because there is no impact on the Crow Tribal water right it is difficult to see what kind of valid objection it could have.

Closing by Sponsor:

REP. GROSFIELD said he is Chairman of the Compact Commission's Crow Tribal negotiating team and he also serves on the Forest Service negotiating team. The negotiations involve dozens of meetings. Every word in the compact has been agreed upon by the negotiating team before it goes to the Legislative Council. The compact settles for all time, all Park Service reserved water rights within the State of Montana.

Tape 2, Side A

HEARING ON HB 403

Opening Statement by Sponsor:

REP. DUANE GRIMES, House District 39, Clancy, said HB 403 was the result of a great deal of thought and anguish over the last couple of years about the difficulties his community experienced over the issue of burning hazardous waste. HB 403 is a realistic, practical approach to a very devious and controversial problem. The bill is fair to both sides. It creates a new section of law that will deal with the commercial hazardous waste incinerators. **REP. GRIMES** distributed an amendment that addresses section 1 of the bill. **EXHIBIT 5** The permitting process will develop guidelines under which a hazardous waste facility, specifically Ash Grove Cement Company, would be permitted to burn hazardous waste. The parameters that would be set up during the trial burn would be followed with a five-year permit at which time there would be another trial burn and Ash Grove would apply for another permit. The Department of Health and Environmental Sciences would periodically monitor the burning of hazardous waste at the plant. The bill has a two-year sunset that would allow the Legislature to reconsider this legislation. This bill is not intended to eliminate the permitting process or the proposal of the plant to burn hazardous waste.

Tape 2, Side B

Proponents' Testimony: None

Opponents' Testimony:

Maureen Cleary-Schwinden, Women Involved in Farm Economics (WIFE), Dairymens Association (DA), disagreed that HB 403 was economically feasible and practical. WIFE and DA also disagree with the concept of self-monitoring. **Ms. Cleary-Schwinden** urged the committee to oppose HB 403.

Ann Hedges, Montana Environmental Information Center. Written testimony. **EXHIBIT 6**

Willa Hall, League of Women Voters, opposed HB 403.

J. V. Bennett, Montana Public Interest Research Group, said HB 403 will not protect public health; it will simply document how many of the extremely toxic substances to which the surrounding residences have been exposed. It isn't right to use the surrounding residents as guinea pigs to confirm whether or not the cement plant can burn the hazardous waste properly.

Bill Allen, Montana Audubon Legislative Fund, said currently there are no standards at the state or federal level by which to

measure the monitoring efforts. Without those standards there can be no enforcement.

Ann Johnson, Montanans Against Toxic Burning, said there seems to be a perception that monitoring assures safety but that is not the case. Monitoring measures emissions. If testing is done and it is determined that dioxins are being emitted at a higher level than the allowable standards, people will have been exposed to those dioxins while those tests have been going on and the results have been examined.

Paul Johnson, Citizens for a Healthy Future, said a monitoring bill as weak as HB 403 will not do anything to assure public health in an area where hazardous wastes are being burned by a cement plant. Monitoring can only determine what has happened after someone has been poisoned. The bill doesn't provide for continuous monitoring. It doesn't provide any standard against which the department or anyone else can measure the results of the tests. The Citizens for a Healthy Future cannot support the bill unless it is amended to provide rulemaking authority to the department to establish uniform standards for dioxins, heavy metals and other hazardous material.

Tape 3, Side A

Tom Daubert, Ash Grove Cement Company, opposed HB 403 but commended **REP. GRIMES** for his intent. The bill portrays misunderstandings of the technology that Ash Grove proposes to use, the permitting process it is subject to and how the Resource Conservation and Recovery Act is designed to monitor and enforce the law in regard to these kinds of facilities. Ash Grove has been in operation for 32 years and is cleaner today than it was when it first began operating. The last time it was tested it was 50% below the Clean Air Act requirements. The plant has constantly been upgraded. Ash Grove has put over \$10 million since 1988 into upgrading the quality of the plant at Montana City to lower the environmental impact and improve its performance.

The plant provides about half of the cement consumed in Montana. It is one of the only cement plants in the entire region that makes as many different kinds of cement as it does. The plant spends about \$7 million a year locally on goods and services, employs over 85 people and supplies over 30% of the local school property tax base funding. The cement industry is enduring threatening economic times. Since 1977 60% of the nation's cement plants using the wet process technology used in Montana City have closed. Over 60% percent of those that haven't closed have gone to foreign ownership. Of the top ten U. S. cement companies that operated in 1977 only three are still in operation which includes Ash Grove. The plant has 100 years of rock ready to be turned into cement. To remain economically viable it must cut its costs. Therefore, its proposal is to use a technology that has been used elsewhere and that is to substitute

traditional fossil fuel for a certain percentage of alternate hazardous waste derived fuel. The process will also supply the state with a means of disposal for certain hazardous wastes.

There are a lot of myths circulating regarding this subject. One of them is that the plant is going to suddenly start creating dioxins through using waste derived fuels. The fact is there are numerous sources in society of dioxins of which the vast majority are completely unregulated. Of the facilities and sources that are regulated, not one is regulated for dioxins, yet they are all creating dioxins and have been for many years. Of all the sources in Montana, both regulated and unregulated, only one is in line to be studied for dioxins, to be risk assessed, to be controlled, monitored and forced in terms of its dioxin emissions. That one facility is Ash Grove Cement Company. The only reason it's in line for that kind of regulation is because it has made this proposal. Without it, Ash Grove could still operate as it has, kicking out who knows how much dioxin, never needing to be monitored just as Colstrip or any other air permittee in the state has never been monitored for dioxins; yet the likelihood is that every one of those facilities has generated dioxins. Huge quantities of traditional fossil fuels are not necessarily benign and hazardous wastes aren't necessarily worse than traditional fossil fuels.

Because of Ash Grove's permit proposal it has recently tested the stack in Montana City for dioxin. Ash Grove's cement kiln in Kansas burns 62% of its fuel in the form of hazardous wastes and produced considerably lower dioxins when last tested than the Montana City kiln did using 100% fossil fuels. Ash Grove's proposal for Montana is a maximum of 20% in the form of hazardous waste derived fuels. Ash Grove believes from its wealth of experience and data gathering at other plants that the overall environmental impacts of the Montana City plant can be improved through this proposal. The economics of the plant will be enormously improved because it will be able to invest in a greater state of the science technology for pollution control.

There is no scientific rationale for HB 403. The bill is economically prohibitive to Ash Grove. It could very well be a project killer. Ash Grove submitted its application in April 1993. At the end of 1993 the agencies told the company that it needed more information before the application could be complete. Ash Grove spent all of 1994 having consultants and contractors gather more data in hopes of rendering the application complete. The application is still not complete. A technical and scientific review cannot begin until the application is complete. In addition, there will be an environmental impact statement and a risk assessment required.

If the risk assessment demonstrates there is no reason to fear the proposal the company will be allowed to conduct a trial burn which is a permitting requirement. In a trial burn the company would be required to use fuels that are worse than would ever be

allowed in ordinary waste fuels. Through the trial burn period every emission is monitored. A trial burn costs from \$750,000 to \$1 million. All of the tests have to be passed before Ash Grove can get a permit. The permit conditions prescribe what fuel inputs have to be, which will always be less than they were during the trial burn. The company would be required to monitor emissions continuously and keep records. **Mr. Daubert** urged the committee to think carefully about HB 403 and predicted that when the Legislature convenes in two years Ash Grove will still not have a permit decision. **EXHIBITS 7 THROUGH 15**

Dan Pittman, Self, Montana City, opposed HB 403.

Allen Lefohn, Ph.D, Clancy. Written testimony. **EXHIBIT 16**

Informational Testimony: None

Questions From Committee Members and Responses:

REP. DAVID EWER asked **Mr. Daubert** if Ash Grove would pay for the waste fuel or would it be paid to take it and if so, how much. **Mr. Daubert** said it was his understanding that the companies in the midwest that use waste fuel are paying for it and it costs less than coal would cost.

Tape 3, Side B

REP. HAL HARPER asked **Mr. Daubert** if the company was only going to burn Chem Fuel. **Mr. Daubert** said that is the present proposal. Chem Fuel has different kinds of wastes that are processed according to a technology that is patented. **REP. HARPER** asked **Mr. Daubert** if any of the Chem Fuel was manufactured in Montana. **Mr. Daubert** said not presently because there isn't any market for it. **REP. HARPER** asked **Mr. Daubert** if the company would have to modify its permit if it used waste fuel other than Chem Fuel. **Mr. Daubert** said he didn't think so. If certain waste streams are homogeneous enough they can go directly from the generator to the cement kiln if the kiln has a permit to take it. Columbia Falls' aluminum plant stream is extremely homogeneous. **REP. HARPER** said the fuel at the plant in Chunute, Kansas has a 38% fossil mix with a 62% hazardous waste mix. The Montana City plant has 100% fossil fuel. He asked **Mr. Daubert** what mixture made up the fossil fuel. **Mr. Daubert** said the mixture **Rep. Harper** was referring to was an average from three different test runs. One was natural gas, one was coal and one was coal and pitch. The highest dioxin number came from natural gas. The Chunute figures are from the most recent test. The company wasn't happy with the dioxin numbers from a previous tests so it made some changes to lower the dioxin. **REP. HARPER** asked **Mr. Daubert** who did the tests. **Mr. Daubert** deferred the question to **Joe Scheeler, Ash Grove Cement Co., Montana City**. **Mr. Scheeler** said the tests were done in accordance with EPA protocol and were contracted out to an independent contractor. **REP. HARPER** asked **Mr. Daubert** who did the tests at Montana City.

Mr. Daubert said it was Amtest which is based in Seattle and some Montana regulators witnessed the tests.

REP. HARPER asked **Jeff Chaffee**, Department of Health and Environmental Sciences (DHES) if he could verify that the test at Montana City was totally independent. **Mr. Chaffee** said one of the department's air quality inspectors attended the test strictly to observe because it was not a compliance test. Generally when stack tests are conducted by companies they are done by stack testing contractors. The department tries to attend those tests to do checks and audits of the testing procedures to make sure they are done correctly. If it is a compliance test a more complete audit is done.

CHAIRMAN KNOX asked **Ms. Hedges** if he understood correctly from her testimony that she felt a test conducted by the cement company would be worthless. **Ms. Hedges** replied that was correct.

Tape 4, Side A

CHAIRMAN KNOX asked **Mr. Scheeler** to comment on **Ms. Hedge's** statement. **Mr. Scheeler** said testing is a very serious business. Invalidating, lying, or attempting to change test results is a criminal act. Environmental and safety professionals as well as the plant managers have to sign on the dotted line that the tests were done in accordance with EPA protocols. The contractors that provide the testing services are legally liable for the results as well. A contractor that has millions of dollars invested in specialized testing equipment and specialized test crews will not be in business very long if the results aren't legally defensible.

Closing by Sponsor:

REP. GRIMES closed.

Other Committee Business:

REP. SCOTT ORR said during executive actions the committee has been allowing people from the audience to testify. The committee has had its opportunity to ask questions. **REP. ORR** said there reaches a point when the committee needs to make a decision and asked if the committee would agree not to allow testimony during executive actions. **REP. HARPER** said it is within the power of any committee member to object to testimony during executive action. **CHAIRMAN KNOX** said the committee was a very thorough committee and did ask a lot of questions, but asked the committee members to use restraint in that regard and be credible about the process. He said he believed that there are specific situations during executive action when it is essential to receive some information from qualified people.

EXECUTIVE ACTION ON HB 338

Motion: REP. SCOTT ORR MOVED HB 338 DO PASS.

Motion/Vote: REP. CLIFF TREXLER MOVED AN AMENDMENT TO HB 338.

EXHIBIT 17. Voice vote was taken. Motion to adopt the Trexler amendment carried 14 to 3. REP. EWER, REP TUSS and REP. ELLINGSON voted no.

Motion/Vote: REP. ORR MOVED HB 338 DO PASS AS AMENDED. Roll call vote was taken. Motion carried 10 to 7.

Tape 4, Side B

EXECUTIVE ACTION ON HB 351

Motion: REP. HAL HARPER MOVED LEROY SCHRAMM'S AMENDMENT THAT ALLOWS MINERAL RIGHTS TO BE TRANSFERRED WHEN LAND IS SOLD.

Discussion:

REP. HARPER asked John North, Attorney, Department of State Lands if the law that prohibits transferring mineral rights applies to lands owned by federal, state or local governments. Mr. North said Title 77 where the law is found, would not apply to these lands.

Vote: Voice vote was taken. Motion to adopt the Schramm amendment carried unanimously.

Motion/Vote: REP. HARPER MOVED HB 351 DO PASS AS AMENDED. Voice vote was taken. Motion carried unanimously.

EXECUTIVE ACTION ON HB 350:

Motion/Vote: REP. ROBERT STORY MOVED TO TABLE HB 350. Voice vote was taken. Motion carried unanimously.

EXECUTIVE ACTION ON SB 48

Motion/Vote: REP. TREXLER MOVED SB 48 BE CONCURRED IN. Voice vote was taken. Motion carried 15 to 3. REP. SLITER, REP. WAGNER AND REP. CURTISS voted no.

EXECUTIVE ACTION ON HB 411

Motion: REP. SCOTT ORR MOVED HB 411 DO PASS.

Discussion:

Mr. Kakuk distributed letters from Larry Brown, Agriculture Preservation Association, and the Department of Health and Environmental Sciences (DHES) in answer to questions the committee had during the hearing on HB 411. EXHIBITS 18 and 19

REP. CARLEY TUSS said she thought executive action should be postponed until February 13 because she understood DHES is in the process of negotiating a memorandum of understanding with the Army Corps of Engineers. REP. TUSS said she would like more information about the effect HB 411 has on any memorandum of understanding that is consummated before the effective date of the bill which is October 1, 1995.

REP. ORR disagreed with REP. TUSS. He said the purpose of the bill is to take the state out of the 401 process entirely.

Tape 5, Side A

Motion: REP. TUSS MOVED TO POSTPONE EXECUTIVE ACTION ON HB 411 UNTIL FEBRUARY 13.

Discussion:

REP. ORR resisted REP. TUSS'S motion.

REP. TUSS said her motion was not an attempt to kill the bill, it was an attempt to get more information.

Vote: Voice vote was taken. REP. TUSS'S motion failed 12 to 6.

Vote: Roll call vote was taken. Motion that HB 411 Do Pass carried 12-6.

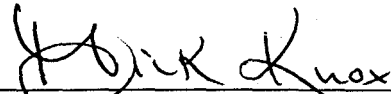
HOUSE NATURAL RESOURCES COMMITTEE

February 10, 1995

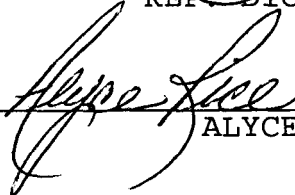
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ADJOURNMENT

Adjournment: 7:00 pm



REP. DICK KNOX, Chairman



ALYCE RICE, Secretary

DK/ar

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 2-10-95

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

February 13, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that **House Bill 338** (first reading copy -- white) **do pass as amended.**

Signed: _____

Dick Knox
Dick Knox, Chair

And, that such amendments read:

1. Page 1, line 22.
Strike: "that" through "life"

-END-

Committee Vote:

Yes 10, No 7

370859SC.Hbk

Amendments to House Bill No. 338
First Reading Copy

Requested by Rep. Trexler
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 13, 1995

1. Page 1, line 22.
Strike: "that" through "life"



HOUSE STANDING COMMITTEE REPORT

February 13, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 48 (third reading copy -- blue) be concurred in.

Signed: _____

Dick Knox
Dick Knox, Chair

Carried by: Rep. Knox

Committee Vote:

Yes 15, No 3.

370900SC.Hbk



HOUSE STANDING COMMITTEE REPORT

February 13, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that House Bill 411 (first reading copy -- white) do pass.

Signed: _____

Dick Knox

Dick Knox, Chair

DS
Committee Vote:

Yes *12*, No *6*.

370902SC.Hbk

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Natural Resources

DATE 2-10-95 BILL NO. 338 NUMBER _____

MOTION: HB 338 DO PASS AS AMENDED

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	✓	

COMMITTEE PROXY

Date 2/10/94

I request to be excused from the Natural Resources
Committee meeting this date because of other commitments. I
desire to leave my proxy vote with Chairman, Knox.

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
HB 338	X	
HB 350 Table	X	
HB 351	X	
SB 40	X	
HB 411	X	
HB 412	X	
AMENDMENT for 351		
AMENDMENT for 350		
AMENDMENT FOR 338		
AMENDMENT FOR 411		

VOTE
WITH
CHAIRMAN }

NOTE
WITH
CHAIRMAN

[illegible]

Rep. Karl Ols
(Signature)

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Natural Resources

DATE 2-10-95 BILL NO. HB 411 NUMBER

MOTION: HB 411 DO PASS

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 2-10-95 BILL NO HB 338 NUMBER

MOTION: HB 338 DO PASS AS AMENDED

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	✓	

SB 203

MT. RESERVED WATER RIGHTS COMPACT COMMISSION / NATIONAL PARK SERVICE
WATER RIGHTS COMPACT PROPOSAL

Little Bighorn Battlefield National Monument/Bighorn Canyon National Recreation Area
January, 1995

EXHIBIT 1

DATE 2-10-95

SB 203

INTRODUCTION

- * Montana Reserved Water Rights Compact Commission (RWRCC) created in 1979 by Montana Legislature as part of the State's general stream adjudication.
- * Authorized to negotiate settlements with federal agencies and Indian tribes claiming federal reserved water rights in Montana.
- * A federal reserved water right is a right to use water that is implied from an act of Congress, a treaty, or an executive order establishing a tribal or federal reservation.

BACKGROUND OF NATIONAL PARK SERVICE NEGOTIATIONS

- * 1993 - Legislature approved compact for Yellowstone National Park, Glacier National Park, and Bighole National Battlefield.
- * RWRCC and National Park Service (NPS) negotiated water rights settlement for two remaining units, Bighorn Canyon National Recreation Area and Little Bighorn Battlefield National Monument.
- * Compact approved by the full RWRCC and NPS management.
- * Compact must be adopted by the Montana Legislature, signed by U.S. Department of the Interior and U.S. Department of Justice. Following Legislative approval Compact must be integrated into Water Court decrees for each water basin involved.

PUBLIC INVOLVEMENT

- * Mailing list developed by RWRCC and NPS (200+ names). Summary of proposal sent to all names on list.
- * Comments solicited from local water users and Crow Tribal officials during negotiating process.
- * Public meetings: Crow Agency, April 1994; Lodge Grass and Billings, November 1994.
- * Negotiating sessions open to the public.

COMPACT AGREEMENT

- * Quantification of NPS reserved water rights in no way conflicts with current or future water rights of the Crow Tribe or with rights derived from Crow Tribal rights.
- * Any administration by the State to enforce the NPS right is limited to new water uses obtained by permit application to the State after the date of the compact, and may also be limited by any future determination of Crow jurisdiction over water rights on the Reservation.
- * NPS water right includes:
 - consumptive uses to be diverted from streams or supplied from groundwater for visitor and administrative facilities and ground maintenance at the two areas;
 - instream flow on Little Bighorn River and west side of Bighorn Canyon Recreation Area.

NPS RESERVED WATER RIGHT CLAIM SITES, BIGHORN CANYON NATIONAL RECREATION AREA, Montana

Bighorn Canyon Recreation Area (NPS);
reserved water rights claimed

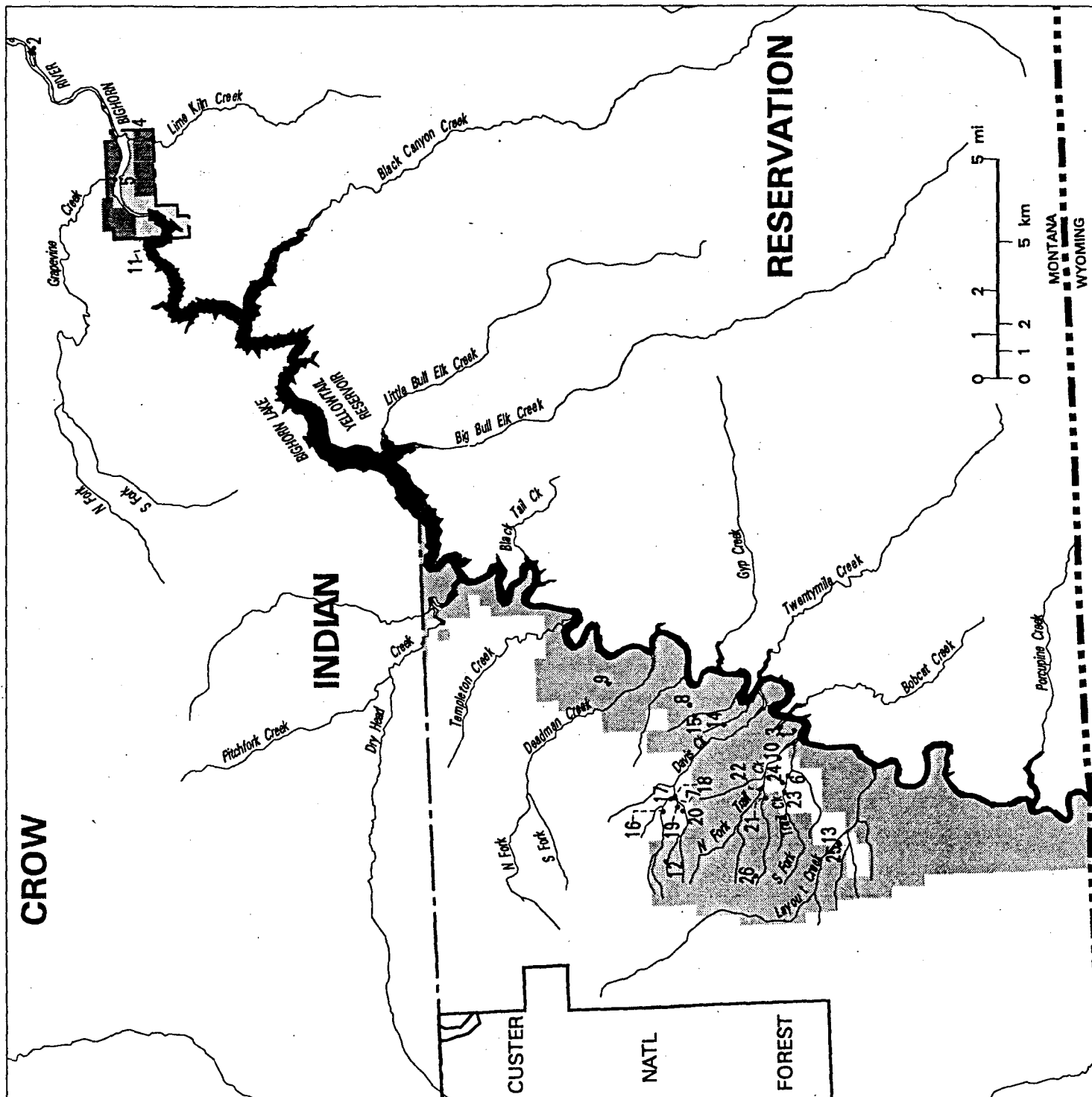
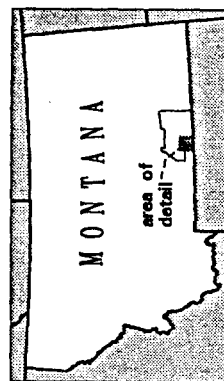
US Bureau of Reclamation; acquired
from Crow Indians by Act of Congress,
07/15/58

Crow Indian Reservation boundary

CLAIM TYPE

SITE NAME

- | | |
|---------------------------------|-------------|
| 1 BARRY'S LANDING | consumptive |
| 2 BIGHORN RIVER RANCH | consumptive |
| 3 CHAIN CANYON | consumptive |
| 4 FT. SMITH VISITORS CENTER | consumptive |
| 5 GRAPEVINE CREEK OVERFLOW | consumptive |
| 6 HILLSBORO | consumptive |
| 7 LOCKHART RANCH | consumptive |
| 8 MIDDLE PASTURE CATCHMENT | consumptive |
| 9 NORTH PASTURE CATCHMENT | consumptive |
| 10 NORTH TRAIL CREEK | consumptive |
| 11 OK A BEH MARINA | consumptive |
| 12 PASTURE A CATCHMENT | consumptive |
| 13 SORENSON RANCH | consumptive |
| 14 MIDDLE PASTURE 1 | spring |
| 15 MIDDLE PASTURE 2 | spring |
| 16 COTTONWOOD | spring |
| 17 LOCKHART RANCH NORTH | spring |
| 18 LOCKHART RANCH HOUSE | spring |
| 19 LOCKHART RANCH WEST | spring |
| 20 LOCKHART RANCH SOUTHWEST | spring |
| 21 NORTH FORK TRAIL CREEK | spring |
| 22 NORTH FORK TRAIL CREEK NORTH | spring |
| 23 SOUTH FORK TRAIL CREEK SOUTH | spring |
| 24 SOUTH FORK TRAIL CREEK NORTH | spring |
| 25 SORENSON RANCH | spring |
| 26 ARC SITE | spring |





Crow Country

CROW TRIBAL COUNCIL

P.O. Box 159
Crow Agency, MT 59022
(406) 638-2601

EXHIBIT 2
DATE 12-10-95
SB 203

Clara Nomee, Madam Chairman
Joseph Pickett, Vice-Chairman
Marvin Stewart, Secretary
Dennis Big Hair, Vice-Secretary

November 21, 1994

Chris D. Tweeten, Chairman
Reserved Water Rights Compact Commission
State of Montana
1520 East Sixth Avenue
P.O. Box 202301
Helena, MT 59620-2301

Dear Mr. Tweeten:

My staff has reviewed documents related to the negotiations for reserved water rights between the Little Bighorn Battlefield National Monument/Big Horn Canyon National Recreation Area and the State of Montana.

As far as the Crow Nation is concerned, we have no objections to the water negotiation at issue, with the understanding that the Crow Water Rights are not affected.

Should you have any questions, please feel free to contact me at (406) 638-2601.

Sincerely,

Clara Nomee, Madam Chairman
CROW TRIBAL COUNCIL



IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE

Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, Colorado 80525-5596

EXHIBIT 3
DATE 2-10-95
SB 203

TESTIMONY OF OWEN R. WILLIAMS

NATIONAL PARK SERVICE

RESERVED WATER RIGHTS COMPACT NEGOTIATION TEAM

SPOKESPERSON

ON SENATE BILL ²⁰³~~293~~

BEFORE THE MONTANA HOUSE NATURAL RESOURCES COMMITTEE

FEBRUARY 10, 1995

Mr. Chairman and members of the Committee, I am Owen Williams, Chief of the National Park Service's (NPS) Water Rights Branch, part of its Water Resources Division. Our office is a component of the NPS's Washington Office which is duty-stationed in Fort Collins, Colorado. Thank you for this opportunity to testify on behalf of the NPS with regard to the Draft Compact between the State of Montana and the United States for Reserved Water Rights in Bighorn Canyon National Recreation Area and Little Bighorn Battlefield National Monument.

I would like to begin with a little background. Supported by my Fort Collins staff, I served as the NPS lead in these negotiations. Richard Aldrich, who is also here today, is the Field Solicitor from Billings. Rich served as the lead representing the Department of the Interior's Office of the Solicitor. The NPS negotiation team also included James DuBois, an attorney representing the United States Department of Justice.

As you are aware, approximately three years ago, the State of Montana, through its Reserved Water Rights Compact Commission, and the United States, through the NPS, committed to a concerted effort to negotiate issues surrounding NPS claims for Federal Reserved Water Rights with the intention of producing a reserved water rights compact. You are considering today the second product of that effort; the second one in which both parties may take pride, in my opinion. The first product--the Compact for Big Hole National Battlefield, and Glacier and Yellowstone National Parks--was ratified last year and is already being implemented. With the passage of the Bill before you today, and its ratification by the Governor and the United States, all claims to Federal Reserved Water Rights on NPS land in Montana will be finally settled.

I am unable, today, to speak for anyone other than the negotiation team. However, the team, joined by line officers of the affected parks, has already passed the draft Compact on to the responsible officers of the Department of the Interior and the Department of Justice with a strong recommendation for approval. Washington, D.C., staff of these Departments have concurred and recommended approval to their principals. Approval has been recommended because, in our collective view, this agreement accomplishes several things which are of paramount importance for the protection of these two NPS units.

First, the Compact protects the water-related resource values of the park units so that each may accomplish its respective "reservation purpose". The Compact assures continued instream flows in tributary streams at Bighorn Canyon NRA for fish, riparian vegetation, and recreation. It protects the historical context of Little Bighorn Battlefield National Monument by maintaining the flows necessary to keep the Little Bighorn river at the monument functioning as it has since the historical battle. This Compact will help assure that the generations which follow us will have the opportunity to enjoy the undiminished benefits of the recreation area and to reflect upon, and be enlightened by, this important memorial to the history of this great Country and its people.

Second, water for the use of existing and future visitors and staff will be assured. The existing and reasonable future consumptive uses of water at these units are quantified by the Compact and will be protected. This gives both the State of Montana and the NPS the certainty needed to respond to and manage growth when it occurs. Also, private water rights holders will be more secure in the knowledge that their water rights are no longer placed at risk by an unquantified senior NPS Reserved Water Right.

Third, the compact will avoid the substantial expenditures of financial and staff resources that are associated with contentious and uncertain litigation. During times of heightened concern over governmental expenditures, this is not a trivial matter.

Finally, while recognizing and protecting existing water uses, the Compact also makes provision for a reasonable level of future water development by the people of Montana. This development can occur in an unhurried and planned manner because the Compact settles the unquantified Federal reserved right question and provides protection for present and future non-Federal uses. Similarly, the NPS can plan with more certainty because the Compact specifies the level of future use of the surface and ground water which is tributary to the parks.

I believe this agreement is sensible for all parties. It is the view of the NPS negotiation team, that a good litigation case with very substantial supporting data could be brought to court. It is also our view that little would be served by such a course of action. Instead, through the Compact, existing private water rights will be protected, future water development will be provided, and the protection required for these nationally important NPS units will be assured.

In conclusion, I recommend that this body take favorable action on the NPS compact. I also want to affirm the NPS's commitment to work closely with the State of Montana in the administration of the Compact; and to cooperatively use this mechanism to protect these special places to benefit the people of this State and the Nation.

This concludes my prepared comments. I will be happy to answer the committee's questions.

A handwritten signature in cursive script, reading "O. R. Willson". The signature is written in dark ink on a white background.

TESTIMONY OF ATTORNEY GENERAL JOSEPH P. MAZUREK
IN SUPPORT OF SENATE BILL 203

HOUSE NATURAL RESOURCES COMMITTEE, FEBRUARY 9, 1995

Chairman Knox, members of the Committee, my name is Harley Harris. I am an Assistant Attorney General and represent the State of Montana in water and Indian law matters. I am appearing today at the request and on behalf of Attorney General Joe Mazurek to indicate his support for SB 203 and to urge the Committee to pass it on to the full House for approval.

Other than indicating Attorney General Mazurek's support, I do not intend to delve into the substance of the Compact. At the request of the sponsors I will, however, try to discuss the "big picture" of why we are here today and underscore the importance of the water right compact process as the "Montana solution" to the complex issues of law and policy presented by federal and Indian reserved water right claims. Since--like me--many members of the Committee were not around at the beginning of this process, this starts with a brief history.

A federal reserved water right is a right that may be implied when the federal government reserves a tract of land for a particular purpose. Reserved water rights have been found to exist, in varying quantities, for Indian reservations, national parks, monuments, recreation areas, and national forests. Since those rights may have a senior priority, generally have never been quantified, and in some cases may be large, they represent a potential source of uncertainty for people who have acquired water rights under state law.

In order to reduce some of the uncertainty caused by federal reserved water rights Montana, like many other western states, is attempting to quantify them through an adjudication process. Montana's effort goes back to the mid-1970s when the United States and some Indian tribes filed several actions in federal district court in Billings, Great Falls, and Missoula seeking to establish the nature and scope of federal reserved water rights for Montana Indian reservations and several other federal reservations. Needless to say, the filing of those actions touched off a firestorm of protest. That, plus a concern that Montana needed to get a better handle on its water rights in order to protect itself against the claims of downstream states, led to the enactment of Senate Bill 76 in 1979.

Senate Bill 76 established the general water rights adjudication process whereby every water right in Montana is to be adjudicated. It was set up specifically to conform to the requirement of a federal law called the McCarran Amendment, which allows the United States to be sued in state water adjudication proceedings. No sooner was the ink was dry on Senate Bill 76 than it was challenged in court. Ultimately, the both the United States Supreme Court and the Montana Supreme Court held that the Montana adjudication process was an adequate and comprehensive mechanism for the state to exercise jurisdiction over the United States' and Indian reserved water rights.

As a way to avoid the high cost of litigating federal and Indian water right claims, and as a way to retain a greater level of control over the process of resolving those claims, the

legislature established the Reserved Water Rights Compact Commission, which was charged with the responsibility of negotiating with the federal government and the Indian tribes to resolve their water right claims. After the dust settled on the various legal challenges to the adjudication in the mid-1980s, compact negotiations started in earnest. Since that time the Compact Commission has reached, and this Legislature has approved, compacts with the Assiniboine and Sioux Tribes of the Fort Peck Reservation, the Northern Cheyenne Tribe of the Northern Cheyenne Reservation and, as discussed earlier, the National Park Service for Yellowstone and Glacier National Parks. Negotiations are ongoing with other tribes and federal agencies.

The compacting process is Montana's solution to quantifying reserved water rights and protecting state water users from federal water claims. It is proving to be one of the most successful and cost-effective ways of resolving issues which are difficult and expensive to resolve through traditional legal processes. A traditional water rights adjudication will result in a decree that sets forth the bare elements of the federal water right, but which does not take into account the rights of other water users on the stream or questions of how the federal right is to be administered. A compact, on the other hand, allows the State the flexibility to negotiate for the protection of state water right holders, to assure water for future growth, and to provide for a measure of state control over how the federal water right is administered. In resolving these questions up front, the compacting process reduces

the possibility that the state may find itself fighting the United States or Tribe in court.

When many of the western states that are dealing with reserved water right issues are having trouble with--and second thoughts about--their adjudication processes, the Montana approach is beginning to stand out as a success story. While we in Montana must remain willing, if necessary, to vigorously contest federal water right claims in court, we must also remain committed to the compact approach because the costs of litigating every federal reserved water right claim in court are high, and the results of such litigation are unpredictable and often unsatisfactory.

I would be happy to answer any questions the Committee may have, and will close by again urging the Committee to pass SB 203 on to the House for approval.

Thank you.

Amendments to House Bill No. 403
First Reading Copy

Requested by Rep. Grimes
For the Committee on Natural Resources

Prepared by Todd Everts
February 9, 1995

EXHIBIT 5
DATE 2-10-95
HB 403

1. Page 1.

Following: line 7

Insert: "STATEMENT OF INTENT"

A statement of intent is included with this bill to clarify that it is the intent of the legislature that stack emissions be tested at least once every 2 months for the first 6 months from the date of startup of the facility for which a permit is issued pursuant to 75-2-211."

2. Page 1, line 14.

Strike: "2"

Insert: "3"

3. Page 1, line 17.

Following: "date"

Insert: "of startup of the facility"

4. Page 1, line 18.

Strike: "on which the"

Insert: "for which a final"

Following: "permit"

Insert: "is"

Following: "75-2-211"

Strike: "is final"

5. Page 2, line 7.

Following: "after"

Insert: "until the violator establishes that continuous"



EXHIBIT 6
DATE 2-10-95
HB 403

MONTANA ENVIRONMENTAL INFORMATION CENTER

HB 403 Testimony Presented by Anne Hedges

This bill is an inappropriate approach to solving the problems pose by hazardous waste incineration in cement kilns. It assumes it is safe to burn hazardous waste in a facility designed to produce cement. Because we believe cement kilns are not adequate facilities to dispose of waste we cannot support this bill.

Other problems with the bill include:

1. Who does the testing of these facilities and who will be paying for that testing?
Probably Ash Grove. They will know when the testing is to occur and can change their waste stream accordingly. Surprise inspections are the only way citizens will know that what is monitored reflects everyday operations at the facility.
2. Monitoring for such hazardous substances as dioxin 6 times a year is unacceptable. Air pollution disperses. Once it comes out of the stack we have no way of recapturing those emissions and testing. This bill only allows for testing 6 times a year. Taking a conservative assumption that each test will occur over a three day period that means we will have data for 18 days. Ash Grove operates 365 days a year. This means 347 days will go unaccounted for and that is not good enough to insure safety of the children going to school 1/2 mile away.
3. The two year period for testing is absurd. Machinery does not improve with age. It wears out over time. Emission testing at the facility should increase as time goes by, not be eliminated.
4. The biggest problem with this bill though is the lack of insurance it provides for those concerned about emissions. First, there are no current standards for dioxins and furans and most heavy metals. EPA does not have standards and the state does not have standards. Ash Grove will prepare a risk assessment. Out of that assessment the state will establish standards for those substances it thinks will pose a problem. This raises two problems:
 - First, the risk assessment process is flawed and any conclusions reached in that process are suspect. I have provided you with testimony by Dr. Allen Lefohn on risk assessment. Dr. Lefohn is not able to be here today but I encourage you to read his testimony on the subject.
 - Second, we don't know what those substances will be, nor what the standard will be set at. Dioxin and furan emissions vary widely between the cement kilns burning hazardous waste. The Combustion Emission Technical Resource Document (see attached) shows that cement kiln dioxin emission for facilities like Medusa, in Pennsylvania emitted 2392.3333 ng/dscm whereas Keystone Cement in Pennsylvania .6833 ng/dscm. That is a very wide range. With no existing set standard, what insurance do we have that even if a facility monitors the dioxin and furan emissions that citizens will be protected? With no current standard in place citizens have not guarantee.

1994 Fuel Consumption

Ash Grove Cement Company -- Montana City

EXHIBIT

7

DATE

2-10-95

HB

403

228,365 mcf natural gas

39,820 tons coal

13,200 tons pitch

1,553 tons coke

Regulation: A Risky Business

By JOHN D. GRAHAM

Stephen Breyer's nomination to the Supreme Court shines the national spotlight on a crucial issue: the mismanagement of risk by government. In his writings, Judge Breyer has criticized the government for devoting resources to relatively insignificant risks—like asbestos exposure in schools—while ignoring far more pressing dangers.

In coming months, Congress has a chance to do something about this imbalance. A number of congressmen have pledged to offer risk-assessment amendments to every major piece of environmental legislation, from the Clean Water Act to the Endangered Species Act. While risk assessment sounds like simple common sense, history teaches us that regulators will not commission objective studies unless Congress and the courts demand that they do so.

Ignoring the Evidence

The Environmental Protection Agency, in particular, has been slow to respond to optimistic scientific knowledge, such as the finding that some animal "carcinogens" pose little or no danger to people. For example, chloroform is a chemical byproduct of technologies used to disinfect public water supplies. Chloroform in huge doses does cause tumors in animals, but the best available science suggests that it does so through biological mechanisms unlikely to exist in people drinking tap water. Yet local governments must get rid of virtually all chloroform in their water under the Safe Drinking Water Act.

Unrealistic assumptions don't always exaggerate risk; sometimes they incorrectly play down hazards. For example, the government continues to assume that there is a safe level of exposure to substances that cause diseases other than cancer. Yet there is a growing body of evidence that there are no safe levels of exposure for lead's neurological effects and dioxin's immunological effects.

If you want to see incredibly unrealistic assumptions, look at an EPA risk assessment for a Superfund site. You will learn

250 days a year from the bottom of contaminated brooks and ponds. You will also learn about households that drink contaminated well water for 70 years even when they are offered clean and cheap alternative sources. In order to eliminate these hypothetical risks, we are spending billions of dollars each year.

Before a target risk is regulated, the magnitude of the risk should be characterized with quantitative methods. When the science is uncertain, central estimates of risk should be reported in conjunction with worst-case and best-case possibilities. Risk assessments should convey how many citizens are affected as well as the risks faced by highly exposed and sensitive individuals.

Since zero risk is not a feasible goal, we need to rank risks in order of priority. Childhood lead poisoning is a serious public health problem. However, fewer resources should be devoted to excavating soil at Superfund sites, where the probability of childhood exposure to lead is low; more resources should be directed at cleaning up older homes in poor and minority communities, where each day kids are ingesting house dust contaminated with deteriorating lead paint.

Congress needs to compare risks more carefully. Few citizens realize that many EPA regulations of "toxic substances" address risks that are no greater than what people routinely incur from drinking a cup of coffee each day or eating a peanut butter sandwich for lunch. It may be true that involuntary risks (such as lead-paint exposure) deserve greater governmental priorities.

drinking), but citizens need a sense of perspective about the relative size of the dangers they face in daily life.

To foster public understanding of relative risk, each target risk should be compared to several ordinary risks that people confront in their daily lives—as the chart nearby does for asbestos exposure. Congress should mandate that this information be provided each time a risk regulation is issued by the federal government.

Comparing Risks
Estimates of risk from asbestos exposure in schools in comparison to other risks in the U.S.

Asbestos exposure in schools	0.005-0.006
Whooping cough vaccination (1970-1980)	1-6
Aircraft accidents (1979)	6
High school football (1970-1980)	10
Drowning (ages 5-14)	27
Motor vehicle accident pedestrian (ages 5-14)	32
Home accidents (ages 1-14)	60
Long-term smoking	1200

Source: Stephen Breyer, "Breaking the Vicious Circle" (1993) and Science magazine.

rent proposals to raise new car fuel economy standards to 40 miles per gallon from 27 miles per gallon will eliminate the safety gains from airbag technology.

Some of these economic realities are beginning to penetrate the health care debate. In President Clinton's proposed health care plan, screenings for breast and cervical cancer were restricted to once every two to three years because the marginal cost of more frequent screenings of women would exceed \$100,000 per year of life saved. But EPA has not been similarly restrained. Each year EPA imposes "carcinogen" regulations that cost more than \$1 million per year of life saved (even assuming EPA's risk and cost numbers are correct). If there are big ecological payoffs

for these rules, it is certainly difficult to discern them from studying EPA's analyses.

Pesticides are one example of the problem at EPA. EPA chief Carol Browner has proposed banning any pesticide that poses a theoretical lifetime cancer risk to food consumers in excess of one in a million, without regard to how much pesticides reduce the cost of producing and consuming food (the best estimates are that banning all pesticides that cause cancer in animals would raise the price of fruits and vegetables by as much as 50%). This is nuts. A baby's lifetime risk of being killed on the ground by a crashing airplane is about four in a million. No one has suggested that airplanes should be banned without regard to their benefits to consumers.

Knee-Jerk Opposition

This type of analysis should not generate knee-jerk opposition from environmentalists. Those who fear that environmental policies can never be defended on analytical grounds have not followed the progress in environmental economics. One of the best cost-benefit studies ever published was an EPA analysis showing that several dollars in benefits result from every dollar spent de-leading gasoline.

The Clinton administration made a great start on this approach by reinforcing the Office of Management and Budget's power to require cost-benefit analyses in support of proposed regulations. But more recently the administration proposed to study and then phase out the use of chlorine without calling for a rigorous cost-benefit analysis.

Our elected officials need to ensure that the public is informed of the costs and benefits of new regulation. As they get serious about passing "risk" legislation, let's grade them on how well they promote sound principles of risk analysis and management. A good report card means that we are taking a first step to cure America's syndrome of paranoia and neglect. A bad report card should be cause to "expel" offending officeholders.

Mr. Graham is professor and founding director of the Center for Risk Analysis at the Harvard School of Public Health.

EXHIBIT 2
DATE 2-10-95
HB 403

Chanute, Kansas, and Montana City Cement Plant Dioxin Emissions

EXHIBIT 9

DATE 2-10-95

HB 403

	Chanute, Kansas 38% fossil fuel, 62% hazardous waste	Montana City TODAY 100 % fossil fuel	Montana City with 20 % waste-derived CHEMFUEL®
Nanogram toxic equivalent of 2,3,7,8 -tetrachloro - dibenzo - dioxin per dry standard cubic meter	0.0089	0.061	?

Source: Ash Grove Cement Co. (1994 testing, April and September)

EXHIBIT 10
DATE 2-10-95
HB 403

Risk Assessment

- * 70 continuous years exposure
- * Site of impossibly maximum impact
- * Constant breathing & maximum diet
- * Requirement: must be as safe as a chest x-ray

Trial Burn

- * Worse-than-"worst" fuels
 - hardest organics to destroy (not routine under permit)
 - highest simultaneously in all RCRA metals
- * Poor combustion
- * Detuned pollution control system

Required Permit Conditions

- * Fuel inputs prescribed, advance testing required (must be lower than in trial burn)
- * Combustion conditions required, continuous monitoring
- * Continuous emissions monitoring

Monitoring & Enforcement

- * Provided by HB 592 (tax passed by 1993 Legislature)
- * \$120,000 for MDHES monitoring and enforcement
- * Approximately \$18,000 to County for environmental enforcement

FINDINGS: "Preliminary Investigation of the Direct and Indirect Risks from Combustion Emissions at the Ash Grove Cement Company, Clancy, MT", Environmental Risk Sciences, Inc., Washington, D.C., January 1995

EXHIBIT 11
DATE 2-10-95
HB 2-10-95

Risk of Death	Occupation	Lifestyle	Accidents	Environmental Risks
1 in 100 10 ² IE-02	Stuntman			
		Smoking (one pack a day)	Skydiving Rock climbing	
1 in 1,000 10 ³ IE-03	Race car driver Fireman Miner Farmer Policeman			
		Heavy drinking	Canoeing Driving motor vehicle	
1 in 10,000 10 ⁴ IE-04	Truck driver Banker Engineer Insurance agent	Using contraceptive pills Light drinking	All home accidents Frequent air travel	
1 in 100,000 10 ⁵ IE-05		Diagnostic X-rays Ash Grove's worst case risk to "subsistence" farmer	Home fire Fishing Poisoning	Substances in drinking water Living downstream of a dam Natural background radiation
1 in 1,000,000 10 ⁶ IE-06		Smallpox vaccination (per occasion)	Occasional air travel (one flight a year)	
				Hurricane Tornado Lightning
1 in 10,000,000 10 ⁷ IE-07		Eating charcoal-broiled steak (one a week)		Animal bite or insect sting
1 in 100,000,000 10 ⁸				Ash Grove's worst-case risk at MT City school

Chart Source: Electric Power Research Institute Journal (July/August 1989)

Montana Sources of Dioxin:
None regulated for dioxin,
most completely unregulated
(examples: not a complete list)

EXHIBIT 12
DATE 2-10-95
HB 403

Pulp & paper mills
Coal-fired power plants
Refineries
Metals recycling and recovery operations
Hospital incinerators
Solid waste incinerators
Supermarket incinerators
Diesel trucks
Cement kilns
Natural gas home heating systems
Crematories
Wood stoves and fireplaces
Compost piles
Charcoal grills
Forest fires
Weed and stubble burning

Only one of Montana's many dioxin sources is in line to be studied, risk assessed, monitored, controlled and regulated for dioxin emissions -- the Ash Grove cement plant in Montana City. This increased regulation would result only because Ash Grove seeks to modernize and become more regulated in order to survive through the next century, by recycling regulated wastes as a fossil fuel substitute.

Further, the Ash Grove cement plant is the only one of Montana's dioxin sources known to ***already*** meet the world's strictest proposed standard for dioxin.

Dioxin emissions data taken from the CETRED Document			EXHIBIT
	PCDD Output	PCDD/PCDF	DATE
COMPANY NAME, LOCATION	OVERALL RANK	(ng/dscm @ 7%O ₂)	TEST DATE
Medusa - Wampum, PA	1	2392.3333	7/92
River Cement - Festus, MO	2	2008.3333	10/92
Medusa - Wampum, PA	3	1603.3333	7/92
Essroc Materials - Logansport, IN	4	1542.7500	8/92
Continental Cement - Hannible, MO	5	1209.1967	7/92
Lafarge - Fredonia, KS	6	827.7100	8/92
Lafarge - Fredonia, KS	7	525.4667	8/92
Continental Cement - Hannible, MO	8	476.0000	12/90
Ash Grove - Foreman, AR	9	327.3500	7/92
Ash Grove - Chanute, KS	10	303.8175	3/92
Holnam - Holly Hill, SC	11	182.8750	8/92
Ash Grove - Chanute, KS	12	156.2000	4/92
Southdown/Kosmos - Kosmosdale, KY	13	111.2975	5/92
Ash Grove - Foreman, AR	14	99.7333	7/92
Holnam - Holly Hill, SC	15	70.9000	8/92
Holnam - Artesia, MS	16	41.8633	8/93
Ash Grove - Foreman, AR	17 /18	32.2700	5/92
Ash Grove - Foreman, AR	17 /18	32.2700	5/92
Southdown/Dixie - Knoxville, TN	19	31.7450	3/92
Ash Grove - Louisville, NE	20	12.8700	8/92
Ash Grove - Louisville, NE	21	8.4400	5/92
National Cement- Lebec, CA	24	6.5967	8/92
Ash Grove - Foreman, AR	22 /23	5.3200	7/92
Ash Grove - Foreman, AR	22 /23	5.3200	7/93
Keystone - Bath, PA	25	2.4130	8/92
Keystone - Bath, PA	26	0.6833	8/92

EXHIBIT

13

DATE

2-10-95

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EXHIBIT 14
DATE 2-10-95
HB 403

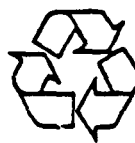
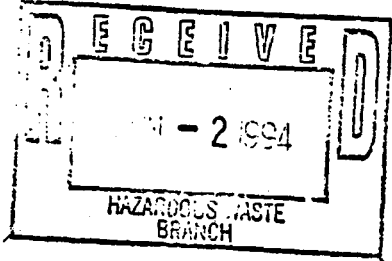
United States
Environmental Protection
Agency

Solid Waste and
Emergency Response
(5305)

EPA530-R-94-014
May 1994



Combustion Emissions Technical Resource Document (CETRED)



Recycled/Recyclable
Printed on paper that contains at
least 50% post-consumer recycled fiber

APPENDIX G:

**DETAILED SUMMARY OF CURRENT TOTAL PCDD/PCDF
DATA SET FOR CEMENT KILNS**

Company	Location	No. Units Tested	Report Date	Blow Waste	Facility Type	Run No.	APCS (%)	O2 (%)	APCS Temp (°F)	ESP Power (kW)	CO ₂ min avg ppmv @ 7% O ₂	PCDD/PCDF (ng/dscm @ 7% O ₂)	# Points	PCDD/PCDF (ng/dscm @ 7% O ₂)	Maximum	Average	Minimum	Sidev
Ash Grove Cement Co.	Louisville, NE	1	Jul-92	y	w	2-4	ESP	11.1	335	34	315	13.76	3	1369	1209.1967	952.32	224.6619	
Ash Grove Cement Co.	Louisville, NE			y		2-5	ESP	10.8	350	60.1								
Ash Grove Cement Co.	Louisville, NE			y		2-6	ESP	11.2	350	59.7								
Ash Grove Cement Co.	Louisville, NE			y		2-7	ESP	10.0	350	59.3								
Ash Grove Cement Co.	Louisville, NE			y		2-8	ESP	-10.7	350	58.8								
Continental Cement Co.	Hannibal, MO	1	Jul-92	y	w	1	ESP	4.0	600	340	344	1369.00	3	1369	1209.1967	952.32	224.6619	
Continental Cement Co.	Hannibal, MO			y		2	ESP	5.6	600	330	344	952.32						
Continental Cement Co.	Hannibal, MO			y		3	ESP	4.4	580	350	344	1306.27						
Continental Cement Co.	Hannibal, MO		Dec-90	y	w	3	ESP	2.0	540		271.9	322.00	2	630	476.0000	322	217.7889	
Continental Cement Co.	Hannibal, MO			y		4	ESP	1.9	540		219.4	630.00						
Continental Cement Co.	Hannibal, MO			n		1	ESP	3.1	443		183.9	84.00						
Continental Cement Co.	Hannibal, MO			n		5	ESP	2.0	469		228.6	777.00						
Fisroc Materials	Logansport, IN	1	Aug-92	y	w	3	ESP		496	32			4	1863	1542.7500	1295	235.7122	
Fisroc Materials	Logansport, IN			y		4	ESP		504	31.7								
Fisroc Materials	Logansport, IN			y		5	ESP		492	39.8								
Fisroc Materials	Logansport, IN			y		6	ESP		517	42.4								
Fisroc Materials	Logansport, IN			y		8	ESP	11.6	606	44.7	186	1295.00						
Fisroc Materials	Logansport, IN			y		9	ESP	12.6	605	34.2	56	1514.00						
Fisroc Materials	Logansport, IN			y		10	ESP	11.9	607	40.5	70	1499.00						
Fisroc Materials	Logansport, IN			y		11	ESP	12.3	614	39.1	79	1863.00						
Fisroc Materials	Dorado, PR	1	Jun-93	y	d (pl/pc/bp)	3-1	FF	6.0		--		na						
Fisroc Materials	Dorado, PR			y		3-2	FF	4.5		--		na						
Fisroc Materials	Dorado, PR			y		3-3	FF	4.0		--		na						
Giant Cement Co.	Harleyville, SC	4	Aug-92	y	w	1	FF	10.1	553	--		na						
Giant Cement Co.	Harleyville, SC			y		3	FF	10.4	553	--		na						
Giant Cement Co.	Harleyville, SC			y		4	FF	10.2	553	--		na						
Giant Cement Co.	Harleyville, SC	4	Aug-92	y	w	1	FF	10.5	549	--		na						
Giant Cement Co.	Harleyville, SC			y		2	FF	10.2	549	--		na						
Giant Cement Co.	Harleyville, SC			y		3	FF	10.4	549	--		na						
Hearland Cement Co.	Independence, KS	4	Oct-92	y	d	1-1	FF	14.3	440	--		na						
Hearland Cement Co.	Independence, KS			y		1-2	FF	14.4	440	--		na						
Hearland Cement Co.	Independence, KS			y		1-3	FF	13.9	440	--		na						
Hearland Cement Co.	Independence, KS			y		2-1	FF	14.5	440	--		na						
Hearland Cement Co.	Independence, KS			y		2-2	FF	14.3	440	--		na						
Hearland Cement Co.	Independence, KS			y		2-3	FF	14.4	440	--		na						
Holnam, Inc.	Anesia, MS	1	Aug-93	y	w	2	ESP	8.4	470	140	273	19.12	3	58.9	41.8633	19.12	20.4948	
Holnam, Inc.	Anesia, MS			y		4	ESP	7.4	530	140	270.8	58.90						
Holnam, Inc.	Anesia, MS			y		6	ESP	8.3	522	140	290.9	47.57						

Company	Location	No. Units Tested	Unit Report Date	Hum Waste	Facility Type	Run No.	APCS (%)	O2 (%)	APCS Temp (°F)	ESP Power (kVA)	CO, nun avg @ 7% O2	PCDD/F CDF (ng/lscm @ 7% O2)	# Points	Maximum	Average	Minimum	Stdev
Lafarge Corp.	Demopolis, AL			y		6	ESP		243	65	na						
Lafarge Corp.	Demopolis, AL			y		7	ESP		230	55	na						
Lafarge Corp.	Fredonia, KS	2	1 Aug-92	y	w	1	ESP	5.5	533	5	359	1066.37	3	1066.37	827.7100	627.96	221.7799
Lafarge Corp.	Fredonia, KS			y		2	ESP	5.5	536	15	547	627.96					
Lafarge Corp.	Fredonia, KS			y		3	ESP	5.5	529	16	416	788.80					
Lafarge Corp.	Fredonia, KS	2	2 Aug-92	y	w	1	ESP		470	38							
Lafarge Corp.	Fredonia, KS			y		2	ESP	5.6	481	38	244	346.00	3	950	525.4667	280.4	369.1169
Lafarge Corp.	Fredonia, KS			y		3	ESP	5.6	511	78	406	950.00					
Lafarge Corp.	Fredonia, KS			y		4	ESP	5.6	496	60	180	280.40					
Lafarge Corp.	Paulding, OH	2	2 Aug-92	y	w	4	ESP	7.0	408	123		na					
Lafarge Corp.	Paulding, OH			y		5	ESP	7.5	404	122		na					
Lafarge Corp.	Paulding, OH			y		6	ESP	7.0	404	123		na					
Lone Star Industries	Cape Girardeau, MO	1	1 Jan-93	y	d (ph/pc/bp)	1-2	FF	10.2	435	--		na					
Lone Star Industries	Cape Girardeau, MO			y		1-3	FF	10.3	435	--		na					
Lone Star Industries	Cape Girardeau, MO			y		1-4	FF	10.6	435	--		na					
Lone Star Industries	Cape Girardeau, MO			y		2-3	FF	10.0	435	--		na					
Lone Star Industries	Cape Girardeau, MO			y		2-4	FF	11.0	435	--		na					
Lone Star Industries	Cape Girardeau, MO			y		2-5	FF	10.8	435	--		na					
Lone Star Industries	Greencastle, IN	1	1 Aug-92	y	w	1-1	ESP	5.4	465	60							
Lone Star Industries	Greencastle, IN			y		1-2	ESP	5.4	457	60							
Lone Star Industries	Greencastle, IN			y		1-3	ESP	5.4	456	60							
Lone Star Industries	Greencastle, IN			n		2-1	ESP	5.0	415								
Lone Star Industries	Greencastle, IN			n		2-2	ESP	4.6	419								
Lone Star Industries	Greencastle, IN			n		2-3	ESP	5.3	416								
Mechusa Cement Co.	Wanpurn, PA	3	1,2 Jul-92	y	d	B-4	ESP	11.2	744	107	2602	1598.00	3	3172	2392.3333	1598	787.1025
Mechusa Cement Co.	Wanpurn, PA			y		B-5	ESP	11.3	708	149	4076	3172.00					
Mechusa Cement Co.	Wanpurn, PA			y		B-6	ESP	11.1	750	138	8631	2407.00					
Mechusa Cement Co.	Wanpurn, PA	3	1,2 Mar-93	y	d	1	ESP	14.6	711	50							
Mechusa Cement Co.	Wanpurn, PA			y		2	ESP	13.9	712	46.8							
Mechusa Cement Co.	Wanpurn, PA			y		3	ESP	14.8	701	57.2							
Mechusa Cement Co.	Wanpurn, PA	3	3 Jul-92	y	d	B-4	ESP	7.3	718	20	153	1093.00	3	2174	1603.3333	1093	543.0196
Mechusa Cement Co.	Wanpurn, PA			y		B-5	ESP	5.7	718	22.8	138	1543.00					
Mechusa Cement Co.	Wanpurn, PA			y		B-6	ESP	5.3	718	24	193	2174.00					
ional Cement Co.	Lebec, CA	1	1 Aug-92	y	d	1	FF	10.6	547	--	10.7	6.65	3	6.91	6.5967	6.23	0.3431
ional Cement Co.	Lebec, CA			y		2	FF	10.5	548	--	7.9	6.91					
ional Cement Co.	Lebec, CA			y		3	FF	10.5	547	--	22.2	6.23					
ional Cement Co.	Lebec, CA			y		4	FF	10.7									

Company	Location	No. Units Tested	Reput Date	Hum Wast	Facility Type	Run No.	APCS (%)	O2 (%)	APCS Temp (°F)	ESP Power (kVA)	CO, min avg ppmv @7%O2	PCDD/PCDF (ng/dscm @ 7% O2)	PCDD/PCDF (ng/dscm @ 7% O2)		
													Maximum	Average	Minimum
Ash Grove Cement Co.	Foreman, AR	3	2	Jul-93	y	2	ESP	10.1	371	72.1	240	2.88	3	9.68	5.3200
Ash Grove Cement Co.	Foreman, AR				y	3	ESP		365	71.8	256	3.40			3.7848
Ash Grove Cement Co.	Foreman, AR				y	4	ESP		373	70	247	9.68			
Holnam Inc.	Holly Hill, SC	2	1	Aug-92	y	1	ESP	10.1	450	30	110	61.00	6	198	70.9000
Holnam Inc.	Holly Hill, SC				y	2	ESP	10.1	450	30	110	198.00			
Holnam Inc.	Holly Hill, SC				y	3	ESP	10.1	450	30	110	142.00			
Holnam Inc.	Holly Hill, SC				n	1	ESP	10.3	450		135	12.40			
Holnam Inc.	Holly Hill, SC				n	2	ESP	10.3	450		135	6.40			
Holnam Inc.	Holly Hill, SC				n	3	ESP	10.3	450		135	5.60			
Holnam Inc.	Holly Hill, SC	2	2	Aug-92	y	1	ESP	7.0	563	30	150	na	4	409	182.8750
Holnam Inc.	Holly Hill, SC				y	2	ESP	7.0	563	30	150	317.00			211.3549
Holnam Inc.	Holly Hill, SC				y	3	ESP	7.2	563	30	145	409.00			
Holnam Inc.	Holly Hill, SC				n	1	ESP	7.0	563		145	3.30			
Holnam Inc.	Holly Hill, SC				n	2	ESP	7.0	563		145	2.20			

w: wet kiln

d: dry kiln

sd: semi-dry kiln

ph: preheater

pc: precalciner

bp: by-pass

Company	Location	Unit Tested	Report Date	Hum Haz Waste	Facility Type	Run No.	AICS	O2 (%)	AICS Temp (°F)	ESP Power (kW)	CO Run Av ppmv@7%O2	TEQ (ng/dscm @ 7% O2)	Points			TEQ (ng/dscm @ 7% O2)	
													Maximum	Average	Minimum		
Ash Grove Cement Co.	Chanille, KS	1	Apr-92	y	w	1	ESP	10.8	422	31.96	468	0.350	4	3.05000	1.55250	0.35000	1.11805
Ash Grove Cement Co.	Chanille, KS			y		2	ESP	10.4	439	30.19	669	1.310					
Ash Grove Cement Co.	Chanille, KS			y		3	ESP	10.7	435	27.58	636	1.500					
Ash Grove Cement Co.	Chanille, KS			y		4	ESP	10.7	448	24.76	697	3.050					
Ash Grove Cement Co.	Chanille, KS	2	Mar-92	y	w	1	ESP	9.5	484	46.43	691	1.370	4	1.37000	1.01300	0.64100	0.30473
Ash Grove Cement Co.	Chanille, KS			y		2	ESP	10.3	412	50.55	415	0.941					
Ash Grove Cement Co.	Chanille, KS			y		3	ESP	10.6	425	38.73	665	1.100					
Ash Grove Cement Co.	Chanille, KS			y		4	ESP	10.8	412	48.18	753	0.641					
Ash Grove Cement Co.	Foreman, AR	1	Jul-92	y	w	1-1	ESP	8.0	387	25.2							
Ash Grove Cement Co.	Foreman, AR			y		1-2	ESP	8.0	360	28.4							
Ash Grove Cement Co.	Foreman, AR			y		1-3	ESP	6.8	371	32							
Ash Grove Cement Co.	Foreman, AR			y		1-4	ESP	7.7	356	28.5							
Ash Grove Cement Co.	Foreman, AR			y		2-1	ESP	5.5	470	27.4	312	0.500					
Ash Grove Cement Co.	Foreman, AR			y		2-2	ESP	5.5	487	29.4	259	12.600					
Ash Grove Cement Co.	Foreman, AR			y		2-3	ESP	4.9	494	21.4	226	1.500					
Ash Grove Cement Co.	Foreman, AR			y		2-4	ESP	6.4	456	22.2	195	0.625					
Ash Grove Cement Co.	Foreman, AR			y		P1	ESP	7.1	408	37.5							
Ash Grove Cement Co.	Foreman, AR			y		P2	ESP	7.0	405	37.2							
Ash Grove Cement Co.	Foreman, AR			y		P3	ESP	6.0	399	37.9							
Ash Grove Cement Co.	Foreman, AR	2	May-92	y	w	1	ESP		500	58		0.571	3	0.57100	0.37033	0.207100	0.18485
Ash Grove Cement Co.	Foreman, AR			y		2	ESP		485	60		0.207					
Ash Grove Cement Co.	Foreman, AR			y		3	ESP		506	58		0.333					
Ash Grove Cement Co.	Foreman, AR	2	Jul-93	y	w	2	ESP		371	72.1		0.077	3	0.20300	0.11597	0.06800	0.07549
Ash Grove Cement Co.	Foreman, AR			y		3	ESP		365	71.8		0.068					
Ash Grove Cement Co.	Foreman, AR			y		4	ESP		373	70		0.203					
Ash Grove Cement Co.	Foreman, AR	3	Jul-92	y	w	2-1	ESP	5.2	475	104.5	296	1.550	3	1.55000	1.02000	0.60000	0.48446
Ash Grove Cement Co.	Foreman, AR			y		2-2	ESP	6.0	470	107.3	540	0.910					
Ash Grove Cement Co.	Foreman, AR			y		2-3	ESP	5.7	460	107.5	551	0.600					
Ash Grove Cement Co.	Foreman, AR			y		2-4	ESP	6.3	512	104.1							
Ash Grove Cement Co.	Foreman, AR			y		2-5	ESP	4.0	522	92.1							
Ash Grove Cement Co.	Foreman, AR			y		2-6	ESP	4.0	517	94.3							
Ash Grove Cement Co.	Louisville, NE	1	May-92	y	sd (pl/pe/bp)	1-1	ESP	15.5	258	18.3	898	0.281	5	0.28100	0.16734	0.09900	0.06958
Ash Grove Cement Co.	Louisville, NE			y		1-2	ESP	15.2	238	20.5	933	0.099					
Ash Grove Cement Co.	Louisville, NE			y		1-3	ESP	15.7	255	22.1	899	0.130					
Ash Grove Cement Co.	Louisville, NE			y		1-4	ESP	15.5	243	26.3	243	0.151					
Ash Grove Cement Co.	Louisville, NE			y		1-5	ESP	15.7	258	23.2	268	0.176					
Ash Grove Cement Co.	Louisville, NE	2	Aug-92	y	d (pl/pe/bp)	2-1	ESP	10.5	355	54.9	211	0.300	4	0.95200	0.50400	0.30000	0.30473
Ash Grove Cement Co.	Louisville, NE			y		2-2	ESP	9.8	355	52.7	181	0.325					

Company	Location	Unit Tested	Report Date	Burn Haz Waste	Facility Type	Run No.	APCS	O2 (%)	APCS Temp (°F)	ESP Power (kW)	CO Run Av	TIOQ (ng/dscm @ 7% O2)	# Points	TIOQ (ng/dscm @ 7% O2)		
														Maximum	Average	Minimum
Holnam, Inc.	Anesia, MS			Y		6	ESP	8.3	522	140	290.9	5.500				
Holnam Inc.	Clarksville, MO	1	Jul-92	Y	W	1	ESP	4.4	597	707		0.033	3	0.56400	0.21643	0.03300
Holnam Inc.	Clarksville, MO			Y		2	ESP	4.4	597	732		0.052				0.30115
Holnam Inc.	Clarksville, MO			Y		3	ESP	4.4	597	700		0.564				
Holnam Inc.	Clarksville, MO			N		1	ESP	4.9				1.190				
Holnam Inc.	Clarksville, MO			N		2	ESP	4.3				0.420				
Holnam Inc.	Clarksville, MO			N		3	ESP	5.6				0.470				
Holnam Inc.	Holly Hill, SC	1	Aug-92	Y	W	1	ESP	10.1	450	30	110	0.049	3	0.37000	0.19733	0.04900
Holnam Inc.	Holly Hill, SC			Y		2	ESP	10.1	450	30	110	0.173				0.16168
Holnam Inc.	Holly Hill, SC			Y		3	ESP	10.1	450	30	110	0.370				
Holnam Inc.	Holly Hill, SC			N		1	ESP	10.3	450		135	0.024				
Holnam Inc.	Holly Hill, SC			N		2	ESP	10.3	450		135	0.015				
Holnam Inc.	Holly Hill, SC			N		3	ESP	10.3	450		135	0.032				
Holnam Inc.	Holly Hill, SC	2	Aug-92	Y	W	1	ESP	7.0	563	30	150	1.430	3	2.47000	1.96667	1.43000
Holnam Inc.	Holly Hill, SC			Y		2	ESP	7.0	563	30	150	2.000				0.52080
Holnam Inc.	Holly Hill, SC			Y		3	ESP	7.2	563	30	145	2.470				
Holnam Inc.	Holly Hill, SC			N		1	ESP	7.0	563		145	0.055				
Holnam Inc.	Holly Hill, SC			N		2	ESP	7.0	563		145	0.025				
Keystone Cement Co.	Bath, PA	1	Aug-92	Y	W	1	ESP	12.1	421	23			3	0.01600	0.01600	0.00000
Keystone Cement Co.	Bath, PA			Y		2	ESP	13.1	422.5	22	27	0.016				
Keystone Cement Co.	Bath, PA			Y		3	ESP	11.7	418	25	26	0.016				
Keystone Cement Co.	Bath, PA			Y		4	ESP	12.3	417	23	25	0.016				
Keystone Cement Co.	Bath, PA			Y		5	ESP	12.5	416	19						
Keystone Cement Co.	Bath, PA			Y		6	ESP	11.8	410	21						
Keystone Cement Co.	Bath, PA			Y		7	ESP	11.7	415	19						
Keystone Cement Co.	Bath, PA			Y		8	ESP	11.4	403	19						
Keystone Cement Co.	Bath, PA			Y		9	ESP	11.2	393	19						
Keystone Cement Co.	Bath, PA			Y		10	ESP	11.3	407	21						
Keystone Cement Co.	Bath, PA	2	Aug-92	Y	W	1	ESP	12.3	407	56	47	0.006	3	0.00600	0.00140	0.00300
Keystone Cement Co.	Bath, PA			Y		2	ESP	11.1	416.5	48	47	0.005				0.00125
Keystone Cement Co.	Bath, PA			Y		3	ESP	11.7	416	49	45	0.003				
Keystone Cement Co.	Bath, PA			Y		4	ESP	12.6	419	61						
Keystone Cement Co.	Bath, PA			Y		5	ESP	11.7	386							
Keystone Cement Co.	Bath, PA			Y		6	ESP	11.5	410							
Keystone Cement Co.	Bath, PA			Y		7	ESP	12.1	401							
Keystone Cement Co.	Bath, PA			Y		8	ESP	11.7	401							
Keystone Cement Co.	Bath, PA			Y		9	ESP	11.3	407							
Keystone Cement Co.	Bath, PA			Y		10	ESP	11.7	412							
Lafarge Corp.	Alpena, MI	1	Aug-92	Y	d (?)	1	FF	6.9	493	--	1365	0.053	3	0.08800	0.05867	0.03500
Lafarge Corp.	Alpena, MI			Y		2	FF	7.6	488	--	1499	0.035				0.02695

Location	Unit Tested	Report Date	Waste	Facility Type	Run No.	AICS (%)	Temp (°F)	AICS (kVA)	Run Av ppmv@7%O2	CO Run Av	TIQ (ng/dscm @ 7% O2)	# Points	Maximum Average	Minimum	Site
National Cement Co.	Lebec, CA		y		2	FF	10.5	548	--	7.9	0.057				
National Cement Co.	Lebec, CA		y		3	FF	10.5	547	--	22.2	0.048				
National Cement Co.	Lebec, CA		y		4	FF	10.7								
North Texas Cement	Midlothian, TX	2 Oct-92	y	w	1	ESP	8.4	441	230		na				
North Texas Cement	Midlothian, TX		y		2	ESP	8.5	439	227		na				
North Texas Cement	Midlothian, TX		y		3	ESP	8.4	449	223		na				
River Cement Co.	Festus, MO	1 Oct-92	y	d	1	ESP	10.1	638		135	52.100	3	57.30000	49.84333	40.13000 8.8046
River Cement Co.	Festus, MO		y		2	ESP	10.1	638		135	57.300				
River Cement Co.	Festus, MO		y		3	ESP	10.1	639		135	40.130				
River Cement Co.	Festus, MO		y		4	ESP									
River Cement Co.	Festus, MO		y		5	ESP									
River Cement Co.	Festus, MO		y		6	ESP									
Southdown/Southwestern	Fairborn, OH	1 Aug-92	y	d (7/bp)	2-1	FF									
Southdown/Southwestern	Fairborn, OH		y		2-2	FF									
Southdown/Southwestern	Fairborn, OH		y		2-3	FF									
Southdown/Southwestern	Fairborn, OH		y		1	FF/main	379			37					
Southdown/Southwestern	Fairborn, OH		y		11	FF/main	379			2.3					
Southdown/Southwestern	Fairborn, OH		y		1	FF/bypass	547			37					
Southdown/Southwestern	Fairborn, OH		y		11	FF/bypass	547			2.3					
Southdown/Dixie	Knoxville, TN	1 Mar-92	y	d (phd/pc/bp)	1-1	FF	12.4	524	--	145					
Southdown/Dixie	Knoxville, TN		y		1-2	FF	12.0	507	--	119					
Southdown/Dixie	Knoxville, TN		y		1-3	FF	12.0	490	--	134					
Southdown/Dixie	Knoxville, TN		y		2-1	FF	11.7	499	--	114					
Southdown/Dixie	Knoxville, TN		y		2-2	FF	12.6	489	--	95					
Southdown/Dixie	Knoxville, TN		y		2-3	FF	12.4	490	--	183					
Texas Industries	Midlothian, TX	1 May-93	y	w	1	ESP	6.3	418	79.5		na				
Texas Industries	Midlothian, TX		y		2	ESP	7.0	414	82.5		na				
Texas Industries	Midlothian, TX		y		3	ESP	7.0	412	98.8		na				
Southdown/Kosmos	Kosmosdale, KY	1 May-92	y	d (ph)	C1-1	FF		519				4	1.32000	1.17500	1.06000 0.10755
Southdown/Kosmos	Kosmosdale, KY		y		C1-2	FF		514.8							
Southdown/Kosmos	Kosmosdale, KY		y		C1-3	FF		518.7							
Southdown/Kosmos	Kosmosdale, KY		y		C2-1	FF	14.9	505.4		158	1.160				
Southdown/Kosmos	Kosmosdale, KY		y		C2-2	FF	14.6	504.7		153	1.060				
Southdown/Kosmos	Kosmosdale, KY		y		C2-3	FF	14.6	505.1		156	1.160				
Southdown/Kosmos	Kosmosdale, KY		y		C3-1	FF	15.4			150	1.320				
Southdown/Kosmos	Kosmosdale, KY		y		C3-2	FF									
Southdown/Kosmos	Kosmosdale, KY		y		C3-3	FF									
Ash Grove Cement Co.	Foreman, AR	2 May-92	y	w	C2-1	ESP						3	0.57100	0.37033	0.20700 0.18485
Ash Grove Cement Co.	Foreman, AR		y		C2-2	ESP									

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date 2/10/95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

A13 Bill No. 351 Peak

Representative Bill Ash

voting Aye
(aye or no)

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date

2/10/95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

AB Bill No. 411 Or

Amend. if any with chair

Representative

Bill Iosh

voting

(aye or no)

Aye

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date 2-10-95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

Bill No. HB 338

Representative Samuel Fuchs voting aye
(aye or no)

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date

2/10/95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

HB Bill No. 350 Peak Table

Representative Bill Fish voting AY
(aye or no)

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date 2-10-95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

H6 Bill No. 351

Representative Daniel Fuchs voting Aye
(aye or no)

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date

2/10/95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

SB Bill No. 48

Reating

Amend. if any with chair

Representative

Bill Lash

voting

Aye

(aye or no)

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date

2-10-95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

~~SB~~ Bill No. 448

Representative

Samuel Fuchs

voting Aye

(aye or no)

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date

2-10-95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

H.S. Bill No. 350

Texas

Representative

David Fuqua

voting

Aye

(aye or no)

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date 2-10-95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

HB Bill No. 411

Representative Daniel Fuchs voting Aye
(aye or no)

EXHIBIT 16
DATE 2-10-95
HB 403

Allen S. Lefohn, Ph.D.
Clancy, Montana 59634
February 10, 1995

Risk assessment has been used to justify the burning of hazardous waste. The predictions of risk assessment should not be treated as scientific fact. As stated in the recent draft of the National Academy of Sciences (NAS) report, *Science and Judgment in Risk Assessment*, "Risk assessment is a set of tools, not an end in itself." In recent years, the public has become increasingly aware of the potential threat to human health and the environment from hazardous waste incineration in cement kilns. The risk assessment analyses performed by the EPA on the WTI facility highlighted the potential for indirect routes to have greater impact than direct routes. However, because of the uncertainty associated with the risk assessment methodology, the public remains skeptical about the reliability of scientific predictions concerning possible threats to human health and the environment. This skepticism has arisen in part because scientists disagree on the assumptions and data inputs that are used in developing risk assessments.

As a result of some of this skepticism, the NAS (a) reviewed the methods used by the U.S. Environmental Protection Agency (EPA) to determine the carcinogenic risk associated with exposure to hazardous air pollutants from sources subject to Section 112 of the Clean Air Act Amendments; (b) included in its review, evaluations of the methods used both for estimating the carcinogenic potency of hazardous air pollutants and for estimating human exposures to these air pollutants; and (c) evaluated, to the extent practicable, risk-assessment methods for noncancer health effects for which safe thresholds might not exist. Because of its relevance to assessing the

modeling is often used instead to establish the relationship between emissions and environmental concentrations of the substance. Inputs to such a model should include data on residence and activities of the exposed population.

- *Risk characterization* combines the assessments of exposure and response under various exposure conditions to estimate the probability of specific harm to an exposed individual or population. To the extent feasible, this characterization should include the distribution of risk in the population. When the distribution of risk is known, it is possible to estimate the risk to individuals who are most exposed to the substance in question.

As discussed in the NAS report, a broad array of concerns has been raised concerning the reliability of using risk assessment methodology. Some of these concerns are

- The lack of scientific data quantitatively relating chemical exposure to health risks.
- The divergence of opinion within the scientific community on the merits of the underlying scientific evidence.
- The lack of conformity among reported research results needed for risk characterization--e.g., the use of different methods for describing laboratory findings, which makes it difficult to compare the data from different laboratories and apply them in risk characterizations.
- The uncertainty of results produced by theoretical modeling, which is used in the absence of measurements.

A key issue for those interested in assessing the impacts of the burning of hazardous waste at Montana City is the reliance on risk assessment methodology when there is not enough information available to generate risk assessments that are protective of public health and the environment. There is a large amount of uncertainty in applying risk assessment. There is extensive variation among individuals in their exposures to hazardous waste pollutants and in their susceptibilities to cancer and other health effects. In addition, as pointed out in the NAS report, there is the real possibility of interactions among pollutants in their effects on human health and on the

- EPA should continue to use as one of its risk-characterization metrics, upper-bound potency estimates of the probability of developing cancer due to lifetime exposure. Whenever possible, this metric should be supplemented with other descriptions of cancer potency that might more adequately reflect the uncertainty associated with the estimates.

There are many uncertainties in risk assessment. It is clear that insufficient information exists for exposure and toxicity to establish the health risks associated with all chemicals identified as hazardous pollutants. In addition, there are uncertainties pertaining to the models used. These uncertainties stem from a lack of knowledge needed to determine which scientific theory is correct for a given chemical and population at risk and thus, which assumptions should be used to derive estimates. Such uncertainties cannot be quantified on the basis of data. Unfortunately, in many cases, the EPA does not include in its estimate of risk the degree of uncertainty. Thus, decision-makers do not know the extent of conservatism, if any, that is provided in the risk estimate.

The NAS recommends in its report that formal uncertainty analysis can help to inform EPA and the public about the extent of conservatism that is embedded in the default assumptions. Uncertainty analysis is especially useful in identifying where additional research is likely to resolve major uncertainties.

Because of the lack of complete data, typical risk assessments tend to ignore the synergistic effects of the mixture of pollutants on human health. Typically, people at risk are exposed to a mixture of chemicals, each of which might be associated with an increased probability of one or more health effects. Data are often available on only one of the adverse effects (e.g., cancer) associated with each chemical. At issue is how best to characterize

directly, they can offer only indirect and somewhat uncertain estimates." It is clear that common sense must prevail in determining whether governmental actions are stringent enough to adequately protect the public and the environment from exposure to cement kiln dust. Risk assessment is an important tool in determining the adequacy of the regulations, but because of the uncertainty associated with using risk assessment methodologies, the government should use extremely conservative judgment in defining what levels protect the public health and the environment.

The bottom line is that:

- **SCIENCE WILL NOT GIVE A DEFINITIVE ANSWER ON WHETHER IT WILL BE SAFE TO BURN HAZARDOUS WASTE AT THE ASH GROVE FACILITY AT MONTANA CITY.**
- **RISK ASSESSMENT IS A TECHNICAL TOOL WITH MUCH UNCERTAINTY. THE FACT THAT METEOROLOGICAL DATA WILL BE USED FROM AREAS THAT ARE NOT RELEVANT TO THE CONDITIONS THAT OCCUR AT MONTANA CITY WILL RENDER THE RISK ASSESSMENT USELESS. IT WILL BE USED AS A POLITICAL TOOL INSTEAD OF A SCIENTIFIC TOOL.**
- **A HISTORY OF UPSETS EXISTS AT THIS FACILITY. AT THIS TIME, UPSETS, WHICH CAUSE EMISSIONS OF HIGH CONCENTRATIONS OVER SHORT PERIODS OF TIME, ARE NOT SERIOUSLY CONSIDERED IN MOST RISK ASSESSMENTS. MORE THAN LIKELY, IT WILL BE THE OCCURRENCE OF THESE UPSETS THAT WILL RESULT IN ONE OF THE MAJOR CONTRIBUTORS TO HUMAN IMPACTS.**

EXHIBIT 17
DATE 2-10-95
HB 338

Amendments to House Bill No. 338
First Reading Copy

Requested by Rep. Trexler
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 13, 1995

1. Page 1, line 22.

Strike: "that" through "life"

4B 411

February 10, 1995

EXHIBIT 18
DATE 2-10-95
HB 411

To: Montana House of Representatives -- Natural Resources Committee

From: Larry Brown 

QUESTION: Asked by Representative Raney, could a wetland of ten acres or less be filled without any agency review?

RESPONSE: No, not legally, and not without at least an affirmation by the Corps of Engineers that the project did not fall under the individual, Nationwide, or general permit or other agency review.

Persons wishing to perform work under any dredge or fill project must be aware of and comply with the 404 conditions, restrictions, and notification procedures. Even though the State has primacy for 401 Water Quality Certification, pursuant to Section 401 of the Clean Water Act, a waiver thereof, is required either from the agency with primacy (MDHES) or by the COE for any project to proceed regardless of size.

Most controversial, the COE *can authorize* dredge and fill projects for up to ten acres in isolated wetlands, headwaters streams (less than five cubic feet per second average annual flow), and lakes. *This does not mean that the project does not receive COE review, it does not waive the obligation of the applicant to provide mitigation, or waive other agency permits (such as 310). It does mean that the COE can exempt the project from continuing the 404 permit review and rigors of disclosure of impacts because the project was deemed insignificant.*

If for some reason, one or more of the agencies, including MDHES, with authority under other statutes, decides that a project qualifies for additional review, the 404 permit (nationwide or general) may be challenged if "more than minimal adverse environmental effects, individually or cumulatively, or would be contrary to the public interest." The COE can then, with discretion, use its authority to require an individual permit on any project.

Other statutes including the Montana Water Quality Act, Metal Mine Reclamation Act, General Mining Law, Water Use Act, Floodplain and Floodway Management Act, Streamside Management Law, Lakeshore Protection Act, and others, may apply depending on location. These laws, 404, and the Stormwater permit program in MDHES provide extensive regulatory authority over nonpoint sources, e.g., erosion control and placement of fill materials at existing and new transportation, construction, certain agricultural projects, and mining projects.

There are at least sixteen other well known entities in Montana besides the COE and MDHES that might be involved in a 404 permit review (pending geographical jurisdiction), duplicative to the COE review, and with some regulatory authority, technical capability, and responsibility for wetlands including:

1. Environmental Protection Agency (Clean Water Act and tribal lands)
2. U.S. Fish and Wildlife Service (Threatened and Endangered Species)
3. County Conservation Districts and Montana Association of Conservation Districts
4. Montana Department of Natural Resources and Conservation -- Conservation Division, Facility Siting Division, Water Resources Division
5. Montana Historic Preservation Office
6. Montana Department of Fish, Wildlife, and Parks
7. Montana Department of State Lands -- Reclamation and Forestry Divisions
8. Montana Department of Transportation
9. Bureau of Land Management
10. U.S. Forest Service
11. U.S. Bureau of Reclamation
12. U.S. Bureau of Indian Affairs
13. Soil Conservation Service
14. Agricultural Stabilization and Conservation Service
15. Kootenai -- Salish Tribe (Shoreline Protection and Aquatic Land Conservation Ordinance) -- Reservation Lands
16. Farm Home Administration

Section 404 of the Clean Water Act protects wetlands by regulating dredge and fill operations into waters of the United States. President George Bush issued a Presidential Proclamation/ Executive Order (date unavailable) to protect the nation's wetlands by declaring that there would be a "No Net Loss of Wetlands" itinerary.

The 404 permit is similar and may be more or less comprehensive than the Montana Natural Streambed and Land Preservation Act (310) or Stream Protection Act, depending on site. The MDHES may also consider broad authority under the 3(a) (Short-term Turbidity Exemption from Water Quality Standards) to review and condition instream activities and dredge and fill projects. The 3(a) authority may negate the need for MDHES 401 certification authority.

In practice, it is inconceivable that the publicity generated by water quality issues, education, potential financial loss, and public awareness would render the unauthorized destruction of wetlands of any size without review and mitigation at some level. The agencies, corporate land managers, members of various conservation groups, commodity associations, and the anonymous public provide incentives and oversight to affirm compliance with the respective environmental laws associated with wetlands.

EXHIBIT 19
DATE 2-10-95
HB 411

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES
WATER QUALITY DIVISION

COGSWELL BUILDING
1400 BROADWAY



STATE OF MONTANA

(406) 444-2406
FAX (406) 444-1374

PO BOX 200901
HELENA, MONTANA 59620-0901

February 9, 1994

Representative Dick Knox
House of Representatives
Natural Resources Committee
Capitol Station
Helena, MT 59620-1701

Dear Chairman Knox,

I am writing in reference to the information you requested about the review of wetland fill activities. There was obviously some confusion at the committee meeting yesterday during the discussion of HB 411 as to the statutory responsibility of state agencies to review different activities.

Lets first look at the statutory authority of each state or local agency that may be involved. Mr. Brown stated that the Department of State Lands (DSL), the Department of Natural Resources and Conservation (DNRC) or a local conservation district may review a wetland fill activity. This is inaccurate in that none of the statutes administered by any of these entities afford them the latitude to review such activities. The DSL reviews only those activities on streams that have been designated navigable under the DSL definition. The DNRC provides guidance to the conservation districts who locally administer the Natural Streambed and Land Preservation Act (310 permit) which applies only to perennial flowing streams. Because these statutes apply only to streams, these agencies are not involved in the review of wetland fill activities. Similarly, the Department of Fish Wildlife and Parks (DFWP) administers the Stream Protection Act which applies only to streams. That leaves DHES the only state agency reviewing the water quality impacts of wetlands fills.

As we described, nationwide permit (NWP) 26 covers two classes of activity, headwaters streams and isolated waters (wetlands). Wetland fill activities are further broken down into two categories - those activities resulting in fill of less than one acre and those activities between one acres and ten acres. The review process initiated by the Corps of Engineers is a little different for each category. Specifically a Pre-discharge Notification (PDN) is issued by the Corps on those activities in the 1-10 acres category. The PDN is sent to three state agencies

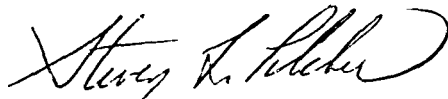
- DHES, DSL and DFWP, an agency we did not discuss. DSL does not comment on wetland fill activities as they have no authority to do so as explained above. DFWP infrequently reviews such activities. When they comment, their concerns are wildlife specific (i.e loss of waterfowl habitat) as that is where their authority lies. The process, again, normally leaves DHES as the only state agency reviewing the wetland fill activities and associate impacts to water quality and aquatic resources.

The question of whether removing the authority of DHES to review nationwide activities would result in a situation where up to 10 acres of wetlands could be filled without state agency review is yes.

One other consideration needs to be discussed. If DHES was taken out of the review process, it may be very likely that the Corps could approve such an fill activity under their jurisdiction and a landowner complete the job without knowledge of or acquiring the necessary state authorization (3A Authorization - Short-term Exemption form State Surface Water Quality Standards). This could result in a violation of the Montana Water Quality Act. Our current process provides the opportunity to notify the applicant of all necessary permits and to stipulate conditions on both the federal and state permits that are consistent. This is an important component of the permitting process and a service that has served applicants well.

Thank you for the opportunity to clarify these issues. If you need further information, please feel free to contact me or Jack Thomas.

Sincerely,

A handwritten signature in dark ink, appearing to read "Steve Pilcher", with a large, stylized loop at the end.

Steve Pilcher, Administrator
Water Quality Division

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. *S.B. 203*
 DATE *2-10-95* SPONSOR(S) *Senator Grassfield*

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Owen Williams 1201 Oakridge Dr. Ft. Collins, CO	National Park Service	203		✓
MARK Simonich	DNRCC	203		✓
Bart Cosens	DNRCC	203		✓
Chris Tweeten	Res Water Rights Comm'n Compact	SB 203		✓

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. *HB 403*
 DATE *2-10-95* SPONSOR(S) *Rep. Grimes*

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<i>Paul Johnson</i>	<i>MHE</i>	<i>403</i>		
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