MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 17, 1995, at 12:30 PM

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Theda Rossberg, Committee Secretary

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

Committee Business Summary:

Hearing:	SB 365, SB 366, SB 373, SB 382, SB 406
Executive Action:	SJR 15, SB 347, SB 349, SB 365, SB 373, SB 386, SB 406

{Tape: 1; Side: A}

EXECUTIVE ACTION ON SJR 15

Motion: **SEN. MIKE FOSTER MOVED AMENDMENT sjr001501.amc AS CONTAINED IN EXHIBIT 1.**

Discussion: **CHAIRMAN LORENTS GROSFIELD** explained the amendment to the committee members.

Vote: **MOTION PASSED UNANIMOUSLY.**

Motion/Vote: **SEN. LARRY TVEIT MOVED DO PASS SJR 15 AS AMENDED. MOTION CARRIED 6-4 ON A ROLL CALL VOTE.**

EXECUTIVE ACTION ON SB 347

Motion: **SEN. WILLIAM CRISMORE MOVED DO PASS SB 347.**

Motion: **SEN. CRISMORE MOVED AMENDMENT sb034701.ate AS CONTAINED IN EXHIBIT 2.**

Discussion: **SEN. CRISMORE** explained the amendments to the committee members. The amendment was striking "reciprocal" because if one or the other land-owners didn't need access from the other they could still have access.

SEN. JEFF WELDON said the word "reciprocal" still remains in Line 11. **Todd Everts** said in checking with the Department of State Lands, they want to leave that particular "reciprocal" in and that would now be a new Subsection 1. They also want to leave it in the title.

SEN. VIVIAN BROOKE said that provides for reciprocal access or for ordinary access, either way.

Vote: **MOTION TO APPROVE AMENDMENT sb034701.ate CARRIED UNANIMOUSLY.**

Motion: **SEN. WELDON MOVED TO APPROVE AMENDMENT sb034702.ate AS CONTAINED IN EXHIBIT 3.**

Discussion: **SEN. WELDON** said his amendment would strike Subsection 2. In granting access, the department is now required to analyze the potential impacts on private lands. Without this amendment, MEPA analysis would be triggered on what would be happening on state lands, but would not include the adjacent property.

Vote: **MOTION FAILED 8-1 WITH SEN. WELDON VOTING YES.**

Vote: **MOTION TO APPROVE SB 347 AS AMENDED CARRIED 8-1 WITH SEN. WELDON VOTING NO.**

HEARING ON SB 406

Opening Statement by Sponsor:

SENATOR LINDA NELSON, SD 49, SHERIDAN AND ROOSEVELT COUNTIES, said SB 406 would clarify SB 196 from the 1993 session. That bill gave the owners of underground storage tanks that were under 1,100 gallons and were noncommercial, 9 months to remove them. Under SB 196 it was mandated that the owner had to notify the department before the tanks were removed. They were also supposed to notify the department if there was any leakage

detected. Then the department was again notified when the tank had been removed. Under that bill, 2,269 tanks were removed from the ground. SB 406 completes the intent of SB 196 to grant closure by the state to those tanks. SB 406 clarifies that the state's response to inquiries is just that the tank had been removed. After that it would be a matter between the lender and the owner.

Proponents' Testimony:

Maureen Schwinden, representing Women Involved in Farm Economics, said they support SB 406.

Jenifer Hill, representing the Montana Stockgrowers Association and the Montana Woolgrowers Association, said that those organizations support SB 406.

Opponents' Testimony: None

Questions From Committee Members and Responses:

CHAIR. GROSFIELD asked **SEN. NELSON** if the bill, as drafted satisfies the banks. She said she didn't think it would completely satisfy the banks. They tend to blame the state if things don't completely satisfy them. That should be addressed between the banks and the owners.

Closing by Sponsor:

SEN. NELSON said she would appreciate a do pass of SB 406.

HEARING ON SB 365

Opening Statement by Sponsor:

SEN. MACK COLE, SD 4, from Two Dot to Colstrip and the Yellowstone Valley, said SB 365 changes the criteria for approval of reclaimed vegetation seeded using introduced species approved by the Department of State Lands. There are two mining operations that are unable to get their funds back from the bonding company because of that problem. The bill allows the DSL to release bonds that were held on lands that were mined prior to the federal Surface Mining Control Act that was effective May 3, 1978.

The bill was worked out between the Montana Coal Council and the Department of State Lands. Those lands have good vegetation cover and it would be a mistake to plow them up just to replant with native species. The lands were used for agriculture and were in better condition now than before when they grew native species.

Proponents' Testimony:

Dave Simpson, Vice President, Operations, Westmoreland Resources Inc., which is a producer member of the Montana Coal Council. He said he had been involved with reclamation of coal mined lands in Montana since 1975. They respectfully request passage of SB 365. **EXHIBIT 4**

Jim Mockler, Executive Director Montana Coal Council, offered an amendment to SB 365 as contained in **EXHIBIT 5.** The amendment will clarify when that process of revegetation starts.

Ken Williams, representing ENTECH and Western Energy Company, said the previous speakers have stated their interest in the bill. They have thirteen hundred acres of land that fall under the criteria of SB 365 and they don't want to have to plow those lands up and start over.

Bud Clinch, Commissioner, Department of State Lands, said they had been involved with the drafting of the legislation and they concur with the previous proponents. They recommend a do pass of SB 365.

Jeff Barber, representing Northern Plains Resource Council said they have been following the issue for about 2 years. They talked with the state when they were discussing a rule change to address the problem. The bill will correct the revegetation problem, and he recommends a do pass.

Neil Brown, representing the Montana Audobon Legislative Fund, said they support SB 365.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: **SEN. COLE** said that on Page 1, Line 13 the word "state" should be struck. The bill would take care of a problem that has been ongoing for a long time. He asked the committee for passage of SB 365.

HEARING ON SB 366

Opening Statement by Sponsor:

SEN. MACK COLE, SD 4, from Two Dot to Colstrip and the Yellowstone Valley, asked the proponents of SB 365 if they would state that they were a proponent to SB 366 and save some time.

The bill would help the State of Montana and any company that is interested in bringing facilities which would fall under the

Major Facility Siting Act procedures and rules to the state. Back in 1973 it appeared to some people that in his area they would have a coal-fired electrical plant on practically every section of land. During the early 1970's many of the people of Montana were led to believe that 15 coal gasification plants and 28 coal-fired electrical plants would be built in Montana by 1995. Because of that potential, the Major Facility Siting Act was passed. The bill did what it was supposed to do because there is not a coal-fired plant on every section.

He said he would address some of the misconceptions of what the Act does and does not do. There was not one environmental standard in the Act. There was no provision for impact funds. The Act directs the Department of Natural Resources and Conservation in new cases, to decide whether or not a facility is needed. One thing the Major Facility Siting Act does do, is cause years of delay and cost to the applicant. In the case of Colstrip 3 and 4, millions and millions of dollars were spent.

If you believe that business decisions should be left to business and to delay simply for the sake of delaying is a poor policy, then you should vote for SB 366. **SEN. COLE** said it was his intent to utilize the DNRC to assist rather than deter applicants in their quest for permits needed to build a major facility.

Not a single environmental standard will be compromised in any way. All of Montana's strict regulatory laws, such as air quality, water quality, MEPA, and reclamation acts would still be in effect.

{Tape: 1; Side: B}

SEN. COLE said some of the sections that were repealed are: 75-20-103, 75-20-302, 57-20-404, 75-20-409, 75-20-501, 75-20-502, 75-20-503, MCA. **EXHIBIT 6.** He recommended a statement of Intent **EXHIBIT 7.**

Proponents' Testimony:

Lee Roberts, owner of Billings Generation, which is a partner in the co-generation plant being built in Billings next to the Exxon Refinery. They support the bill because the Major Facility Siting Act does not work rationally in today's environment. He said they have tried to go through the process since Colstrip 3 and 4. They had all the permits necessary to build the plant and it was nearly complete. There was no public opposition in any of the hearings in regard to air and water quality permits. It is a $150 million project and employs 300 construction people. The plant had to be built at less than 50 megawatts because of the Siting Act. In order to apply for the Siting Act there has to be a fully designed plant. The plant cost $5 million and it takes 2 years to design the plant and 2 years to go through the Major Facility Siting Act process that costs about $1 million. It takes

4 years before the process is approved at a cost of $6 million. That $6 million had to paid up front before they could even get a permit telling them whether or not they could build anything. They would like to increase the plant by 10 megawatts and would not increase any emissions, and would not require any permit changes in air or water quality.

Steven K. Shirley, Vice President and Manager of Great Northern Properties, said the way the Major Facility Siting Act was written was a significant detriment to any facility being built in Montana. They would probably build in North Dakota or Wyoming.

The Great Northern would like to open a new mine and electric generating facility in eastern Montana. That facility could produce 2,000 megawatts of power derived from 10 million tons of ignite coal mined per year. That plant would employ 500 people at the generation plant and 300 at the mine facility, and generate income from property taxes, state taxes, wages, housing, etc. **EXHIBIT 8, 8A.**

Jim Mockler, Executive Director Montana Coal Council, said there were not any objections to the intent of the Major Facility Siting Act as far as protecting the air, water, and environment. But what that Act had done was to take those resources of 100 billion pounds of coal in eastern Montana and the opportunities that those people may have to develop those resources, and put them through such a process that they cannot be developed. Kenicott is looking at building a major coal facility at Decker, Montana. That would be a $250 million project which would use about 5 million tons of coal and generate about 120-130 megawatts of electricity.

The people in places like Glendive and Circle would have the opportunity to find jobs. They don't have the industry boom in the east as there was in the west. If the committee feels that those people deserve the right to develop their resources, then vote for SB 366.

Steve Hart, Manager Exxon Refinery, Billings, said they support SB 366. The bill as drafted maintains a good balance between the environment and the economy for the State of Montana. The bill maintains all the state and federal regulations. It makes a lot of improvements and reduces the time in which it takes to get a permit. They urge the committee to support SB 366.

Haley Beaudry, Engineer from Butte and owns an Engineering Company, said 15 years ago he was the project manager at Colstrip, and was involved with the Major Facility Siting Act application. He urges the committee to support SB 366.

Opponents' Testimony:

Don MacIntyre, Chief Legal Counsel, Department of Natural Resources and Conservation, said they oppose SB 366. They recognize that the Act is not perfect and probably needs some revising, but the changes should not damage the balance between economics and the environment. **EXHIBIT 9.**

Ellen Physter, Rancher in the Bull Mountains, said she was present in the Governor's chambers when they had the conference hearing for the consideration of the Major Facility Siting Act. The previous opponent gave a good summary of what SB 366 would do. The Act was developed to provide balance for construction of large facilities. In the 1970's the Bureau of Reclamation did a study called the North Central Power Study. Under that study eastern Montana would have had numerous plants the size of Colstrip. There probably would not have been any agriculture because all the water would have gone for coal generation.

Ms. Physter said that under this bill, if there was a project proposed near her ranch, she would not be allowed to participate in the project even if it would have an adverse affect on her ranch. The bill was so bad that the hearing dates were changed so they could sneak it into the Capitol. Do it openly and in public and don't kid them that there are protections in Helena. If SB 366 is passed you might just as well not waste the time and paper of printing it in the code.

Ken Toole, representing the Montana Environmental Information Center, said the concern they have in the amendments was the restriction of public involvement. The question is not if a facility gets built, but how it is built. The public has a right to participate in the issues that would be raised by a specific proposal under the bill they would be allowed to participate only through litigation. He asked about county ordinances and how they are going to affect the possibility of building transmissions for generation facilities. The Major Facility Siting Act should work for everyone involved.

Vicki Watson, Missoula, said she couldn't have testified against the bill any better than the previous speakers. The Major Facility Siting Act was doing a very difficult job. It was not perfect, but it was the Democratic way to allow public participation in decision-making in some very uncertain conditions. The Act was trying to protect the environment for future generations. That type of legislation requires a lot of crafting and thought. It probably needs some revising, but the proposed amendments were not carefully crafted revisions. She urged the committee to spend more time on the issues and come up with a good bill next session.

Debby Smith, Attorney, Sierra Club said they were opposed to SB 366 for all the reasons already stated. The bill was only supported by the coal industry. There have been some very good

reasons why the bill should be tabled. Perhaps a bill could be drafted early in the next session so that everyone would have a chance to participate. The laws that affect the location of those plants, affect everyone. It doesn't make sense to encourage more coal plants in Montana when there may not be a market for them in the future.

Janet Ellis representing the Montana Audubon Legislative Fund, said the bill is a major rewrite of a major environmental law in the state. The committee needs to spend more time on the bill and thoroughly understand each change that was being made. She said that DNRC was looking at the Major Facility Siting Act to come up with some consensus of some logical streamlining of the process. They support that kind of a process, not a bill that is heard this late in the session that they cannot understand.

Steve Kelly, Sculptor and an Environmental Activist, said SB 366 appears to be a bill looking for a problem.

{Tape: 2; Side: A}

The bill will affect everyone in the state and it is inappropriate to rework the Act when it was working so well. The public involvement in the state is one of the primary reasons that the environmental laws do work. Those were nonrenewable resources and will not generate jobs for very long. He urged the committee to table the bill.

Questions From Committee Members and Responses:

SEN. B. F. "CHRIS" CHRISTIAENS, asked **SEN. COLE** what happens to facilities that are currently in the process or have already been certified, if SB 366 passes. **Mr. MacIntyre** responded that they would no longer be under the regulations of the Major Facility Siting Act. The permits that have already been issued would be under the jurisdiction of the statutes already in place. If the bill passes those facilities would still be certified.

SEN. CHRISTIAENS said there were a lot of unanswered questions. The fiscal note talks about loss of fees that support different agencies. No. 5 of the fiscal note says: "The DHES is given sole responsibility to monitor compliance under this law with no ability to recover costs for monitoring." It says that impacts may be significant and there were a lot of questions that have major impacts with passage of SB 366. He said **SEN. COLE** did not sign the fiscal note and perhaps could address that in his closing.

Van Jamison, Administrator, Energy Division of DNRC, said that when an application was filed with the DNRC for certification under the Siting Act, they enter a contractual agreement with the applicant to do the necessary studies and to complete the certification process. Because the threshold has been raised, they anticipate fewer facilities going through the Major Facility

Siting Act process, and that would mean fewer fees. They contract for outside help to do the analysis or hire inhouse people. Their expenditures exactly equal the revenues that were collected. The applicants would only be billed for the actual necessary expenses of the department. He said the problem with the bill was trying to anticipate the eventualities that may occur.

SEN. CHRISTIAENS said most of the bills that they have heard relieve the DNRC of responsibilities and wondered if there were a number of corresponding FTE's that would not be needed with passage of similar bills. **Mr. Simonich** responded that they didn't think that would be the case. Because of the facilities that have already been sited, there will be some continuing monitoring responsibility. He said they do not maintain a high level of staff because of the sporadic applications coming in; they do mostly outside contracting.

SEN. KEATING asked **Mr. Jamison** what other facilities were permitted by the Major Facility Siting Act besides Colstrip 3 and 4. He replied that Colstrip 3 and 4 were the only coal burning facilities that have been permitted. There have been a large number of transmission lines and pipe lines that were permitted. **SEN. KEATING** said when they seek a permit under the Act, they pay a fee for the work that was done, is that right? **Mr. Jamison** said that was correct. All the costs they incur after an application has been filed would be covered. The costs that are incurred before an application is filed identifying the rules to the applicant or a concerned citizen are paid for out of the general fund.

SEN. KEATING asked **Mr. MacIntyre** when he found out that SB 366 was being drafted. He replied the department heard there were 3 requests for Siting Act bills, none of which they had access to. **SEN. KEATING** asked why he didn't get involved in the drafting of some of the bills rather than coming in the last week before transmittal and try to kill the bill.

Mr. MacIntyre said the department was actively involved in the process of developing a collaborative process for streamlining the Siting Act. They did not think it appropriate during the current session to undertake that kind of an activity since they did not have access to the bill. **SEN. KEATING** said in your testimony you said that the Siting Act needs to be streamlined and there needs to be some amendments and repealers in there. **Mr. MacIntyre** said he thought there was a need to modernize the Siting Act.

SEN. KEATING asked **Mr. Jamison** how anyone knows, since no one has asked for a permit, that the Siting Act is good, bad, or indifferent or what. **Mr. Jamison** said as an example, in the Flathead area a company wanted to develop a major transmission line that would cross the fields operated by the mint growers. As a result of the process, members of the public came forward

and asked the BPA if they couldn't upgrade one of their substations rather than build the line. The BPA reviewed that request and as a result withdrew from the Siting Act and upgraded the substation. In doing that they saved the facility millions of dollars. That proves that the public process does have a beneficial effect on decisions.

SEN. BROOKE said the sponsor made the claim that the Major Facility Siting Act was not based on science. She asked **Mr. MacIntyre** if he would respond to that. He said the Major Facility Siting Act is a comprehensive Act that looks at environmental and social needs, costs, and economics and tries to balance the environmental impact. He disagreed that it was not based on science.

CHAIR. GROSFIELD asked **SEN. COLE** why he did not sign the fiscal note. He replied that it was given to him late in the afternoon and he didn't have a chance to thoroughly review it, but he didn't think he would have have any problem with it.

CHAIR. GROSFIELD asked **Mr. Mockler** how many projects were being proposed that were in the 40 to 49 megawatt range. He replied there were two that he was aware of: Rosebud Energy at Colstrip that burns waste oil and the plant in Billings. The other proposal is Kenicott. In Wyoming they went through their Siting Act in 6 months. They would like to build 2 plants, but do not intend to spend 3 to 4 years getting sited.

CHAIR. GROSFIELD asked if there were any applications just under some of the thresholds that were proposed in order to not come under the Major Facility Siting Act, in the past number of years. **Mr. Mockler** said they have not seen any of those since the early 1980's. There have been transmission facilities proposed that were smaller than the threshold. The plant in Billings burns coke which is a byproduct of the petroleum and mining industry. At the facility at Rosebud, they were burning waste coal. If they were to burn real coal, their contract under the Public Utility Regulatory Act would probably be void.

Closing by Sponsor:

SEN. COLE said according to some of the things addressed by **Mr. MacIntyre** it probably was time to change the Major Facility Siting Act. Perhaps when they get into executive action they can discuss some changes to the Siting Act. He said they were not talking about not doing what the Siting Act was intended for.

HEARING ON SB 373

Opening Statement by Sponsor:

SEN. MIKE FOSTER, SD 20, Townsend, said SB 373 addresses the performance bonds for the Metal Mine Reclamation Act. There were

two changes that were proposed: 1) reasonable foreseeable activities could be bonded in advance, and 2) allow mines to post bonds in addition to what is currently required by the state. The bill provides flexibility so that a mine could put up an unobligated bond to cover unanticipated activities that may arise.

He said the Department of State Lands has proposed a couple of amendments to the bill which were acceptable. **SEN. FOSTER** reviewed the proposed amendments with the committee, as contained in **EXHIBIT 10.**

Proponents:

Bud Clinch, Commissioner, Montana Department of State Lands, said they regulate hard rock mining on state, federal, and private lands under the Metal Mine Reclamation Act. Under the Act a permit is required in order to engage in hard rock mining. The applicant must submit a number of plans, including a remedial action plan to control and mitigate any anticipated discharges of contaminates into ground or surface waters. The Montana Codes 82-4-338 were being amended in SB 373. It would require the applicant to submit a performance bond to guarantee that the plans were complied with.

Another purpose of SB 373 is to ensure that the department does not require a remedial action and an accompanying bond to be based upon problems that have a very remote chance of occurring. The department proposed two amendments that **SEN. FOSTER** addressed. **EXHIBIT 10.** With the amendments, the department supports SB 373.

Fess Foster, PH.D., Director of Geology and Environmental Affairs, Golden Sunlight Mines, Inc., said the bill was a housekeeping measure that amends the performance bond section of the Metal Mines Reclamation Act. The two new sections that were added to the Act, clarify which mining activities are to be bonded, and how to post the bonds. **EXHIBIT 11.**

Paul Teitz, Senior Geologist of the Santa Fe Pacific Gold Corp., said he was also the manager of the Elkhorn project which was an advanced exploration gold project in the Elkhorn Mountains. They may be interested in going ahead with the project within the next year and were interested in clarifying the bonding process. They support the bill and the amendments.

Leonard Wortman, Chairman Jefferson County Commission, said Jefferson County is one of the largest mining counties in the State of Montana and they support SB 373.

Tammy Johnson, representing Citizens United for a Realistic Environment, said they support SB 373 with the DSL's amendments, because of a couple of common sense reasons, namely that it makes

sense to bond only "reasonably foreseeable activities" and "activities that have a reasonable probability of occurring". In terms of posting unobligated bonds, it was the current policy and practice.

{Tape: 2; Side: B}

Gary Langley, Montana Mining Association, said they support SB 373 and the amendments.

Eric Williams, Pegasus Gold Corp., said they support **SEN. FOSTER'S** bill as amended.

Opponents:

Jim Jensen, Montana Environmental Information Center, said he was a proponent to part of the bill and an opponent to part of it. It is good policy to have statutory authority for activities that the agency was doing. It was important that the legislature clarifies that, that was what they should be doing. Section (5) however, was not just a housekeeping change to the bonding provision of the Metal Mine Reclamation Act. That section changes the reclamation standards that the DSL had been allowed to impose on metal mines. Reasonable and foreseeable activities cannot be easily quantified. It was not defined or quantified in the bill. Those words will cause proponents and opponents of various mining projects to have a cause of action that will be used to litigate mining permits, a cause of action that does not currently exist.

Florence Orr, Northern Plains Resource Council, said she also had difficulty with the words, "reasonable and foreseeable activities." That was not clearly defined in the bill and the current policy shouldn't be changed.

Questions From Committee Members and Responses:

SEN. CHRISTIAENS asked **Mr. North** if he would defend something that would be "reasonably foreseeable". **John North, Chief Legal Counsel, Department of State Lands** replied that the term was used in law quite a bit. It basically means that a prudent person looking into the future could see if an activity would likely occur. "Reasonable possibility" means that under the circumstances, occurrences were capable of happening. He said the standards were there to define those terms.

SEN. BROOKE asked **Mr. North** if the language was adopted and they were trying to get bonding from the Chicago Mining Corporation, would it have been possible to get a bond from them, if this had been in place at that time. **Mr. North** said yes, every permit has a bonding requirement. The Act would have required them to have a spill contingency plan, and the department would be bonding for

spills if they thought there was a reasonable possibility that a spill might occur.

CHAIR. GROSFIELD said that **Mr. North** has described "capable of happening" in much the same way that he described "reasonable possibility". Supposing there was a gold mine that wants a permit and they state that they would not use cyanide, would it be considered that cyanide leaching was capable of happening or not? **Mr. North** responded no it would not be capable.

CHAIR. GROSFIELD said that on Page 1, Line 12, the bill says: "...not less than $200 or more that $2,500 for each acre of disturbed land..." Someone mentioned a $32 million bond. That sounds like it would be a lot of acreage, or does that size bond likely result from the authority on Line 16 that says: "...the bond may not be less than the estimated costs..."? **Mr. North** said that is correct.

CHAIR. GROSFIELD said **Mr. Jensen** indicated that this bill would lead to litigation trying to figure out what the terms mean. He asked why there wasn't litigation now over that statement on Line 16. **Mr. Jensen** said the requirements of the bond were set at a level that reflects the actual cost of reclamation, which is the standard that is imposed. This bill would give the company additional basis for challenge of a bond because of the reclamation standards being imposed.

CHAIR. GROSFIELD said **Mr. Clinch** said that is essentially what was being done now. With or without that language he did not see that it would lead to the result **Mr. Jensen** was talking about. **Mr. Jensen** said they both have their legal view of the changes and they were not the same. The committee will have to decide whose legal opinion to trust.

Closing by Sponsor:

SEN. FOSTER said it was important to remember that the bill does not change any permitting requirements, and the department is comfortable to work with the wording. It was also important to keep common sense in mind and use the prudent person standard in making those determinations. He said he hoped the committee would support those reasonable clarifications.

HEARING ON SB 382

Opening Statement by Sponsor:

SEN. JOHN HARP, SD 42, Kalispell, said SB 382 was a bill that would change the Resource Indemnity Trust account. Twenty-one percent would go to the environmental quality protection fund, and $.5 million for an emergency fund. He said there was concern about joint and several liability and the effects that had on one person's liability of picking up all the costs even though that person didn't contribute to the specific problem on that site.

The bill changes joint and several liability to a proportioned liability as identified in the bill.

The Voluntary Cleanup Act will give an incentive to improve the process of cleanup. **Carol Browner, EPA Administrator,** has made a comment that the reason that the Superfund Act was broke was because of delays and litigation over liability. This bill would take care of the joint and several liability problem and make the party responsible for the problem clean up the problem.

After they clean up a site they have to try to put the property back to its best use. This bill allows some flexibility to get the land back to what would be practicable, reasonable and economical. There were some concerns about the allocations of the RIT fund and the effective date, but the amendments in the draft grey bill that has been provided to the committee address that by making it effective in the next biennium.

Proponents' Testimony:

Leo Berry, Attorney for the Montana Mining Association, said he had been involved in the drafting of SB 382. The DHES was to be commended for working with them to make the bill as amenable as they could. There were three parts to the bill: 1) amendments to the Superfund Law, 2) a voluntary cleanup section, and 3) the Superfund portion relating to the strict joint and several liability and the cleanup standards.

Mr. Berry said a hypothetical example of how joint and several liability works would be if there was a car accident in front of the Capitol at 6th and Montana Ave., when cars driven by **SEN. CRISMORE, SEN. TVEIT, SEN. CHRISTIAENS, AND SEN. BROOKE** were coming to a stop. **SEN. TVEIT** ran into the back of **SEN. CHRISTIAENS** who ran into the back of **SEN. CRISMORE** who hit **SEN. BROOKE** out into the intersection and all the cars were dented. Two years later the Legislature passes a law that says they don't want any more dents in cars, they have to be fixed. The four Senators were told to fix those dents. **SEN. CRISMORE, SEN. CHRISTIAENS, AND SEN. BROOKE** said that **SEN. TVEIT** caused the accident by running into the back of them. Meanwhile, **SEN. TVEIT** has sold his car to **SEN. GROSFIELD. SEN. GROSFIELD** said he wasn't even there, he bought the car from **SEN. TVEIT,** and he shouldn't be liable. But the way the law works under joint and several liability all the parties are liable for fixing the dents. The Senators except for **SEN. BROOKE** say they don't have any money, so **SEN. BROOKE** gets to pay for fixing all the dents even though she wasn't liable. What this bill is trying to do is make sure that everyone pays the part that they were responsible for.

Under the bill, if a person was broke or couldn't be found, that person's share is referred to as an "orphan share." The "orphan

share" is paid for out of the fund set up from the RIT account. He asked the committee to support the bill with the amendments.

Frank Crowley, Attorney, representing ASARCO and the Butte Mining Company, said that joint and several liability goes against human nature. A way to fix part of that is to make liability proportionate and the rest can be fixed by having a fund to respond to the "orphan shares." There was unanimous agreement in the country that the federal Superfund program is broke. The Clinton Administration and the EPA were working for change. He referred to "The White House Bulletin" dated February 17, 1995, which was a press release in which the EPA said there will be "greater use of mixed funding for which the Government pays for non-viable party (cleanup) shares at certain pilot sites." **EXHIBIT 12.**

He said it was time to take the state Superfund program and make it work. He thanked **DHES Director Bob Robinson** and his staff for all the time spent on the bill. He urged the committee to support the bill and the amendments.

John Davis, representing the Atlantic Richfield Company, said he wanted to address the cleanup sections that appear on Pages 28 and 29 of the grey bill. There has to be some relationship between the benefits received from the environmental cleanup and the costs of resources that will go into that. In Section 2 of the bill they have tried to refocus what the considerations were in the selection of remedial actions by eliminating certain preferences that were in the statutes.

Jay Sprekelmeyer, Superfund Manager ASARCO, said the Superfund Act is wasteful. The time and money spent do not solve the problem. This bill will allow their efforts to be focused on appropriate cost effective remedies. An example is the soil cleanup in East Helena by ASARCO to reduce the risk to human health. The soil removal was mandated when lead levels were above a certain level. The company had been trying to reduce the lead level by soil tilling. This bill would allow efficiency in the remedy selection by incorporating corresponding risk reduction with the associated costs. He said he was optimistic that the amendments to the bill could be worked out with the DHES.

Fess Foster, Golden Sunlight Mine, Whitehall, said SB 382 was complicated but an important piece of legislation. The State Superfund law was modeled after the Federal Superfund Act. They were having problems on the federal level as well as the state Act. The bill will rectify many of those concerns.

{Tape: 3; Side: A}

He said currently they cannot clean up sites that they do not own without assuming liability. He suggested that SB 382 be amended to allow them to voluntarily clean up sites they do not own at their expense without incurring environmental liability.

Jerome Anderson, representing Shell West Production Company, said the bill was very technical, but they wholeheartedly support the bill.

Allen Barkley, representing Columbia Falls Aluminum Company, said they strongly support the concept of the bill and urge its passage.

Opponents' Testimony:

Bob Robinson, Director, Department of Health and Environmental Sciences, said the department has worked with the people supporting the bill, in the past 2 weeks. One of the reasons for the department to become involved was damage control. The bill would be a significant change in public policy and how cleanup was approached. A number of changes were directed to move the state Superfund Act more towards the Federal Superfund Act. He said there has been testimony that the Federal Superfund was broke and bound up in litigation. That was not the case with the state Superfund Act, because of the joint and several liability. Each and every one of the sites don't have to be litigated.

Mr. Robinson said another problem in the bill is lowering the protective health standards that exist in the current state Superfund Act. He urged the committee to review the written testimony in: **EXHIBIT 13,** "Comparison of Estimated State Costs Related to Orphan Share/Insolvent Share"; **EXHIBIT 14,** "Alternative revisions to cleanup standards"; and **EXHIBIT 15.**

Mr. Robinson said the RIT fund has been diverted and squirreled away in various grant programs over the years and was not doing what it was initially intended to do.

Mr. Robinson said that in 1985 **SEN. HARP** said relative to joint and several liability, that it was better to find some way for cleanup and worry a little bit less about who was responsible. It's important to remember that even after joint and several liability takes over and someone cleans it up, the opportunity is there for the person who cleaned it up to go back to the responsible parties, if they can find them, and assess some share of the cost.

Mark Simonich, Director, Department of Natural Resources and Conservation, said **SEN. HARP** indicated that he understood that the DHES had some concerns about the bill and that the amendments would address those concerns. There also were concerns with the fiscal impact to the 1997 biennium with the changes that would be made with reallocation of funds. Over the years there had been a

great tendency to depend more and more on the RIT and the diversion of that fund to pay for general operations in state government. Many agencies have become dependent upon those funds to the point that about $14 million goes into funding agency budgets. **Governor Racicot** put some of the general fund monies back in.

Mr. Simonich said that the renewable resource grant and loan programs were guaranteed $2 million for the biennium, plus $3 million for the reclamation and development grants program. The department has never been able to put enough money into reclamation because of the liability problem. If the Legislature can figure out a way to correct the liability problem for the state arising from spending that money, they will be able to funnel more money into reclamation through the reclamation and development grants program. There should be some language change to that grant program because money had been siphoned off for other nonreclamation types of grants. He said **SEN. HARP'S** amendments would satisfy the DNRC.

Chris Tweeten, Chief Deputy Attorney General, said he was appearing on behalf of **Attorney General Joe Mazurek** and the **Department of Justice.** He said they became interested in June when the Governor transferred the Natural Resource Damage Program from the DHES to the Department of Justice. They share the concerns of **Bob Robinson** with respect to the proposed legislation. As the bill was introduced it would have cut off Montana's claim against ARCO for damages under the state Superfund Law for the cleanup of the Clark Fork Basin. They understood there was an amendment in the grey bill that would correct that problem.

Mr. Tweeten said they oppose the bill for much of the same reasons that had been addressed by the DHES. When they appeared before the Appropriations Committee and presented the budget for the continuation of the litigation against ARCO for the Clark Fork damage case, Arco urged the Legislature to throw in the towel on that litigation and not fund the litigation for the next biennium. One of their arguments was there was too much money spent on litigation and not enough on cleanup.

Mike Volesky, Executive Director, Montana Association of Conservation Districts, said they oppose the bill in its original form because of the grant and loan program that repairs environmental damage of Montana's natural resources. The renewable resource grant and loan program and the reclamation and development grants program amount to $2 million and $3 million respectively. The bill would decrease those amounts and conservation districts would oppose that. The amendments that were offered would address their concerns about the reallocation of the RIT funds. If the amendments were adopted they would not oppose the bill.

Ann Hedges, representing the Montana Environmental Information Center, said the 10% of the interest income from the RIT fund allocated for reclamation of abandoned mines that was in the original bill, was reduced to 5% in the grey bill. She said in the original bill where it talks about the approval of voluntary action plans, no one disagrees with the concept of that, but in the bill the state only has 60 days to review a voluntary action plan, and they probably could not adequately analyze the problems in just 60 days. The failure of a property to comply with the plan renders the plan void. There should be some kind of enforcement mechanism. The other language that was of concern was that the submission of misleading information renders the plan void, but there is no enforcement against anyone for that activity.

Florence Orr, Northern Plains Resource Council, said it was unfair for amendments to come in that they have not had a chance to see.

Jim Emerson, private citizen, said his problem with the bill was that the taxpayers shouldn't be burdened with that. Companies should be paying enough higher taxes that the private citizen doesn't have to pay for fixing the problem. The people that were taking over abandoned facilities like ARCO in Butte, didn't take them over just to clean them up, they expected to make a big profit.

Peter Nielsen, Environmental Health Supervisor, Missoula County Health Department, submitted written testimony. **EXHIBIT 16.**

Questions From Committee Members and Responses:

SEN. BROOKE asked **Mr. Tweeten** if there was a case pending, would it be exempt under the new standards. He responded that any claim that was ongoing would be exempt from the bill.

SEN. BROOKE asked if he thought that if a judge looked at an outstanding claim, would it go forward. **Mr. Tweeten** answered that the judge would determine what the intention of the Legislature was with respect to the bill's applicability. He thought the court would have a hard time applying the changes that were in the bill.

CHAIR. GROSFIELD said to **Mr. Davis,** "you are here representing ARCO and you have seen the applicability language." **Mr. Davis** said that was correct. **CHAIR. GROSFIELD** asked if his understanding of that language in the bill was that this bill would not apply to any currently ongoing legislation. **Mr. Davis** replied yes.

SEN. CHRISTIAENS asked **SEN. HARP** if there was a fiscal note with the bill. He said not the way it was amended. There wouldn't be

a fiscal note until they work with DHES and DNRC. **SEN. CHRISTIAENS** said that **Mr. Robinson** said the claims would outstrip the earnings. He asked **SEN. HARP** if he agreed with that. He answered that the bill says they can only appropriate what the Legislature would grant. If the money was not there the "orphan cases" would have to wait for a period of time. They could not appropriate any more dollars than what would be available.

SEN. CHRISTIAENS asked **Mr. Simonich** if the money appropriated for the grant and loan programs would be near the same amount. He answered that the $5 million was for two programs: the renewable resource program gets $2 million and the reclamation grant program gets $3 million. He said the bill as introduced would reduce each of those by $1 million. But the amendments that were proposed would not change the $5 million appropriation.

SEN. CHRISTIAENS asked **Mr. Simonich** to comment on whether, if the appropriations subcommittee replaced the RIT with general fund in the department's budget for the biennium, that is, if the subcommittee agreed with the Governor to backfill with general fund, since the department was funded with 30% of RIT funds did **Mr. Simonich** think that 30% would continue to be made up from the general fund in the next Legislature. **Mr. Simonich** said they cannot keep relying on RIT because there just wouldn't be enough money, not just for the DNRC, but for a variety of agencies that go through different apropriations subcommittees.

SEN. CHRISTIAENS asked **Mr. Robinson** how many additional FTE's they would need with their additional duties and the approximate cost. He said (referring to the chart in **EXHIBIT 14)** the $292,043 would reflect 5 FTE's and the $235,384 would reflect 4 FTE's.

SEN. KEATING said he didn't understand how the bill would be financed. On the first page of the grey bill there were temporary expenditures of the RIT funds that says that would be effective July 1, 1995. So beginning July 1, 1995 there was 21% of the interest income going to the Environmental Quality Protection Fund. **Mr. Berry** said that is an error in the grey bill and it should be effective July 1, 1997. **SEN. KEATING** said in that case, they would continue appropriating the RIT interest until July, 1997.

{Tape: 3; Side: B}

SEN. KEATING said the changes that were being proposed deal with the interest income to the Hazardous Waste account and the Environmental Quality Protection Account. **Mr. Robinson** said the chart shows the anticipated increased expenses of $5,754,543 with the introduced bill and $6,547,884 with the amendments. **EXHIBIT 14.** He said with the additional claims they would end up with a negative balance. They anticipate a decrease in cost recovery because they cannot recover from the "orphan share."

CHAIR. GROSFIELD asked **Mr. Berry** if his understanding of the applicability section of the bill was that the bill would not affect any current litigation. **Mr. Berry** responded that that is correct, the language was drafted by the Department of Justice so that the bill would not affect current litigation. **CHAIR. GROSFIELD** asked **Mr. Berry** to respond to the question that if the grey bill was passed, would it lead to an increase in litigation. **Mr. Berry** said it would be speculative whether or not it would. The reason for a lot of litigation on the federal side is because people think they were being treated unfairly. There would be circumstances toward the end of the process when people can't agree on what share should go to the "orphan share", and end up with some litigation. They tried to minimize that by not allowing recovery of legal fees from the fund.

CHAIR. GROSFIELD asked if the voluntary cleanup was kind of a good samaritan thing where someone could clean something up and not end up with a large liability. **Mr. Berry** said that is correct, and Golden Sunlight Mine actually would go off their property for cleanup if they were not stuck with a liability. **SEN. GROSFIELD** asked if the Environmental Quality Protection Fund would reimburse all of those voluntary cleanups. **Mr. Berry** replied yes if there were an "orphan share" and no one to collect from. **CHAIR. GROSFIELD** asked if the site wasn't cleaned up properly, what would the liability be. **Mr. Berry** said they have to submit a plan to the department addressing the problem, and implement the plan in accordance with the department's direction. If a problem comes up after the clean up, then the department can require that the new problem be cleaned up, but if the volunteer party did not cause the problem they were not liable. The $1 million reserve is for additional problems that may occur.

CHAIR. GROSFIELD said some of the opponents were concerned about the voluntary approach. One of the concerns was that the department had only 60 days to review a voluntary proposal, and that there may not be enforcement to carry it out. **Mr. Berry** said if it wasn't carried out within 24 months, the plan lapses. The department retains the authority to order that something be done through the regular Superfund process. The voluntary cleanup provisions were taken from a Colorado law that had been successful. Their review period was only 30 or 40 days. **Carol Fox, State Superfund Program**, said in their amendment they struck the provision that referred to the 60 days.

CHAIR. GROSFIELD said the bill was very complex and very significant and was wondering if they could put the bill on the list of bills that wouldn't have to make the transmittal deadline. **SEN. HARP** said he wanted to make sure they had time to obtain a fiscal note and to give the public the proper time to review the bill. He suggested as that Majority Leader, he would talk to the House leadership and that the bill should stay in the Senate Natural Resources Committee.

SEN. HARP said there was a list of both House and Senate bills that leaderslhip of both houses would agree to delaly without having to suspend the rules for transmittal deadlines. He said he didn't want anything going to the floor that wasn't in proper form.

Closing by Sponsor:

SEN. HARP said a lot of the opposition to the bill was to the original draft. By holding the bill until after transmittal it will help the process. He said he did carry the bill in 1989 and it had joint and several liability in it, but he knows when he makes a mistake. With the work of the committee the legislation can be improved upon. The main purpose of the bill is to clean up sites. The orphan accounts could wait for those appropriations, recognizing that what would be appropriated could be spent. He was surprised that the Department of Justice opposed the bill based on ARCO, because that has nothing to do with the bill because that litigation is already in place.

SEN. BROOKE said she wanted to analyze the bill in its completed form so that they could agree on it.

SEN. KEATING said if **SEN. HARP** can get the bill on the list with the House, could the committee get a grey bill that had all the amendments in it with a couple of flow charts, so they know what people would be talking about, and a fiscal note.

CHAIR. GROSFIELD said there were several mistakes in the draft grey bill, and it would help to have an accurate grey bill.

EXECUTIVE ACTION ON SB 406

Motion/Vote: **SEN. WELDON MOVED DO PASS SB 406. MOTION CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON SB 386

Motion: **SEN. COLE MOVED TO ADOPT AMENDMENTS NO. sb038601.amk AS CONTAINED IN EXHIBIT 17.**

Discussion: **Mr. Everts** said basically the amendments allow for the voluntary compliance with the Underground Storage Tank Act. It provides that a tank that is installed after the effective date of the Act shall not be eligible for reimbursement under the Petroleum Storage Cleanup Fund. The amendments also provides a termination date of December 31, 1995.

SEN. BROOKE asked **Jean Riley, Executive Director, Petroleum Tank Release Compensation Board, DHES,** if she supported the amendments. She replied that the concern with the amendments and the bill was that the tanks above ground were covered by the

fund; but the underground tanks were not. If an above ground tank has an underground pipe that has a leak, they would not be sure what to do in that case. There could be legal ramifications if funding for that was denied.

CHAIR. GROSFIELD asked why **SEN. DEVLIN** was requesting a termination date. **Frank Gessaman, Release Prevention Program Manager, Underground Storage Tanks Section, Waste Management Division, DHES,** said the reason for the termination date was to bring closure to the voluntary compliance issue, so there wouldn't be problems like there was with SB 196 that was passed last session. **CHAIR. GROSFIELD** asked if SB 196 also had a deadline date. **Mr. Gessaman** answered yes the deadline date was December 31, 1993. Upon passage of this bill, tank-owners will have to make a decision whether they want to continue to comply with the current requirements until December 31, 1995. If they do their release detection this year, which is a 36 hour test, and apply for a permit to remove their tanks, and they find a leak, they would be eligible for reimbursement by the board. After that date they can remove their tanks, but they will not be eligible for reimbursement. Storage tanks under 1,100 gallons after 1995 will not be regulated by the department and will not be eligible for release compensation.

Vote: **MOTION TO APPROVE THE AMENDMENTS CARRIED WITH SEN. BROOKE VOTING NO.**

Vote: **SEN. KEATING MOVED DO PASS ON SB 386 AS AMENDED.**

Discussion:

SEN. WELDON asked how many tanks were taken out of the ground in 1993. **Mr. Gessman** replied that there were 2,269 tanks that were removed. **SEN. WELDON** asked if there was an estimate of how many of those were problematic. He said there were 33 tanks that leaked.

SEN. CHRISTIAENS said in another committee meeting, the recommendation was that the tanks be filled with concrete. Is that the recommendation that farmers and ranchers are receiving now for above ground tanks? **Mr. Gessman** said the above ground tanks were regulated by the state Fire Marshall and that office has requirements for them. Under this bill since tanks with less than 1100 gallons capacity they will no longer be regulated, a farmer can reinstall those tanks underground.

CHAIR. GROSFIELD asked if the bill passes as amended, how will anyone know about it. **Mr. Robinson, Director, DHES,** said with SB 196 in the last session they advertised in the newspapers and a lot of people still didn't get the message. They have a list of everyone who has a tank and they will be sending a postcard or a letter saying the bill has passed and they have until the end of December, 1995, if they want to get their tank out, with an opportunity to do it under the protection of the Release

Compensation Board, and that after that they were on their own and there would be no further opportunity. Also they would put public notices in the major newspapers around the state.

Vote: MOTION TO DO PASS SB 386 AS AMENDED PASSED WITH SEN. BROOKE VOTING NO.

EXECUTIVE ACTION ON SB 365

Motion: SEN. CRISMORE MOVED TO DO PASS SB 365.

Motion/Vote; SEN. COLE MOVED AMENDMENT NO. sb036501.ate AS CONTAINED IN EXHIBIT 5. MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. CRISMORE MOVED TO DO PASS SB 365 AS AMENDED. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 373

Motion: SEN. FOSTER MOVED TO DO PASS SB 373.

Motion/Vote: SEN. FOSTER MOVED THE AMENDMENTS NO. sb037301.ate AS CONTAINED IN EXHIBIT 10. MOTION CARRIED UNANIMOUSLY.

Vote: MOTION TO DO PASS SB 373 AS AMENDED CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 349

Motion: SEN. FOSTER MOVED TO DO PASS SB 349.

Motion/Vote: SEN. FOSTER MOVED THE AMENDMENTS NO. sb034901.ate AS CONTAINED IN EXHIBIT. 18. MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. FOSTER MOVED THE AMENDMENTS NO. sb034901.amc AS CONTAINED IN EXHIBIT 19. MOTION CARRIED UNANIMOUSLY.

Discussion:

SEN. CHRISTIAENS said he noted that SB 349 needed a fiscal note. **SEN. FOSTER** responded that he had seen the fiscal note and it had a cost of $10,000 and an additional one-half FTE. He said he refused to sign it because he didn't know why they had to have an FTE to carry around some kind of a monitor. They can figure out how to do that without another FTE.

Vote: MOTION TO DO PASS SB 349 AS AMENDED CARRIED UNANIMOUSLY.

{Comments: the meeting was recorded on 3 tapes, 60 minutes each side.}

ADJOURNMENT

Adjournment: 3:00 PM

Lorents Grosfield

LORENTS GROSFIELD, CHAIRMAN

Theda Rossberg

THEDA ROSSBERG, SECRETARY

by Shirley Hewin

LG/TR1

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 2-17-95

SEN

NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	✓		
B.F. "CHRIS" CHRISTIAENS	✓		
MACK COLE	✓		
WILLIAM CRISMORE	✓		
MIKE FOSTER	✓		
TOM KEATING	✓		
KEN MILLER	✓		
JEFF WELDON	✓		
BILL WILSON	✓		
LARRY TVEIT, VICE CHAIRMAN	✓		
LORENTS GROSFIELD, CHAIRMAN	✓		

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CS-09

SENATE STANDING COMMITTEE REPORT

February 18, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration SJR 15 (first reading copy -- white), respectfully report that SJR 15 be amended as follows and as so amended do pass.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

1. Title, line 7.
Following: line 6
Insert: "PENDING OR FUTURE"
Following: "AFFECTING"
Insert: "AIR QUALITY, UNDERGROUND STORAGE TANKS, WASTE OIL, AND"

2. Page 2, line 15.
Strike: "regulate"
Insert: "air quality, the underground storage tank program, waste oil, and"

-END-

Amd. Coord.
Sec. of Senate

421039SC.SPV

SENATE STANDING COMMITTEE REPORT

February 18, 1995

MR. PRESIDENT:
We, your committee on Natural Resources having had under consideration SB 347 (first reading copy -- white), respectfully report that SB 347 be amended as follows and as so amended do pass.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

1. Title, line 6.
Following: "LANDS"
Insert: "; AND DEFINING "ANALYSIS REQUIREMENTS""

2. Page 1, line 10.
Strike: "**reciprocal**"
Following: "**access.**"
Insert: "(1)"

3. Page 1, line 12.
Following: "easements."
Insert: "(2)"
Strike: "reciprocal"

4. Page 1, line 14.
Strike: "reciprocal"

-END-

Amd. Coord.
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

February 18, 1995

MR. PRESIDENT:
We, your committee on Natural Resources having had under consideration SB 349 (first reading copy -- white), respectfully report that SB 349 be amended as follows and as so amended do pass.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

1. Title, lines 8 and 9.
Strike: "SPECIFYING" on line 8 through "INCINERATORS;" on line 9

2. Title, lines 11 through 13.
Strike: "CLASSIFYING" on line 11 through "INCINERATORS;" on line 13.

3. Title, line 15.
Strike: "75-2-220,"
Following: "75-2-231"
Strike: ","
Insert: "AND"
Following: "75-2-413,"
Strike: "AND 75-10-403,"

4. Page 2, line 4.
Following: the first "which"
Strike: "hazardous"
Insert: "the"
Following: the first "burning"
Insert: "of commercial hazardous waste"
Following: "which"
Strike: "hazardous"
Insert: "the"
Following: "burning"
Insert: "of commercial hazardous waste"

5. Page 2, line 6.
Following: "(2)"
Strike: "The"
Insert: "When, because of the proximity of a commercial hazardous waste incinerator to populated areas, the department determines that continuing monitoring is appropriate, the"

6. Page 2, lines 10 through 12.
Strike: subsection (3) in its entirety

Amd. Coord.
Sec. of Senate

7. Page 2, line 14 through page 5, line 15.
Strike: Section 2 in its entirety
Renumber: subsequent sections

8. Page 7, line 11 through page 9, line 28.
Strike: Section 4 in its entirety
Renumber: subsequent sections

9. Page 10, lines 20 and 21.
Following: "occur" on line 20.
Strike: "or"
Insert: ","
Following: "nature"
Insert: ", or that the telemetering device was compromised or otherwise tampered with"

-END-

SENATE STANDING COMMITTEE REPORT

February 18, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration SB 365 (first reading copy -- white), respectfully report that SB 365 be amended as follows and as so amended do pass.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

1. Page 1, line 13.
Strike: "state"

2. Page 1, line 25.
Following: "possible"
Insert: "following an application for final bond release"

-END-

Amd. Coord.
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

February 18, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration SB 373 (first reading copy -- white), respectfully report that SB 373 be amended as follows and as so amended do pass.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

1. Page 2, line 6.
Strike: "will"
Insert: "may"

2. Page 2, line 9.
Strike: "probability"
Insert: "possibility"

-END-

Amd. Coord.
Sec. of Senate

421118SC.SPV

SENATE STANDING COMMITTEE REPORT

February 18, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration SB 406 (first reading copy -- white), respectfully report that SB 406 do pass.

Signed: _____
Senator Lorents Grosfield, Chair

Amd. Coord.
Sec. of Senate

421053SC.SPV

SENATE STANDING COMMITTEE REPORT

February 18, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration SB 386 (first reading copy -- white), respectfully report that SB 386 be amended as follows and as so amended do pass.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

1. Title, line 8.
Following: "RELEASE;"
Insert: "CREATING A VOLUNTARY COMPLIANCE PROCEDURE FOR REIMBURSEMENT;"

2. Title, line 10.
Following: "DATE"
Insert: "AND A TERMINATION DATE"

3. Page 5, line 12.
Following: "(h)"
Insert: "[except as provided in [section 4],]"

4. Page 6.
Following: line 22
Insert: "NEW SECTION. **Section 4. Voluntary compliance -- reimbursement.** (1) For the purposes of this section, a tank is:

(a) a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(b) a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing heating oil for consumptive use on the premises where it is stored; or

(c) farm or residential underground pipes used to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less.

(2) Except as provided in subsection (3), if an owner or operator of a tank voluntarily complies with the requirements under Title 75, chapters 10 and 11, that owner may be eligible for reimbursement subject to the requirements of 75-11-307."

(3) A tank installed after [the effective date of this act] is not eligible for reimbursement under 75-11-307.
Renumber: subsequent sections

Amd. Coord.
Sec. of Senate

5. Page 6, line 24.
Insert: "NEW SECTION. **Section 6. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 75, chapter 11, part 2, and the provisions of Title 75, chapter 11, part 2, apply to [section 4]."

6. Page 6.
Following: line 26
Insert: "NEW SECTION. **Section 8. Termination.** [Section 4 and the bracketed language in 75-11-307] terminate December 31, 1995."

-END-

Amendments to Senate Joint Resolution No. 15
First Reading Copy

Requested by Sen. Grosfield
For the Committee on Natural Resources

Prepared by Martha Colhoun
February 17, 1995

1. Title, line 7.
Following: line 6
Insert: "PENDING OR FUTURE"
Following: "AFFECTING"
Insert: "AIR QUALITY, UNDERGROUND STORAGE TANKS, WASTE OIL, AND"

2. Page 2, line 15.
Following: "regulate"
Insert: "air quality, the underground storage tank program, waste oil, and"

Amendments to Senate Bill No. 347
First Reading Copy

Requested by Senator Crismore
For the Committee on Natural Resources

Prepared by Todd Everts
February 17, 1995

1. Title, line 6.
Following: "LANDS"
Insert: "; AND DEFINING "ANALYSIS REQUIREMENTS""

2. Page 1, line 10.
Strike: "reciprocal"
Following: "access."
Insert: "(1)"

3. Page 1, line 12.
Following: "easements."
Insert: "(2)"
Strike: "reciprocal"

4. Page 1, line 14.
Strike: "reciprocal"

Amendments to Senate Bill No. 347
First Reading Copy

Requested by Senator Weldon
For the Committee on Natural Resources

Prepared by Todd Everts
February 17, 1995

1. Page 1, lines 12 through 14.
Strike: "In" on line 12 through "access." on line 14.

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 2-17-95
BILL NO. SB 365

Before the Natural Resources Committee of the Montana State Senate
Testimony of David W. Simpson on
SB 365

Mr. Chairman and members of the Committee, my name is Dave Simpson. I live in Hardin, and I am Vice President, Operations, of Westmoreland Resources Inc., which is a producer member of the Montana Coal Council. I have been involved in reclamation of coal mined lands in Montana since 1975.

The purpose of SB 365 is adequately addressed in the statement of intent, so I won't repeat it in detail.

The language of the bill has been carefully crafted, in cooperation with the Department of State Lands, to accomplish three things. First is the stated objective of allowing a determination that reclaimed vegetation seeded during the early years of the reclamation program using introduced grass species approved by the Department is successful reclamation where certain standards are met. Second, there is no effect on more recent or future reclamation since the Department of State Lands has not approved significant proportions of introduced species in seed mixes since the early 1980's, and such approval is effectively precluded by current rules except in very narrow circumstances as alternate reclamation. Third, the language is consistent with state and federal post-mining land use standards, and hence we are confident that it is approvable by the federal Office of Surface Mining.

Enactment of SB 365 will solve a long-standing problem without compromising the objective of the Montana Strip and Underground Mine Reclamation Act that lands disturbed by coal mining be returned to productive use. Westmoreland Resources Inc. and the Montana Coal Council respectfully request that you act favorably on this bill.

Amendments to Senate Bill No. 365
First Reading Copy

Requested by Senator Cole
For the Committee on Natural Resources

Prepared by Todd Everts
February 17, 1995

1. Page 1, line 13.
Strike: "state"

2. Page 1, line 25.
Following: "possible"
Insert: "following an application for final bond release"

SB 366
SENATE NATURAL RESOURCES
EXHIBIT NO. 6
DATE 2-17-95
BILL NO. SB 366

Repealed Sections
Major Facility Siting Act

75-20-103. Chapter supersedes other laws or rules. This chapter supersedes other laws or regulations except as provided in 75-20-401. If any provision of this chapter is in conflict with any other law of this state or any rule promulgated thereunder, this chapter shall govern and control and the other law or rule shall be deemed superseded for the purpose of this chapter. Amendments to this chapter shall have the same effect.

75-20-302. Conditions imposed. (1) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification.

(2) In making its findings under 75-20-301(2)(a) for a facility defined in 75-20-104(10)(a)(i), the board may condition a certificate upon actual load growth reaching a specified level or on availability of other planned energy resources.

75-20-404. Enforcement of chapter by residents. (1) A resident of this state with knowledge that a requirement of this chapter or a rule adopted under it is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark. If the court finds that a requirement of this chapter or a rule adopted under it is not being enforced, the court may order the public officer or employee whose duty it is to enforce the requirement or rule to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

75-20-409. Optional annual installments for location of facility on landowner's property. A landowner upon whose land a facility is proposed to be located shall have the option of receiving any negotiated settlement for use of his land, if and when the land is used for a facility, by easement, right-of-way, or other legal conveyance in either a lump sum or in not more

than five consecutive annual installments.

75-20-501. Annual long-range plan submitted--contents--available to public--least-cost plan. (1) Except as provided in subsection (5), each utility and each person contemplating the construction of a facility within this state in the ensuing 10 years shall furnish annually to the department for its review a long-range plan for the construction and operation of facilities.

(2) The plan must be submitted by July 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the utility or person whose construction is projected to commence during the ensuing 10 years, as well as those facilities to be removed from service during the planning period;

(b) in the case of planned development of utility facilities, a description of efforts by the utility or person to coordinate with other utilities and regional planning;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility or person and explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the board by rule or the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this chapter.

(3) The plan shall be furnished to the governing body of each county in which any facility included in the plan under (2)(a) of this section is proposed to be located and made available to the public by the department. The utility or person shall give public notice throughout the state of its plan by filing the plan with the environmental quality council, the department of health and environmental sciences, the department of transportation, the department of public service regulation, the department of state lands, the department of fish, wildlife, and parks, and the department of commerce. Citizen environmental protection and resource planning groups and other interested persons may obtain a plan by written request and payment for the plan to the department.

(4) A rural electric cooperative may furnish the department with a copy of the long-range plan and 2-year work plan or other integrated resource plan required to be completed under federal rural electrification administration or other federal agency requirements in lieu of the long-range plan required in subsection (1).

(5) The provisions of subsections (1) through (4) do not apply to a public utility that submits an integrated least-cost resource plan to the public service commission pursuant to Title

69, chapter 3, part 12.

(6) A public utility that submits an integrated least-cost resource plan pursuant to Title 69, chapter 3, part 12, shall contract with the department to fund the actual and necessary costs of the department that are associated with preparing the department's comments on the public utility's plan and with obtaining other agencies' comments, as provided in 69-3-1205. If a contract is not entered into prior to the submission of the plan, the department, upon completion of its review and comment, shall bill the utility for the department's costs.

75-20-502. Study of included facilities. If a utility or person lists and identifies a proposed facility in its plan, submitted pursuant to 75-20-501, as one on which construction is proposed to be commenced within the 5-year period following submission of the plan, the department shall commence examination and evaluation of the proposed site to determine whether construction of the proposed facility would unduly impair the environmental values in 75-20-503. This study may be continued until such time as a person files an application for a certificate under 75-20-211. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate.

75-20-503. Environmental factors evaluated. In evaluating long-range plans, conducting 5-year site reviews, and evaluating applications for certificates, the board and department shall give consideration to the following list of environmental factors, where applicable, and may by rule add to the categories of this section:

(1) energy needs:

(a) growth in demand and projections of need;

(b) availability and desirability of alternative sources of energy;

(c) availability and desirability of alternative sources of energy in lieu of the proposed facility;

(d) promotional activities of the utility which may have given rise to the need for this facility;

(e) socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality;

(f) conservation activities which could reduce the need for more energy;

(g) research activities of the utility of new technology available to it which might minimize environmental impact;

(2) land use impacts:

(a) area of land required and ultimate use;

(b) consistency with areawide state and regional land use plans;

(c) consistency with existing and projected nearby land use;

(d) alternative uses of the site;

(e) impact on population already in the area, population attracted by construction or operation of the facility itself;

(f) impact of availability of energy from this facility on growth patterns and population dispersal;

(g) geologic suitability of the site or route;
(h) seismologic characteristics;
(i) construction practices;
(j) extent of erosion, scouring, wasting of land, both at site and as a result of fossil fuel demands of the facility;
(k) corridor design and construction precautions for transmission lines or aqueducts;
(l) scenic impacts;
(m) effects on natural systems, wildlife, plant life;
(n) impacts on important historic architectural, archeological, and cultural areas and features;
(o) extent of recreation opportunities and related compatible uses;
(p) public recreation plan for the project;
(q) public facilities and accommodation;
(r) opportunities for joint use with energy-intensive industries or other activities to utilize the waste heat from facilities;
(s) opportunities for using public lands for location of facilities whenever as economically practicable as the use of private lands and compatible with the requirements of this section;
(3) water resources impacts:
(a) hydrologic studies of adequacy of water supply and impact of facility on stream flow, lakes, and reservoirs;
(b) hydrologic studies of impact of facilities on groundwater;
(c) cooling system evaluation, including consideration of alternatives;
(d) inventory of effluents, including physical, chemical, biological, and radiological characteristics;
(e) hydrologic studies of effects of effluents on receiving waters, including mixing characteristics of receiving waters, changed evaporation due to temperature differentials, and effect of discharge on bottom sediments;
(f) relationship to water quality standards;
(g) effects of changes in quantity and quality on water use by others, including both withdrawal and in situ uses;
(h) relationship to projected uses;
(i) relationship to water rights;
(j) effects on plant and animal life, including algae, macroinvertebrates, and fish population;
(k) effects on unique or otherwise significant ecosystems, e.g., wetlands;
(l) monitoring programs;
(4) air quality impacts:
(a) meteorology -- wind direction and velocity, ambient temperature ranges, precipitation values, inversion occurrence, other effects on dispersion;
(b) topography -- factors affecting dispersion;
(c) standards in effect and projected for emissions;
(d) design capability to meet standards;
(e) emissions and controls:
(i) stack design;
(ii) particulates;

(iii) sulfur oxides;
(iv) oxides of nitrogen; and
(v) heavy metals, trace elements, radioactive materials, and other toxic substances;
(f) relationship to present and projected air quality of the area;
(g) monitoring program;
(5) solid wastes impacts:
(a) solid waste inventory;
(b) disposal program;
(c) relationship of disposal practices to environmental quality criteria;
(d) capacity of disposal sites to accept projected waste loadings;
(6) radiation impacts:
(a) land use controls over development and population;
(b) wastes and associated disposal program for solid, liquid, radioactive, and gaseous wastes;
(c) analyses and studies of the adequacy of engineering safeguards and operating procedures;
(d) monitoring -- adequacy of devices and sampling techniques;
(7) noise impacts:
(a) construction period levels;
(b) operational levels;
(c) relationship of present and projected noise levels to existing and potential stricter noise standards;
(d) monitoring -- adequacy of devices and methods.

SENATE NATURAL RESOURCES
EXHIBIT NO. 7
DATE 2-17-95
BILL NO. SB-366

Statement of Intent
SB 366

A statement of intent is required because the bill gives the Department of Natural Resources authority to adopt and administer rules and requires the department to repeal old rules.

It is the intent of the Legislature to change the intent of the Major Facility Siting Act from one requiring extended studies, long waiting periods and determination of need for a proposed facility to directing the department to assist and insure that an applicant secure the multitude of permits required for the construction of a major facility as described in the Act.

Senate Bill 366
Revising the Montana Major Facility Siting Act

The Benefit

I am Steven K. Shirley, Vice President and Resident Manager of Great Northern Properties with its offices in Billings, Montana, and is the successor in interest to Meridian Minerals Company to approximately 3 million acres of mineral rights, primarily COAL, and several thousand acres of ranch lands in Eastern Montana. The Bull Mountains Mine is not a part of our holdings. Great Northern Properties is a privately held organization whose only business is the development of its natural resources. Currently, Great Northern Properties is Montana's and the nation's largest private mineral owner, second only to the federal government, and the largest private coal lessor to Western Energy Company at their Colstrip operation and similarly at Peabody's Big Sky Mine.

Great Northern Properties has identified several projects within its holdings which we would like to see developed. As the vast majority of our undeveloped coal resources are in the lignite coal fields of eastern Montana, and the character of lignite coal is such that it will not transport well over long distances, these reserves will require that their consumption and ultimate release of energy through the production of electricity will be at or near the site of extraction.

To that end, I am here to offer the Committee some economic possibilities for the welfare of the State of Montana to think about, with respect to Senate Bill 366. It would be Great Northern's desire to establish at least one new mine and electric generating facility in eastern Montana in the near term. We believe that one such facility producing 2,000 megawatts of power derived from 10 million tons of lignite coal mined per year would yield the following benefits to Montana and its citizens.

10 million tons/year to fuel 2,000 Megawatts of electricity

Capital investment:	$1,000,000,000
Property Taxes to County:	$10,000,000/yr
Severance Taxes to Montana:	$10,000,000/yr
Gross Proceeds Tax to Montana:	$5,000,000/yr
Employment: (permanent)	
Generation Plant:	500
Mine Facility:	300
Wages per Week:	$800
Wages per Year (50 weeks, no overtime):	$40,000
Total Wages:	$32,000,000
New Housing ($50,000 for 250 workers):	$12,500,000
Property Taxes on new houses ($800 per)	$200,000/yr
Montana State Taxes (at 3% of gross):	$960,000/yr

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Total Montana/County: $1,070,660,000
(Inclusive of Capital Investment)

Total Montana/County Annually: $58,160,000
(Life of plant/mine, estimate 40 years)

Please also note that this has not taken into account the impact of the work force on the retail sector, neither does it take into account the support businesses needed to support this type of operation. Please note that the Colstrip operation (generation plant and mine only) cause a +/- $100,000,000 cash flow through the Billings economy alone each year due to equipment and material acquisition.

All of the above figures are assumptions based on public knowledge of the impact that Western Energy Company/Montana Power Company's Colstrip operations have on Montana and Rosebud County. Theses figures are not exact, but rather serve to illustrate the impact that only one such facility has on an area. There are the resources and the growing demand for more than one of these facilities to serve Montana and the nation's energy needs.

As a representative of an interested party and a citizen of the State of Montana, I urge you to do everything in your power to pass Senate Bill 366. The Major Facility Siting Act as

currently written, serves as a significant deterrent to any such facility being built in Montana: it is more likely that the facility could be build next door in North Dakota or Wyoming.

Revising the Act, through Senate Bill 366 will have a great impact on the youth of Montana as it offers directly and indirectly many high paying jobs to those who will be entering the work force in the future. Give them a chance to stay and make a life for themselves in Montana.

missoulian 12-13-73

400-million-ton annua coal harvest seen

Great Falls Tribune Thursday, Dec. 13, 1973

Growing demand for coal to result in tremendous strip-mine activities

By STEVEN P. ROSENFELD
Associated Press Writer

HELENA, Mont. (AP) — A forecast for coal development in Montana says that as many as 400 million tons of the abundant mineral may be mined annually by the year 2000, about 40 per cent of the projected peak production of the vast Fort Union deposits.

That compares with slightly less than 11 million tons of lowsulfur coal being mined this year in Montana.

The figures were unveiled Wednesday at a meeting of the Montana Energy Advisory Council. They were taken from a report prepared by the Northern Great Plains Resource Program, a federal-state study directed by the Interior Department.

If there is an all-out effort to develop coal in Montana, Wyoming and the Dakotas, annual production for the fourstate region will reach 977 million tons by the year 2000, the report abstract said.

It said peak Montana production would be 393 million tons and that the state would have 15 coal-gasification plants and 28 coal-fired electrical plants in operation.

But the report said that the most-probable level of development in the region would be 362 million tons mined annually by the year 2000 with 133 million tons from Montana strip mines.

Two years ago the controversial North Central Power Study listed 21 potential sites in Montana for construction of coal-fired electrical plants, with a combined requirement of 200 million tons of coal a year.

Such vast power-plant complexes could generate more than 50,000 megawatts. Presently, Montana's largest coal-fired power plant produces 180 megawatts of electricity, less than one-half of 1 per cent of the potential output.

The validity of the contents of the report were questioned by some members of the energy policy body who said the state agency has been virtually shut out from participating in the development of the figures. Research economist James H. Nybo of the Montana Natural Resources Department said he has been stymied from learning the methods used to arrive at the figures.

The Energy Advisory Council, using data in the report, said extensive energy development in Montana could require more than 550,000 acre-feet of water annually in the year 2000. That compares with the average annual flow of 9.4 million acre-feet of water in the Yellowstone River, according to state officials.

An acre-foot of water is the amount needed to cover one acre of land to a depth of one foot.

The North Central Power Study predicted more considerble demands on Montana's water resources, up to one-third the annual flow of the Yellowstone.

Projections were that Montana would be shipping between 30 million and 251 million tons of coal to other states by the year 2000, with the most probable figure being 60 million tons.

The report said the most probable development of coal in Montana would result in the establishment of six gasification plants and 28 coal-fired electrical plants by the year 2000.

The council said the most probable demand for water by the year 2000 would be between 180,000 and 290,000 acre-feet a year.

It is likely that Montana strip mines will have an annual production of 20 million tons of coal by 1975, 41 million tons by 1980, 75 million tons by 1985 and 133 million tons by 2000, the report said.

The Independent Record, Helena, Mont., Thursday, December 13, 1973

Prediction for year 2000

Montana coal production may increase by 36 times

TESTIMONY ON SENATE BILL 366

OPP 2-17

INTRODUCTION

My name is Don MacIntyre. I'm representing the Department of Natural Resources and Conservation and the Administration. I'm here to oppose Senate Bill 366.

The Montana Major Facility Siting Act regulates the location, construction, and operation of large-scale energy facilities. The Siting Act is intended to ensure that new energy facilities are built only when consumers need the energy that they would supply or transport, and that their construction and operation impose minimum costs on society and produce the least impact on people and the environment. Alternatives to the proposed facility, including, but not limited to, energy efficiency investments, distributed generation schemes, alternative sites, and alternative sizing, must be developed and analyzed. A proposed facility cannot be certified and, subsequently, constructed unless it represents the best balance among benefits, costs, and environmental impacts when compared to reasonable alternatives.

WHAT SENATE BILL 366 DOES

Senate Bill 366 reverses a state policy that Montana has used for over 20 years to balance economic and environmental costs of energy development. It replaces this policy with a regulatory playing field that is strewn with legal land mines for anyone seeking a certificate under the Major Facility Siting Act.

The heart of the Siting Act is that it is one of the few environmental statutes that balances the private costs of a facility with its environmental impacts. It balances the interest of ratepayers, developers and the environment. The Act requires the Board of Natural Resources and Conservation to choose the energy facility that costs less and has fewer environmental impacts than other reasonable alternatives. Developers aren't required to mitigate all impacts of the facility regardless of cost and the environment does not bear unnecessary impacts if there are no benefits in return. Thus the Siting Act as a matter of public policy is balanced.

SB366 eliminates this balance and tilts the scale to the side of development. The requirement for balancing is eliminated. The bill also eliminates the list of factors that are to be balanced in making a decision on a facility. By eliminating this list of factors, the Board is precluded from considering them when it reviews the environmental impacts of any future proposed facilities.

This bill does not stop here. Senate Bill 366 would permit transmission line and pipeline builders who have the powers of eminent domain to "take" a private citizen's property without

demonstrating that the lines are needed or would serve the public interest, convenience, and necessity in a public process. In addition, the Board of Natural Resources and Conservation would be powerless to prevent such a taking, even if the Board finds in its studies that the taking could be avoided by moving the line. Project sponsors are given the right of eminent domain to construct a facility, without any requirement of a finding that the taking is in the public interest.

These factors alone should cause one to carefully consider the public policy created when the scales are tipped so much in favor of development, with little or no protection for landowners. But the bill goes on to further jeopardize the rights of landowners in Montana. The bill eliminates the preference for locating facilities on public land, thus increasing the likelihood that private property will be subject to eminent domain takings, when public land might otherwise be used.

SB 366 also substantially limits the rights of any public interest organization from participating in the siting process. Senate Bill 366 precludes certain citizens from participating in the decisions that their government is making. Although this provision may likely be unconstitutional in Montana, organizations like the Montana Stockgrowers, Senior Citizens, local granges, and so forth would be eliminated from the siting process.

Senate Bill 366 precludes the Board of Natural Resources from revoking or suspending a certificate to enforce the conditions of the certificate or any provisions of the law except those relating to making false statements. Citizens will no longer be able to petition the agency to enforce a certificate's conditions or the law since the *mandamus* provisions contained in 75-20-404 are repealed by this bill. As a consequence, certificate holders can choose to conform, obey the law, or not depending on whether compliance is economical to them.

Senate Bill 366 eliminates the nearly "one stop" state permitting process that is currently embodied in the Facility Siting Act by removing the coordinated agency review provisions and repealing 75-20-103. Developers like the "one stop" feature and often come in and ask DNRC to perform this type of permit facilitation and coordination that is our responsibility under the major facility siting process.

The bill eliminates the override for local laws that are unduly restrictive to facilities. In other words it will now be OK for a local governments to subject developers to unreasonably restrictive local ordinances or zoning restrictions, such as zoning any energy facilities out of their jurisdiction. At the same time the bill gives local governments the ability to vote a facility completely out of the state siting process. This is somewhat confusing, and can create real problems for transmission

lines. County A zones them completely out and county B decides they like the line so much that they vote to exempt it from the siting process and County C decides it should be located in a place that doesn't connect to the line in County B and the siting process can't change location or can't override any county's decision. The result is going to be that virtually all transmission and pipeline siting will be litigated and the courts will decide. Hardly a desirable result.

National efforts through the National Governors's Association, the Department of Energy, and the Keystone Center, are looking at problems that utilities are having in siting and constructing transmission lines in the United States. The conclusion of these studies is that states that have good siting processes, with public participation, local overrides, and clearly defined decisions rules do not have these problems. It is the states that do not have siting processes or that don't provide for adequate public participation that are having the problems and the reason is fairly straightforward.

Landowners that don't have a public process or feel that they weren't given a fair process are tying these transmission lines up in the court system. Besides being very expensive, legal proceedings can drag on for 6 or 7 years. Utilities aren't willing to take on the cost or face the uncertainty associated with new transmission. They are looking at more costly solutions that don't involve transmission lines to solve their electrical problems. The consequence is that nobody wins. In many cases utilities have asked for siting legislation in states that do not have it to remedy the problems created by the lack of good siting legislation. Florida is the most recent example.

In fact the irony of this bill is that on a national level, utilities and others view Montana as a national model for siting transmission lines. A process that is fair and balanced to all parties. The fact that there has not been any litigation over a state siting process for over 10 years is testimony to the usefulness of the Siting Act. This bill takes Montana from a process which, while not perfect, is generally in line with what utilities, landowners and regulators think the siting process would be in order to get needed transmission lines constructed, to a situation where it may be much more difficult and expensive to build these same lines. SB 366 invites us to stop avoiding problems and experience how difficult we can make our lives, rather than learning from national experience and continuing to do the right thing.

SB 366 asks us to go from a siting process that is the envy of most folks throughout the country because it is a balanced and fair public process that has avoided the costly pitfalls of litigation, to a siting process whose only outcome is that it creates billable hours for attorneys.

None of us should be confused by Senate Bill 366. The bill is not a simple repeal of the Act. It creates innumerable unintended results that will damage both our environment, our private property rights and our industry's ability to build needed energy facilities.

Rather than being unworkable, many developers suggest that the type of process and the coordination and other activities under the Siting Act should be models for other environmental permitting processes to follow. SB 366 eliminates this completely.

CONCLUSION

Mr. Chairman and committee members, the Administration and the Department of Natural Resources and Conservation urge you to oppose passing SB 366.

While we oppose this bill, we recognize that the Major Facility Siting Act is not perfect and does need to be revised to account for changes that have occurred in energy industries, such as electric and gas utilities, over the last twenty years. Dramatic changes in these industries call for parallel changes in the Siting Act, but these changes should not damage the balance between economics and the environment that the Siting Act is intended to achieve.

Toward this end, the Department of Natural Resources and Conservation has reconvened a regulatory reform effort that involves all of the parties who have a stake in the way energy facilities are sited in this state. At its most recent meeting, the members of this Siting Act reform group committed to developing comprehensive revisions to the Act for the next session of the Legislature to consider. Everything in the Act has been put on the table. The group's previous effort at developing consensus legislation resulted in HB 390 last session that unanimously passed both houses of the Legislature and shortened the siting process by two years.

Both the Administration and the Department feel that this group deserves a chance to develop a set of comprehensive and broadly supported reforms for legislative consideration. If we have learned anything over the years of litigation over energy issues in this state it is that communication and working together are less costly and more likely to succeed in the long run, rather than litigation and meat axe legislation. Give consensus building a chance and avoid the distrust and litigation that legislation such as this fosters. We can avoid a lot of acrimony and unnecessary litigation by giving these people a chance to truly reform the Siting Act. The DNRC and Administration urge you to defeat Senate Bill 366.

Amendments to Senate Bill No. 373
First Reading Copy

Requested by Senator Foster
For the Committee on Natural Resources

Prepared by Todd Everts
February 17, 1995

1. Page 2, line 6.
Strike: "will"
Insert: "may"

2. Page 2, line 9.
Strike: "probability"
Insert: "possibility"

TESTIMONY ON SB 373, A BILL TO AMEND THE BONDING PROVISION OF THE MONTANA METAL MINES RECLAMATION ACT

by

Fess Foster, Ph.D.
Director of Geology and Environmental Affairs
Golden Sunlight Mines, Inc.
Whitehall, Montana

February 17, 1995

SB 373 is essentially a housekeeping measure. It amends the performance bond section of the Metal Mines Reclamation Act by adding two new subsections. The new subsections clarify which mining activities are to be bonded, and how bonds can be posted.

The new subsection 5 simply states that only those "reasonably foreseeable" activities that have a "reasonable probability" of occurring shall be bonded in advance. This language would provide the industry some assurance that bonding will not be required for activities that in all likelihood will not occur. Note that the state at any time can still require a mine to post additional bond for any unforeseen new activities that do occur.

The new subsection 6 allows mines to post bond in addition to that required by the state. This additional (or unobligated) bond can then be applied to any unanticipated activities that periodically arise. Mines commonly post bonds once per year. During the course of routine operations, unanticipated activities are often necessary.

As an example, a mine may realize in the middle of the year that a new road is required to begin reclaiming an area. This amendment would allow the mine to use its unobligated bond to cover the disturbance associated with the road. The company, state, and bonding agent will not need to process additional paperwork. The result will be less paperwork for all concerned, yet adequate bonding will be in place at all times. Note that mines currently do post unobligated bonds. This amendment would simply put this practice into statute.

THE WHITE HOUSE BULLETIN

BULLETIN BROADFAXING NETWORK, 825 KING STREET, ALEXANDRIA, VA 22314 (703) 684-2020

SUBJECT: TODAY'S BRIEFING

DATE: FRIDAY, FEBRUARY 17, 1995

o **EPA officials to announce Superfund administrative reforms.** Environmental Protection Agency officials will announce this afternoon reforms to the Superfund contaminated site cleanup program "designed to improve the pace, cost and fairness of the cleanup program while expanding the involvement of states, tribes and local communities." EPA Assistant Administrator for Solid Waste and Emergency Response Elliot Laws told the *Bulletin* this morning that the EPA initiative will cover enforcement; economic redevelopment; community involvement in Superfund decision-making; environmental justice; and consistent program implementation and state and tribal empowerment. Among the initiatives to be announced is one that would encourage the use of innovative technologies at Superfund sites. According to Laws, "This is a recognition that there are some problems with the program and that we do have some ability to correct some of the deficiencies that have been identified over the years." Laws said among the most important reforms will be one to "do some pilot allocations to try to allocate some responsibility for response costs among all the parties, including greater use of mixed funding in which the Federal Government pays for non-viable party [cleanup] shares at certain pilot sites." Laws added that under the current system, which generates "most of the lawyers fees, the parties involved at a Superfund site duke it out among themselves to figure out how much everybody pays." Laws said EPA intends to "set up an allocation scheme where early on in the process we will try to figure out what the allocation share is for each party would be, and the Federal Government would be a player in that if appropriate." Laws said the Department of Justice's Enforcement Office is working on the details of a neutral allocation scheme that would not involve the costs of using administrative law judges.

As to why the Clinton Administration is only now getting aggressive on reforming Superfund administratively, Laws said, "There was some debate as to whether we could have gone further last year. It was a tactical decision made in consultation with folks on the Hill as to whether if we tried to do too much we might have removed momentum for legislative reform last year." Laws said by proving that Superfund can be run more efficiently, "It might show...that some of the reforms we came up with last year which were designed to preserve retroactive liability while to a great extent modifying joint and several liability might provide some relief to parties that are opposed to retroactive liability..."

Laws also noted that EPA's "Brownfields" initiative to allow industrial development to occur at reasonably cleaned up inner city sites addresses House Speaker Newt Gingrich's criticism yesterday about the economic impact of EPA actions in urban areas. "The reaction we are getting is extremely positive," said Laws. "The only criticism we are getting is that we are not doing enough or doing it fast enough."

SB 382

Testimony of Department of Health and Environmental Sciences
Bob Robinson, Director

DHES opposes SB 382.

SB 382 is more than mere substantive amendments to the state superfund law. It constitutes significant change in public policy concerning responsibility for pollution and cleanup and shifts a significant portion of the cleanup cost to the state.

Summary

A number of the changes proposed in this bill, even as amended, would change the State's current effective cleanup program into one that is bogged down in legal fees and transaction costs. With these changes, you will see people coming in here in two years seeking repeal of the entire program because it will be so ineffective and wasteful.

These proposals are primarily an attempt to shift costs from responsible parties to the state Environmental Quality Protection Fund. The ability to do this is completely dependent on increasing the revenue into the fund from the RIT. But the amount proposed to be reallocated to the EQPF falls far short of what will actually be needed to pay the costs which would be shifted to the fund under this proposal.

While I can't represent to you that the liability scheme currently in place is absolutely fair in all instances, I can tell you that given the limited resources of the state, it is absolutely necessary for an effective and efficient cleanup program. This administration supports the current liability scheme as a valid policy choice in order to obtain expeditious cleanup of contaminated sites.

ANALYSIS

Liability Scheme:

The draft legislation, even with the amendments offered by the proponents, significantly changes the CECRA liability scheme by:

(1) eliminating "joint and several" liability and replacing it with a "proportionate" liability standard,

(2) eliminating liability for most "current owners and operators," and

(3) adding an affirmative conduct requirement to the definition of "disposal."

These changes create several problems:

- Proportionate liability, limiting current owner liability, and the affirmative act requirement go much further in limiting liability than the present federal law.

- These changes would significantly reduce:

  - the department's ability to require parties to clean up contaminated sites, and

  - the department's ability to recover the cost of cleaning up contaminated sites from liable parties.

- "Proportionate liability" is not a standard that is clearly defined or developed in the law. "Affirmative act" is an ambiguous standard compared to the strict liability in the current law. This lack of clarity would lead to wasteful litigation and ineffective enforcement of the statute.

- Each of these changes would increase litigation between the department and responsible parties, both to establish liability and to apportion liability. This would draw the resources of all the parties away from cleanup.

- Limiting owner/operator liability and adding an affirmative act requirement would severely restrict the ability of the Underground Storage Tank Program to use CECRA as a cost recovery mechanism. Without that mechanism, the program's authorization would be in jeopardy.

- Adopting standards of liability that fall far short of the comparable federal standards would also limit the Department's ability to obtain the lead role at federal Superfund sites in the future.

Orphan Share Funding

These changes in the liability scheme under CECRA will substantially increase the number of what are known as "orphan shares" at sites. "Orphan shares" are those parts of the total responsibility for the cost of cleanup at a site for which there is not any party that can be found to seek reimbursement from.

After guaranteeing a significant increase in the number of orphan shares at sites, this legislation, even as amended, makes the state liable for all orphan shares, and even makes the state pay for those parties that are simply unable to pay for their part of the cleanup. A conservative estimate of the fiscal impact to the state is in the range of $ 5 million per year and may total $50,000,000 over ten years. Under this framework:

- The department is required to approve filed claims for reimbursement and these claims accumulate over time, accrue interest, and carry over without limit to successive fiscal years. Given the proposed allocation to the EQPF, accrual of interest on the claims would exceed annual revenue after four years.

- Litigation by the Department will be increased, primarily to defend its decisions on filed claims for reimbursement and to defend the interests of the state through representation of an orphan share or party that is unable to pay.

- A new responsibility is placed on the department to review and evaluate validity and reasonableness of costs submitted for reimbursement.

Cleanup Standards

The legislation also replaces the requirements that currently govern cleanup activities with standards that diminish the importance of protecting public health and the environment, and limits the ability of the department to take measures necessary to protect the public from future health and environmental threats at a site. These changes:

- eliminate the statute's primary goal of protecting public health and the environment,

- offset the need for protection of the public health and environment directly against cost, instead of requiring cost to be considered among alternatives that all protect public health,

- could require the Department to choose a cleanup option for a site that violates substantive environmental laws and standards, including both state and federal requirements,

- are unclear and will result in litigation.

DEPARTMENT PROPOSALS:

Voluntary Cleanup Program

The department has considered what constructive steps can be taken to create a cleanup program that works faster and is more efficient. We have proposed an act for a voluntary cleanup program that will allow voluntary cleanups to be conducted with minimal department oversight and restriction. This program would allow private parties more control over their cleanup activities. Yet, they could still receive the department's acknowledgement that they have accomplished cleanup goals, so that property transfers are not restricted.

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DATE 2-17-95
BILL NO. SB-382

Cleanup Standards

In addition, the Department has proposed changes to the criteria considered for selection of remedies to allow more flexibility in choosing remedies and to allow greater consideration of the relative costs and benefits of available alternatives. You have heard about the need for reasonable cost/benefit analysis in making sound remedy selection decisions. The department's proposal for the remedy selection section of CECRA will allow the department to conduct this type of analysis in making remedy selection decisions.

Both of these proposals by the department represent sound and predictable improvements to the cleanup law. The department encourages you to adopt our proposed Voluntary Cleanup Act Proposal and remedy selection revisions for Section 721 of CECRA and to strike the rest of the bill.

Assumptions Used to Estimate Claims on Fund[**]

** Interest for claims on the EQPF **is not** included in these estimates

Past CECRA Sites (SB382 as introduced)

Twenty (20) sites. Total estimated cleanup cost of $9,650,000. Estimated orphan share/insolvent share reimbursement cost of $5,300,000. All claims filed in two-year biennium at $2,650,000 per year. (Source: DHES)

Future CECRA Sites (SB382 as introduced and as amended)

Twenty-six (26) high-priority sites. No abandoned mine sites included. Total estimated cleanup cost of $29,900,000. Estimated orphan share/insolvent share cost of $18,000,000. Claims estimated to occur evenly over a 10-year period at $1,800,000 per year. (Source: DHES)

Abandoned Mine Sites (SB382 as amended)

Twenty (20) high-priority sites exist that will cost from $5,000,000 - $10,000,000 each to reclaim. (Source: DSL) Most of these sites have some responsible parties, and they would be addressed under CECRA authorities. To address 10 sites in 10 years would require a minimum estimated total cost of $50,000,000. Estimated 50% orphan share/insolvent share cost of $25,000,000 distributed evenly over 10 years at $2,500,000 per year. (Source: DHES)

Sixty (60) mid-range sites exist that will cost approximately $1,000,000 each to reclaim. (Source: DSL) Many of these sites have responsible parties or mixed liability, and they would be addressed under CECRA authorities. To address 20 sites in 10 years would require a minimum estimated total cost of $20,000,000. Estimated 50% orphan share/insolvent share cost of $10,000,000 distributed evenly over 10 years at $1,000,000 per year. (Source: DHES)

Storage Tank Sites (SB382 as introduced and as amended)

Approximately 10,000 active underground storage tanks exist in Montana. Leaks from these tanks are reported at a rate of approximately one per day. Under the revised bill, the cleanup of some of these leaking tanks would be eligible for reimbursement from the EQPF. Forty-five (45) cleanups per biennium are estimated to be ineligible for reimbursement from the Petroleum Tank Release Compensation Fund, but would be eligible for reimbursement from the EQPF under the proposed bill. Cleanup costs average $45,000 per site, for a total estimated cost of $2,025,500 per biennium, or $1,012,500 per year. (Source: DHES)

SB 382

Comparison of Estimated State Costs Related to Orphan Share/Insolvent Share Funding Under Proportionate Liability

(Introduced and Amended Versions)

Annually
(in dollars)

	Current Law	SB 382 As Introduced	SB 382 As Amended
Additional Revenue			
EQPF	0	647,000	1,332,500
Cost Recovery	0	(105,000)	(105,000)
TOTAL ADD'L REVENUE	0	542,000	1,227,500
Additional Expenses			
DHES Program Costs	0	292,043	235,384
Claims on EQPF			
Past CECRA Sites	0	2,650,000	0
Future CECRA Sites	0	1,800,000	1,800,000
Abandoned Mine Sites	0	0	3,500,000
Storage Tanks Sites	0	1,012,500	1,012,500
TOTAL ADD'L EXPENSES	0	5,754,543	6,547,884
BALANCE (Revenue less Expenses)	**0**	**(5,212,543)**	**(5,320,384)**

Alternative revisions to cleanup standards:

Section 75-10-721. **Degree of cleanup required -- permit exemption -- financial assurance.**

(1) A remedial action performed under this part must attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release or further release of that substance that assures present and future protection of public health, safety, and welfare and of the environment.

(2) In approving or carrying out remedial actions performed under this part, the department:

(a) shall require cleanup consistent with applicable state or federal environmental requirements, criteria, or limitations;

(b) ~~shall~~ may consider ~~and may require cleanup consistent with~~ substantive state or federal environmental requirements, criteria, or limitations that are well-suited to the site conditions; and

(c) shall select remedial actions that, at a minimum, protect public health, safety, and welfare and the environment, considering present and reasonably anticipated future land uses, and that:

(i) ~~use permanent solutions~~are effective and reliable in the short-term and the long-term;

(ii) are technically practicable and implementable;

(iii) use ~~alternative~~ treatment technologies or resource recovery technologies ~~to the maximum extent~~ where practicable, considering alternatives for institutional and engineering controls; and

(~~iiii~~iv) are cost-effective, taking into account the total short-term and long-term costs of the actions, including the cost of operation and maintenance activities for the entire period during which the activities will be required. Cost effectiveness shall be determined through an analysis of the incremental costs and incremental benefits of alternatives considered.

(3) In selecting remedial actions the department shall also consider the acceptability of the actions to the affected community, as indicated by community members and the local government.

(4) The department may select a remedial action that does not meet an applicable state environmental requirement, criterion, or limitation under any of the following circumstances:

(a) The remedial action is an interim measure and will become part of a total remedial action that will attain the requirement,

MISSOULA COUNTY
MISSOULA
MISSOULA CITY-COUNTY HEALTH DEPARTMENT
301 W ALDER ST
MISSOULA MT 59802-4123
(406) 523-4755

SENATE NATURAL RESOURCES
EXHIBIT NO. 16
DATE 2-17-95
BILL NO. SB-382

Missoula Valley Water Quality District

February 16, 1995

Post-it® Fax Note 7671	Date 2-17	# of pages ▶ 6
To Vivian Brooke	From Peter Nielsen	
Co./Dept.	Co.	
Phone #	Phone #	
Fax # 444-7873	Fax #	

Senator Lorents Grosfield, Chair
Senate Natural Resources Committee
Montana Senate
Helena MT

RE: Senate Bill 382

Dear Senator Grosfield,

We are unable to attend today's hearing on Senate Bill 382, but wish to offer the following comments.

Missoula Valley residents obtain their water from a sole source aquifer. Several facilities have affected the quality of our aquifer through releases of toxic substances. These include sites which are currently being cleaned up through the state CECRA program, where industrial chemicals such as pentachlorophenol, heavy metals, insecticides and other sucbstances have been released to groundwater. As such, we are gravely concerned about the proposed amendments to CECRA law suggested in Senate Bill 382. We urge you to resist ill-founded attmepts to weaken CECRA or to shift the costs of cleanup and state regulatory oversight from those that cause pollution to Montana citizens.

Senate Bill 382 is a complicated bill, but our understanding of it is made much more difficult by the numerous proposed amendments which have been suggested recently. We have only had a brief opportunity to review these proposed amendments this morning, and doubt that other Montana citizens are aware of their nature. For this reason, I suggest that your committee rehear this bill to enable our department and Montana citizens an opportunity to comment on the legislation which is actually proposed for adoption.

We are alarmed by the proposal in Section 5 to exempt those who purchased property prior to July 1, 1989 from liability and to eliminate the concept of joint and several liability. These changes would shield virtually every facility which has caused pollutoin of our aquifer from liability under this statute. This is clearly unnacceptable, adn we urge you in the strongest possible terms to delete these proposed amendments.

We are also extremely concerned with the proposed changes which would seriously weaken the standards to which a site must be cleaned up. These are proposed in Section 6. The version of SB382 which we have reviewed would eliminate the need to provide both present and future protection of human health and the environment. It would also require that the costs of cleanup be "reasonable related to" the benefits. This sounds nice in theory, but in effect it means that if

SENATE NATURAL RESOURCES
EXHIBIT NO. 16
DATE 2-17-95
BILL NO. SB-382

a cleanup costs more than the public benefits, the cleanup may not be required - and that means that the cost is simply shifted to the public - you and me. I don't believe that Montanans agree that they should pay the cost of cleaning up toxic waste sites. Certainly the costs of cleanup are high - this should provide industry with ample incentive to prevent future contamination. If we relieve them of the requirement to pay for effective cleanup, we have elimintated all incentive to prevent future pollution.

In a similar vein Section 6 makes radical changes in the criteria for determining degree of cleanup. It would eliminate the need to meet state and federal requirements. Instead of doing this, we suggest that you add a requirement to meet local standards for cleanup, where they have been adopted by Montana citizens through their local governments. The proposal included in SB 382 is contrary to the notion of state and local rights.

The proposed amendements also would delete the requirement that a cleanup use permanent solutions. This is a short-sighted suggestion which will only serve to transfer the costs of cleanup from those who caused the pollution to future generations of Montanans.

Section 6 would also require that ony current land uses be considered in establishing the degree of cleanup required. This is also incredibley short-sighted because it forbids consideration of a community's long-term goals, and takes away our right of self-determination.

Section 7 would eliminate the requirement that polluters pay the state's cost of overseeing cleanup. Not only will this tranfer the costs of this task to innocent Montanans, but it will also effectively limit the state's capability to get work done on cleanup sites because it will not have the budget to do so.

We have only briefly reviewed the recent drafts of language pertaining to a voluntary cleanup program. While we agree that a voluntary cleanup program is desirable, we must emphasize the importance of building in adequate safeguards to protect the public interest and to prevent abuse of such a system. The Department must have the ability to proceed with cleanup under administrative orders instead of voluntary cleanup plans, and the public must have an oportunity to be informed and involved in decisions.

Please consider tabling this bill, or rehearing it to allow public comment on the legislation which may be sent ot the Senate for consideration. Thank you for considering these comments.

Sincerely,

Peter Nielsen

Peter Nielsen
Environmental Health Supervisor

cc: Senator Jeff Weldon
Senator Vivan Brooke

Amendments to Senate Bill No. 386
First Reading Copy

Requested by Sen. Devlin
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 16, 1995

1. Title, line 8.
Following: "RELEASE;"
Insert: "CREATING A VOLUNTARY COMPLIANCE PROCEDURE FOR REIMBURSEMENT;"

2. Title, line 10.
Following: "DATE"
Insert: "AND A TERMINATION DATE"

3. Page 5, line 12.
Following: "(h)"
Insert: "[except as provided in [section 4],]"

4. Page 6.
Following: line 22
Insert: "NEW SECTION. **Section 4. Voluntary compliance -- reimbursement.** (1) For the purposes of this section, a tank is:

(a) a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(b) a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing heating oil for consumptive use on the premises where it is stored; or

(c) farm or residential underground pipes used to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less.

(2) Except as provided in subsection (3), if an owner or operator of a tank voluntarily complies with the requirements under Title 75, chapters 10 and 11, that owner may be eligible for reimbursement subject to the requirements of 75-11-307."

(3) A tank installed after [the effective date of this act] is not eligible for reimbursement under 75-11-307.
Renumber: subsequent sections

5. Page 6, line 24.
Insert: "NEW SECTION. **Section 6. {standard} Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 75, chapter 11, part 2, and the provisions of Title 75, chapter 11, part 2, apply to [section 4]."

6. Page 6.
Following: line 26

Insert: "NEW SECTION. **Section 8. Termination.** [Section 4 and the bracketed language in 75-11-307] terminate December 31, 1995."

SENATE NATURAL RESOURCES
EXHIBIT NO. 18
DATE 2-17-95
BILL NO SB-349

Amendments to Senate Bill No. 349
First Reading Copy

Requested by Senator Foster
For the Committee on Natural Resources

Prepared by Todd Everts
February 13, 1995

1. Title, lines 8 and 9.
Strike: "SPECIFYING" on line 8 through "INCINERATORS;" on line 9

2. Title, lines 11 through 15.
Strike: "CLASSIFYING" on line 11 through "INCINERATORS;" on line 13.

3. Title, line 15.
Strike: "75-2-220,"
Following: "75-2-231"
Strike: ","
Insert: "AND"
Following: "75-2-413,"
Strike: "AND 75-10-403,"

4. Page 2, lines 10 through 12.
Strike: subsection (3) in its entirety

5. Page 2, line 14 through page 5, line 15.
Strike: Section 2 in its entirety
Renumber: subsequent sections

6. Page 7, line 11 through page 9, line 28.
Strike: Section 4 in its entirety
Renumber: subsequent sections

SENATE NATURAL RESOURCES
EXHIBIT NO. 19
DATE 2-17-95
BILL NO. SB 349

Amendments to Senate Bill No. 349
First Reading Copy

Requested by Sen. Grosfield
For the Committee on Natural Resources

Prepared by Martha Colhoun
February 17, 1995

1. Page 2, line 4.
Following: the first "which"
Strike: "hazardous"
Insert: "the"
Following: the first "burning"
Insert: "of commercial hazardous waste"
Following: "which"
Strike: "hazardous"
Insert: "the"
Following: "burning"
Insert: "of commercial hazardous waste"

2. Page 2, line 6.
Following: "(2)"
Strike: "The"
Insert: "When, because of the proximity of a commercial hazardous waste incinerator to populated areas, the department determines that continuing monitoring is appropriate, the"

3. Page 10, line 21.
Following: "nature"
Insert: "or that the telemetering device was compromised or otherwise tampered with"

DATE 2-17-95

SENATE COMMITTEE ON NATURAL RESOURCES

BILLS BEING HEARD TODAY: ~~SB-xxx~~, SB-365, SB-373, SB-366, SB 382

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Deborah Smith	Sierra Club	366 373		X
Dick Juntunen	Resource Managent Associates	406, 366 365, 373, 382	X	
Fess Foster	Golden Sunlight Mine	373	X	
John Fitzpatrick	Pegasus Gold	373 382	X	
Anne Hedges	MEIC	382		X
GAIL ABERCROMBIE	MT Petroleum Assn	382	X	
John Davis	ARCO	382	X	
Fess Foster	Golden Sunlight Mine	382	X	
Larry Brown	Ag Pres. Assoc.	—	—	—
Mick Bowman				

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-17-95

SENATE COMMITTEE ON NATURAL RESOURCES

BILLS BEING HEARD TODAY: ~~SB-[illegible]~~, SB-365, SB-373
SB-366, SB-382

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Jim Mockler	MT. Coal Council	365 366	✓ ✓	
Steve Shirley	Great Northern Properties	366	✓	
STEVE HART	EXXON	366	✓	
Ken Williams	MPC/Entech	365	✓	
Dan Simpson	MT Coal Council/Westmoreland	365	✓	
Bud Clinch	DSL	373 365	✓ ✓	
Brian Dunn	Exxon	366 382	✓ ✓	
~~Tom Bell~~ Paul Tietz	Santa Fe Pacific Gold	382 373	✓ ✓	
Maureen Clary-Schwinden	WIFE	406	✓	
Leonard Wortman	Jefferson County	373	X	
[illegible]	MSGA MWGA	406	✓	
[illegible] Brown	Montana Audubon	365		
[illegible]	DNRC/governors Office	366		X
Janet Ellis	MT Audubon	366		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-17-95

SENATE COMMITTEE ON NAT. RESOURCES

BILLS BEING HEARD TODAY: ~~SB 406~~, SB-365, SB-373
SB-366, SB-382

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
MARK Simonich	DNRC	SB366		X
Allen Barkley	Columbia Falls Aluminum Co	SB 382	✓	
Gary Wiens	MT. Elec. Co-ops Assn	SB366		
Chuck Rose	Seven-Up Pete Joint Venture	373 382	✓	
Ellen P Foster	Bull Mtn Land Owners & Northern Plains ResCon	366		X
Jeff Barber	NPRC	365	X	
DON MACINTYRE	DNRC & ADMINISTRATION	366		✓
Thomas J Johnson	CURE	373	X	
ERIC WILLIAMS	PEGASUS GOLD	373	X	
Bob WILLIAMS	MT MINING ASOC	"	✓	
Bill Allen	MT Audubon			X
Steve Kelly	self	366		X
GARY LANGLEY	MONTANA MINING ASSN	382 373	✓	
Vicki Watson	myself	366 382		✓ ✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-17-95 BILL NO. SJR-15 NUMBER 1

MOTION: DO PASS AS AMENDED

6-4

NAME	AYE	NO
VIVIAN BROOKE		✓
B.F. "CHRIS" CHRISTIAENS		
MACK COLE	✓	
WILLIAM CRISMORE	✓	
MIKE FOSTER		✓
TOM KEATING	✓	
KEN MILLER	✓	
JEFF WELDON		✓
BILL WILSON		✓
LARRY TVEIT, VICE CHAIRMAN	✓	
LORENTS GROSFIELD, CHAIRMAN	✓	

SEN:1995
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CS-11