

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By REP. DICK KNOX, Chairman, on January 6, 1995,
at 3:00 p.m.

ROLL CALL

Members Present:

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

Members Excused: Rep. Aubyn Curtiss, Rep. David Ewer, Rep. Emily Swanson

Members Absent: None

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

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

Committee Business Summary:

Hearing: HB 75, HB 72
Executive Action: HB 50

HEARING ON HB 75

Opening Statement by Sponsor:

REP. BILL WISEMAN, House District 41, Great Falls, said HB 75 was requested by the Department of Health and Environmental Sciences. For years the Environmental Protection Administration (EPA) has had strict rules for handling used oil but Montana has never had the same restrictions. The main part of the bill is on pages 8

and -9 which states the penalties for people who mishandle used oil.

Proponents' Testimony:

Roger Thorvilson, Acting Division Administrator, Waste Management Division, Health and Environmental Sciences. Written testimony. Exhibit 1.

Bill Allen, Montana Audubon Legislative Fund. Written testimony. Exhibit 2.

Ronna Alexander, Montana Petroleum Marketers Association (MPMA) said the association is the wholesaler and distributor of petroleum products in Montana. The industry supports the contents of HB 75, however a language amendment has been offered. **Exhibit 3.** It is important that Montana does adopt the rules governing the management of oil to ensure that it is handled properly. The people in the oil industry also need to be protected against liability problems.

Steve Turkiewicz, Montana Automobile Dealers Association (MADA), said the association is supportive of HB 75 with the amendments proposed by the Petroleum Marketers' Association. MADA feels that the adoption of EPA's proposal is enough for the legislature to give that authority and no more, to the Department of Health and Environmental Sciences. MADA supports the bill with the proposed amendments.

Joanna Johnson, National Oil Recycling Association, Automotive Oil Change Association supports HB 75 because it sets the groundwork to adopt 40 CFR part, 279. This rule is very protective of the environment and promotes used oil collection. It classifies used oil destined for recycling as non-hazardous waste. This is necessary in order to maintain the used oil recycling chain. The classification encourages service stations to collect used oil. It is the do-it-yourselfers' used oil that ends up in sewers. Also, the service station dealer exemption is important. **Ms. Johnson** encouraged the legislature to consider expanding the definition of the service station dealer exemption sometime in the future.

Roger Bessler, President, Oily Waste Processors, Great Falls, supports HB 75 and the amendments proposed by the MADA.

Ann Hedges, Montana Environmental Information Center, said her office receives a lot of calls from the public asking what they should do with used oil. **Ms. Hedges** said HB 75 makes her feel more comfortable turning the calls over to the Department of Environmental Sciences. This bill recognizes the danger used oil poses. The public is no longer dumping used oil in back alleys. They understand that something proper must be done with it. The bill is a reasonable, although limited approach. The Center

believes it should be expanded in the future. **Ms. Hedges** urged the committee to support HB 75.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. DOUGLAS WAGNER, House District 83, Hungry Horse, asked **Roger Thorvilson** if individual homeowners will be exempt from the rules for used oil. **Mr. Thorvilson** replied yes. **REP. WAGNER** asked **Mr. Thorvilson** if the bill proposes to let the state decide if oil is a hazardous waste. **Mr. Thorvilson** said the EPA decided that used oil shouldn't be listed as hazardous waste and that it was not the best approach because they didn't want to discourage recycling by establishing too heavy a control on material. The EPA developed under their authority, in their hazardous waste program, the ability to regulate used oil without listing or identifying it as hazardous waste. Their intention was to give the state the same authority.

REP. JON ELLINGSON, House District 65, Missoula, asked if there is any used oil that is not hazardous. **Mr. Thorvilson** said there is used oil that is not hazardous. If some used oils were tested against the criteria, they would test as hazardous. That was particularly the case in the past when there was more leaded fuel. Historically, used oil was often mixed with hazardous waste, but for the most part, used oil is not hazardous. **REP. ELLINGSON** asked **Mr. Thorvilson** if he would agree that the language in the bill that identifies that some used oil is not hazardous, clarifies ambiguity rather than creates one. This is in reference to the proposed amendments which asks that this language be stricken. **Mr. Thorvilson** said it was his understanding that the department attorney and the bill drafter decided that was the best language to use to clarify the intent of the bill.

REP. CLIFF TREXLER, House District 59, Corvallis, asked **Mr. Thorvilson** what part of HB 75 exempts the homeowner. **Mr. Thorvilson** said that is not in the text of the bill. It is a provision of the regulations that has already been developed by the EPA.

REP. WAGNER asked **Roger Bessler** if he currently keeps oil records and how often the state checks those records. **Mr. Bessler** said the state comes to his place of business on a regular hazardous waste inspection and record review about once a year.
Tape 1 Side B

Closing by the Sponsor:

REP. BILL WISEMAN said for years used oil was handled very carelessly in the State of Montana. **Roger Bessler** saw an

opportunity as a private entrepreneur to build a plant in Great Falls to process used oil. He now collects oil from different areas of the state and processes it in his plant and sells it to asphalt plants, industrial institutions, or homeowners that need heating oil. **Mr. Bessler** has built a plant, pays taxes, and still supports this legislation. **REP. WISEMAN** urged the committee to support HB 75.

HEARING ON HB 72

Opening Statement by Sponsor:

REP. CHARLES DEVANEY, House District 97, Plentywood, said he is sponsoring HB 72 at the request of the Board of Oil and Gas Conservation. The board is authorized by rule to set drilling permit fees not to exceed \$200 and institutes a fee of \$50 for filing a notice of change of operator. The board is funded proprietorially and the fees have not been adjusted since 1954. Since 1954 there have been many changes in the oil and gas industry and the regulatory burden associated with it. These changes have substantially increased the administrative responsibility of the board. This bill provides the funding to accomplish the required task.

Proponents' Testimony:

Tom Richmond, Administrator and Petroleum Engineer, Board of Oil and Gas, Billings, said HB 72 changes the drilling permit fee from the three-tier level by depth, to a single fee. The bill also provides for a fee for a change of operator. It allows the board to establish both fees by rulemaking. There would be a public hearing before the fees could be adopted. The board has always collected a drilling permit fee for new wells. The board by rule, has required a drilling permit fee for the deep drilling of a well which is defined as the drilling out of plugs of a previously plugged well. A fee is not charged for re-entering or working on a well that exists and has not been plugged. The bill authorizes the collection of a fee for the deepening of a well. The board by rule has collected the difference in the depth fees or deepening in the past. If a well is deepened within a certain depth range a fee is collected; if a well is deepened within the next depth range the difference is collected. The bill also authorizes the collection of a drilling fee for a horizontal re-completion which is a new technology. The operator fee is to recover some of the administrative costs involved in the procedures of changing operators. In checking with other states it was found that several states are now collecting change of operator fees and a number of states are collecting drilling permit fees substantially different from what they used to collect. Wyoming is the only state that still hasn't done anything to its drilling permit fee. The fee is \$25. North Dakota collects a \$100 drilling permit fee and a \$25 change of operator fee. South Dakota collects a \$200 drilling permit fee and a \$25 change of operator fee. Alaska charges a \$100 drilling

permit fee but a cost of plugging log must be posted at the time the drilling is through. Louisiana charges a \$100 drilling permit fee for a 3,000 foot or shallower well, \$500 for a 3,000 to 10,000 foot well, and \$1,000 for a 10,000 foot or deeper well. Texas charges a \$125 drilling permit fee for a 4,000 foot well, \$150 for a 4,000 to 9,000 foot well, and \$200 for a 9,000 foot or deeper well. The board may choose to set a tiered fee for drilling and change of operator permits. The fiscal note will show that last year there were over 2,000 change of operators, mainly due to change of ownership of two of the largest gas fields in the state. The board's rulemaking is a very public process and there is a lot of input from operators throughout the state.

Jerome Anderson, Attorney, Shell Western Exploration and Production Company (SWEPC) said SWEPC is the largest producer of crude oil in Montana. SWEPC supports of HB 72 as amended. **Exhibit 4.**

Gail Abercrombie, Executive Director, Montana Petroleum Association (MPA) supports HB 72.

REP. GARY FELAND, District 88, Shelby, presented an amendment to HB 72. **Exhibit 5.** **REP. FELAND** supports HB 72 as amended.

Jim Jensen, Executive Director, Montana Environmental Information Center (MEIC) supports HB 72.

Dennis Iverson, Northern Montana Oil and Gas Association supports HB 72 with the two amendments presented by **Jerome Anderson** and **REP. FELAND.**

Patty O'Reilly, Shelby, said she doesn't see a need to inspect wells whenever there is a change of operators because part of the duties of the oil and gas industry is to check their own wells and take care of the problems on a timely basis. She asked the committee to consider this.

Patrick Montalban, President, Mountain States Resources, Inc. (MSR), Vice President, Montana Oil and Gas Association (MOGA), Cut Bank, supports HB 72 if it will help continue the operation of the Shelby Board of Oil and Gas office. MSR and MOGA believes an increase in fees for drilling permits is completely justified. A tiered type of permit such as they have in Texas would be fairer to the small independent operator. MSR and MOGA do not agree with the change of operator part of the bill. It's usually the small independent operators in Montana that buy wells from the major oil companies. They are the ones that take the wells over when its uneconomical for major oil company to operate. Four hundred wells at the cost of \$50 each for a total of \$20,000 is a lot of money. This cost should be removed from the bill. If the Board of Oil and Gas need more funds to justify its operations, it should raise the resource indemnity tax. **Mr.**

Montalban urged the committee to pass HB 72 with the amendments.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

Tape 2 Side A

REP. EMILY SWANSON, House District 30, Bozeman, referred to the part of the HB 72 that states that the board cannot exceed \$200 for drilling fee permits and \$50 for change of operator permits and asked **Tom Richmond** if these amounts left room for the board to set a graduated fee scale. **Mr. Richmond** replied yes. He said his recommendation would be that the board set a graduating fee for change of operators and set the drilling fee at \$200 because the cost of processing the paperwork for a shallow well is not significantly different than processing the paperwork for a deeper well.

REP. CARLEY TUSS, House District 46, Great Falls, said the proponents from Shelby seemed to perceive the operators' fee as a burden but as **Mr. Richmond** described it, it was more of a protection against a previous owner's misjudgment. She asked **Mr. Richmond** to clarify his statement. **Mr. Richmond** said the intention is to provide a service at the time the well is being transferred. The service is to make sure that the wells being transferred are not out of compliance. This benefits the state, but the board thinks it also benefits the people involved in the transfer because the new operator knows either that the property is in compliance or what parts are out of compliance. **REP. TUSS** asked **Mr. Richmond** if there would be penalties assessed if the operator did not bring the well into compliance. **Mr. Richmond** said there could be penalties assessed depending on what the non-compliance is.

REP. JAY STOVALL, House District 16, Billings, asked **Mr. Richmond** to explain the makeup of the Board. **Mr. Richmond** said the board is a seven member quasi-judicial board appointed by the governor. The chairman is **Stan Lund** of Reserve, Montana. He is a farmer/rancher. By statute, three of the board members are industry representatives, two of the board members are landowner representatives, and two of the board members are public members. One of the members has to be an attorney.

REP. HAL HARPER, House District 52, said according to the **Jerome Anderson** amendments, unless a well is extended 200 feet or more, a driller is exempt from obtaining a permit and asked **Mr. Richmond** to comment. **Mr. Richmond** said it is his understanding that the amendments only apply to existing wells that have already been drilled.

REP. KARL OHS, House District 33, Harrison, Montana, asked **Mr. Richmond** how the board is funded. **Mr. Richmond** said the board is principally funded by a licensing tax. That is a tax on the value of oil and gas produced in the state. The tax is currently set by statute at a maximum rate of two-tenths of one percent of the value sold. Another source of income for the board is drilling permit fees.

REP. STOVALL asked **Mr. Richmond** if the change of operator fee costs an individual the same amount for one well as it would for several wells. **Mr. Richmond** said he thinks there is an economy of scale. **REP. STOVALL** asked **Mr. Richmond** what inspectors check during a field inspection of wells. **Mr. Richmond** said inspectors check to make sure that the property is in minimal acceptable condition for that area. For example, the inspectors make sure there are no oily pits. There is also a record check done in the office to make sure required reports are there.

REP. BOB RANEY, House District 26, Livingston, said he was concerned about **REP. FELAND'S** amendment that changes the operating permit fee from \$50 to \$25. He asked **Mr. Richmond** if the \$25 fee would be enough to cover costs in all cases. **Mr. Richmond** said as part of the rulemaking the board would need to look at a tiered system and how many wells could be done for \$25 and make necessary adjustments to recover costs. **Mr. Richmond** stated when he checked with other states he didn't find any that were charging more than \$25. **REP. RANEY** asked **Mr. Richmond** why he requested the \$50 operating permit fee. **Mr. Richmond** said the \$50 was requested as a ceiling. **REP. RANEY** said he didn't understand why all of a sudden a \$25 ceiling would be okay. **Mr. Richmond** said when the board made the proposed legislation it was expected that the board would be authorized to establish a fee schedule and it didn't believe the \$50 proposal would be adopted. The board asked for a high enough cap to give it some flexibility. Twenty-five dollars is an adequate operating permit fee.

Closing by Sponsor:

REP. DEVANEY said both fees are set by rule which gives the Board of Oil and Gas Conservation the opportunity to hold public hearings and all protesters and other interested individuals will have the chance to have their objections heard at the hearings. **REP. DEVANEY** urged the committee Do Pass HB 72.

Michael Kakuk, Environmental Quality Counsel, referred to an amendment on HB 72 written by **Jerome Anderson**, Attorney, SWEPC, and said it was not in proper format. He reminded the committee that all amendments should go through the committee staff so they are properly written. All amendments must be requested by a representative before the committee staff drafts them.

EXECUTIVE ACTION ON HB 42Discussion:

REP. WILLIAM REHBEIN, JR, House District 100, Lambert, presented his amendment to HB 42. **EXHIBIT 6.** He said the amendment makes sure the law does not become retroactive or affect any stream alteration that has been installed. The amendments were proposed by the Department of Livestock.

REP. DAVID EWER asked REP. REHBEIN why the amendment exempts irrigation structures. If the irrigation structure is legitimate to begin with, exemption isn't needed. If it is illegitimate then it is a trespass and it doesn't matter if it is an irrigation structure or a house. REP. REHBEIN deferred the question to **Jeff Hagener, Administrator, Land Administration Division, Department of State Lands.** Mr. Hagener said there is already a process through the 310 permit law, and what is called a 404 permit that is required by the Army Corp of Engineers that covers most of the things on riverbeds, in particular, irrigation structures. There is a provision called "for customary and historic actions" that exempts additional approval unless there is a major change in what has already been done. The amendment does not exempt what is required under the 310 permit process.

REP. RANEY said recently someone in his community violated the 310 permit law and wasn't penalized for it. Violators won't be punished under the amendment and they aren't penalized under the 310 permit law. He asked **Mr. Hagener** how violators would ever be penalized when the amendments exempt them. **Mr. Hagener** deferred the question to **John Bloomquist, Montana Stockgrowers Association.** Mr. Bloomquist said there are penalty provisions within the 310 permit law even though the provisions may not have been enforced.

REP. HARPER said if the irrigation structure exclusion was made part of HB 42, and state lands property was damaged, by an irrigation structure on the bed of a navigable water body, state lands wouldn't have any recourse. The 310 permit law may or may not come into play depending on whether the stream bed is altered or whether it is necessary to put machines into the stream. He asked **Mr. Bloomquist** what the logic of the amendment was. **Mr. Bloomquist** said in his opinion, the 310 permit law works. He said if the bill does not have the exemption, it would be necessary to get a license from the Department of State Lands and go through the 310 permit process. The intent of the exception was to take away one of the hoops to jump through. REP. HARPER said the law seemed to apply only to someone who damages state land. **Mr. Bloomquist** said he didn't agree. He said the bill refers to "a person who constructs a road, pipeline, ditch, utility line, fence, building, or other facility or structure on

state land, etc"., "or who disturbs state land in anticipation of the installation of a facility or structure", etc.

REP. STORY said that maybe the amendment was placed in the wrong spot in the bill.

REP. EWER asked if an amendment could be amended. REP. HARPER said an amendment could be amended.

Motion:

REP. EWER MOVED TO AMEND REP. REHBEIN'S AMENDMENT.

Discussion:

REP. HARPER said if a person has a valid 310 permit, a permit from state lands is not required to disturb state lands. The amendment is going to allow an exception where the value of state lands can be diminished without compensation and also possibly the value of the lessee's land can be disturbed without compensation.

REP. ELLINGSON asked if the 310 permit is obtained from the Department of Natural Resources. REP. STORY said the 310 law was established about 1975 for the purpose of protecting the water ways of the state. It basically requires anyone who goes into a perennial stream to acquire a permit from the conservation district that he lives in. An application is completed and then it is determined if it is a project. A project is anything that disturbs the bed or banks of the stream. An inspection team consisting of a representative of the conservation district and a representative from the Department of Fish, Wildlife and Parks will inspect the site. The inspection team will determine if the work is going to be done with the least impact on the stream. The decision will then be made to approve, disapprove or modify the project.

CHAIRMAN KNOX said there is a lot of support for HB 42 and when some of the problems can be worked out the bill will be passed by the committee. He asked REP. EWER to withdraw his motion to amend the amendment. He suspended executive action on the bill until the sponsor and interested parties can get together and get the amendment cleared up and bring it back to the committee for further action.

REP. EWER withdrew his motion to amend the amendment.

EXECUTIVE ACTION ON HB 50

Motion:

REP.. ORR MOVED HB 50 DO PASS.

Discussion:

REP. RANEY said he couldn't find any place in the bill where it mandates the sale of timber.

REP. HARPER said he thought HB 50 was actually an amendment to an act that was past during the last legislative session that mandated the sale of timber.

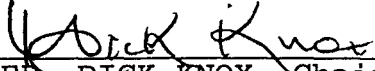
REP. RANEY asked Don Artley, Administrator, Forestry Division, Department of State Lands, why the bill was originally a temporary bill that became permanent. Mr. Artley said a sunset provision was placed into the statute because of concern about the source of expending the revenues generated from the sale of timber. Those revenues go directly to the school equalization account and there was some discomfort with tapping that source of revenue. Because of the general fund difficulties over the past several years the legislature decided to put in a two-year sunset provision and then evaluate it. HB 50 removes the sunset provision and makes it a permanent source of revenue.

Vote:

Question was called. Voice vote was taken. Motion carried unanimously. HB 50 Do Pass.

ADJOURNMENT

Adjournment: 5:15 p.m.



REP. DICK KNOX, Chairman



ALYCE RICE, Secretary

DK/ar

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 1-6-95

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

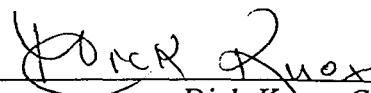


HOUSE STANDING COMMITTEE REPORT

January 9, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that **House Bill 50** (first reading copy -- white) **do pass**.

Signed: 
Dick Knox, Chair

Committee Vote:
Yes 8, No 0.

70909SC.HDH

Department of Health & Environmental Sciences
Testimony in Support of HB 75

House Natural Resources Committee
January 6, 1995

The department has operated a state hazardous waste program pursuant to state law and under an authorization agreement with the US EPA since 1981. Under the "Findings and Purpose" section (§ 75-10-402) of the Montana Hazardous Waste and Underground Storage Tank Act (MHWUSTA), it is stated that *"The legislature finds that the safe and proper management of hazardous wastes, the permitting of hazardous waste facilities, and the siting of facilities are matters for statewide regulation and are environmental issues that should properly be addressed and controlled by the state rather than by the federal government."* The amendments to MHWUSTA set forth in this bill are necessary to update the state program, to maintain its equivalence with the federal hazardous waste program, and to ensure that regulatory controls are exercised by the state, rather than the federal government, in Montana. Another purpose of the bill, and of the administrative rules that the department intends to adopt upon passage of the bill, is to foster used oil recycling as opposed to disposal.

Should this bill be enacted, the department will exercise MHWUSTA authority over the management of used oil and will adopt administrative rules equivalent to those adopted by the US EPA in 1992 and codified in 40 CFR Part 279. To a significant extent collectors and processors of used oil in Montana and surrounding states already are meeting the requirements of 40 CFR Part 279. Passage of this bill, therefore, will not cause any significant disruptions in the current system of used oil collection and management.

I am providing as a handout an EPA summary of the Part 279 used oil management standards. You will note from this summary

that the used oil regulations address:

- Generators of used oil
- Processors & re-refiners
- Collectors/marketers
- Fuel burners
- Transfer facilities
- Used oil disposal

The regulatory burden of the rules is concentrated on the collectors and marketers of used oil and on the ultimate re-refining or fuel burning facilities; the requirements are minimal for those who generate used oil and consign it to others for management. The regulations ban used oil as a dust suppressant on roads, parking lots, etc. Montana is among the last few states nationally to enact this ban. Exemptions are provided in the regulations for:

- Individual household generators of used oil;
- Farmers producing less than 25 gallons/month;
- Use as a fuel in oil-fired space heaters (conditional exemption);
- Direct reuse of used oil from diesel engines by way of blending it back in as a partial diesel fuel substitute.

The authority of the department to adopt administrative rules under MHWUSTA is limited by language in § 75-10-405(2): *"The department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976"* Passage of this bill will allow the department to accomplish the necessary and important updating of its rules to conform with those regulations already published by the US EPA. It will ensure that regulatory decisions and compliance decisions which apply to used oil handlers within Montana will be formulated in Montana, not in Denver or Washington. There is no projected fiscal impact related to this bill; rulemaking and implementation will be absorbed within the program's normal implementation scheme. The department urges your favorable consideration of this bill.

Testimony provided by Roger Thorvilson
Dept. of Health & Environmental Sciences
Ph. 444-1430

EXHIBIT 1
DATE 1-6-95
HB 75STATEMENT OF INTENT
SENATE BILL 212
Senate Public Health Committee

A statement of intent is required for this bill because it delegates rulemaking and licensing authority to the Department of Health and Environmental Sciences. Senate Bill 212 is intended to separate from the existing Montana Solid Waste Management Act (Title 75, chapter 10, part 2) all references to the treatment, storage, disposal, generation, and transportation of hazardous wastes and place the statutes regulating hazardous wastes into a separate part of the code. The specific objective and intent of the bill is to clarify and extend state rulemaking authority in order to be totally authorized by the Administrator of the Environmental Protection Agency (EPA) to operate a hazardous waste program in Montana which is equivalent to and in lieu of the federal hazardous waste program established by Subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976, P.L. 94-580, as amended.

The rules promulgated and permitting procedures adopted under this bill shall meet minimum standards under RCRA and shall not be more restrictive than those analogous provisions in which EPA has adopted regulations under RCRA. In the limited situations in which no federal regulations have been adopted or the drafting of regulations has been purposefully left to the states, the Department must be guided and constrained by the purpose set forth in Section 9, the powers of the Department noted in Section 11, the rulemaking guidelines of Section 12, and the minimum requirements of RCRA.

It should be noted that Montana has enacted regulatory provisions under existing Title 75, chapter 10, part 2, the Solid Waste Management Act, and has sufficient coverage of hazardous waste responsibilities enabling the state to qualify for interim authorization from EPA to carry out a program in lieu of the federal RCRA hazardous waste program. This bill grants the Department authority to make additional adjustments, through rulemaking, which will bring its program affecting generators and transporters of hazardous wastes, the universe of hazardous waste, inspection and sampling, definitions, enforcement alternatives and penalties into equivalency and consistency with federal requirements.

Senate Bill 212 intends that the Department of Health and Environmental Sciences shall have authority to require by rule, in accordance with the Montana Administrative Procedure Act, that generators of hazardous wastes, prior to transporting hazardous wastes or offering them for transport offsite, must perform certain packaging, labeling, marking and placarding of the wastes in a manner equivalent to the provisions of federal regulations contained in 40 CFR 262.30 through 262.33. The Department shall

SENATE BILL NO. 212

have authority under the bill to adopt rules setting penalties or fines for generators of hazardous wastes that set upper limitations which are no less than the amount of \$10,000 per day, as required for final authorization under the federal program. Furthermore, Senate Bill 212 allows additional rulemaking to clarify the Department's authority to make inspections of and take samples from generators of hazardous wastes in a manner equivalent to federal inspection authority provided in Section 3007 of RCRA and federal rules promulgated under RCRA.

Under existing law, the Department has promulgated rules which define a broad spectrum of hazardous wastes (the universe of hazardous wastes) by specific listing and by characteristics; which list exclusions from the definition of hazardous waste; which define terms necessary to implement the hazardous waste program; which establish manifest requirements specifying how a hazardous waste is documented from time of generation through transport to time of disposal by the operator of a treatment, storage or disposal facility; which set recordkeeping and emergency cleanup procedures for transporters of hazardous wastes; which establish licensure procedures and standards for operators of hazardous waste treatment storage and disposal systems; and which provide enforcement alternatives for treatment, storage and disposal facility licenses. All of the existing rules are equivalent to and consistent with the federal program established by RCRA; in many instances, EPA rules have been incorporated by reference.

Under Senate Bill 212, the Department will have authority to amend and revise these rules, and to adopt new rules, in accordance with the Montana Administrative Procedure Act, which may be needed to meet changing minimum federal standards for a hazardous waste program authorized for state control under RCRA, as amended. Thus, Montana will be able to continue to maintain federal authorization for an independent hazardous waste program, equivalent to the federal program, but operated by the Department.

First adopted by the Senate Public Health Committee on the 9th day of February, 1981.



Environmental Fact Sheet

Management Standards Issued To Control Potential Risks from Recycled Used Oil—No Hazardous Waste Listing

The Environmental Protection Agency (EPA) has issued management standards for recycled used oil that protect human health and the environment while promoting recovery of this valuable commodity. These management standards avoid unnecessary regulatory and financial burdens on the used oil recycling industry—particularly service station dealers.

Action

EPA has issued management standards for recycled used oil that provide strong safeguards against any potential types of mishandling that may occur. The management standards address potentially unsafe practices associated with improper storage of used oil, road oiling, and contamination of used oil from hazardous waste. By controlling these practices with management standards, listing recycled used oil as a hazardous waste is unnecessary.

The management standards cover all segments of the used oil recycling system, and are codified in a new Part 279 of Title 40 of the *Code of Federal Regulations* (CFR). While generators are the largest segment of this industry, the most stringent standards apply to used oil processors and re-refiners because they handle the largest quantities of used oil. The standards are not expected to cause major economic impacts, but are designed to correct and control certain practices. They prohibit storage in unlined surface impoundments and road oiling (except in states authorized to manage their own hazardous waste programs).

Requirements for Service Stations and Other Generators

A generator is any business which produces used oil through commercial or industrial operations, or that collects it from these operations or private households. Besides vehicle repair shops and service stations, some of the more common examples of used oil

generators are military motorpools; taxi, bus, and delivery companies; and shipyards. People who change their own oil (do-it-yourselfers) are not covered, nor are farmers who generate an average of 25 gallons or less of used oil per month in a calendar year. Approximately 700,000 facilities qualify as generators.

Generators simply must:

- Keep storage tanks and containers in good condition;
- Label storage tanks, "used oil";
- Clean up any used-oil spills or leaks to the environment; and
- Use a transporter with an EPA identification (ID) number when shipping used oil off-site.

Service station dealers that comply with these requirements, that send used oil for recycling, and that accept used oil from do-it-yourselfers are not liable for emergency response costs or damages resulting from threatened or actual releases of used oil from subsequent handling of the oil. EPA believes relief from this particular regulatory burden will encourage more service station dealers to collect used oil, thereby increasing used oil recycling by the consumer sector.

Requirements for Processors and Re-refiners

Used oil processors and re-refiners handle and store large quantities of used oil for a wide variety of purposes. Consequently, data suggest that damage from mismanagement of used oil at these facilities is not uncommon, and that stronger controls are necessary. Approximately 300 facilities must comply with these management standards.

Requirements for these facilities include:

- Obtaining an EPA ID number and notifying the Agency of any activities concerning used oil;
- Maintaining storage tanks and containers in good condition, and labeling them "used oil";
- Processing and storing used oil in areas with oil-impervious flooring and secondary containment structures (such as berms, ditches, or retaining walls);
- Clean up any used oil spills or leaks to the environment;
- Preparing a plan and a schedule for testing used oil for halogen content;
- Tracking incoming used oil and out-going recycled used oil products;
- Maintaining certain records and biennial reporting;
- Managing used oil processing and re-refining residues safely; and
- Ensuring that the facility is properly closed when recycling operations cease.

Requirements for Transporters, Collectors, and Burners of Off-Specification Used Oil

A used oil transporter or collector is any person who transports used oil to another site for recycling. Transfer facilities that are holding

areas, such as loading docks and parking and storage areas, must comply with the transporter requirements when used oil shipments are held for more than 24 hours in route to their final destination. Generators who transport less than 55 gallons of their own used oil are exempt from the transporter requirements.

Approximately 400 transporters and collectors also must obtain an EPA ID number and notify the Agency of any activities concerning used oil; maintain storage tanks and containers in good condition, and label them "used oil"; process and store used oil in areas with oil-impervious flooring and secondary containment structures (such as berms or ditches); clean up any used oil spills or leaks to the environment; and track incoming used oil and out-going used oil. In addition, transporters and collectors must:

- Limit storage at transfer facilities to 35 days and
- Test waste in storage tanks that are no longer in service for hazardous characteristics, and, if wastes are hazardous, close them according to existing hazardous waste management requirements.

Used oil burners must comply with the same storage requirements as transporters. Less than 1,000 facilities burn off-specification used oil. Standards for these burners are recodified from 40 CFR Part 266 to 40 CFR Part 279. The Agency plans additional study on used oil burned as fuel.

Requirements for Used Oil Marketers

Marketers of used oil were regulated in 1985. These standards are recodified from 40 CFR Part 266, Subpart E to 40 CFR Part 279. There are no major changes to existing requirements.

Conclusion

In May 1992, EPA determined that listing used oil destined for disposal as a hazardous waste was unnecessary. Combined with that rule, this action fulfills EPA's statutory mandate under the Used Oil Recycling Act of 1980. These management standards—working in tandem with existing laws and regulations—effectively control potential risks while promoting used oil recycling.

Contact

For additional information or to order a copy of the *Federal Register* notice, contact the RCRA Hotline, Monday-Friday, 8:30 a.m. to 7:30 p.m. EST. The national, toll-free number is (800) 424-9346; TDD (800) 553-7672 (hearing impaired); in Washington, D.C., the number is (703) 920-9810, TDD (703) 486-3323.

Copies of documents applicable to this rule may be obtained by writing: RCRA Information Center (RIC), U.S. Environmental Protection Agency, Office of Solid Waste (OS-305), 401 M Street SW, Washington, D.C. 20460.

EXHIBIT 2
DATE 1-6-95
HB 75

Montana Audubon Legislative Fund

P.O. Box 595 • Helena, MT 59624 • 443-3949

Testimony on HB 75
House Natural Resources Committee
January 6, 1995

Mr Chairman and Members of the Committee,

My name is Bill Allen and I am here representing the Montana Audubon Legislative Fund. On behalf of our 2,500 statewide members, I would like to express our support for House Bill 75.

Our support is based on two premises. First of all, used oil poses a severe environmental risk to surface and ground water reserves throughout the state. Used oil which is discarded in streets or landfills can eventually make its way into our underground water reserves. One gallon of used oil from a single oil change can ruin one million gallons of fresh water - a year's supply for 50 people. The potential environmental damage is staggering when one considers that in 1991, state officials estimated that 2.2 million gallons of used oil are produced annually in Montana.

Secondly, this bill would allow the Department of Health and Environmental Sciences to begin to effectively regulate the disposal and recycling of used oil by following the guidelines established by the Environmental Protection Agency.

We urge your support for House Bill 75 so that this potential environmental threat can be properly managed by the state in accordance with federal regulations.

Thank You

EXHIBIT 3
DATE 1-6-95
HB 75

HOUSE BILL 75 - WISEMAN

Presented by Montana Petroleum Marketers Association
Ronna Alexander-Executive Director

Amendment to Statement of Intent: Strike the entire second paragraph; "In adopting administrative rules, etc."

Amendment to Section 1, 75-10-402, line 27, Strike; "that is not hazardous".

Amendment to Section 1, 75-10-402, lines 2, 3 & 5, Strike, "that is not hazardous".

Amendment to Section 3, 75-10-405, line 6, Strike, "that is not hazardous".

Amendment to Section 3, 75-10-405, under (2)(b), add (i)
"does not apply to used oil generators or used oil facilities".

EXHIBIT 4 P.01DATE 1-6-95HB 72

. Amend House Bill 72 by inserting on line 24 after the word and punctuation "hole." the following:

"No one shall be required to obtain a permit for any drilling, re-drilling, deepening, or horizontal completion of an existing well unless such activity will deepen or extend such well for more than 200 feet.

Each drilling permit shall be effective for a term of 12 months after the date of issuance unless terminated for cause by the Board."

Post-It Fax Note 7671		Date	15	# of pages	1
To	Jerome Anderson		From	Susan	
Co/Dept			Co.		
Phone #			Phone #	449-6136	
Fax #	449-4300		Fax #	449-3668	

EXHIBIT 5
DATE 1-6-95
HB 72

Amendments to House Bill No. 72
First Reading Copy

Requested by Rep. Feland
For the Committee on Natural Resources

Prepared by John MacMaster
January 5, 1995

1. Page 1, line 15.
Strike: "\$50"
Insert: "\$25"

2. Page 2, line 1.
Strike: "\$50"
Insert: "\$25"

Amendments to House Bill No. 42
1st Reading Copy

Requested by Rep. Rehbein
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
January 5, 1995

1. Page 1, line 13.

Following: "who"

Insert: ", after September 30, 1995,"

2. Page 1, line 14.

Following: "land"

Insert: ", except for an irrigation structure on the bed of a
water body that is navigable for title purposes,"

3. Page 1, line 16.

Following: "who"

Insert: ", after September 30, 1995,"

Following: "installation of"

Strike: "a"

Insert: "the"

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. HB 75
 DATE 1-6-95 SPONSOR(S) Rep. Wiseman

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Maureen Clardy-Schwinden	WIFE	75		
Roger Thorvilson	DHES	75		X
Larry Brown	Ag. Pres. Assoc.	75		
Anne Hodge	MEIC	75		X
Eric Finka	EDA	75		
Charles R. Brooks	Bigschmeyer Yellowstone County	75		
Don Artley	DSL	50		
Russ Ritter	Wash Corp			
Bill Allen	MT Audubon	75		X
Steve Turkiewicz	MT Auto Dealers Assn			X with amendments
Gary Feland	MT & Operating			X
Bonnie Alexander	MT. Petroleum Marketers			X
Roger Bessler	Oil Waste Processors			X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
 ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources

COMMITTEE

BILL NO.

HB 75DATE 8-1-6-95 SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Joanna Johnson	National Oil Recyclers Ass'n Automotive Oil Change Ass'n	75		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. HB 72
 DATE 1-6-94 SPONSOR(S) Rep. Devaney

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
LARRY BROWN	Ag. Pres. Assoc.			
F. Patrick Crowley	Self.			
JEROME ANDERSON	SHALL WESTERN REP. INC.	72		✓
John Jensen	MEIC			✓
TOM RICHMOND	BOARD OF OIL & GAS			✓
GAIL ABERCROMBIE	MT Petrol Assn			✓
Charles Devaney	House	72		✓
Patrick M. Montelban	MR NMUGA			✓
Pat: O'Reilly	MOGA- MARINE.	72		✓
Gary Felner	Rep.	72		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
 ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.