

**MINUTES
MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION
COMMITTEE ON NATURAL RESOURCES**

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 20, 1995, at 1:00 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: Sen. Bill Wilson

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: HB 50, HB 75
Executive Action: SB 48

{Tape: A; Side: 1}

HEARING ON HB 50

Opening Statement by Sponsor:

REP. DON LARSON, District 58, Seeley Lake, said HB 50 is a continuation of a bill that was introduced in the last session. That bill revised timber sales on state lands. HB 50 continues the state timber sale account and any amount appropriated from that account is replaced by an equal amount. In 1993 the Department of State Lands put up 19 million board feet of timber on state lands, and in 1994 they put up 30 million board feet. **REP. LARSON** said HB 50 eliminates the requirement to put up a 20% bond, which prohibits smaller companies from bidding on those sales. As the timber supply diminishes, there are smaller sales

necessitating the need for smaller bidders, and by eliminating that bond requirement there would be more competitive bidding for the timber sales. The bill simplifies the DSL foresters' mandate to require fair market value on their timber.

Proponent's Testimony:

Bud Clinch, Commissioner, Department of State Lands, said over the last 5 to 7 years there have been many changes in the process of selling timber and consequently, the timber sales have declined. The department has upgraded its response under the Montana Environmental Policy Act and rearranged some of the staff to respond to the changing times. He stated that the timber market has taken increased in stumpage prices. He recognizes that department timber sales are still far below the overall yield level of timber on state lands. Because of a bill introduced in the last session, they decided to increase the timber sales program by an additional 5 million board feet. HB 652, enacted during the last session, allocated the department an additional 6 FTE and \$300,000 in resources. Since that time, the department realized an increase of approximately 5 million board feet of timber sales. HB 50 makes that process permanent by removing the sunset provision on HB 652, and leaving a provision for the Appropriations Committee to appropriate the corresponding amount of funds into the DSL budget. The increased staff includes 4 field foresters, a wild life biologist, and a water shed specialist. This staff has provided the department with more detailed and defensible environmental analysis in order to expand the program.

Mr. Clinch stated that the fiscal note reflects that the program will yield an additional 5 million board feet of timber sales for approximately \$1.5 million in revenue for the school trust. The bill eliminates the 20% deposit fee that was initially implemented in HB 652 to make the fiscal impact neutral. There is a language change from \$3 per 1,000 feet of timber to full market value, which is more appropriate. He urged the passage of HB 50.

Don Allen, representing the Montana Wood Products Association, said they were in support of HB 50. He said they also supported HB 652 in the last session. The program has worked well and is a move in the right direction.

Jim Jensen, Executive Director, Montana Environmental Information Center, said they support HB 50. He said the 20% bond was not fair to small operators. The interest on the funds that was put up by the operator, did not accrue to the operator or bidder, but went into the program which was not a fair situation. **Mr. Jensen** stated that timber treated as crop income, does not go into the fund. He suggested that the committee members hold HB 50 because there were other bills dealing with the same issues that would be coming from the house.

Opponents Testimony: None

Questions From Committee Members and Responses: SEN. MIKE FOSTER asked Mr. Jensen if he knew the House Bill numbers that he mentioned. Mr. Jensen replied HB 201 is being heard in the House Natural Resources. That bill compels the department to harvest a minimum of timber per year. The other bill is sponsored either by SEN. DARYL TOEWS or REP. DOUGLAS WAGNER.

SEN. JEFF WELDON asked Mr. Clinch if Sections 1 and 3 of HB 50 would be void if HB 201 passes. Mr. Clinch replied that was correct, and if HB 201 passes it would provide the same level of funding for all of the department activities, including that which is currently funded through HB 652, which is proposed to sunset if the bill doesn't pass.

SEN. WELDON asked Mr. Clinch why the effective date for Section 2 was October 1, 1995 instead of June 30, 1995. Mr. Clinch replied that he was not familiar with the reason, but offered to research that and provide an answer for him.

CHAIRMAN LORENTS GROSFIELD asked Mr. Clinch why the effective date wasn't July 1, 1995 instead of June 30, 1995. Mr. Clinch said he was assuming that was so there would not be a void between the sunset of HB 652 and the enactment of HB 50.

SEN. WILLIAM CRISMORE asked Mr. Clinch regarding the 20% bonding for timber sales, if they would continue putting up a bid guarantee. Mr. Clinch stated that was correct, as well as all the other provisions for bonding slash, etc. The 20% bond was an advance on the purchase of the stumpage.

SEN. CRISMORE asked Mr. Clinch from what base would the extra 5 million board feet come. Mr. Clinch replied that prior to the enactment of HB 652, the department was funded for approximately 27 million board feet per year. The legislative audit review revealed that was substantially below the sustained timber yield. The last legislature acted on a bill that directed the department to produce an additional 5 million board feet of timber. Therefore, with the enactment of HB 652 the department is currently funded to sell 32 million board feet of timber.

SENATOR MACK COLE asked Mr. Clinch if they also sold timber by tonnage. Mr. Clinch replied yes, and the reason the department proposes to change the sales requirements is because the department wants to sell the timber by the method that is most advantageous to them.

SEN. CRISMORE asked Mr. Clinch why the fiscal note says the funds will go into a special revenue account instead of the general fund, because under item (d) the revenue drops by nearly \$1.5 million.

CHAIR. GROSFIELD stated that the answer to that question might be that assuming the bill passes, it will raise \$1.5 million and if it doesn't pass they will lose that amount. **Mr. Clinch** explained the funds had to be deposited into a special revenue account in order to expend those funds.

SEN. CRISMORE asked **Mr. Clinch** if he agreed with **CHAIR. GROSFIELD'S** explanation regarding the \$1.5 million. **Mr. Clinch** said that was correct, and without that there wouldn't be any funding for the 6 FTE and the services they provided.

SENATOR VIVIAN BROOKE asked **REP. LARSON** if he was in favor of LC 294. **REP. LARSON** answered that he was in support of LC 294. This is the first time that proceeds from timber sales have been used to fund the staff.

SEN. BROOKE asked **Mr. Allen** if he agreed with the fiscal note that says that the current value of timber was \$290 per thousand board feet. One of the concerns is that federal sales may be opening up and might make an impact on the value because of an over-supply of timber. **Mr. Allen** said that the \$290 per thousand board feet was a conservative estimate, because the amount is actually over \$400 per thousand board feet. He didn't think there was a concern with federal timber sales.

SENATOR THOMAS KEATING said that this should be a proprietary fund instead of a special revenue fund because the program is funding itself out of the proceeds from state property.

{Tape: A; Side: B; Comments: Tape tends to slow off and on.}

Closing by Sponsor:

REP. LARSON said the revenue that is generated from timber sales will help to defray property taxes, which is very important for the school funding formula. HB 50 helps the land board to acquire the highest return from state lands. He said that according to **Commissioner Clinch**, it is an understatement that the return is currently \$290 per thousand board feet on an average. He said it is actually up around \$500 to \$600 per thousand board feet. HB 50 gives the Department some flexibility with the timber market.

HEARING ON HB 75

Opening Statement by Sponsor:

REP. WILLIAM WISEMAN, District 41, Malmstrom Air Force Base and east and south of Great Falls, said he was carrying HB 75 at the request of the Department of Health and Environmental Sciences. The last 8 years the Environmental Protection Agency has had very strict regulations on the disposal of used oil. The EPA decided used oil was not a hazardous waste, but should be handled very carefully. He said he was referring to oil that comes from the engines or crankcases of cars, tractors, machinery, etc. He said

there is nothing in the Montana codes pertaining to waste oil. Under the EPA, if anyone is caught mishandling waste oil they will be prosecuted under federal law. HB 75 addresses the handling of waste oil. There is a business in Great Falls called Oily Waste Processors that has routes to pick up used oil at no charge to service stations or collectors of waste oil. That oil is hauled to Great Falls and processed by taking the water, dirt, etc. out of the waste oil and then selling it to asphalt plants and other industrial uses where people burn heating oil, etc.

REP. WISEMAN said individuals can continue to change their own oil. Ranchers and farmers who accumulate less than 24 gallons per month can continue to do what they were doing with their used oil. Some people spray their used oil on the road for dust control. They can continue to do so as long as it is sprayed on the owner's property. He said the penalties for mishandling used oil by the federal government are equal to, or tougher than in HB 75. **REP. WISEMAN** said it is important that Montana adopt the EPA rules governing the management of used oil. **EXHIBIT 1.**

Proponents' Testimony:

Roger Thorvilson, Department of Health and Environmental Sciences, reviewed the statement of intent of SB 212 from the 1981 legislative session in regard to the disposal of hazardous waste. **EXHIBIT 2.** The environmental fact sheet lists the management standards issued to control potential risks from recycled used oil. **EXHIBIT 2a.**

Mr. Thorvilson stated 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 these environmental issues should be addressed by the state rather than the federal government. **EXHIBIT 3.**

Bill Allen, representing the Montana Audubon Legislative Fund, said they support HB 75 so that potential environmental threats can be properly managed by the state in accordance with federal regulations. **EXHIBIT 4.**

Steve Turkiewicz, representing the Montana Auto Dealers Association, the National Oil Recyclers Association and the Automotive Oil Change Association, said they are in support of HB 75 because it is a crucial step for used oil recycling in Montana. The federal used oil management standards provide protection of both the environment and businesses which promote the collection and recycling of used oil. **EXHIBIT 5.**

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. B. F. "CHRIS" CHRISTIAENS asked **Mr. Thorvilson** if there were fees generated that would pay for the DHES services.

Mr. Thorvilson said the primary funding for the program is Resource Indemnity Trust funds that has a state match and an annual renewable federal grant. There are some fees, but they do not apply to used oil. There is an annual fee for hazardous generators that derives approximately \$30,000 to \$40,000 of revenue per year, which is deposited into the general fund. He said in the last session there was some fee language added to the bill to deal with commercial facilities handling hazardous waste. There was an application fee and also a per ton fee for a commercial facility that accepts hazardous waste.

SEN. CHRISTIAENS asked **Mr. Thorvilson** if the penalty fees could be lowered, or are they patterned after the federal fees. **Mr. Thorvilson** said states are allowed to have lower penalty amounts than the federal penalty fees. For administrative or civil penalties, the state is allowed up to \$10,000 and the federal maximum penalty is \$25,000. Under criminal violation the state is allowed up to \$25,000 and the federal maximum is \$50,000.

SEN. BILL WILSON asked **Mr. Thorvilson** to clarify if someone changes their own oil can they dump it on their own land. **Mr. Thorvilson** answered that you cannot use oil on parking lots and roads for dust suppression. However, there are two exceptions: 1. individual home owners, and 2. farmers who produce less than 25 gallons per month.

CHAIR. GROSFIELD said that they were dealing with a primacy issue. He asked **Mr. Thorvilson** if there is any assurance that if HB 75 is passed, the EPA will give the state primacy. **Mr. Thorvilson** said an EPA representative attended the committee hearing in the House, and he said they would view HB 75 favorably. The EPA individually screens rules and they do a very careful evaluation. The rules will be identical to EPA's, with the exception that EPA's will say EPA and Montana's rules will refer to the department. Therefore, he did not see any problem with authorization.

CHAIR. GROSFIELD said it was his understanding that there have been a number of primacy requests pending before the EPA for years. He asked **Mr. Thorvilson** if he thought the EPA would approve primacy, when they are hesitant in other areas. **Mr. Thorvilson** replied there is a backlog of applications that relates to a number of things. For example, during one of the first applications to update their authorization, there was a disagreement with EPA over the department's approach to equivalence, and it took a long time to resolve that issue. He said there is a backlog on applications, and doesn't expect EPA to act instantly on the application they will receive this summer. However, it should be an easy authorization for EPA to make.

{Tape: 2; Side: A}

Closing by Sponsor:

REP. WISEMAN noted that there were also no opponents to HB 75 in the House. He said there is no reason to mishandle used oil because of the options available. If HB 75 is not passed and someone is caught mishandling used oils, they will be in federal court dealing with the federal bureaucracy. If HB 75 is passed, and there is a violation, they will be dealt with in state district court.

EXECUTIVE ACTION ON SB 48

Motion: SEN. KEATING MOVED SB 48 DO PASS

Substitute Motion: SEN. KEATING PRESENTED AMENDMENTS TO SB 48 AS CONTAINED IN EXHIBIT 6.

Discussion:

SEN. BROOKE asked SEN. KEATING how many 30 day extensions there could be, because it appeared there was only one extension in the original language. SEN. KEATING said the applicant can ask for more than one 30 day extension.

Vote: MOTION TO AMEND SB 48 AS AMENDED IN EXHIBIT 6, PASSED UNANIMOUSLY.

SEN. MIKE FOSTER reviewed his amendment to SB 48 as contained in EXHIBIT 7.

SEN. FOSTER said the state designed SB 48 to allow both civil and criminal penalties in order to be consistent with the EPA and Title 5. He stated that it should be limited to the operator permitting program, instead of the entire Clean Air Act of Montana.

SEN. CHRISTIAENS asked the department how they perceive the amendment. David Rusoff, Attorney, Department of Environmental Health, said the civil penalty in the Montana Clean Act arose out of their attempt to get approval of the Title 5 program from EPA. In 1993 EPA indicated the "in lieu of language" was a potential barrier to EPA approval of the Title 5 permit program. He said their initial concern would be if there was a protection problem. There could be two facilities committing the same violation and one could be under Title 5 and the other may not. The facility that would not be under the Title 5 program, would be subject to enforcement by EPA, because the state wouldn't have the authority to pursue a criminal penalty they would however be subject to a civil action by the state. Those facilities that are under Title 5, would be subject to both civil and criminal penalties. The courts would have to decide if there is a constitutional problem. If that language was removed, then the department would have the authority to impose a criminal and civil violation on a facility.

Mr. Rusoff said all facilities in the state should be treated the same way whether a criminal or civil penalty occurs. Another

concern is that the department may not know if a facility is subject to a penalty under Title 5. It wouldn't be clear whether a violation would be subject to a civil or criminal action.

SEN. CHRISTIAENS asked **Mr. Rusoff** if there would be a primacy problem if the amendment was adopted. **Mr. Rusoff** answered that he didn't think the EPA would disapprove primacy over the Title 5 program if the amendment was adopted. What could happen, would be the non-Title 5 facilities, which are small businesses, would be subject to a criminal action by EPA.

SEN. KEATING said Section 3 deals with 75-2-413, civil penalties. He asked **Mr. Rusoff** if that section applied to Title 3 of the Air Quality Act as well as Title 4 and Title 5. **Mr. Rusoff** clarified that Title 5 refers to the language in subchapter 5 of the Federal Clean Air Act. **SEN. KEATING** asked **Mr. Rusoff** if in Section 3 of the bill, with the deletion of "civil in lieu of criminal penalties", would apply to subchapter's 3, 4, and 5 equally. **Mr. Rusoff** replied that 75-2-413 is a provision of the state Air Quality Act which covers all violations.

SEN. KEATING said the proposed amendment says the change in Section 3 applies only to subchapter 5. **Mr. Rusoff** said there could be a hazardous waste violation that wouldn't be subject to subchapter 5, in which they would be immune from a criminal action by the state if a civil action had already been pursued. Whereas, a subchapter 5 penalty would be subject to both criminal and civil action by the state.

CHAIR. GROSFIELD asked **Mr. Rusoff** if criminal and civil penalties applied to everything in the state Air Quality Act. **Mr. Rusoff** replied that currently, both civil and criminal actions apply to all violations of the state Air Quality Act. **CHAIR. GROSFIELD** asked if that was also required by the federal Clean Air Act. **Mr. Rusoff** answered that he wasn't aware of any provision to that effect.

CHAIR. GROSFIELD said that the title of SB 48 talks about applicants for construction permits, etc. and revising certain provisions of the state Air Quality Act to conform with the Federal Clean Air Act. The amendment that is being considered by the committee is to restrict only a certain portion of the state Air Quality Act. He said the bill, without the proposed amendment, may not be consistent with the title of the bill, because that which has been struck on Line 25 goes beyond the title of the bill.

SEN. KEATING said that language is required by the federal Clean Air Act as it pertains to subchapter 5, and **SEN. FOSTER'S** amendment says, "The civil penalty is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the operating permit program required by subchapter 5 of the federal Clean Air Act." **SEN. KEATING** asked if the amendment or the title of SB 48 needed to be changed.

CHAIR. GROSFIELD said SEN. FOSTER'S amendment conforms to the title of the bill.

Todd Everts, Environmental Quality Council, said there was an issue with the title of the bill. He asked the department to clarify, if by striking the language on Line 25 of Section 3, would that bring it into compliance with the federal requirements. Mr. Russoff replied that by striking that language it would bring that statute into compliance with the federal regulations. With SEN. FOSTER'S amendment that would restrict it to only subchapter 5 of the federal Clean Air Act.

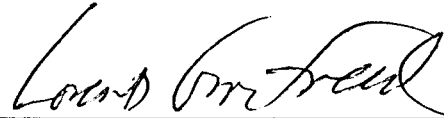
Vote: MOTION TO AMEND SB 48 AS PER SEN. FOSTER'S AMENDMENT AS CONTAINED IN EXHIBIT 7, CARRIED UNANIMOUSLY.

Motion/Vote: SEN. KEATING MOVED TO ADOPT SB 48 AS AMENDED. MOTION CARRIED UNANIMOUSLY.

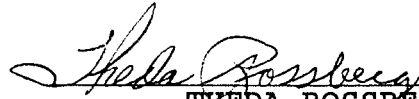
{Comments: This meeting recorded on one and one-half sixty minute tapes.}

ADJOURNMENT

Adjournment: 2:30 PM



LORENTS GROSFIELD, Chairman



THEDA ROSSBERG, Secretary

LG/tr

1-20.95

[illegible]

SEN:1995
wp.rollcall.man
CS-09

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
January 23, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration SB 48 (first reading copy -- white), respectfully report that SB 48 be amended as follows and as so amended do pass.

Signed: 
Senator Lorents Grosfield, Chair

That such amendments read:

1. Page 3, line 4.

Strike: "An additional"

Insert: "Additional"

2. Page 3, line 5.

Strike: "extension"

Insert: "extensions"

3. Page 3, line 30.

Following: "is"

Strike: "being"

Following: "conducted"

Insert: ", such as air contaminant emissions or ambient concentration sampling, testing, or monitoring, or an activity in which samples are gathered, processed, or stored"

4. Page 4, line 2.

Following: "chapter"


Insert: ", for the purpose of inspecting those records. The authority granted under this subsection (c) does not limit the department's right to inspect any property, premises, or place, except a private residence, under subsections (1)(a) and (1)(b) if records are also kept at those sites"

5. Page 4, line 17.

Following: line 16

Insert: "(7) Inspections under this section must be conducted in compliance with all applicable federal or state rules or requirements for workplace safety and with all source-specific facility workplace safety rules or requirements. The source shall inform the inspector of all applicable workplace safety rules or requirements at the time of the inspection."

6. Page 4, line 25.


Amd. Coord.
Sec. of Senate

191244SC.SPV

Following: "~~75-2-412.~~"

Insert: "The civil penalty is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the operating permit program required by Subchapter V of the federal Clean Air Act."

-END-



January 20, 1995

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 1-20-95
BILL NO. HB 75

Re: House Bill 75 - Representative Wiseman

I am submitting this testimony on behalf of the Montana Petroleum Marketers who are the wholesalers and distributors of petroleum products in Montana. A majority of these 115 members also own their own retail locations.

The association supports House Bill 75 as amended. The amendments that were offered clarify certain language and eliminate language that was confusing.

It is important that Montana adopt the U.S. EPA rules governing the management of used oil. It's important to insure the proper handling of used oil, and also to provide those that do handle the products the liability protection provided in the rules. This is called the Service Station Dealer Exemption (CERCLA, 42 U.S.C. §9601(37) (A), which will prevent station operators who follow the management standards and collect used oil from do-it-yourselfers from being held as responsible parties in situations where recyclers who subsequently take marketers' used oil cause contamination.

We urge the committee's approval of House Bill 75.

Respectfully submitted;
Ronna Alexander
Executive Director

STATEMENT OF INTENT
SENATE BILL 212
Senate Public Health Committee

STATE NATURAL RESOURCES
COMMITTEE NO. 2
DATE 1-20-95
BILL NO. 17B 75

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

Office of Solid Waste



Environmental Fact Sheet

SENATE NATURAL RESOURCES

EXHIBIT NO. 2a

DATE 1-20-95

BILL NO. 143-75

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.

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

Senate Natural Resources Committee
January 20, 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 include used oil authority, to maintain its equivalence with the federal 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 and no more stringent than 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 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

Montana Audubon Legislative Fund

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

Testimony on HB 75
Senate Natural Resources Committee
January 20, 1995

Mr Chairman and Members of the Committee,

My name is Bill Allen and I am here representing the Montana Audubon Legislative Fund and I would like to express our support for House Bill 75.

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. 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.

This bill would give the Department of Health and Environmental Sciences the needed authority 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

TESTIMONY OF

THE NATIONAL OIL RECYCLERS ASSOCIATION &
THE AUTOMOTIVE OIL CHANGE ASSOCIATION

SUBMITTED TO

THE STATE OF MONTANA SENATE COMMITTEE ON NATURAL RESOURCES

REGARDING HOUSE BILL 75

JANUARY 20, 1995

As the national representatives for over 1,200 quick-lube facilities and more than 100 used oil collectors and marketers, many of which operate in the state of Montana, the Automotive Oil Change Association (AOCA) and the National Oil Recyclers Association (NORA) are very much in favor of House Bill 75. House Bill 75 is a crucial step for the used oil recycling chain in Montana because it would provide the authority for Montana's adoption of the federal used oil management standards found in 40 C.F.R. part 279. The federal used oil management standards provide an excellent framework for businesses engaged in used oil generation, collection, transportation, and/or processing/recycling. The federal used oil management standards also provide dual protection of both the environment and the businesses which promote the collection and recycling of used oil. Under federal law, used oil managed under the federal used oil management standards is specifically classified as a nonhazardous waste. This nonhazardous listing is critical to the collection of do-it-yourselfer used oil because, without it, collection of do-it-yourselfer used oil would be cost-prohibitive for most quick-lubes, service stations, and recyclers. The recycling chain could not afford to exist.

Additionally, under federal law, those businesses which qualify under the definition of "service station dealer," follow the federal used oil management standards, and collect do-it-yourselfer used oil are sheltered from Superfund liability under the "service station dealer exemption." The quick-lube businesses and oil recyclers in Montana need this exemption. AOCA's members collect hundreds of thousands of gallons of used oil annually from do-it-yourselfers on a volunteer basis. Few if any of these businesses make a dime on their collection activities. AOCA members consider their collection activities a public service. Nevertheless, if an AOCA member were to give a load of used oil to a facility

that later becomes a Superfund site, that member would be treated as a liable party unless it could avail itself of the service station dealer exemption. Similarly, NORA members, who collect over one-half of all used oil that is recycled in the United States each year, are subject to devastating liability under Superfund for the actions of "end-users" unless they have the opportunity to qualify for the service station dealer exemption. Until the federal used oil regulations are adopted by Montana, *none* of its businesses may qualify for the exemption.

Therefore, AOCA and NORA urge the Senate Natural Resources Committee to pass House Bill 75 and give Montana the opportunity to participate in an established regulatory system that protects both the environment and the economy.

Amendments to Senate Bill No. 48
First Reading Copy

Requested by Senator Keating
For the Committee on Natural Resources

Prepared by Todd Everts
January 12, 1995

SENATE NATURAL RESOURCES

EXHIBIT NO. 6

DATE 1-20-95

BILL NO. SB-48

1. Page 3, line 4.

Strike: "An additional"

Insert: "Additional"

2. Page 3, line 5.

Strike: "extension"

Insert: "extensions"

3. Page 3, line 30.

Following: "is"

Strike: "being"

Following: "conducted".

Insert: ", such as air contaminant emissions or ambient concentration sampling, testing, or monitoring, or an activity in which samples are gathered, processed, or stored"

4. Page 4, line 2

Following: "chapter"

Strike: "."

Insert: ", for the purpose of inspecting those records. The authority granted under this subsection (c) does not limit the department's right to inspect any property, premises, or place, except a private residence, under subsections (1)(a) and (1)(b) if records are also kept at those sites."

5. Page 4.

Following line 16

Insert: "(7) Inspections under this section must be conducted in compliance with all applicable federal or state rules or requirements for workplace safety and with all source-specific facility workplace safety rules or requirements. The source shall inform the inspector of all applicable workplace safety rules or requirements at the time of the inspection."

Amendments to Senate Bill No. 48
First Reading Copy

Requested by Senator Foster
For the Committee on Natural Resources

Prepared by Todd Everts
January 18, 1995

1. Page 4, line 25.

Following: "~~75-2-412.~~"

Insert: "The civil penalty is in lieu of the criminal penalty provided for in 75-2-412,
except for civil penalties for violation of the operating permit program
required by Subchapter V of the federal Clean Air Act."

DATE 1-20-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB-50 HB-75

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Roger Thorvilson	Dept. of Health + Env. Sciences	HB75	X	
Bill Allen	MT. Audubon	HB75	X	
BUD CLINCH	DSL	HB-50	X	
Steve Turkiewicz	Mr. Auto Dealers Assn	HB75	X	
Anne Hedges	MEIC	HB75	X	
Don Call	MWPA	HB75	✓	
Jim Jensen	MEIC	HB50	X	
Peggy Beltrone	Cascade County Comm.	Just Visiting		
Russ Hudson	Libby Area Conservancy Dist	N/A		
John K. McBride	Libby Area Conservancy Dist	—		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY