

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

JOINT SUBCOMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN ROGER DEBRUYCKER**, on January 24, 1995, at 8:00 a.m. in Room 402 of the State Capitol.

ROLL CALL

Members Present:

Rep. Roger Debruycker, Chairman (R)
Sen. Thomas F. Keating, Vice Chairman (R)
Sen. Judy H. Jacobson (D)
Sen. Loren Jenkins (R)
Rep. John Johnson (D)
Rep. William R. Wiseman (R)

Members Excused: none

Members Absent: none

Staff Present: Mark Lee, Legislative Fiscal Analyst

Connie Huckins, Office of Budget & Program
Planning
Debbie Rostocki, Committee Secretary

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

Committee Business Summary:

Hearing: Department of Health & Environmental Sciences
-Water Quality Division
-Air Quality Division
Executive Action: Department of Health & Environmental Sciences
-Water Quality Division
-Air Quality Division
-Environmental Remediation Division

Mr. Steve Pilcher, Administrator of the Water Quality Division of the Department of Health and Environmental Sciences (DHES), spoke up regarding DHES's response to problems an audit conducted by the Office of the Legislative Auditor (OLA) had outlined. A copy of the response to the OLA explaining what the agency is doing was distributed. **EXHIBIT 1** Also, copies of two monthly updates to the Legislative Audit Committee and the Environmental Quality Council (EQC) were passed out. **EXHIBITS 2 and 3**

HEARING ON DHES Water Quality Division (continued)

Proponent's testimony: Mr. Mike Volesky, representing the Montana Association of Conservation Districts, testified in support of the Water Quality Division's Nonpoint Source pollution control program budget and its nonregulatory approach to pollution control via education programs, watershed planning and projects to demonstrate Best Management Practices (BMP's). Over the past five years the division has provided over \$5.5 million to local organizations, with about 65% of that funding going to conservation districts for projects which they initiated. Montana provides a 40% share on federal Section 319 (Nonpoint Source pollution control program) funding, with few restrictions from the Environmental Protection Agency (EPA) on how the money is spent.

Questions: In response to SEN. LOREN JENKINS, Mr. Volesky said the increased funding request was in response to an increased availability of federal funding as well as the need to fund ongoing and upcoming projects. Mr. Pilcher said that \$664,755 was the 1994 base for the Nonpoint Source/Wetlands budget: the amount of 319 money that has been available has fluctuated. In some past years, more than \$664,000 has been available. The EPA has indicated in 1996 there would be an additional \$1.3 million available and in 1997 the figure would be \$1.7 million. Of the \$1.3 million about 65% would be available to the Conservation Districts; in the past it has been as high as 70%. Exact figures are hard to provide because they are dependent upon the projects the Conservation Districts submit to DHES for funding.

SEN. JENKINS wanted more information on the 60/40 federal/state match for 319 funding. Mr. Pilcher said the match was done on a project level and matching state dollars are usually provided by the local conservation districts using Resource Indemnity Trust (RIT) grant monies.

EXECUTIVE ACTION ON DHES Water Quality Division

Question: SEN. KEATING wanted to know if Present Law (PL) Adjustment No. 1 included any additional FTE. Mr. Mark Lee, Legislative Fiscal Analyst (LFA), said the majority of the increase was probably due to vacancy savings and about \$33,000 per year was due to salary increases under the pay plan. Mr. Bob Robinson, Director of DHES, said \$141,000 (New Proposal No. 14, p. B-166) was the amount of vacancy savings adjustment for the next biennium. The larger amount of vacancy savings in PL No. 1 reflects the fact that some extra vacant positions were used to pay for early retirements.

Motion: REP. WILLIAM WISEMAN moved to accept PL Adjustments No. 4, 6, 7, 8, 10, 11 and 12 on p. B-165; SEN. JUDY JACOBSON seconded the motion.

Discussion: REP. WISEMAN declared that every taxpayer owes \$40,000 in national debt and \$2,800 is the cost for interest on the debt. He rejected the argument that if federal funds are not spent in Montana they will be spent elsewhere. He said that if the federal balanced budget amendment passes, starting in 1996 the federal government will have to cut its spending by at least a total of \$1.2 trillion by the year 2000. He declared his motion was drawing the line.

SEN. THOMAS KEATING rose in support of the motion.

Substitute motion/vote: SEN. JENKINS moved to accept PL Adjustment No. 11. SEN. KEATING seconded the substitute motion. The question was called for on the substitute motion and the motion carried with REP. WISEMAN opposed. Tape No. 1:B:000

Motion/vote: SEN. KEATING moved to accept PL No. 9; REP. WISEMAN seconded the motion. The motion carried with SEN. JENKINS opposed.

Motion: REP. JOHN JOHNSON moved to accept PL No. 5, with \$700,000 in each year to be earmarked for the conservation districts. There was no second.

Substitute motion/vote: SEN. KEATING moved and REP. WISEMAN seconded, to accept PL No. 10. The motion carried unanimously.

Motion/vote: SEN. JENKINS moved to accept New Proposal No. 14 on p. B-166; REP. WISEMAN seconded the motion. The motion carried unanimously.

Motion/vote: SEN. KEATING moved to accept New Proposal No. 15. SEN. JACOBSON seconded the motion. The motion carried unanimously.

EXECUTIVE ACTION ON DHES Air Quality Division

Informational testimony: Mr. Lee gave a brief overview of the division.

Mr. Robinson stated that when DHES went through reorganization it attempted to save one FTE as well as improve operations and submitted reorganization had achieved some savings for the department. He said a position formerly in the Environmental Sciences Division had been used to meet a need in the Air Quality Division.

Mr. Jeff Chaffee, Administrator of the Air Quality Division, then reviewed the PL Adjustments (p. B-156) and New Proposals (p. B-158).

Regarding PL No. 5, he said no funds were expended in 1994 because they did not have the staff on board.

The expenditures in 1994 for enforcement-related legal fees and court costs (PL No. 6) were lower than normal, especially in the Occupational Health program. Only about \$4,100 was spent.

In regard to PL No. 10, he pointed out that this \$97,000 increase was offset by a \$55,500 savings contained in PL No. 3. He pointed out also that the rent they paid in their new office on Front Street was a good rate and there hadn't been any additional space available at the Capitol Complex.

Equipment expenditures in 1994 amounted to about \$36,000. \$28,000 is requested for a passenger vehicle for the Polson field office. About \$22,000 per year is requested for the computer needs of the division, and about \$50,000 per year is for air monitoring equipment, most of it replacement equipment.

Regarding PL No. 13, he said the counties have had an increase in their workload and DHES is attempting to provide adequate state and federal funding to support this. Also the division anticipates new county programs in the Gallatin County area and in Sanders County to come into the County Air Pollution Control Program in the second year. The increases would be funded with general fund and federal grant monies. He added that none of the air quality fees collected from the industry were passed on to the counties since they do not operate the fee-related parts of the program.

The New Proposals were then reviewed. He recapped for the committee that there were three areas the New Proposals were geared at dealing with: the State Implementation Plan (SIP) for nonattainment areas, the permitting programs related to federal Clean Air Act amendments and the continued need to meet the public service needs.

Ms. Jan Sensibaugh, Permitting Section Supervisor for the division, reviewed New Proposals No. 3 and 4. The section's current level of staffing allows them to get all permits out within the mandatory timeframes as well as to process modifications and transfers in a timely fashion and to be proactive in assisting the industry.

Three FTE are being requested for the new operating permit program, which will need to process 30 yearly operating permits from the major sources of pollution. She explained that facilities have the option to get a preconstruction permit, which can help them stay out of the Operating Permit Program. There has been a lot of interest in this and her section has already begun processing these "synthetic miner" applications. She estimated that one additional FTE will be needed to process these permits.

The Major Source Air Toxic Permitting Program will also be coming on line and the department will need one new FTE to do Air Toxics permits for major sources. In addition one FTE will be added to

work in the area of the upcoming new rules which will impact small businesses.

Tape No. 2:A:000

In the Compliance and Enforcement Section, they are going to add an FTE in Billings to take care of the Operating Permit program requirements, which will be requiring a lot more recordkeeping and monitoring. An FTE is needed for report reviews and certification monitoring. Also an FTE is requested for responding to citizen complaints.

Mr. Adrian Howe reviewed New Proposal No. 2. This proposal requests an additional FTE to inspect mammography facilities. The department feels it can provide more efficient and timely inspection and this would preclude the federal government from intervening.

Tape No. 2:A:000 (no recording of last two paragraphs)

Under New Proposal No. 5, DHES plans to seek primacy from the federal government. He submitted that the federal requirements would contribute to the generation of a lead-based paint industry in the state.

New Proposal No. 6 would add one half FTE to expand the department's public information and outreach efforts pertaining to radon. The proposal would also provide for an additional five contracts in each year for monetary and technical support for the county programs. He pointed out that radon is very prevalent in the state and yet is easy to test for and mitigate. The program has witnessed a significant increase in public requests for assistance.

Mr. Chaffee reviewed New Proposal No. 7. DHES has been working on the development of new SIP's for the nonattainment areas. They have also been tracking and maintaining the plans and redesignating areas back into attainment. Due to staff shortages their priority has been dealing with the mandatory federal deadlines. The older nonattainment areas "sit in limbo" until the program gets back to them. The program also has continuing needs in the air monitoring area in order to guarantee the data on monitoring sites run by the industry (in cooperation with DHES) is being collected accurately.

Some communities have asked DHES to monitor for some of the toxic air pollutants. The division is requesting one FTE in this area because they have not had the staff or resources to meet these requests.

The remaining one FTE being requested is related to work in the area of modeling of air quality permit applications from the industry to make sure compliance with ambient air quality standards can be met. It is important for this to be done in a timely manner so as to not delay construction activities. Also, modeling is needed to predict whether the new emission control

plan will work. Funding is derived from a mixture of industrial air permit fees and federal grant monies that try to reflect the proportion of industry-generated vs. people-generated sources of pollution.

Mr. Chaffee reiterated that DHES thought it could do a better job of implementing the Clean Air Act than the EPA and build the right-sized program for the state vs. the EPA's "one size fits all" program.

Mr. Frank Crowley, representing ASARCO, which operates a lead/zinc smelter in East Helena, then spoke regarding the assessment of air quality permitting fees, which he stated would be doubling in the coming biennium. (ASARCO emits pollutants which are subject to the per ton fee.) ASARCO would like to see the Air Quality Division continue as the permitting authority in the state. He submitted the division was "firm but fair." ASARCO is willing to pay its fair share of the costs of running the permitting program but they feel the reason the division is requesting so many additional FTE is because of the manner in which the Title V permitting program is required to be run. He submitted that the federal regulations and statutes are cumbersome and the way it is being dictated they be enforced is contributing to this. He requested the committee to ask the division to review EPA's regulations and program requirements to see if they could be made less cumbersome.

Mr. Crowley stated that there is discussion going on at the federal level regarding whether the Title V permitting program should be slowed down or delayed. Putting a 100-day moratorium on federal regulations has been discussed. ASARCO would like the committee to "put a note" on the budget stating that the Air Quality Division will adjust its program needs to the extent that Title V requirements are changed by Congress. He added that ASARCO would like a firm commitment from DHES and the Air Quality Division to explore all possible means of spreading the costs of the permitting program more broadly. He suggested that the majority of pollution was urban and non-industrial and that Congress and the Legislature had not intended that such a few number of industries carry the entire burden of a permitting program. He testified that in Montana, where there are "just a handful of industries," the burden on each source is extremely large and disproportionate to other states that have a greater denominator over which to spread the costs. He said that while the industry was reducing emissions, paradoxically permit fees were rising and this inverse relationship needed to be stopped as soon as possible. In closing he commented that ASARCO obviously does not want to pay more fees for a program which is "probably a questionable need," but at the same time they want the division to have what it needs to continue to be the permitting agency. He hoped a way could be found to "wind down" the cost of this program.

Ms. Sandy Oitzinger, Montana Association of Counties, then testified in support of the present law adjustments for supporting local air pollution control activities.

Questions: In response to **SEN. KEATING**, **Ms. Sensibaugh** said the division did not have an acid rain program but would soon begin implementing the federal acid rain rules as required by the Title V program. The two acid rain facilities in the state (Montana Power's facilities at Colstrip and Montana Dakota Utility's facilities in Sidney) are interested in having DHES handle the acid rain program. Two of the 6.5 new FTE would be involved in Title III Toxic Air permitting.

In response to **SEN. JACOBSON**, **Mr. Chaffee** explained PL Adjustment No. 14. This category primarily includes the other operating expenses associated with the vacant positions in 1994. Now that the new staff has been added the expenses need to be added back in. This is also reflected in PL Adjustments No. 1, 8 and 9.

SEN. JENKINS said that two FTE had been cut regarding SIP duties yet New Proposal No. 7 requested 2.5 to be put back in. **Mr. Chaffee** said the two that were taken out were part of a one-time appropriation for the purpose of developing sulphur dioxide SIP's for Billings and Laurel. Only one of the New Proposal additions is directly oriented to SIP. It is a statewide position and will be involved with redesignating the areas that have come into attainment.

SEN. JENKINS wanted to know what the base was under PL Adjustment No. 13, grants to counties. **Mr. Chaffee** said the base in 1994 was \$229,110. **SEN. JENKINS** wanted to know more specifically what the counties were doing with this money. **Mr. Chaffee** said it varied. In Missoula County the program is fully delegated: the county issues permits and does inspections for small sources and they run the wintertime wood stove curtailment program and street sanding activities. In Lewis and Clark County they help DHES with local monitoring and run the wintertime wood stove curtailment program. It's up to how much the county wants to take on, up to the major industries, which the state retains control of. Taking over DHES's workload saves the state money and provides for increased efficiency and does not result in a large increase in FTE at the county level. **Tape No. 2:B:000**

SEN. JENKINS wanted to know the status of the slash burning permit program. **Mr. Chaffee** said DHES was in the process of rewriting the rules to provide more flexibility and a streamlined procedure for burning in the wintertime months especially in the eastern part of the state. Concerns from the forestry burners have been voiced that this is the only time of year they can safely burn slash. With the exception of special permits, burning is shut down statewide during December, January and February. He said if there was a problem with agricultural interests DHES would be willing to work with them as well. He said that in general, permits were not required for agricultural

burning unless the area was over 2,000 acres. **SEN. JENKINS** said in Choteau County open air burning permits could not be given on the county level and had to be done through the state. He submitted that the original intent in this area had been to protect only the western valleys of the state from inversion problems. **Mr. Chaffee** said it wasn't really DHES's intention to pull the eastern part of the state in and the department was willing to work on this on a case by case basis. He added that wintertime burning had been prohibited by the state for many years.

In response to **SEN. JACOBSON**, **Mr. Chaffee** explained in the last Legislature the division was authorized to hire 14 additional FTE plus the two SIP positions. Five FTE were added in FY 95 and thus did not show up in the base and the LFA subtracted two from the base, which results in a net increase of three FTE in FY 96 base. It was his understanding that there were two FTE brought into the division during reorganization: his position and a clerical position. The personal services reductions in New Proposal No. 8 are because the executive proposes to add 12 FTE instead of the department's request of 14, to provide for vacancy savings. These positions have not been filled.

SEN. JENKINS submitted the vacancy savings would end up adding two FTE into the budget for the next biennium. **Ms. Huckins** explained that the two FTE would not show up in the coming biennium's base although they were funded in the current biennium. **Mr. Lee** explained that the two FTE which were removed in the new proposal were computer support positions; one of these two positions was one of the two that remained in the Air Quality Division after reorganization. New Proposal No. 8 includes vacancy savings. The two FTE that were one-time-only SIP-related positions are eliminated in PL No. 1. The two FTE that the LFA issue concerns (p. B-157) do not come into play in the net increase contained in PL No. 1.

Mr. Robinson tried to clarify the issue. In 1994 the base staff had 9 FTE added. In addition, two FTE were added for the SIP work. In 1995, 5 more FTE were added. Going into 1996, the two SIP-related FTE have been entirely taken out of the formula.

Mr. Lee said this program used to contain the entire Environmental Sciences program, and portions of that program were spun out when reorganization occurred. This is why the two FTE referred to in the issue are not an increase: they were already essentially in this program. One of these two FTE the OBPP removes as part of its personal services reductions.

Mr. Robinson said from their perspective they saved at least one position during reorganization by transferring it out of the administrator's office to the Air Quality Division. He did not know where the LFA got the other position in the issue. DHES had been planning to eliminate the position they ended up saving and actually reduced FTE in 1995 by one, but since this would not be

reflected in the base, the new proposal provides for the removal of this position from the base. The LFA is suggesting that the other FTE could also be eliminated. The one FTE that they propose to eliminate (in the new proposal) represents the savings they were supposed to have derived from reorganizing.

Mr. Chaffee said that essentially there would be four positions disappearing: two one-time-only SIP positions and potentially the one carried over in reorganization, plus one more.

Ms. Huckins said four FTE were involved in the two discussions: two of them apply to the PL adjustment discussion and two apply to the new proposal discussion. The two in the new proposal would be related to the savings from reorganization and one more within the program. **SEN. JENKINS** submitted the division would be ending up with 14 FTE in the coming biennium's base.

Tape No. 3:A:000

SEN. JENKINS couldn't understand why, if the executive had not agreed to add 14 FTE, were two FTE even being cut in the new proposal; why this hadn't been done before the budget was finalized. **Ms. Huckins** said the personal services reductions were identified to help fund the pay plan. A "snapshot" of personal services was taken in June 1994 and personal services for DHES was calculated according to this snapshot. DHES chose in July 1994 to take its pay plan reduction as presented in New Proposal No. 8. The present law adjustments were worked out after this decision; therefore the FTE being discussed are two different sets of two FTE.

CHAIRMAN DEBRUYCKER wanted to know if it was federal law that the state was being required to enforce under PL No. 6. **Mr. Chaffee** said according to the way the federal Clean Air Act is written the EPA must implement its provisions if the state doesn't. They are authorized to charge the fees themselves.

Regarding lead abatement, **CHAIRMAN DEBRUYCKER** wanted to know who the new fees proposed by the department were going to be charged to and how the responsible party was going to be determined on houses built many years ago. **Mr. Howe** said the fees were on the course providers and on the individuals who are being certified to perform the lead-based paint activities. Also, there will be permit fees for performing the activities.

Regarding New Proposal No. 7, **CHAIRMAN DEBRUYCKER** wanted to know how it was determined when an area of the state was in violation or in danger of violation of National Ambient Air Quality Standards. **Mr. Chaffee** said the department researched this in the Billings area because it was predicted to be in violation. The impacts of the emissions were predicted using dispersion modeling. Even though DHES had not found monitored violations of the standards, the models predicted that the current emissions control plan would not protect the standards. This required that DHES rewrite the plan. In some case nonattainment is triggered

via monitor violations and in some cases it happens through the predictive scientific tools which DHES uses. The latter approach is used because of the inability to run enough monitors long enough in enough areas to get all the data needed. The areas that have a history of high levels of a pollutant are focused on.

CHAIRMAN DEBRUYCKER wanted to know what percentage of total pollution was from the large sites. **Mr. Chaffee** said it varied depending on the pollutant. West of the divide, roughly 2/3 - 3/4 of the pollution sources are people-generated (woodstoves, dusty roads) with the remainder from wood processing facilities and other industrial sources. In contrast East Helena's nonattainment for lead and sulphur dioxide is almost solely due to ASARCO's smelter. By statute DHES cannot charge fees to cover the people-generated components of the program. Grant monies cover those components. The concern for the future is if the amount of the grants decreases then it has to be determined how to pay for this portion of the problem.

REP. WISEMAN said the Flathead Basin Commission states that Flathead Lake is being polluted by the Kalispell sewer plant, which has been fixed, and by the air pollution from the inversion layer over the lake. He wanted to know what was being done about this human-generated problem. **Mr. Chaffee** replied that this element was not a factor in the control plans in the Flathead valley. DHES's primary focus to date has been bringing the hearts of the communities of Whitefish, Columbia Falls and Kalispell into attainment with particulate standards. He confirmed that part of the phosphorous portion of the fallout on Flathead lake is from woodstove and slash-burning emissions. This is something the Water Quality Division and the Air Quality Division need to put their heads together on.

Mr. Robinson pointed out that Kalispell and Columbia Falls had SIP's in place (Whitefish's SIP is not completed yet) which are mainly driven by people-generated pollution; part of the solution is to reduce this emission. **Mr. Chaffee** said to date these communities' control plans have not required a mandatory woodstove curtailment program. Kalispell has a voluntary curtailment program but their biggest problem is from street sanding.

SEN. KEATING wanted to know of the air quality fees in the program were just for sulphur dioxide emissions. **Mr. Chaffee** said the current fees are charged against sulfur dioxide, particulate lead, nitrogen oxide and volatile organic compounds. The fee schedule charges four times more for the first two. He pointed out that they had not added in any fees for toxic pollutants as yet. Each year they go to the Board of Health and adjust their fees to make up what they need to run the program. Small businesses will be brought in in order to "levelize" the burden. The department projects sulphur dioxide fees will be raised to \$20 per ton in 1996 and \$24 in 1997 but this is not

with the toxics component figured in. The federal presumptive levels charges are more than \$30 per ton. Even with the toxics figured in, the fee will not go back to \$10.

SEN. KEATING wanted more information on how dispersion modeling was done. **Mr. Chaffee** said emissions from a stack are measured with either a continuous emission monitor or calculations are made in conjunction with the industry. **SEN. KEATING** wanted to know, if the readings from the monitor are actual, then why was modeling needed. **Mr. Chaffee** said one way to determine compliance is ambient monitoring, which was different from stack monitoring. The problem with just relying on this is that it takes a lot of time, monitors and effort to truly assure compliance is being met. In addition, any one year might not be an accurate representation of what is allowed in the airshed. **SEN. KEATING** said he felt the monitors would be able to detect any problems before the public health was affected and questioned the funding increase. **Mr. Chaffee** pointed out that some sensitive persons, such as asthmatics, are affected by short-term exposure to sulphur dioxide.

In response to **SEN. JENKINS**, **Mr. Chaffee** said mammography inspections were presently under a budget amendment and the new proposal would continue funding. The lead abatement program is a new proposed program. The radon program has been authorized for a number of years.

SEN. JENKINS submitted that the counties would be incurring additional costs to implement these programs. **Mr. Chaffee** said the state's portion of the grants came from the Resource Indemnity Trust (RIT) revenues. **Mr. Howe** elaborated that the current programs which the department is operating under budget amendment include the federal grant. The 50% match is in-kind services out of DHES's radiation control program. In-kind services include the time spent by DHES giving presentations, etc. as well as in-kind donations or services from the counties. The only actual money is from the federal government and RIT funds which are a contract with the Bureau of Mines and Geology to conduct radon water testing and GIS mapping. Under the contract for mammography inspection, the federal Food and Drug Administration (FDA) provides full reimbursement. The testing equipment, computers and software are provided by the FDA. The vehicle is from the State Motor Pool but travel costs are paid for by the federal government.

In response to **SEN. JACOBSON**, **Mr. Howe** explained that DHES had been conducting radon activities for a number of years under its Radiation Control program. In the last legislative session the Radon Control Act was passed which provided RIT monies and helped expand the program's public information and outreach activities for radon. At present there is an industry providing radon measurement and another industry providing mitigation services.

Tape No. 3:B:000

The program has purchased a step-by-step do-it-yourself program and distributed it to all the public libraries in the state with EPA monies.

EXECUTIVE ACTION ON DHES Air Quality Division

Motion/vote: SEN. JACOBSON moved to accept PL Adjustments No. 4, 5, 7, 8, 10, 11 and 13 on p. B-156; REP. JOHNSON seconded the motion. Motion carried unanimously. SEN. JENKINS was excused and left a proxy vote of "yes."

Motion: SEN. JACOBSON moved to accept New Proposals No. 2, 5 and 8 on p. B-158. REP. JOHNSON seconded the motion.

Discussion: Mr. Lee clarified that the Lead Abatement Accreditation program was necessary in order to receive federal Housing and Urban Development (HUD) funds in the DHES Health Services Division. These funds were not accepted by the subcommittee which considered that part of the budget. SEN. KEATING said the HUD representatives would like to have an abatement program for older homes but the program is going to include industrial abatement as well. He said the refineries in Billings already had their own abatement program which followed EPA guidelines and did not need to be monitored by the state. The Centers for Disease Control wants to address lead abatement in older homes due to health concerns. He submitted there was not really any empirical data that lead is a real threat.

SEN. JACOBSON said in Butte they had been working for years on a program involving ARCO, the EPA, Butte/Silverbow and the state. This is an unusual program because all parties have bought off on allowing the Butte/Silverbow Health Department to be the lead agency in the cleanup. ARCO and the EPA have both contributed funds. They are ready to implement their program but they need accredited people to do it. This money will help that program.

Substitute motion/vote: SEN. KEATING moved to segregate the vote on New Proposal No. 5; REP. WISEMAN seconded the motion. Motion carried with REP. JOHNSON and SEN. JACOBSON opposed.

Discussion: CHAIRMAN DEBRUYCKER wanted to know more about New Proposal No. 2. Mr. Howe explained that producing a good diagnostic radiograph involves proper training and properly maintained equipment. Typically the program finds processing units which are under-developing. Consequently an over-exposure is necessary to get the proper density which leads to some blackness on the film. This leads to not being able to detect early breast cancers. Machines are not routinely checked unless someone comes in with the proper training and testing equipment. The idea of the program is to assist facilities with coming into compliance and not to put them out of business. In response to SEN. JENKINS he reported that currently there were 50 mammography facilities in the state with about 52 machines currently operating. Mr. Robinson explained that this program was in the

Air Quality Division budget because it dealt with indoor air quality.

Vote: The motion to **accept New Proposals No. 2 and 8** was then voted on. Motion **carried** unanimously.

Discussion: New Proposal No. 5 was then discussed. In response to **SEN. JACOBSON**, **Mr. Lee** said that although the Human Services Subcommittee had rejected the statewide program for lead abatement, it had accepted another proposal for about \$300,000 in 1996 and \$350,000 in 1997 for lead. **Mr. Howe** said this program is seeking to get primacy for the federal program and HUD lead abatement grants are available to the state and local communities only if there is a state program. If the EPA took on the program, providers in Montana would be forced to get their accreditation out of state. The FTE being requested would administer the state program and would audit and approve required training courses as well as operate the certification. In addition the FTE would inspect the lead-based paint abatement projects. **Mr. Chaffee** said that certifying people out-of-state would add to the cost to the industry. **Mr. Howe** stated the EPA's preference is to send the individuals to another certified state program to get accreditation and certification rather than taking over and charging fees based on 100% cost recovery. **Tape No. 4:A:000**

In response to **REP. WISEMAN**, **Mr. Howe** confirmed that the proposed FTE is the only lead abatement specialist in state government. **Mr. Robinson** said the department did not foresee any expansion in the program and stressed that the new proposal was aimed at facilitating the availability of funds for retrofitting HUD homes.

CHAIRMAN DEBRUYCKER wanted to know if there would be any way New Proposal No. 5 could be restricted for nonindustrial purposes. **Mr. Robinson** said the money available in the other part of the budget had to be used only on HUD homes and the department would have to focus its efforts "clearly on the residential uses." He said this could be included as contingency language in the appropriation.

Mr. Howe added that the program, in order to get primacy from EPA, was required to be at least as protective as the federal law. The EPA is requiring regulations for superstructures and this would include bridges and overpasses and industrial structures. He said it would be very unlikely that the EPA would give Montana primacy if certification requirements were not included for industry as well. **Mr. Robinson** submitted that DHES would be too busy with the residential portion of the program to be proactively involved with industry. **SEN. JACOBSON** wanted to know if the funds would be at risk if the beforementioned contingency language was included. **Mr. Robinson** said he felt the bill before the Legislature to establish the state program would establish the field of work.

Vote: The question was called for on the motion to **approve New Proposal No. 5.** The motion **carried** with **SENS. JENKINS** and **KEATING** opposed.

EXECUTIVE ACTION ON DHES Environmental Remediation Division

Discussion: SEN. JACOBSON referred the committee to PL Adjustment No. 4 on p. B-161 (Environmental Remediation Division budget) which the committee had rejected. She said part of the funding in this proposal was related to the Butte/Silverbow lead abatement program, Silver Bow Creek and the Montana Pole Superfund sites. Mr. Curt Chisolm, DHES Administrative Officer, explained that the increases were coming off a 1994 base expenditure of about \$583,000. He pointed out that the base was almost \$1 million in 1992. He requested that the committee reconsider its action because the decision was going to "leave EPA Superfund contract dollars on the table." He pointed out that these federal dollars would be recovered because there is a responsible party in each activity. These are ongoing Superfund activities which impact the Butte/Silverbow area substantially. The remediation phase is being initiated at some of the sites and \$500,000 is needed to begin designing what is to be done at the Montana Pole site. Private contractors in the state are doing work on behalf of the responsible parties. More than likely if the funding is not approved, the EPA will take over as the lead agency, especially at the Montana Pole site. He stressed that it would be better for the state to retain the lead in order to ensure that the state's operation and maintenance obligations are met once the remediation is completed. Even if the EPA were to become the lead agency the operation and maintenance obligation would remain with the state. If these Superfund programs lose the state lead, the lead abatement program in Butte will probably fall by the wayside as well.

Mr. Robinson told SEN. KEATING that the responsible parties at these Superfund sites were primarily ARCO. At the Montana Pole site, it has not been resolved but Burlington Northern has a potential as well as Inland Properties, a subsidiary of the Washington Corporation. The record of decision at the Montana Pole site indicates there is a range in cost between \$35 million and \$43 million to recover all the contaminants. He was not sure if the bids would come in any different if EPA was the lead agency; his primary concern regards the state's future liability at the site. Mr. Robinson said that if the EPA took over the lead on the project the record of decision would not change but the project would be slowed down while the EPA "got up to speed." All of the companies on these sites have made preliminary offers for settling out their portion of the liability. He estimated there would be court action between all of the parties regarding the portions of responsibility for each party. If resolution is not achieved the courts will resolve it. DHES could be involved in court action if there is a dispute over who is a liable party. He stressed that anticipated legal expenses were not built into this budget.

Mr. Robinson explained that the Natural Resource Damage lawsuit is not related with these sites although some of the costs which ARCO has incurred in its Butte and Anaconda area cleanup would probably be incorporated into those loss figures. The lawsuit is to recover the loss of use of and damages to the Clark Fork basin due to the actions of ARCO and its predecessors. The state has determined that roughly \$300 million of the \$600 million ARCO owes in the natural resource damage lawsuit is supposed to be used for continued cleanup and recovery on the Clark Fork River from Milltown Dam to Butte/Silverbow County. The other \$300 million is for the loss of use of recreational opportunity and industrial purposes on portions of the river.

Tape No. 4:B:000

Motion: SEN. JACOBSON moved to accept PL No. 4 on p. B-161; REP. JOHNSON seconded the motion.

Discussion: SEN. JENKINS wanted to know if approval of the adjustment could be contingent upon the receipt of EPA funds.

Vote: The question was called for and the motion carried with REP. WISEMAN opposed.

EXECUTIVE ACTION ON DHES Air Quality Division

Motion: REP. JOHNSON moved to approve New Proposals No. 3 and 4 on p. B-158; SEN. JACOBSON seconded the motion.

SEN. JENKINS questioned adding FTE in this area when the positions approved prior to this proposal had not been filled. Mr. Chaffee said part of the reason hiring was delayed in 1994 was because the state classification and recruitment process was time-consuming. Also in this same year the Legislature directed the division to justify to the department director that these duties could not be contracted for. This required the department to set up a new system before the positions could be approved. He stressed that this did not mean the positions were not needed. He also emphasized that if there was not any growth in permitting and compliance, Montana would not be able to hang onto primacy in the Title V program.

Vote: The question was called for. The motion failed with REP. JOHNSON voting "yes."

Discussion: Mr. Robinson commented that in his experience this had probably been the most thorough, open and fair budget hearing that he had ever been involved in.

Motion/vote: REP. WISEMAN moved to close the section on DHES; SEN. JENKINS seconded the motion. Motion carried unanimously.

ADJOURNMENT

Adjournment: 11:54 a.m.



ROGER DEBRUYCKER, Chairman



DEBBIE ROSTOCKI, Secretary

RD/dr

This meeting was recorded on four 60-minute audiocassette tapes.

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

DIRECTOR'S OFFICE

EXHIBIT 1

DATE 1/24/95

COPY

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STATE OF MONTANA

(406) 444-2544 (OFFICE)
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HELENA, MONTANA 59620-0901

November 14, 1994

Scott A. Seacat
Legislative Auditor
Office of the Legislative Auditor
State Capitol
Helena, Montana 59620-1705

Dear Mr. Seacat,

This letter is in response to the supplemental information requested by the Legislative Audit Committee at the September 30, 1994 hearing on the Program Performance Audit of the Water Quality Division. As outlined in Angie Grove's letter to my office dated October 4, 1994, the following is submitted in compliance with the request of your committee:

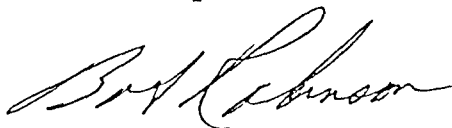
1. Attachment A is a document that contains a listing of the recommendations made in the audit report, our agency's initial and formal response to those recommendations as printed in the audit report itself, plus a more detailed and definitive response to those same recommendations as requested by the Audit Committee.
2. Attachment B is a document that is intended to provide some insight into initial plans for improving upon our computerized data based information systems in order to provide for the tracking required in the enforcement process. This attachment is referred to in the supplemental response to recommendation #5.
3. Attachment C is a copy of my letter to committee Chairman Senator Jergeson which constitutes the monthly written follow-up report to each recommendation made in the audit as requested by the Audit Committee.

I plan on attending the next meeting of the Legislative Audit Committee to personally outline the agency's collective process in meeting our goal to correct the audit deficiencies and, at that time, I will also briefly comment on our plans to deal with areas that require further study as outlined on pages 3 and 4 of the audit report.

Scott A. Seacat
Page 2
November 14, 1994

I trust that this information is satisfactory to the committee's needs and in compliance with their expectations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robt J. Robinson".

Robert J. Robinson
Director
Department of Health and Environmental Sciences

ATTACHMENT A - SUPPLEMENTAL RESPONSES TO THE RECOMMENDATIONS
MADE IN THE SEPTEMBER 1994 PROGRAM PERFORMANCE
AUDIT OF THE WATER QUALITY DIVISION

RECOMMENDATION #1

WE RECOMMEND THE DEPARTMENT CLARIFY, COMMUNICATE, AND IMPLEMENT A
FORMAL ENFORCEMENT POLICY FOR WQD STAFF TO FOLLOW.

Original response submitted to the Legislative Audit Committee on
September 30, 1994:

The Department concurs with this recommendation. The director's office appointed a task force consisting of Water Quality Division staff along with a member of the Air Quality Division enforcement staff and a member of the Environmental Remediation Division to begin this process on August 23, 1994. That group has completed a draft Interim Enforcement Procedure/Policy that is currently being refined to provide a systematic and predictable process for enforcement response under the two acts. The interim policy will be adopted for use within the Water Quality Division within the next 30 days. This document is being prepared in such a manner that it will have general transferability to all other organizational divisions of the department. Within the next 3 months it will be implemented throughout the Department.

Supplemental Response:

The Department additionally proposes to take the following action to implement this recommendation:

- 1) Adopt Interim COMPLIANCE/ENFORCEMENT MANUAL 10/14/94
- 2) Disseminate to WQD Program Managers 10/17/94
- 3) Continue Enforcement Policy Workgroup to expand on the COMPLIANCE/ENFORCEMENT MANUAL according to the following schedule:
 - A. Select appropriate enforcement response & prepare draft policy 10/18,20,25/94
 - B. Develop penalty policy and calculations and prepare draft policy 10/27, 11/1,7,10,15,17/94
 - C. Prepare draft policy for recovery of agency enforcement costs 11/29/94
 - D. Prepare draft policy for initiation of formal administrative or judicial enforcement 12/1,6/94
 - E. Prepare draft policy on case management 12/8/94
 - F. Review of modified COMPLIANCE/ENFORCEMENT MANUAL to discuss general issues 12/13,15,20/94
 - G. Establish procedure for periodic evaluation of the COMPLIANCE/ENFORCEMENT MANUAL to maintain program accountability 12/22/94
 - H. Submittal of final COMPLIANCE/ENFORCEMENT MANUAL for administrative review, approval, and final implementation 1/4/95

- 4) Initiate training of WQD staff 1/17/95
- 5) Initiate implementation and training in all other divisions with enforcement responsibility 1/31/95

RECOMMENDATION #2

WE RECOMMEND:

- A. THE DEPARTMENT ESTABLISH A PROCESS TO SET RULE-MAKING PRIORITIES; AND
- B. THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES ADOPT RULES IN CRITICAL PROGRAM AREAS TO HELP IMPLEMENT THE ENFORCEMENT POLICY.

Original response submitted to the Legislative Audit Committee on September 30, 1994:

A. The Department concurs with this recommendation. The Department will develop both a policy and a procedure for dealing with priority setting for rule-making. In addition, the department will establish a monitoring system in order to supervise agency progress in completing and then implementing rule-making. This process will be implemented no later than October 15, 1994. However, in response to an explicit suggestion contained in the body of the audit report but not specifically in the audit recommendations, the Department, pursuant to its authority in 75-5-211, MCA, will conduct an analysis of each of the subject areas listed to determine the need for promulgation of rules or adoption of other internal operating procedures to ensure clarity, consistency and effectiveness in enforcement in each of the program areas. This analysis will be completed by November 30, 1994. If statutory authority in addition to Section 2-4-201, MCA, is required to promulgate these rules, this will be requested in the 1995 legislative session. It should be noted that the Department has drafted and is in the process of promulgating rules pertaining to administrative penalties under the Water Quality Act and the Public Water Supply Act, and pertaining to campgrounds and trailer courts. The Department has identified a need to clarify its authority legislatively to protect water sources through wellhead protection. The Department has identified a need for promulgation of administrative rules concerning standards for pesticides in groundwater. The interim enforcement policy mentioned in Response #1 will be used to establish rule-making priorities.

B. The Board of Health and Environmental Sciences was consulted on this specific recommendation at their meeting of September 16, 1994. The Board directed us to respond that they concur with this recommendation, but since they do not have the capability to evaluate the need for rule-making in areas that are not specifically required by statute, they would entertain recommendations from the Department for amending or improving upon their rule-making posture after the Department has completed its evaluation referenced in #2A.

Supplemental Response:

The department has developed a draft policy and procedure for implementing a method for dealing with priority setting for its rule making agenda along with a number of other rule making related issues. This draft was completed on October 15, 1994.

The department will have a final policy in place by November 30, 1994. This assignment is the responsibility of the Chief Legal Counsel for the Department.

DATE 1-24-95

In addition, the department will complete its review of possible rule making deficiencies relative to its rule making authority along with potential rule making deficiencies of the Board of Health and Environmental Sciences by November 30, 1994. This is the responsibility of the chief legal counsel who is coordinating this effort with all division administrators and counsel for the Board. Once that review has been completed, the director will review the results of that analysis and implement, if necessary, a course of action relative to legislative initiatives based on that report no later than December 8, 1994.

RECOMMENDATION #3

WE RECOMMEND THE DEPARTMENT DEVELOP FORMAL ENFORCEMENT PROCEDURES FOR WQD STAFF TO HELP ENSURE CONSISTENCY IN ENFORCING THE PROVISIONS OF THE WQA AND THE PWSA.

Original response submitted to the Legislative Audit Committee on September 30, 1994:

The Department concurs with this recommendation. As previously mentioned, the agency has already drafted an interim enforcement procedure/policy document. The procedural part of our effort will recognize and utilize the procedures currently in existence in both the drinking water and waste discharge permit programs and will improve upon them if necessary.

Supplemental Response:

- 1) The COMPLIANCE/ENFORCEMENT MANUAL will address this recommendation. See RECOMMENDATION #1 supplemental response for additional detail and schedule.

RECOMMENDATION #4

WE RECOMMEND THE DEPARTMENT STRENGTHEN THE MANAGEMENT CONTROLS OF THE WQD BY:

1. DEFINING AND COMMUNICATING FORMAL REPORTING AND SUPERVISORY RELATIONSHIPS;
2. DEFINING THE AUTHORITY OF STAFF AND DELEGATING THE AUTHORITY TO THE APPROPRIATE LEVEL; AND
3. IMPLEMENTING A SYSTEM TO DIRECT DAY-TO-DAY STAFF ACTIVITIES

Original response submitted to the Legislative Audit Committee on September 30, 1994:

The Department generally concurs with this recommendation. The Water Quality Division was part of a major reorganization of the Department that became effective on July 1, 1994. The replacement of the previous Environmental Sciences Division with four new divisions was intended, in part, to provide more direct management controls. The Water Quality Division is one of the four new environmental regulatory divisions. No further organizational changes will be made until a permanent division administrator is selected. Completion of the organizational review will address these recommendations.

Supplemental Response:

The Department proposes the following schedule for completion of the organizational review within the WQD:

- | | |
|---|----------|
| 1) Selection of Division Administrator | 11/16/94 |
| 2) Initiate organizational review of WQD | 12/1/94 |
| 3) Propose organizational changes to the
Department Director | 1/15/95 |
| 4) Implement organizational changes with WQD | 2/1/95 |
| 5) Supervisors schedule meetings with appropriate
staff to discuss appropriate roles and
responsibilities | 2/3/95 |

A WQD Handbook will be developed to assist division staff in policy and procedural issues.

- | | |
|--|----------|
| 1) Draft WQD Handbook available for staff review | 12/15/94 |
| 2) Adoption of WQD Handbook | |

RECOMMENDATION #5

WE RECOMMEND THE DEPARTMENT SET UP A MANAGEMENT INFORMATION SYSTEM TO DOCUMENT AND TRACK CRITICAL DIVISION ACTIVITIES

Original response submitted to the Legislative Audit Committee on September 30, 1994:

The Department concurs with this recommendation. In June of this year, the Water Quality Division sent two administrative support staff members to a multi-day training session on files and records management. The division will be implementing a central filing system. A draft outline of the filing system has been developed and is currently under review by division managers. In addition, copies of all enforcement logs and other enforcement tracking systems are being reviewed in an attempt to consolidate the same into one common system that will track alleged violations from the original complaint through final resolution.

Supplemental Response:

A central filing system will be establish and implemented in conjunction with the relocation of some WQD offices.

- | | |
|--|---------|
| 1) WQD staff will review all files in their possession
at the time of their move and determine which files
can be placed in a central location | ongoing |
| 2) Implement central filing system structure | 1/15/95 |

To better track enforcement activities the Department proposes the following:

- | | |
|--|----------|
| 1) Temporary hire of two half time positions to
update complaint reports and enter data on the
existing data management system | 10/15/94 |
| 2) Develop a proposal for AUTOMATION OF
ENFORCEMENT TRACKING (see attachment B) | 11/1/94 |
| 3) Initiate procurement process for contractor | 12/15/94 |
| 4) Draft recommendations and cost estimate | 4/15/95 |

RECOMMENDATION #6

WE RECOMMEND THE DEPARTMENT ESTABLISH A POLICY AND PROCEDURES TO ENSURE A COMPREHENSIVE AND CONSISTENT ENFORCEMENT OF THE WQA AT HARD ROCK MINES.

Original Response submitted to the Legislative Audit Committee on September 30, 1994:

The Department concurs with this recommendation. Comprehensive and consistent enforcement should apply to all violations and not just those involving hard rock mines. We will initiate a review of the current Memorandum of Understanding that exists between the DHES and the Montana Department of State Lands.

Supplemental Response:

The Department proposes the following schedule for review of the Memorandum of Understanding with the Department of State Lands

- | | |
|--|----------|
| 1) Initiate DHES/DSL review of the MOU | 12/1/94 |
| 2) Complete revisions to MOU | 3/15/94. |

RECOMMENDATION #7

WE RECOMMEND THE DEPARTMENT:

- A. SEEK LEGISLATIVE CLARIFICATION ON THEIR AUTHORITY TO GRANT WQA EXCLUSIONS, OR
- B. ELIMINATE THE EXCLUSIONS CURRENTLY OUTLINED IN THE ARMS.

Original response submitted to the Legislative Audit Committee on September 30, 1994:

The Department concurs with recommendation #7B and will therefore initiate rule modification to eliminate those exclusions currently outlined in the ARMs for those activities not subject to direct DHES permitting or approval. The Department intends to notice these rule changes by at least December 31, 1994. The elimination of these exclusions will result in a significant increase in the number of facilities requiring permits, and accordingly will impact the workload of the WQD and its need for staff resources to deal with this problem. Examples of facilities that are currently excluded from permitting requirements are hard rock mining operations, some facets of oil and gas field operations, and activities regulated under the federal underground injection control program.

Supplemental Response:

Since the department decided to initiate rule modification to eliminate the exclusions from MGWPCS permits, the department would like to take this opportunity to update and revise its ground water permit program. Current discussions and questions center around whether to modify and update only the MGWPCS regulations (ARM 16.20.1001 et., seq.) or to eliminate the MGWPCS regulations and modify the surface water (MPDES) permit program to include permits for discharges to ground water.

The schedule established for the above referenced rule modification activities is:

1994

November 1 through 30 - Groundwater section will take lead in conducting a series of inter-divisional meetings to finalize approach to this rule change and meet with effected agencies and industry representatives to determine problematic areas that will impede practical application of rule change.

December 1 through 31 Groundwater section will draft proposed rules, will have them review by legal staff, and have a final draft prepared by December 31, 1994.

1995

January 1 through 31 Division will hold a series of informal public meetings to obtain preliminary comment and review of draft rules.

February 15 Division will finalize draft rules. File proposed regulations with Secretary of State to initiate rule adoption process.

RECOMMENDATION #8

WE RECOMMEND THE DEPARTMENT SEEK LEGISLATION GRANTING THE DEPARTMENT A WIDER RANGE OF ENFORCEMENT ACTIONS UNDER THE WQA AND PWSA.

Original response submitted to the Legislative Audit Committee on September 30, 1994:

The Department partially concurs with this recommendation. While this has never been a problem in over twenty years of enforcing the two acts, we will consider seeking legislation providing clarification of the legislative intent for enforcement response. We do not feel that a wider range of enforcement actions is necessary but clarification of enforcement discretion using current enforcement tools would be valuable.

Supplemental Response:

The Department has submitted proposed legislation to the Office of Budget and Program Planning (OBPP) for review prior to submittal to Legislative Council.

* *DO NOT
BOUNDS TO SEEK
ONLY CIVIL PENALTIES
- clarify
intent*

RECOMMENDATION #9

WE RECOMMEND THE DEPARTMENT SEEK STATUTORY CLARIFICATION TO EITHER:
A. REQUIRE A PERFORMANCE BOND REQUIREMENT, IF NECESSARY, TO ENSURE COMPLIANCE WITH WQA, OR
B. ELIMINATE THE VOLUNTARY BOND AUTHORIZATION.

Original response submitted to the Legislative Audit Committee on September 30, 1994:

The Department generally agrees with the recommendation and will seek statutory clarification to require performance bonds, when necessary, to ensure compliance with the WQA. We agree that such authority would be helpful but during legislative consideration of the voluntary bond provisions there was considerable legislative opposition to making performance bonds a general requirement under the WQA.

Supplemental Response:

The Department has submitted proposed legislation to the OBPP for review prior to submittal to Legislative Council.

RECOMMENDATION #10

WE RECOMMEND THE DEPARTMENT SEEK LEGISLATIVE CLARIFICATION OF THE USE OF ECONOMIC CONSIDERATIONS IN ENFORCING THE WATER QUALITY ACT AND PUBLIC WATER SUPPLY ACTS.

Original response submitted to the Legislative Audit Committee on September 30, 1994:

The Department partially concurs with this recommendation. The Water Quality Act, in section 75-5-631 (4), provides for economic consideration when seeking penalties. We will seek similar clarification for Montana's Laws Regarding Public Water Supplies.

Supplemental Response:

The Department has submitted proposed legislation to the OBPP for review prior to submittal to Legislative Council.

ATTACHMENT B

AUTOMATION OF ENFORCEMENT TRACKING

11/04/94

The Objective

The objective is to implement a comprehensive system to track enforcement activities of the Department of Health and Environmental Sciences. The system must store and retrieve information about enforcement actions in such a way that case histories, entity histories, and enforcement statistics are readily accessible. The expected outcome of this project is confidence and ease in making and defending departmental enforcement decisions.

The Issues

The Water Quality Division's enforcement capability is compromised by the lack of an effective data base management information system. A basic factor contributing to this ineffectiveness is the inability of the existing data system to meet present and future demands. The subsequent lack of readily accessible case histories, entity histories, and enforcement statistics have made it difficult to make and defend enforcement decisions. It is likely that other programs within the department are in similar circumstances. This additional potential liability makes it prudent to address the enforcement tracking needs of the entire department, not just the problems of the Water Quality Division.

The Process

An automation project should be approached in a systematic manner for satisfactory results. The process needs to include the following components:

- * Formulate descriptions of what is the matter with the current system and, very generally, what we want to accomplish.
- * Assign an analyst to perform a systems analysis. This will include identification and interview of all involved parties (enforcement staff in each division, legal staff, division administrators, and the director). The analyst will work with these people to document the types of information required for tracking and managing enforcement actions. The analyst will also document the statistics and reports needed by the director's office and division administrators.

- * Present the needs analysis findings to the involved parties for refinement and sign off. Finalize any changes to the document.
- * Assign an analyst to research possible solutions. Similar regulatory agencies and legal organizations should be polled to see what methods and software they are using. Other sources of potential solutions should be investigated. Pricing, availability, and relevant features should be summarized in a report. It would be appropriate for the analyst to make recommendations regarding the suitability of the possible solutions.
- * Present the solutions research findings to the involved parties for discussion. Any literature and demonstration disks should be made available to the people so that they may become as informed as possible about the features and limitations of all viable solutions. Further investigation of one or more of the solutions may be required as a result of this process.
- * Decide which solution, if any, to pursue.
- * Identify resources to be used for procurement and implementation of the chosen solution. This will include selection of a person or persons to oversee the project and to identify funding sources.

The Options

Labor

1. Contract a consultant to perform a needs analysis, research available solutions, propose solution options, and implement.
2. Assign departmental staff to perform a needs analysis, research available solutions, propose solution options, and implement.
3. Use a combination of contracted and staff labor.

Solutions

1. Purchase off-the-shelf software. Some such software can be customized.
2. Contract a programmer to write a software application.
3. Do nothing. This is always an option.

Recommendations

Hire a consultant to do the whole project. There are no unused in-house resources. An outsider will bring a fresh perspective and will be perceived as impartial.

Include the entire department in the needs analysis phase. Implement the solution in a modular fashion beginning with the Water Quality Division and the Legal Section. This addresses the immediate crisis with WQD while setting the stage for integrated enforcement processing for the whole department.

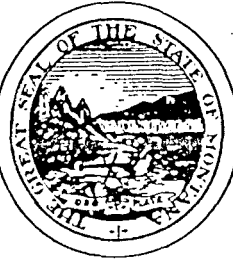
Make every effort to locate an existing application rather than develop from scratch. The short-range costs of purchasing an existing solution are offset by the relatively short time needed to have a working system in place. The long-range costs of developing an application of this magnitude often approach the cost of purchasing an application. A decision to develop a custom application would require serious discussion of what language and/or database platform to use for the development. At that point, Information Services Bureau staff will need to be heavily involved. The state has recently chosen a new database standard; the timeframe for availability of and support for this new platform are uncertain.

Be prepared to aggressively pursue financing for the chosen solution. It may be discovered that implementation will require more money than is currently available. Don't abandon the needs analysis or the goal of a comprehensive solution; do it right the first time.

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES
DIRECTOR'S OFFICE

EXHIBIT 2
DATE 1/24/95
HB _____

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STATE OF MONTANA

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HELENA, MONTANA 59620-0901

November 14, 1994

Senator Greg Jergeson, Chairman
Legislative Audit Committee
State Capitol
P.O. Box 201705
Helena, Montana 59620-1705

Dear Senator Jergeson:

As requested by the Legislative Audit Committee at its September 30, 1994 meeting and clarified by letter from Angie Grove dated October 4, 1994 we are providing a written follow-up on each of the recommendations contained in the Performance Audit Report for Enforcement of the Water Quality and Public Water Supply Acts.

RECOMMENDATION #1 - The Department, on October 14, 1994, adopted an Interim COMPLIANCE/ENFORCEMENT MANUAL. This document has been disseminated to all Water Quality Division (WQD) program managers and is being used by the staff. The enforcement work group continues to meet twice each week to continue refinement and clarification of the document.

RECOMMENDATION #2 - The Department has directed WQD program managers to review rules to determine if any new rules should be adopted or any existing rules should be modified or repealed. A hearing was held on October 14, 1994 on modifications to the Campground and Trailer Court rules. The WQD has met with the Montana Rural Water Users Association staff regarding concerns with the administrative penalty rules for the Public Water Supply Act. The department will request Board of Health and Environmental Sciences adoption of those rules in December. Notice of rulemaking for the administrative penalties under the Montana Water Quality Act will be noticed within the next 30 days.

RECOMMENDATION #3 - The Interim COMPLIANCE/ENFORCEMENT MANUAL has been disseminated to all WQD program managers and will be used for future enforcement actions.

RECOMMENDATION #4 - Completion of the organizational review within the WQD will be initiated with the selection of the Division Administrator. Implementation of any organizational changes will

Senator Greg Jergeson
Page 2
November 14, 1994

be completed and staff roles reviewed by early February. A WQD Handbook is being developed and will be available for staff review and comment by 12/15/94. Effective October 17, 1994 the Department implemented a reorganization plan for legal services within the agency. This plan creates a central legal unit with all attorneys reporting to the Chief Legal Counsel. This will eliminate the supervisory confusion mentioned in the audit report.

RECOMMENDATION #5 - The Department has developed a plan to provide additional space for WQD programs within the Cogswell Building. In conjunction with the move, the WQD will implement the central filing system. To improve our tracking of enforcement actions, the Department has hired two half time employees to update the complaint reports and to enter data on the existing data management system. A proposal for AUTOMATION OF ENFORCEMENT TRACKING has been developed.

RECOMMENDATION #6 - Copies of the current Memorandum of Understanding between the DHES and Department of State Lands (DSL) have been distributed to appropriate WQD staff for review. Meetings with DSL will follow.

RECOMMENDATION #7 - The WQD is reviewing the current groundwater rules to determine the appropriate way to eliminate exclusions currently outlined in the rules.

RECOMMENDATION #8, #9, & #10 - The Department has submitted proposed legislation to deal with each of these issues to the Office of Budget and Program Planning for review prior to submittal to Legislative Council.

We hope this information is helpful to you and reflects the commitment this agency has made to address the findings and recommendations of the audit report. Should you need additional information in any of the above areas please feel free to contact me.

Sincerely,



Robert J. Robinson
Director

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES
DIRECTOR'S OFFICE

EXHIBIT 3
DATE 1/24
HB



STATE OF MONTANA

COPY

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HELENA, MONTANA 59620-0901

December 19, 1994

Senator Greg Jergeson, Chairman
Legislative Audit Committee
State Capitol
P.O. Box 201705
Helena, Montana 59620-1705

Dear Senator Jergeson:

The Department of Health and Environmental Sciences continues to make progress implementing those measures identified in response to recommendations contained in the Performance Audit Report for Enforcement of the Water Quality and Public Water Supply Acts. The following is provided as a written follow-up on each of those recommendations:

RECOMMENDATION #1 - The enforcement workgroup continues to meet twice each week to revise and enhance the Interim COMPLIANCE/ENFORCEMENT MANUAL in accordance with this agency's self imposed work schedule for this task. The work group has been expanded to include John Wardell, Director of the Montana Office of the Environmental Protection Agency to ensure that final document is consistent with EPA policies. In addition, a review team from the Region VIII office of EPA is scheduled to arrive in Helena on January 23, 1995 to work with Water Quality Division staff to review compliance of delegated programs.

RECOMMENDATION #2 - Responses to comments have been prepared for the Public Water Supply Administrative Penalty rules. Final Board of Health and Environmental Sciences action on the rules was postponed due to the fact that the December 16, 1994 Board of Health meeting was held in Billings and was intended to deal exclusively with the SO2 State Implementation Plan for that particular air shed. The department will schedule this issue on the Board's agenda at its next meeting in January.

RECOMMENDATION #3 - A complete list of all existing water quality enforcement cases and proposed enforcement actions has been developed and submitted to WQD program managers for review and prioritization in accordance with the Interim COMPLIANCE/ENFORCEMENT Manual. Each priority list will then be submitted to the Division enforcement review team for a determination of appropriate enforcement response.

RECOMMENDATION #4 - The Water Quality Division has initiated a review of the current organizational structure within the division. On December 12, 1994 WQD program managers met to begin the process. A subsequent meeting is scheduled for December 19, 1994. In addition, on December 14, 1994 WQD program managers met with staff of the Billings and Polson Regional offices to discuss communication, coordination, and supervision responsibilities. A written policy of coordination with and supervision of the regional office staff will be provided by the WQD administrator by December 31, 1994.

RECOMMENDATION #5 - The two half-time employees hired to update enforcement records continue their work. They have prepared the summary of current and pending enforcement request referenced in response to recommendation #3. The WQD is developing the documents to procure the services of a contractor to complete the work identified in the proposal for AUTOMATION OF ENFORCEMENT TRACKING previously submitted.

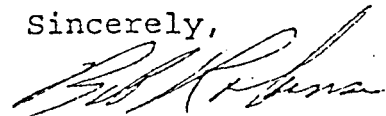
RECOMMENDATION # 6 - The Department has been in contact with representatives of the Department of State Lands regarding a review of the existing Memorandum of Understanding between the two agencies. A meeting between the two directors and other appropriate staff has been scheduled for Tuesday, December 20, 1994 to initiate this review.

RECOMMENDATION # 7 - Representatives of the WQD have initiated discussions with representatives of the Oil and Gas industry regarding elimination of the current permit exclusions. Similar meetings are planned with representatives of other industries for which exclusions are proposed to be eliminated.

RECOMMENDATION #8, #9, & #10 - Proposed legislation to implement these recommendations has been returned from Legislative Council. We have been discussing the legislation with the Environmental Quality Council Enforcement Subcommittee and will be seeking their endorsement and support for the legislation.

If you have questions regarding the information provided, please feel free to contact me.

Sincerely,



Robert J. Robinson
Director

HOUSE OF REPRESENTATIVES

Natural Resources SUB-COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Mike Ulesky BUDGET _____

ADDRESS _____ DATE 1/24/95

WHOM DO YOU REPRESENT? MT Assoc. of Cons. Dist.

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS: Water Quality Division's Nonpoint Source
Pollution Budget

HOUSE OF REPRESENTATIVES

SUB-COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Jandy Ditzinger BUDGET AD

ADDRESS 2711 J. R. Pappert Rd DATE _____

WHOM DO YOU REPRESENT? ME Assn of Counties

SUPPORT ✓ OPPOSE _____ AMEND _____

COMMENTS: President Law Administration - County

grants for AIE population control

HOUSE OF REPRESENTATIVES

SUB-COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME FRANK CROWLEY BUDGET Air Quality

ADDRESS 807 2nd DATE 1-24-95

WHOM DO YOU REPRESENT? ASARCO, Inc.

SUPPORT ☒ OPPOSE ☐ AMEND ☐

COMMENTS: with reservations regarding # of
FTE's necessary to implement permitting
program.