

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
54th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By Rep. Dick Knox, Chairman, on March 13, 1995,  
at 3:00 pm.

**ROLL CALL**

**Members Present:**

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

**Members Excused:** Rep. Carley Tuss (D)

**Members Absent:** None

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

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

**Committee Business Summary:**

Hearing: SB 330, SB 331  
Executive Action: HB 521 Do Pass As Amended  
SB 362 Do Pass As Amended  
SB 252 Tabled

Tape 1, Side A

(Note: Testimony and discussion pertaining to both SB 330 and SB  
331 can be found in each of the hearings for these two bills.)

HEARING ON SB 330Opening Statement by Sponsor:

SEN. CHUCK SWYSGOOD, Senate District 17, Dillon, said SB 330 proposes an amendment to the water quality nondegradation provisions of Montana water quality laws, changes the definition of high-quality waters, changes the definition of interested persons and amends sections 75-5-103 and 75-5-303, MCA. Under current law, almost every drop of water in the state is classified as high-quality water. Lowering one parameter of the 240 established parameters would constitute a degradation of the current definition of high-quality water. The bill proposes to protect the high-quality of waters in Montana and at the same time put some common sense into the classification of waters.

Proponents' Testimony:

Peggy Trenk, Western Environmental Trade Association. Written testimony. EXHIBIT 1 (SB 330 and SB 331)

John Bloomquist, Montana Stockgrowers Association, said the current definition of water quality degradation is the lowering of a parameter even if there is no effect on any beneficial use. Standards, criteria and definitions under the Water Quality Act should be tied to the concept of beneficial use. SB 330 would accomplish this. The present definition of high-quality waters is essentially all waters in Montana. The proposed definition recognizes that some waters in the state are not high-quality waters. The changes in SB 330 are necessary to maintain a reasonable nondegradation policy for Montana.

Larry Brown, Agricultural Preservation Association, said surface water pollution is largely due to uncontrollable sources. Permitting has advanced to the point where the state is approaching zero risks regardless of whether it is the impact on the environment or the impact on humans. It is unrealistic, unachievable and an unnecessary band-aid.

Max Botz, President, Hydrometrics, Inc., Helena, said the regulatory programs have become more complex than anywhere in the United States. All waters in the state are defined as high-quality. Colorado, Idaho, Wyoming and Utah have high-quality waters also, but they have not declared all their waters high-quality. These states have only declared the waters that are truly high-quality. SB 330 proposes that all waters continue to meet water quality standards. All it does is delineate the nondegradation provision.

The following proponents supported SB 330:

David Owen, Montana Chamber of Commerce

Lorna Frank, Montana Farm Bureau

Don Allen, Montana Wood Products Association

Tape 1, Side B

Carl Schweitzer, Montana Contractors Association

Collin Bangs, Montana Association of Realtors

Mike Murphy, Montana Water Resources Association

Gail Abercrombie, Montana Petroleum Association

Bob Williams, Montana Mining Association

Jim Kembel, City of Billings

Employees of Pegasus Gold Corporation. Written testimony.  
EXHIBIT 2 (SB 330 and SB 331)

K. D. Feedback, Lincoln. Written testimony. EXHIBIT 3 (SB 330  
and SB 331)

Don Peoples, Montana Technology Companies, Inc., Montana Energy  
Research & Development Institute. Written testimony. EXHIBIT 4  
(SB 330 and SB 331)

Opponents' Testimony:

Hope Stevens, Self, said SB 330 is going to do irrevocable harm  
to the waters of the state and to the citizens of Montana.

Kenneth Knapp, Montana River Action Network, said SB 330 and SB  
331 propose nothing short of war on Montana's waters. The mining  
industries' war on waters threatens to degrade the water quality  
of some of the most pristine and beautiful waters of the world,  
held in high esteem by people from all over the world who come to  
Montana to utilize it. Mr. Knapp submitted a map and list  
showing 25 waters at risk in Montana. EXHIBIT 5

Brian Kuehl, Greater Yellowstone Coalition. Written testimony.  
EXHIBIT 6

Julia Page, Northern Plains Resource Council. Written testimony.  
EXHIBIT 7

Alan Rollo, Montana Wildlife Federation. Written testimony.  
EXHIBIT 8

Don Spivey, Whitefish, Self, Citizens for a Better Flathead.  
Written testimony. EXHIBIT 9

Don Kern, Board of Directors, Canyon Coalition. Written  
testimony. EXHIBIT 10

**Tape 2, Side A**

**Paul Roos, Representing Land Lindbergh, Greenough and North Powell Conservation Supervisors. Written testimony. EXHIBITS 11 and 12**

**Vicki Watson, Associate Professor, Biology, University of Montana, Self, Clark Fork-Pondera Coalition. Written testimony. EXHIBIT 13**

**Steve Pilcher, Department of Health and Environmental Sciences, said the department is concerned with the definition of degradation in SB 330. Mr. Pilcher said it was his understanding that alternate language to the definition of degradation will be offered in conjunction with SB 331. However, without knowing the fate of that bill and without ensuring that the coordination clause that is proposed in the bill will come into play and address the definition issue, it is only fair to express the department's concerns.**

**Paul Hawks, Rancher, Melville. Written testimony. EXHIBIT 14**

**Sally Jones, Self, said article 9, section 1, of the Montana Constitution prohibits the Legislature from allowing any degradation of Montana's high-quality water. Ms. Jones urged the committee to table SB 330 and SB 331.**

**The following opponents expressed opposition to SB 330 or had written testimony:**

**Jim Emerson, Self, Helena**

**Ron Cunningham, Fishing Outfitters Association of Montana**

**Jim Curtis, Sierra Club. Written testimony. EXHIBIT 15**

**Jim Barrett, Beartooth Alliance, Cooke City**

**Mike Geary, Self**

**Grant Parker, Mullendore, Tawney, Watt, Parker & Johnson, Attorneys At Law. Written testimony. EXHIBIT 16**

**Jim Carlson, City-County Health Department, Missoula**

**John Smart, Self, Island Mountain Protectors Association.**

**Louise Bruce, Montana Wilderness Association**

**Florence Ore, Concerned Citizens of Pony**

**Tony Schoonen, Anaconda Sportsmens Association**

**Bill Holdorf, Skyline Sportsmens Association**



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Jim Jensen, Montana Environmental Information Center

Steve Kelly, Friends of the Wild Swan

George Ochenski, Trout Unlimited

Mike Biedscheid, Self, Whitefish. Petition against SB 330 and SB 331. EXHIBIT 18

Randy Penez, Fort Belknap Tribes

Stan Krager, Self, Helena

Cecil Davis, Self, Helena. Written testimony. EXHIBIT 19

J. V. Bennett, Montana Public Interest Research Group. Written testimony. EXHIBIT 20

Dana Boussard, Self, Arlee. Written testimony. EXHIBIT 21

Willa Hall, League of Women Voters. Written testimony. EXHIBIT 22

Informational Testimony: None

Questions From Committee Members and Responses:

REP. BOB RANEY asked SEN. SWYSGOOD why he wanted to remove the public from "interested persons" and change the definition to include only property owners. State waters belong to all citizens in Montana. SEN. SWYSGOOD said the language was taken from a court decision by Judge McCarter on the Stillwater Mine. The public will still have the opportunity to make comments to the agency involved. REP. RANEY asked SEN. SWYSGOOD if the public would have the same impact as the property owner in a siting decision on degradation. SEN. SWYSGOOD said he wasn't sure.

REP. KARL OHS asked Mr. Pilcher to explain classifications three and four of ground waters. Mr. Pilcher said class three and class four ground waters are those that have a total dissolved solids level in the range of 10,000 parts per million. The waters are classified in those two classifications because of the high dissolved solids which render them of marginal use for most beneficial purposes. The waters are not necessarily suitable for drinking even under desperate situations.

REP. CLIFF TREXLER asked Mr. Pilcher if all the municipalities in Montana were complying with the water quality laws. Mr. Pilcher said he didn't want to go as far as to say all municipalities are in compliance with water quality laws. The water quality standards are used by the Water Quality Division when it issues permits for the discharge of waste in the waters. Every municipality that discharges waste into the state's waters must

have a waste discharge permit. The limits that are imposed as conditions on the quality of the discharge are based on protection of beneficial uses and compliance with surface water quality standards.

Tape 2, Side B

REP. JON ELLINGSON asked Mr. Pilcher to explain the designated uses that are referred to under exceptions on page 2 of the bill. Mr. Pilcher said the Montana surface water quality standards identify a number of beneficial uses that are to be protected. Some of those uses are drinking and culinary purposes, irrigation, and fish and aquatic life. REP. ELLINGSON asked for an example of a river or lake that would not be capable of supporting one of the designated uses. Mr. Pilcher said, as a cautious example, a stream not capable of supporting any beneficial use would be Silver Bow Creek. Silver Bow Creek is classified at the current lowest classification recognized in the significant limitations.

REP. ELLINGSON said many people in his community fish and swim in the Clark Fork River. Missoula recharges its aquifer by way of the Clark Fork River. He asked SEN. SWYSGOOD if the city of Missoula would be considered an "interested person" under the new definition. SEN. SWYSGOOD said if the city has an interest that is liable to be affected by the degradation process, it would be classified as an "interested person." REP. ELLINGSON said he understood that an "interested person" was a property owner. A water company in Missoula drills wells and takes water out of the aquifer. He asked SEN. SWYSGOOD if he considered the water company or the city of Missoula to be interested parties. SEN. SWYSGOOD said probably not.

REP. BILL TASH asked Mr. Pilcher to explain specifically why he was concerned about the definition of degradation. Mr. Pilcher said the department's primary concern is with the definition of degradation because that is what triggers the protection that the rules have been promulgated provide. If degradation does not apply to any waters, there is no need for the nondegradation process that has been developed. An amendment will be proposed for consideration of SB 331 that will address the definition of degradation. As it now stands, the definition of degradation is the same in SB 330 and SB 331. The amendment to be offered would revert back to the language that exists currently in the law. If the amendment is accepted, it would eliminate the department's concern.

REP. PAUL SLITER asked Chris Tweeten, Department of Justice, if SB 330 violates article 9, section 1, of the Montana Constitution as suggested by one of the opponents. Mr. Tweeten said he was the worst person to be asked that question because the Attorney General never expresses opinions on the constitutionality of pending legislation. The reason for that is in the event the legislation is enacted and the Attorney General's staff is called

upon to go to court to defend the legislation's constitutionality and it doesn't find that there are constitutional problems, it would undermine the arguments that the staff would need to present. However, if SB 330 is enacted, the Attorney General's office will study it in great detail to determine whether its constitutionality can be protected under the Montana Constitution.

REP. HAL HARPER referred to page 8 of the bill that states that the department may review authorizations to degrade state waters and may modify the authorization if it determines that an economically, environmentally, and technologically feasible modification to the development exists. He asked Mr. Pilcher if he thought the extent of the modification would constitute the possibility of revoking the authorization. Mr. Pilcher said the language referred to was inserted on the Senate floor. There was considerable discussion in Senate Natural Resources. The primary concern was whether the language enabled the department to significantly modify an authorization to the equivalent of a revocation. That is a legal question that needs to be answered. Without the language to revoke an authorization, it would preclude the department from considering some alternatives.

REP. SLITER asked Alan Joscelyn, Attorney, if, in his opinion, SB 330 violates article 9, section 1, of the Montana Constitution. Mr. Joscelyn said he believed that the legislation is constitutional. The constitution requires the Legislature to act reasonably in defining what is and what is not allowable degradation.

Michael Kakuk, Legal Counsel, Environmental Quality Council (EQC), told the committee that the council undertook a year and a half study that addressed the nondegradation issue. One of the sub-issues it looked at was the constitutionality of Montana's new nondegradation policy. The report has been completed and copies are available for anyone that is interested.

Tape 3, Side A

REP. RANEY asked Mr. Pilcher if there is a stream that is presently degraded from a mining operation and has no beneficial use, does it mean that it is all right to dump anything and everything into it. Mr. Pilcher said other provisions of the Montana Water Quality Act would prevent conditions from worsening in that situation.

REP. DANIEL FUCHS asked Mr. Pilcher how many of the public water supplies are in compliance with the current nondegradation policy. Mr. Pilcher said generally the provisions and the impact of the nondegradation policy do not impact public water supplies.

REP. FUCHS redirected his question to Mr. Kuehl. Mr. Kuehl said the nondegradation policy that is being debated has not been implemented. The rulemaking was only approved on July 15, 1995.

There is not one polluter that is out of compliance with the nondegradation policy because not one polluter has gone through the nondegradation policy at this point in time. The nondegradation policy hasn't been tried out to determine if it is a good policy. The policy has been enacted and is being changed before it has even been tried out.

Closing by Sponsor:

REP. SWYSGOOD said all that SB 330 proposes to do is to put some reasonableness into the interpretation of what high-quality waters are. It is not the intention of the bill to degrade the quality of life in Montana, or to degrade the quality of waters that should rightfully be protected.

HEARING ON SB 331

Opening Statement by Sponsor:

SEN. TOM BECK, Senate District 28, Deer Lodge, said he was born and raised in the Deer Lodge valley. He has watched the Clark Fork River waters turn red, gray and into all kinds of waters. At present it is a fairly clear stream. There are trout in that stream and there will continue to be trout in that stream. There is a major cleanup of the stream that is continuing. SB 331 will put some common sense into the water quality standards of the state. The present standard for arsenic is 18 parts per trillion. The bill will reduce that standard to 20 parts per billion. The arsenic in the Madison River flows 50 parts per billion. There is a lot of sensationalism and hysteria regarding SB 331. The scientific community will describe what is really in the bill.

Proponents' Testimony:

Collin Bangs, Montana Realtors Association, said SB 331 will permit people to build affordable houses and will still do a good job of preventing the pollution of the state's water.

John Bloomquist, Montana Stockgrowers Association, pointed out the following benefits of SB 331:

State standards that are more stringent than federal standards would be allowed if there is sound scientific or technical evidence that stricter standards are warranted.

The definitional change of state waters would exclude those waters that are privately owned ponds or lagoons used solely for treating, transporting, or impounding pollutants; irrigation waters or land application disposal waters when the waters are used up within the irrigation or land

application disposal system and the waters are not returned

to state waters.

Changes in the bill under prohibited activities would eliminate potential enforcement by making it unlawful to cause pollution by placing wastes where they are likely to cause pollution of state waters.

Classification changes in the bill create appropriate classification for intermittent streams where no fishery is supported.

Tape 3, Side B

**Mr. Bloomquist** said SB 331 makes reasonable and necessary changes to the Water Quality Act. SB 331 is not just a mining bill; it affects everyone who uses water.

**Larry Brown, Agricultural Preservation Association**, said SB 331 perfects the process of bringing science to the administrative process.

**Lorna Frank, Montana Farm Bureau**, supported SB 331 for the same reasons **Mr. Bloomquist** gave.

**Chris Gallus, Representing Don Peoples, Montana Technology Companies, Inc., and Montana Energy and Research Development Institute.** (See Exhibit 4)

**Carl Schweitzer, Montana Contractors Association**, supported SB 331.

**Doug Parker, Crown Butte Mines**, supported SB 331.

**David King, Hydrogeologist, Schafer and Associates**, said SB 331 establishes a water quality level for arsenic that protects the environment and recognizes Montana's unique geologic environment. The bill proposes to set arsenic levels at 20 parts per billion. To put this value into perspective, the current water quality protection standards for fish and aquatic life are 190 parts per billion. The EPA standards for drinking water are 50 parts per billion. In the upper Madison River there are 50 to 70 parts per billion of arsenic naturally occurring in the water. The average arsenic concentration of arsenic in the Missouri River in Townsend is 24 parts per billion. Laboratory detection levels for arsenic are only three parts per billion, yet the current Montana health standard is 0.018 parts per billion. That is less than a drop of water in an olympic sized swimming pool. The 20 parts per billion value will protect Montana's water quality. It is less than one-half of the federal and state standards for drinking water and it is significantly lower than water quality that is occurring naturally in Montana. **Mr. King** urged the committee to support SB 331.

Ray Lazuk, Hydrologist, Golden Sunlight Mines, said one of the purposes behind SB 331 is to put some clarification back into the regulations and address some technical issues that are presently left open to interpretation by regulatory personnel. Unfortunately, the interpretation hasn't always been consistent. Another important purpose is the recognition of the hydraulic characteristics of a water shed when developing water resource regulations. Mr. Lazuk urged the committee to support SB 331.

Sandra Stash, Engineer, Atlantic Richfield Company, said SB 331 encourages the use of site specific water quality criteria to direct water quality management in Montana. A permittee will look at the actual organisms in the water in an attempt to help the department set the water quality criteria appropriately. An amendment that will be offered will give a permittee some recourse if there is scientific debate between the department and the permittee.

The following proponents supported SB 331:

Don Allen, Montana Wood Products Association

Peggy Trenk, Western Environmental Trade Association

Mike Murphy, Montana Water Resources Association

David Owen, Montana Chamber of Commerce

Jim Kembel, City of Billings

Bob Williams, Montana Mining Association

Tim Wilkinson, John Wilkinson Construction, Great Falls

Opponents' Testimony:

Hope Stevens, Self, opposed SB 331.

Vicki Watson, Associate Professor, Biology, University of Montana, Self. Written testimony. (See Exhibit 13)

Tape 4, Side A

Steve Pilcher, Department of Health and Environmental Sciences (DHES), Water Quality Division, said until the department is sure the proposed amendments have been included in the bill it opposes SB 331 in its current form. The department's ability to develop site specific water quality standards when conditions so demand or dictate, is currently contained in Montana's water quality laws. However, all routes of exposure of a contaminant to the beneficial use have to be considered. It is essential that reference to other routes of exposure be included in the bill. The definition of degradation in SB 331 mirrors the definition of degradation in SB 330. The concerns raised about degradation in

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SB 330 are appropriate for SB 331. The department has historically utilized the total recoverable method of metals analysis. The department is required under federal guidelines to use the total recoverable method in setting effluent limits for waste discharge permits in conjunction with MPDES program. DHES has yet to be convinced that switching to dissolved, where only the impact of the metals in the water column is analyzed, is in the best interest of the environment and of the state's water quality program.

**Jim Carlson, City-County Health Department, Missoula.** Written testimony. EXHIBIT 23

**Kenneth Knapp, Montana River Action Network,** urged the committee to table SB 331.

**Chris Tweeten, Attorney General's Office, Department of Justice,** said the department's interest arose initially from the claim against the American Refining Company (ARCO) over natural resource damages in the Clark Fork River Basin. In that lawsuit the state seeks to recover \$630 million. In preparing the claim for trial the state has invested a considerable sum of money in conducting a natural resource damage assessment in the Clark Fork River Basin. Many of the water quality standards which are subject to change in SB 331 were incorporated in the damage assessment. The department is particularly concerned about the attempt in the proposed legislation to change the method of measuring water quality standards from recoverable to dissolved concentration. However, the amendments that will be offered will remove the reference to changing to dissolved concentration and will leave the law as it currently stands. The amendments go a long way toward addressing the problems that SB 331 has with respect to the Clark Fork River Basin litigation. SB 331, as it currently exists, may undercut the science that was the basis for the reports that the department is going to offer in the trial and there is a potential for decreasing the recovery.

**Don Spivey, Self, Citizens for a Better Flathead.** Written testimony. EXHIBIT 24

**Brian Kuehl, Greater Yellowstone Coalition, Bozeman.** Written testimony. (See Exhibit 6)

**Alan Rollo, Montana Wildlife Federation.** Written testimony. EXHIBIT 25

Tape 4, Side B

The following opponents expressed their opposition to SB 331.

**Mark Shapley, Hydrogeologist, Island Mountain Protectors Association**

Jim Jensen, Montana Environmental Information Center. Written testimony. EXHIBIT 26

George Ochenski, Trout Unlimited

Julia Page, Northern Plains Resource Council. Written testimony. EXHIBIT 27

Jim Curtis, Sierra Club

J. V. Bennett, Montana Public Interest Research Group. Written testimony. EXHIBIT 28

Robin Cunningham, Fishing Outfitters Association

Steve Kelly, Friends of the Wild Swan

Stan Frasier, Self, Helena

Florence Ore, Concerned Citizens of Pony

Jim Emerson, Self, Helena

Willa Hall, League of Women Voters of Montana. Written testimony. EXHIBIT 29

Paul Hawks, Rancher, Melville. Written testimony. EXHIBIT 30

Tim Wilkinson, John Wilkinson Construction, Great Falls. Written testimony. EXHIBIT 31

Informational Testimony: None

Questions From Committee Members and Responses:

REP. JON ELLINGSON said it was hard to understand why SB 331 is needed. The proponents have said that the legislation will encourage economic development. Montana's economic development, the growth of per capita income, and almost every other measure of economic growth is leading the nation. One reason that Montana is leading the nation is that it has values that are very desirable, including its pristine environment and waters. REP. ELLINGSON asked SEN. BECK why Montana should tamper with any degradation of its water quality in the name of encouraging economic development when it doesn't need to. SEN. BECK said economic development hinges on more than just people moving into the state. There has to be jobs for those people. It appears that it has been quite difficult for the mining industry to permit mines. The agricultural industry has had to struggle to meet the water quality standards. The timber industry has also had some strains put on it due to the water quality standards. The legislation doesn't put the state's water quality below EPA standards. The standards would still be above many of EPA's standards.



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**REP. HAL HARPER** asked **Ms. Watson** how the adoption of SB 331 would change the ultimate clean-up of the Clark Fork River. **Ms. Watson** said she hadn't assessed clean-up specifically, she concentrated mostly on its overall impact on the waters of all of Montana. One lawsuit and one particular set of problems shouldn't determine all of Montana's water quality policies. There has been too much attention addressed to the arsenic standards. The legislation loosens up the standards for all the other carcinogens as well. SB 331 would probably make it more difficult for the state to require the same level of clean-up than it would have required otherwise for the Clark Fork River.

**REP. BOB RANEY** asked **Mr. Pilcher** if trout can survive in water that is at the minimum drinking water standard. **Mr. Pilcher** said generally speaking, trout probably would survive, but it must be kept in mind that sometimes what is good for humans may not be good for fish and aquatic life. To protect fish and aquatic life, it may mean adopting standards that are different than the maximum contaminant levels for human consumption.

Tape 5, Side A

**REP. EMILY SWANSON** asked **SEN. BECK** which parties were involved in writing the amendments. **SEN. BECK** said he understood that the mining industry, DHES and possibly the Governor's office all worked on the amendments.

**REP. DAVID EWER** referred to a section in the bill that relates to the adoption of standards for pretreatment, effluent and performance of waste. Reference is made to establishing standards of performance for new point source discharges and that the Board shall ensure that the standards are cost-effective and economically, environmentally and technologically feasible. This seems to jeopardize the requirement for some sort of base line for standards. **REP. EWER** asked **Mr. Pilcher** to comment. **Mr. Pilcher** said surface water quality standards should not be subject to determination of what is economically feasible. Surface water standards have to be adopted to protect the beneficial uses. That section attempts to address the development of treatment standards and treatment requirements. The bill, in its current language, would require the department in setting treatment standards, to take into consideration things such as technology-based treatment requirements and economic and environmental feasibility.

**CHAIRMAN KNOX** said there had been some concerns expressed about the potential impact on livestock during calving season because of the rules that have been adopted by the department on water quality in stream corridors. **CHAIRMAN KNOX** asked **Mr. Pilcher** for his comments on those concerns and also how SB 331 would affect those concerns. **Mr. Pilcher** said the Water Quality Act requires people to refrain from causing pollution. The nondegradation provision is intended to deal with new and increased sources of contamination. If an individual has a feedlot or any confined

livestock operation located in such a manner that all of the waste that accumulates on the surface of that lot is flushed into an adjacent stream every time there is a natural precipitation event, there is a likelihood that pollution could occur. If the department finds that the discharge of that waste into the stream causes pollution and impacts the beneficial use, it would work with the responsible party to devise alternate methods of handling the run off from the feedlot. With the possible exception of the relaxation of the nitrate levels in ground water, SB 331 wouldn't change the threat to agriculture very much.

CHAIRMAN KNOX asked Mr. Pilcher if it could be assumed that existing livestock practices along the streams would be allowed to continue if there has not been any citation or cause for action. Mr. Pilcher said that assumption might be going one step too far. There is no grandfather protection for an operation that has existed for a number of years and has gone unnoticed by the department and found sometime in the future to be causing a water quality problem. The current law doesn't provide that protection and SB 331 doesn't either. Due to limited staff, the department has focused on the livestock operation areas that posed a serious threat to water quality where the impact to beneficial uses could be documented. The department would then work with the party to correct the problem.

Mr. Joscelyn explained the amendments to SB 331 at the request of REP. SWANSON. EXHIBIT 32

Tape 5, Side B

Closing by Sponsor:

SEN. BECK said the amendments to SB 331 may be compatible with Governor Racicot, some of the people in the department and industry, but he was not in total agreement with them. SB 331 will not degrade the waters of Montana. People will still be able to drink out of the streams.

EXECUTIVE ACTION ON HB 521

Motion: REP. DOUG WAGNER MOVED HB 521 DO PASS.

Discussion:

Copies of the Department of Health and Environmental Sciences' (DHES) comments on the fiscal note, discussion draft no. 2 and amendments to HB 521 were provided to the committee. EXHIBITS 33, 34 and 35

REP. WAGNER explained the comments from the department on the fiscal note.

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Tape 6, Side A

Motion/Vote: REP. WAGNER MOVED THE AMENDMENTS TO HB 521.

Discussion:

REP. KARL OHS asked REP. WAGNER to explain why "local governments" were added into the amendments. REP. WAGNER said local governments were not in the bill originally. The amendments bring them into the bill so when the bill is heard in the Senate they will have the opportunity to participate.

CHAIRMAN KNOX said that rather than re-hear the bill in the House for that inclusion, it was his feeling that the bill would receive a full hearing in the Senate and that portion would be subject to full review.

Vote: Voice vote was taken. Motion on the amendments to HB 521 carried 13 to 5. REP. RANEY, REP. ELLINGSON, REP. HARPER, REP. TUSS AND REP. SWANSON voted no.

Motion/Vote: REP. WAGNER MOVED HB 521 DO PASS AS AMENDED. Voice vote was taken. Motion carried 11 to 7. REP. TAYLOR, REP. RANEY, REP. EWER, REP. TUSS, REP. ELLINGSON, REP. HARPER and REP. SWANSON voted no.

Tape 6, Side B

EXECUTIVE ACTION ON SB 362

Motion: REP. PAUL SLITER MOVED SB 362 BE CONCURRED IN. .

Discussion:

Amendments to SB 362 were provided to the committee and Steve Pilcher, DHES, explained them. EXHIBIT 36

Motion/Vote: REP. SLITER MOVED THE AMENDMENTS TO SB 362. Voice vote was taken. Motion carried unanimously.

Vote: REP. SLITER MOVED SB 362 BE CONCURRED IN AS AMENDED. Voice vote was taken. Motion carried 12 to 6. REP. EWER, REP. TUSS, REP. HARPER, REP. SWANSON, REP. ELLINGSON and REP. RANEY voted no.

EXECUTIVE ACTION ON SB 252

Motion: REP. BILL TASH MOVED SB 252 BE CONCURRED IN.

Discussion:

REP. HAL HARPER said a property owner cannot stop pollution at his own boundary and SB 252 is a bad bill.

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REP. TASH said the bill provides some consistency. That consistency includes permit criteria and will guarantee water quality.

REP. DAVID EWER said SB 252 would weaken protection for the public.

Vote: Voice vote was taken. Motion failed by a 9 to 9 tie vote.

Motion/Vote: REP. TASH MOVED SB 252 BE TABLED. Voice vote was taken. Motion carried 11 to 7.


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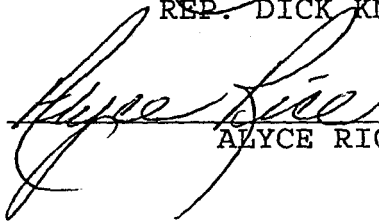
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ADJOURNMENT

Adjournment: 8:40 pm

  
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REP. DICK KNOX, Chairman

  
\_\_\_\_\_  
ALYCE RICE, Secretary

DK/ar

# HOUSE OF REPRESENTATIVES

## Natural Resources

ROLL CALL

DATE 3-13-95

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



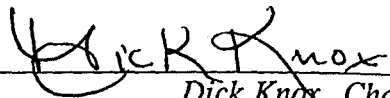
## HOUSE STANDING COMMITTEE REPORT

March 14, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 362 (third reading copy -- blue) be concurred in as amended.

Signed:

  
Dick Knox, Chair

Carried by: Rep. Sliter

And, that such amendments read:

1. Page 2, lines 1 and 2.

Strike: "authorized" on line 1 through "(1)" on line 2

Insert: "described in Title 16, chapter 20, subchapter 10,  
Administrative Rules of Montana"

2. Page 3, line 16.

Strike: "discharges"

Insert: "permit exclusions"

-END-

Committee Vote:

Yes 12, No 6.

591458SC.Hbk



## HOUSE STANDING COMMITTEE REPORT

March 14, 1995

Page 1 of 17

Mr. Speaker: We, the committee on Natural Resources report that House Bill 521 (first reading copy -- white) do pass as amended.

Signed: *Dick Knox*  
Dick Knox, Chair

And, that such amendments read:

1. Title, line 4.

Strike: "PROHIBITING"

Insert: "REQUIRING"

2. Title, line 4.

Following: "ADMINISTRATIVE"

Strike: "AGENCY"

Insert: "AND LOCAL AGENCIES TO JUSTIFY THE ADOPTION OF"

3. Title, line 5.

Strike: "FROM BEING"

Insert: "THAT ARE"

4. Title, line 6.

Strike: second "AND"

Insert: ", "

5. Title, line 7.

Following: "SCIENCES"

Insert: ", AND LOCAL UNITS OF GOVERNMENT"

6. Title, lines 8 and 9.

Strike: "CREATING" on line 8 through "RULES;" on line 9

7. Title, line 9.

Following: "SECTIONS"

Committee Vote:

Yes 17, No 3

591450SC.Hbk



Insert: "50-2-116,"

8. Title, line 10.

Strike: first "AND"

Following: "75-10-603,"

Insert: "76-3-501, 76-3-504, 76-4-104, AND 80-15-105,"

9. Page 2, line 1.

Strike: "and to"

Insert: ", "

Following: "sciences"

Insert: ", and local units of government"

10. Page 2, line 5.

Strike: "statement" through "whether"

Insert: "written finding if"

11. Page 2, line 6.

Following: "by"

Insert: "comparable"

12. Page 2, line 7.

Following: "than"

Insert: "comparable"

Strike: "statement"

Insert: "written finding"

13. Page 2, line 8.

Strike: "a risk-cost"

Insert: "an"

14. Page 2, lines 9 through 16.

Strike: "to impose the" on line 9

Insert: "that the proposed state"

Strike: "and" on line 9 through "is" on line 16

Insert: "protect public health or the environment of the state  
and that the state standards or requirements to be imposed  
can mitigate harm to the public health or the environment  
and are achievable under current technology. The department  
is not required to show that the federal regulation is  
inadequate to protect public health. The written finding  
must also include information from the hearing record  
regarding the costs to the regulated community directly  
attributable to the proposed state standard or requirement.  
[Sections 1 through 3] are"

15. Page 2, line 19.

Following: "2;"

Insert: "Title 75, chapter 3;"

16. Page 2.

Following: line 19

Insert: "[Sections 4 and 5] apply to local units of government when they attempt to regulate the control and disposal of sewage from private and public buildings. [This act] is not intended to apply to the establishment or setting of fees."

17. Page 2, line 23.

Strike: first "standards"

Insert: "regulations"

Strike: second "standards"

Insert: "regulations or guidelines"

Strike: "Except"

Insert: "After [the effective date of this act], except"

18. Page 2, line 24.

Strike: "(6),"

Insert: "(5) and"

19. Page 2, line 25.

Strike: "corresponding"

Insert: "comparable"

Following: "regulations"

Insert: "or guidelines"

20. Page 2, line 26.

Strike: "corresponding"

Insert: "comparable"

Following: "regulations"

Insert: "or guidelines"

21. Page 2, line 27.

Strike: "corresponding"

Insert: "comparable"

22. Page 2, line 28.

Strike: "adopt" through "regulations"

Insert: "guidelines"

23. Page 2, line 30 through page 3, line 26.

Strike: first "the" on page 2, line 30 through "section." on page 3, line 26

Insert: ": (a) the proposed state standard or requirement protects public health or the environment of the state; and  
(b) the state standard or requirement to be imposed can mitigate harm to the public health or

environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board to review the rule. If the board determines that the rule is more stringent than comparable federal regulations or guidelines, the board shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the board for a rule review under subsection (4)(a) if the board adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

24. Page 3, line 28.

Strike: first "standards"

Insert: "regulations"

Strike: second "standards"

Insert: "regulations or guidelines"

Strike: "Except"

Insert: "After [the effective date of this act], except"

25. Page 3, line 29.

Strike: "(6),"

Insert: "(5) and"

26. Page 3, line 30.

Strike: "corresponding"

Insert: "comparable"  
Following: "regulations"  
Insert: "or guidelines"

27. Page 4, line 1.  
Strike: "corresponding"  
Insert: "comparable"

28. Page 4, line 2.  
Following: "regulations"  
Insert: "or guidelines"

29. Page 4, line 4.  
Strike: "corresponding"  
Insert: "comparable"  
Strike: "adopt" through "regulations"  
Insert: "guidelines"

30. Page 4, line 6 through page 5 line 2.  
Strike: second "the" on page 4, line 6 through "section." on page 5, line 2

Insert: ": (a) the proposed state standard or requirement protects public health or the environment of the state; and (b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the board's or department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board or department adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board or department to review the rule. If the board or department determines that the rule is more stringent than comparable federal regulations or guidelines, the board or department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board or department may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the board or department for a rule review under subsection (4)(a) if the board or department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board or department rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

31. Page 5, line 4.

Strike: first "standards"

Insert: "regulations"

Strike: second "standards"

Insert: "regulations or guidelines".

Strike: "Except"

Insert: "After [the effective date of this act], except"

32. Page 5, line 5.

Strike: "(6),"

Insert: "(5) and"

33. Page 5, line 6.

Strike: "corresponding"

Insert: "comparable"

Following: "regulations"

Insert: "or guidelines"

34. Page 5, line 7.

Strike: "corresponding"

Insert: "comparable"

Following: "regulations"

Insert: "or guidelines"

35. Page 5, line 9.

Strike: "corresponding"

Insert: "comparable"

Strike: "adopt" through "regulations"

Insert: "guidelines"

36. Page 5, line 11 through page 6, line 7.

Strike: first "the" on page 5, line 11 through "section" on page 6, line 7

Insert: ": (a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the department adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable federal regulations or guidelines may petition the department to review the rule. If the department determines that the rule is more stringent than comparable federal regulations or guidelines, the department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The department may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the department for a rule review under subsection (4)(a) if the department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted department rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1) "

37. Page 6.

Following: line 7

Insert: "NEW SECTION. Section 4. Local regulations no more stringent than state regulations or guidelines. (1) After [the effective date of this act], except as provided in subsections (2) through (4) and unless required by state law, the local board may not adopt a rule under 50-2-116(1)(i), (2)(k)(iii), or (2)(k)(v) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The local board may incorporate by reference comparable state regulations or guidelines.

(2) The local board may adopt a rule to implement 50-2-116(1)(i), (2)(k)(iii), or (2)(k)(v) that is more stringent than comparable state regulations or guidelines only if the local board makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local board standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the local board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the local board adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable state regulations or guidelines may petition the local board to review the rule. If the local board determines that the rule is more stringent than comparable state regulations or guidelines, the local board shall comply with this section by either revising the rule to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The local board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the local board for a rule review under subsection (4)(a) if the local board adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted local board rule.

NEW SECTION. Section 5. Local regulations no more stringent than state regulations or guidelines.

(1) After [the effective date of this act], except as provided in subsections (2) through (4) and unless

required by state law, a governing body may not adopt a rule under 76-3-501 or 76-3-504(5)(c) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The governing body may incorporate by reference comparable state regulations or guidelines.

(2) The governing body may adopt a rule to implement 76-3-501 or 76-3-504(5)(c) that is more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the governing body adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body to review the rule. If the governing body determines that the rule is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the rule to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The governing body may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the governing body for a rule review under subsection (4)(a) if the governing body adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that



are less stringent than the previously adopted governing body rule.

Section 6. Section 50-2-116, MCA, is amended to read: "50-2-116. Powers and duties of local boards.

(1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or the equivalent and with appropriate experience, as determined by the department, and shall fix his salary;

(b) elect a chairman and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth that cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions;

(i) subject to the provisions of [section 4], adopt necessary regulations that are no less stringent than state standards for the control and disposal of sewage from private and public buildings that is not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of health and environmental sciences and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards may:

(a) quarantine persons who have communicable diseases;

(b) require isolation of persons or things that are infected With communicable diseases;

(c) furnish treatment for persons who have communicable diseases;

(d) prohibit the use of places that are infected with communicable diseases;

(e) require and provide means for disinfecting places that are infected with communicable diseases;

(f) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(g) contract with another local board for all or

a part of local health services;

(h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

(j) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings (fees must be deposited with the county treasurer);

(k) adopt rules that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of [section 4], on sanitation in public buildings that affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives; and

(v) subject to the provisions of [section 4], for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401."

Renumber: subsequent sections

38. Page 7, line 14.

Strike: "corresponding"

Insert: "comparable"

39. Page 7, line 15.

Strike: "or" through "exists"

Strike: "not"

40. Page 12, line 4.

Strike: "corresponding"

Insert: "comparable"

41. Page 12, line 5.

Strike: "or" through "exists"

Strike: "not"

42. Page 17, lines 6 through 9.

Strike: subsection (3) in its entirety

43. Page 17.

Following: line 29

Insert: "Section 17. Section 76-3-501, MCA, is amended to read:

"76-3-501. Local subdivision regulations. (1) Before July 1, 1974, the governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air, and recreation; for the provision of adequate transportation, water, and drainage, ~~and;~~ subject to the provisions of [section 5], for the regulation of sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

(2) Review and approval or disapproval of a subdivision under this chapter may occur only under those regulations in effect at the time an application for approval of a preliminary plat or for an extension under 76-3-610 is submitted to the governing body."

Section 18. Section 76-3-504, MCA, is amended to read:

"76-3-504. Minimum requirements for subdivision regulations. The subdivision regulations adopted under this chapter shall, at a minimum:

(1) require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas which, because of natural or ~~man-caused~~ human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction

techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

(b) grading and drainage;

(c) subject to the provisions of [section 5], water supply and sewage and solid waste disposal ~~which that~~, at a minimum, meet the regulations adopted by the department of health and environmental sciences under 76-4-104;

(d) the location and installation of utilities;

(7) provide procedures for the administration of the park and open-space requirements of this chapter;

(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision; such utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body."

**Section 19.** Section 76-4-104, MCA, is amended to read:

"76-4-104. Rules for administration and enforcement. (1) The department shall, subject to the provisions of [section 3], adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards shall provide the basis for approving subdivision plats for various types of water, sewage facilities, and solid waste disposal, both public and private, and shall be related to size of lots, contour of land, porosity of soil, ground water level, distance from lakes, streams, and wells, type and construction of private water and sewage facilities, and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The rules shall provide for the review of the following divisions of land by a local department or board of health, as described in Title 50, chapter 2,

part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to review these divisions of land:

(a) divisions of land containing five or fewer parcels, whenever each parcel will contain individual onsite water and sewage disposal facilities; and

(b) divisions of land proposed to connect to existing municipal water and waste water systems previously approved by the department, if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the divisions of land described in subsection (3).

(5) The department shall review those divisions of land described in subsection (3) if:

(a) a proposed division of land lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules shall further provide for:

(a) the furnishing to the reviewing authority of a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area;

(ii) total number of proposed dwelling units;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to insure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal

systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) requiring evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary or final plan or plat.

(7) If the reviewing authority is a local department or board of health, it shall, upon approval of a division of land under this part, notify the department of the approval and submit to the department a copy of the approval statement.

(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect at the time plans and specifications are submitted to the department, except in cases where current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time such lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality will apply."

Section 20. Section 80-15-105, MCA, is amended to read:

"80-15-105. Rulemaking. (1) The board shall, subject to the provisions of [section 1], adopt rules for the administration of this chapter for which the board and the department of health and environmental sciences have responsibility. These rules must include but are not limited to:

(a) standards and interim numerical standards for agricultural chemicals in ground water as authorized by 80-15-201;

(b) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(c) field and laboratory operational quality assurance, quality control, and confirmatory procedures as authorized by 80-15-107, 80-15-202, and 80-15-203, which may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(d) standards for maintaining the confidentiality

of data and information declared confidential by EPA and the confidentiality of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108; and

(e) administrative civil penalties as authorized by 80-15-412.

(2) The department shall adopt rules necessary to carry out its responsibilities under this chapter. These rules must include but are not limited to:

(a) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(b) the content and procedures for development of agricultural chemical ground water management plans, including the content of best management practices and best management plans, procedures for obtaining comments from the department of health and environmental sciences on the plans, and the adoption of completed plans and plan modifications as authorized by 80-15-211 through 80-15-218;

(c) standards for maintaining the confidentiality of data and information declared confidential by EPA and of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108;

(d) field and laboratory operational quality assurance, quality control, and confirmatory procedures as authorized by 80-15-107, 80-15-202, and 80-15-203, which may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(e) emergency procedures as authorized by 80-15-405;

(f) procedures for issuance of compliance orders as authorized by 80-15-403; and

(g) procedures for the assessment of administrative civil penalties as authorized by 80-15-412."

Renumber: subsequent sections

44. Page 18, lines 2 and 3.

Strike: first "and"

Following: "6"

Strike: ", "

Insert: "; and Title 80, chapter 15, "

45. Page 18, line 6.

Strike: "and"

46. Page 18, twice on line 7

Following: "10"

Strike: ", "

Insert: "; and Title 76, chapter 4, "

Strike: second "and"

47. Page 18, line 8.

Insert: "(4) [Section 4] is intended to be codified as an integral part of Title 50, chapter 2, and the provisions of Title 50, chapter 2, apply to [section 4].

(5) [Section 5] is intended to be codified as an integral part of Title 76, chapter 3, and the provisions of Title 76, chapter 3, apply to [section 5]."

-END-



3/13/95

1530

Re: Proxy Vote  
Natural Resource Committee

I give Hal Haepue my proxy vote  
for all executive action taken this day

Carly Lars

NATURAL RESOURCES  
3/13/95

I LEAVE MY PROXY  
WITH VICE CHAIR

~~TAKE~~ ASH ON ALL MOTIONS  
AND BALLS.

St du

Chairman Ross:

I am excusing myself for the purpose of  
attending the Health Care Committee.

Harl Hooper has my proxy vote for all  
executive action taken this day.

Orlady Two  
3-13-95

3-13-95

HOUSE NATURAL RESOURCES  
COMMITTEE.

I VOTE ON ALL MATTERS  
WITH EMILY SWANSON,

Jim Olinger

**WETA**

EXHIBIT 1

DATE 3-13-95

SB 330/331

***Western Environmental Trade Association***

***Aspen Court, 33 South Last Chance Gulch, Suite 2B  
Helena, Montana 59601  
Phone (406) 443-5541  
Fax # 443-2439***

**TESTIMONY BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE**

**MONDAY, MARCH 13, 1995**

**SENATE BILL 330/331**

Mr. Chairman, Members of the Committee, my name is Peggy Trenk and I'm here today representing the Western Environmental Trade Association in support of SB 330(331).

It's no secret that this bill, and its companion legislation, have attracted a good deal of attention in the media and in the halls of this building. The value of the legislative process is that it allows ideas and proposals to be openly and thoroughly discussed with the intended outcome to be enactment of good public policy. This bill has undergone many changes in recent weeks as different interests have offered their input. From the perspective of accommodating these various points of view, SB 330 (and 331) is a probably a better bill today than when it was first introduced.

However, what has also emerged out of this public process is a series of inaccuracies about both the source, and the impact of this legislation. Before you hear from some other folks about what the bill actually does, I'd like to offer the Committee a brief perspective on what I call "Modern Legislative Mythology - 101".

1. MYTH NUMBER 1: SB 330/331 IS A MINING BILL

SB 330 and some of the other pieces of legislation you have or will consider are important to the mining industry. But the mining industry is by no means the only interest who has a stake in this bill. Following passage of SB 401 last session, a coalition of interests and industries came together to participate in the extensive rulemaking process undertaken to implement that bill. In the latter part of that process, those groups submitted joint testimony to the Board of Health and Environmental Sciences on what we all believed were changes necessary to make the rules minimally workable. That group represented realtors and homebuilders, agriculture, oil and gas, timber, main street businesses, contractors, mining, and citizen organizations. I recall at one point, one of the Board of Health members remarked that it appeared we collectively represented 90% of the state's economy. While I can't verify that percentage, I can say with reasonable certainty this "coalition" spoke directly for 64,000 Montanans.

Now what has all that got to do with SB 330/331? The point of all that is, this bill is also a product of those same groups and the people they represent. It was clear that even as the existing rules were adopted last summer, they still contained significant workability problems identified by the various participants. Yes, the mining industry has a stake in this bill, but so do a lot of other folks across Montana who raise livestock, and build homes, and pick up the tab for local water treatment plants -- folks on whose behalf Senator Swysgood and those who signed on to this bill have stepped forward to make the nondegradation law a workable policy.

Page 3

2. MYTH NUMBER 2: SB 330 AND RELATED BILLS ROLL ENVIRONMENTAL PROTECTION BACK 20 YEARS.

The water quality bills that have generated the most controversy this session are not a frontal assault on Montana's environmental laws. As I mentioned earlier, they derive primarily from what has happened in the last two years since passage of SB 401.

The other day some of the opponents to these bills had a rally here at the Capitol and one of the signs outside read, "Who Elected Gary Langley"? Now some of those who know Gary pretty well immediately countered with the question, "Who would elect Gary Langley", but then that's another story entirely.

I would suggest a better sign might have been, "Who elected the staff at the Department of Health and Environmental Sciences to set environmental policy in Montana?" Regulators play an important role in protecting our environment, but I have always understood that role to be in IMPLEMENTING THE POLICY set down by the Legislature, not in SETTING THEIR OWN POLICY. You are the people who set policy.

We were among those who supported SB 401 in 1993 because we thought it was important for the public, DHES, and the regulated industries to clarify the existing nondegradation law. It is our believe that the rules that emerged in this interim to implement that law reached beyond what you, the Legislature, intended in SB 401 and that the Department did in fact, SET new policy in some areas. I don't mean that as a criticism of the Department

or the Board of Health and Environmental Sciences. They did a very good job of trying to seek public comment and involvement in drafting the rules. The problem is, when people start from a different set of assumptions about legislative policy, they rarely arrive at the same point of agreement.

If we were disagreeing about how many times to mow the Capitol lawn this summer, that difference of opinion wouldn't matter. But how we implement the water nondegradation law has such a significant impact on our environment, on our economy, and on the people who live in this state that we felt it necessary to come back in this legislative session to better clarify the state's policy--knowing full well we'd be criticized for doing so. We simply don't feel DHES accurately captured the legislative intent in their rules, and apparently, neither did the Montana Senate a few weeks ago when a bi-partisan majority voted in support of SB 330(331).

In other words, we aren't asking you to overturn 20 years of environmental law, but rather to determine whether regulatory requirements established to implement SB 401 went beyond the intent of Legislature, and if so, to provide better guidance as to how to bring them back in line with the policy you have set.

And finally,

3. MYTH NUMBER THREE: SB 330 (AND ITS COMPANION LEGISLATION) IS THE WORK OF EVIL CORPORATE POLLUTERS AND WILL INCREASE CANCER RATES IN MONTANA

I don't know how much time members of this Committee have had to devote to following the national media or that of our neighboring states in recent months, but when it comes to proposals that will impact existing environmental laws -- whether they involve air or water quality, farming practices or timber harvest, you can count on a similar theme to be attributed to the environmental community. Somewhere in that article, there will likely be an attempt to link whatever the applicable issue might be to "evil corporate polluters" and the fear that it will somehow lead to increases in "cancer". That has been particularly true in the local media regarding SB 330 and SB 331. Unfortunately, the facts don't always bear that out and they certainly haven't in this case. We who represent industry are criticized, and at times fairly criticized, for seeking to justify what we believe only in terms of "JOBS" and "WHAT IT WILL COST TO COMPLY". Maybe we do sound like a broken record sometimes.

But if that's the case, the themes of "corporate polluter" and "cancer" are the flip side of that same broken record. The difference is, we are called upon to quantify those job numbers, to identify the goods and services we contribute to the economy of Montana, to explain to homeowners why their water rates have gone up, and to identify why regulatory policy is important to all those considerations. Those who words like "corporate greed" and "cancer" should have to be as accountable for their statements as the folks I represent. If they can



illustrate by virtue of the facts that these are legitimate concerns, then by all means they should be considered. But to this point in the debate, there has been little proof to support those arguments.

In sum, there is a lot of issues that this Committee will want to weigh as they consider the merits of this and related water quality bills. Yours is not an easy task, but I am confident as you hear the ensuing testimony, it will become clear what is proposed in this bill makes sense and provides for sound public policy. In closing, I'd like to acknowledge recent reports about the strength of Montana's economy. I haven't reviewed those in any depth, but who can find fault with a growing economy. My only question is, how much better might those numbers be if we made sure we provided for a reasonable and consistent regulatory climate. What's good can always get better.

I want to thank you all for your attention and I encourage your support of this legislation.



EXHIBIT 2  
DATE 3-13-95  
SB 330/331

February 22, 1995

Senator Tom Beck  
Capitol Station  
Helena, MT 59620

Dear Senator Beck:

Thank you for your help in protecting our jobs. We appreciate your support of Senate Bills 330 and 331.

Sincerely,

Thomas W. West  
Buckley

Edward A. Stepan

Mickey Quintus

A. Leue Farrington

DBB

Waneta Taylor

Kerry Peterson

Halley

Larry J. Baldwin

Steve Lubitz

John Smith

Chris Wall

Doug Bowen

Dan Holland

Joe Jurgens

Randall C. Mitchell

Brent Chandler

Larry Allick

John Francisco

Mike Hanley

Tom Penhall

Joe Mason

Garrett Thompson

Jerry Hecker

Rock Rakich

Greg Locke

Paul H. H. H.

Ray D. Wood

Jim Starn

Jerry Jallan

Randy W. W.

Charlie Davies

Chris Connors

Jim H. H.

Bill Knott

Doug G. H.

Jo Lynn Hallen

Bobby Jacobse

Leslie R. Jaconen  
R.J.

Anthony J. Keener  
J. Mickleth  
William Zochin  
Mike Stager  
Eric Smith  
Delmer Hren

Carolyn T. Lewis  
Joe Bell  
Edward A. Stepan  
Mike B. Lott  
Material

Jim Allen  
Paul L. Bagger  
Robert Kuyate  
Jim Smith  
Jim Malesich  
Jim Lott  
Albert L. Brown  
Jeffrey C. Benning  
Steve Tibbitt  
Ron Raker  
Jim J. J. J.

Sam E. Mout  
Shawn Roberts  
Ken J. J. J.  
John Storey  
Edward L. Jones Sr.  
Don Jones  
Mike Skoville  
Joseph P. Hannon  
Scott Barry  
Don Kellogg  
Bill Watson  
Chuck Devine  
Herb Jett  
Rocky Sventke  
Frank Podgors  
Jack, Howard

Jim P.  
Jeff J. J.  
Jim Willoughby  
Domingo Monter  
Dulley Smallwood  
Gary Davis  
Jim Nicholson  
James M. Taylor  
Tony D'Agostino  
Bob Taguel  
SEAN SMITH  
Tom J. J.

Ken Lian  
Tim Magness  
Jan Brown  
Nat Steph  
Jung Silbysie  
Carl E. Esten  
James E. Vinyt  
Tom J. J.  
James D. Giffard  
Brian Clark  
James J. Robertson  
Pat Drury  
Charles L. Sanford  
Richard L. J.  
Telo Smith  
Harry M. Manner  
Brian Morris  
Pat Bennett  
Bill Brothers  
Joe Alth.  
Rich Brown  
Sam J.  
Walter J.  
James J. J.

Tom Hagan  
John Anderson

Mike Moady  
Patricia R

Dy W W W W

Nita Periman

EXHIBIT 3  
DATE 3-13-95  
SB 330 / 331

March 10, 1995

KD Feeback  
PO Box 907  
Lincoln, Montana 59639

Senator Tom Beck  
Montana State Senate  
Capitol Station  
Helena, Montana 59620

Dear Sir,

I am writing to voice my support for both SB 330 & SB 331. I am an avid outdoors person and come from several generations of people who have made their livly-hood from the land. Neither I nor the people I live around want to see our environment degraded, however, we must make a living as well. As a corollary I'd like to voice my support for SB 252 & SB 362.

Our laws governing regulation of Montana's water are not only unenforceable, they are unrealistic. Currently, proponents of the existing water regulations have selectively used them against the mining and timber industry. I feel certain that eventually the same unrealistic laws will be used to castigate municipal water systems as well as agricultural industries.

I also support reasonable reclamation guidelines for hard rock mining, SB 338.

Thank you for your proactive measures in these endeavors.

Cordially,



KD Feeback

**Testimony  
Donald R. Peoples  
Montana Technology Companies, Inc. &  
Montana Energy Research & Development Institute**

**Montana House of Representatives  
Natural Resource Committee  
Room 437, 3:00 p.m. (or Adjournment)**

Mr. Chairman, members of the committee. For the record my name is Don Peoples, CEO/President of Montana Technology Companies, and the Montana Energy Research & Development Institute in Butte. My company is involved in research and development of environmental waste remediation technologies, and we are very concerned about economic development in Montana. It is for these reasons that we appear today in strong support of Senate Bills 330 and 331.

As the former Chief Executive of Butte-Silver Bow, and now as President of a company involved in economic development, I understand the importance of Montana's natural resources based economy. When the mines closed in Butte, and again when they re-opened, I completely understood the impacts that our natural resource industries have on our communities. And as a life-long resident of Butte, I am aware of the environmental impacts that can occur from mining and inadequate regulation.

We should expect that industries operating in Montana provide protection for our environment. That is in our constitution, and it is important to Montanans. Yet it is possible that we can go to far. Some of our protective standards cause great harm to industry and workers while resulting in little or no tangible benefit to the environment.

Montana should provide a standard of protection justified by our need to maintain a healthy environment and a healthy economy. Unfortunately some see these

two goals as mutually exclusive. My experience tells me we can do both, and these bills allow us to do both.

Montana needs to step away from the extremism on both sides of this debate and put forth sensible regulation that protects the environment and allows our natural resource based industries to operate under some stability. Simply put, these bills:

- Create a reasonable and sensible standard by which to regulate industries and other water dischargers (i.e. cities);

- Sets attainable and measurable human health standards;

- Protects recreational opportunities important to the citizens of Montana;

- Provides some added stability to an industry that provides significant revenue for local governments, schools, and the state; and

- Helps protect Montana jobs and the families those jobs support.

You will hear, that these bills are an assault on our environment, and that these bills represent some sort of legislative atrocity if passed. My experience tells me that nothing could be further from the truth, and that the only potential atrocity is for Montana to fail to enact practical well reasoned regulations, and continue this debate along the old environmentalist vs. industry debate.

Contrary to what some would have you believe these bills do not return us to a state of unregulated, unchecked industrial development. They do not create standards which are unsafe for humans and leave fisheries unprotected. They do not create unbridled benefits to industry to the exclusion of Montana citizens. All these bills do is set a safe and sensible standard, that provides stability and meets the expectations everyday Montanans.

Natural resource extraction is important to Montana. One need only look to the Coal Tax Trust, the Resource Indemnity Trust, Hard-rock Impact funds, revenues paid to local governments and schools, and most importantly, to the jobs provided and the families those jobs support.

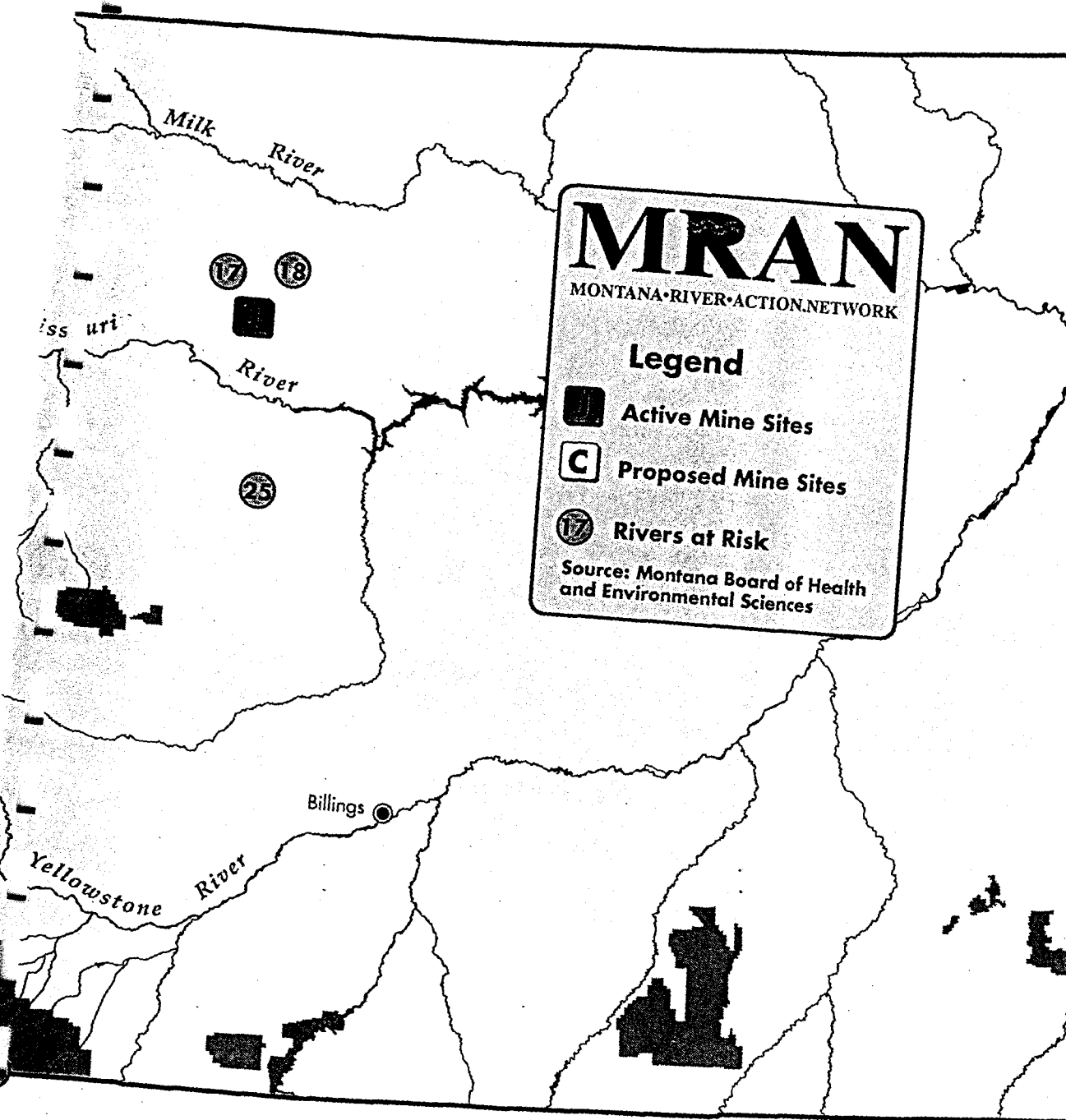
In conclusion, my company is a leader in the field of environmental remediation technology. We understand the importance of our environment. We understand what "no" regulation of industry does to the environment. These bills do not leave our environment unprotected and they meet our expectations for sound public policy. They protect our environment, our health, and our recreation, while giving us the benefits of stable industry, needed revenue, and jobs.

Thank you, we urge your support.



# Risk Montana's Waters

EXHIBIT 5  
DATE 3-13-95  
SB. 330/331



## 25 "Waters - at - Risk"

### Mining Industry's War on Montana's Waters

Water Body	County /Location	Mining Activity (historic, active or proposed)
1. Blackfoot River	Lewis & Clark	Inactive or abandoned mining, and Proposed "7-up Pete Joint Venture Mine"
2. Tenmile Creek	Lewis & Clark	Inactive or abandoned mining
3. Silver Creek	Lewis & Clark	Inactive or abandoned mining
4. Clark's Fork of the Yellowstone River and Fisher Creek	Park	Proposed "New World" Noranda-Crown Butte Mine
5. Daisy Creek, Soda Butte Cr. & Stillwater	Park	Inactive or abandoned mining and proposed "New World" "Noranda-Crown Butte Mine" and existing "Stillwater Mine"
6. Yellowstone River	Park	Proposed dredge mining operation (Yankee Jim Canyon)
7. Pony (Drinking water)	Jefferson	Cyanide from "Pony Abandoned Gold Mill"
8. Boulder River	Jefferson	Inactive or abandoned mines
9. Cataract Creek	Jefferson	Inactive or abandoned mines
10. Mainstem, Clark Fork R.	Sanders	Inactive or abandoned mines
11. Rock Creek	Sanders	Inactive or abandoned mines, plus "ASARCO Rock Creek Mi

12.	Belt Creek	Cascade	Inactive or abandoned mines
13.	Dry Fork, Belt Creek	Cascade	Inactive or abandoned mines
14.	W. Fk., Bitterroot River (Headwaters)	Ravalli	Inactive or abandoned mining
15.	Upper Clark Fork River	Powell / Missoula	Inactive or abandoned mining
16.	Grasshopper Creek	Beaverhead	Inactive or abandoned mining
17.	Rock Cr. (near Landusky)	Phillips	Inactive or abandoned mining
18.	Ruby & King Creeks	Phillips & Blaine	Inactive or abandoned mining and "Zortman-Landusky Mine"
19.	Flint Creek	Granite & Deer Lodge	Inactive or abandoned mining
20.	Lake Creek	Lincoln	Inactive or abandoned mining
21.	Libby Creek	Lincoln	Inactive or abandoned mining & proposed "Noranda's Montanore Mine"
22.	Jefferson River (groundwater near river)	Madison	"Golden Sunlight Mine"
23.	Confederate Gulch	Broadwater	Inactive or abandoned mining
24.	East Boulder River	Sweet Grass	Proposed East Boulder Platinum Mine
25.	Chicago Gulch & Collar Gulch	Fergus	Inactive or abandoned mining

# **Mining Industry's War on Montana's Water**

## ***Active and Proposed Hardrock Mines***

- A. ASARCO (Proposed)**
- B. Noranda Montanore (Proposed)**
- C. 7 Up Pete Joint Venture (Proposed)**
- D. Pegasus Gold Beal Mt. (Active)**
- E. Golden Sunlight Mine (Active)**
- F. Jardine Joint Venture (Active)**
- G. Noranda-Crown Butte (Proposed)**
- H. East Boulder Mine (Proposed)**
- I. Stillwater Mine (Active)**
- J. Zortman-Landusky (Active)**

## **Waters at Risk Press Conference Technical Background**

The waters identified in the graphics and supporting documents were derived from the 305-B report published by the Montana Board of Health and Environmental Sciences.

Any technical questions regarding reclassification or legislative efforts to degrade Montana's water quality should be addressed to:

Deborah Smith, Board President  
Montana River Action Network  
401 N. Last Chance Gulch  
Helena, MT 59601  
454-3441

or

Peter Aengst  
Greater Yellowstone Coalition  
Box 1874  
Bozeman, MT 59771  
586-1593



# Greater Yellowstone Coalition

EXHIBIT 6  
DATE 3-13-95  
SB 330/331

Comments on SB 330 and SB 331. Submitted to the Montana House of Representatives Natural Resources Committee -- March 13, 1995.

Good afternoon Mr. Chairman, members of the committee. My name is Brian Kuehl. I represent the Greater Yellowstone Coalition based in Bozeman, Montana. The Greater Yellowstone Coalition works to protect the environment, communities, and sustainable economies in Greater Yellowstone including portions of Carbon, Sweetgrass, Park, Gallatin, Beaverhead, and Madison counties in Montana.

The Greater Yellowstone Coalition opposes SB 330 and 331. If passed, these bills will dramatically lower our state's water quality at the expense of our health, livelihood, and way of life. Attached is a list of the provisions in SB 330 and 331 that would lower the quality of Montana's rivers. For the sake of brevity, I will limit my oral testimony to one provision contained in SB 331. I want to emphasize, though, that correcting this one provision will not correct these bills; both are flawed to their very core.

SB 331 proposes lowering the arsenic standards to allow 1 in 1,000 Montanans to get cancer instead of the current level of 1 in 1,000,000 Montanans. Think about <sup>that</sup> change for a minute. In Libby, three people could get cancer due to this change. In Dillon, four people. In Lewistown, seven people. In Billings, sixty seven people. Which of your constituents are expendable? Do you think they will understand when you explain that a sacrifice had to be made and it was them? When you have the Missoula health department, and other health departments in the state objecting to this provision, it should give you pause. It should make you ask whether it is really good policy to subject eight hundred Montanans to cancer.

Again, this provision is just one of the many that are objectionable in these bills. These bills will affect every stream in Montana and every Montanan. These bills will adversely affect landowners, farmers, ranchers, recreation and other industries, and anglers, all of whom rely on the high quality of Montana's waters.

Before you vote on these bills, think of the Montanan's who will be affected by these bills and ask yourself one question -- will your constituents thank you for voting for these bills? If you agree that they will not, then table SB 330 and 331.

# Northern Plains Resource Council

EXHIBIT

DATE 3-13-95

SB 330

## Testimony of Julia Page for the Northern Plains Resource Council on Senate Bill 330

before the House Natural Resources Committee  
March 13, 1995

Mr. Chairman, members of the committee, my name is Julia Page. I live in Gardiner where I operate a whitewater rafting company. I am testifying today on behalf of the Northern Plains Resource Council.

We are appalled by SB330. Lobbyists and lawyers for the mining industry wrote Senator Swysgood's bill. It is regressive legislation of the worst kind. It violates the principles of the Montana Constitution, it violates the principles of the federal Clean Water Act, and it will allow the destruction of Montana's most valuable natural resource: exceptionally pristine water.

The mining industry claims strict protection of clean water is unfair, too restrictive and too expensive, therefore, industry wants to change our laws. Montana's water resources are exceptional, and they require and deserve diligent protection. We shouldn't change the law just to accommodate special interests anymore than we should change the rules of a competitive sport just because some of the players are out of shape, refuse to pay for good equipment or don't know how to play the game.

SB330 redefines degradation to "a change in water quality likely to affect a beneficial use". The Montana Water Quality Act requires that beneficial uses be protected. If you allow a change in water quality that affects a beneficial use you have, by definition, violated water quality standards. The whole point of a non-degradation policy is to ensure that pristine water stays pristine -- not that we pollute it until a beneficial use is damaged. (Page 1, line 28)

This bill may well stifle economic development in Montana. If you pass SB330, you run the risk of creating the same situation with state waters that the city of Billings faces with its air. The air in Billings is so polluted with sulphur dioxide, that it is now very difficult for any new sulphur dioxide emitting industry to move into the area. SB330 will let companies pollute our waters to the point where even new operators who would cause minimal degradation would be shut out.



# MONTANA WILDLIFE FEDERATION

P.O. Box 1175  
Helena, MT 59624

Ph. 406-449-7604  
Fax 406-449-8946

March 13, 1995

EXHIBIT 8  
DATE 3-13-95  
SB 330

House Natural Resources Committee  
Helena, Montana

Chairman Knox and Committee Members,

I am Alan Rollo, representing the Montana Wildlife Federation. I would like to start by thanking the sponsor of SB 330 for being concerned about the business climate of this state. We do feel though that this bill has missed that mark significantly and for that reason we oppose it.

A key issue here today is why should this bill push primarily one industries agenda to impact so many other worthy businesses in Montana. This state's waters are the hub to many businesses that ensure a diversity in our economic world which makes it hard for us to see the rational for this bill. I am not just talking small dollars here with the other businesses, I am talking major contributors to our tax base, such as: the non-resident tourism industry that brought in \$1.2 billion last year, the angler business that brings in approximately \$205 million annually, the agriculture community that irrigates over 1,700,000 acres and has over 2,500,000 head of cattle, the in-state recreational trade, other local community businesses that utilize alot of water, let alone the communities themselves that require water for their citizens. All have one common denominator - clean water.

The next significant issue is the amount of water quality problems that Montana citizens are contending with, with our current water quality laws and we want to relax them more. I have brought only a few examples of where people that want the law changed have already caused significant problems to individuals water supplies which I have attached to my testimony. People can replace alot of items that they acquire but they cannot replace their loved ones or easily clean their degraded water once contaminated.

The last key point is the fiscal requirements that apply to this bill. In a time of budget constraints why should we modify the water quality laws considerably after two years of heavy debate and numerous hearings around the state. \$48,000 to rewrite the water quality standards is a large dollar figure and then you have the major confusion as everyone tries to understand the new law, only two years after the last major rewrite of the water quality laws.

What I have mentioned today should not be considered lightly, for the businesses that I have mentioned are just a few that allow Montana to maintain a steady and healthy economic growth, not the boom and bust of earlier years seen with some industries. We must look at all businesses when we look at this bill.

So in recap, there are three key reasons that I would like to suggest, would enable this committee to feel good about tabling this bill:

1. Economics of other good businesses in Montana;
2. The health and welfare of our citizens; and
3. The time and money just spent to reaccomplish the water quality rules.

For those three reasons alone, we request that this committee table SB 330.  
Thank you.

Sincerely,

Alan Rollo  
Montana Wildlife Federation



## Cancer deaths in Montana on the rise

MISSOULA (AP) — The book that summarizes the facts of life and death, marriage and divorce in Montana is out in a new volume that covers the year 1992.

Cancer deaths rose, but heart disease remained the No.1 killer, according to the report.

The birth rate among Montanans was below the national figure, and the number of births outside of hospitals rose.

For the most part, Montana reflects national trends, said Sherry Spence, manager of the State Health Statistics Program, which compiles the data.

"But there are patterns we are seeing that we don't like," she said. They include cancer's near catch-up with heart disease as a cause of death.

"That is happening nationally, but not quite so markedly as in Montana," Spence said.

The 1992 report documents 3,004 new cancer diagnoses for the year. Prostate cancer was the most common cancer among men (577 cases), and in women, breast cancer was the most common (492 cases).

Lung cancer ranked second on the cancer diagnosis list for men and for women, but it was the top cancer killer in 1992. The report says 441 people died of the disease. Lung cancer cases diagnosed in 1992 totaled 417.

Montana recently received a five-year grant with which to expand collection of health statistics.

27 Aug. 94

# Cascade town effluent draws lawmaker's ire

## Stop polluting Missouri — now, Blaylock says

By The Associated Press

HELENA — A legislator from Laurel says state health officials and the town of Cascade have fallen down on the job by letting raw sewage enter the Missouri River for the past 17 years.

At a meeting with the Montana consumer counsel on Thursday, Democratic Sen. Chet Blaylock demanded town officials report to the counsel regularly. He said they should outline steps for fixing their leaky sewer lagoon on an island in the river south of Great Falls.

Blaylock said he's frustrated with longstanding claims that "they're working on it."

Blaylock is vice chairman of the Legislative Consumer Committee, which monitors the work of Consumer Counsel Bob Nelson.

"How can you assure this committee that you feel the town of Cascade is serious about getting this done?" Blaylock asked.

The two Cascade councilmen at the meeting, Medric Bruneau and Robert Nicholson, said they are indeed serious about solving the problem.

The town has hired an engineer to come up with a plan, but after two years the process hasn't advanced

much, Nicholson said. Town officials have submitted a preliminary plan to the state and have applied for a planning grant.

It appears the community will have to get a loan to cover the sewage work, which is expected to cost \$1 million to \$3 million.

Scott Anderson of the Montana Department of Health and Environmental Sciences' assistance program said that he went to the Cascade council "many times and basically took a bag of money with me,"

but was refused. Some grant money previously available has dried up.

On Thursday, the Cascade councilmen did not fully explain why problems have dragged on.



Blaylock

"I tried to convince the other members of the council that we have to do this," Nicholson said. "Part of the problem was the council was split down the middle and had a lot of resistance. Hopefully, we are getting beyond that now."

Anderson said that although sewage seeping into the river isn't treated, it becomes diluted.

Blaylock said the absence of an immediate health hazard doesn't mean the problem is not important. He said the "idea of sewage going into our rivers is aesthetically disgusting at the very least."

State enforcement officers have recommended a fine of \$13 million against the town of Cascade, but the penalty has not been imposed.

5 JAN 93

## Pollution violation costs \$1 million

BILLINGS (AP) — A North Dakota waste disposal firm accused of violating anti-pollution rules in Montana has been ordered to pay a \$1 million civil penalty.

U.S. District Judge Jack Shanstrom also issued an injunction to prevent Balco Inc. of Williston, N.D., from injecting waste water into the ground at pressures that could cause fractures in a well near Sidney.

The well was used for disposal of salt water in oil and gas production.

The federal Environmental Protection Agency claimed that Balco injected brine into the well under more pressure than the well could take.

The EPA sued Balco, claiming fractures in the well could lead to contamination of drinking water.

6 JAN 93

## Helena warned of danger from water

HELENA (AP) — Helena's drinking water may be in danger unless Lewis and Clark County health officials adopt a plan to protect the Tenmile Creek watershed, a hydrogeological engineer said this week.

Vivian Drake told the county Water Quality Protection District board that the Tenmile should be their first concern. Drake listed 27 problems with Helena's water sources, rating each on potential effects to public health, damage to businesses, degradation of water quality and estimating difficulty of cleanup.

The drainage has no management plan, other than U.S. Forest Service documents, Drake said. She said mining, logging and recreation are all potential problems.

6 JAN 93

## Flathead tests show water quality declining

YELLOW BAY (AP) — Tests show an alarming stagnation in Flathead Lake, University of Montana researchers say.

Dissolved oxygen content in the deepest part of Big Arm Bay has declined by one-third, said Jack Stanford, director of the UM biological station at Yellow Bay.

Over time, a decline in oxygen in deep waters can lead to the spread of phosphorous and accelerated algae growth, the researchers say.

The developments "appear to be symptoms of declining water quality" in the lake, according to the

station's just-released 1992 monitoring report.

Slower water circulation in Big Arm Bay could be a factor in the stagnation, Stanford said. The report also notes "significant sources of shoreline pollutants" such as homes and septic tanks around the bay.

Air pollution — particles from wood smoke — contribute between 23 percent and 28 percent of the biologically active phosphorous reaching the lake, based on samples collected by the Yellow Bay station.

10 JAN 93

# Report summarizes Montana lake, river pollution

BOULDER (AP) — A survey of pollution in nearly two-thirds of lakes and about 10 percent of streams in Montana, the state Quality Bureau said.

The bureau evaluated 979,432 of lakes and 178,896 miles of streams for the agency's 1992 Water Quality Report. The study is repeated every other year under the Clean Water Act.

The lakes evaluated, 62 percent polluted to the point that they

couldn't fully support their designated uses, bureau officials said. The stream survey used the same yardstick.

Environmental specialist Chris Levine of the bureau said the survey essentially covered all Montana lakes and streams. Methods of evaluation included measurement apparatus and professional judgment, he said.

The report shows that of the healthy streams, the number of miles in danger of becoming unhealthy rose from 80 in 1990 to 615

last year. The figure showing lakes in peril did not change substantially in the two-year period.

Part of the reason for the increase in threatened streams is that in the last two years, scientists have increased the list of identifiable stream problems, said Loren Bahls, supervisor of the bureau's ecosystems management section.

The report says agricultural practices and natural contamination by arsenic are two significant sources of water problems in Montana.

Removal of water from rivers is a

big problem, said George Ochenski, a natural resources lobbyist.

"The water quality might be the problem but how much water is there," Ochenski said. He said some streams literally run dry during a season of agricultural irrigation.

Among the states, Montana ranked third in stream miles and sixth in lake acreage.

Natural contamination of water by arsenic remains a concern.

24 Jan. 95

Great Falls Tribune 3B

# State sends Arco \$635 million bill for river cleanup

By BOB ANEZ  
Associated Press Writer

HELENA — The state of Montana has sent Atlantic Richfield Co. a \$635.4 million bill for decades of environmental damage from mining in the upper Clark Fork River basin.

The total is less than the preliminary estimate of \$700 million to \$800 million contained in a series of studies released by the state over the past two years.

Those reports chronicled harm done to fish, surface and ground water, air, soil, vegetation, wildlife and wildlife habitat as a result of hazardous waste released by Anaconda Co. mining operations in the Butte-Anaconda area. The affected area extends from Butte downstream to the Milltown Dam east of Missoula.

The state claims in a federal court suit filed in 1983 that Arco, which bought Anaconda and its properties in 1977, is responsible for paying for the damage and clean up under federal law.

Attempts to negotiate a settlement stalled last fall and a trial is expected in early 1997.

About \$300.7 million of the revised estimate is for damaged natural resources and interest. The state has demanded another \$326.8 million for restoration and \$7.8 million for the cost of the assessment studies and enforcement.

In its report explaining the revised demand, the state calls the claims reasonable and minimal. An Arco official Monday labeled the demand "unreasonable and unacceptable."

The state's report said the estimate of past lost use of natural resources in the basin goes back to 1981 even though hundreds of millions of dollars in damage occurred

before then.

In addition, the state said the estimate of future damages assumes all of the ruined resources will be cleaned up in 20 years. That is a generous assumption since clean up will not be finished in that time and some areas will never be restored, the report said.

It also concluded that the demand for cleanup money "does not even approach the true costs of restoring all of the resources."

Sandy Stash, Montana facilities manager for Arco, said the company has spent about \$200 million on cleanup efforts in the area over the past five years and has plans to spend another \$70 million.

The state does not take that into consideration and its demand for payment would require Arco to pay twice, she said.

Stash also said federal law prohibits its collection of damages when environmental harm and the release of hazardous wastes happened solely before the federal superfund cleanup law took effect in December 1980. The state is trying to collect for damages that occurred over the past century, she alleged.

"We don't think there are damages that can be collected under the law," she said. "Any problems in the basin result from practices that were a long, long time ago."

Robert Collins, a lawyer with the state's Natural Resource Damage Program, said courts repeatedly have rejected that argument. The state is claiming damages only for environmental harm that has continued since the federal law was enacted, he said.

Contrary to Stash's comment, Collins said, the state's demand for money carefully accounts for what Arco has spent so far on cleanup.

14 Mar 94

# No one walking a mile for this city's water

**MILES CITY (AP)** — The water in Miles City tastes awful these days, thanks to the chemicals health officials are dumping in the pot. But they say the alternative would be worse.

Runoff, flooding, turbulence and jostling ice packs in recent days have turned the Yellowstone River into a tumult of what health officials politely call "organics."

The term covers everything from dead animals to residues of flooded feed lots. Organics carry diseases — many serious, like typhoid or cholera.

And since Miles City draws its water from the river, the concern is more than academic.

"Whenever the lowlands flood upriver, we get real concerned about water quality, not just because of the turbidity, but because of what the flooding brings with it," said city Public Utilities Director Curt Myran. "We have to disinfect it."

Chlorine is one chemical being used; chlorine levels at the tap

have jumped from 1.2 or 1.3 parts per million to about 1.6 or 1.7 ppm.

"That doesn't sound like a lot, but that makes quite a difference," Myran said.

Other chemicals are intended to clarify the water, which is up to 200 times more turbid than usual. Those chemicals also leave a faint taste and odor.

"The dosages of the chemicals we use are probably twice as high as what we normally use. We are testing continuously to arrive at the best dosages of chemicals," Myran said.

"Until the quality of the Yellowstone improves considerably, there'll be a noticeable chlorine or chemical taste, but the water we're putting out now meets all the standards and parameters. It's safe to drink," he said.

Myran said the problem will occur again in June, when the mountain snowpack melts and causes seasonal flooding on the Yellowstone again.

7 Dec 94 Great Falls Tribune 9A

# Officials worry about cyanide in groundwater near Bozeman

**BOZEMAN (AP)** — Cyanide leaking from a closed gold mill in southwestern Montana might be threatening the groundwater north of Pony.

State health officials were expected to report Tuesday on whether the leak from a tailings pond at the Chicago Mining Corp., mine had left unsafe levels of cyanide in a natural spring nearby.

The state Health Department has sent the company a letter, ordering it to stop the leak and remove the cyanide, which has escaped the first of two liners intended to contain the poisonous material.

The 5.5-acre pond is 200 feet above Pony, a tiny town on the western edge of the Tobacco Root Mountains. The town is on Willow Creek, a tributary of the Jefferson River.

Cyanide is used to remove gold from rock. The waste rock is then placed in a tailings pond where the cyanide is gradually neutralized.

The Health Department ordered the company to neutralize the leaked cyanide immediately, but it set an Oct. 1, 1995 deadline for

repairing the upper liner and either removing or neutralizing the cyanide-laced tailings.

If the cyanide leak cannot be controlled the pond must be reclaimed, the order stated. Failure to comply could result in civil and administrative penalties.

Chicago Mining's lawyer, Ed Sheehy Jr. of Missoula, said he had not seen the Health Department's letter, and did not know what action the company would take.

When the mill was first proposed, some residents fought the project, because of fears cyanide could leak into wells.

When the gold mill stopped running in 1991, Chicago Mining quit monitoring water and making quarterly water quality reports. The state revoked the company's groundwater pollution control permit in December 1993.

Although deed papers filed in Madison County show that Chicago Mining sold its Pony mill to Great American Gold Co., Sheehy said the deal is not final.

## State holds Pony mine meeting

9 Feb 95

PONY — State officials will hold an informational meeting Thursday, Feb. 23 in Pony to update the public and discuss concerns about the Pony gold mill.

The meeting will be at 7 p.m. at the Pony schoolhouse. It will be held by the Montana Department of Health and Environmental Sciences Water Quality Division. It will be led by John Arrigo, head of the division's groundwater section, and Terry Webster, a section hydrogeologist. Representatives of Great American Gold Co., which owns the mill, also have been invited to attend.

Recent sampling of drinking water wells and springs in Pony turned up traces of cyanide in one well below a tailings pond. The state department is providing bottled drinking water to the family that has the well with traces of cyanide. It is continuing to monitor drinking water supplies in the area.

For more information, call Arrigo at (406) 444-5327 or Terry Webster at (406) 444-1455.

10.

25 Feb 95

# Pony gold mill cleanup on hold

PONY (AP) — The cleanup of cyanide pollution at the Pony gold mill has been put on hold until the new owner raises enough money, and the president of the company that bought the mill declined Thursday to estimate when that might be.

Joel Barbee, president of Great American Gold Co., said the original plan to begin cleanup March 15 was unrealistic. A company official told The Montana Standard in mid-January that the cleanup would begin on March 15 and last 60 to 90 days.

"It's my naivete that has kept us from being ready," Barbee said after a public meeting on the issue at the Pony schoolhouse. "I've learned new things even today."

He said the company is close to raising enough money, but also said he did not know how much the cleanup will cost. He is in charge of the cleanup.

If reopening the mill turns out not to be profitable, the cleanup still will be done, he promised.

The mill cannot reopen until the site is cleaned up and permits are obtained from the state. A plan for cleanup is supposed to be submitted to the state by March 1, but the

company plans to ask for more time, a state official said Thursday night.

Chicago Mining Corp., the previous owner, operated the gold mill from December 1989 until 1991.

The state recently discovered that a pond on the site containing cyanide-laced mine tailings is leaking cyanide into the groundwater, state water specialist Terry Webster said at Thursday night's meeting.

State tests have shown cyanide has leaked through two liners in the tailings pond, into a spring and into a well owned by David Zimmerman. He is chairman of Concerned Citizens for Pony.

Great American Gold Co. took over responsibility for neutralizing the tailings and repairing the liners when it bought the site recently, Barbee said.

Jan Zimmerman, David's wife, said the meeting confirmed her suspicions about Great American Gold Co.

"This company is in the same classification as (Chicago Mining)," she said after the meeting. "They have no track record, no money and no knowledge about the area."

Chicago Mining folded in 1991, leaving behind a string of debts with local contractors and landowners.

EXHIBIT 9  
DATE 3-13-95  
SB 330

March 12, 1995

Memo to: House Natural Resources Committee  
Representative Dick Knox, Chairman

Subject Senate Bill 330

I'm a retired citizen, operator of a small business near Whitefish and am representing myself and the Citizens for A Better Flathead, a public interest group of several hundred members.

We are strongly opposed to Senate Bill 330 for several reasons:

1. Montana's water, both quantity and quality, represent the most important economic asset of this State. It also represents the most fundamental element in our quality of life. Several recent surveys in Flathead County have identified preservation of water quality as the most important public concern and any degradation is damaging to our future and our children's and grandchildren's future.

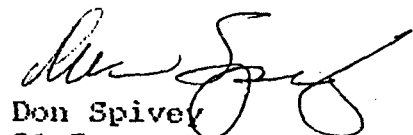
2. The proposed standards changes along with changes in the non-degradation regulations will have negative impacts such as:

- \* Redefining "High Quality Waters" will remove many state waters from the non-degradation rules negatively impacting water quality in those non designated streams and that is unacceptable to us.
- \* Modifying non-degradation rules which would allow for increased loading of nutrients such as Nitrogen will accelerate the degradation of lakes and streams throughout the state.
- \* This does not help maintain employment in the extractive industries, it only enables increased profits for those industries. Personnel costs are always the key cost-cutting target in any business. Automation will eliminate and change jobs in this industry independent of any legislative action.
- \* Once polluted, the recovery costs will be beyond the State's capability to fund, e.g., the ARCO site, Lake Washington-300 Million, Lake Tahoe-multiple Billions.

3. The State waters, streams, rivers, and lakes are in the public domain and are thus the private property rights of every resident of this State. Any degradation is an infringement of those rights.

We believe there is little if anything to gain from this legislation and EVERYTHING to lose. Thus we urge you to table this bill and not pass it through for House consideration.

Respectfully,



Don Spivey  
51 Penney Lane  
Columbia Falls, MT 59912  
257-0724

.cc Governor Marc Racicot



EXHIBIT 10  
DATE 3-13-95  
SB 330/331

Statement of Donald H. Kern

Mister Chairman and members of the committee:

My name is Donald Kern, and I have been asked to testify as an opponent of SB 330 and SB 331 because of my experience as a hydrologic technician on three national forests – the Flathead, the Bitterroot and the Nez Perce. I am not currently employed by nor do I speak for the Forest Service, however, my experience more than qualifies me to speak on the topic of water quality. I do speak as a member of the Board of Directors of the Canyon Coalition, a government watchdog group of over 400 members whose primary mission is protection of the Greater Glacier Ecosystem.

SB 330 and SB 331 would prohibit state water quality standards which are more stringent than federal regulation except in limited circumstances. This "permit to pollute" is a slap in the face to every Montanan who appreciates our precious clean water supplies. Many streams found within the boundaries of this state have been described by both state and federal agencies as "some of the most pristine waters to be found in the lower 48 states." We have the Berkeley Pit and the largest toxic superfund site in the world to remind us of what happens when regulations are not in place.

Changes in methodology, such as expressing standards in total dissolved instead of total recoverable methods are masked attempts to allow further pollution. This bill prohibits the state from preventing water pollution from many industrial sources, including mine tailings, cyanide heap leach pads and other wastes, and agricultural sources such as feedlots, which are frequently located on or near streambanks. SB 331 also requires the state to prepare costly analyses defending Montana's water quality standards which are stricter than federal standards.

Perhaps the ugliest part of these bills is their attempt to remove non-dissolved pollution from regulation; essentially eliminating much mining waste and other "chunk-type" wastes from regulation. This is totally unacceptable at a time when huge, foreign mining conglomerates are pushing to mine every corner of Montana and getting away with it under the protection of the antiquated 1872 Mining Law.

SB 330 and SB 331 would limit the number of streams protected by non-degradation standards, and allows increased degradation in the few streams that will remain protected. It also limits public participation in some non-degradation determination to those people who have property interests that may be affected by determinations, excluding the general public, who are the true owners of our state's waters. Once again, this is a veiled attempt to subsidize the mining and timber industries at the expense of the water quality in these streams.

Finally, these bills lower human health standards for carcinogens such as arsenic, and increase the risk of cancer by 100 fold, lowering standards from 1/1,000,000 to 1/10,000. Are we now expected to subsidize mining with our lives and the lives of our children?

The proposed changes in these bills are nothing more than attempts to gut more than 20 years of existing water quality regulations and open up pristine streams to unacceptable pollution. If industry views our current degradation rules as onerous and draconian, then I would suggest they look elsewhere to conduct their dirty business. Do not allow industry to bully you into lowering our water quality standards to the same standards as New Jersey. I strongly urge you to kill these bills and protect the pristine waters of Montana.

Thank you.

EXHIBIT 11DATE 3-13-95SB 330/331

To: Members of the House Natural Resources Committee

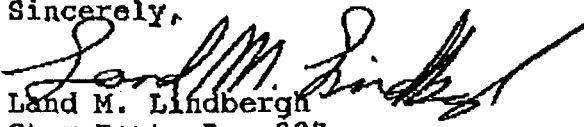
From: Land M. Lindbergh - Resident of Greenough, Montana

Subject: SB #330 and SB#331

Position: Opposed to SB. #330 and SB#331 in their entirety.

As a 30 year resident and property owner in the Big Blackfoot Valley, I am deeply concerned with the implications of SB #330 and SB #331 for the long term quality of the waters of Montana. Those of us who have been working very closely for a great many years with agricultural, industrial and environmental groups, as well as with state and federal agencies, are terribly disturbed by the prospects of such legislation destroying the gains that have been made to protect and enhance water quality in this state. We have put in a tremendous amount of time and effort to get to where we are now with water quality ... please don't destroy in a few ill-considered moments what has taken years to build into one of the finest examples of responsible state law in the United States. Please defeat both of these bills, now under consideration by your committee, in their entirety. Thank you very much for your serious consideration of my strongly held opinions on this legislation.

Sincerely,



Land M. Lindbergh  
Star Route Box 337  
Greenough, Montana 59836

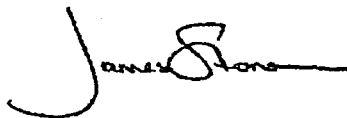
(1-406-244-5599)

EXHIBIT 12  
DATE 3-13-95  
SB 330 / 331

TO: Members of the Natural Resource Committee  
FROM: The North Powell Conservation Supervisors  
RE: SB 330 and SB 331

The Supervisors of the North Powell Conservation District ( N.P.C.D. ) would like to go on record as opposing SB 330 and SB 331. We feel that it is important that the Agriculture Industry show itself in support of good water quality regulations that improve Montana's water quality; not degradate it at the hands of any industry. The N.P.C.D has initiated The Nevada Creek Watershed Project which has put Agriculture in the Blackfoot Valley in the lead for BMP's in relation to water quality and land stewardship. In conclusion; we feel that we need to work together, not compromise, the pristine water that we all work and live for in Montana.

Thank you for your time and consideration on these bills.



James Stone - Member

David Cochran - President

David Mannix - Vice President

Tracy Manley - Member

Mick Goettle - Member

Date: 3-13-95

*Vicki Watson*

From: Vicki Watson, Assoc. Professor, Biology, U. Montana  
To: Montana House Natural Resource Committee

RE: Comments on SB 330 and 331

The last legislature directed the DHES to revise its nondegradation rules and water quality standards. These were carefully revised over a 2 year period with much input from scientists and a wide range of interests. Nobody got everything they wanted, but the process is probably the best we could have done. These new rules have just been put in place. Give them a chance to work. My reading of SB 330 and 331 is that they would be harder to enforce, cause more delays and legal wrangling, and give much less protection to human health, environmental quality and property values. They are too flawed to be salvaged by amendment. I urge you to stop these bills in this committee.

Here are some of the things SB 331 would do if passed:

- \* Make it harder for the Board of Health to adopt rules more stringent than general federal guidelines (which are set as the minimum acceptable levels); yet makes it easier for dischargers to get the Board to set site-specific standards for them that are weaker than the general federal guidelines.

- \* Greatly weaken water quality standards-- allowing a 1000 fold increase in cancer death risk from arsenic and a 10 fold increase in cancer death risk from other carcinogens. There are about 110 carcinogens with standards and many more that don't have standards. Given the Montana population, this could translate to as much as 800 more deaths from arsenic and about 1000 more deaths from other carcinogens. Do you want to be one of those statistics?

- \* Change standards for metals to a form for which EPA has provided no guidance. DHES would have no meaningful way of enforcing such standards.

- \* Weaken protection for groundwater--changes in groundwater are not significant degradation as long as nitrate stays just a bit below the level at which the water becomes unfit to drink--apparently all other aspects of the groundwater can degrade as long as nitrates remain barely acceptable. There are many things wrong with this view. 1) Other substances can degrade groundwater besides nitrates. 2) Allowing substances to degrade to a point just short of the standard gives little protection in groundwater due to the uncertainty of characterizing groundwater. 3) Nitrates do not just harm water for drinking. If nitrates are allowed to rise to these high levels, many streams and lakes in Montana would become more enriched and would experience increased algae levels and reduced water clarity. Jack Stanford of the Biological Station at Flathead Lake speaking before the Board of Health stated that such a rise in nitrate levels in groundwaters around Flathead Lake would likely harm its quality significantly.

\* Require that the Board of Health downgrade the classification of certain streams, and abandon the goal of restoring them. Many streams in the state that were damaged by poor historic mining practices were given classifications based on what they were like before the damage, with the intent of reclaiming these streams. Now the board would be forced to write off these streams and let them be classified industrial sewers.

\* Require that standards be "cost effective and economically, environmentally and technologically feasible". But the bill does not define these terms. Lawyers would spend a lot more time arguing over what this means for every single permit than was the case when all dischargers simply had to meet health and environmental standards. Who says what is 'economically feasible'? The discharger pays the treatment bills but does not pay Montanan's medical bills or replace the lost fish. And what does 'environmentally feasible' mean? The usual explanation I am given for this is that some unpolluted Montana streams (such as those flowing out of Yellowstone) have some metals levels that exceed standards, so the standards should be as high as those naturally poisonous streams. This makes no sense. There are naturally poisonous mushrooms in the woods; does that mean we should allow poisons on all our foods to rise to the level where they are as poisonous as those mushrooms?

\* Would allow groundwater to be pumped and discharged into surface water without a discharge permit or nondegradation permit as long as the groundwater was not altered from its 'ambient quality'. What if the water was pumped from a mine where the ambient water quality was contaminated by historical mining in the area? Or, as often happens, the pumping of groundwater starts the process of acid rock drainage which contaminates the water before it ever reaches the pump? Or if contaminated groundwater was being pumped up after a spill? Or the groundwater is naturally salty and makes the surface water more salty? All of these would degrade the surface water and possibly even violate state standards, but without tracking through a permit, we would not know this until too late.

\* Existing law says it was unlawful to place wastes in a location where they are likely to cause water pollution--the new law says where they will cause water pollution. We can rarely say for certain that land disposed wastes will get in surface water. So now wastes can be placed where they are likely to cause water pollution as long as it is not certain that they will. Moreover, any waste put there with a federal or state permit is assumed not to pollute waters even though no water quality agency reviewed that permit. We have a lot of waste sites around the country permitted by other agencies that are now polluting the water and costing a lot to clean up.

\* The entire section on administrative actions and penalties taken when the law is violated seems to be stricken by 331. Does that mean there is no longer any penalty for violating this act?

And what about SB 330 which amends the Nondegradation Law?

This act repeals the Nondegradation law by redefining degradation. Formerly, degradation was any worsening of water quality. SB 330 says degradation is the lowering of water quality in a way likely to affect a beneficial use. In the recent past, policy makers in DHES stated that the standards protect beneficial uses, so until standards are violated, beneficial uses are not affected. Hence there is no degradation until standards are violated. Yet the intent of the nondegradation law is to prevent water that is better than the standards from degrading to the standards. Catch 22.

SB 330 also redefines high quality waters (whose high quality must be maintained). In existing law, all state waters were high quality for any parameter (a measure, like the amount of copper) that was better than water quality standards. So even if one parameter was at or below the standard, all the other high quality parameters were to be maintained. So all state waters were high quality in some way and worthy of protection. Under SB 330 high quality waters do not include any that are not capable of supporting any of their designated uses. Many Montana waters are designated as not fully supporting their designated uses based on a parameter that does not meet standards. So if even one parameter exceeds the standard, the water might lose its high quality status and all its parameters could be allowed to degrade. Do we allow many of our waters to degrade to New Jersey conditions because we mistakenly allowed one parameter to degrade?

SB 330 also declares that streams that flow only a short time in the spring are not high quality waters worthy of protection from degradation even though these streams can be important for spawning and migration according to fisheries biologists.

SB 330 also says that most of us Montanans have no interest in water quality. It redefines 'interested persons' who may challenge the Board of Health's decisions on whether or not to allow degradation of state waters. Formerly, anyone of us who showed our interest by submitting oral or written testimony on the Board's preliminary decision could challenge their final decision. Under SB 330 they can be challenged only by those wishing to degrade the water or by someone who owns property that would be directly affected. Perhaps we could claim our bodies are our property and would be affected if we unwittingly took a drink or ate a fish from the wrong place.

Formerly, the DHES was required to review permits to degrade state waters every 5 years to see if a technique had been developed that would allow a discharger to stop degrading state waters. Under SB 330 the DHES may do this, but is not required to. Given budget cuts, the DHES won't be doing anything it is not required to do, so even if a low cost technology comes along that would make degradation unnecessary, it won't be used.

Many people in Montana have the mistaken notion that the laws that protect our air, water, land and wildlife hurt our economy. Two of the strongest parts of our economy are our tourism industry and our real estate values. Many people visit Montana and many others relocate here for retirement or to operate small businesses. These keep our economy healthy. Mining is a relatively small part of our economy according to studies by U. Montana economists. Weakening our water quality and land reclamation laws in the name of helping our economy is counterproductive. Protecting our high quality environment is the best way to keep Montana's economy healthy in the long term.

330

EXHIBIT 14  
DATE 3-13-95  
SB 330

My name is Paul Hawks. I am a third generation rancher from Melville.

My father-in-law is fond of saying "people are sick and tired of being regulated to death". Understanding that sentiment has a lot to do with how this debate turns out. It is the message that many of you think the mandate of the last election is about. And I believe that is where most of the agricultural proponents of this bill come from.

Government is often inept and is an easy target. But you can't legislate morals and ethical standards. And in today's world of big government and big business, morals are often lacking because there is no direct stake in the outcome of decisionmaking or the bottom line is the only thing that ultimately matters.

Most of us in Montana, and particularly in rural Montana, have high ethical standards because we are still very dependent on neighbors for our prosperity. We tend to share common values because its necessary for the community's wellbeing. And we're proud of our clean water and landscape.

Some of you may know that a large multi-national corporation or an absentee landowner is a different kind of neighbor. There are many times conflicts. Goals or ways of doing business are different. Often there is mistrust because common values are not shared. If resources are ruined, they are gone, maybe forever, ruining the prosperity of future generations.

Ideally regulations protect the common good, but there is rarely agreement as to how that is achieved. The proponents of SB 330 would argue that the goal is to comply with federal water quality standards. This will allow business to prosper and the water to be protected.

The problem is that this state has very high quality water and for 23 years we have had a nondegradation philosophy (although we cannot say a policy). I would argue that the proponents want the nondegradation policy repealed. I believe if that's what they want, then say so, and don't sneak in the back door through SB330.

So I guess your job is really quite simple. If you believe Montana's water should only meet minimum standards then you vote for this bill. If you believe Montana should attempt to protect our most precious resource...and I don't mean water, I mean "high quality" water, then you should vote no. I believe this issue is the most important issue facing Montana's long term future, and if you're intent on pushing these bills forward, then I would suggest that you let Montana's voters have the final say.



EXHIBIT 15  
DATE 3-13-95  
OR 330 + SB331

Testimony Concerning SB330 and SB331

Mr. Chairman, my name is Jim Curtis. I live at 1318 Khan abad Drive, Missoula, MT. In presenting this statement I am representing the Montana Chapter of the Sierra Club, but I am also representing myself.

The Montana Chapter strongly opposes SB330 and SB331. In opposing these two bills we are proud to associate ourselves with the many other organization and the many ordinary citizens of Montana that have helped in the team effort to assure that one of Montana's most important and precious natural resources, clean water, has been protected by good state legislation.

Suddenly, in 1995, we find ourselves astounded and angered that the protective laws that have served Montana well for the past two decades are under frontal attack, apparently from industries who stand to profit by being allowed to make clean waters unclean, and safe drinking water less safe.

Granted, these laws are not perfect, but their imperfections are not those that have been alleged in the Statements of Intent found in SB330 and SB331. The regulations for protection of our clean waters do not lack in scientific justification. The system is not broken. The only significant flaws are that the protective laws need to be strengthened, not weakened, and they need to be more effectively implemented and enforced.

Mr. Chairman, I would be interested to meet the legislator who can truly state that he was elected on a platform to promote the pollution of Montana's clean ground and surface waters. If any Montana voters thought they were voting to make their streams less able to sustain fish and aquatic life, they were few and far between. I do not believe that Montanans thought they were voting to have the waters from their wells and municipal water supplies made less safe to drink, more likely to cause cancer.

If you do not have a mandate from the majority of Montana voters to make the waters in this state less safe and clean, the only motivation for this legislation has to be coming from those who will profit from a license to pollute.

The question before this committee is really very simple. Are you going to grant that license to potential industrial polluters? We in the Montana Chapter sincerely hope that the answer is a resounding "NO."

MULLENDORE, TAWNEY & WATT, P.C.

ATTORNEYS AT LAW

ROBERT G. MULLENDORE (MT, WA, AK)  
PHILIP D. TAWNEY (MT) (1949-1995)  
WILLIAM C. WATT (MT)  
GRANT D. PARKER (MT, WA)  
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March 13, 1995

House Natural Resources Committee  
Montana's 54th Legislative Assembly  
Capitol Station  
Helena, MT 59620

SB 330 and SB 331 - Efforts to Weaken  
Montana's Water Quality Laws

Dear Natural Resource Committee Members:

We are writing to urge you to reject efforts to weaken the state's Water Quality Act provisions which protect Montana's nationally-recognized high quality waters from degradation.

Montana is experiencing renewed economic growth and vitality because it has clean water and good overall environmental quality. We represent a number of growing and successful businesses in Montana that would not be here if it wasn't for our clean water and our high environmental quality. The changes being proposed in SB 330 and SB 331 will result in a lowering of water quality, and increased risks to the health of Montanans for generations to come.

We believe these proposed changes send the wrong message to Montanans and others interested in investing in our state, and in the long run, will be a detriment to our economy. Montana's reputation for world-renowned trout fishing and recreational opportunities will be damaged if we weaken existing water quality laws.

In 1971 the Montana Legislature adopted a nondegradation policy that prohibited new and increased sources of pollution from degrading Montana's high quality waters. This nondegradation policy was modified in 1993 through SB 401, in an effort endorsed by the Department of Health and Environmental Sciences, the mining industry, municipalities, and other regulated industries. We have not yet had an opportunity to implement and test this new law, and the regulations adopted by DHES.

We believe that weakening Montana's water quality laws as proposed in SB 330 and SB 331 would constitute an unconstitutional legislative act. Article IX, Section 1 of the

EXHIBIT 16  
DATE 3-13-95  
SB 330 + SB 331

House Natural Resources Committee

Page - 2

March 13, 1995

Montana Constitution prohibits the Legislature from allowing any degradation of Montana's high quality waters. The proper method for allowing such degradation, as required by the Montana constitution, is to submit the issue to a vote of the people.

The history of the Constitutional Convention supports the position that the Montana Legislature cannot provide for the degradation of Montana waters. The comments on the majority proposal clarify that this section applies to water, and that Montana's waters cannot be degraded:

Subsection (3) mandates the legislature to provide adequate remedies to protect the environmental life support system from degradation. The committee intentionally avoided definitions to preclude being restrictive and the term "environmental life support system" is all encompassing including, but not limited to air, water, and land and whatever interpretation is afforded this phrase by the legislature and courts; there is no question that it cannot be degraded.

[Emphasis added.]

Vol. II, *Proceedings of Constitutional Convention of State of Montana*, pg. 555 (1971-1972). This prohibition on degradation is further supported by comments of Delate C.B. McNeil from Polson, who stated that, "our intention was to permit no degradation of the present environment of Montana and affirmatively require enhancement of what we have now." Vol. IV, *Proceedings of Constitutional Convention of State of Montana*, pg. 1205 (1971-1972).

We ask you to reject the recent efforts to expressly allow pollution and degradation of our waters to the detriment of the public's health and Montana's environment. If you have any questions regarding these matters, please feel free to call.

Sincerely,

Mullendore, Tawney & Watt, P.C.



Grant D. Parker



Sara J. Johnson

c: Governor Racicot

We the undersigned strongly oppose any measures that would weaken Montana's water quality laws. In our view, Senate Bills 330, 331, and 382 are a giant step backwards in our efforts to maintain clean water in our lakes and streams.

<u>Michael W. Biedscheid</u>	455 Glenwood Rd Whitefish, MT	862-3570
<u>Jamie B. Metzmaker</u>	915 Dakota Whitefish, MT	862-7960
<u>Pete Metzmaker</u>	915 DAKOTA WF	862-7960
<u>John R. Becker</u>	905 Dakota #A	862-0604
<u>J. F. Fitch</u>	905 DAKOTA A	862-0604
<u>Gail Leonard</u>	514 Pine Place, Whitefish	862-5807
<u>Leo Reane</u>	514 Pine Place Whitefish	862-5807
<u>George D. Widener</u>	15 Central Ave, Whitefish	862-1298
<u>Rest. V. McIntosh</u>	Box 1564, Whitefish	862-1090
<u>Patricia K. Widener</u>	15 Central Whitefish, MT	862-1298 59937
<u>Mike Biedscheid</u>	455 Glenwood WF	862-3510
<u>Karen C. Zwislock</u>	35 Dakota Ave WF	862-5700

EXHIBIT ~~18~~ 19  
DATE 3-13-95  
SB 3304 SB331

Ladies and Gentlemen,

I am not a lobbyist or a special interest. I am an average concerned voting citizen.

Hasn't this state and this country paid enough for the unguarded environmental henhouse? Does history always have to repeat itself?

Most resource users don't pay much of anything for the land they use or raw materials they extract. Can't they at least be forced to extract or use the resources in the most scientifically sound methods available to prevent degradation of these multi-use lands we all hold as precious?

Allowing industry to write legislation is wrong! Allowing industry to write environmental legislation is ludicrous! If we protect these lands to the best of our ability, then their worth will only appreciate exponentially for all future generations to come.

Thank You!

*Totally against 330-331*

*Bill Davis*  
*3315-C*  
*Isaac Cannon*

*Alma, MB.*

# MontPIRG

Montana Public Interest Research Group

360 Corbin Hall - Missoula, MT - (406) 243-2908

Testimony Against Senate Bill 330, March 13, 1995

Chairman Knox and members of the House Natural Resource Committee:

For the record, my name is J.V. Bennett, for the Montana Public Interest Research Group, or MontPIRG.

MontPIRG is a non-profit, non-partisan research and advocacy organization working for good government, consumer rights and sound environmental protection. MontPIRG represents over 4000 members in Montana, with 2200 student members, and is funded with membership donations.

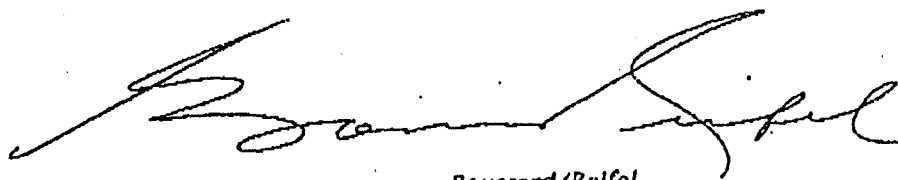
As an organization advocating good government and sound environmental protection, MontPIRG rises in opposition to Senate Bill 330.

Montana's high quality waters are one of our greatest resources, a resource Montana has wisely sought to protect over the last 25 years. Senate Bill 330 would undermine protection of high quality waters in Montana by allowing degradation of pristine streams.

Senate Bill 330 redefines degradation and high quality waters in a way most likely to benefit polluting industries, not the average Montanan. Instead of a precautionary approach which considers it worthwhile to keep clean waters clean, we would allow the degradation unless it was likely to affect an undefined beneficial use. This is likely to place the burden of proof on the public wishing to maintain water quality. Since much is still unknown about the effect of various pollutants on the health of humans and the environment, these new definitions are a prescription for future trouble. As a policy we should need a good reason to pollute currently clean waters, rather than encouraging pollution unless there is an obvious reason to keep them clean.

Another problem with Senate Bill 330 is it removes the public from the process by changing the definition of affected persons. Under this bill they would only be "persons who have a property interest that may be affected". Water is a public resource and its purity a public good. For that reason removing concerned members of the public runs against the principles of our democracy.

For these reasons MontPIRG urges you to table this ill conceived attempt to weaken protection of Montana's streams and rivers.

EXHIBIT 21  
DATE 3-13-95  
SB 330 & SB 331

Boussard/Reifel  
Two Heart Creek  
24425 Doney Rd.  
Arlee, MT 59821 USA  
Phone-(406)-726-3357  
Fax-(406)-726-41360

---

March 9, 1995

To: House of Representatives  
Natural Resources Committee

From: Dana Boussard, 24425 Doney Rd. Arlee, MT 59821

Re: SB 231, 349, 362, 330, 331

As a concerned Montana citizen, I am writing to urge you to vote **no** on the above Senate bills. They will degrade and destroy Montana's precious resources. All of these bills weaken Montana's strong environmental laws---laws that we citizens who deserve a clean environment for ourselves and our children, have fought for over the last 20 years.

Living in "The Last Best Place" is a honor for all of us. That name was coined by the state for its pristine qualities of air, water, and scenery.....not for its polluted air, its clearcut forests, and its dirty streams!

Please vote **NO** on these bills and save Montana's true assets! Once they are gone.....they are gone.

Thank you  
Dana Boussard

League of Women Voters  
of Montana



EXHIBIT 12  
DATE 3-13-95  
SB 330

Senate Bill 330 by Senator Snyggood  
HOUSE NATURAL RESOURCE COMMITTEE; March 13, 1995

**TESTIMONY SUBMITTED BY THE LEAGUE OF WOMEN VOTERS OF MONTANA**

We do not want to see Montana Water Quality Standards lowered and we feel this bill will do just that. Changing the definition of "high-quality water" on page two would eliminate many of the state streams, leaving them vulnerable to possible pollution. Please restore the original definition.

A change in the wording in the Nondegradation Policy section, would give economic development a higher priority than the protection of high quality waters. We believe that development should not take place if it can not be done without polluting our waters. Please restore the "HIGH QUALITY" definition.

The waters of Montana belong to all of us and it is our right and indeed, our responsibility to help protect the quality and use of this water. Please continue to give the public the right to submit comments about our water resource by restoring the original definition of "Interested Person".

On the final page, the 5 year periodical review is changed from SHALL to MAY. We feel review a vital part of monitoring our water quality and therefor should not be weakened or eliminated by the word MAY.

We urge you to restore the important language as stated above or better yet, **TABLE THIS BILL** and protect our vital and most important resource - **WATER**.

VALLA HALL  
Legislative Corps, LEVMI



March 12, 1995

Memo to: House Natural Resources Committee  
Representative Dick Knox, Chairman

Subject Senate Bill 331

I'm a retired citizen, operator of a small business near Whitefish and am representing myself and the Citizens for A Better Flathead, a public interest group of several hundred members.

We are strongly opposed to Senate Bill 331 for several reasons:

1. Montana's water , both quantity and quality, represent the most important economic asset of this State. It also represents the most fundamental element in our quality of life. Several recent surveys in Flathead County have identified preservation of water quality as the most important public concern and any degradation is damaging to our future and our children's and grandchildren's future.

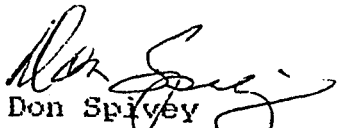
2. The proposed standards changes along with changes in the non-degradation regulations will have negative impacts such as:

- \* An increase in toxic disease causing agents for ever degrading quality of life and that is unacceptable to us.
- \* Modifying non-degradation rules which would allow for increased loading of nutrients such as Nitrogen will accelerate the degradation of lakes and streams throughout the state.
- \* This does not help maintain employment in the extractive industries, it only enables increased profits for those industries. Personnel costs are always the key cost-cutting target in any business. Automation will eliminate and change jobs in this industry independent of any legislative action.
- \* This legislation will surely damage the State's case against ARCO while at the same time this legislature is considering additional funding for that litigation--doesn't make sense. An opinion from the Attorney General on this aspect is needed.
- \* Once polluted, the recovery costs will be beyond the State's capability to fund, e.g., the ARCO site, Lake Washington-300 Million, Lake Tahoe-multiple Billions.

3. The State waters, streams, rivers, and lakes are in the public domain and are thus the private property rights of every resident of this State. Any degradation is an infringement of those rights.

We believe there is little if anything to gain from this legislation and EVERYTHING to lose thus we urge you to table it and not pass it through for House consideration.

Respectfully,



Don Spivey  
51 Penney Lane  
Columbia Falls, MT 59912  
257-0724

.cc Governor Marc Racicot



# MONTANA WILDLIFE FEDERATION

P.O. Box 1175  
Helena, MT 59624

Ph. 406-449-7604  
Fax 406-449-8946

March 13, 1995

EXHIBIT 25  
DATE 3-13-95  
SB 331

House Natural Resources Committee  
Helena, Montana

Chairman Knox and Committee Members,

I am Alan Rollo, representing the Montana Wildlife Federation. I would like to start by thanking the sponsor of SB 331 for being concerned about the business climate of this state. We do feel though that this bill has missed that mark significantly and for that reason we oppose it.

A key issue here today is why should this bill push primarily one industries agenda to impact so many other worthy businesses in Montana. This state's waters are the hub to many businesses that ensure a diversity in our economic world which makes it hard for us to see the rationale for this bill. I am not just talking small dollars here with the other businesses, I am talking major contributors to our tax base, such as: the non-resident tourism industry that brought in \$1.2 billion last year, the angler business that brings in approximately \$205 million annually, the agriculture community that irrigates over 1,700,000 acres and has over 2,500,000 head of cattle, the in-state recreational trade, other local community businesses that utilize a lot of water, let alone the communities themselves that require water for their citizens. All have one common denominator - **clean water**.

The next significant issue is the amount of water quality problems that Montana citizens are contending with, with our current water quality laws and we want to relax them more. I have brought only a few examples of where people that want the law changed have already caused significant problems to individuals water supplies which I have attached to my testimony. People can replace a lot of items that they acquire but they cannot replace their loved ones or easily clean their degraded water once contaminated.

The last key point is the fiscal requirements that apply to this bill. In a time of budget constraints why should we modify the water quality laws considerably after two years of heavy debate and numerous hearings around the state. \$116,000 to rewrite the water quality standards is a large dollar figure and then you have the major confusion as everyone tries to understand the new law, only two years after the last major rewrite of the water quality laws.

What I have mentioned today should not be considered lightly, for the businesses that I have mentioned are just a few that allow Montana to maintain a steady and healthy economic growth, not the boom and bust of earlier years seen with some industries. We must look at all businesses when we look at this bill.

So in recap, there are three key reasons that I would like to suggest, would enable this committee to feel good about tabling this bill:

1. Economics of other good businesses in Montana;
2. The health and welfare of our citizens; and
3. The time and money just spent to reaccomplish the water quality rules.

For those three reasons alone, we request that this committee table SB 331. Thank you.

Sincerely,

Alan Rollo  
Montana Wildlife Federation

**Montana Department  
of  
Fish, Wildlife & Parks**

EXHIBIT 26  
DATE 3-13-95  
SB 331



*Submitted by Jim Jensen  
Montana Environmental Systematics  
Center during SB 331 hearing.*

P.O. Box 200701  
Helena, MT 59620-0701  
(406) 444-3186  
FAX: (406) 444-4952  
March 9, 1995

Governor Racicot  
Room 204, State Capitol  
P.O. Box 200801  
Helena, MT 59620-0801

Dear Governor Racicot:

As the group you charged with developing a recovery strategy for bull trout, we are aware of a number of bills pending before the Legislature which may affect our work.

We today forward to you a memo prepared by our Scientific Group which expresses concern over four bills which may adversely impact bull trout recovery. In addition, Montana Fish, Wildlife & Parks has informed us that HB 192 may constrain our ability to work with local watershed groups in developing watershed recovery strategies. There may be other bills which will affect, positively or negatively, bull trout restoration.

We do not have the time to fully investigate each of these bills, nor do we have a structure which makes it easy to either oppose or support specific legislation. We all recognize, however, that the work of the Legislature may affect our ability to successfully complete a bull trout recovery plan. Given this, we hope that you will take your goals for bull trout recovery fully into account as you consider the merits of the laws being passed by this Legislature.

Sincerely,

*Larry Peterman*  
For / Larry Peterman, Chairman  
Bull Trout Restoration Team

/ss

3/10/95

TO: Bull Trout Restoration Group

FROM: Bull Trout Scientific Group

The Scientific Group has reviewed the implications of the following bills by discussing their content with staff of the Water Quality Bureau, Dept. of State Lands, and Fish, Wildlife and Parks and feels that they are in conflict with bull trout restoration.

The group was split on what to recommend to the Restoration Group. Generally, half of the scientific group recommends that the Governor veto these bills if they reach his desk in their present form. The other half suggest that we inform the restoration team of the problems with the bills and they decide what to recommend to the Governor.

Any other bills that will lower water quality standards, or cause land use changes that negatively impact water quality or aquatic habitat should be reviewed for their impact on bull trout. If they will potentially have negative impacts they should be dealt with in a similar fashion as the following bills.

HB201

45-55

Dept. of State Lands would be required to cut 50 Million board feet of timber annually from state owned timber lands. One important reason DSL does not cut that much now is that they take into account cumulative watershed effects, so they mitigate for surrounding land practices. If this bill passes, they will have to be more aggressive in their timber harvest. This bill ~~would~~ <sup>may</sup> make their policy for mitigation more difficult.

Bull trout are dependent on healthy watersheds, and impairment would have negative impacts to bull trout populations.

HB 263

Dept. of State Lands would have to manage their lands for maximum income to the State. DSL would have less flexibility to protect fisheries resources like they did when they made it policy not to harvest timber in SME's and to review and fix any grazing problems in bull trout streams.

SB 331

Changes the water quality standard for metals in streams from total recoverable metals to dissolved. This means that instead of acidifying the samples and extracting all of the ecologically available metals for analysis, the samples would be filtered and analyzed. Typically, this would mean some relaxation of the standard for metals. Metals in the sediments would not be included in the standards. Even though metals that are in particulate are

COPY



**PlumCreek Timber Company, L.P.**

Flathead Unit

2050 Highway 2 West P.O. Box 8990

Kalispell, MT 59904-1990

406/755-1498

March 9, 1995

The Honorable Marc Racicot  
Governor  
The State of Montana  
State Capitol Building  
Helena, Montana 59620

Dear Governor Racicot:

As a member of your Bull Trout Restoration Team, I want to share my opinion on the comments regarding pending legislation forwarded to you by the Team from our Science Group.

Based on the conversation at the Restoration Team meeting, I do not believe that either the Science Group or the Team itself have sufficient information on which to base their concerns with pending legislation. I believe that more detailed and accurate information regarding the legislation is available from the various state agencies that have evaluated these bills.

Plum Creek remains committed to working towards constructive solutions based on sound scientific analysis to recover bull trout, as evidenced by our participation on the Restoration Team as well as our research and actions on the ground.

Sincerely,

Bill Parson  
Director of Operations

# Northern Plains Resource Council

EXHIBIT 27

DATE 3-13-95

SB 331

**Testimony of Julia Page  
for the Northern Plains Resource Council  
on Senate Bill 331  
before the House Natural Resources Committee  
March 13, 1995**

Mr. Chairman, members of the Committee, for the record, my name is Julia Page. I live in Gardiner, Montana where I operate a whitewater rafting company. I am speaking today on behalf of members of the Northern Plains Resource Council.

I am here today to express our deep opposition to Senate Bill 331. Senator Beck's bill also was written by lobbyists and lawyers for the mining industry. Taken in concert with SB 330, it would remove most of the protections that have enabled Montana to retain an enormously valuable natural resource which is rapidly disappearing elsewhere - clean water.

In SB 331, the mining industry again wants to change our laws because it claims strict protection of clean water is unfair, too restrictive and too expensive. Again, I say Montana's water resources are exceptional and they require and deserve exceptional protection.

New section 2 of SB 331 requires the establishment of site-specific water quality standards at the request of members of the regulated community. The only practical reason for requesting site-specific standards is to obtain lower standards. Therefore, this provision of the bill will just make it easier for polluters to exploit Montana waters that are already damaged and continue to pollute them further. This is a direct contradiction of the goals of the federal Clean Water Act, the Montana Water Quality Act and the state Constitution which are to protect, maintain and improve water quality. (Page 4, lines 14-20)

Like its companion SB 330, this bill redefines degradation to allow more pollution of state waters. (Page 4, line 30)

SB331 changes the definition of "state waters" so if an industry or anyone impounds state water, it would no longer be protected as "state waters". Since most impoundments leak or seep into groundwater, this provision provides yet another way to hurt the quality of Montana's water. (Page 7, lines 6-7)

# MontPIRG

Montana Public Interest Research Group  
360 Corbin Hall - Missoula, MT - (406) 243-2908

Testimony Against Senate Bill 331, March 13, 1995  
Chairman Knox and members of the House Natural Resource Committee:

For the record, my name is J.V. Bennett, for the Montana Public Interest Research Group, or MontPIRG.

MontPIRG is a non-profit, non-partisan research and advocacy organization working for good government, consumer rights and sound environmental protection. MontPIRG represents over 4000 members in Montana, with 2200 student members, and is funded with membership donations.

As an organization advocating good government and sound environmental protection, MontPIRG rises in opposition to Senate Bill 331.

Senate Bill 331 would allow the pollution of Montana's waters by prohibiting the state from preventing water pollution from industrial sources. By prohibiting the state from adopting rules more stringent than federal standards without exhaustive and expensive studies, this bill is likely to doom Montana to the quality of water found in states like New Jersey.

Moreover, Senate Bill 331 would lower the acceptable cancer risk for heavy metals to 1 in 10,000 and for arsenic to 1 in 1000. This is simply an unacceptable risk to human health regardless of the purported benefits.

Senate Bill 331 also has the questionable effect of allowing the placement of wastes near water without water quality review if the placement is authorized by another permitting authority. This removes an important guarantee that potential effects to water quality by a permitted activity will be considered.

For these reasons MontPIRG urges this committee to table this attempt to weaken the laws protecting water quality.



EXHIBIT 29  
DATE 3-13-95  
SB 331 + SB 331

Dick Knox, Chairman  
House Natural Resources Committee

Mr. Chairman, members of the committee,

The Missoula City-County Health Department is opposed to those modifications included in Senate Bill 331 which substantially weaken state law. Missoula County is responsible for the operation and maintenance of 3 state permitted community sewer systems which accept and treat effluent from homes and businesses in communities such as Lolo, Clinton, El Mar Estates, and Golden West. We do everything in our power to insure that these systems are properly operated to meet State requirements, but also to guarantee that our discharge has the lowest impact on state waters that is achievable by our equipment. We view the use of our state waters for effluent discharge as a privilege that needs to be carefully protected. Residents of Missoula County place an extremely high value on the quality of our waters and we realize the fragile nature of our lakes rivers and aquifers.

Even with the current water quality rules, we know from research conducted by the Department of Fish Wildlife and Parks that the Clark Fork River in Missoula County has far fewer fish than a stream of its type should have. How can we expect to reverse this situation with a weakened water quality law?

The residents of Milltown have had to find a new source of drinking water, the water that those homes had used for decades was contaminated with arsenic. Weakening the standard for arsenic will not bring that aquifer back into use. Missoula will be saddled with the discharge of two to twenty pounds per day of arsenic for the next couple thousand years into the headwaters of the Missoula aquifer which is the sole source of drinking water for nearly sixty thousand people.

Septic systems in the Linda Vista area have seriously polluted area drinking water wells with bacteria and nitrate. In fact, roughly 25 percent of the water in these wells originated in a septic system. This bill would allow that same percentage of contamination from septic systems using level two treatment and still rank it "nonsignificant" with regard to non-degradation.

With these comments in mind we make the following recommendations for amendments to this bill:

Strike new section two in its entirety. This requires the Board of Health to adopt weakened site specific standards when someone pollutes an area so badly that it becomes a state or

federal super-fund site. It makes no sense to require a lower set of standards for those who have the greatest impact on our water resources.

Strike the amendment to the definition of non-degradation in section 3. One of the purposes of non-degradation is to provide an adequate margin of safety to prevent devastating impacts on streams or long lasting impact on aquifers. The definition in the current bill essentially a violation of a standard before degradation is deemed to have occurred.

In the amendments to the definition of "state waters" the term "privately owned" should be deleted unless we want publicly owned sewage lagoons to be considered as "state waters". Apparently the drafters of the bill forgot that public systems serve far more businesses than all the "private" systems in the state.

In section 5. (75-5-301) should be amended to read (line 25) "streams that due to natural sporadic flow, do not support an aquatic system ..." We need to be sure that we don't mandate a weakening in standards for streams that are artificially de-watered.

In section 5 (2), (A) the one in a thousand risk level for the arsenic standard should be stricken. There is no evidence to indicate that cancer for arsenic is preferable to cancer from other chemicals. Just because some carcinogens occur naturally such as arsenic, doesn't mean that we shouldn't minimize the risk when the source is caused by man as is the case in mining and arsenic. We also question lowering the risk level for other carcinogens from one-in-a-million to one-in-a-hundred-thousand.

Strike section 5 (2), (D). This section apparently limits the level of protection of any stream or lake to that of those standards set for human consumption. Please note that the human stomach can stand levels of many contaminants which are lethal to all aquatic life. This provision is contrary to the new criteria set in new section 1, which allows standards that are necessary for protection. "Equal" should be replaced with "less stringent than"

Section 5 (5), (d), (I)-(IV) sets standards for degradation from nitrate. It is important to note that the legislature would be setting aside its own non-degradation criteria in setting the standards for non-degradation at 75% of the drinking water standard. It is also a change in precedent to take the authority from the State Board of Health. Most ground waters in Missoula County are .01 milligrams per liter nitrate in their natural state. This standard allows an increase of 750 times background to be considered non-significant if level two-treatment is used. If the level-two system fails to remove nitrate as predicted, the concentration could go as high as 15 milligrams per liter, which is 50% over

the drinking water standard. From this it is apparent that the proposals do not provide an adequate margin of safety. These standards would make it legal to cause pollution such as that in Linda Vista where ground water is contaminated and unwary home buyers have been required to install public sewer at a cost of \$13,000 per home. It is our preference that the standards set by the Board of Health stand and that this section be stricken. In any case pristine waters should not be allowed to exceed 5 milligrams per liter. At a minimum (III) should be stricken.

Section 11 (75-5-605) should delete the new language "where they will" and return the old language "in a location where they are likely to". The other new language is reasonable. The old language should be retained because the new language stops the state from preventing pollution and only allows it to respond to contamination which has already occurred.

This concludes our specific comments. We respectfully to ask you to carefully consider the amount of amount of enjoyment, concern and love that Montanans have for our State waters. This bill as written, jeopardizes and, in some instances sacrifices those waters to other interests. Please don't let a few examples of regulatory mistakes cause wholesale repeal of our water law and remember that much of our states waters are still greatly diminished in quality and fisheries production due to the influences of man.

Jim Carlson



Director

Environmental Health

**League of Women Voters  
of Montana**



EXHIBIT 29  
DATE 3-13-95  
SB 331

**Senate Bill 331 by Senator Beck  
HOUSE NATURAL RESOURCE COMMITTEE: March 13 1990**

**TESTIMONY SUBMITTED BY THE LEAGUE OF WOMEN VOTERS OF MONTANA**

We are certainly in favor of making the administration of our water laws more efficient and fair, but not at the expense of weakening our Water Quality Standards, as is the intent of this bill. Requiring coordination between appropriate departments is a good idea and should benefit both the permittee and the State.

However, allowing the permittee to adopt his own standards as allowed in the Site-specific standards section is quite inappropriate.

The requirement of extensive proof, and studies to establish standards higher than federal standards are much too stringent and expensive. We have water standards appropriate for our state and these should not be lowered to the federal levels.

This bill weakens water protection by allowing one excess cancer death per 1,000 Montanans from arsenic, instead of the current cancer risk of one death in 1 million.

Again, as in several other bills, this bill favors economic development over the protection of the health of the people and the environment of Montana. What is the point of having a good job if you must sacrifice your own health or that of the people of the state so that you can't enjoy the fruits of that job?

The lack of permits and review are unacceptable. We urge you to table this bill.

**Willie Hall  
Legislative Corps, LWVMT**

330

My name is Paul Hawks. I am a third generation rancher from Melville. A little over two years ago, the State of Montana had a nondegradation policy requiring new sources of pollution to maintain existing water quality. The 1971 law hoped to maintain the high quality of Montana's waters as the state developed. We take for granted our high quality water, but it is the envy of most other states. By the 1960's, water quality in other states had become so bad that the federal Clean Water Act was passed to set minimum standards for public health. A basic tenet of that law was to maintain and improve existing water quality.

Montana also adopted that basic tenet in both its Constitution and its Water Quality Law. With no rules to implement the nondegradation policy, however, that issue came to a head last session in SB 401. Industry felt that the policy was too onerous and everyone agreed that a workable policy did not exist. After bitter debate and a two year rule making process, the State finally adopted a potentially workable process last summer, nearly a quarter century after the law was passed.

Neither side was totally happy. But the policy adopted agreed that some degradation does occur when development occurs, and it attempted to balance this with the philosophy that it was in the State's best long term interest to maintain and improve our water quality whenever possible. The policy categorically excluded many activities as "nonsignificant" and even allowed violations of the minimum standards in "mixing zones" as long as they were of the smallest practicable size. This policy has never been used, and SB 331 seeks to ensure that it never is.

Practicably this bill abandons our commitment to maintaining and improving our water quality, and will let all state water, except in national parks and wilderness areas, be degraded over time to the lowest common denominator, ie. minimum federal standards. Is this really the legacy that this committee wants to leave to future generations?

How many of you consider yourselves as conservatives? I was raised to believe that a true conservative protected the things he needed, used things wisely, and left them in as good or better shape than he found them. He was a true steward of the land and his community. He didn't take a little here, take a little there, and line his own pockets at his neighbors expense.

A lot of work went into the present policy under SB401. It has the potential to solve the contentiousness around this issue. If passed, SB 330 will let the cat out of the bag again. We'll be right back where we started and probably in court. Years away from a solution.....

**JOHN WILKINSON CONSTRUCTION**329 FLOOD ROAD  
GREAT FALLS, MONTANA 59404EXHIBIT 3/8  
DATE 3-13-95  
SB 331

March 10, 1995

Senator Tom Beck's Office  
Attn: Elaine  
Montana State Capital  
Helena, Montana

Re: SB 331

*Committee Members*

Dear [REDACTED]

I am writing you concerning Senate Bill 331 introduced by Senator Beck which I understand has been referred to the House's Natural Resources Committee. I would appreciate you forwarding this letter to the chair of that committee.

Senate Bill 331 attempts to interject some reasonableness in the Department of Health and Environmental Sciences' recent interpretation of Montana's water nondegradation law. I would like to stress the importance of passage of this bill to not only our small company and our community but no doubt to many Montanans.

We are in the planning stages of a residential development in the greater Great Falls area which would not only provide needed lots for a growing community, but would also provide direct road access (shortening the current access by 5-6 miles) from the local fire department to over 250 existing residences. Not only would public safety be enhanced, but I am told that most of those served in the area would see a significant reduction in their fire insurance premiums.

However, development is currently hindered by DHES' administrative rules enacted just last year regarding subdivisions and the nondegradation of ground water. More specifically, in determining whether to allow any subdivision, the Department requires a nitrate test of the "first water" occurring under the property no matter how insignificant the aquifer or zone of saturation nor whether the water is used for any purpose. Although the EPA drinking water standard is 10 mg/l, DHES's administrative rules prohibit any realistic development of the property if the nitrate level is greater than 5.0 mg/l. The only alternative is to obtain a permit to degrade; a process which is quite lengthy, expensive, and unlikely to result in a favorable result. I have included with this letter a copy of ARM 16.20.712, Table I, demonstrating this point.

With Senate Bill 331, as currently amended, the environmental standards become a little more reasonable. Environmental safeguards would still be required by use of a Level II type

septic system in most circumstances, and the resulting nitrogen concentration could not exceed 7.5 mg/l, still well below the EPA standard of 10 mg/l.

As a Montanan I value our quality water. I also appreciate a healthy economy. It is foolish to believe that the two are incompatible. Enactment of Senate Bill 331 would certainly maintain quality water but would also loosen the current strangle-hold on residential development.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Tim Wilkinson', written in dark ink.

Tim Wilkinson

A dark, horizontal, irregular smudge or mark, possibly a stamp or ink blot, located below the signature.

## WATER QUALITY

16.20.712

EXISTING NITROGEN CONCENTRATION IN GROUND WATER AS OF APRIL 29, 1993	PRIMARY SOURCE OF EXISTING NITROGEN	PREDICTED NITROGEN CONCENTRATION AT THE EDGE OF THE MIXING ZONE AFTER THE PROPOSED ACTIVITY	REQUIREMENTS FOR NONSIGNIFICANCE FOR HUMAN WASTE DISPOSAL	REQUIREMENTS FOR NONSIGNIFICANCE FOR DISPOSAL OF OTHER WASTES
< 2.5 MG/L	HUMAN WASTE	< 2.5 MG/L	NONE	NONE
		2.5 < 5.0 MG/L	LEVEL 2 TREATMENT	NONE
		5 < 7.5	SIGNIFICANT	SECONDARY TREATMENT AS DEFINED BY THE DEPARTMENT
	OTHER	< 5.0 MG/L	NONE	NONE
		5 < 7.5 MG/L	LEVEL 2 TREATMENT	SECONDARY TREATMENT AS DEFINED BY THE DEPARTMENT
		7.5 < 10	SIGNIFICANT	SIGNIFICANT
2.5-5.0 MG/L	HUMAN WASTE	< 5 MG/L	LEVEL 2 TREATMENT	SECONDARY TREATMENT AS DEFINED BY THE DEPARTMENT
		5 < 7.5	SIGNIFICANT	SECONDARY TREATMENT AS DEFINED BY THE DEPARTMENT
	OTHER	< 5	NONE	NONE
		5 < 7.5	LEVEL 2 TREATMENT	SECONDARY TREATMENT AS DEFINED BY THE DEPARTMENT
		> 7.5	SIGNIFICANT	SIGNIFICANT
* 5.0-7.5	HUMAN WASTE	ANY INCREASE	SIGNIFICANT	SIGNIFICANT
	OTHER	< 7.5	LEVEL 2 TREATMENT	SECONDARY TREATMENT AS DEFINED BY THE DEPARTMENT
		7.5	SIGNIFICANT	SIGNIFICANT
> 7.5	ANY	ANY INCREASE	SIGNIFICANT	SIGNIFICANT
		10 or greater	NOT ALLOWED VIOLATES STANDARDS	NOT ALLOWED VIOLATES STANDARDS
ANY LEVEL	ANY	NO CHANGE	NOT SIGNIFICANT	NOT SIGNIFICANT



Proposed Amendments to SB 331  
Third Reading Copy, As Amended

1. Page 4, line 14

Following: "life."

Insert: "(1)"

2. Page 4, line 15

Following: "chapter,"

Insert: "and except as provided in subsection (2)."

3. Page 4, line 20

Following: "criteria."

Insert: "(2) If the department, based upon its review of an application submitted under subsection (1) and sound scientific, technical and available site-specific evidence, determines that the development of site-specific criteria in accordance with draft or final federal regulations, guidelines, or criteria would not be protective of beneficial uses, the department, within 90 days of the submission of an application under subsection (1), shall notify the applicant in writing of its determination and of all additional procedures the applicant must comply with in the development of site-specific standards of water quality under this section. If there is a dispute between the department and the applicant as to the additional procedures, the board shall, on the request of the department or the applicant, hear and determine the dispute. The board's decision must be based on sound scientific, technical and available site specific evidence."

4. Page 4, line 30

Strike: "~~for a parameter~~ FOR A PARAMETER IF THAT CHANGE IS LIKELY TO AFFECT A BENEFICIAL USE"

Insert: "for a parameter"

5. Page 7, lines 25 - 28

Strike: "The department shall coordinate permit proceedings under this chapter with permit proceedings involving the same project conducted by the department of state lands under Title 82, chapter 4, and by the department of natural resources and conservation under Title 75, chapter 20, FOLLOWING THE TIME SCHEDULE OF THE LEAD AGENCY."

Insert: "When the department's review of a permit application submitted under another chapter is required or requested, the department will coordinate the review with the review conducted by the agency or unit under the other chapter following the time schedule for that review."

6. Page 8, line 30

Following: "FOR"

Strike: "MEASURING"

7. Page 8, line 30

Following: "CARCINOGENS"

Strike: "IN SURFACE WATER"

8. Page 9, line 4

Strike: Subsection (B) in its entirety

Renumber: subsequent subsections

9. Page 9, line 8

Following: "(D)"

Insert: "Notwithstanding subsection (A) above,"

10. Page 13, line 3

Following: "(I)"

Insert: "THE DISCHARGE DOES NOT CONTAIN INDUSTRIAL WASTE, SEWAGE,  
OR OTHER WASTES,  
(II)"

11. Page 13, line 4

Following: "PARAMETERS"

Delete: ": OR"

Insert: ": AND"

12. Page 13, line 5

Strike: "(II)"

Insert: "(III)"

13. Page 17, line 29

Following: "account"

Strike: "AND THE COURT SHALL CONSIDER"

14. Page 19, line 15

Following: "CLAUSE."

Strike: "SECTION 75-5-614 DOES NOT AFFECT PROCEEDINGS THAT WERE  
BEGUN BEFORE [THE EFFECTIVE DATE OF THIS ACT]."

Insert: "THIS ACT DOES NOT APPLY TO CIVIL OR ADMINISTRATIVE  
ACTIONS COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS ACT OR TO  
CLAIMS MADE IN THOSE ACTIONS, EXCEPT THAT COMPLIANCE PLANS  
RESULTING FROM SUCH ACTIONS MUST REFLECT CHANGES MADE BY THIS ACT."

15. Page 19

Following: Section 18

Insert: "NEW SECTION. SECTION 19. COORDINATION INSTRUCTION. IF  
SB 330 IS PASSED AND APPROVED AND IF IT INCLUDES A SECTION THAT  
AMENDS 75-5-103(4), DEFINITION OF "DEGRADATION", THEN THE  
DEFINITION OF DEGRADATION PROVIDED IN SECTION 3 OF THIS ACT SHALL  
PREVAIL, AND THE DEFINITION PROVIDED IN SB 330 IS VOID."

-End-

DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL SCIENCES  
DIRECTOR'S OFFICE

EXHIBIT 32  
DATE 3-13-95  
HBES 521

COGSWELL BUILDING  
1400 BROADWAY  
PO BOX 200901



STATE OF MONTANA

(406) 444-2544 (OFFICE)  
(406) 444-1804 (FAX)

HELENA, MONTANA 59620-0901

March 6, 1995

Representative Doug Wagner  
H.D. 93/95  
House of Representatives  
State Capitol  
Helena, Montana 59620

RE: HB 521 - Update to Fiscal Impact Statement

Dear Representative Wagner,

In response to your request to provide an update to the fiscal impact HB 521 will have on the Department of Health and Environmental Sciences (DHES) given the amendments that have been offered and agreed to, the following is provided.

For background purposes, I think that it is safe to re-project fiscal impact on the basis of the following assumptions which, in my judgement, were conceptually agreed to by all parties during last Wednesday's noon hour meeting of your subcommittee:

1. That the amendments prepared by Mr. Kakuk, a copy of which is attached, will be adopted by the full committee.
2. That added to those amendments will be a provision that stipulates that retroactive petitions challenging rules already in effect, can only impact rules promulgated from January 1, 1990 forward to the effective date of this act.
3. That rules that are reviewable under the provisions of this act, prospectively or retrospectively, are those rules where there is a direct comparable set of federal rules or guidelines.
4. That it is not the intent of the bill to force the DHES to justify whether or not federal rules and regulations are sufficient to protect public health. Reasons of protecting public health and the environment are only at issue if the Board or Department promulgates rules more stringent than the federal counterpart.
5. That the intent of the bill is to require either the Board or the Department, when promulgating rules that are more stringent, to produce a formal findings statement that is supported by the documentation required in the

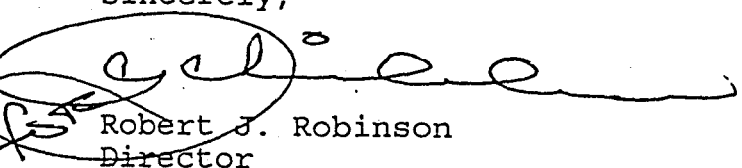
amended version of the bill. The bill does not require the department to engage in costly scientific and economic research other than to justify its actions on the basis of available validated research from other sources.

Given the above, HB 521, as it was conceptually presented last Wednesday, would have a minimal fiscal impact on the department and its resources. However, if the bill changes substantially in its final form and from the assumptions listed above, then the fiscal impact would again have to be reevaluated.

Please keep in mind that this assessment is being provided at your request in order to benefit the work of your subcommittee in completing its assignment to resolve many of the complex problematic issues contained in the bill. A formal fiscal impact statement would normally come through the budget office for their review and subsequent approval. Once the bill is formally amended and passed out in a second reading version, then a formal impact statement can be produced through the budget office.

I trust that this information is sufficient for your needs at this time. If you have need for additional information or assistance, please do not hesitate to request such through my office.

Sincerely,



Robert J. Robinson  
Director

Department of Health and Environmental Sciences

Encl:

cc: Dave Lewis, OBPP  
Michael Kakuk, EQC

75  
EXHIBIT 34 HB0521.01  
DATE 3-13-95  
HB 521

1 **DISCUSSION DRAFT -- 2**

2 HOUSE BILL NO. 521

3 INTRODUCED BY  
4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_

7 A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROHIBITING~~ REQUIRING CERTAIN  
8 STATE ADMINISTRATIVE AND LOCAL AGENCY AGENCIES TO JUSTIFY THE ADOPTION  
9 OF RULES FROM BEING THAT ARE MORE STRINGENT THAN CORRESPONDING  
10 COMPARABLE FEDERAL REGULATIONS OR GUIDELINES; REQUIRING THE BOARD OF  
11 HEALTH AND ENVIRONMENTAL SCIENCES ~~AND~~ THE DEPARTMENT OF HEALTH AND  
12 ENVIRONMENTAL SCIENCES, AND LOCAL UNITS OF GOVERNMENT TO REVIEW AND  
13 REVISE CERTAIN RULES TO ENSURE COMPLIANCE WITH THIS ACT; ~~CREATING AN~~  
14 ~~AFFIRMATIVE DEFENSE FOR VIOLATIONS OF CERTAIN RULES MORE STRINGENT~~  
15 ~~THAN CORRESPONDING FEDERAL RULES~~; AMENDING SECTIONS 50-2-116,  
16 75-2-111, 75-2-301, 75-2-503, 75-3-201, 75-5-201, 75-5-311, 75-6-103,  
17 75-10-204, 75-10-405, AND 75-10-603, 76-3-501, 76-3-504, 76-4-107, AND  
18 80-15-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

19  
20 WHEREAS, the federal government frequently regulates areas that  
21 are also subject to state regulation; and

22 WHEREAS, differing state and federal policy goals and unique  
23 state prerogatives frequently result in different levels of  
24 regulation, different standards, and different requirements being  
25 imposed by state and federal programs covering the same subject  
26 matter; and

27 WHEREAS, Montana must simultaneously move toward reducing  
28 redundant and unnecessary regulation that dulls the state's  
29 competitive advantage while being ever vigilant in the protection of  
30 the public's health, safety, and welfare; and

31 WHEREAS, Montana's administrative agencies should consider

1 applicable federal standards when adopting, readopting, or amending  
2 rules with analogous federal counterparts; and

3 WHEREAS, Montana's administrative agencies should analyze whether  
4 analogous federal standards sufficiently protect the health, safety,  
5 and welfare of Montana's citizens; and

6 WHEREAS, as part of the formal rulemaking process, the public  
7 should be advised of the agencies' conclusions about whether  
8 comparable federal regulations or guidelines sufficiently protect the  
9 health, safety, and welfare of Montana citizens.

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#### STATEMENT OF INTENT

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A statement of intent is required for this bill in order to  
provide guidance to the board of health and environmental sciences and  
to the department of health and environmental sciences, AND TO LOCAL  
UNITS OF GOVERNMENT in complying with [this act].

The legislature intends that in addition to all requirements  
imposed by existing law and rules, the board or the department include  
as part of the initial publication and all subsequent publications of  
a rule a ~~statement as to whether~~ WRITTEN FINDING IF the rule in  
question contains any ~~standards~~ REGULATIONS or ~~requirements~~ GUIDELINES  
that exceed the ~~standards~~ REGULATIONS or ~~requirements~~ GUIDELINES  
imposed by COMPARABLE federal law.

If the rules are more stringent than COMPARABLE federal law, the  
~~statement~~ WRITTEN FINDING must include but is not limited to a  
discussion of the policy reasons and a ~~risk cost~~ AN analysis that  
supports the board's or department's decision ~~to impose the~~ THAT THE  
PROPOSED STATE standards or requirements and also supports the fact  
~~that the state standards or requirements to be imposed are achievable~~  
~~under current technology, notwithstanding the federal government's~~  
~~determination that lesser standards or requirements are appropriate.~~

~~The risk cost analysis must address the probability of harm to~~

1 ~~public health or the environment under the conditions imposed by the~~  
 2 ~~federal standards, the reduction in that probability of harm because~~  
 3 ~~of imposition of stricter state standards, and the costs required of~~  
 4 ~~the regulated community to mitigate the harm to public health or the~~  
 5 ~~environment via the stricter state standards.~~

6 ~~{This act}~~ is PROTECT PUBLIC HEALTH OR THE ENVIRONMENT OF THE  
 7 STATE AND THAT THE STATE STANDARD OR REQUIREMENT TO BE IMPOSED CAN  
 8 MITIGATE HARM TO THE PUBLIC HEALTH OR ENVIRONMENT AND IS ACHIEVABLE  
 9 UNDER CURRENT TECHNOLOGY. THE DEPARTMENT IS NOT REQUIRED TO SHOW THAT  
 10 THE FEDERAL REGULATION IS INADEQUATE TO PROTECT PUBLIC HEALTH. THE  
 11 WRITTEN FINDING MUST ALSO INCLUDE INFORMATION FROM THE HEARING RECORD  
 12 REGARDING THE COSTS TO THE REGULATED COMMUNITY DIRECTLY ATTRIBUTABLE  
 13 TO THE PROPOSED STATE STANDARD.

14 [SECTIONS 1 THROUGH 3] ARE intended to apply to any rule that is  
 15 adopted, readopted, or amended under the authority of or in order to  
 16 implement, comply with, or participate in any program established  
 17 under federal law or under a state statute that incorporates or refers  
 18 to federal law, federal standards, or federal requirements under Title  
 19 75, chapter 2; TITLE 75, CHAPTER 3, Title 75, chapter 5; Title 75,  
 20 chapter 6; or Title 75, chapter 10. [SECTIONS 4 AND 5] APPLY TO LOCAL  
 21 UNITS OF GOVERNMENT WHEN THEY ATTEMPT TO REGULATE THE CONTROL AND  
 22 DISPOSAL OF SEWAGE FROM PRIVATE AND PUBLIC BUILDINGS. [THIS ACT] IS  
 23 NOT INTENDED TO APPLY TO THE ESTABLISHMENT OR SETTING OF FEES.

24  
 25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

26  
 27 NEW SECTION. Section 1. State standards REGULATIONS no more  
 28 stringent than federal standards REGULATIONS OR GUIDELINES. (1)  
 29 Except as provided in subsections (2) through {6} (5), unless required  
 30 by state law, the board may not adopt a rule to implement this chapter  
 31 that is more stringent than the corresponding COMPARABLE federal

1 regulations OR GUIDELINES that address the same circumstances. The  
2 board may incorporate by reference ~~corresponding~~ COMPARABLE federal  
3 regulations OR GUIDELINES.

4 (2) The board may adopt a rule to implement this chapter that  
5 is more stringent than ~~corresponding~~ COMPARABLE federal regulations  
6 or GUIDELINES ~~adopt rules when there are no corresponding federal~~  
7 ~~regulations only if the board makes a written finding after a public~~  
8 ~~hearing and public comment and based on evidence in the record that~~  
9 ~~the corresponding federal regulations are not adequate to protect~~  
10 ~~public health or the environment of the state. This finding must be~~  
11 ~~accompanied by a summarizing conclusion statement referring to and~~  
12 ~~evaluating the probability of harm to public health or the environment~~  
13 ~~at the level of the federal rule or regulation and the specific~~  
14 ~~improvement in the public health or environment from the stricter~~  
15 ~~state rule. The statement must reference information and studies~~  
16 ~~contained in the record that form the basis for the board's~~  
17 ~~conclusion.~~

18 ~~(3) The summarizing conclusion statement must include but is not~~  
19 ~~limited to a discussion of the policy reasons and a risk cost analysis~~  
20 ~~that supports the board's decision to impose the standards or~~  
21 ~~requirements and also supports the fact that the state standard or~~  
22 ~~requirement to be imposed can mitigate the increased probability of~~  
23 ~~harm to the public health or environment and is achievable under~~  
24 ~~current technology, notwithstanding the federal government's~~  
25 ~~determination that lesser standards or requirements are appropriate~~  
26 ~~and protective of public health or the environment.~~

27 ~~(4) If the board, upon petition by any person affected by a rule~~  
28 ~~of the board, identifies rules more stringent than federal regulations~~  
29 ~~or identifies rules for which there are no corresponding federal~~  
30 ~~regulations, the board shall review and revise those rules to comply~~  
31 ~~with this section within 9 months of the filing of the petition.~~



~~(5) a person who is issued a notice of violation or a denial of a permit or other approval based on a rule that is more stringent than a corresponding federal regulation or for which there is no corresponding regulation may assert a partial defense to that notice or a partial challenge to that denial on the basis and to the extent that the rule violates this section because it imposes requirements more stringent than the federal regulations, unless the more stringent rule was adopted in compliance with this section.~~

~~(6) (a) The board shall review and propose revisions to its rules to ensure compliance with this section by October 1, 1995. The board shall revise its rules to comply with this section by October 1, 1996.~~

~~(b) The board may propose and adopt revisions to its rules prior to the dates specified in subsection (6)(a) upon petition for rulemaking by a person as provided under 2-4-315 and subsection (4) of this section. :~~

(A) THE PROPOSED STATE STANDARD PROTECTS PUBLIC HEALTH OR THE ENVIRONMENT OF THE STATE; AND

(B) THAT THE STATE STANDARD OR REQUIREMENT TO BE IMPOSED CAN MITIGATE HARM TO THE PUBLIC HEALTH OR ENVIRONMENT AND IS ACHIEVABLE UNDER CURRENT TECHNOLOGY.

(3) THE WRITTEN FINDING MUST REFERENCE INFORMATION AND ANY PEER REVIEWED SCIENTIFIC STUDY CONTAINED IN THE RECORD THAT FORMS THE BASIS FOR THE BOARD'S CONCLUSION. THE WRITTEN FINDING MUST ALSO INCLUDE INFORMATION FROM THE HEARING RECORD REGARDING THE COSTS TO THE REGULATED COMMUNITY DIRECTLY ATTRIBUTABLE TO THE PROPOSED STATE STANDARD.

(4) (A) A PERSON AFFECTED BY A RULE OF THE BOARD ADOPTED AFTER JANUARY 1, 1990 AND BEFORE [THE EFFECTIVE DATE OF THIS ACT] THAT THAT PERSON BELIEVES TO BE MORE STRINGENT THAN COMPARABLE FEDERAL REGULATIONS OR GUIDELINES MAY PETITION THE BOARD TO REVIEW THE RULE.

1 IF THE BOARD DETERMINES THAT THE RULE IS MORE STRINGENT THAN  
 2 COMPARABLE FEDERAL REGULATIONS OR GUIDELINES, THE BOARD SHALL COMPLY  
 3 WITH THIS SECTION BY EITHER REVISING THE RULE TO CONFORM TO THE  
 4 FEDERAL REGULATION OR GUIDELINE OR BY MAKING THE WRITTEN FINDING AS  
 5 PROVIDED UNDER SUBSECTION (2) WITHIN A REASONABLE PERIOD OF TIME NOT  
 6 TO EXCEED 12 MONTHS AFTER RECEIVING THE PETITION. A PETITION UNDER  
 7 THIS SECTION DOES NOT RELIEVE THE PETITIONER OF THE DUTY TO COMPLY  
 8 WITH THE CHALLENGED RULE. THE BOARD MAY CHARGE A PETITION FILING FEE  
 9 IN AN AMOUNT NOT TO EXCEED \$250.

10 (B) A PERSON MAY ALSO PETITION THE BOARD FOR A RULE REVIEW UNDER  
 11 SUBSECTION (4) (A) IF THE BOARD ADOPTS A RULE AFTER JANUARY 1, 1990  
 12 WHERE NO FEDERAL REGULATION OR GUIDELINE EXISTED AND THE FEDERAL  
 13 GOVERNMENT SUBSEQUENTLY ESTABLISHES A COMPARABLE REGULATION OR  
 14 GUIDELINE THAT IS LESS STRINGENT THAN THE PREVIOUSLY ADOPTED BOARD  
 15 RULE.

16 (5) THIS SECTION DOES NOT APPLY TO A RULE ADOPTED UNDER THE  
 17 EMERGENCY RULEMAKING PROVISIONS OF 2-4-303(1).

18  
 19 NEW SECTION. Section 2. State ~~standards~~ REGULATIONS no more  
 20 stringent than federal ~~standards~~ REGULATIONS OR GUIDELINES. (1)  
 21 Except as provided in subsections (2) through ~~(6)~~ (5), unless required  
 22 by state law, the board OR DEPARTMENT may not adopt a rule to  
 23 implement this chapter that is more stringent than the ~~corresponding~~  
 24 COMPARABLE federal regulations OR GUIDELINES that address the same  
 25 circumstances. The board OR DEPARTMENT may incorporate by reference  
 26 ~~corresponding~~ COMPARABLE federal regulations OR GUIDELINES.

27 (2) The board OR DEPARTMENT may adopt a rule to implement this  
 28 chapter that is more stringent than ~~corresponding~~ COMPARABLE federal  
 29 regulations or GUIDELINES ~~adopt rules when there are no corresponding~~  
 30 ~~federal regulations~~ only if the board OR DEPARTMENT makes a written  
 31 finding after a public hearing and public comment and based on

1 evidence in the record that the corresponding federal regulations are  
2 not adequate to protect public health or the environment of the state.  
3 This finding must be accompanied by a summarizing conclusion statement  
4 referring to and evaluating the probability of harm to public health  
5 or the environment at the level of the federal rule or regulation and  
6 the specific improvement in the public health or environment from the  
7 stricter state rule. The statement must reference information and  
8 studies contained in the record that form the basis for the board's  
9 conclusion.

10 (3) The summarizing conclusion statement must include but is not  
11 limited to a discussion of the policy reasons and a risk cost analysis  
12 that supports the board's decision to impose the standards or  
13 requirements and also supports the fact that the state standard or  
14 requirement to be imposed can mitigate the increased probability of  
15 harm to the public health or environment and is achievable under  
16 current technology, notwithstanding the federal government's  
17 determination that lesser standards or requirements are appropriate  
18 and protective of public health or the environment.

19 (4) If the board, upon petition by any person affected by a rule  
20 of the board, identifies rules more stringent than federal regulations  
21 or identifies rules for which there are no corresponding federal  
22 regulations, the board shall review and revise those rules to comply  
23 with this section within 9 months of the filing of the petition.

24 (5) a person who is issued a notice of violation or a denial of  
25 a permit or other approval based on a rule that is more stringent than  
26 a corresponding federal regulation or for which there is no  
27 corresponding regulation may assert a partial defense to that notice  
28 or a partial challenge to that denial on the basis and to the extent  
29 that the rule violates this section because it imposes requirements  
30 more stringent than the federal regulations, unless the more stringent  
31 rule was adopted in compliance with this section.

~~(6) (a) The board shall review and propose revisions to its rules to ensure compliance with this section by October 1, 1995. The board shall revise its rules to comply with this section by October 1, 1996.~~

~~(b) The board may propose and adopt revisions to its rules prior to the dates specified in subsection (6)(a) upon petition for rulemaking by a person as provided under 2-4-315 and subsection (4) of this section. :~~

(A) THE PROPOSED STATE STANDARD PROTECTS PUBLIC HEALTH OR THE ENVIRONMENT OF THE STATE; AND

(B) THAT THE STATE STANDARD OR REQUIREMENT TO BE IMPOSED CAN MITIGATE HARM TO THE PUBLIC HEALTH OR ENVIRONMENT AND IS ACHIEVABLE UNDER CURRENT TECHNOLOGY.

(3) THE WRITTEN FINDING MUST REFERENCE INFORMATION AND ANY PEER REVIEWED SCIENTIFIC STUDY CONTAINED IN THE RECORD THAT FORMS THE BASIS FOR THE BOARD'S OR DEPARTMENT'S CONCLUSION. THE WRITTEN FINDING MUST ALSO INCLUDE INFORMATION FROM THE HEARING RECORD REGARDING THE COSTS TO THE REGULATED COMMUNITY DIRECTLY ATTRIBUTABLE TO THE PROPOSED STATE STANDARD.

(4) (A) A PERSON AFFECTED BY A RULE OF THE BOARD OR DEPARTMENT ADOPTED AFTER JANUARY 1, 1990 AND BEFORE [THE EFFECTIVE DATE OF THIS ACT] THAT THAT PERSON BELIEVES TO BE MORE STRINGENT THAN COMPARABLE FEDERAL REGULATIONS OR GUIDELINES MAY PETITION THE BOARD OR DEPARTMENT TO REVIEW THE RULE. IF THE BOARD OR DEPARTMENT DETERMINES THAT THE RULE IS MORE STRINGENT THAN COMPARABLE FEDERAL REGULATIONS OR GUIDELINES, THE BOARD OR DEPARTMENT SHALL COMPLY WITH THIS SECTION BY EITHER REVISING THE RULE TO CONFORM TO THE FEDERAL REGULATION OR GUIDELINE OR BY MAKING THE WRITTEN FINDING AS PROVIDED UNDER SUBSECTION (2) WITHIN A REASONABLE PERIOD OF TIME NOT TO EXCEED 12 MONTHS AFTER RECEIVING THE PETITION. A PETITION UNDER THIS SECTION DOES NOT RELIEVE THE PETITIONER OF THE DUTY TO COMPLY WITH THE

1 CHALLENGED RULE. THE BOARD OR DEPARTMENT MAY CHARGE A PETITION FILING  
 2 FEE IN AN AMOUNT NOT TO EXCEED \$250.

3 (B) A PERSON MAY ALSO PETITION THE BOARD OR DEPARTMENT FOR A  
 4 RULE REVIEW UNDER SUBSECTION (4)(A) IF THE BOARD OR DEPARTMENT ADOPTS  
 5 A RULE AFTER JANUARY 1, 1990 WHERE NO FEDERAL REGULATION OR GUIDELINE  
 6 EXISTED AND THE FEDERAL GOVERNMENT SUBSEQUENTLY ESTABLISHES A  
 7 COMPARABLE REGULATION OR GUIDELINE THAT IS LESS STRINGENT THAN THE  
 8 PREVIOUSLY ADOPTED BOARD OR DEPARTMENT RULE.

9 (5) THIS SECTION DOES NOT APPLY TO A RULE ADOPTED UNDER THE  
 10 EMERGENCY RULEMAKING PROVISIONS OF 2-4-303(1).

11

12 NEW SECTION. Section 3. State standards REGULATIONS no more  
 13 stringent than federal standards REGULATIONS OR GUIDELINES. (1)  
 14 Except as provided in subsections (2) through ~~(6)~~ (5), unless required  
 15 by state law, the department may not adopt a rule to implement this  
 16 chapter that is more stringent than the ~~corresponding~~ COMPARABLE  
 17 federal regulations OR GUIDELINES that address the same circumstances.  
 18 The department may incorporate by reference ~~corresponding~~ COMPARABLE  
 19 federal regulations OR GUIDELINES.

20 (2) The department may adopt a rule to implement this chapter  
 21 that is more stringent than ~~corresponding~~ COMPARABLE federal  
 22 regulations or GUIDELINES ~~adopt rules when there are no corresponding~~  
 23 ~~federal regulations~~ only if the department makes a written finding  
 24 after a public hearing and public comment and based on evidence in the  
 25 record that ~~the corresponding federal regulations are not adequate to~~  
 26 ~~protect public health or the environment of the state. This finding~~  
 27 ~~must be accompanied by a summarizing conclusion statement referring~~  
 28 ~~to and evaluating the probability of harm to public health or the~~  
 29 ~~environment at the level of the federal rule or regulation and the~~  
 30 ~~specific improvement in the public health or environment from the~~  
 31 ~~stricter state rule. The statement must reference information and~~

1 ~~studies contained in the record that form the basis for the board's~~  
2 ~~conclusion.~~

3 ~~(3) The summarizing conclusion statement must include but is not~~  
4 ~~limited to a discussion of the policy reasons and a risk cost analysis~~  
5 ~~that supports the board's decision to impose the standards or~~  
6 ~~requirements and also supports the fact that the state standard or~~  
7 ~~requirement to be imposed can mitigate the increased probability of~~  
8 ~~harm to the public health or environment and is achievable under~~  
9 ~~current technology, notwithstanding the federal government's~~  
10 ~~determination that lesser standards or requirements are appropriate~~  
11 ~~and protective of public health or the environment.~~

12 ~~(4) If the board, upon petition by any person affected by a rule~~  
13 ~~of the board, identifies rules more stringent than federal regulations~~  
14 ~~or identifies rules for which there are no corresponding federal~~  
15 ~~regulations, the board shall review and revise those rules to comply~~  
16 ~~with this section within 9 months of the filing of the petition.~~

17 ~~(5) a person who is issued a notice of violation or a denial of~~  
18 ~~a permit or other approval based on a rule that is more stringent than~~  
19 ~~a corresponding federal regulation or for which there is no~~  
20 ~~corresponding regulation may assert a partial defense to that notice~~  
21 ~~or a partial challenge to that denial on the basis and to the extent~~  
22 ~~that the rule violates this section because it imposes requirements~~  
23 ~~more stringent than the federal regulations, unless the more stringent~~  
24 ~~rule was adopted in compliance with this section.~~

25 ~~(6) (a) The board shall review and propose revisions to its~~  
26 ~~rules to ensure compliance with this section by October 1, 1995. The~~  
27 ~~board shall revise its rules to comply with this section by October~~  
28 ~~1, 1996.~~

29 ~~(b) The board may propose and adopt revisions to its rules prior~~  
30 ~~to the dates specified in subsection (6)(a) upon petition for~~  
31 ~~rulemaking by a person as provided under 2-4-315 and subsection (4)~~

1 ~~of this section.~~ :

2 (A) THE PROPOSED STATE STANDARD PROTECTS PUBLIC HEALTH OR THE  
3 ENVIRONMENT OF THE STATE; AND

4 (B) THAT THE STATE STANDARD OR REQUIREMENT TO BE IMPOSED CAN  
5 MITIGATE HARM TO THE PUBLIC HEALTH OR ENVIRONMENT AND IS ACHIEVABLE  
6 UNDER CURRENT TECHNOLOGY.

7 (3) THE WRITTEN FINDING MUST REFERENCE INFORMATION AND ANY PEER  
8 REVIEWED SCIENTIFIC STUDY CONTAINED IN THE RECORD THAT FORMS THE BASIS  
9 FOR THE DEPARTMENT'S CONCLUSION. THE WRITTEN FINDING MUST ALSO  
10 INCLUDE INFORMATION FROM THE HEARING RECORD REGARDING THE COSTS TO THE  
11 REGULATED COMMUNITY DIRECTLY ATTRIBUTABLE TO THE PROPOSED STATE  
12 STANDARD.

13 (4) (A) A PERSON AFFECTED BY A RULE OF THE DEPARTMENT ADOPTED  
14 AFTER JANUARY 1, 1990 AND BEFORE [THE EFFECTIVE DATE OF THIS ACT] THAT  
15 THAT PERSON BELIEVES TO BE MORE STRINGENT THAN COMPARABLE FEDERAL  
16 REGULATIONS OR GUIDELINES MAY PETITION DEPARTMENT TO REVIEW THE RULE.  
17 IF THE DEPARTMENT DETERMINES THAT THE RULE IS MORE STRINGENT THAN  
18 COMPARABLE FEDERAL REGULATIONS OR GUIDELINES, THE DEPARTMENT SHALL  
19 COMPLY WITH THIS SECTION BY EITHER REVISING THE RULE TO CONFORM TO THE  
20 FEDERAL REGULATION OR GUIDELINE OR BY MAKING THE WRITTEN FINDING AS  
21 PROVIDED UNDER SUBSECTION (2) WITHIN A REASONABLE PERIOD OF TIME NOT  
22 TO EXCEED 12 MONTHS AFTER RECEIVING THE PETITION. A PETITION UNDER  
23 THIS SECTION DOES NOT RELIEVE THE PETITIONER OF THE DUTY TO COMPLY  
24 WITH THE CHALLENGED RULE. THE DEPARTMENT MAY CHARGE A PETITION FILING  
25 FEE IN AN AMOUNT NOT TO EXCEED \$250.

26 (B) A PERSON MAY ALSO PETITION THE DEPARTMENT FOR A RULE REVIEW  
27 UNDER SUBSECTION (4) (A) IF THE DEPARTMENT ADOPTS AFTER JANUARY 1, 1990  
28 A RULE WHERE NO FEDERAL REGULATION OR GUIDELINE EXISTED AND THE  
29 FEDERAL GOVERNMENT SUBSEQUENTLY ESTABLISHES A COMPARABLE REGULATION  
30 OR GUIDELINE THAT IS LESS STRINGENT THAN THE PREVIOUSLY ADOPTED  
31 DEPARTMENT RULE.

1        (5) THIS SECTION DOES NOT APPLY TO A RULE ADOPTED UNDER THE  
2        EMERGENCY RULEMAKING PROVISIONS OF 2-4-303(1).

3  
4        NEW SECTION.    Section 4. Local regulations no more stringent  
5        than state regulations or guidelines. (1) After [the effective date  
6        of this act], except as provided in subsections (2) through (4) and  
7        unless required by state law, the local board may not adopt a rule  
8        under 50-2-116(1)(i), (2)(k)(iii), or (2)(k)(v) that is more stringent  
9        than the comparable state regulations or guidelines that address the  
10       same circumstances. The local board may incorporate by reference  
11       comparable state regulations or guidelines.

12       (2) The local board may adopt a rule to implement 50-2-  
13       116(1)(i), (2)(k)(iii), or (2)(k)(v) that is more stringent than  
14       comparable state regulations or guidelines only if the local board  
15       makes a written finding after a public hearing and public comment and  
16       based on evidence in the record that:

17       (a) the proposed local standard protects public health or the  
18       environment; and

19       (b) that the local board standard or requirement to be imposed  
20       can mitigate harm to the public health or environment and is  
21       achievable under current technology.

22       (3) The written finding must reference information and any peer  
23       reviewed scientific study contained in the record that forms the basis  
24       for the local board's conclusion. The written finding must also  
25       include information from the hearing record regarding the costs to the  
26       regulated community directly attributable to the proposed local  
27       standard.

28       (4) (a) A person affected by a rule of the local board adopted  
29       after January 1, 1990 and before [the effective date of this act] that  
30       that person believes to be more stringent than comparable state  
31       regulations or guidelines may petition the local board to review the



1 rule. If the local board determines that the rule is more stringent  
2 than comparable state regulations or guidelines, the local board shall  
3 comply with this section by either revising the rule to conform to the  
4 state regulation guideline or by making the written finding as  
5 provided under subsection (2) within a reasonable period of time not  
6 to exceed 12 months after receiving the petition. A petition under  
7 this section does not relieve the petitioner of the duty to comply  
8 with the challenged rule. The local board may charge a petition  
9 filing fee in an amount not to exceed \$250.

10 (b) A person may also petition the local board for a rule review  
11 under subsection (4) (a) if the local board adopts a rule after January  
12 1, 1990 where no state regulation or guideline existed and the state  
13 government subsequently establishes a comparable regulation or  
14 guideline that is less stringent than the previously adopted local  
15 board rule.

16  
17 NEW SECTION. Section 5. Local regulations no more stringent  
18 than state regulations or guidelines. (1) After [the effective date  
19 of this act], except as provided in subsections (2) through (4) and  
20 unless required by state law, a governing body may not adopt a rule  
21 under 76-3-501 or 76-3-504(5)(c) that is more stringent than the  
22 comparable state regulations or guidelines that address the same  
23 circumstances. The governing body may incorporate by reference  
24 comparable state regulations or guidelines.

25 (2) The governing body may adopt a rule to implement 76-3-501  
26 or 76-3-504(5)(c) that is more stringent than comparable state  
27 regulations or guidelines only if the governing body makes a written  
28 finding after a public hearing and public comment and based on  
29 evidence in the record that:

30 (a) the proposed local standard protects public health or the  
31 environment; and

1 (b) that the local board standard or requirement to be imposed  
2 can mitigate harm to the public health or environment and is  
3 achievable under current technology.

4 (3) The written finding must reference information and any peer  
5 reviewed scientific study contained in the record that forms the basis  
6 for the governing body's conclusion. The written finding must also  
7 include information from the hearing record regarding the costs to the  
8 regulated community directly attributable to the proposed local  
9 standard.

10 (4) (a) A person affected by a rule of the governing body  
11 adopted after January 1, 1990 and before [the effective date of this  
12 act] that that person believes to be more stringent than comparable  
13 state regulations or guidelines may petition the governing body to  
14 review the rule. If the governing body determines that the rule is  
15 more stringent than comparable state regulations or guidelines, the  
16 governing body shall comply with this section by either revising the  
17 rule to conform to the state regulation or guideline or by making the  
18 written finding as provided under subsection (2) within a reasonable  
19 period of time not to exceed 12 months after receiving the petition.  
20 A petition under this section does not relieve the petitioner of the  
21 duty to comply with the challenged rule. The governing body may  
22 charge a petition filing fee in an amount not to exceed \$250.

23 (b) A person may also petition the governing body for a rule  
24 review under subsection (4)(a) if the governing body adopts a rule  
25 after January 1, 1990 where no state regulation or guideline existed  
26 and the state government subsequently establishes a comparable  
27 regulation or guideline that is less stringent than the previously  
28 adopted governing body rule.

29

30 **Section 6.** Section 50-2-116, MCA, is amended to read:

31 **50-2-116. Powers and duties of local boards.** (1) Local boards shall:

1 (a) appoint a local health officer who is a physician or a  
2 person with a master's degree in public health or the equivalent and  
3 with appropriate experience, as determined by the department, and  
4 shall fix his salary;

5 (b) elect a chairman and other necessary officers;

6 (c) employ necessary qualified staff;

7 (d) adopt bylaws to govern meetings;

8 (e) hold regular meetings quarterly and hold special meetings  
9 as necessary;

10 (f) supervise destruction and removal of all sources of filth  
11 that cause disease;

12 (g) guard against the introduction of communicable disease;

13 (h) supervise inspections of public establishments for sanitary  
14 conditions;

15 (i) subject to the provisions of [section 4], adopt necessary  
16 regulations that are no less stringent than state standards for the  
17 control and disposal of sewage from private and public buildings that  
18 is not regulated by Title 75, chapter 6, or Title 76, chapter 4. The  
19 regulations must describe standards for granting variances from the  
20 minimum requirements that are identical to standards promulgated by  
21 the board of health and environmental sciences and must provide for  
22 appeal of variance decisions to the department as required by  
23 75-5-305.

24 (2) Local boards may:

25 (a) quarantine persons who have communicable diseases;

26 (b) require isolation of persons or things that are infected  
27 With communicable diseases;

28 (c) furnish treatment for persons who have communicable  
29 diseases;

30 (d) prohibit the use of places that are infected with  
31 communicable diseases;

1 (e) require and provide means for disinfecting places that are  
2 infected with communicable diseases;

3 (f) accept and spend funds received from a federal agency, the  
4 state, a school district, or other persons;

5 (g) contract with another local board for all or a part of local  
6 health services;

7 (h) reimburse local health officers for necessary expenses  
8 incurred in official duties;

9 (i) abate nuisances affecting public health and safety or bring  
10 action necessary to restrain the violation of public health laws or  
11 rules;

12 (j) adopt necessary fees to administer regulations for the  
13 control and disposal of sewage from private and public buildings (fees  
14 must be deposited with the county treasurer);

15 (k) adopt rules that do not conflict with rules adopted by the  
16 department:

17 (i) for the control of communicable diseases;

18 (ii) for the removal of filth that might cause disease or  
19 adversely affect public health;

20 (iii) subject to the provisions of [section 4], on sanitation  
21 in public buildings that affects public health;

22 (iv) for heating, ventilation, water supply, and waste disposal  
23 in public accommodations that might endanger human lives; and

24 (v) subject to the provisions of [section 4], for the  
25 maintenance of sewage treatment systems that do not discharge an  
26 effluent directly into state waters and that are not required to have  
27 an operating permit as required by rules adopted under 75-5-401.

28

29 **Section 7.** Section 75-2-111, MCA, is amended to read:

30 **"75-2-111. Powers of board.** The board shall, subject to the  
31 provisions of [section 2]:

1       (1) adopt, amend, and repeal rules for the administration,  
2 implementation, and enforcement of this chapter, for issuing orders  
3 under and in accordance with 42 U.S.C. 7419, and for fulfilling the  
4 requirements of 42 U.S.C. 7420 and regulations adopted pursuant  
5 thereto;

6       (2) hold hearings relating to any aspect of or matter in the  
7 administration of this chapter at a place designated by the board. The  
8 board may compel the attendance of witnesses and the production of  
9 evidence at hearings. The board shall designate an attorney to assist  
10 in conducting hearings and shall appoint a reporter who ~~shall~~ must be  
11 present at all hearings and take full stenographic notes of all  
12 proceedings ~~thereat~~, transcripts of which will be available to the  
13 public at cost.

14       (3) issue orders necessary to effectuate the purposes of this  
15 chapter;

16       (4) by rule require access to records relating to emissions;

17       (5) by rule adopt a schedule of fees required for permits and  
18 permit applications, consistent with this chapter;

19       (6) have the power to issue orders under and in accordance with  
20 42 U.S.C. 7419."

21

22       Section 8. Section 75-2-301, MCA, is amended to read:

23       "75-2-301. Local air pollution control programs. (1) After  
24 public hearing, a municipality or county may establish and administer  
25 a local air pollution control program if the program is consistent  
26 with this chapter and is approved by the board.

27       (2) If a local air pollution control program established by a  
28 county encompasses all or part of a municipality, the county and each  
29 municipality shall approve the program in accordance with subsection  
30 (1).

31       (3) (a) Except as provided in subsection (4), the board by

order may approve a local air pollution control program that:

~~(a)~~(i) provides by ordinance or local law for requirements compatible with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402, and rules adopted under these sections;

~~(b)~~(ii) provides for the enforcement of requirements established under subsection (3)(a)(i) by appropriate administrative and judicial processes; and

~~(c)~~(iii) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit fee provisions of 75-2-220. The permit fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of permitting activities.

(b) Board approval of an ordinance or local law that is more stringent than the corresponding COMPARABLE state law or for which no state law exists is not subject to the provisions of [section 2].

(4) Except for those emergency powers provided for in 75-2-402, the board may not delegate to a local air pollution control program the authority to control any air pollutant source that:

(a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;

(b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or

(c) has the potential to emit 250 tons per year or more of any pollutant subject to regulation under this chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air pollution control program prior to January 1, 1991.

1       (5) If the board finds that the location, character, or extent  
2 of particular concentrations of population, air pollutant sources, or  
3 geographic, topographic, or meteorological considerations or any  
4 combination of these ~~are such as to~~ make impracticable the maintenance  
5 of appropriate levels of air quality without an areawide air pollution  
6 control program, the board may determine the boundaries within which  
7 the program is necessary and require it as the only acceptable  
8 alternative to direct state administration.

9       (6) If the board has reason to believe that any part of an air  
10 pollution control program in force under this section is either  
11 inadequate to prevent and control air pollution in the jurisdiction  
12 to which the program relates or is being administered in a manner  
13 inconsistent with this chapter, the board shall, on notice, conduct  
14 a hearing on the matter.

15       (7) If, after the hearing, the board determines that any part  
16 of the program is inadequate to prevent and control air pollution in  
17 the jurisdiction to which it relates or that it is not accomplishing  
18 the purposes of this chapter, it shall require that necessary  
19 corrective measures be taken within a reasonable time, not to exceed  
20 60 days.

21       (8) If the jurisdiction fails to take these measures within the  
22 time required, the department shall administer within that  
23 jurisdiction all of the provisions of this chapter, including the  
24 terms contained in any applicable board order, that are necessary to  
25 correct the deficiencies found by the board. The department's control  
26 program supersedes all municipal or county air pollution laws, rules,  
27 ordinances, and requirements in the affected jurisdiction. The cost  
28 of the department's action is a charge on the jurisdiction.

29       (9) If the board finds that the control of a particular air  
30 pollutant source because of its complexity or magnitude is beyond the  
31 reasonable capability of the local jurisdiction or may be more

1 efficiently and economically performed at the state level, it may  
 2 direct the department to assume and retain control over that air  
 3 pollutant source. A charge may not be assessed against the  
 4 jurisdiction. Findings made under this subsection may be either on the  
 5 basis of the nature of the sources involved or on the basis of their  
 6 relationship to the size of the communities in which they are located.

7 (10) A jurisdiction in which the department administers all or  
 8 part of its air pollution control program under subsection (8) may,  
 9 with the approval of the board, establish or resume an air pollution  
 10 control program that meets the requirements of subsection (3).

11 (11) A municipality or county may administer all or part of its  
 12 air pollution control program in cooperation with one or more  
 13 municipalities or counties of this state or of other states."

14

15 **Section 9.** Section 75-2-503, MCA, is amended to read:

16 **"75-2-503. Rulemaking authority -- issuance of permits.** (1) The  
 17 department shall, subject to the provisions of [section 2], adopt  
 18 rules establishing standards and procedures for accreditation of  
 19 asbestos-related occupations and control of the work performed by  
 20 persons in asbestos-related occupations. The rules must be consistent  
 21 with federal law and include but are not limited to:

22 (a) standards for training course review and approval;

23 (b) standards for accreditation of applicants for  
 24 asbestos-related occupations;

25 (c) examination requirements for accreditation of applicants for  
 26 asbestos-related occupations;

27 (d) requirements for renewal of accreditation, including  
 28 periodic refresher courses;

29 (e) revocation of accreditation;

30 (f) inspection requirements for asbestos projects and  
 31 asbestos-related occupations credentials;



(g) criteria to determine whether and what type of control measures are necessary for an asbestos project and whether a project is completed in a manner sufficient to protect public health, including criteria setting allowable limits on indoor airborne asbestos. A determination of whether asbestos abatement of a structure is necessary may not be based solely upon the results of airborne asbestos testing.

(h) requirements for issuance of asbestos project permits and conditions that permitholders shall meet;

(i) standards for seeking injunctions, criminal and civil penalties, or emergency actions;

(j) advance notification procedures and issuance of permits for asbestos projects; and

(k) fees, which must be commensurate with costs, for:

(i) review and approval of training courses;

(ii) application for and renewal of accreditation by a person seeking to pursue an asbestos-related occupation;

(iii) issuance of asbestos project permits; and

(iv) requested inspections of asbestos projects.

(2) For asbestos projects having a cost of \$3,000 or less, the department shall issue asbestos project permits within 7 calendar days following the receipt of a properly completed permit application and the appropriate fee."

Section 10. Section 75-3-201, MCA, is amended to read:

"75-3-201. State radiation control agency. (1) The department is the state radiation control agency.

(2) Under the laws of this state, the department may employ, compensate, and prescribe the powers and duties of the individuals ~~which that~~ are necessary to carry out this chapter.

(3) The department may, subject to the provisions of [section

1 31. for the protection of the occupational and public health and  
2 safety:

3 (a) develop and conduct programs for evaluation and control of  
4 hazards associated with the use of sources of ionizing radiation;

5 (b) develop programs and adopt rules with due regard for  
6 compatibility with federal programs for licensing and regulation of  
7 byproduct, source, radioactive waste, and special nuclear materials  
8 and other radioactive materials. These rules ~~shall~~ must cover  
9 equipment and facilities, methods for transporting, handling, and  
10 storage of radioactive materials, permissible levels of exposure,  
11 technical qualifications of personnel, required notification of  
12 accidents and other incidents involving radioactive materials, survey  
13 methods and results, methods of disposal of radioactive materials,  
14 posting and labeling of areas and sources, and methods and  
15 effectiveness of controlling individuals in posted and restricted  
16 areas.

17 (c) adopt rules relating to control of other sources of ionizing  
18 radiation. These rules ~~shall~~ must cover equipment and facilities,  
19 permissible levels of exposure to personnel, posting of areas,  
20 surveys, and records.

21 (d) advise, consult, and cooperate with other agencies of the  
22 state, the federal government, other states, interstate agencies,  
23 political subdivisions, and groups concerned with control of sources  
24 of ionizing radiation;

25 (e) accept and administer loans, grants, or other funds or  
26 gifts, conditional or otherwise, in furtherance of its functions, from  
27 the federal government and from other sources, public or private;

28 (f) encourage, participate in, or conduct studies,  
29 investigations, training, research, and demonstrations relating to  
30 control of sources of ionizing radiation;

31 (g) collect and disseminate information relating to control of

1 sources of ionizing radiation, including:

2 (i) maintenance of a file of all license applications,  
3 issuances, denials, amendments, transfers, renewals, modifications,  
4 suspensions, and revocations;

5 (ii) maintenance of a file of registrants possessing sources of  
6 ionizing radiation requiring registration under this chapter and any  
7 administrative or judicial action pertaining ~~thereto~~ to this chapter;

8 (iii) maintenance of a file of all rules relating to regulation  
9 of sources of ionizing radiation, pending or adopted, and proceedings  
10 ~~thereon~~."

11  
12 Section 11. Section 75-5-201, MCA, is amended to read:

13 "75-5-201. Board rules authorized. (1) The board shall, subject  
14 to the provisions of [section 1], adopt rules for the administration  
15 of this chapter.

16 (2) The board's rules may include a fee schedule or system for  
17 assessment of administrative penalties as provided under 75-5-611."

18  
19 Section 12. Section 75-5-311, MCA, is amended to read:

20 "75-5-311. Local water quality districts -- board approval --  
21 local water quality programs. (1) A county that establishes a local  
22 water quality district according to the procedures specified in Title  
23 7, chapter 13, part 45, shall, in consultation with the department,  
24 undertake planning and information-gathering activities necessary to  
25 develop a proposed local water quality program.

26 (2) A county may implement a local water quality program in a  
27 local water quality district if the program is approved by the board  
28 after a hearing conducted under 75-5-202.

29 (3) In approving a local water quality program, the board shall  
30 determine that the program is consistent with the purposes and  
31 requirements of Title 75, chapter 5, and that the program will be

1 effective in protecting, preserving, and improving the quality of  
2 surface water and ground water, considering the administrative  
3 organization, staff, and financial and other resources available to  
4 implement the program.

5 (4) Subject to the board's approval, the commissioners and the  
6 governing bodies of cities and towns that participate in a local water  
7 quality district may adopt local ordinances to regulate the following  
8 specific facilities and sources of pollution:

9 (a) onsite waste water disposal facilities;

10 (b) storm water runoff from paved surfaces;

11 (c) service connections between buildings and publicly owned  
12 sewer mains;

13 (d) facilities that use or store halogenated and nonhalogenated  
14 solvents, including hazardous substances that are referenced in 40 CFR  
15 261.31, United States environmental protection agency hazardous waste  
16 numbers F001 through F005, as amended; and

17 (e) internal combustion engine lubricants.

18 (5) (a) For the facilities and sources of pollution included in  
19 subsection (4) and consistent with the provisions of subsection (6),  
20 the local ordinances may:

21 ~~(a)~~ (i) be compatible with or more stringent or more extensive  
22 than the requirements imposed by 75-5-304, 75-5-305, and 75-5-401  
23 through 75-5-404 and rules adopted under those sections to protect  
24 water quality, establish waste discharge permit requirements, and  
25 establish best management practices for substances that have the  
26 potential to pollute state waters;

27 ~~(b)~~ (ii) provide for administrative procedures, administrative  
28 orders and actions, and civil enforcement actions that are consistent  
29 with 75-5-601 through 75-5-604, 75-5-611 through 75-5-616, 75-5-621,  
30 and 75-5-622 and rules adopted under those sections; and

31 ~~(c)~~ (iii) provide for civil penalties not to exceed \$1,000 per

1 violation, provided that each day of violation of a local ordinance  
2 constitutes a separate violation, and criminal penalties not to exceed  
3 \$500 per day of violation or imprisonment for not more than 30 days,  
4 or both.

5 (b) Board approval of an ordinance or local law that is more  
6 stringent than the corresponding COMPARABLE state law or for which no  
7 state law exists is not subject to the provisions of [section 1].

8 (6) The local ordinances authorized by this section may not:

9 (a) duplicate the department's requirements and procedures  
10 relating to permitting of waste discharge sources and enforcement of  
11 water quality standards;

12 (b) regulate any facility or source of pollution to the extent  
13 that the facility or source is:

14 (i) required to obtain a permit or other approval from the  
15 department or federal government or is the subject of an  
16 administrative order, a consent decree, or an enforcement action  
17 pursuant to Title 75, chapter 5, part 4; Title 75, chapter 6; Title  
18 75, chapter 10; the federal Comprehensive Environmental Response,  
19 Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675,  
20 as amended; or federal environmental, safety, or health statutes and  
21 regulations;

22 (ii) exempted from obtaining a permit or other approval from the  
23 department because the facility or source is required to obtain a  
24 permit or other approval from another state agency or is the subject  
25 of an enforcement action by another state agency; or

26 (iii) subject to the provisions of Title 80, chapter 8 or  
27 chapter 15.

28 (7) If the boundaries of a district are changed after the board  
29 has approved the local water quality program for the district, the  
30 board of directors of the local water quality district shall submit  
31 a program amendment to the board and obtain the board's approval of

1 the program amendment before implementing the local water quality  
2 program in areas that have been added to the district.

3 (8) The department shall monitor the implementation of local  
4 water quality programs to ensure that the programs are adequate to  
5 protect, preserve, and improve the quality of the surface water and  
6 ground water and are being administered in a manner consistent with  
7 the purposes and requirements of Title 75, chapter 5. If the  
8 department finds that a local water quality program is not adequate  
9 to protect, preserve, and improve the quality of the surface water and  
10 ground water or is not being administered in a manner consistent with  
11 the purposes and requirements of Title 75, chapter 5, the department  
12 shall report to the board.

13 (9) If the board determines that a local water quality program  
14 is inadequate to protect, preserve, and improve the quality of the  
15 surface water and ground water in the local water quality district or  
16 that the program is being administered in a manner inconsistent with  
17 Title 75, chapter 5, the board shall give notice and conduct a hearing  
18 on the matter.

19 (10) If after the hearing the board determines that the program  
20 is inadequate to protect, preserve, and improve the quality of the  
21 surface water and ground water in the local water quality district or  
22 that it is not being administered in a manner consistent with the  
23 purposes of Title 75, chapter 5, the board shall require that  
24 necessary corrective measures be taken within a reasonable time, not  
25 to exceed 60 days.

26 (11) If an ordinance adopted under this section conflicts with  
27 a requirement imposed by the department's water quality program, the  
28 department's requirement supersedes the local ordinance.

29 (12) If the board finds that, because of the complexity or  
30 magnitude of a particular water pollution source, the control of the  
31 source is beyond the reasonable capability of a local water quality

1 district or may be more efficiently and economically performed at the  
2 state level, the board may direct the department to assume and retain  
3 control over the source. A charge may not be assessed against the  
4 local water quality district for that source. Findings made under this  
5 subsection may be based on the nature of the source involved or on the  
6 source's relationship to the size of the community in which it is  
7 located."

8  
9 Section 13. Section 75-6-103, MCA, is amended to read:

10 "75-6-103. Duties of ~~the~~ board. (1) The board has general  
11 supervision over all state waters ~~which~~ that are directly or  
12 indirectly being used by a person for a public water supply system or  
13 domestic purposes or as a source of ice.

14 (2) The board shall, subject to the provisions of [section 1],  
15 adopt rules and standards concerning:

16 (a) maximum contaminant levels for waters that are or will be  
17 used for a public water supply system;

18 (b) fees, as described in 75-6-108, for services rendered by the  
19 department;

20 (c) monitoring, recordkeeping, and reporting by persons who own  
21 or operate a public water supply system;

22 (d) requiring public notice to all users of a public water  
23 supply system when a person has been granted a variance or exemption  
24 or is in violation of this part or a rule or order issued pursuant to  
25 this part;

26 (e) the issuance of licenses by the department to laboratories  
27 that conduct analysis of public water supply systems;

28 (f) the siting, construction, operation, and modification of a  
29 public water supply system or public sewage system;

30 (g) the review of financial viability of a proposed public water  
31 supply system or public sewage system, as necessary to ensure the

1 capability of the system to meet the requirements of this part;

2 (h) the collection and analysis of samples of water used for  
3 drinking or domestic purposes;

4 (i) the issuance of variances and exemptions as authorized by  
5 the federal Safe Drinking Water Act and this part;

6 (j) administrative enforcement procedures and administrative  
7 penalties authorized under this part; and

8 (k) any other requirement necessary for the protection of public  
9 health as described in this part.

10 (3) The board may issue orders necessary to fully implement the  
11 provisions of this part."

12

13 **Section 14.** Section 75-10-204, MCA, is amended to read:

14 **"75-10-204. Powers and duties of department.** The department  
15 shall, subject to the provisions of [section 3], adopt rules governing  
16 solid waste management systems ~~which shall~~ that must include but are  
17 not limited to:

18 (1) requirements for the plan of operation and maintenance that  
19 must be submitted with an application under this part;

20 (2) the classification of disposal sites according to the  
21 physical capabilities of the site to contain the type of solid waste  
22 to be disposed of;

23 (3) the procedures to be followed in the disposal, treatment,  
24 or transport of solid wastes;

25 (4) the suitability of the site from a public health standpoint  
26 when hydrology, geology, and climatology are considered;

27 (5) requirements relating to ground water monitoring, including  
28 but not limited to:

29 (a) information that owners and operators of municipal solid  
30 waste landfills and other disposal sites specified in 75-10-207 must  
31 submit to the department to enable the department to prepare the



1 priority compliance list authorized by 75-10-207(3);

2 (b) the content of plans for the design, construction,  
3 operation, and maintenance of monitoring wells and monitoring systems;  
4 and

5 (c) recordkeeping and reporting;

6 (6) fees related to the review of solid waste management system  
7 license applications;

8 (7) the renewal of solid waste management system licenses and  
9 related fees;

10 (8) a quarterly fee based on the justifiable direct and indirect  
11 costs to the state of administering Title 75, chapter 10, parts 1 and  
12 2, for solid waste generated outside Montana and disposed of or  
13 incinerated within Montana.; ~~These rules must be adopted by August 1,~~  
14 ~~1993.~~

15 (9) any other factors relating to the sanitary disposal or  
16 management of solid wastes."

17

18 Section 15. Section 75-10-405, MCA, is amended to read:

19 "75-10-405. Administrative rules. (1) The department may,  
20 subject to the provisions of [section 3], adopt, amend, or repeal  
21 rules governing hazardous waste, including but not limited to the  
22 following:

23 (a) identification and classification of those hazardous wastes  
24 subject to regulation and those that are not;

25 (b) requirements for the proper treatment, storage,  
26 transportation, and disposal of hazardous waste;

27 (c) requirements for siting, design, operation, maintenance,  
28 monitoring, inspection, closure, postclosure, and reclamation of  
29 hazardous waste management facilities;

30 (d) requirements for the issuance, denial, reissuance,  
31 modification, and revocation of permits for hazardous waste management

1 facilities;

2 (e) requirements for corrective action within and outside of  
3 facility boundaries and for financial assurance of that corrective  
4 action;

5 (f) requirements for manifests and the manifest system for  
6 tracking hazardous waste and for reporting and recordkeeping by  
7 generators, transporters, and owners and operators of hazardous waste  
8 management facilities;

9 (g) requirements for training of facility personnel and for  
10 financial assurance of facility owners and operators and for liability  
11 of guarantors providing financial assurance;

12 (h) requirements for registration of generators and  
13 transporters;

14 (i) establishing a schedule of fees and procedures for the  
15 collection of fees for:

16 (i) the filing and review of hazardous waste management facility  
17 permits as provided in 75-10-432;

18 (ii) hazardous waste management as provided in 75-10-433;

19 (iii) the reissuance and modification of hazardous waste  
20 management facility permits; and

21 (iv) the registration of hazardous waste generators;

22 (j) a schedule of fees to defray a portion of the costs of  
23 establishing, operating, and maintaining any state hazardous waste  
24 management facility authorized by 75-10-412;

25 (k) requirements for availability to the public of information  
26 obtained by the department regarding facilities and sites used for the  
27 treatment, storage, and disposal of hazardous wastes;

28 (l) procedures for the assessment of administrative penalties  
29 as authorized by 75-10-424; and

30 (m) other rules ~~which~~ that are necessary to obtain and maintain  
31 authorization under the federal program.

1       (2) The department may not adopt rules under this part that are  
2 more restrictive than those promulgated by the federal government  
3 under the Resource Conservation and Recovery Act of 1976, as amended,  
4 except that the department:

5       (a) may require the registration of transporters not otherwise  
6 required to register with the state of Montana pursuant to the federal  
7 Resource Conservation and Recovery Act of 1976, as amended;

8       (b) may require generators and facilities to report on an annual  
9 rather than on a biennial basis;

10      (c) may adopt requirements for the prevention and correction of  
11 leakage from underground storage tanks, including:

12          (i) reporting by owners and operators;

13          (ii) financial responsibility;

14          (iii) release detection, prevention, and corrective action;

15          (iv) standards for design, construction, installation, and  
16 closure;

17          (v) development of a schedule of fees, not to exceed \$50 for a  
18 tank over 1,100 gallons and not to exceed \$20 for a tank 1,100 gallons  
19 or less, per tank, for tank notification and permits to defray state  
20 and local costs of implementing an underground storage tank program;

21          (vi) a penalty schedule and a system for assessment of  
22 administrative penalties, notice, and appeals under 75-10-423; and

23          (vii) delegation of authority and funds to local agents for  
24 inspections and implementation. The delegation of authority to local  
25 agents must complement and may not duplicate existing authority for  
26 implementation of rules adopted by the department of justice that  
27 relate to underground storage tanks.

28      (d) may adopt regulatory requirements for hazardous waste  
29 transfer facilities;

30      (e) shall require the owner or manager of any proposed  
31 commercial facility for the storage, collection, or transfer of

hazardous waste to conduct a public hearing, as provided for in 75-10-441; and

(f) may adopt rules and performance standards for industrial furnaces and boilers that burn hazardous wastes. The rules and performance standards:

(i) may be adopted if there are no federal regulations; or

(ii) may be more restrictive than federal regulations.

~~(3) If the department adopts rules under subsection (2) that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended, the department shall comply with the provisions of [section 3] if it receives a petition as provided under [section 3(4)].~~"

**Section 16.** Section 75-10-603, MCA, is amended to read:

**"75-10-603. Cooperative agreement -- authority of department.**

(1) In order to assist in implementation of CERCLA, the department may, subject to the provisions of [section 3]:

(a) participate in the determination of appropriate remedial action to deal with the release or threatened release within Montana of:

(i) any contaminant presenting an imminent and substantial danger to public health or welfare; or

(ii) any hazardous substance;

(b) in the event of the release or threatened release of any of the substances described in subsection (1)(a), negotiate the terms of a cooperative agreement with the federal government containing mutual commitments of each party to remedial action, including the elements required by subsection (2).

(2) A cooperative agreement may contain the following assurances:

(a) the state of Montana will ~~assure~~ ensure the future

1 maintenance of the removal and remedial actions agreed upon for the  
2 expected life of the actions;

3 (b) a hazardous waste disposal facility is available to the  
4 state of Montana that meets the specifications of the president and  
5 complies with the requirements of subtitle C of the federal Solid  
6 Waste Disposal Act for necessary offsite storage, destruction,  
7 treatment, or secure disposition of the hazardous substances; and

8 (c) the state of Montana will pay or ~~assure~~ ensure payment of  
9 a share of the costs of the remedial action, including all future  
10 maintenance."

11 Section 17. Section 76-3-501, MCA, is amended to read:

12 "76-3-501. Local subdivision regulations. (1) Before July 1,  
13 1974, the governing body of every county, city, and town shall adopt  
14 and provide for the enforcement and administration of subdivision  
15 regulations reasonably providing for the orderly development of their  
16 jurisdictional areas; for the coordination of roads within subdivided  
17 land with other roads, both existing and planned; for the dedication  
18 of land for roadways and for public utility easements; for the  
19 improvement of roads; for the provision of adequate open spaces for  
20 travel, light, air, and recreation; for the provision of adequate  
21 transportation, water, and drainage, and ; subject to the provisions  
22 of [section 5], for the regulation of sanitary facilities; for the  
23 avoidance or minimization of congestion; and for the avoidance of  
24 subdivision which would involve unnecessary environmental degradation  
25 and the avoidance of danger of injury to health, safety, or welfare  
26 by reason of natural hazard or the lack of water, drainage, access,  
27 transportation, or other public services or would necessitate an  
28 excessive expenditure of public funds for the supply of such services.

29 (2) Review and approval or disapproval of a subdivision under  
30 this chapter may occur only under those regulations in effect at the  
31 time an application for approval of a preliminary plat or for an

1 extension under 76-3-610 is submitted to the governing body."  
2

3 **Section 18.** Section 76-3-504, MCA, is amended to read:

4 **"76-3-504. Minimum requirements for subdivision regulations.** The  
5 subdivision regulations adopted under this chapter shall, at a  
6 minimum:

7 (1) require the subdivider to submit to the governing body an  
8 environmental assessment as prescribed in 76-3-603;

9 (2) establish procedures consistent with this chapter for the  
10 submission and review of subdivision plats;

11 (3) prescribe the form and contents of preliminary plats and the  
12 documents to accompany final plats;

13 (4) provide for the identification of areas which, because of  
14 natural or ~~man-caused~~ human-caused hazards, are unsuitable for  
15 subdivision development and prohibit subdivisions in these areas  
16 unless the hazards can be eliminated or overcome by approved  
17 construction techniques;

18 (5) prohibit subdivisions for building purposes in areas located  
19 within the floodway of a flood of 100-year frequency as defined by  
20 Title 76, chapter 5, or determined to be subject to flooding by the  
21 governing body;

22 (6) prescribe standards for:

23 (a) the design and arrangement of lots, streets, and roads;

24 (b) grading and drainage;

25 (c) subject to the provisions of [section 5], water supply and  
26 sewage and solid waste disposal ~~which that~~, at a minimum, meet the  
27 regulations adopted by the department of health and environmental  
28 sciences under 76-4-104;

29 (d) the location and installation of utilities;

30 (7) provide procedures for the administration of the park and  
31 open-space requirements of this chapter;

1       (8) provide for the review of preliminary plats by affected  
2 public utilities and those agencies of local, state, and federal  
3 government having a substantial interest in a proposed subdivision;  
4 such utility or agency review may not delay the governing body's  
5 action on the plat beyond the time limits specified in this chapter,  
6 and the failure of any agency to complete a review of a plat may not  
7 be a basis for rejection of the plat by the governing body."

8  
9       Section 19. Section 76-4-104, MCA, is amended to read:

10       "76-4-104. Rules for administration and enforcement. (1) The  
11 department shall, subject to the provisions of [section 3], adopt  
12 reasonable rules, including adoption of sanitary standards, necessary  
13 for administration and enforcement of this part.

14       (2) The rules and standards shall provide the basis for  
15 approving subdivision plats for various types of water, sewage  
16 facilities, and solid waste disposal, both public and private, and  
17 shall be related to size of lots, contour of land, porosity of soil,  
18 ground water level, distance from lakes, streams, and wells, type and  
19 construction of private water and sewage facilities, and other factors  
20 affecting public health and the quality of water for uses relating to  
21 agriculture, industry, recreation, and wildlife.

22       (3) The rules shall provide for the review of the following  
23 divisions of land by a local department or board of health, as  
24 described in Title 50, chapter 2, part 1, if the local department or  
25 board of health employs a registered sanitarian or a registered  
26 professional engineer and if the department certifies under subsection  
27 (4) that the local department or board is competent to review these  
28 divisions of land:

29       (a) divisions of land containing five or fewer parcels, whenever  
30 each parcel will contain individual onsite water and sewage disposal  
31 facilities; and

1 (b) divisions of land proposed to connect to existing municipal  
2 water and waste water systems previously approved by the department,  
3 if no extension of the systems is required.

4 (4) The department shall also adopt standards and procedures for  
5 certification and maintaining certification to ensure that a local  
6 department or board of health is competent to review the divisions of  
7 land described in subsection (3).

8 (5) The department shall review those divisions of land  
9 described in subsection (3) if:

10 (a) a proposed division of land lies within more than one  
11 jurisdictional area and the respective governing bodies are in  
12 disagreement concerning approval of or conditions to be imposed on the  
13 proposed subdivision; or

14 (b) the local department or board of health elects not to be  
15 certified.

16 (6) The rules shall further provide for:

17 (a) the furnishing to the reviewing authority of a copy of the  
18 plat and other documentation showing the layout or plan of  
19 development, including:

20 (i) total development area;

21 (ii) total number of proposed dwelling units;

22 (b) adequate evidence that a water supply that is sufficient in  
23 terms of quality, quantity, and dependability will be available to  
24 ensure an adequate supply of water for the type of subdivision  
25 proposed;

26 (c) evidence concerning the potability of the proposed water  
27 supply for the subdivision;

28 (d) adequate evidence that a sewage disposal facility is  
29 sufficient in terms of capacity and dependability;

30 (e) standards and technical procedures applicable to storm  
31 drainage plans and related designs, in order to insure proper drainage



1 ways;

2 (f) standards and technical procedures applicable to sanitary  
3 sewer plans and designs, including soil percolation testing and  
4 required percolation rates and site design standards for on-lot sewage  
5 disposal systems when applicable;

6 (g) standards and technical procedures applicable to water  
7 systems;

8 (h) standards and technical procedures applicable to solid waste  
9 disposal;

10 (i) requiring evidence to establish that, if a public sewage  
11 disposal system is proposed, provision has been made for the system  
12 and, if other methods of sewage disposal are proposed, evidence that  
13 the systems will comply with state and local laws and regulations  
14 which are in effect at the time of submission of the preliminary or  
15 final plan or plat.

16 (7) If the reviewing authority is a local department or board  
17 of health, it shall, upon approval of a division of land under this  
18 part, notify the department of the approval and submit to the  
19 department a copy of the approval statement.

20 (8) Review and certification or denial of certification that a  
21 division of land is not subject to sanitary restrictions under this  
22 part may occur only under those rules in effect at the time plans and  
23 specifications are submitted to the department, except in cases where  
24 current rules would preclude the use for which the lot was originally  
25 intended, the applicable requirements in effect at the time such lot  
26 was recorded must be applied. In the absence of specific requirements,  
27 minimum standards necessary to protect public health and water quality  
28 will apply.

29

30 Section 20. Section 80-15-105, MCA, is amended to read:

31 "80-15-105. Rulemaking. (1) The board shall, subject to the

1 provisions of [section 1], adopt rules for the administration of this  
2 chapter for which the board and the department of health and  
3 environmental sciences have responsibility. These rules must include  
4 but are not limited to:

5 (a) standards and interim numerical standards for agricultural  
6 chemicals in ground water as authorized by 80-15-201;

7 (b) procedures for ground water monitoring as authorized by  
8 80-15-202 and 80-15-203;

9 (c) field and laboratory operational quality assurance, quality  
10 control, and confirmatory procedures as authorized by 80-15-107,  
11 80-15-202, and 80-15-203, which may include, through adoption by  
12 reference, procedures that have been established or approved by EPA  
13 for quality assurance and quality control;

14 (d) standards for maintaining the confidentiality of data and  
15 information declared confidential by EPA and the confidentiality of  
16 chemical registrant data and information protected from disclosure by  
17 federal or state law as required by 80-15-108; and

18 (e) administrative civil penalties as authorized by 80-15-412.

19 (2) The department shall adopt rules necessary to carry out its  
20 responsibilities under this chapter. These rules must include but are  
21 not limited to:

22 (a) procedures for ground water monitoring as authorized by  
23 80-15-202 and 80-15-203;

24 (b) the content and procedures for development of agricultural  
25 chemical ground water management plans, including the content of best  
26 management practices and best management plans, procedures for  
27 obtaining comments from the department of health and environmental  
28 sciences on the plans, and the adoption of completed plans and plan  
29 modifications as authorized by 80-15-211 through 80-15-218;

30 (c) standards for maintaining the confidentiality of data and  
31 information declared confidential by EPA and of chemical registrant

1 data and information protected from disclosure by federal or state law  
2 as required by 80-15-108;

3 (d) field and laboratory operational quality assurance, quality  
4 control, and confirmatory procedures as authorized by 80-15-107,  
5 80-15-202, and 80-15-203, which may include, through adoption by  
6 reference, procedures that have been established or approved by EPA  
7 for quality assurance and quality control;

8 (e) emergency procedures as authorized by 80-15-405;

9 (f) procedures for issuance of compliance orders as authorized  
10 by 80-15-403; and

11 (g) procedures for the assessment of administrative civil  
12 penalties as authorized by 80-15-412.

13  
14 NEW SECTION. Section 21. Codification instructions. (1)  
15 [Section 1] is intended to be codified as an integral part of Title  
16 75, chapter 5; and Title 75, chapter 6; AND TITLE 80, CHAPTER 15, and  
17 the provisions of Title 75, chapter 5; and Title 75, chapter 6; AND  
18 TITLE 80, CHAPTER 15, apply to [section 1].

19 (2) [Section 2] is intended to be codified as an integral part  
20 of Title 75, chapter 2, and the provisions of Title 75, chapter 2,  
21 apply to [section 2].

22 (3) [Section 3] is intended to be codified as an integral part  
23 of Title 75, chapter 3; and Title 75, chapter 10; AND TITLE 76,  
24 CHAPTER 4, and the provisions of Title 75, chapter 3; and Title 75,  
25 chapter 10; AND TITLE 76, CHAPTER 4, apply to [section 3].

26 (4) [SECTION 4] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART  
27 OF TITLE 50, CHAPTER 2, AND THE PROVISIONS OF TITLE 50, CHAPTER 2,  
28 APPLY TO [SECTION 4].

29 (5) [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART  
30 OF TITLE 76, CHAPTER 3, AND THE PROVISIONS OF TITLE 76, CHAPTER 3,  
31 APPLY TO [SECTION 5].

1        NEW SECTION.    Section 22. Effective date.    [This act] is  
2 effective on passage and approval.

3

4

-END-

EXHIBIT 35  
DATE 3-13-95  
HB 521

Amendments to House Bill No. 521  
First Reading Copy

Requested by Rep. Wagner  
For the Committee on Natural Resources

Prepared by Michael S. Kakuk  
March 13, 1995

1. Title, line 4.  
Strike: "PROHIBITING"  
Insert: "REQUIRING"
2. Title, line 4.  
Following: "ADMINISTRATIVE"  
Strike: "AGENCY"  
Insert: "AND LOCAL AGENCIES TO JUSTIFY THE ADOPTION OF"
3. Title, line 5.  
Strike: "FROM BEING"  
Insert: "THAT ARE"
4. Title, line 6.  
Strike: second "AND"  
Insert: ", "
5. Title, line 7.  
Following: "SCIENCES"  
Insert: ", AND LOCAL UNITS OF GOVERNMENT"
6. Title, lines 8 and 9.  
Strike: "CREATING" on line 8 through "RULES;" on line 9
7. Title, line 9.  
Following: "SECTIONS"  
Insert: "50-2-116,"
8. Title, line 10.  
Strike: first "AND"  
Following: "75-10-603,"  
Insert: "76-3-501, 76-3-504, 76-4-104, AND 80-15-105,"
9. Page 2, line 1.  
Strike: "and to"  
Insert: ", "  
Following: "sciences"  
Insert: ", and local units of government"
10. Page 2, line 5.  
Strike: "statement" through "whether"  
Insert: "written finding if"
11. Page 2, line 6.  
Following: "by"  
Insert: "comparable"

12. Page 2, line 7.  
Following: "than"  
Insert: "comparable"  
Strike: "statement"  
Insert: "written finding"

13. Page 2, line 8.  
Strike: "a risk-cost"  
Insert: "an"

14. Page 2, lines 9 through 16.  
Strike: "to impose the" on line 9  
Insert: "that the proposed state"  
Strike: "and" on line 9 through "is" on line 16  
Insert: "protect public health or the environment of the state and that the state standards or requirements to be imposed can mitigate harm to the public health or the environment and are achievable under current technology. The department is not required to show that the federal regulation is inadequate to protect public health. The written finding must also include information from the hearing record regarding the costs to the regulated community directly attributable to the proposed state standard or requirement. [Sections 1 through 3] are"

15. Page 2, line 19.  
Following: "2;"  
Insert: "Title 75, chapter 3;"

16. Page 2.  
Following: line 19  
Insert: "[Sections 4 and 5] apply to local units of government when they attempt to regulate the control and disposal of sewage from private and public buildings. [This act] is not intended to apply to the establishment or setting of fees."

17. Page 2, line 23.  
Strike: first "standards"  
Insert: "regulations"  
Strike: second "standards"  
Insert: "regulations or guidelines"  
Strike: "Except"  
Insert: "After [the effective date of this act], except"

18. Page 2, line 24.  
Strike: "(6),"   
Insert: "(5) and"

19. Page 2, line 25.  
Strike: "corresponding"  
Insert: "comparable"  
Following: "regulations"  
Insert: "or guidelines"  
20. Page 2, line 26.  
Strike: "corresponding"

Insert: "comparable"  
Following: "regulations"  
Insert: "or guidelines"

21. Page 2, line 27.  
Strike: "corresponding"  
Insert: "comparable"

22. Page 2, line 28.  
Strike: "adopt" through "regulations"  
Insert: "guidelines"

23. Page 2, line 30 through page 3, line 26.  
Strike: first "the" on page 2, line 30 through "section" on page 3, line 26

Insert: ": (a) the proposed state standard or requirement protects public health or the environment of the state; and (b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and any peer-reviewed scientific study contained in the record that forms the basis for the board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board to review the rule. If the board determines that the rule is more stringent than comparable federal regulations or guidelines, the board shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the board for a rule review under subsection (4)(a) if the board adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)"

24. Page 3, line 28.  
Strike: first "standards"

Insert: "regulations"  
Strike: second "standards"  
Insert: "regulations or guidelines"  
Strike: "Except"  
Insert: "After [the effective date of this act], except"

25. Page 3, line 29.

Strike: "(6),"

Insert: "(5) and"

26. Page 3, line 30.

Strike: "corresponding"

Insert: "comparable"

Following: "regulations"

Insert: "or guidelines"

27. Page 4, line 1.

Strike: "corresponding"

Insert: "comparable"

28. Page 4, line 2.

Following: "regulations"

Insert: "or guidelines"

29. Page 4, line 4.

Strike: "corresponding"

Insert: "comparable"

Strike: "adopt" through "regulations"

Insert: "guidelines"

30. Page 4, line 6 through page 5 line 2.

Strike: second "the" on page 4, line 6 through "section." on page 5, line 2

Insert: ":(a) the proposed state standard or requirement protects public health or the environment of the state; and (b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and any peer-reviewed scientific study contained in the record that forms the basis for the board's or department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board or department adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board or department to review the rule. If the board or department determines that the rule is more stringent than comparable federal regulations or guidelines, the board or department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2),



within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board or department may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the board or department for a rule review under subsection (4)(a) if the board or department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board or department rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

31. Page 5, line 4.

Strike: first "standards"

Insert: "regulations"

Strike: second "standards"

Insert: "regulations or guidelines"

Strike: "Except"

Insert: "After [the effective date of this act], except"

32. Page 5, line 5.

Strike: "(6),"

Insert: "(5) and"

33. Page 5, line 6.

Strike: "corresponding"

Insert: "comparable"

Following: "regulations"

Insert: "or guidelines"

34. Page 5, line 7.

Strike: "corresponding"

Insert: "comparable"

Following: "regulations"

Insert: "or guidelines"

35. Page 5, line 9.

Strike: "corresponding"

Insert: "comparable"

Strike: "adopt" through "regulations"

Insert: "guidelines"

36. Page 5, line 11 through page 6, line 7.

Strike: first "the" on page 5, line 11 through "section" on page 6, line 7

Insert: ": (a) the proposed state standard or requirement protects public health or the environment of the state; and  
(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and any peer-reviewed scientific study contained in the

record that forms the basis for the department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the department adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable federal regulations or guidelines may petition the department to review the rule. If the department determines that the rule is more stringent than comparable federal regulations or guidelines, the department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time. not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The department may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the department for a rule review under subsection (4)(a) if the department adopts after January 1, 1990 a rule in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted department rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)"

37. Page 6.

Following: line 7

Insert: "NEW SECTION. Section 4. Local regulations no more stringent than state regulations or guidelines. (1) After [the effective date of this act], except as provided in subsections (2) through (4) and unless required by state law, the local board may not adopt a rule under 50-2-116(1)(i), (2)(k)(iii), or (2)(k)(v) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The local board may incorporate by reference comparable state regulations or guidelines.

(2) The local board may adopt a rule to implement 50-2-116(1)(i), (2)(k)(iii), or (2)(k)(v) that is more stringent than comparable state regulations or guidelines only if the local board makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local board standard or requirement to be

imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and any peer-reviewed scientific study contained in the record that forms the basis for the local board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the local board adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable state regulations or guidelines may petition the local board to review the rule. If the local board determines that the rule is more stringent than comparable state regulations or guidelines, the local board shall comply with this section by either revising the rule to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The local board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the local board for a rule review under subsection (4)(a) if the local board adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted local board rule.

NEW SECTION. Section 5. Local regulations no more stringent than state regulations or guidelines. (1) After [the effective date of this act], except as provided in subsections (2) through (4) and unless required by state law, a governing body may not adopt a rule under 76-3-501 or 76-3-504(5)(c) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The governing body may incorporate by reference comparable state regulations or guidelines.

(2) The governing body may adopt a rule to implement 76-3-501 or 76-3-504(5)(c) that is more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local board standard or requirement to be imposed can mitigate harm to the public health or

environment and is achievable under current technology.

(3) The written finding must reference information and any peer-reviewed scientific study contained in the record that forms the basis for the governing body's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the governing body adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body to review the rule. If the governing body determines that the rule is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the rule to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The governing body may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the governing body for a rule review under subsection (4)(a) if the governing body adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body rule.

**Section 6.** Section 50-2-116, MCA, is amended to read: **50-2-116. Powers and duties of local boards.**

(1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or the equivalent and with appropriate experience, as determined by the department, and shall fix his salary;

(b) elect a chairman and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth that cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions;

(i) subject to the provisions of [section 4], adopt

necessary regulations that are no less stringent than state standards for the control and disposal of sewage from private and public buildings that is not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of health and environmental sciences and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards may:

(a) quarantine persons who have communicable diseases;

(b) require isolation of persons or things that are infected with communicable diseases;

(c) furnish treatment for persons who have communicable diseases;

(d) prohibit the use of places that are infected with communicable diseases;

(e) require and provide means for disinfecting places that are infected with communicable diseases;

(f) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(g) contract with another local board for all or a part of local health services;

(h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

(j) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings (fees must be deposited with the county treasurer);

(k) adopt rules that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of [section 4], on sanitation in public buildings that affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives; and

(v) subject to the provisions of [section 4], for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401.

Renumber: subsequent sections

38. Page 7, line 14.

Strike: "corresponding"

Insert: "comparable"

39. Page 7, line 15.  
Strike: "or" through "exists"  
Strike: "not"

40. Page 12, line 4.  
Strike: "corresponding"  
Insert: "comparable"

41. Page 12, line 5.  
Strike: "or" through "exists"  
Strike: "not"

42. Page 17, lines 6 through 9.  
Strike: subsection (3) in its entirety

43. Page 17.  
Following: line 29

Insert: "Section 17. Section 76-3-501, MCA, is amended to read:

"76-3-501. Local subdivision regulations. (1) Before July 1, 1974, the governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air, and recreation; for the provision of adequate transportation, water, and drainage, and; subject to the provisions of [section 5], for the regulation of sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

(2) Review and approval or disapproval of a subdivision under this chapter may occur only under those regulations in effect at the time an application for approval of a preliminary plat or for an extension under 76-3-610 is submitted to the governing body."

{Internal References to 76-3-501:

x 76-3-503}

Section 18. Section 76-3-504, MCA, is amended to read:

"76-3-504. Minimum requirements for subdivision regulations. The subdivision regulations adopted under this chapter shall, at a minimum:

(1) require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas which, because of natural or ~~man-caused~~ human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

(b) grading and drainage;

(c) subject to the provisions of [section 5], water supply and sewage and solid waste disposal ~~which that~~, at a minimum, meet the regulations adopted by the department of health and environmental sciences under 76-4-104;

(d) the location and installation of utilities;

(7) provide procedures for the administration of the park and open-space requirements of this chapter;

(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision; such utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body."

{Internal References to 76-3-504: None.}

Section 19. Section 76-4-104, MCA, is amended to read:

"76-4-104. Rules for administration and enforcement.

(1) The department shall, subject to the provisions of [section 3], adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards shall provide the basis for approving subdivision plats for various types of water, sewage facilities, and solid waste disposal, both public and private, and shall be related to size of lots, contour of land, porosity of soil, ground water level, distance from lakes, streams, and wells, type and construction of private water and sewage facilities, and other factors affecting public health and the quality of water for uses relating to

agriculture, industry, recreation, and wildlife.

(3) The rules shall provide for the review of the following divisions of land by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to review these divisions of land:

(a) divisions of land containing five or fewer parcels, whenever each parcel will contain individual onsite water and sewage disposal facilities; and

(b) divisions of land proposed to connect to existing municipal water and waste water systems previously approved by the department, if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the divisions of land described in subsection (3).

(5) The department shall review those divisions of land described in subsection (3) if:

(a) a proposed division of land lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules shall further provide for:

(a) the furnishing to the reviewing authority of a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area;

(ii) total number of proposed dwelling units;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to insure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;



(h) standards and technical procedures applicable to solid waste disposal;

(i) requiring evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary or final plan or plat.

(7) If the reviewing authority is a local department or board of health, it shall, upon approval of a division of land under this part, notify the department of the approval and submit to the department a copy of the approval statement.

(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect at the time plans and specifications are submitted to the department, except in cases where current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time such lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality will apply."

{Internal References to 76-4-104:

x 76-3-504            x 76-4-102            x 76-4-108}

Section 20. Section 80-15-105, MCA, is amended to read:

"80-15-105. Rulemaking. (1) The board shall, subject to the provisions of [section 1], adopt rules for the administration of this chapter for which the board and the department of health and environmental sciences have responsibility. These rules must include but are not limited to:

(a) standards and interim numerical standards for agricultural chemicals in ground water as authorized by 80-15-201;

(b) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(c) field and laboratory operational quality assurance, quality control, and confirmatory procedures as authorized by 80-15-107, 80-15-202, and 80-15-203, which may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(d) standards for maintaining the confidentiality of data and information declared confidential by EPA and the confidentiality of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108; and

(e) administrative civil penalties as authorized by 80-15-412.

(2) The department shall adopt rules necessary to carry out its responsibilities under this chapter.

These rules must include but are not limited to:

(a) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(b) the content and procedures for development of agricultural chemical ground water management plans, including the content of best management practices and best management plans, procedures for obtaining comments from the department of health and environmental sciences on the plans, and the adoption of completed plans and plan modifications as authorized by 80-15-211 through 80-15-218;

(c) standards for maintaining the confidentiality of data and information declared confidential by EPA and of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108;

(d) field and laboratory operational quality assurance, quality control, and confirmatory procedures as authorized by 80-15-107, 80-15-202, and 80-15-203, which may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(e) emergency procedures as authorized by 80-15-405;

(f) procedures for issuance of compliance orders as authorized by 80-15-403; and

(g) procedures for the assessment of administrative civil penalties as authorized by 80-15-412."

{Internal References to 80-15-105: None.}

Renumber: subsequent sections

44. Page 18, lines 2 and 3.

Strike: first "and"

Following: "6"

Strike: ", "

Insert: "; and Title 80, chapter 15,"

45. Page 18, line 6.

Strike: "and"

46. Page 18, twice on line 7

Following: "10"

Strike: ", "

Insert: "; and Title 76, chapter 4,"

Strike: second "and"

47. Page 18, line 8.

Insert: "(4) [Section 4] is intended to be codified as an integral part of Title 50, chapter 2, and the provisions of Title 50, chapter 2, apply to [section 4].

(5) [Section 5] is intended to be codified as an integral part of Title 76, chapter 3, and the provisions of Title 76, chapter 3, apply to [section 5]."

Amendments to Senate Bill No. 362  
Third Reading Copy

For the Committee on Natural Resources

Prepared by Michael S. Kakuk  
March 13, 1995

1. Page 2, lines 1 and 2.

Strike: "authorized" on line 1 through "(1)" on line 2

Insert: "described in Title 16, chapter 20, subchapter 10,  
Administrative Rules of Montana"

2. Page 3, line 16.

Strike: "discharges"

Insert: "permit exclusions"

## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

House Natural Resources COMMITTEE BILL NO. SB 330  
 DATE 3-13-95 SPONSOR(S) Senator Swygstad

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
DONALD KERN 1805 JDSLYN #89 HELENA	CANYON COALITION	330	X	
Willa Hall	LWV MT	330	X	
Ken Knapp Box 383 Helena	MANA	330	X	
W James Kembel	City of Billings	330		✓
Brian Kuehl	Greater Yellowstone Coalition	330	X	
ALAN ROLLO	MWF	330	X	
ROBIN CUNNINGHAM	FISHING OUTRITTERS ASSN. OF MONTANA	330	X	
DON SPRUEY	SELF & CITIZENS FOR GREAT FLK	330	X	
Mike Grimes/Helena	Self	330	X	
GEORGE OCHENSKI	TROUT UNLIMITED		X	
Barb Grimes	Blackfoot Legacy	330	X	
John P Davis	ARCO	331		✓
James Emerson	Self	330	X	

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STEVE PILGER

DHS

330 X

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House Natural Resources COMMITTEE

BILL NO. SB 330

DATE 3-13-95

SPONSOR(S) Senator Snyggard

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Peter Aengst	self	SB 330	X	
Mike Briedscheid 59937 455 Glenwood Rd. Whitefish, mt	self	SB 330 331	X	
MIKE MURPHY	MT. WATER RES. ASSN	SB 330		X
Ryszard Lenzuk	Golden Gulch Mines	330		X
S. STASH	ARCO	SB 330		✓
David King	Schafer & Associates	SB 330 331		✓
Larry Brown	Ag. Pres. Assoc	330 331		X
Bob Williams	MT. MINGIAN	330		✓
Steve Gilbert	Self	330	X	
Peggy Thew	WETA	SB 330		X
Bruc Holdorf	SKYLINE SPORTSMEN	SB 330	✓	
Tom Schoonover	Arizona Sportsmen	330	X	

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Natural Resources COMMITTEE BILL NO. SB 330  
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Cecil Davis	Self	330	X	
Jim Curtis	Montana Chapter Sierra Club	330	X	
Jon Krutar	Self	330	X	
COLLIM B AMOS	REALTORS	330		X
PAUL ROOS	Self and Powell County S.C.D.	330	X	
MIKE GEARY	SELF		X	
Howard Sumner	Billing Assoc. Realtor	330		X
JERRY KEMNEY	BILLING "REALTOR"	330		X
PAUL HAWKS	MELVILLE SPOSS	330	X	
Julia Papp	Gardiner-NPRC	330	X	
Jim Barrett	BA Cooke City	330	X	
Louise Bruce	Montana Wilderness Assoc.	330	X	
John Bloomquist	mt. Stockgrowns	330		X

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House Natural Resources COMMITTEE BILL NO. SB 330  
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M. K. BOTA	HYDROMETRICS			✓
R. Ritter	MT Resour			✓
GAIL ABERCROMBIE	MT Petroleum Assn			✓
Vicki Watson 509 Daly Missoula, MT	myself	330	✓	
Ken Williams	MPC/Entech	330		✓
J. V. Bennett	Mont PIRG	330	✓	
Lorna Frank	MT Farm Bureau	330		✓
Carl Schweitzer	MT Cont Assn	330		✓
Chris J. Hallus	MEIC & M&D MT Technology Company	330		✓
Don Peoples	MEIC/ME&D	330		✓
Jack Lynch	Battle Lake Bus. Inc. Ass.	330		✓
James D. Jensen	MEIC	330 331	X	
John Smart	Island Mt.	330 331	X	

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I Bruce Ore of Concerned Citizens 330 X  
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SENATE COMMITTEE ON

HB 330

BILLS BEING HEARD TODAY:

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Name	Representing	Bill No.	Support	Oppose
Rosemary Harmon Helen		330		X
Heidi Halverson	Self general mt.	330		X
Dylan Torcoletti		330		X
Beth Wheatley		330 331 HB		X
Janet Ellis	MT Audubon	330		X
David Purser	MT Chamber	330	Support ✓	<del>X</del>
DAVID HEMION	MT Assoc. of Churches	330		✓
Steve Kelly	KOWS	330		X

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## HOUSE OF REPRESENTATIVES

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COMMITTEE

BILL NO. 331

DATE

3-13-95

SPONSOR(S)

Senator Dick

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Willa Hall	LWVMT	331	X	
Ken Karap Box 383 Helena	man	331	X	
W James Kembel	City of Billings	331		✓
Brian Kueh'	GIL	331	X	
ALAN Rollo	MWF	331	X	
ROBIN CUNNINGHAM	FISHING OUTFITTERS ASS'N. OF MONTANA	331	X	
DON STINEY	SELF & WHOLE FOR 30th F/oth	331	X	
GEORGE OCHENSKI	TROUT UNLIMITED	331	X	
Mike Grimes	Self	331	X	
Barb Grimes	Blackfoot Legacy	331	X	
Jonny Paden	Chowm Bette	331		X
Jim Smelter	Self	331	X	

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Natural Resources COMMITTEE BILL NO. SB 331  
 DATE 3-13-95 SPONSOR(S) Senator Beck

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
John Fitzpatrick	Pegasus Gold	SB 331		X
Peter Angst	self	SB 331	X	
MIKE MURPHY	MT. WATER RES. ASSN.			X
Raymond Lazuk	Golden Light Mine	331 SB		X
ANDREA WASH	ARCO	331		✓
Larry Brown	Arg Pres. Assoc.	330 331		✓
Bob Williams	MT MINE MNG	331		✓
Steve Gilbert	SELF		X	
Peggy Thiele	WETA	SB 331		X
Toy Schoonen	Aracoma Sports	SB 331	X	
Michael Downey	Self	331	X	
Cecil Davis	Self	330	X	
DKL HOPPER	SKYCINESPORTSMEN	330	✓	

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Natural Resource COMMITTEE BILL NO. SB-331  
 DATE 2-13-95 SPONSOR(S) Sen. Beck

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Jim Curtis, 1318 Khanabadi Dr. Mslca	MT Chapter Sierra Club	331	X	
Tom Kutan.	Self	331	X	
Collin Bang	Pres. Tom	331	X	X
Paul Roos	Self and Powell City SLD	331	X	
MIKE GEARY	SELF	331	X	
Howard Sumner	Billings Assoc. Rec. Soc	331		X
Jim Barrett	BA Cooke City	331	X	
JERRY KENNEY	BILLINGS. RR ALTOUS	331		X
DALE HAWES	MELVILLE	331	X	
Julia Page	NPRC	331	X	
Louise Bruce	Mont. Wilderness Assoc.	331	X	
Jim Mockler	MT. Coal Council	331		✓
CHris Tweeten	mt. Dept. of Justice	331	✓	

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Natural Resources COMMITTEE BILL NO. SB331  
 DATE 3-13-95 SPONSOR(S) Sen. Dick

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Hope Stevens	SELF	331	X	
Don Allen	MT. WORK PRODUCTS	331		✓
MARK SHAPLEY	ISLAND MOUNTAIN PRODUCTS		X	
Jim Coulson	MSLA CO		✓	
Randy Peneg	Fr. Beltrami Trib		✓	
Kim Milburn	City of Helena	331		✓
Sally Johnson	Self		✓	
Grant Parker	Self	331	X	
Kelly Rosenleaf	City Council City of Missoula	331	X	
Stan Frasier	Self	331	X	
Jamara J. Johnson	CURE			X
Russ Ritter	MT Resources			X
John Bloomquist	MT. Stockpiles	331		X

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no. 331

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## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. SB 331  
 DATE 3-13-95 SPONSOR(S) Sen Beck

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
GAIL ABERCROMBIE	MT Petroleum Assn	331		X
509 Daly Vicki Watson Missoula, MT	Myself	331	✓	
Ken Williams	MPC/Entech	331		✓
J.V. Bennett	Mont DIRC	331	✓	
Lorna Frank	MT. Farm Bureau	331		✓
Don Peoples	Mont. Technology Co./MCRD			✓
Chris Gallus	MTC/MCRD			✓
Jack Lynch	CEO Butte Silver Bow			✓
Steve Kelly	FOWS		X	
Karmie Ore	Concerned Citizens of Butte	331	X	
Rosemary Harmon Helena		331	X	
Heidi Halverson	Self	331	X	
Dylan Torcoletti	"	331	X	

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

## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. SB 331  
DATE 3-13-95 SPONSOR(S) Sen. DeLoach

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
John Gatzell	MT WILDERNESS ASSOC	331	X	
<del>Steve Pilsner</del>	DHEC	331	X	
Carl Schweitzer	MT Cont Assn	331		X
Janet Ellis	MT Audubon	331	X	
David Jurin	MT Chamber	331		✓
DAVID HEMMON	MT ASSOC. OF CHURCHES	331	✓	

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