

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 24, 1995,
at 3:00 PM

ROLL CALL

Members Present:

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

Members Excused: None

Members Absent: None

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

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

Committee Business Summary:

Hearing: None
Executive Action: HB 412

{Tape: 1; Side: A}

EXECUTIVE ACTION ON HB 412

Motion: SEN. MIKE FOSTER MOVED TO CONCUR IN HB 412.

Motion: SEN. FOSTER MOVED TO ADOPT AMENDMENT NO. hb041208.ate AS
CONTAINED IN EXHIBIT 1.

Discussion:

Todd Everts, Environmental Quality Council reviewed the amendments that were incorporated into the Gray Bill.

Susan Callahan, Montana Power Company, said the amendments were the result of the Department of Health and Environmental Sciences, the regulated community and some of the concerns from the opponents.

Ms. Callahan said Amendment no. 1 was the result of the regulated community and the DHES.

Ms. Callahan said Amendment no. 2 was a consensus amendment requested by the DHES and the regulated community that defines an "Environmental Evaluation Report" It was important to define the scope of the environmental self-evaluation, identify violations, and indicate environmental violations that have been resolved.

Ms. Callahan said Amendment no. 3 addresses that when an entity reports a violation, they must identify the date of the self-evaluation, a written description of the violation, the action to correct the violation, the timetable, and the commitment to diligent resolution of the violation. After the information was submitted to the agency, it becomes public information.

Ms. Callahan reviewed the rest of the amendments with the committee members.

SEN. WELDON asked a question regarding the language in amendment no. 21 that states: "information contained in the environmental self-evaluation report that is relevant in a civil action..." He asked **Ms. Callahan** if she envisioned any situation where the state would be a party to a civil action. She replied that if the state were a party to a civil action, and it wasn't based upon environmental laws, they would have the same option to take advantage of those exemptions.

Bob Robinson, Department of Health and Environmental Sciences said that **Kathryn Orr, Chief Legal Counsel,** worked diligently on the amendments for about a week, and many hours on earlier drafts. They had been reviewed by the Governor and he supports the concept of the draft. After the committee finishes with the bill the Governor wants to review it again, because it would obviously be different.

CHAIR. GROSFIELD said there were more amendments to the bill and asked if the department was comfortable with all of them. **Mr. Robinson** said they support the concept of the Gray Bill.

Debby Smith, Helena Attorney, Sierra Club, said there had been a broad group of people that had been meeting to negotiate the terms of the bill because they all like the intent of the bill, which was to correct violations of environmental laws without

being penalized. The bill has set up immunity and privilege for people that discover violations of environmental law on their land. She said she could support the "Limited protection for voluntary disclosures of violation" on Page 11, Section 7.

Ms. Smith said she could not support any kind of privilege, because potential relevant facts could be kept from the fact-finder. It makes no sense that someone who made an environmental self-evaluation may have withheld potentially relevant information in developing a compliance plan.

Ann Hedges, Montana Environmental Information Center, said she agreed with the concept of allowing a company to do audits. She said she was concerned about the privilege and also the immunity. On Page 5, Section 3, subsection (2), it says: "Unless disclosure constituted a waiver of the privilege under [section 4], a person or entity that conducted an environmental self-evaluation OR PREPARED AN ENVIRONMENTAL SELF-EVALUATION REPORT or ANY PERSON OR ENTITY IDENTIFIED IN [SECTION 4 (2)]..." She said Section 4 (2) involved employees of the operation, people who were connected with the company. They cannot be compelled to testify regarding that report. She would add language that said: "the violation was disclosed solely because of the self-evaluation report." Then if there was an on-going violation after the report, the company couldn't come back and say, "you only knew about that from the report."

Ms. Hedges said she was concerned about the standards that were set up for the privilege. She was specifically concerned with Item (E) on Page 7 that says: "... CLEAR, PRESENT, AND SUBSTANTIAL IMPENDING DANGER..." She said she had never seen that phrase in common law or statute. That would be a very high standard and impossible to prove. That whole section should be eliminated because it would be impossible to prove. She disagreed with having standards that were unattainable.

Ms. Hedges disagreed with criminal immunities, and felt no one should be immune from prosecution for a crime. There could be serious crimes committed and they would receive immunity. The word "criminal" should be struck from Page 11. Item (C) says: "...A CLEAR, SUBSTANTIAL, AND IMMEDIATE THREAT OF ACTUAL HARM..." She didn't think that anyone would ever be able to prove that language. She suggested striking "SUBSTANTIAL, AND IMMEDIATE." She didn't think Section (3) would catch bad actors, because unless each violation under that language was serious, a bad actor would never be caught.

Ms. Hedges recommended removing the word "serious", because having a series of violations over a period of time would be sufficient.

{Tape: 1; Side: B}

CHAIR. GROSFIELD asked how the immunity applied. **Ms. Callahan** replied that the immunity did not apply to any violation that was otherwise required to be reported to an agency. There were a lot of violations that were required to be reported and a lot of them that were not required. The immunity would apply to those that were not otherwise required to be reported. The immunity kicks in upon the disclosure of the violation, and applies only as long as the company was following the rules and fixes the violation. In order to keep the immunity, Page 5, subsection (e) requires that: "... the person or entity making the disclosure cooperates with the appropriate agency in connection with investigation and resolution..."

Ms. Callahan said she agreed that "substantial" and "impending" were big words. The only time that standard would apply would be if a company was remedying a violation and something came up that the public needed to know, or if the company wasn't pursuing remedying a violation with diligence. Then their privilege would be lost.

CHAIR. GROSFIELD asked **Ms. Callahan** if she would give the committee members some examples that would not be required to be reported. She replied labeling violations, not having material safety data sheets in appropriate locations, possibly items relating to discovery of an unpermitted discharge. There would be training requirements and keeping certain reports.

SEN. TVEIT said the bill was a self-evaluation that also had a privilege that basically says, if a problem was found, fix it and they wouldn't have to tell anyone. He asked where the chain of communication was between the company and the DHES. How would the department know if that was fixed right or not? Where does the privilege come in if a problem was discovered and supposedly was fixed, but no one knows whether or not that was actually done? Would that be covered in the bill, or were there another 8 sets of amendments covering that?

Ms. Callahan responded that was covered in the bill. She said if a company goes out and does an environmental evaluation and prepares a report, there was no requirement now that the company does anything with the report, unless they find violations. The bill says okay, if you fix it, you have a privilege. If you want to disclose violations that you don't have to otherwise, what you have to do is in the amendments on Page 4, subsection (4). DHES was comfortable with the amendments because many of them were drafted by them.

CHAIR. GROSFIELD said it was his understanding that anything that was disclosed to the department was automatically public information and not subject to privilege. At the bottom of Page 5 it says: "The privilege granted by (section 3) does not apply to the extent that it is waived..." That was the key to the privilege. He asked **Ms. Callahan** what kind of privileges does that refer to. She replied the reason a company would want the

privilege would be the ability to say no. The companies were encouraged to audit, but the fear was that the state or agency may say they know you disclosed a violation and they want to see everything that you have done. Even though the problem had been fixed the existence of the document creates a disincentive for companies to do audits in the first place.

Vote: MOTION TO ADOPT AMENDMENT NO. hb041208.ate, CARRIED 7-4 ON A ROLL CALL VOTE.

Motion: SEN. FOSTER MOVED TO ADOPT AMENDMENTS NO. HB041204.ATE AS CONTAINED IN EXHIBIT 2.

Discussion:

SEN. FOSTER said the amendments address the concerns of Ms. Hedges. However, some of the amendments have already been approved in the previous amendments. SEN. FOSTER asked Mr. Everts to address which of the amendments were already acted upon.

SEN. COLE asked if the amendments that SEN. FOSTER proposed were directly tied to the amendments that were just voted upon and passed.

Mr. Everts said the amendments that were either resolved by the amendments just passed, or that were amending deleted language, were amendments no. 3,4,5,6,10, and 14. Ms. Hedges agreed that those had been resolved by the amendments that were just adopted.

CHAIRMAN GROSFIELD stated that since there were so many amendments in this package and that they dealt with several different topics, that he would prefer it if SEN. FOSTER would separate them by subject area. He asked Mr. Everts if he would be prepared to break them down in this manner. SEN. FOSTER agreed and said he would not offer amendments No. 3,4,5,6,10, and 14 because they covered areas that the committee had already dealt with. He said he would like to start with the amendments dealing with privilege from criminal proceedings, and asked Mr. Everts to clarify which amendments these were.

Mr. Everts said the amendments that take privilege from criminal proceedings out of the privilege and immunity sections were amendments no. 13,17,22,23,24,27, and 33, which were indicated by a small c within a circle. Those basically limit the privilege and immunity sections to civil and administrative proceedings.

Substitute Motion: SEN. FOSTER MOVED A SUBSTITUTE MOTION TO ADOPT AMENDMENTS 13,17,22,23,24,27, AND 33.

CHAIR. GROSFIELD asked Ms. Hedges to respond to these amendments that eliminated immunity from criminal proceedings. She responded that she didn't have anything to add, except there were very few places in law where criminals were exempted.

Ms. Callahan said the reason that immunity from criminal proceedings was in the bill was because of what **Ms. Hedges** said earlier, that the intent of environmental crimes is almost like a civil standard. For many crimes a person or entity could be prosecuted both civilly and criminally. She said on Page 11 it says: "A civil, criminal, or administrative fine or penalty may not be sought or imposed by a court..., unless the violation was intentionally and willfully committed by the person or entity making the disclosure..." She urged the committee to keep "criminal" in the bill.

Mr. Robinson said the Governor had some concerns about exempting criminal acts. He said he was unaware of any criminal charges that have ever been filed as a result of an environmental violation.

CHAIR. GROSFIELD said in environmental law there were generally both civil and criminal penalties. He asked **Ms. Hedges** what would happen if there were only the criminal penalties and no civil penalties because of privilege. She replied that she would have to research that.

Mr. Robinson said every law that he was familiar with refers to civil or criminal penalty.

CHAIR. GROSFIELD said since most environmental laws involved both civil and criminal penalty, most of the bill would be cut out by eliminating immunity from criminal penalties. **Ms. Hedges** said she didn't think so because there were still administrative penalties in the bill, and there would be a different penalty assessed for a criminal penalty vs. a civil penalty.

CHAIR. GROSFIELD said if a company wanted to do an environmental audit, they may want to take advantage of the privilege. If immunity from criminal penalty were taken out of the bill they would be telling the company you might have the privilege with respect to the civil side of it, but since most of the environmental laws also have criminal penalties in them, why would any company want to do the audit in the first place?

Mr. Everts said criminal violations were only attached if someone knowingly and purposely violates those provisions. Civil law attaches if there had been a violation that had occurred and the person potentially didn't know about it. Even though environmental law provides for both, they were separate and distinct.

Ms. Callahan said someone could be safe on the civil side if they play by the rules, but the agency has the ability to prosecute on the criminal side with the same set of facts. What would happen is a company would have to conclude that it while still had a big risk out there of having a criminal action filed.

{Tape: 2; Side: A}

Ms. Hedges said they either had to get rid of immunity from criminal proceedings or change the standards that would be impossible to prove.

Deborah Schmidt, Director, Environmental Quality Council, said an example of environmental law was the Subdivision and Platting Act. It was very difficult to enforce that law because the County Attorney often has to prosecute someone who has considerable standing in the community. Therefore, civil and administrative penalties have only recently been added to environmental laws to give a different level of enforcement.

Vote: MOTION TO ADOPT AMENDMENTS 13,17,22,23,24,27, AND 33
FAILED 9-1 ON A ROLL CALL VOTE.

Mr. Everts said the next amendments would be no's. 1 and 2, which involved the definition of environmental self-evaluation, and what the purpose was. The notations to the right of the amendments refers to the section in the Gray Bill.

Ms. Callahan said the language that was struck was introduced in the House at the request of the DHES.

SEN. FOSTER said he would not offer Amendments no. 1 and 2.

Mr. Everts said amendments no. 7,8,9,11, and 12 deal with the definition of voluntarily disclosed violation. Amendment no. 7 clarifies that the violation means a violation of an environmental law. Amendment no. 8 will be seen throughout the amendments, and was basically striking "promptly" and inserting "within 5 days" to better define the time frame within which a disclosure must be made. Amendment no. 9 refers to that same theme of timeliness. Amendment no. 11 was a technical amendment striking "and." Amendment no. 12 would be adding a new subsection (g).

SEN. FOSTER said amendment no. 12 was most important because it would result in a company not being able to say "they did something bad, but they were immune because..." The new section (g) says: "that is not made with knowledge of an investigation or administrative or judicial proceeding that was underway or imminent and that concerns the subject matter of the disclosure."

Ms. Hedges responded that the amendments to Subsection (4) (a) and (d) were also important. The concern that those address was the promptness of reporting those violations.

CHAIR. GROSFIELD said (b) says: "...after the disclosing person or entity obtains knowledge of the violation..." It seems that doing an environmental audit, may not be a simple project that can be completed within 24 hours. It may take a couple of weeks or months to figure out. He asked how to deal with that when that has to be reported within 5 days.

Ms. Hedges said she didn't agree with the 5 days since written requirements were added into the bill. She suggested asking **Ms. Callahan** about the time-table by which the audits were created. What the normal procedure would be was left out of the bill, as well as consideration of how much time it takes to do an audit.

Ms. Callahan said with the Montana Power Company, there were two kinds of audits: 1) a multimedia audit that could take up to a week, and 2) written documents that take much longer. There were informal inspections that may take a day and additional time for the information to be generated. They tried to make sure that the entity would promptly disclose a violation and follow-up in writing within a reasonable amount of time. The self-evaluation would have to be within a certain period of time. She did not envision the scenario of taking two weeks or two months time to do an audit.

Ms. Callahan disagreed with the 5 day provision because "promptly" would be sufficient. She didn't have any objection to amendment no. 12 as long as it was the same standard that was on Page 7 of the Gray Bill, because that was the same issue. She proposed that those be the same standards because the violations arise out of the self-evaluation. There shouldn't be one self-evaluation applying to the report, they should be the same standards. She suggested replacing the language in amendment 12 and changing the language on Page 7 (B) to read: "the environmental self-evaluation voluntary disclosure was prepared to avoid disclosure of information:..."

SEN. FOSTER said he would not offer Amendments no. 8 and 9.

Motion/Vote: **SEN. FOSTER** MOVED TO ADOPT AMENDMENTS NO. 7, 11 AND THE REVISED NO. 12 (AS SUGGESTED BY **MS. CALLAHAN**). MOTION FAILED 5-5 ON A ROLL CALL VOTE.

Mr. Everts explained amendments no. 15 and 16. He said they were kind of a testimonial privilege that was outlined in subsection 2, Page 5 of the grey bill.

SEN. FOSTER said he would not offer Amendments no. 15 and 16.

Mr. Everts explained amendments no. 18,19,20,21, and 25. He said they deal with Section 4 with limitations on the privilege for environmental self-evaluations.

Ms. Hedges said if they are allowed immunity from criminal proceedings in the privilege, then they would need to have a standard to overcome that presumption that would be attainable.

Ms. Schmidt said amendment no. 25 would replace the language in the Gray Bill that was currently in the standard for litigation to compel discovery. To replace the amendment with what was currently in the Gray Bill, you wouldn't have the privilege in litigation.

Ms. Callahan, referring to amendment no. 18, said the language that was in the Gray Bill was at the request of the DHES. No. 19 was already redrafted in the amendments that were adopted. In no. 21 she didn't think that "present, and substantial impending" should be struck. It was saying that if they have the privilege and have done everything that they were supposed to do, nonetheless there may be compelling circumstances to warrant disclosure, but the standard for requiring disclosure should stay high. The language in amendment 25 was language the DHES agreed upon. It was saying only the sections of the report that were privileged and were irrelevant could be kept from disclosure. That was addressed in the language that was reviewed in the House.

Ms. Smith said amendment no. 25 was clearly different than what was in the Gray Bill. If you decided to adopt 25 it would be inconsistent with the remaining language. It wouldn't make any sense. Something would either be privileged or it would not.

Mr. Robinson said they support the current language on no's. 19 and 20.

Motion/Vote: SEN. FOSTER MOVED TO ADOPT AMENDMENT 21. MOTION FAILED 9-1 ON A ROLL CALL VOTE.

Mr. Everts explained amendment no. 26.

SEN. FOSTER said he would not offer Amendment no. 26.

Mr. Everts explained amendments No. 28,29,30,31,32, 34, and 35. He said all of the amendments address Section 7, which was limited protection for voluntary disclosure of violations. In amendment no. 28 a civil, criminal, or administrative fine cannot be sought or imposed for a voluntary disclosure unless, the violation was intentional. The amendment was striking "and willfully..."

SEN. FOSTER said he would not offer Amendments no 28,29,30,31, and 32.

{Tape: 2; Side: B}

SEN. FOSTER said he had a discussion with **Mr. Johnson** concerning the word "serious" in amendment no. 34. If that word was eliminated maybe that should be substituted with another word.

CHAIR. GROSFIELD said there may be paper violations that were not serious. What would happen if the word "serious" was struck and then where it says: "...or orders on consent" and inserting "and when taken together or individually are serious."

Ms. Hedges said that language would be on the right track.

Ms. Smith said perhaps what you could do would be to move the word serious from modifying "violations" on the second line to modifying "violations" on the third line.

Ms. Callahan said "serious" was in there to catch bad actors. The current form was proposed by the DHES for that purpose. She said she preferred **Ms. Smith's** suggestion.

Mr. Robinson said he disagreed that they had all kinds of tools to catch all kinds of crooks. He said he thought that **CHAIR. GROSFIELD'S** language suggestion was the best way, by adding after consent, "when taken together are serious."

Motion/Vote: SEN. FOSTER MOVED TO ADOPT AMENDMENT NO. 34 AS REVISED BY STRIKING "SERIOUS" AND INSERTING AFTER CONSENT, " WHEN TAKEN TOGETHER ARE SERIOUS." MOTION CARRIED 6-4 ON A ROLL CALL VOTE.

SEN. COLE asked if it was necessary to go to 5 years with the changes that have already been made.

SEN. FOSTER asked if there was anywhere else in the bill that would have to be changed to conform with amendment no. 35.

Mr. Everts answered no.

Motion/Vote: SEN. FOSTER MOVED TO ADOPT AMENDMENT NO. 35. MOTION FAILED 3-7 ON A ROLL CALL VOTE.

Mr. Everts reviewed the amendments no. hb041201.ate that were proposed by the Montana Realtors Association, as contained in **EXHIBIT 3**. He said the amendments further define what a waiver of a privilege was.

Ms. Callahan said the reason for the amendment was to cover a loop-hole that the realtors have identified in the bill. Often an agent of a purchaser of land would have knowledge of a disclosure of that arose out of a self-evaluation report, as that information would be disclosed to the potential purchaser and agent as well.

Motion/Vote: SEN. CRISMORE MOVED TO ADOPT AMENDMENT NO. hb041201.ate. MOTION CARRIED 6-4 ON A ROLL CALL VOTE.

Motion/Vote: SEN. CRISMORE MOVED TO CONCUR IN HB 412 AS AMENDED. MOTION CARRIED 7-4 ON A ROLL CALL VOTE.

(**CHAIR. GROSFIELD** will carry the bill)

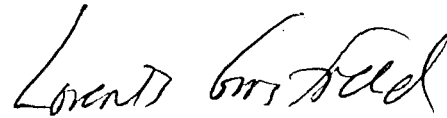
{Comments: additional written testimony was distributed at this meeting opposing HB 412, and **CHAIRMAN GROSFIELD** agreed to have it inserting in the Committee Hearing record:

Milt Carlson, Kalispell, Montana - **EXHIBIT 4**, and Don Spivey, Columbia Falls, Montana - **EXHIBIT 5**.}

{Comments: the meeting was recorded on 2, 2 hour tapes}

ADJOURNMENT

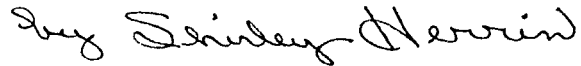
Adjournment: 5:45 PM



LORENTS GROSFIELD, Chairman



THEDA ROSSBERG, Secretary



LG/TR

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE 3-24-95

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

SEN

SENATE STANDING COMMITTEE REPORT

Page 1 of 5
March 25, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration HB 412 (third reading copy -- blue), respectfully report that HB 412 be amended as follows and as so amended be concurred in.

Signed: 
Senator Lorents Grosfield, Chair

That such amendments read:

1. Page 1, line 24.

Strike: "and"

Insert: "or"

2. Page 2, lines 3 through 22.

Strike: the second "report" on line 3 through "LAWS." on line 22

Insert: "set of documents that are prepared as a result of an environmental self-evaluation. All documents that are part of an environmental self-evaluation report must contain the date or dates on which the environmental self-evaluation was conducted. An environmental self-evaluation report must:

(a) contain materials that were collected or developed for the primary purpose of and in the course of conducting an environmental self-evaluation and that may include but are not limited to field notes and records of observations, findings, opinions, suggestions, conclusions, drafts, memorandums, drawings, photographs, computer-generated or electronically recorded information, maps, charts, graphs, and surveys;

(b) state the scope of the environmental self-evaluation, the information obtained, and conclusions and recommendations with a reference to supporting data or supporting information that is to be generated or that has already been generated for purpose of the report;

(c) identify proposed actions to resolve identified violations in accordance with applicable environmental laws; and

(d) indicate identified violations that have been resolved or indicate that a plan has been implemented to resolve the violations in accordance with applicable environmental laws."


3. Page 2, line 28 and 29.

Strike: "CORRECTS" on line 28 through "AGENCY" on line 29

Insert: "submits to the appropriate regulatory agency, in writing, the following information:

(i) the date of the self-evaluation that identified the violations;

(ii) a description of the violation, including all data


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SEN. GROSFIELD
Senator Carrying Bill

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pertinent to the determination that a violation existed;
(iii) the action being undertaken to correct the violation;
(iv) an estimated timetable for correcting the violation;
and
(v) a commitment to diligent resolution of the violation"

4. Page 3, line 1.

Strike: "issues"

Insert: "violations"

Following: "disclosure"

Insert: "pursuant to applicable environmental laws"

5. Page 3, line 8.

Strike: "(4)"

6. Page 3, line 10.

Following: "ENTITY"

Insert: "identified in [section 4(2)]"

7. Page 3, line 12.

Strike: "REPORT OR ANY MATTER that is addressed in"

Insert: "or"

8. Page 3, line 16.

Following: "conducted"

Insert: "or to the extent that the owner or operator consents to
disclosure"

9. Page 3, line 27.

Following: "operator"

Insert: "or the owner's or operator's agent"

10. Page 3, line 28.

Following: "purchaser"

Insert: "or the purchaser's agent"

11. Page 4, line 1.

Strike: "tribunal"

Insert: "body"

12. Page 4, line 4.

Strike: "tribunal"

Insert: "body"

13. Page 4, line 15.

Strike: "TO COMPLETION"

Insert: "to resolve the violation in compliance with applicable
environmental laws"

14. Page 4, line 21.

Strike: "necessary proof"

Insert: "prima facie evidence"

15. Page 4, line 22.

Following: "COMPLETION"

Insert: "and including a commitment that completion will be accomplished in accordance with applicable environmental laws"

16. Page 5, line 4.

Following: "prepared"

Insert: "or the state's attorneys"

Strike: "tribunal"

Insert: "body"

17. Page 5, line 5.

Strike: "Failure"

Insert: "Unless the state files a petition, failure"

18. Page 5, line 6.

Strike: "tribunal"

Insert: "body"

Following: "shall"

Insert: "immediately"

19. Page 5, line 24.

Strike: "tribunal"

Insert: "body"

20. Page 6, line 5.

Strike: "OR"

Insert: ", except to the extent derived"

21. Page 6, line 7.

Following: the second "SELF-EVALUATION"

Insert: "report"

Strike: "OR"

22. Page 6, line 10.

Strike: "."

Insert: ";"

23. Page 6.

Following: line 10

Insert: "(6) information contained in the environmental self-evaluation report that is relevant in a civil action for alleged damage to real property or to tangible personal

Following: "CONSENT"

Insert: ", that when taken together are serious,"

31. Page 7, lines 5 through 11.

Strike: "[THIS]" on line 5 through "[ACT]." on line 11.

Insert: "(1) The evidentiary privilege created by [this act] applies to environmental self-evaluation reports that are prepared as a result of environmental self-evaluations after [the effective date of this act] and before [the termination date of this act].

(2) The limited protection for voluntary disclosures created by [this act] applies to voluntary disclosures that are made during the period beginning on [the effective date of this act] and ending on [the termination date of this act].

(3) [This act] applies to all legal actions and administrative actions commenced on or after [the effective date of this act].

(4) Environmental self-evaluation reports that are privileged under [this act] and voluntary disclosures that are protected under [this act] must remain privileged and protected after [the termination date of this act]."

-END-

property in areas outside of the facility property provided that the causes of action asserted are not for alleged violations of environmental laws and that only that portion of the report may be disclosed that is relevant to the action; or

(7) information contained in the environmental self-evaluation report that is relevant in a civil action for alleged personal injury provided that the causes of action asserted are not for alleged violations of environmental laws and that only that portion of the report may be disclosed that is relevant to that action."

24. Page 6, line 17.

Following: "be"

Insert: "sought or"

Strike: "tribunal"

Insert: "body"

25. Page 6, line 18.

Following: "law"

Insert: ", except for a violation of Title 82, chapter 4, part 1 or 2, first made known only by the entity conducting the environmental self-evaluation,"

26. Page 6, line 21.

Strike: "was not initiated within a reasonable period of time"

Insert: "does not meet the requirements of [section 2(4)(d)]"

27. Page 6, lines 22 and 23.

Strike: "significant" on line 22 through "ENVIRONMENT" on line 23

Insert: "a clear, substantial, and immediate threat of actual harm to the public health or to the environment"

28. Page 6, line 26.

Following: "AUTHORITY"

Insert: "or within a reasonable time after disclosure is made.

All information submitted to a regulatory agency regarding a voluntarily disclosed violation is public information"

29. Page 6, line 29.

Strike: "TRIBUNAL"

Insert: "body"

Strike: "SERIOUS"

30. Page 7, line 1.

15. Page 5, line 5.
Strike: "Failure"
Insert: "Unless the state files a petition, failure"

16. Page 5, line 6.
Strike: "tribunal"
Insert: "body"
Following: "shall"
Insert: "immediately"

17. Page 5, line 24.
Strike: "tribunal"
Insert: "body"

18. Page 6, line 5.
Strike: "OR"
Insert: ", except to the extent derived"

19. Page 6, line 7.
Following: the second "SELF-EVALUATION"
Insert: "report"
Strike: "OR"

20. Page 6, line 10.
Strike: "."
Insert: ";"

21. Page 6.
Following: line 10
Insert: "(6) information contained in the environmental self-evaluation report that is relevant in a civil action for alleged damage to real property or to tangible personal property in areas outside of the facility property provided that the causes of action asserted are not for alleged violations of environmental laws and that only that portion of the report may be disclosed that is relevant to the action; or
(7) information contained in the environmental self-evaluation report that is relevant in a civil action for alleged personal injury provided that the causes of action asserted are not for alleged violations of environmental laws and that only that portion of the report may be disclosed that is relevant to that action."

22. Page 6, line 17.
Following: "be"
Insert: "sought or"
Strike: "tribunal"
Insert: "body"

4. Page 3, line 1.

Strike: "issues"

Insert: "violations"

Following: "disclosure"

Insert: "pursuant to applicable environmental laws"

5. Page 3, line 8.

Strike: "(4)"

6. Page 3, line 10.

Following: "ENTITY"

Insert: "identified in [section 4(2)]"

7. Page 3, line 12.

Strike: "REPORT OR ANY MATTER that is addressed in"

Insert: "or"

8. Page 3, line 16.

Following: "conducted"

Insert: "or to the extent that the owner or operator consents to disclosure"

9. Page 4, line 1.

Strike: "tribunal"

Insert: "body"

10. Page 4, line 4.

Strike: "tribunal"

Insert: "body"

11. Page 4, line 15.

Strike: "TO COMPLETION"

Insert: "to resolve the violation in compliance with applicable environmental laws"

12. Page 4, line 21.

Strike: "necessary proof"

Insert: "prima facie evidence"

13. Page 4, line 22.

Following: "COMPLETION"

Insert: "and including a commitment that completion will be accomplished in accordance with applicable environmental laws"

14. Page 5, line 4.

Following: "prepared"

Insert: "or the state's attorneys"

Strike: "tribunal"

Insert: "body"

SENATE JOURNAL
DATE 3-24-95
FILE NO. HB-412

23. Page 6, line 18.

Following: "law"

Insert: ", except for a violation of Title 82, chapter 4, part 1 or 2, first made known only by the entity conducting the environmental self-evaluation,"

24. Page 6, line 21.

Strike: "was not initiated within a reasonable period of time"

Insert: "does not meet the requirements of [section 2(4)(d)]"

25. Page 6, lines 22 and 23.

Strike: "significant" on line 22 through "ENVIRONMENT" on line 23

Insert: "a clear, substantial, and immediate threat of actual harm to the public health or to the environment"

26. Page 6, line 26.

Following: "AUTHORITY"

Insert: "or within a reasonable time after disclosure is made. All information submitted to a regulatory agency regarding a voluntarily disclosed violation is public information"

27. Page 6, line 29.

Strike: "TRIBUNAL"

Insert: "body"

28. Page 7, lines 5 through 11.

Strike: "[THIS]" on line 5 through "ACT]" on line 11.

Insert: "(1) The evidentiary privilege created by [this act] applies to environmental self-evaluation reports that are prepared as a result of environmental self-evaluations after [the effective date of this act] and before [the termination date of this act].

(2) The limited protection for voluntary disclosures created by [this act] applies to voluntary disclosures that are made during the period beginning on [the effective date of this act] and ending on [the termination date of this act].

(3) [This act] applies to all legal actions and administrative actions commenced on or after [the effective date of this act].

(4) Environmental self-evaluation reports that are privileged under [this act] and voluntary disclosures that are protected under [this act] must remain privileged and protected after [the termination date of this act]."

Amendments to House Bill No. 412
Third Reading Copy

Requested by Rep. Orr
For the Committee on Natural Resources

Prepared by Todd Everts
March 22, 1995

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 3-24-95
BILL NO. HB-412

1. Page 1, line 24.

Strike: "and"

Insert: "or"

2. Page 2, lines 3 through 22.

Strike: the second "report" on line 3 through "LAWS." on line 22

Insert: "set of documents that are prepared as a result of an environmental self-evaluation. All documents that are part of an environmental self-evaluation report must contain the date or dates on which the environmental self-evaluation was conducted. An environmental self-evaluation report must:

(a) contain materials that were collected or developed for the primary purpose of and in the course of conducting an environmental self-evaluation and that may include but are not limited to field notes and records of observations, findings, opinions, suggestions, conclusions, drafts, memorandums, drawings, photographs, computer-generated or electronically recorded information, maps, charts, graphs, and surveys;

(b) state the scope of the environmental self-evaluation, the information obtained, and conclusions and recommendations with a reference to supporting data or supporting information that is to be generated or that has already been generated for purpose of the report;

(c) identify proposed actions to resolve identified violations in accordance with applicable environmental laws; and

(d) indicate identified violations that have been resolved or indicate that a plan has been implemented to resolve the violations in accordance with applicable environmental laws."

3. Page 2, line 28 and 29.

Strike: "CORRECTS" on line 28 through "AGENCY" on line 29

Insert: "submits to the appropriate regulatory agency, in writing, the following information:

(i) the date of the self-evaluation that identified the violations;

(ii) a description of the violation, including all data pertinent to the determination that a violation existed;

(iii) the action being undertaken to correct the violation;

(iv) an estimated timetable for correcting the violation; and

(v) a commitment to diligent resolution of the violation"

Amendments to House Bill No. 412
Third Reading Copy

Requested by: Senator Foster
For the Committee on Natural Resources

Prepared by Todd Everts
March 22, 1995

[] = location on discussion draft

Sec. 2(2)
environmental
self evaluation
definition

1. Page 1, line 28. [Section 2(2), page 2]
Strike: "PRIMARY"

2. Page 1, line 29. [Section 2(2), page 2]
Strike: "ON A LONG-TERM BASIS"

Sec. 2(3)
environmental
self evaluation
report
definition

3. Page 2, lines 3 and 4. [Section 2(3), page 2]
Strike: "that" on line 3 through "and" on line 4

4. Page 2, line 21. [Section 2(3)^(b), page 3]
Following: "RESOLVE"
Insert: "any"

5. Page 2, line 22. [Section 2(3)^(b), page 3]
Strike: "ISSUES"
Following: "LAWS"
Insert: ", and a timetable for prompt implementation of proposed corrective actions"

Sec. 2(4)
voluntary
disclosed
violation
activities

6. Page 2, line 23. [Section 2(4), page 4]
Following: "a"
Insert: "written"

7. Page 2, line 24. [Section 2(4)(a), page 4]
Following: "violation"
Insert: "of an environmental law"

8. Page 2, line 25. [Section 2(4)(b), page 4]
Strike: "promptly"
Insert: "within 5 days"

9. Page 2, line 28. [Section 2(4)(d), page 4]
Following: "reasonably"
Insert: "prompt and"
Following: "AND"
Insert: "promptly"

10. Page 2, line 29. [Section 2(4)(d), page 4]
Strike: "APPROVED"
Insert: "ordered"

11. Page 3, line 1. [Section 2(4)(e), page 5]
Strike: "and"

12. Page 3, line 3. [Section 2(4)(f), page 5]
Following: "authority"
Insert: "; and
(g) that is not made with knowledge of an investigation or administrative or judicial proceeding that was underway or imminent and that concerns the subject matter of the disclosure"

13. Page 3, line 7. [Section 3(1), page 5]
Strike: ", criminal,"

14. Page 3, line 8. [Section 3(2), page 5]
Strike: "4(4)"
Insert: "4"

15. Page 3, line 10. [Section 3(2), page 5]
Strike: "results were"
Insert: "report was"

16. Page 3, line 12. [Section 3(2), page 5]
Following: "REPORT"
Strike: remainder of line 12 through "report"

17. Page 4, line 1. [Section 4(3), page 6]
Strike: ", criminal,"

18. Page 4, lines 7 through 11. [Section 4(3)(B)(I) & (II), page 7]
Strike: ":" on line 7 through "INITIATED" on line 11

19. Page 4, line 14. [Section 4(3)(D), page 7]
Following: "and"
Insert: "the evidence before the court or administrative body"

20. Page 4, line 15. [Section 4(3)(D), page 7]
Following: "and"
Insert: "diligently"
Strike: "with reasonable diligence"

21. Page 4, line 18. [Section 4(3)(E), page 7]
Strike: ", PRESENT, AND SUBSTANTIAL IMPENDING"

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22. Page 4, lines 22 through 29.

[Section 4(4), pages 7 & 8]

Strike: "reasonable" on line 22

Strike: "TOWARD" on line 22

Insert: "to"

⊙ Strike: "However" on line 22 through "the" on line 29

Insert: " (5) The"

Following: "obtain" on line 29

Insert: "and use in any criminal proceeding"

⊙ 23. Page 4, line 30 through page 5, line 15.

[Section 4(5), pages 8 & 9]

Strike: "The" on line 30, page 4 through "disclosed." on line 15, page 5

⊙ 24. Page 5, line 17.

[Section 4(6), page 9]

Strike: ", criminal,"

25. Page 5, lines 25 and 26.

[Section 4(8), page 9]

Strike: "NOT" on line 25 through "dispute" on line 26

Insert: "reasonably calculated to lead to the discovery of admissible evidence"

26. Page 6, line 6.

[Section 5(4), page 10]

Following: "OF"

Insert: "or after completion of"

⊙ 27. Page 6, lines 16 and 17.

[Section 7(1), page 11]

Following: "civil" on line 16

Strike: ", " on line 16 through "criminal," on line 17

28. Page 6, line 19.

[Section 7(1)(A), page 11]

Strike: "and willfully"

29. Page 6, line 21.

[Section 7(1)(B), page 11]

Strike: "within a reasonable period of time"

Insert: "and completed promptly and diligently"

30. Page 6, line 22.

[Section 7(1)(C), page 11]

Following: "in"

Insert: "a"

Following: "significant"

Insert: "threat to or"

31. Page 6, line 23.

[Section 7(1)(C) page 11]

Strike: the first "THE" and the second "TO"

32. Page 6, line 24.

[Section 7(2), page 11]

Strike: "SUPPORTING"

Insert: "establishing"

Section 5
exceptions
the privilege
that self
incrimination
privilege

Section 7
-limited
protection for
summary
disclosures of
violations

EXHIBIT NO. 2

DATE 3-22-95

BILL NO. HB-112

33. Page 6, line 27.
Strike: "CRIMINAL."

[Section 7(3), page 11]

34. Page 6, line 29.
Strike: "SERIOUS"

[Section 7(3), page 12]

35. Page 7, line 2.
Strike: "3-YEAR"
Insert: "5-year"

[Section 7(3), page 12]

Section 8
Availability

36. Page 7, line 10.
Following: "ALL"
Insert: "civil"

[Section 8, page 12]

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 3-24-95
BILL NO. HD-415

Amendments to House Bill No. 412
Third Reading Copy

For the Committee on Natural Resources

Prepared by Todd Everts
March 15, 1995

1. Page 3, line 27. [Section 4(2)(b), page 6]
Following: "operator"
Insert: "or the owner's or operator's agent"

2. Page 3, line 28. [Section 4(2)(b), page 6]
Following: "purchaser"
Insert: "or the purchaser's agent"

SENATE NATURAL RESOURCES

COMMITTEE NO. 4

DATE 3-24-95

BILL NO. HB-412

MILT CARLSON
375 Grandview Drive
Kalispell, MT 59901-2614

March 12, 1995

Senator Bill Wilson
Capitol Station
Helena MT 59620-1706

RE: HB 412 (Orr, Libby)

Dear Senator:

Please, please consider the long range effects of this Bill proposing privilege for a so-called "environmental self-evaluation report" and send this Bill to the never-never land that it wants to create in this State. Vote "NO" on HB 412.

Having been involved in the beet sugar business for over 36 years, I am cognizant of all types of requirements of corporate and public entities especially as they regard the environment. Any company that does not self-audit is stupid, and any company that does not deal openly with the public is merely asking for trouble.

If any threat to the public health and welfare exists anywhere in the State of Montana, we are all stakeholders and require more than voluntary cooperation from an entity. Our State agencies are underfunded and overburdened enough at this point, and this Bill, if enacted, would send the public interest farther down the list of priorities (or eliminate it).

Kindly put down this unworkable and unreasonable bill by voting "NO" and let us get on with positive efforts to maintain, not destroy, Montana's quality of life and reason.

Sincerely,



Milt Carlson

Copy to Governor Racicot

March 12, 1995

Memo to: Senate Natural Resources Committee
Senator Lorents Grosfield

Subject: House Bill 412

On behalf of myself and the Citizens For a Better Flathead I urge you to vote NO on HB 412.

Consider carefully the public interest implications inherent in this "Environmental Self Evaluation Report". Providing a privileged status for this information prevents examination and potential corrective action for environmental damage by the public.

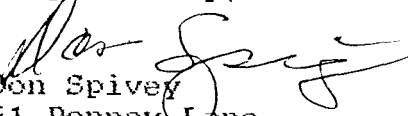
A "Voluntary Disclosure Violation" is also privileged and no civil, criminal, or administrative action can be taken unless our overburdened and underfunded public agencies can prove violation of vaguely defined criteria. The general public is excluded.

This may very well be unconstitutional under Article 2 of the Montana Constitution.

This bill represents BAD public policy and is no way to address potential environmental damage in our State.

Please vote NO on HB 412.

Respectfully,


Don Spivey
51 Penney Lane
Columbia Falls 59912
257-0724

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-24-95 BILL NO. HB-412 NUMBER 8

MOTION: TO CONCUR IN
HB 412 AS AMENDED
CARRIED 7-4

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

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-24-95 BILL NO. HB 412 NUMBER 7

MOTION: To Adopt Amendment

No hb 041202.ate

CARRIED 6-4

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

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-27-95 BILL NO. HB-412 NUMBER 6

MOTION: To Adopt Amendment

No 35

FAILED 7-3

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

MONTANA SENATE
 1995 LEGISLATURE
 NATURAL RESOURCES COMMITTEE
 ROLL CALL VOTE

DATE 3-24-95 BILL NO. HB-412 NUMBER 5

MOTION: To Adopt AMENDMENT No 34
With New Language

CARRIED 6-4

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

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3.24.95 BILL NO. HB 412 NUMBER 4

MOTION: To Adopt AMENDMENT 21

Failed *9-1*

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

MONTANA SENATE
 1995 LEGISLATURE
 NATURAL RESOURCES COMMITTEE
 ROLL CALL VOTE

DATE 3-24-95 BILL NO. HB-412 NUMBER 3

MOTION: To adopt 17 amendments
No 7, 11 and the revised No 12.
FAILED 5-5

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

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-24-95 BILL NO. HB-412 NUMBER 2

MOTION: To Adopt Amendments

No's 13, 17, 22, 23, 24, 27, 33, 36

To Take "Criminal" Out of B:11
FILED 9-1

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

MONTANA SENATE
 1995 LEGISLATURE
 NATURAL RESOURCES COMMITTEE
 ROLL CALL VOTE

DATE 3-24-95 BILL NO. HB 412 NUMBER 1

MOTION: To Adopt AMENDMENTS

NO. hb 041208.ate

CARRIED 7-4

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