

MINUTES

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

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 27, 1995,
at 4:20 PM

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (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)

Members Excused: Sen. William Crismore
Sen. Bill Wilson

Members Absent: None

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

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

Committee Business Summary:

Hearing: HB 521
Executive Action: None

{Tape: 1; Side: A}

HEARING ON HB 521

Opening Statement by Sponsor:

REP. DOUGLAS WAGNER, HD 83, Flathead, said HB 521 was an attempt to put more accountability into the regulatory process for clean water, air, and solid and hazardous waste. The Department of Environmental Sciences and the Board of Health must justify their actions when adopting rules that were more stringent than comparable federal requirements. The bill does not prohibit the

DHES going beyond federal requirements, but does require that they provide formal records and reasons for that decision.

REP. WAGNER said the House Natural Resources Committee adopted amendments to the bill that extend those same requirements to local units of government. As introduced, the bill did not include local units of government. However, they were approached by people who were concerned that if they wanted to build in accountability of the regulatory process, local units of government should be included. **EXHIBIT 1.**

Proponents' Testimony:

Peggy Trenk, representing Western Environmental Trade Association, said the bill would require regulators to be more accountable for their decisions. The bill does not require either the state or local units of government to conduct costly new studies either to justify rules already adopted or to adopt new rules. They would like to know what existing studies they were using to base their rationale on. The bill was modeled after legislation in Utah and North Dakota as well as an executive order signed by the Governor of New Jersey.

Andy Skinner, Skinner Enterprises, said he deals with affordable housing. He said they deal with the elderly as well as the young people. They sell approximately 80 houses a year in Lewis and Clark County in a price range of from \$80,000 to \$85,000. The average home in Bozeman costs an average of \$130,000.

Mr. Skinner said they had spent over \$50,000 in time and legal fees to get Lewis and Clark County to comply with the subdivision laws as written. His attorney met with them and told them they were exceeding the law and their position was, "if you don't like it, sue us." But before the county could be sued, all remedy processes had to be exhausted. That took over 2 years in running tests, and providing engineering. **Mr. Skinner** said he spent \$4,000 on just one report. The sanitation department's regulations were not as good as what the state had approved. Their subdivision was approved by the DHES in 1988, by Lewis & Clark County Commissioners in 1990, and by the state of Montana in 1993. Even after that, they still cannot get the Board of Health to approve the plat so they can sell lots. He referred to a letter from **Steven Pilcher, Administrator, Water Quality Bureau, Department of Health and Environmental Sciences,** and to the county subdivision regulations. **EXHIBITS 2, 2A, and 2B.**

Mark Johnson, resident of Lewis and Clark County, said in 1994 he was issued a septic permit and road approach to build a second house on his 19.7 acres. He installed the septic tank, had it approved and completed the access road and the foundation. In November he aggressively spoke out against the proposed County Zoning Plan, as a result the county revoked his septic permit after it was completed. He hired a lawyer who believed there was

sufficient evidence to prove the permit was revoked in retaliation.

Mr. Johnson said the County Health Department completed their review and said it looked good. DHES denied his application on grounds that the nitrate levels in his well were too high. State law requires nitrate levels to be below 2.5, his level was 1.4. DHES said that was too high and was approaching 2.5. As a result he has paid \$800 in attorney fees, and \$10,000 of improvements to the house and no permit. The cost of the test to get his permit reissued would be from \$10,000 to \$25,000. He said if he performed that test, he was sure they would find another reason to deny his application. He reviewed a letter he received from the DHES denying his permit. See **EXHIBIT 3** for testimony, and phone conversation. He felt HB 521 would require state and county government to be accountable for their actions.

David Owen, Montana Chamber of Commerce, said in traveling the state he had talked to gas station owners that had paid \$10,000 to \$30,000 to replace tanks and cap off floor drains. He had also talked to dry cleaners who paid \$25,000 in fees. An implement dealer in the Bozeman area who was building a wash basin to wash tractors before he worked on them, told him it cost \$300,000. Businesses ask "tell us what the rules are, and why." The fiscal note makes it seem it is more expensive to justify rules than it would be to write them to begin with.

Steve Turkiewicz, Montana Automobile Dealers Association, said they support HB 521. If Montana government entities finds it too cumbersome or too expensive to justify in writing standards more stringent than federal rules, how can Montanans be required to comply or afford the costs?

Riley Johnson, National Federation Independent Businesses, said contrary to what a lot of people may believe, small businesses are not in favor of rape and pillage of the environment such as the water, air, etc. However, they do want accountability, and to "tell us why."

Chris Racicot, Executive Director, Montana Building Industry Association, said the building industry deals with state and local regulations. There were increased regulations and a void of any checks and balances that had almost gotten out of control. For the reasons already stated, they support HB 521.

Ken Williams, representing the Montana Power Company, said it was important to remember that federal standards were adopted to protect the environment, so when the state of Montana chooses to go beyond federal standards, the regulated community has a right to know the scientific basis for more stringent standards. They urge a do pass on HB 521.

Gail Abercrombie, Executive Director, Montana Petroleum Association, said that HB 521 was a good bill. It will create

business and regulatory efficiencies by allowing flexibilities to accommodate special situations in Montana. The bill would give Montana the opportunity to apply further science to meet their concerns.

Tom Ebzery, Attorney for Exxon, in Billings, said HB 521 had been subject to 4 subcommittee meetings and a suitable compromise was worked out. A lot of changes were made, and the bill provides provisions that probably won't be acceptable to all, but that was often true in a compromise. The bill doesn't strip any environmental laws, but for a rule to be more stringent than a federal rule they have to justify it through a findings process. There was a look-back provision that provided a petition mechanism for an affected party to obtain a review of an existing rule adopted after January 1, 1990. **Mr. Ebzery** said HB 521 represents a lot of work and recommends a do pass.

Charles Brooks, Billings Chamber of Commerce, said they asked the committee to consider a cost analysis of any environmental regulations. The bill would protect private property rights, and insure that proposed mandates were fully funded by the legislature. The EPA in setting their standards, goes through a very scientific analysis and review by independent scientists. **Mike Murphy, representing Montana Water Resources Association,** said they wish to go on record in support of HB 521.

Eric Williams, Pegasus Gold, said they support HB 521 as amended.

Tom Daubert, representing Ash Grove Cement Company, said they support the legislation. If anyone suggests that the bill would allow Ash Grove Cement Company to petition the state to review the rules and role them back to make them weaker than they were, anyone who would say that, doesn't understand the legislation. If the Legislature directs a state agency to adopt rules that were stricter than the federal rules, the agency may do so. The bill does not interfere with that provision.

John Schontz, representing the Montana Association of Realtors, said their association supports the legislation. The bill would do a lot to make sure that good science was used, and that unfunded mandates on private citizens do not occur without good reason.

Don Allen, representing Montana Wood Products Association, said they were in support of HB 521. It is important that local governments were involved, because they too should be able to justify requirements beyond the federal government.

Lorna Frank, representing the Montana Farm Bureau Federation, said they support HB 521 because it was a good bill.

Rex Manuel, representing Cenex Petroleum Division, Laurel, said there was a lot of work that went into the bill and they support the bill as presented in the House.

Russ Ritter, representing Washington Corporation, Missoula, said they have a number of companies that were affected by HB 521 and they support the bill for all the reasons previously stated.

Written testimony submitted:

J. E. Taylor, Engineering Consultant, supports HB 521. **EXHIBIT 9.**

Opponents' Testimony:

Bob Robinson, Director, Department of Health and Environmental Sciences, said the way the bill was originally drafted it would have forced the DHES to prove that federal standards were not protective of public health. The environmental laws were more stringent in Montana than they were in Los Angeles. The bill addressed why they went beyond federal standards. He said he would prefer that it not be retroactive to 1990, because they would have to go through a lot of records. He asked the committee to take a look at what the intent of the bill was. They think the intent was to apply to federal standards and not procedural.

Mr. Robinson responded to **Mr. Johnson's** comments about the DHES. He said they received a copy of the letter that was sent to him and his subdivision was not entirely refused. They wrote him a letter on March 20, saying, the material he submitted was incomplete. **EXHIBIT 4.**

{Tape: 1; Side: B}

Blake Wordal, Lewis and Clark County Commissioner, said they did not have any problem with the bill that provides review or justification of the rules that were adopted beyond federal standards. He said they do have a problem with retroactivity. It would take a lot of time, energy and money to deal with that. Sometime rules and regulations are not good for us, specifically the solid waste rules and regulations. The federal regulations said if another waste facility was within 150 miles of another facility they were not exempt. That meant that Augusta had to go through the process of closing their landfill at an enormous cost for no good reason except for the distance. HB 521 would be considered an unfunded mandate with costs involved.

Ted Lange, representing the Northern Plains Resource Council, said they had no problem with the rule-making process. Their concern was that HB 521 goes beyond producing a summary. Their interpretation of the bill was it creates a cause of action for lawsuits against state and local government. They were concerned with the language on Page 4, Line 14-15, that says: "the state standard or requirement to be imposed can mitigate harm to the public health or environment..." Montana recently adopted a

boiler and industrial rule for toxic waster burning. **EXHIBIT 5.**
He reviewed some suggested amendments. **EXHIBIT 6.**

Ann Hedges, representing Montana Environmental Information Center, said she had some suggested amendments that she reviewed with the committee members. **EXHIBIT 7.** If a company doesn't like the written justification that the department has provided them, and they don't believe that it was achievable under current technology, they go to the department and ask "why?" The next step would be to go to court and challenge those regulations. If the standards were based upon public health and safety, would it be appropriate to say they have to be achievable under current technology?

Debby Smith, Helena Attorney representing the Sierra Club, said they oppose HB 521. The rules that were currently in place in which the state had implemented federal programs, were not based on arbitrary decisions. If the bill passes in its current form the fiscal note indicated it would cost the state \$2.9 million in fiscal year 1996, and another \$2.9 million in fiscal year 1997.

Ms. Smith said if anyone, under current law, wanted a rule change they may file a petition for rule-making with any department, and set forward the reasons they wanted a rule change and the basis for those reasons. All of the proponents can go back to DHES and say, "here is our evidence that the rules should be changed." The agency has to consider that evidence and has to make a decision on the record, they cannot just arbitrarily ignore what had been presented to them. She urged the committee to table the bill or provide a prospective road map with directions for agencies to justify the decisions they make on rules that they issue. Let the people who are unhappy with those rules come forward and petition the agency to change the rules.

Sarah Barnhart, representing Montanans Against Toxic Burning, said a lot of work has gone into the bill, but it was obvious there were many areas that needed clarification. Definitions need to be clarified, and the petition provision on Page 4, Lines 21-24 that says, "a person affected by a rule of the board adopted after January 1, 1990 and before the effective date of this act that person believes to be more stringent than comparable federal regulations or guidelines may petition the board to review the rule." She wondered how that would work. She asked how the \$250 petition filing fee was arrived at, and if it would cover the costs involved. Also they would like to see the retroactive provisions removed.

Melissa Case, representing Montanans for a Healthy Future, said they were also concerned about the retroactive section of the bill, and what constitutes a rule. Rules that were developed in the early 1980's or earlier and opened up later (in the 1990's) for revisions may be considered new rules and not be excluded within the provisions of the legislation. They oppose HB 521.

Janet Ellis, representing the Montana Audubon Legislative Fund, said they oppose the bill because they didn't think the legislation documents decisions being made. It creates a standard that would prohibit the state or local governments of putting higher standards in affect. Often health standards are set because of health reasons and not because of technological reasons. Also they had a problem with the retroactive date. She said there already was a documentation on rule-making that says, "no rule adopted is valid or effective unless consistent and not in conflict with the statute and the reasonable necessity to effectuate the purpose of the statute, such reasonable necessity must be demonstrated in the agencies notice of proposed rule-making...."

J. V. Bennett, representing the Montana Public Interest Research Group, said they also share the concerns of the other opponents to HB 521. Because the bill will lead to department paralysis and undermine Montana's ability to protect its citizens, they urge the committee to table HB 521. **EXHIBIT 8.**

Questions From Committee Members and Responses:

SEN. JEFF WELDON asked **REP. WAGNER** how they arrived at the retroactive date of January 1, 1990. He replied they originally wanted to go back to the date that the Clean Air and Water Act occurred. The subcommittee, DHES, and industry discussed that, and they talked about going back to 1980. People didn't keep records that far back so it was decided that 1990 was in the computer age and there would be no problem coming up with data, or records for that date, and everyone agreed upon that date, including **Director Robinson**.

SEN. WELDON asked what the bill would do to help **Mr. Johnson's** problem. **REP. WAGNER** said probably offer a little pressure on the DHES, the Board of Health, and the local boards that if they were going to make a ruling on his proposed development, they have to put it in writing the justification for their decision.

SEN. WELDON said the bill only applies to the rule that was used by the department to conclude that 1.4 was approaching the 2.5 nitrate limit. Would the bill give **Mr. Johnson** the option of suing the state or local government? **REP. WAGNER** said he could already sue them if he so desired.

SEN. VIVIAN BROOKE asked **Mr. Robinson** if the bill was passed how would he envision the wood stove merchants in Missoula challenging a rule that may not have as a good a science as the bill requires.

Mr. Robinson replied the standards in Missoula were more stringent and if anyone was dissatisfied with them they could be challenged for the \$250 filing fee, and force the air quality board to justify why they went beyond the state standards.

{Tape: 2; Side: A}

SEN. MILLER asked **Mr. Johnson** to explain why they refused his request. He replied he was told he had to make a sensitivity test and that cost was \$25,000. State law says 2.5 was the limit for nitrates. They owe him an explanation why they rejected his 1.4 nitrate level and they refuse to tell him why.

SEN. MILLER said he assumed that **Director Robinson** would give him that information. **Mr. Johnson** said that he could challenge their ruling for \$250, but he would have to hire an attorney at \$100 an hour, and his attorney said it would cost \$3,000 to get to the first court if they don't appeal it, and their attorneys were free..

Mr. Robinson said the denial was based upon incomplete information and when the nitrate sensitivity analysis was done then they would make another decision. If the current well water indicates that there was 1.4 level of nitrates the applicant has to show through an analysis what another septic tank would do in that particular spot. He didn't think it came anywhere close to \$25,000 for that analysis. He said that for \$250 they would go back and review the groundwater standards.

SEN. MILLER said they had 2.5 and the EPA standard was 10. The way **Mr. Robinson** explained it, it was a 1.4 and you need documentation to see if it would raise to the 2.5 level.

Mr. Robinson said the drinking water standard was 10 parts per million of nitrates. He said they worked with the developers on SB 401 on the nondegradation rules to set a couple thresholds, and one was 2.5, if that goes above 2.5 then they would have to use secondary treatment.

SEN. WELDON asked **Mr. Robinson** if when the Board of Health concluded that 2.5 would be the standard, were the minutes of that meeting kept describing what you just said. He replied that was correct.

SEN. WELDON asked **Mr. Wordal** how many rules the local health department had developed or modified since 1990. He replied that he didn't know because he was not a part of that process.

Mr. Skinner said **Mr. Johnson's** problem seems to be that the nitrate sensitivity analysis were very expensive. It was an arbitrary decision to impose that upon him and not upon everyone. Only some people were required to have the nitrate sensitivity test. He was given a septic tank permit that was revoked, and he had preliminary approval with no conditions. Six months later the county imposed conditions without notifying him, and that was in violation of the law.

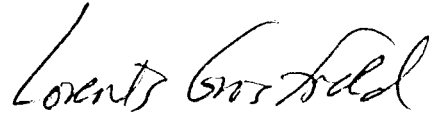
Closing by Sponsor:

REP. WAGNER said the bill deals with rules that were more stringent than federal rules, dealing with the public and the environment. He thought a lot of the issues that were brought up were only to cloud the issue and to create doubt. He said they weren't suggesting the EPA didn't do a good job. They were not asking for anyone to go out and perform a study or a scientific analysis. He said they weren't asking for anything unreasonable. When rules were promulgated, they were on record and they could look at that and say, here was the information they got for a public hearing. The bill was fairly simple and makes for good policy.

{Comments: the meeting was recorded on 2 60 minute tapes.}

ADJOURNMENT

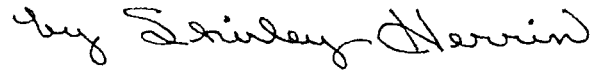
Adjournment: 5:45 PM



LORENTS GROSFIELD, Chairman



THEDA ROSSBERG, Secretary



LG/TR

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE 3-27-95

[illegible]

SEN:1995
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WHAT IS HB521 ALL ABOUT?

HOUSE BILL NO. 1
DATE 3-22-95
BILL NO. HB521

HB521 puts more accountability into the regulatory process. It requires the Department of Health and Environmental Sciences, the Board of Health and Environmental Sciences, and Local Boards of Health to justify their actions when they adopt rules that are more stringent than comparable federal or state requirements for such things as clean water, clean air, and solid and hazardous wastes.

- The bill makes it clear that we can recognize Montana's uniqueness in providing greater protection for public health and the environment at both the state and local level. It asks only that a written rationale for regulatory decisions be maintained that reflects the "science" behind the decision as well as information from the public record.

THE BILL'S PETITION PROCESS:

- Allows those impacted by Rules adopted after January 1, 1990 to obtain a written justification for those requirements since the existing public record from the rulemaking process should be available. Right now, those who feel the rules are not justified can go to court, but that option can be costly for all involved. This would provide a better alternative.
- Allows us to stay current with the science behind new federal rules should they be adopted to address areas not presently regulated. It wouldn't require the state to repeal any regulations that were adopted in the absence of those federal requirements. On receipt of a petition, the state would have to verify that those existing rules are justified if they exceed the new federal requirements.

HB521 DOES NOT:

- Roll back any existing Regulations at either the state or local level.
- Affect Requirements in State Law that set more stringent standards.
- Put PUBLIC HEALTH OR THE ENVIRONMENT AT RISK. Federal requirements protect public health and the environment already. HB521 does not call for the state to be less protective than those requirements. It only asks us to identify the purpose for going beyond federal requirements, or in the case of local units of government, comparable state requirements.
- Take away the ability of local units of government to exceed comparable state standards, nor does it call for changing or duplicating any existing processes for developing regulatory requirements. Again, it asks only that a written record of the rationale for decisions be maintained, and that it be accessible to the public.
- Create an unfunded mandate for local governments. Information about the reasons for local decisions should be readily available from the public record - otherwise, why have they adopted more stringent requirements? Producing a written statement justifying that decision should not be a significant burden.

*Information provided by Representative Doug Wagner

SKINNER ENTERPRISES

1925 Poplar
P.O. Box 5447
Helena, MT 59604
(406) 442-6931

SENATE NATURAL RESOURCES

EXHIBIT NO. 2

DATE 3-27-95

BILL NO. HB-521

March 27, 1995

Senator Lorents Grosfield
Chairman
Natural Resources Committee
Capitol Station
Helena, MT 59620

Re: HB 521

Dear Senator Grosfield:


We are writing you in support of HB 521. Our firm has committed over \$50,000.00 in time, engineering and legal fees to get Lewis and Clark County to comply with the subdivision laws as written.

Their position has been 'if you do not like it, sue us'. The only problem is that we were required to exhaust all remedy processes and appeals before we could go to court. Therefore, we went through two years of monitoring, testing, and consulting and wound up right where we started because the state determined this county has no legal right to regulate major subdivisions under 50-2-116 (1)(i) MCA as they have been doing. (see attached letter).

What makes matters even worse is the fact that many of the regulations which the county has attempted to implement are arbitrary chosen, even by their own admission in public hearings. By adopting HB 521 a county would have to justify the cost as well as the need for a regulation by public hearings. By posting \$250 we can have counties establish by scientific fact the justifications why exceedingly stringent regulations are necessary and that they can be performed in a cost efficient manner.

We urge the committee to support HB 521 so that a stop can be put to unreasonable regulations which are depriving the families of Montana affordable housing.

Yours Truly,



Andy Skinner

EXHIBIT NO. 2A

DATE 3-29-95

FILE NO. 8 HB-521

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES
LEGAL UNITCOWSWELL BUILDING
1400 BROADWAY

STATE OF MONTANA

(406) 444-2630 (OFFICE)
(406) 444 1904 (FAX)

March 24, 1995

PO BOX 200411
HELENA, MONTANA 59620-0801

James E. Taylor, P.E.
J.E. Taylor & Associates
8422-Diamond Springs Drive
Helena, MT 59601

Re: Green Acres Subdivision, Review of Local Board of Health
Decision

Dear Mr. Taylor:

I am responding to your letter of March 17, 1995, regarding the potential for appeal of the Lewis and Clark County Board of Health's decision on Green Acres Subdivision. I have consulted with Bob Thompson, an attorney for the Water Quality Division, and provide the following clarification.

Section 75-5-305(3), MCA, authorizes an appeal to the Department of a local board of health's variance decision from minimum sewage disposal requirements adopted under Section 50-2-116(1)(i), MCA. However, section 50-2-116(1)(i), MCA, limits the scope of such requirements to systems that are not regulated under the Sanitation in Subdivisions Act (Title 76, chapter 4, MCA) or Public Water Supply Act (Title 75, chapter 6, MCA).

The Department has reviewed sewage systems for Green Acres Subdivision under the Sanitation in Subdivisions Act. Therefore, regulations adopted under Section 50-2-116(1)(i), MCA, do not apply to the subdivision. Accordingly, I do not feel that a variance appeal to the Department is appropriate in this instance. Please note, however, that there are local ordinances adopted under other authority than Section 50-2-116(1)(i), MCA, that can impose sewage treatment and disposal requirements.

I would encourage you to review this letter with Lewis and Clark County officials. Please feel free to call me or Bob Thompson if you have further questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steven L. Pilcher".
Steven L. Pilcher
Administrator

cc: Bob Thompson

SECTION 1. AUTHORITY AND SCOPE**1.1 TITLE**

(1) This shall be known and cited as: A REGULATION GOVERNING THE ON-SITE TREATMENT OF WASTEWATER IN LEWIS AND CLARK COUNTY.

1.2 AUTHORITY

(1) These regulations are promulgated by the Lewis and Clark City-County Board of Health under the authority of Title 50, Chapter 2, Section 116, Paragraph (1)(i), MCA.

(2) As provided in Title 50, Chapter 2, Section 116, Paragraph (2)(j), MCA, fees may be set for the administration of this program.

1.3 INTENT

(1) These rules and regulations are necessary for the protection of public health in Lewis and Clark County.

(2) The control of environmental pollution and communicable disease is established by regulating the location, application, design, and construction of on-site wastewater treatment systems and by regulating the disposal of sewage in Lewis and Clark County.

(3) The Department does not design on-site wastewater treatment systems. The requirements set forth in a permit do not guarantee the proper operation of any system.

1.4 SCOPE

(1) These rules and regulations apply to all areas of Lewis and Clark County.

(2) These rules and regulations apply to any person intending to install, installing, responsible for installation or alteration of new or existing on-site wastewater treatment systems including load increases and connection to abandoned systems.

1.5 COMPLIANCE

(1) It is illegal to construct, alter, extend, or utilize an on-site wastewater treatment or disposal system that may:

(a) contaminate any actual or potential drinking water supply;

Telephone conversation with Ken Cope, DHES (444-2406) 3-24-95

DATE 3-27-95

FILE NO. HB-521

I indicated we had received his letter dated March 20, 1995 and asked if he could explain his reason for denying our permit. He indicated the nitrate level of 1.4 was approaching the state allowed level of 2.5. I said 1.4 seems to me to be a long way from 2.5. I asked if there was a standard for him to be able to say when the nitrate level is "approaching" the 2.5. After much discussion and asking the same question several times he said if the level is greater than 1.0 for this area he would require the analysis. I asked what he meant by "this area". He didn't respond and I said do you mean Grizzly Gulch or Lewis and Clark County? He replied that he meant Lewis and Clark County. I asked if he had a study or some other basis to justify the 1.0 for Lewis and Clark County? He said they know the background of the area but did not indicate they have any studies or scientific evidence he was using to justify the 1.0. He indicated that in some Counties the natural nitrate levels could be as high as 10.0 and he would approve the permit.

I told Mr. Cope I was extremely frustrated because this appears to be a judgement call rather than a definable standard based on studies. He agreed that it was a judgement call. I told him Rick Duncan at the County Health Department had reviewed our file and indicated the 1.4 would meet state approval. He questioned whether Rick had reviewed the file because the letter that was sent to him was signed by Joan Miles. I assured him Rick had reviewed it because I had spoken to Rick and he told me he had approved it and was sending it to DHES.

At this point Ken mentioned the analysis was necessary to ensure the new system would not increase the nitrate levels in the waterway that runs down Grizzly Gulch. I told him there is not waterway above ground on our property. He said maybe not year round but at some time during the year there was. I assured him there is no water running above ground at any time during the year on our property. He then said there is probably shallow underground water. I asked what he meant by shallow and he replied it depends on the situation. I informed him our well and the wells of the two closest neighbors are approximately 250 feet deep. He said this did not necessarily mean there is not water closer to the surface. (note: while I agree the three wells do not represent a statistical sample that can provide specific levels of assurance with specific tolerable misstatements it is more evidence than he appears to have.)

I then told Mr. Cope we were not required to perform this analysis on the septic system we installed a few years ago. He suggested that maybe the existing system was causing the nitrate levels to be high in our current water sample. I informed him this was not likely because the existing system is downgrade from the well.

Conclusion

Ken did not appear to me to be interested in or capable of justifying his judgement regarding how he determined the 1.43 was too high for approval. He seemed intent on repeating he is requiring this test be done.

NOTE: The conversation lasted approximately 10-12 minutes. At the end of the conversation I informed Ken I was uncertain of what we were going to do and thanked him for the information.

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 3-27-95
BILL NO. HB-521

March 27, 1995
RE: HB #521

Honorable Chairman and members of the Committee, I am Mark Johnson.

I appreciate the opportunity to relate the problems I am having with State and County Health and Subdivision Officials.

In October of 1994 I was issued a septic permit and road approach permit by Lewis and Clark County to build a second house on my 19.7 acres.

In November of 1994 I proceeded with construction. I installed the septic system and had it approved. I completed the access road and the foundation.

Also in November I aggressively spoke out against the proposed County Zoning Plan.

On December 8, 1994 the County revoked my septic permit after I had completed all this work. I hired an attorney and he believes there is sufficient evidence to prove the permit was revoked in retaliation. He recommended we sue but we wanted to first make a good faith effort to get the permit reissued.

We resubmitted our application to the County Health Department in February of 1995. On March 7, 1995 the County Health Department completed their review and said we had provided all required information and it looked good. They forwarded the application to DHES.

DHES denied my application. It was denied on the grounds of the nitrate level in my well water. State law requires nitrate levels to be below 2.5. My nitrate level is 1.4, well within the strict state standards; yet they used this for grounds for denial of my permit because they said 1.4 is approaching 2.5. That's like the speed limit being 60 and I'm ticketed for going 34 because its approaching 60. I couldn't believe it because two weeks earlier the County Health Department said the test result of 1.4 looked good to them.

My situation presently is this: I have \$800 in attorney fees, nearly \$10,000 of improvements toward a house and no permit. The cost of the test to get my permit reissued I understand could be between \$10,000 and \$25,000. If I perform this test I believe they will attempt to find another technicality to deny my application.

Is this fair? Is this how business is done in Montana? It looks to me that Government can make up any rule they please without regard to science or law.

HB521 would provide a feasible means for individuals in my situation to require the Government Officials to justify the standards they set and their denial of permits. The passage of this bill is essential to provide the average Montana citizen an economic means of holding State and County Government accountable for its actions.

Bureaucrats don't need to fear this bill unless they intend to abuse their authority.

Thank You Mark Johnson

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 3-27-95
BILL NO. HB 521

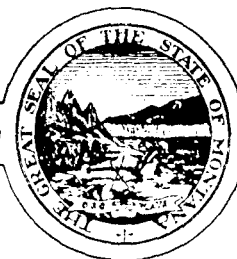
Johnson Minor Subdivision
RE: HB521

October 3, 1994	Septic permit issued
November 1, 1994	Road approach permit issued
November, 1994	Completed septic system, road approach and foundation
November 2, 9, & 22	Aggressively spoke out against county zoning plan
December 7, 1994	Septic permit officially revoked
Next 3 months	Have stopped construction and have been trying to get permit reissued
March 24, 1995	Ken Cope, DHES denied application because our nitrate level of 1.4 is approaching the state limit of 2.5.

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES
WATER QUALITY DIVISION

4
S-27-95
BILL NO. HB-521

COGSWELL BUILDING
1400 BROADWAY



STATE OF MONTANA

(406) 444-2406
FAX (406) 444-1374

March 20, 1995

PO BOX 200901
HELENA, MONTANA 59620-0901

Mark and Kathy Johnson
1285 Grizzly Gulch Rd.
Helena, MT 59601

RE: Johnson Minor Subdivision
Lewis and Clark County
E.S. #25-95-S82-902

Dear Mr. & Mrs. Johnson:

The application for the above referenced subdivision was received by this office and reviewed in accordance with Sections 76-4-101-131 MCA. This is to inform you that the material submitted for the above referenced proposal is incomplete for our review purposes. The deficiencies are noted on the attached sheet.

Because of the inadequate information, the Department hereby denies the proposed division. Until the information required by law and regulation is submitted to this office and found to be adequate, we cannot produce a statement that the subdivision is free of sanitary restriction. The time period for review, specified in Section 76-4-125(1)(b) MCA, will commence again upon your resubmittal of material which addresses the deficiencies.

You may submit the necessary information for our review. If you do so, please use the submittal title noted above to assure that the information is placed with your particular proposal.

If you have any questions on the above, please feel free to call on us at the Water Quality Bureau at 444-2479.

Sincerely,

A handwritten signature in cursive script, reading "Kenneth A. Cope".

Kenneth A. Cope
Subdivision Program Manager
Water Quality Bureau
Environmental Sciences Division

cc: file
county sanitarian

Page 2
March 20, 1995

RE: Johnson
Lewis and Clark County

ADDITIONAL INFORMATION

1. Since the background nitrate concentration is approaching the 2.5 mg/l limit a nitrate sensitivity analysis is required. If this analysis indicates that the concentration exceeds 2.5 mg/l due to the proposed new source plans and specifications will be required for level 2 treatment.

STATE OF MONTANA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
COGSWELL BUILDING
HELENA MONTANA, 59620-0901

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 3-27-95
BILL NO. 14 B-521

LABORATORY SYSTEM

ACCOUNT: T012050B ATTN:

MARK JOHNSON
1285 GRIZZLY GULCH RD
HELENA MT 59601

FOR: MARK JOHNSON

SAMPLE ANALYSIS REPORT

February 6, 1995

#	testname	sampleid	date	reported	units
001-100221	NITRATE PLUS NITRITE AS N	HLN	01/19/95	1.43	MG/L
001-100221	SPECIFIC CONDUCTANCE	HLN	01/19/95	545	UMHOS

APPROVED BY:

DUB

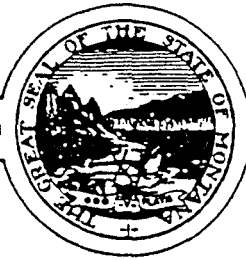
*FOR QUESTIONS CONCERNING THIS ANALYSIS CALL: 406-444-2642

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

Solid and Hazardous Waste Bureau
Hazardous Waste Program

STAN STEPHENS, GOVERNOR (406) 444-1430

STATE NATURAL RESOURCES
EXHIBIT NO. 5
DATE 3-27-95
BILL NO. HB 521 FAX # (406) 444-1409



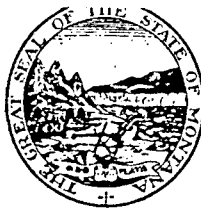
STATE OF MONTANA

OFFICE 836 Front Street
LOCATION: Helena, Montana

MAILING Cogswell Building
ADDRESS: Helena, MT 59620

The following summarizes changes that the Department of Health and Environmental Sciences has made to the federal boiler and industrial furnace rules as published within the attached "Interim Notice of New Rules":

1. Prohibition of Burning Dioxin Listed Wastes - Thirteen designated EPA waste codes will be prohibited from being burned in BIFs due to their containing dioxin or pentachlorophenol [see New Rule III (5)(b)(iv)].
2. Background and Periodic Testing of Soils, Surface Waters and Aquifers - Background and periodic testing of soils, surface waters and aquifers will be required in order to verify that the burning of hazardous waste is not contributing to long-term environmental degradation [see New Rule III (6)].
3. Controls for Dioxins and Furans - The facility will be required to perform a site-specific risk assessment to demonstrate that dioxin and furan emissions do not pose an unacceptable risk - the federal rules provided an exemption if the air pollution control system was operated within a certain temperature range [see New Rule IV (5)].
4. Additional Devices, Instrumentation, Systems and Equipment - The facility may be required to install and operate additional instrumentation if determined by the Department, during the permit review process, to be required [see New Rule III (5)(g)(iv)].
5. Monitoring and Inspections - The facility will be required to sample and analyze stack emissions on at least an annual basis, the sampling plan will be established during the permit review process [see New Rule III (5)(h)(i)(C)].
6. Permit Review - A permit review will occur after five years, similar to permits issued for a land disposal facility [see ARM 16.44.111].
7. Exemptions - Exemptions for low risk waste, waiver of DRE trial burn for boilers and using data in lieu of a trial burn have been removed from the rules.
8. Inversions - The facility will be required to submit a plan for restricting the use of hazardous waste during prolonged winter inversion occurrences [see New Rule III (5)(c)(iii)].



SENATE NATURAL RESOURCES
EXHIBIT NO. 6
DATE 2-27-95
BILL NO. H.B. 521

HOUSE COMMITTEE OF THE WHOLE AMENDMENT

House Bill 521
Representative Ellingson

March 21, 1995 12:17 pm
Page 1 of 1

Mr. Chairman: I move to amend House Bill 521 (second reading copy -- yellow).

Signed: Jim Ellingson
Representative Ellingson

And, that such amendments to House Bill 521 read as follows:

1. Page 4, line 20.
Page 6, line 24.
Page 8, line 28.

Following: "REQUIREMENT."

Insert: "The written finding must also include information from the hearing record regarding the degree to which the proposed state standard or requirement will protect or enhance private property values and property rights."

2. Page 10, line 7.
Page 11, line 14.

Following: "REQUIREMENT."

Insert: "The written finding must also include information from the hearing record regarding the degree to which the proposed local standard or requirement will protect or enhance private property values and property rights"

-END-

ADOPT

AC

REJECT

651217CW.Hbk

Amendments to HB 521
Prepared by Anne Hedges
Montana Environmental Information Center

SENATE NATURAL RESOURCES
EXHIBIT NO. 7
DATE 2-27-95
BILL NO. HB-521

1. Page 3, Line 8.

Strike: "required"

Insert: "allowed"

2. Page 4, lines 14 through 15

Strike line 14 through line 15

3. Page 4, lines 17 through 20

Following: "CONCLUSION." on line 17

Strike: "The" through ""REQUIREMENT" on line 20

4. Page 4, line 23.

Following: "GUIDELINES"

Insert: "and is not allowed by state law"

5. Page 5, line 2 through line 6.

Strike: "(B)" on line 2 through "RULE." on page 6

Apply these same changes to Sections 2, 3, 4, 5

MontPIRG

Montana Public Interest Research Group

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

Testimony Against House Bill 521, March 27, 1995

Chairman Grosfield and members of the Senate Natural Resources 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 advocacy organization advocating good government and sound environmental protection, MontPIRG rises in opposition to House Bill 521. While this bill in its amended form is less extensive and presumable less expensive than its introduced form, it is still an unacceptable attack on Montana's environment and sovereignty.

One troubling aspect of this bill is the issue of Montana's right to impose regulations that are more stringent than federal standards. The people of Montana have decided over the past two decades that the quality of our water, air and land were important enough to enact standards more stringent than those promulgated by the federal government. To disregard the will of Montanans, simply because it has resulted in more stringent regulations, and force us to accept federal regulations undermines our sovereignty as a State.

In addition, this bill would complicate the process by which future Legislatures could exercise their prerogative to enact laws to protect the quality of Montana's environment. Under this bill Legislators could not direct the scientists it employs to develop regulations under a law enacted by the Legislature without triggering a time consuming analysis. In order to enact laws without triggering this process, the Legislature would have to debate each regulation and standard. The pace of the Legislature and the amount of issues confronting Legislators is not conducive to spending the time necessary to develop regulations necessary to implement a law. The reason we employ the scientists we have in the Department of Health and Environmental Sciences and allow them to do the detail work under guidance from the Legislature is it is an efficient use of scarce time and resources.

Moreover, the inclusion of local governments in the amended form of this bill will make it difficult for local governments to adopt regulations suited to local conditions and concerns. In addition, the fiscal note states that the expense to local governments wishing to adopt more stringent standards is unknown, but is likely to result in increased workloads. In addition, local governments are less likely to have the scientific experts needed under this bill and will have to contract them at considerable expense. It can be argued that this represents an unfunded mandate from the state to its political subdivisions.

House Bill 521 also creates a standard for adopting regulations more stringent than comparable federal regulations that will be difficult if not impossible to meet. Our current science is not perfect and it can be beyond the scope of its ability to conclusively prove whether a proposed action will definitely mitigate harm to public health and the environment. However, many pollutants we discharge into our environment bioaccumulate and biomagnify in the food chain. Therefore release of minute amounts of these pollutants are likely to be significant when they reach our bodies. When considering the health of our children and the future economic viability of our state, particularly in the area of agriculture, it is important to take a precautionary approach. House Bill 521 would greatly hamper these actions to protect our health, environment and economy.

Because this bill is will lead to department paralysis and undermine Montana's ability to protect its citizens, MontPIRG urges you to table this House Bill 521.



J.E. TAYLOR & ASSOCIATES

Engineering Consultants
8422 Diamond Springs Drive

Helena, Montana 59601

(406) 458-5232

STATE NATURAL RESOURCES

EXHIBIT NO. 9

DATE 3-27-95

BILL NO. HB 521

March 27, 1995

Senator Lorents Grosfield
Chairman
Natural Resources Committee
Capitol Station
Helena, MT 59620

Re: HB 521

Dear Senator Grosfield:

I am an independent consulting engineer providing civil and sanitary engineering services throughout the state. In this capacity, I am constantly working with environmental laws and regulations that are administered by both the State Department of Health and local county sanitarians.

Those of us that work toward solutions to environmental problems find the current regulations and their administration to be cumbersome, ineffective and at times counter-productive. I will give you but a few examples of why we need this bill. There are many more. These that I cite are fully documented if you would like additional information.

The State Department of Health has adopted groundwater regulations, ie, non-degradation. In the process of rule making, reference was made to Level 2 treatment when certain conditions, for example, nitrate concentrations are not satisfied. There is strong scientific evidence that at least some of the methods approved as level 2 treatment may create more of a health hazard than the conventional methods they replace. How were the level 2 treatment methods established? Not by scientific research or by field evaluation, or the same scientific conclusions would have been reached.

With regard to non-degradation regulations, particularly as they apply to subdivisions, I challenge anyone to tell me how the rules work to the benefit of the public, the taxpayers and voters. For example, to conduct a nitrate sensitivity analysis groundwater characteristics must be determined. Strictly speaking, a minimum of three wells must be drilled, soils characteristics evaluated, groundwater elevations measured and pump tests conducted to determine underground flow characteristics. This can become very expensive depending upon the depth to groundwater. For example, the cost to perform this analysis with groundwater at 50 feet would be about \$10,000. This is just to satisfy non-deg, mixing zones, and nitrate restrictions. Per Lot! I have one subdivision where groundwater is 400 feet down through 250 feet of clay. Conceivably, the cost for each lot would approach \$20,000 for this test alone. If a workable level 2 treatment system is needed, add another \$15,000 to \$20,000. This regulation not only adds significant cost to development, but also encourages development in areas with shallow groundwater.

March 27, 1995

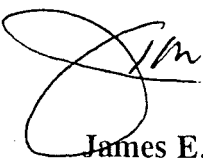
Page 2

Because of such obscure reasons as nitrates, existing water quality regulations could ADD \$40,000 to the cost of a single lot. When we consider that not one fatality has been directly attributed to nitrates in drinking water in the State of Montana, this requirement becomes highly questionable. It becomes more questionable when a water treatment system can be installed in each household for less than \$1,000, IF it is needed.

You may think this is extreme. However, if groundwater testing is NOT performed on each lot, someone will have to make ASSUMPTIONS. I make assumptions all the time based upon my education and experience. If I make the wrong assumptions, I stand to lose everything I own. When the Bureaucracy makes an assumption, you first have to question their qualifications and experience, but more significantly, who pays when they are wrong? I am involved with two subdivisions in the Helena Valley where the developers are expected to spend an additional \$925,000 for treatment systems that may not improve treatment at all. The treatment systems that are mandated may even present a greater health risk than conventional systems. This makes the fiscal note associated with some of these bills look like peanuts. When all is said and done, the developer does not pay the price. The end consumer shoulders the burden of regulation. How can our kids afford to stay in this state if there is a \$20,000+ surcharge on each lot, for nothing?

If government is going to undertake protection of our environment, they have to do it with responsibility and capability. If I, as an engineer with 20 years experience in this field cannot get the answers I need from State and local government, the regulations are not working. This is 1995. Most of us are educated and can read and write. Someday, someone will write the regulation we need. Until then, we have to fix what we have because the taxpayer/voter is paying through the nose for nothing in return. At least give us the ability to hold wayward bureaucracy in check.

Very truly yours,



James E. Taylor, PE

J.E. Taylor & Associates

DATE 3-27-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: 521

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Anne Hedges	MEIC	521		X
Jim Richard	MWR	521		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3.27.95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: H.B. 521

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Peggy Trenk	WETA	521	✓	
Riley Johnson	NFIB	521	X	
Mark Johnson	self	521	✓	
Charles R. Brooks	Billings Chamber	521	✓	
Ken Williams	MPC/Entech	521	✓	
Blake Wordal	HWB & Clark Co.	521		✓
Ed Lange	NPRC	521		✓
PEX MANUEL	CENEX	521	✓	
Bonnie Alexander	MT Petroleum Marketers	521	✓	
EROC WILCOX	PEBIASUS GOLD	521	X	
Janet Ellis	MT Audubon	521		X
Tamara J. Johnson	CURE	521	X	
Melissa Case	Montanans for a healthy future	521		X
JACOB L. KOREL	SELF	521	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-27-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: 521

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
J. Shontz	MT Assoc REALTORS	521	✓	
Steve Turkiewicz	Mr. Auto Dealers Assn	521	x	
Robert Leach	MT Assoc of Realtors	521	X	
SARAH BARNARD	MTNS AGAINST TOXIC BURNING	521		X
J.V. Bennett	Mont PERG	521		X
Lorna Frank	mt. Farm Bureau	521	✓	
Don Oller	MT Wood Products Assn	521	✓	
Tom Danbert	Ash Grove Cement Co.	521	X	
Russ Butler	MT Resources / MRL	521	X	
David Owen	mt Chamber	521	✓	
GAIL ABERCROMBIE	MT PETROLEUM Assn	521	✓	
MIKE MURPHY	MT WATER RES. ASSN	521	✓	
Deborah Smith	Sierra Club	521		X
TOM EBZERY	EXXON	521	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY