MINUTES

MONTANA
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **Rep. Dick Knox, Chairman,** on March 31, 1995, at 3:00 pm.

ROLL CALL

Members Present:

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

Members Excused: Rep. Douglas T. Wagner (R)

Members Absent: None

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

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

Committee Business Summary:
Hearing: SB 366, SB 382
Executive Action: None

Tape 1, Side A

HEARING ON SB 366

Opening Statement by Sponsor:

SEN. MACK COLE, Senate District 4, Hysham, said SB 366 is a revision of the major Facility Siting Act. Around 1973 coal was supposedly the product of the future. It was believed that there would be approximately 18 large plants in eastern Montana which would bring in about 60,000 people. Of course, that didn't happen. The Facility Siting Act was written at that time to control the plants. SB 366 would exclude plants that produce less than 150 megawatts of electricity from the provisions of the Siting Act for two years and would exempt coal processing facilities. Environmental standards will not be compromised by the bill. The purpose of the bill is to allow some development of the state's resources without the subjective analysis required by the Act.

Proponents' Testimony:

SENATOR TOM KEATING, Senate District 5, Billings, said the Facility Siting Act, as written, has stopped the development and growth of the coal industry. There are facilities that are small in size, clean and environmentally sound that could be economically valuable to the state of Montana. **SEN. KEATING** asked the committee to seriously consider SB 366.

Mark Simonich, Department of Natural Resources and Conservation (DNRC), said SB 366 was severely amended in the Senate due to negotiations that took place between **Governor's** office, DNRC and the sponsor. The original bill would have amended a large portion of the Facility Siting Act. SB 366 is a step forward for Montana in terms of dealing with coal production facilities and electrical generation facilities. The bill would eliminate an unnecessary step for the Board of Natural Resources regarding the need determination requirement.

Owen Orndorff, Yellowstone Energy Plant, Billings, supported SB 366.

Jim Mockler, Montana Coal Council, said due to SB 366 and a tax incentive bill that was passed in the committee, a company that had planned to build a major plant in Wyoming, would now prefer to build a plant at Spring Creek. **Mr. Mockler** urged the committee to support SB 366.

Haley Beaudry, Emerald Engineers, said the present Facility Siting Act is a deterrent to the development of new plants in Montana. SB 366 offers people the opportunity to move to Montana and develop its coal resources.

Opponents' Testimony:

Jeff Barber, Northern Plains Resource Council (NPRC), said the Facility Siting Act was a product of its time when Montana was going to become the boiler room for the nation. There were going to be power plants everywhere and power would be shipped to the east and west coasts. The reason the public need determination was put in the Act was because the people of Montana would have to live with the impact of the plants while the power was going some place else. The Act has succeeded in severely restricting the building of power plants. SB 366 doesn't solve this problem, It just opens the door for two years. NPRC is participating in a study to revise the Act which will hopefully make it more workable and will bring it up to date. All SB 366 does is open the door for two years to allow two companies to go through and no one knows how many others will follow. **Mr. Barber** urged the committee to table SB 366.

Debbie Smith, Sierra Club, said Montana has one of the finest facility siting acts in the nation. There are many states that are striving to pass an act that is as tight as the one in Montana. The proponents profess that facilities can be built that will result in net environmental benefits, but the Act is too restrictive to comply with. SB 366 would open the door for any kind of facility to come into Montana in the next two years and would be against the very premise that the Facility Siting Act stands for. **Ms. Smith** urged the committee to table SB 366.

Tape 1, Side B

Informational Testimony: None

Questions From Committee Members and Responses:

REP. DAVID EWER asked **Mr. Simonich** why he was a proponent of the bill and also a proponent of the long term study on the Facility Siting Act. **Mr. Simonich** said the department and the administration were strong opponents when the bill was heard in the Senate. The department and the administration now support the bill in its amended form. The provisions in the bill as amended, collaborate with changes that will be made in the future anyway.

REP. EWER asked **Mr. Orndorff** if it was true that his firm understood the requirements of the Facility Siting Act and that its existing turbine at the facility is fully capable of generating more power with minor modifications. **Mr. Orndorff** said the turbine is one part of an overall plant. The plant has a turbine which is capable of providing steam to the refinery and can be adjusted to provide additional power. The changes would be major because there are four checks that would have to be adjusted.

REP. HAL HARPER said ten years ago the Facility Siting Act was amended to give Montana some degree of control over water and licensing. **REP. HARPER** asked **Don MacIntyre, Attorney, DNRC,** how allowing 150 megawatts would affect the state's ability to intervene on behalf of its water users in re-licensing. **Mr. MacIntyre** said ten years ago a project filed an application before DNRC under the Facility Siting Act and were also required to file for a license under the Federal Energy Regulatory Commission (FERC). FERC denied the license. Because of the denial, an issue was raised with respect to the Facility Siting Act. It was heightened by the fact that the Montana Power Company which operates the dams on the Missouri River, wanted to re-license them under FERC. The department and Montana Power Company recognized that FERC, under the Federal Power Act, preempts state's decision making power. The Montana Power Company and the department authored the amendment that removed the decision making power from the Board of Natural Resources and required the Montana Power Company or any other utility that was developing power that required a FERC license, to apply under the Facility Siting Act and file an application. The state would then do a study and would be required to intervene in the proceedings. The state could still have input into the federal process, but FERC would still make the permitting decisions. The Fish, Wildlife and Parks Department (FWP), as a matter of federal law, still must provide information on all fishery and water biological issues with respect to Montana Power's dams that are being re-licensed. **REP. HARPER** said he understood that FWP could intervene in the issues of fish and wildlife impacts, but if the megawatts are raised to 150, DNRC would lose its ability to represent other categories of water users under the FERC process. He asked **Mr. MacIntyre** what those categories would be. **Mr. MacIntyre** said, other than those issues that fall under FWP, the department, through intervention, could be involved in any aspect of water resources impact.

REP. BOB RANEY asked **Mr. Simonich** why the window of opportunity in the bill shouldn't be restricted to the one company it was obviously written for, since the department will be doing a two-year study on amending the Facility Siting Act. **Mr. Simonich** said the department didn't feel that it should craft a bill that was designed specifically for one company.

Tape 2, Side A

REP. JON ELLINGSON asked **Mr. Orndorff** to explain what kinds of difficulties the Facility Siting Act is creating for his company. **Mr. Orndorff** said the application that DNRC requires is approximately six volumes. A social study of the history of the proposed site is required by DNRC. The company has done a 50-page historical study of Billings and Yellowstone County. The company has had to contact every state and federal agency within either jurisdiction. The company has had to submit complete final plans of a completed plant. The Act is limiting because a plant has to be fully designed before the Act can be responded to

and all the questions answered. The regulations require a completely in-depth analysis of every possible impact. A consultant had to be hired to do a study on the scenic value of the plant in the backdrop of the Exxon Refinery. The company has spent $750,000 for these studies. There will not be a lot of economic development in Montana unless something is done to get the Act to fit today's environment.

REP. HARPER asked **SEN. COLE** if he intended to have the bill take away the standing of water rights holders on the Missouri River. **SEN. COLE** said SB 366 is not in any way a water rights bill. **REP. HARPER** said there was an amendment to the Act in 1985 that gave water rights holders some additional protection. A facility is defined according to the Facility Siting Act, so when the megawatts are raised to 150, water rights holders will lose their standing. **REP. HARPER** asked **SEN. COLE** if "for hydro-facilities" could be inserted into the bill so water rights holders wouldn't lose their standing. **SEN. COLE** said he has studied the bill, had attorneys look at it and he didn't believe that it would affect the standing of water rights holders.

REP. ROBERT STORY asked **Mr. Simonich** if the two-year window of opportunity allows a company to submit an application and what other things could take place. **Mr. Simonich** said during that two-year period a company would have to acquire the actual air and water quality permits. **REP. STORY** asked **Mr. Simonich** how long the permitting process usually takes. **Mr. Simonich** said it varies depending on the proposed project and how long it takes the applicant to respond once the department sends the applicant a letter of deficiencies. Normally, permits can be obtained within a 12 to 18 month period.

Tape 2, Side B

REP. CARLEY TUSS asked **Mr. MacIntyre** if it is the Facility Siting Act that is in dispute or if it is the administrative rules that are really the problem. **Mr. MacIntyre** said the entire siting process throughout the United States is in a state of flux. There is a need to update siting. The Facility Siting Act is 20 years old and has been amended over a period of years on a piece meal basis. It doesn't truly represent the utility industry. The administrative rules reflect the Act. **REP. TUSS** asked **Mr. MacIntyre** if he would consider SB 386 a piece meal solution to a major problem. **Mr. MacIntyre** said SB 386, in its present form, is very reflective of linear facility siting in Montana. The changes that have been made, are changes that can be made without compromising the threshold.

Closing by Sponsor:

SEN. COLE said SB 386 will be beneficial to a large section of Montana and asked the committee to support it.

HEARING ON SB 382

Opening Statement by Sponsor:

SEN. JOHN HARP, Senate District 42, Kalispell, said SB 382 revises the method of selecting cleanup required for remedial actions; creates a voluntary cleanup and redevelopment process; requires the Department of Health and Environmenmtal Sciences to set up a collaborative process that analyzes the elimination of joint and several liability and related funding necessary to clean up state Superfund sites.

Proponents' Testimony:

Leo Berry, Attorney, Montana Mining Association, said individuals who own or operate property are jointly and severally liable for cleaning up those sites. Even if an individual is only one percent responsible for the contamination on the property, that individual can end up paying 100 percent of the cleanup costs under the joint and several liability law, if the other parties don't have any money. Joint and several liability is not included in the federal Superfund law, but it is included in the Montana Superfund law. When joint and several liability is eliminated "orphan shares" are created. There are ways at the federal level to fund orphan shares because of its huge superfund. Montana doesn't have that kind of money. There will be a study that will include finding possible funding sources. SB 382 changes the method of selecting cleanup standards and establishes a voluntary cleanup program. When the Senate amended the bill by taking out all the sections dealing with joint and several liability, it inadvertently eliminated some things that need to be in the bill. These amendments would reinsert those items. **EXHIBIT 1**

Tape 3, Side A

Wally Bell, Montana Powder and Equipment Company, said he purchased the company in 1985. Before he could sell a piece of his property he had to clean it up. He had nothing to do with the contamination of the property. The contamination was caused by previous owners who did ore processing in the early 1900's. Later there was a foundry on the property and after that there was a sand and gravel operation which also contributed to the contamination. Approximately 200 yards of oil-soaked material were removed from the property. There were also 20 yards of mine tailings. The only place to get rid of the mine tailings is somewhere in Salt Lake City, Utah and would cost about $500 a yard. A fund is needed to help people pay for these types of cleanups.

Sandy Stash, Manager, Atlantic-Richfield Company, said she has managed the cleanup of left overs from the Anaconda Minerals Company. SB 382 is very helpful because it injects some reality into the decisions on how the sites should be cleaned up. The

voluntary cleanup portion of the bill is also very helpful and will encourage companies voluntarily clean up property.

Bob Robinson, Director, Department of Health and Environmental Sciences (DHES). Written testimony. **EXHIBIT 2**

John Davis, Attorney, Butte, supported SB 382.

Bill Allen, Montana Audubon Legislative Fund, supported SB 382.

Ted Lange, Northern Plains Resource Council, said he was neutral to SB 382. **Mr. Lange** said the council liked the idea of the study and the voluntary cleanup section. There is concern about how cost effective the cleanup will be.

Opponents' Testimony:

Ann Hedges, Montana Environmental Information Center, said she was 50% for the bill and 50% concerned about it. **Ms. Hedges** recommended that section 2 should be stricken from the bill and given to the study committee.

Ted Antonioli, Geologist, Missoula. Written testimony. **EXHIBIT 3**

Tape 3, Side B

Informational Testimony: None

Questions From Committee Members and Responses:

REP. BOB RANEY said on page 23, new section 7 which is about public participation, it states that compliance with the section is considered to satisfy the requirements of Title 75, Chapter 1. That is the Montana Environmental Protection Act (MEPA). According to this section all the department has to do is to respond to relevant written or verbal comments during the comment period. **REP. RANEY** asked **Ms. Hedges** for her comments. **Ms. Hedges** said it concerned her and should be clarified and the public should not be cut out of the participation process.

REP. RANEY asked **Mr. Robinson** if he really meant that just listening to some public comments and responding to relevant written or verbal comments is enough to meet MEPA requirements. **Mr. Robinson** said the comments would be on the cleanup plan. Thirty days notice would be given for the public to provide written comments to the department and if ten or more individuals or a government body request it, a public meeting will be conducted at or near the facility regarding the voluntary cleanup plan. There is plenty of opportunity for public participation. **REP. RANEY** asked **Mr. Robinson** if the public could force the department to make a change in the cleanup plan. **Mr. Robinson** said the public could give input to the department but he wasn't sure they could force the department to make a change. The

department would review the public's comments to ensure its concerns are met if they are valid. **REP. RANEY** asked **Mr. Robinson** if the public would have the right to appeal a decision to grant a voluntary cleanup. **Mr. Robinson** replied no. **Rep. Raney** asked **Mr. Robinson** why a citizen wouldn't have the same right of appeal on a voluntary cleanup as an industry has. **Mr. Robinson** said he didn't know why citizens would want to appeal a voluntary cleanup by a company that would be making a proactive effort to cleanup, when the standards are the same as they are for an ordered cleanup.

REP. HAL HARPER asked **Mr. Robinson** how he interpreted "reasonably anticipated future uses" as referred to on page 2 of the amendments at the bottom of the page. **Mr. Robinson** said originally there was language in the bill that basically said reasonably anticipated future uses were limited to zoning or other kinds of restrictions put on by local government. The department thought that was too narrow. The amendments broaden that definition.

REP. DAVID EWER asked **Mr. Robinson** what the difference was between federal superfund sites and state superfund sites in Montana. **Mr. Robinson** said it is the risk to human health and the environment. There is a rating system and anything above 28.5 becomes eligible for the national priority list and can become a federal superfund site. Anything below 28.5 fits under the state superfund law. **REP. EWER** asked **Mr. Robinson** if the owner of the property that has been cleaned up is given a certificate by the state. **Mr. Robinson** said determining what the reasonable and anticipated uses of the land would be is what drives the risk assessment for the level of cleanup. If the site is going to be used for a residential area, the level of cleanup is going to be high. If the site is going to be an industrial area, it might not have to be as clean. When the site has been cleaned up to the required standards, the owner will be notified that he has met the standards and the property is no longer a superfund site. The owner can then sell the property if he so wishes, without having additional liability attached to it. **REP. EWER** asked **Mr. Robinson** if he had given any thought to putting a four year sunset on the legislation. **Mr. Robinson** said the department hadn't considered a sunset, but in 1997 and 1999 the results could be reviewed.

Closing by Sponsor:

Waived

ADJOURNMENT

Adjournment: 5:40 pm

REP. DICK KNOX, Chairman

ALYCE RICE, Secretary

DK/ar

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL DATE 3-31-95

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

EXHIBIT 1
DATE 3-31-95
SB 382

Amendments to Senate Bill No. 382
Second Reading Copy

Requested by Sen. Harp
For the Committee on Natural Resources

Prepared by Martha Colhoun
March 31, 1995

1. Title, line 5.
Strike: "DEGREE OF"
Insert: "METHOD OF SELECTING"

2. Title, line 9.
Strike: "SECTION"
Insert: "SECTIONS 75-10-701 AND"

3. Title, line 10.
Following: "~~DATE AND~~"
Insert: "AN IMMEDIATE EFFECTIVE DATE AND"

4. Page 13.
Following: line 23
Insert: "

Section 1. Section 75-10-701, MCA, is amended to read:

"**75-10-701. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Director" means the director of the department of health and environmental sciences.

(3) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.

(4) (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located.

(b) The term does not include any consumer product in consumer use.

(5) "Fund" means the environmental quality protection fund established in 75-10-704.

(6) "Hazardous or deleterious substance" means a substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare or the

environment and is:

(a) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14), as amended;

(b) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261; or

(d) any petroleum product.

(7) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other such resources within the state of Montana owned, managed, held in trust or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

(8) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for a release or threatened release under 75-10-715(1).

(9) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.

(10) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(11) "Reasonably anticipated future uses" means likely future land or resource uses that take into consideration:

(a) local land and resource use regulations, ordinances, restrictions, or covenants;

(b) historical and anticipated uses of the facility;

(c) patterns of development in the immediate area; and

(d) relevant indications of anticipated land use from the owner of the facility and local planning officials.

~~(11)~~ (12) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance), but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers as defined in 80-10-101(2) when applied as part of accepted agricultural practice.

~~(12)~~ (13) "Remedial action" includes all notification, investigation, administration, monitoring, cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action, health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or threatened release.

~~(13)~~ (14) "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or request issued by the department, the United States, or any federal agency, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.

~~(14)~~ (15) "Remedial action contractor" means:

(a) any person who enters into and is carrying out a remedial action contract; or

(b) any person who is retained or hired by a person described in subsection ~~(14)(a)~~ (15)(a) to provide services relating to a remedial action.

~~(15)~~ (16) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies.""

Renumber: subsequent sections

5. Page 13, line 27.
Strike: "2"
Insert: "3"
Strike: "10"
Insert: "11"

6. Page 19, lines 1 and 5.
Strike: "2"
Insert: "3"
Strike: "10"

Insert: "11"

7. Page 19, line 24.
Following: "ELIGIBLE"
Strike: "TO FOLLOW"
Insert: "for"

8. Page 20, line 6.
Following: the second "ACT"
Strike: "."
Insert: "; or
(e) a facility that is the subject of pending action under this part because the facility has been issued a notice commencing a specified period of negotiations on an administrative order on consent."

9. Page 20, line 7.
Following: "THROUGH"
Strike: "(1)(D)"
Insert: "(1)(e)"

10. Page 20, line 16.
Following: "(4)"
Strike: "EXCEPT" through "(2), IF"
Insert: "If"

11. Page 20, line 17.
Following: "DECISION"
Insert: "to reject the filing of the application"

12. Page 20, line 18.
Following: "UNDER"
Strike: "THIS SECTION"
Insert: "subsection (1) or (3)"
Following: "MAY"
Insert: ", within 30 days of receipt of the department's written decision pursuant to [section 9],"

13. Page 20, line 19.
Following: "SCIENCES."
Insert: "In reviewing a department decision to reject an application under subsection (1) or (3), the board shall apply the standards of review specified in 2-4-704."

14. Page 20, line 21.
Following: "BOARD"
Insert: ", the department,"

15. Page 20, line 23.
Following: "7."
Insert: "A hearing before the board may not be requested regarding a decision of the department made pursuant to subsection (2)."

16. Page 21, lines 2, 4 and 17.
Strike: "6"
Insert: "7"

17. Page 21, line 23.
Strike: "2"
Insert: "3"
Strike: "10"
Insert: "11"

18. Page 23, lines 15 and 24.
Strike: "8(1)"
Insert: "9(1)"

19. Page 25, line 9.
Strike: "6"
Insert: "7

20. Page 26, line 2.
Strike: "4(3)"
Insert: "5(3)"

21. Page 26, line 16.
Strike: "10(2)(B)"
Insert: "11(2)(b)"

22. Page 26, lines 24 through 27.
Strike: subsection (14) in its entirety
Insert: "
(14) Immunity from liability under this section does not apply to a release that is caused by conduct that is negligent or grossly negligent or that constitutes intentional misconduct."

23. Page 27, line 9.
Strike: "2"
Insert: "3"
Strike: "10"
Insert: "11"

24. Page 28, line 3.
Following: "FOR"
Strike: "THE"
Insert: "[insert"
Following: "IDENTIFIED"
Insert: "]"

25. Page 30, line 13.
Page 30, lines 14 and 15.
Strike: "2"
Insert: "3"
Strike: "10"
Insert: "11"

26. Page 30, line 18.
Strike: "OR ADMINISTRATIVE"

27. Page 30, lines 19 through 21.
Following: "."
Strike: "CLAIMS" on line 19 through "." on line 21

28. Page 30.
Following: line 23
Insert: "NEW SECTION. **Section 16. Effective date.** [This act] is effective on passage and approval."

EXHIBIT 2
DATE 3-31-95
SB 382

Testimony on SB382, as amended

provided by Bob Robinson, Director
Montana Department of Health and Environmental Sciences (DHES)
before the House Natural Resources Committee
March 31, 1995

DHES supports SB382 as amended by the Senate Natural Resources Committee. The bill amends the State Superfund law (CECRA) in three major areas: 1) changing the cleanup standards; 2) establishing a voluntary cleanup program; and 3) providing for a collaborative study that analyzes the possible elimination of strict, several, and joint liability.

1. Changes in Cleanup Standards (pp.13-16, Section 1) DHES worked with industry representatives on changes to the remedy selection criteria (cleanup standards) that would allow cheaper, faster remedies and yet still maintain protection of public health and the environment. Following are highlights of these changes.

- A "reasonably anticipated future uses" standard is added that DHES will use to evaluate the future protectiveness of remedies (Subpart 2C).

- The "permanence" criterion for remedies is replaced with "long and short-term effectiveness" (Subpart 2C(ii)).

- A requirement that remedies be "technically practicable and implementable" is added (Subpart 2C(iii)).

- The bill requires full consideration of institutional and engineering controls while still maintaining a preference for treatment (Subpart 2C(iv)).

- Local community and government acceptance is added as a new remedy selection criterion (Subpart 3).

- Waivers of an applicable regulation are provided. These waivers apply: when the remedy is an interim action (Subpart 4A); when complying with the applicable regulation would increase the risk (Subpart 4B); when the remedy will meet an equivalent standard of performance (Subpart 4D); or when compliance is technically not feasible (Subpart 4C) or not cost effective (Subpart 4E).

- A new definition of cost effectiveness will increase the weight of cost considerations by requiring direct comparison of the additional cost vs. the additional risk reduction attained by each alternative considered.

2. Voluntary Cleanup (pp. 19-28 Sections 2 through 10) Many of the cleanups at state Superfund sites to date have been conducted without the need for formal enforcement action and DHES supports having voluntary cleanup provisions added to CECRA. They will allow a streamlined process that will speed cleanup. Industry proposed the initial voluntary cleanup portions of the bill based on Colorado's voluntary cleanup law. DHES negotiated with industry on their proposal to make it better fit Montana's statute and

program. This bill now reflects a consensus voluntary program except for certain technical corrections and clarifications proposed in amendments that have been presented to this Committee. Following are highlights of these voluntary cleanup provisions.

- The bill includes eligibility criteria that would restrict voluntary cleanups to certain sites. There would be an appeals process to the Board of Health if an applicant disagrees with DHES' eligibility determinations (Section 4).

- Voluntary cleanup plans would include an environmental assessment, a remediation proposal, reimbursement of state costs, and landowner permission (Sections 5 and 6).

- The public would participate through a 30-day public comment period on completed applications (Section 7).

- A completeness review by DHES would ensure that the voluntary cleanup plan meets the requirements of CECRA for protection of public health and the environment (Section 8).

- "Safeguard" provisions would restrict the number of applications to be considered simultaneously, address unforeseeable conditions, address misleading information, and address lack of compliance with a plan (Section 8).

- A closure procedure would provide for "no further action" declaration by DHES when an approved voluntary cleanup plan has been completed (Section 10).

3. Study of Elimination of Joint and Several Liability (pp. 28-29, Section 11)

As originally proposed, SB382 represented a significant change in public policy concerning responsibility for pollution and cleanup by replacing joint and several liability with proportionate liability and restricting current owner liability. These changes would have shifted a significant portion of cleanup costs to the state by requiring the state to pay for orphan and insolvent shares using RIT interest revenues. Significant changes in the RIT interest allocation were proposed to cover the state's increased funding liability; however, DHES estimated the increased funding would have been inadequate to cover anticipated orphan and insolvent shares.

Recognizing the major impacts the proposed changes in CECRA liability would have, the Senate Natural Resources committee proposed a two-year collaborative study on this issue. DHES supports this study alternative because it allows for the comprehensive and thorough analysis that this complex and controversial issue requires.

Explanation of amendments
DHES supports the amendments presented by industry representatives on behalf of the bill sponsor. These amendments were the result of recent negotiations and are mostly technical corrections and clarifications.

EXHIBIT 3
DATE 3-31-95
SB 382

TESTIMONY ON HOUSE HEARING OF SB 382

by Ted Antonioli, Geologist, 5907 Longview, Missoula, MT 59803

Lincoln freed the slaves. Gorbachev (by mistake) killed off Communism. The Montana House can strike a smaller but still unmistakable blow against injustice by ridding our statute books of joint and several "superfund" liability - by which courts force parties to pay for damages they did not cause. As you are aware, the essence of joint and several liability is that if you are liable for even the tiniest FRACTION of an environmental problem, you must pay for ALL the cleanup, even for problems caused a hundred years ago by parties who are long dead. This is unfair, and unAmerican.

This federal version of this law has already severely damaged investment in mineral exploration throughout the United States. Mining districts are becoming "tar babies" that no exploration firm or investor wants to touch, for fear of being stuck with remediation for anything ever done in the district. In one case, at Summitville Colorado, ASARCO drilled a handful of exploration drill holes, and then were named as a potentially responsible party to pay for the mess created by a crooked Canadian promoter.

The Superfund law was purported to be a mechanism to speed cleanup by finding some the deep pockets and forcing them to pay. Even some proponents acknowleged this to be patently unfair, but said we needed this approach for pragmatic reasons. In fact, the result has been to turn cleanups into an almost exquisitely slow-motion battle of studies and litigation. But then again, as the process moves slower, and more litigation is required, more billable hours are accrued. As President Clinton pointed out in early 1993 (with only slight exaggeration), EVERYBODY knows that Superfund doesn't work, because ALL the money goes to lawyers and NOTHING gets done.

In summary, it shouldn't take a report from a study commission before you get rid of such a worthless, unworkable, unfair, and unAmerican legal concept.

With respect to the voluntary cleanup program in SB382, I am concerned that landowners who are aware of an environmental problem on their land will be deterred in coming forward by the clause in Section 5 (3) indicating that they will get a bill from the State for some unknown amount if they submit a plan for voluntary cleanup. In fact, that provision strikes me as bizarre and counter-productive. The best approach to cleanup would be for Congress to change Superfund into a block grant program that would provide state agencies with the resources to clean up and reclaim sites, according to local priorities and concerns.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. SB 366

DATE 3-31-95 SPONSOR(S) Senator Cole

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Jim Mockler	Mt. Coal Council	SB366		✓
Owen Orndorff	Yellowstone Energy	SB 366		✓
Haley Beaudry	Emerald Engineers	SB 366		✓
Debbie Smith	Sierra Club	11	X	
Jeff Barber	Northern Plains Resource Council	SB 366	X	
Tom Keating	SD 5	SB 366		✓
Mark Simonich	DNRC	SB 366		✓
Dan McGee	DNRC	SB 366		✓

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. SB 382

DATE 3-31-95 SPONSOR(S) Senator Harp

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Allen Berkley	Columbia Falls Aluminum Co.			X
John P Davis.	ARCO.			X
VANDRA VOTAW	ARCO			X
WALLY Bell	Montana Power & EQ			X
Leo Berry	MMA			X
Ted Lange	NPRC		neutral	
Bill Allen	MT Audubon			X

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