

**MINUTES**

**MONTANA SENATE  
55th LEGISLATURE - REGULAR SESSION  
COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on February 5, 1997, at 3:00 P.M., in Room 405

**ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. William S. Crismore, Vice Chairman (R)  
Sen. Vivian M. Brooke (D)  
Sen. Mack Cole (R)  
Sen. Thomas F. Keating (R)  
Sen. Dale Mahlum (R)  
Sen. Bea McCarthy (D)  
Sen. Ken Miller (R)  
Sen. Mike Taylor (R)  
Sen. Fred R. Van Valkenburg (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Larry Mitchell, Legislative Services Division  
Gayle Hayley, Committee Secretary

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

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB152, SB253, HB120, SB146,  
HB59, Posted Jan. 31, 1997.  
Executive Action: SB175

**HEARING ON HB152**

**Sponsor:** REP. ED GRADY, HD 55, CANYON CREEK

**Proponents:** Denise Mills, Remediation Administer, Dept. of  
Environmental Quality

**Opponents:** None

### Opening Statement by Sponsor:

REP. ED GRADY, HD 55, stated that HB152 was a housekeeping bill requested by the Department of Environmental Quality. This bill recodifies the underground storage tank provisions and the Montana Hazardous Waste Underground Storage Tank Act. He said this legislation will streamline the Dept.'s ability to administer the underground storage tank and hazardous waste programs, which are managed by different divisions, and will facilitate the public and regulated communities' ability to understand the regulations. He said basically, all this bill does is separate the two programs so the Dept. can administer the programs more efficiently.

### Proponents' Testimony:

Denise Mills, Remediation Division Administrator, Dept. of Environmental Quality, stated that HB152 is a recodification of the Montana Hazardous Waste and Underground Storage Tank Act, that splits the Hazardous Waste and Underground Storage Tank provisions into two acts. The intent of the bill is to recodify the law, not to make any changes to the law. The primary purposes were to make the laws more easily understood by the public and to facilitate administration of the laws by the Dept. She distributed her written testimony, attached as (EXHIBIT 1).

Opponents' Testimony: None

### Questions From Committee Members and Responses:

SEN. MACK COLE asked Denise Mills if these were not separated, is there another way to do this besides setting up two separate sets of rules and regulations for these two different types of programs. He questioned if this would actually streamline the process.

Denise Mills replied that the Dept. had evaluated that before proposing this bill and found that this way was the most efficient way to make these laws easier to work with, and less difficult to interpret.

SEN. DALE MAHLUM asked Ms. Mills if there would be an additional burden on the filing users?

Ms. Mills said no, the Dept. is not proposing any additional burden to those entities. This bill would make it easier for the regulated public to follow these laws, and would make it easier for the Dept. to administer them.

SEN. MIKE TAYLOR asked Ms. Mills if any additional responsibility or fiscal impact would result from this legislation.

Ms. Mills answered no, and they were not anticipating any changes in the current program.

SEN. THOMAS KEATING asked Ms. Mills if the definitions in the New Section 3, were identical to what was in the codes now.

**Ms. Mills** said that under the definitions, the only changes made was to strictly put in definition of "hazardous waste" into the codification of hazardous waste laws, and to put definition of "regulated substances" into the underground storage tank laws.

**CHAIRMAN LORENTS GROSFIELD** asked **Ms. Mills** to confirm that this bill didn't alter DEQ's authority, or penalties, or extended any rulemaking authority?

**Ms. Mills** answered that was correct.

**Closing by Sponsor:**

**REP. GRADY** closed by saying the bill is just a housekeeping matter. He said the reason it is a long bill, is only because the whole statute has to be gone through, but it does not really change anything in either program. He added that **SEN. BECK** would carry the bill on the floor.

**CHAIRMAN GROSFIELD** closed the hearing on HB152 and opened the hearing on SB253.

*{Tape: 1; Side: A; Approx. Time Count: 3:17; Comments: .}*

**HEARING ON SB253**

**Sponsor:** **SEN. J.D. LYNCH, SD19, BUTTE**

**Proponents:** **Jim Johnson, Director of Public Works**  
**Russ Ritter, Missoula**

**Opponents:** **Jan Sensibaugh, Dept. of Environmental Quality**  
**Anne Hedges, Mt. Environmental Information Center**  
**Jim Leiter, BFI Environmental and Operation Manager**  
**Tom Daubert, Waste Management Inc.**  
**Ted Lange, Northern Plains Resource Council**  
**Chris Cerquone, Missoula County Health Dept.**  
**Doug Sparrow, City/County Sanitation, Helena**  
**Mark Johnson, Flathead Disposal**

**Opening Statement by Sponsor:**

**SEN. J.D. LYNCH, SD 19, BUTTE**, stated that SB253 was a common sense efficiency bill. He also called it a "bureaucracy get out of our way, let us run our business efficiently and properly bill." He said that Anaconda and Butte shared a four million dollar new landfill. In addition to the new landfill, Butte has a "demolition dump". The problem was that they had been waiting for three years for the bureaucracy to get rules that they could dump construction material, (not asbestos, paint, toxic materials, etc.) into the demolition dump. He said they did not want to use their \$4 Million dollar dump for these materials. He mentioned some of the restrictions of a Class III dump. He said it was a good bill and hoped the committee would support it.

**Proponents' Testimony:**

**Jim Johnson, Director of Public Works for Butte-Silver Bow,** said as **SEN. LYNCH** stated, they shared a state of the art Class III land-fill with Anaconda. The problem was that there were numerous demolition projects in the area, and they did not want to fill up their high tech landfill with demolition waste.

**Russ Ritter, Enviro-Con, Missoula and Morris & Knudson Washington Construction Co.,** stated this bill would make things easier for construction companies or a environmental remediation company to understand clearly what they can put in a landfill and what they can't.

**Opponents' Testimony:**

**Jan Sensibaugh, Dept. of Environmental Quality,** read her written testimony, attached as **(EXHIBIT 2)**.

**Anne Hedges, Montana Environmental Information Center,** addressed a few points of the bill. The first point, she referred to Page 2, lines 12-15, of the bill, where it says what solid waste does not mean, but it leaves it hanging to what it does means. She interpreted this as having no regulation for construction demolition waste. She pointed out there is constituents in this waste that could lead to groundwater contamination. She said we need to be careful of what we place in unregulated areas because of leaching at these sites. She closed in saying as this bill is written now, they could not support it.

**Jim Leiter, Operation and Environmental Manager, BFI, Missoula and Mt. Solid Waste Contractors Association,** passed out his written testimony for SB253, which highlighted his four main points, **(EXHIBIT 3)**. He added that wording of this bill, by excluding construction demolition waste from regulation entirely, doesn't just apply to a contractor in Butte, but to anybody in the State of Montana who has construction and demolition and waste that they want to dispose of. He believed we are inviting a lot of people, besides a few responsible construction companies, to do illegal things or dispose of other wastes.

**Tom Daubert, Waste Management Inc.,** stated that we're not talking about wastes that have no threat to the environment. There is a reason for the subtitle D regulations that exist. He felt this bill basically tells those folks who made the investment to protect the environment, that they wasted their money. This bill conditions the kinds of wastes in no way at all. He asked what if you were demolishing the East Helena smelter or any other industrial facilities that were known to have contaminated bi-products. He said this bill basically opens up a huge loophole that threatens the environment and that undercuts the investments that the private and public sector have made over the last five to ten years. However, he said he agreed that we do need to define more clearly what kinds of inert non-

threatening wastes, including construction wastes, can go to these less regulated land-fills. However, don't open the door to all construction and demolition wastes to go to facilities that don't have liners, that aren't required to monitor for groundwater contamination, that aren't required to keep records, or that aren't required to even have a staffer on site. He emphasized that was the kind of risks this bill creates. He urged the committee to support and encourage the Dept. to develop rules but not to support this bill.

**Ted Lange, Northern Plains Resource Council**, stated that they have been concerned that Montana could become a dumping ground for out-of-state waste. This bill could create a significant incentive for out-of-state wastes to be dumped in Montana, therefore, they did not believe it was a good idea to concur with this legislation.

**Chris Cerquone, Senior Water Quality Specialist, Missoula County Health Dept.**, distributed his written testimony, attached as (EXHIBIT 4).

**Doug Sparrow, City County Sanitation**, said he ran this small business in Helena, and had been in business for 31 years which involved hauling and landfilling. His main concern was the environmental aspect. He said that he had seen a lot of materials from demolition dumps which were not acceptable in any landfill. He envisioned the same scenario as the abandoned junk tire pile five or ten years down the road, therefore he felt a strong opposition for this bill.

**Mark Johnson, Flathead Disposal**, said he had operated this business for the past 18 years, and spoke in opposition to this bill. He said the bill opens the door to go backwards in waste management. He was also concerned over the fact that construction waste was not defined. He asked for the committee's support for re-defining Class III wastes.

#### Questions From Committee Members and Responses:

**SEN. BEA MCCARTHY** asked **Ms. Sensibaugh, DEQ**, how do you dispose of the wastes in the mean time until your committee meets.

**Ms. Sensibaugh** said they would suggest that the disposal of wastes continue just as we currently dispose of it. The Dept. will create a new category and a new mechanism for disposal. She deferred the question to **Jon Dilliard, the Bureau Chief and Manager of the Solid Waste Program, DEQ**. He said the Dept. is going to continue for now, with the waste going into Class II landfills, which the Dept. recognizes as an inappropriate spot. However, there is an opportunity to sort out certain types of that waste, and get it into a less regulated facility. Group III waste that can go into clean fill areas, would take some work by the contractors. He said the Dept. plans on having some draft rules prepared next week.

**SEN. MCCARTHY** said her big concern was if the waste isn't legal to go into the dump facilities, are they just supposed to stop construction in the mean time and wait.

**Mr. Dilliard** replied that they could continue doing what they are doing right now. He said in the Butte case, we have set up an facility for them that they can use, along with the alternative of using their brand new facility. In other communities, contractors have been using the existing municipal landfills for the disposal of their waste, and they can continue to do that until the new facilities would be developed under the new regulations.

**SEN. MCCARTHY** asked what kind of expense are we looking at.

**Mr. Dilliard** replied that the expense of putting in a new one would be much less than putting waste in the existing municipal solid waste facilities. He said in regards to the rules, a facility would only have to meet certain siting criteria, (keep it out of the coulee with the water on the bottom and get it up on top of a high dry hill). It would not be regulated as stringently as the new facilities, but it would be regulated to the point that the Dept. made sure that the waste was kept out of the groundwater and areas where we might experience environmental damage or threats to public health.

**SEN. MCCARTHY** asked **Mr. Dilliard** if they are going to require every single landfill in the state to build another facility.

**Mr. Dilliard** replied no, the Dept. would not require them to build another new facility but that would be up to their scrutiny. They could if they chose to do that and the Dept. would help them with the standards, location, siting criteria, etc. He envisioned that there would be some facilities, such as the Butte/Silver Bow landfill, that would want to build a site for construction and demolition waste, probably within their current landfill but off of their expensive liners. He said there probably would be some private construction companies that would decide that they want to go ahead and build a landfill for their own waste. The Dept. would not require it to be done, but would just provide the alternative to be used if they want to.

**SEN. MIKE TAYLOR** asked **Mr. Dilliard** what was the problem or holdup to get these regulations and rules submitted.

**Mr. Dilliard** said it has taken quite a while to do this and it was approximately three years ago that he had discussions with Butte about wanting to do something with this waste. At that time, the EPA was proposing to come out with some new rules that would address construction demolition waste along with some industrial type waste. Therefore the Dept. delayed taking action until EPA came out with their new regulations and guidelines. The EPA got sidetracked, which is not uncommon, and they didn't get it done. He said it was approximately a year ago that the

Dept. started opening discussion with the Mt. Association of Counties and The League of Cities and Towns, in a quarterly group that meets with the Dept. With their assistance, the Dept. put out a survey, which entailed 330 individuals, public entities, and facilities throughout Montana, to get their input concerning how we define construction and demolition waste. Unfortunately, the survey turned out to be a flop, and only received 11 responses. He said the Dept had developed a work group that is working on the new rules.

**SEN. TAYLOR** asked **Mr. Dilliard** if the Legislature funded any money out of the general fund and when can we expect to see a final set of rules.

**Mr. Dilliard** replied yes the Solid Waste Program does get approximately \$140,000 in general fund monies for the operation of the program. In response to his second question, the Dept will have the outline of a proposed set of rules, and definition for solid waste for that work group to review at the February 18th meeting. The Dept. would then get some input and schedule another meeting one month later to work on the finalization process of the rules and regulations, and then would publish those rules and put them into effect. He said it could be possible to complete the process in three or four months.

**SEN. DALE MAHLUM** asked **Mr. Dilliard** when someone comes to your Dept. and tells you they want to get permission to build a landfill, do you or the local county health department, give them the specifications on the liner and other things that they have to use. What jurisdiction does it lie under.

**Mr. Dilliard** said the jurisdiction regarding the approval of a specific liner system for a given landfill, does lie within the Solid Waste Management Program. The Dept. doesn't specifically tell them exactly what type of liner or what construction technique they have to have within the rules. However, he said there is a performance standard, to meet a certain standard for a certain performance. They can use any option available to them to meet that standard. He then discussed some of the options that have been used in the past to meet the standards.

**CHAIRMAN GROSFIELD** asked **Mr. Dilliard** who were the stakeholders in the rulemaking process that the Dept. has been working towards.

**Mr. Dilliard** said the individuals that were currently on the committee included: **Jim Leiter, BFI, Missoula; Jim Johnson, Butte Landfill; Barbara Butler, Billings Landfill; Dave Elias, Anaconda; Jim Wilbur, Braun Intertech Consulting; Joe Aline, Shumaker Trucking, Great Falls.**

**CHAIRMAN GROSFIELD** commented this bill had a lot to do with local government, and asked if League of Cities and Towns, or MACO, showed up at the meetings or were involved.

**Mr. Dilliard** said no there was not any representative of the MACO Association present, but received input from League of Cities.

*{Tape: 1; Side: B; Approx. Time Count: 3:45; Comments: None.}*

**CHAIRMAN GROSFIELD** asked **Alec Hansen, League of Cities and Towns**, how big a problem is this landfill situation.

**Mr. Hansen** said that they had been working on this for two years, and believed the reason the bill arose was because the progress towards a solution of this problem has been slow. He said the intent was to get inert types of demolition and construction wastes out of those expensive landfills because that is costing the taxpayers money. We are hoping to be able to work something out with the Dept. as soon as possible to see if there is an alternative method of disposing of this waste. He said that they had very good success with the Dept. concerning negotiations in the past but this particular problem has been slower than usual.

**CHAIRMAN GROSFIELD** asked **Mr. Hansen** about Class III landfills and what can be put in them.

**Mr. Hansen** replied that in the Class III landfills, or inert material fills, includes things like rock, dirt, concrete, brick, tires, woodwaste, and other inert material.

**CHAIRMAN GROSFIELD** asked if any of those materials from construction and demolition waste, fit into that category.

**Mr. Hansen** replied that a lot of the material from construction and demolition waste could meet that requirement if sorted out from the other materials. Concrete foundations, wood used in the walls, masonry products, etc. could go into the Class III type facility.

**CHAIRMAN GROSFIELD** asked **Jim Johnson** how tough it was, from a construction contractor's perspective, to separate all the materials and was it cost effective.

**Jim Johnson** replied that it would cost too much to separate it, and that was one of their arguments.

**SEN. MILLER** asked **Mr. Johnson** what would marketable byproducts include.

**Mr. Johnson** said that was put in there so that a material that could be perceived as a waste from a product but still has a sellable value to someone, would not be considered a waste.

**Mr. Johnson** explained byproducts may result in situations where an industry, in their production process, produces a waste material from which they can sell to someone else, thus being called a marketable byproduct. He said it then would be an item in commerce, and that would be excluded from the definition of waste. An example would be a rendering plant, where they are



taking in a waste product and then converting it into another usable product.

Closing by Sponsor: SEN. LYNCH said he introduced this bill in late December and anyone that wanted to participate could have done so, but nobody came around. He emphasized that all they wanted was reasonableness.

*{Tape: 1; Side: B; Approx. Time Count: 4:00; Comments: None.}*

CHAIRMAN GROSFIELD closed the hearing on SB253 and opened the hearing on HB120.

#### HEARING ON HB120

Sponsor: REP. SAM ROSE, HD 87, CHOTEAU

Proponents: Dan Andrews, Power, Mt.  
Alan Rollo, Coordinator of Muddy Creek Project

Opponents: None

#### Opening Statement by Sponsor:

REP. SAM ROSE, HD 87, stated that they had a problem in their particular area that has been historically costly to the state and to the federal government. A small stream called Muddy Creek, originates in the northwest corner of Cascade county and a very small portion of Teton county, and has been studied over and over again because of the major sediment problem. He said it dumps 200,000 tons of silt into the Sun River per year. The Greenfield Irrigation District, the Teton County Conservation District, and the Cascade County Conservation District, have all tried to control this stream and tried to prevent this tremendous erosion problem. This bill presents an opportunity to re-use water when there is an extreme excess and to install a conservation method during the irrigation season, to utilize some of this excess flow. He noted that it was not in any violation to any existing water rights. He felt that this was an additional tool to try to control this heavy siltation and better manage this small stream.

#### Proponents' Testimony:

Dan Andrews, Power, Mt. stated he had a dryland farm located 1/8 of a mile from Muddy Creek. His plans were to develop a sprinkler irrigation system on these acres if he can secure a permit on Muddy Creek. He said Muddy Creek is unique because of its unsteady stream banks and elevated flows. His proposed sprinkler system would require 12 cubic ft. per second of water, which would be junior to the existing rights, therefore he would have to schedule his irrigation at the elevated peak flow. In order to develop this system, he needed the committee's support

for HB120. This proposed development would benefit Muddy Creek by de-watering the creek at key times to reduce this excess water.

**Alan Rollo, Coordinator for the Muddy Creek Project**, thought HB120 was a win-win situation for all those that live along Muddy Creek and those that live in Great Falls and along the Sun River. He said that this stream typically flows at approximately 30 cfs, but currently is flowing at 250 cfs. He felt projects like the one mentioned above would help reduce the severe erosion problem and the excess flow in Muddy Creek.

**Opponents' Testimony:** None

**Questions From Committee Members and Responses:**

**SEN. MACK COLE** asked **REP. ROSE** to give him a little more information on why this has happened. Is the increase in flows a result of irrigation in the area?

**REP. ROSE** replied that the geology of the area has an effect on the problem along with the irrigation district.

**SEN. COLE** asked if they are looking to lower the stream level strictly through sprinkler systems.

**REP. ROSE** answered that sprinkler systems is just one thing we are looking at. If we can decrease this flow, especially at peak flows, they felt like they could decrease the amount of erosion taking place in the stream.

**SEN. COLE** asked if this would be setting a precedence for other closed basins.

**REP. ROSE** said that he closed the Teton Basin in 1993, and this would not affect any existing water rights.

**SEN. WILLIAM CRISMORE** asked the sponsor if this was their only stepping stone or problem for trying your project is the closed basin. **REP. ROSE** answered affirmatively.

**CHAIRMAN GROSFIELD** asked **Mr. Andrews** how much potential water might be used by those five or six people out of Muddy Creek.

**Mr. Andrews** replied that it was hard to say. He said in his particular location, the lift would only be 75 ft. to the field because he was relatively close to the creek. He did not expect any large projects or large requests for water due to the fact the people downstream would have approximately 150 foot of lift to pump, along with the fact the land is farther away, so the transmission cost would be high. He said there were a few small projects proposed.

**CHAIRMAN GROSFIELD** wondered if it was so silty that its going to be a problem in terms of wearing out a pump right away.

**Mr. Andrews** said there was a water user approximately 3/4 of a mile downstream of him, and he said it was not as abrasive as it sounds and is more than feasible to use the water.

*{Tape: 1; Side: B; Approx. Time Count: 4:15; Comments: None.}*

**CHAIRMAN GROSFIELD** asked **Mark Simonich** about the attitudes of the conservation districts involved did not have any comments on this bill one way or another.

**Mark Simonich**, said he was aware of the problem because he had been at DNRC for a few years, and thought the issue is a water rights issue at this point in time.

**CHAIRMAN GROSFIELD** asked someone from DEQ to ask **Van Jamison** about how they are going to implement line 30, Page 1.

**SEN. VIVIAN BROOKE** asked **Mr. Andrews** what is there to guarantee that this will solve the problem, and she wondered about the return flows and the runoff.

**Mr. Andrews** said that the land is well suited for irrigation, being that it is not steep. The way the land is situated, if there is runoff, it won't flow directly into Muddy Creek.

**Closing by Sponsor:**

**REP. ROSE** closed in saying that HB120 is an attempt to handle the terrible erosion problem in Muddy Creek.

*{Tape: 1; Side: B; Approx. Time Count: 4:20; Comments: None.}*

**CHAIRMAN GROSFIELD** closed the hearing on HB120 and opened the hearings on HB59 and SB146.

**HEARING ON SB146 and HB59**

**Sponsor:** **SEN. AL BISHOP, SD 9, BILLINGS**

**Opening Statement by Sponsor:** **SEN. AL BISHOP, SD9**, stated that HB59 and SB146 were identical and what they both would do is repeal the Hannah Bill. He said what the Hannah bill did was put the Yellowstone County Airshed on a different sulphur dioxide standard than the rest of the state. This put them on the federal standard and the state standard was more stringent. We were told in 1987 that it would take about five years for the companies to get in compliance with the state's standard. He said, here we are ten years later, putting the airshed back on the same sulphur dioxide ambient air quality standards as the

rest of the state. He said that HB59, **REP. JOHNSON'S** bill, had passed the House by a large margin, so we have to dispose of one of the bills. He proposed to table his bill, SB146, and continue on with HB59.

Sponsor: **REP. ROYAL JOHNSON, HD 10, BILLINGS**

Proponents: Rex Manuel, Cenex  
Jerry Driscoll, Conoco  
Mark Simonich, Director, DEQ  
Ed Bartlett, Montana Power  
Mary Westwood, Mt. Sulphur and Chemical Co.  
Jim Kembel, City of Billings  
Mike Mathew, Yellowstone County  
Gail Abercrombie, Mt. Petroleum Association  
Betty Waddell, Montana Association of Churches  
Dexter Busby, Mt. Refinery Co.

Opponents: None

Opening Statement by Sponsor:

**REP. ROYAL JOHNSON, HD 10, Billings**, distributed a handout to help explain the bill, which included Chapter No. 504 of the Montana Session Laws 1987, and a data sheet summarizing 1996 Sulfur Dioxide levels in the Yellowstone County area, which are attached to the minutes as **(EXHIBIT 5)**. He explained that the Dept. of Natural Resources put in the rules to set the ambient air standards to the state level, whereby in 1987, the five polluting industries in Yellowstone County were not able to reach those state standards. It would of required that some of them shut down, to make changes. Industry was allowed to be exempt from those state standards and stay on the federal standards if they began working on revamping their refineries to lower their sulfur dioxide levels. The italicized writing in Chapter No. 504 showed where the Legislature put it into the rule, not in the statute, to allow Yellowstone County to stay on the federal standards. This prohibited the Dept. doing anything about exceeding the current state standards, which is approximately 30 percent less that the federal standard. The agreement was then that the industries would immediately start working on improving that situation to lower their sulfur dioxide levels. He stated that Conoco started to completely revamp their refinery and did an outstanding job to get the pollution down. The other industries have spent a half a billion dollars to come into compliance over the last ten years. He referred to the Coburn Road data, which was located on the second sheet of **(EXHIBIT 5)**, and showed that the level in 1996 at that station was .010 ppm, which is about half of the state standard. This legislation would put Yellowstone County back the state standard and keep the sulfur dioxide level 30 percent lower than the federal standard.

Proponents' Testimony:

**Rex Manuel, Cenex Petroleum, Laurel,** stated they have been involved with the Hannah Bill for several years. The reason it was passed was to give industry, such as Cenex, time to secure the money and remodel the plant to lower the emissions out of the refinery. He said Cenex, comparatively, was a small refinery, but had spent \$95 million dollars on remodeling of the refinery. Through this remodeling, they had reduced the emissions by two-thirds, which is under the state standards. They supported HB59 and urged a do pass from the Committee.

**Jerry Driscoll, Conoco Inc.,** supported HB59 without amendments. He said in 1987, the Legislature gave them time to comply with the state air standards. In the meantime, industry in Yellowstone county had spent \$497.5 million dollars on construction to clean up the environment and it has worked. He said it was time to put Billings back with the rest of the state.

**Mark Simonich, Director of the Dept. of Environmental Quality,** read his written testimony, attached as (EXHIBIT 6), which supported HB59.

*{Tape: 2; Side: A; Approx. Time Count: 4:40; Comments: Start of Tape 2.}*

**Ed Bartlett, Montana Power Company,** supported HB59 as it was introduced and passed in the House, and they also supported the content of **SEN. BISHOP'S** bill, SB146. The time has come for the repeal of the Hannah Bill, without a continuation of the debate that started more than ten years ago.

**Charles Brooks, Billing Area Chamber of Commerce,** supported the repeal of the Hannah Bill, with future regulatory enforcement governed by data gathered through the monitoring of the SO2 producers, and urged the Committee's favorable consideration.

**Mary Westwood, Director of Governmental Relations for Montana's Sulphur and Chemical Co., Billings,** stated they were a small business that takes gases from the Exxon Refinery and removes the sulphur. They have taken over the history of their company, an equivalent of two millions tons of SO2 out of the air in Billings. In 1987, they were the only industry that neither supported or opposed the Hannah Bill. She believed HB59 would be good for her community, and it is time for this bill to be passed.

**Jim Campbell, City of Billings,** wished to thank **SEN. BISHOP** and **REP. JOHNSON** for bringing forth the bill and supported the simple repeal of the Hannah Bill.

**Mike Mathew, Commissioner in Yellowstone County,** concurred with **REP. JOHNSON** and urged the passage of HB59.

**Gail Abercrombie, Mt. Petroleum Association,** stated that last session she was before the House stating that the Hannah Bill

should not be repealed, and that the federal standards for SO<sub>2</sub> was fully protective of human health with a margin of safety to protect the sensitive populations. She said that they still believed the federal standards were fully protective. However, regarding HB59, the realities recorded by monitors have shown that the actual air quality in the Billings area for the last three years has met the more stringent state standards. The two monitors located in the population centers of Billings, the Senior High School and West High School, have shown that the highest reading was only 24 percent of state standard. She said with HB59, the Billings area will be identical to the rest of the state and felt emission sources should be treated equitably throughout the state. She felt this was an emotional issue and further debates would likely to continue, however, she believed it should be done with monitored data and sound science.

**Betty Waddell, Mt. Associations of Churches**, supported HB59 and were thankful that the industries have come into compliance. They supported good air quality and believed this bill would provide good health for people living in Montana.

**Derrick Burney, Mt. Peoples' Action**, said they were a state-wide organization of 5,000 members, of which 600 are in the Billings area. The organization works on bread-and-butter issues that effect the members. They were in strong support of the Hanna Bill repeal and HB59 for health and safety reasons and to attain environmental justice.

**Opponents' Testimony:** None

**Questions From Committee Members and Responses:**

**SEN. BEA MCCARTHY** asked about the difference in the fiscal notes of the two bill, HB59, and SB146.

**REP. JOHNSON** replied that there will be no fiscal note on it at all if another monitor does not have to be put in. Seven of the monitors are owned by Industry and two are owned by the State.

**SEN. FRED VAN VALKENBURG** asked the Dept. of Environmental Quality about the Dept.'s enforcement policy concerning the possible violations of the standards. He asked what enforcement actions has been taken by the Dept. in respect to ambient air standard violations in the last two years.

**Bob Raisch, Dept. of Environmental Quality**, explained how the Dept. goes about enforcing the ambient air standards. He said there were basically two ways to go about that. If one can identify the source that caused the problem, the Dept. can take direction action against that source in District Court, but he added that was usually difficult to do. The other approach is to go through a process where dispersion modeling is done to identify the sources that are contributing, and then emission limits are set on those sources that would ensure compliance with

the ambient standard. In-stack monitors are put in place to determine compliance with that emission cap the Dept. put on. If that is violated, then action is taken in District Court and an administrative penalty on that violation of emission is determined. He could not recall any action taken by the Dept. in District Court directly on an ambient standard for at least 15 years. Generally, the Dept. has gone with the modeling procedures to come up with an emission limit and then enforce against that emission limit. He stated that the Dept. has taken considerable enforcement actions against emission limits.

**SEN. VAN VALKENBURG** asked if the Board of Environmental Quality had a role in the enforcement actions too.

**Mr. Raisch** replied to some extent. If the Dept. takes direct enforcement action for an ambient standard, that was strictly the Dept. filing a suit in District Court and the Board is not involved. If the Dept. goes through the other route, and sets emission limits on stacks, the Board would be the one that orders those emission limits.

**SEN. VAN VALKENBURG** asked if the Board can refuse to enforce those emission limits that the Dept. felt were appropriate and allow the entity to continue that practice.

**Mr. Raisch** said the Board could refuse to set a limit at a level but once they set that limit, the enforcement mechanism falls with the Dept. filing suit in District Court.

**SEN. VAN VALKENBURG** asked if there was an issue with that regarding Stone Container in Missoula.

**Mr. Raisch** said that Stone Container was a very complex situation. The Board did set emission limits on Stone Container, but the EPA did not agree with the rulemaking that the Board made. Consequently, EPA and some other groups are suing Stone Container over that issue and believed the Board was improper at how they did that.

**SEN. VIVIAN BROOKE** asked **Mr. Raisch** if the monitoring information gave the Dept. a clear picture of which stack was over the standard and which stack wasn't.

**Mr. Raisch** said no the monitoring information did not paint the whole picture but it does indicate whether there is a violation of the ambient standards or not. He said in the case by Billings, where there were several sources of sulphur dioxide, it doesn't paint the whole picture.

**SEN. BROOKE** asked if the repeal in HB59 allows the Dept. to enforce those emission caps. **Mr. Raisch** answered affirmatively.

**SEN. BROOKE** asked if the self-audit bill would affect HB59.

**Mr. Raisch** said it would not have a large effect on HB59 because an audit would not show much and the monitors would be telling the Dept. what was going on anyway.

**SEN. BROOKE** wanted **Mr. Raisch** to explain the difference between HB54 and HB59. He said the difference was that in HB54, the Dept. was to set emission caps immediately and with HB59, the Dept. would wait until an ambient violation was seen on the monitors and then set the emission cap. The difference is one is an immediate action to set emission limits and under HB59, the Dept. would wait until they see an ambient monitoring violation.

**SEN. KEN MILLER** asked **Mr. Raisch** about the fiscal note of HB54, **REP. BOHLINGER'S** bill. He said the fiscal note that was put together for HB54 showed a cost of \$158,608.00 in 1998 and \$114,168.00 in 1999. The main difference is that the development of the dispersion modeling and the control plans for each of the industries, would take considerable amount of personnel time and technical studies to go with that. It is also possible that HB54 would apply to other areas in the state, such as East Helena, Great Falls, and Colstrip.

**SEN. MILLER** asked if there was additional costs to the industry as well in HB54. **Mr. Raisch** replied that it would be very likely to have additional costs involved for industry.

**SEN. THOMAS KEATING** asked if the location of the monitors in Billings have been situated by the direction of the Dept. **Mr. Raisch** replied that to some extent yes, but also with the cooperation with the Black Tech Group, which is the collaboration of the industries, the Dept., Yellowstone County Air Pollution, and to some extent, the environmental groups.

**SEN. KEATING** asked if Geo-Research was the company that reports the readings from the monitors. **Mr. Raisch** said that was correct, Geo-Research is on contract with Black Tech to run at least four of the sites, with one of the Exxon sites and two of the state sites being run by Yellowstone County on contract. **SEN. KEATING** reiterated that independent, non-biased people are reading the monitors, thus the reports are from disinterested parties. To some extent, however **Mr. Raisch** added that they are on contract with the industries, so may not be "disinterested."

**SEN. KEATING** asked if all the various facilities or generators in the Yellowstone Valley would have to install an in-stack monitor. **Mr. Raisch** said all of the major stacks in the area, with any significant output of SO<sub>2</sub>, will have in-stack monitors.

**CHAIRMAN LORENTS GROSFIELD** referred to the sheet that **REP. JOHNSON** handed out, (**EXHIBIT 5**), the 1996 sulphur dioxide data, and clarified that the standard is .10 ppm, but he observed that the Feb. 1996 data on Coburn Road exceeded the standard (.105). If this bill passes, and the same scenario happens again next year, what would the response be.



**Mr. Ralsch** said the first time the level is exceeded it was not a violation, but it is the second time in a year that it becomes a violation. He said those statistics referred to the high 24-hour rolling average. If there were two occurrences of exceeding the standard in the same year, it would constitute a violation. The Dept. would proceed with the dispersion modeling study and set new emission caps equivalent to the ambient standard.

**CHAIRMAN GROSFIELD** stated the Hannah Bill was unusual in that it amended rules of an agency. This bill repeals the Hannah Bill. The Hanna Bill says the Board of Environmental Review shall amend this rule in this manner, now we are repealing that, so we are taking away the mandate of the Board, that doesn't change the rule yet. If this bill passes, is the next thing that happens that the Board of Environmental Review is going to change the standard and how do we know, how fast is that going to happen, is that going to happen? **Director Simonich** said he was correct in that by repealing the Hanna Bill, you remove those directions that directed the Board to adopt a different standard. There is no longer that direction in law, the Board will have to do something. We fully understand the intent of the Legislature in passing this repeal. That intent being you want a consistent state-wide standard for ambient air quality for standards for sulphur dioxide. This bill, he believed would be effective October 1. The Dept.'s intent will be to initiate rulemaking as soon as this bill is enacted into law, before the Board of Environmental Review. Rulemaking that would then bring those current Montana ambient air standards in effect covering the Yellowstone County area. The Dept. would do that in a way so that the Board would be able to step through that rulemaking process have that rule in place and be able to become effective by the time the bill becomes effective, October 1, 1997.

**Closing by Sponsor:**

**REP. JOHNSON** wanted to thank **SEN. BISHOP** for suggesting a way to take care of the situation. He said this was the most contentious problem that has occurred in the Yellowstone County area for a long time. Every candidate that ran for office in the county, said they were going to help repeal the Hannah provisions. Everybody in the county has agreed that they would in fact support this legislation. He said it does not cost any more to put in monitors under this bill than any other bill that the Legislature might see before you.

**CHAIRMAN GROSFIELD** closed the hearings on SB146 and HB59.

*{Tape: 2; Side: A; Approx. Time Count: 5:15; Comments: None.}*

**EXECUTIVE ACTION ON SB175**

**Motion:** **SEN. CRISMORE MOVED A DO PASS FOR SB175.**

Discussion: CHAIRMAN LORENTS GROSFIELD said we have an amendment that SEN. SWYSGOOD requested in committee, sb017501.amc and passed out copies to the committee, (EXHIBIT 7).

Motion: SEN. MILLER MOVED THE AMENDMENT sb017501.amc

Discussion: SEN. VAN VALKENBURG said he did not have the impression that this was the amendment that the parties that were before the committee were talking about.

CHAIRMAN GROSFIELD said there were two amendments and the one that talked about federal energy regulatory commission was the next one. He said remember that we are dealing with a compact that has been signed off on by the negotiating parties.

Vote: Motion TO ADOPT AMENDMENT sb017501.amc CARRIED UNANIMOUSLY.

Discussion: CHAIRMAN GROSFIELD said the other amendment, sb017502.alm, (EXHIBIT 8), takes care of the federal energy regulatory commission issue, and it did not really affect the state. It is more of a clarification issue between Montana Power and the Federal Energy Regulatory Commission. He said he visited with Susan Cottingham about this amendment and she had checked with all the parties and everybody was agreeable to this.

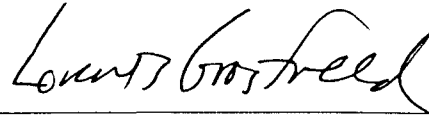
Motion/Vote: SEN. CRISMORE MOVED AMENDMENT sb017502.alm and MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. CRISMORE MOVED A DO PASS FOR SB175 AS AMENDED, MOTION CARRIED UNANIMOUSLY.

CHAIRMAN GROSFIELD adjourned the meeting at 5:30.

ADJOURNMENT

Adjournment: 5:30 PM



SEN. LORENTS GROSFIELD, Chairman



GAYLE HAYLEY, Secretary

LG/GH