

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By CHAIRMAN KEN MESAROS, on March 10, 1997, at
3:03 p.m., in Room 413/415.

ROLL CALL

Members Present:

Sen. Kenneth "Ken" Mesaros, Chairman (R)
Sen. Ric Holden, Vice Chairman (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. Gerry Devlin (R)
Sen. Don Hargrove (R)
Sen. Reiny Jabs (R)
Sen. Greg Jergeson (D)
Sen. Walter L. McNutt (R)
Sen. Linda J. Nelson (D)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Doug Sternberg, Legislative Services Division
Angie Koehler, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HJR 27, 03/05/97
HB 224, 03/05/97
Executive Action: None

HEARING ON HJR 27

Sponsor: REPRESENTATIVE SHIELL ANDERSON, HD 25, LIVINGSTON

Proponents: Larry Brown, Agricultural Preservation Assoc.
Les Graham, MT Cattlemen Assoc., MT Dairy Assoc.
and MT Livestock Auction Assoc.
Lorna Frank-Karn, MT Farm Bureau
Quinn Holzer, MT Stockgrowers Assoc.

Opponents: Janet Ellis, MT Audubon

Opening Statement by Sponsor:

REP. SHIELL ANDERSON, HD 25, LIVINGSTON: This resolution was put together to recognize problems that Montana is being faced with. It pertains to bison wandering into our state out of the Park. It basically says that we, as a legislature, recognize that the buffalo present problems coming into Montana in many ways. North of Gardiner they have torn out a number of fences and fight with horses and cattle over hay fed by ranchers. There have been some vet bills incurred from horses being gored. On a broader issue, they threaten Montana's *brucellosis* free status. All states are moving toward this. Montana has spent a lot of money getting there and are there except we have a problem with the known *brucellosis* infection in the Park.

In the resolution, the legislature supports the Governor and his efforts to address the problem. We urge the Governor not to relent in his demand that the President require a federal solution to protect America's bison in a responsible manner. I have a newspaper article from 1930 and wish I'd brought it with me today. Back then they actively controlled the buffalo herd within the Park to keep their numbers to around 1,000 because they thought that was what the range was capable of carrying.

REP. ROBERT REAM noted that the problem is simply too many numbers in the Park. Over the mild winters they continue to increase and then we get a harsh winter as we had last winter and this winter, in particular, and they wander out of the Park. Montana then gets the black eye and the national spotlight because we're the ones that have to actually take care of the buffalo.

Proponents' Testimony:

Larry Brown, Agricultural Preservation Association: We'd like to go on record as supporting this resolution. It's very important that the legislature address this issue. I don't know if any of you were available to listen to **SEN. CONRAD BURNS** last week when he was here. There was a question and answer session afterwards. He told us about his meeting with **Secretary Babbitt** from the Department of the Interior and **Secretary Glickman** from the Department of Agriculture. It doesn't sound like the federal government is going to take their responsibility very seriously in terms of managing the wildlife in the Park. The problem is that science is not being applied in the Park. We think the Governor should take a very strong stand from this position and we urge the legislature to do so also.

Les Graham, MT Cattlemen Association, MT Dairy Association and MT Livestock Auction Association: We support the bill. Some of you may have seen the paper, over the weekend, where Oregon has now decided that Montana has to test all of our cattle going in. This has an impact on the livestock industry as well as the marketing sector that I represent. There was a letter from the President of the U.S. Animal Health Association two or three

weeks ago telling all state veterinarians to be aware of the problem in Montana with *brucellosis* in the Park. That was like a red flag. For the 20 some years I was with Department, I was a member of the U.S. Animal Health Association and even chaired some of their committees and I can tell you that the letter coming from the President of the U.S. Animal Health Association is probably just the beginning of it. Most of these state veterinarians will think a little more. I anticipate more states putting us on the lists. We want to support the Governor in any effort he can bring forth to resolve this situation and urge your support on this resolution.

Lorna Frank-Karn, MT Farm Bureau: We support this bill because of many reasons you have heard. What started all of this was an article in the Helena Independent Record and probably some other papers throughout the state saying Boycott Buffalo Butchery. The state and the Governor were getting a black eye because of this ad. We felt it would be fair to have the legislature come out at this time and support the Governor along with all of the different ag organizations throughout the state. The Governor had an excellent letter in the Bozeman Chronicle over the weekend. It told just what his position was on this particular issue. If you get a chance to look at that, it was a very good article. (EXHIBIT 1)

Quinn Holzer, MT Stockgrowers Association: We've long been involved in trying to make sure our cattle are going to be free to move about and disease free. It is also a human health issue. In Saturday's Great Falls Tribune there was a good article about one of the veterinarians who has *undulant fever*, the human form of *brucellosis*. The pressure will have to be kept on. We support the Governor in this.

{Tape: 1; Side: A; Approx. Time Count: 3:11 p.m.}

Opponents' Testimony:

Janet Ellis, MT Audubon: I thought about this a long time. I don't take this resolution lightly and speak to you as an organization that wants this solved. We see a problem with how one of our wildlife species is being managed. I'm afraid this resolution trenches Montana in more. Somehow, we need to encourage the parties that are involved to sit down and try to work out a solution. One of things I've been talking to conservation organizations about is trying to have a consensus council process. Many of you are aware of the Montana Consensus Council to require APHIS, the Park Service and even the State of Montana to sit down together to try to come up with a solution. It is surprising you would pass a resolution demanding that the President of the United States require a federal solution to protect American bison in a responsible manner as indicated on page 2, line 7-9. I would assume Montana would want to be involved in that solution and that you'd want to sit down and try to work things out. I'm an opponent just because I feel this

trenches things in. I want to see something worked out. I don't have any answers to the situation, but I was trying to think of a constructive way to raise the issue and a dialogue would be more appropriate than finger pointing.

Questions From Committee Members and Responses:

SEN. DON HARGROVE: Do you know what got under the saddle of the folks in Oregon? Are they required to have their stock tested when they come here?

Mr. Graham: I have no idea other than maybe it's a response to the letter that came from the U.S. Animal Health Association president. Also, Oregon has been *brucellosis* free so they do not have to have testing coming this way. I will tell the Committee this. In the past, Montana was cleaning up the *brucellosis* problem here and we had a few herds left in the seven counties on the west side. On the *scabies* issue, Montana and North Dakota teamed up and were pretty tough on some states that weren't doing very much to clean themselves up. We made it very clear we didn't want their cattle. I wouldn't be surprised if once in a while there is a shot taken back at us.

SEN. HARGROVE: Because technically we're *brucellosis* free.

Mr. Graham: We're free as well as Oregon. I wouldn't be surprised if maybe they're jerking our chain a little bit.

SEN. REINY JABS: This *brucellosis* deal is really played out. The main reason they're leaving the Park is because of overgrazing. There is just no feed. We should emphasize the reason they're leaving rather than blame it on *brucellosis*. It is advertising the wrong idea. They think we're all infected with *brucellosis* now. The federal government should manage their Park because it's overstocked. If they put a fence around it, half of them would die anyway yet they blame us for killing them.

REP. ANDERSON: I couldn't agree more. That is the problem. Of course, this winter is especially difficult. They have frozen ice underneath the snow. I understood the bison numbered about 3400-3700 at the beginning of the winter and now they're down to around 2,500. **REP. ALVIN ELLIS** wrote an excellent letter to the editor about how they actively controlled the numbers 30 years ago. The superintendent of the Park at that time took so much heat for killing them that no superintendent since has had the fortitude to face the public opposition that goes along with doing that. Obviously, the Park is putting their job onto Montana so we look like the bad guys instead of the Park. That's very unfair.

SEN. JABS: You're right. They're shifting the blame.

VICE CHAIRMAN RIC HOLDEN: Over the last three years that I've been sitting in the Senate and on Senate Agriculture Committee,

time after time environmental organizations come in and ridicule the agricultural industry for not properly controlling their cattle herds on grazing districts and overgrazing pastures. You said you spent some time analyzing this legislation. This goes directly to the problem which deals with the overgrazing of bison in the Park. What would be your response to that?

Ms. Ellis: I think it's a little more complicated than that. You could say bison are leaving the Park just because of overgrazing. If you look at it, the way they're leaving the Park is on the roads that are groomed for snowmobiles. That's not as much of an issue in Gardiner as it is in West Yellowstone. They normally would have deep snow and they wouldn't all head out that way or be successful getting out that way. It's a really complex issue and like I said, I don't have a solution. All I know is, people are trenching in and pointing fingers. I think the best thing to do is get all interested parties together to sit down and talk to each other. Pointing fingers doesn't get solutions.

VICE CHAIRMAN HOLDEN: We've been dealing with this for at least four years. We've been talking about it and thinking about it. The herd continues to grow and migrate out of Yellowstone National Park. Has your organization come to some sort of consensus as to what the population should be in the Park?

Ms. Ellis: No, it hasn't.

{Tape: 1; Side: A; Approx. Time Count: 3:20 p.m.}

Closing by Sponsor:

REP. ANDERSON: A couple weeks ago my family went down by Haley Lake which is north of the Park. The number of elk on the winter range is amazing. We went through Gardiner and up into the Park a ways. It's a sad sight to see all the skinny buffalo and elk that are in Gardiner. They have decimated every single lawn and garden whether it has been fenced or not. There is not one sprig of grass there. In fact, there was a group of about 50 on the high school football field. One of them saw a sprig of grass and they all jumped up and ran for it. It's terrible to see how it's been mismanaged. The only way you can deal with the natural policy, other than making everything die in the Park which seems to be okay if you're in the Park, but not as a private stock grower, is to expand borders. That's what they've done and I think it's the wrong approach. The only place they can go now is farther and farther into Montana, Wyoming and Idaho. Hopefully, this resolution sends a message to Congress and to the President that Montana doesn't think we should shoulder the problem. This goes to what **Ms. Ellis** said about joining together to find a solution. We shouldn't have to be part of the solution because we're not part of the problem. Buffalo are entirely different from elk and deer because they cause substantial threat in terms of property damage and *brucellosis*.

HEARING ON HB 224

Sponsor: REPRESENTATIVE SAM KITZENBERG, HD 96, GLASGOW

Proponents: REPRESENTATIVE JAY STOVALL, HD 16, BILLINGS
Lorna Frank-Karn, MT Farm Bureau
Jason Campbell, MT Stockgrowers Association and MT
Cattlemomens Association
Bob Stephens, MT Grain Growers Association
Larry Brown, Agricultural Preservation Association

Opponents: Beth Baker, MT Department of Justice
William Rodgers
Ross Fitzgerald, MT State Volunteer Fire Fighters
Association

Opening Statement by Sponsor:

REP. SAM KITZENBERG, HD 96, GLASGOW: I am here to strike a blow for freedom on Montana farms and ranches. Freedom from government regulations, intrusion and nuisance. This is the Montana Fire Code. These are all rules and regulations that farmers, ranchers and businessmen in Montana have to live with. When I was out campaigning a farmer told me there was something I could do for him if I was serious about representing him. He said it used to be that farming and ranching was fun and he used to have a lot of fun, but now when he sees somebody coming down the road he doesn't know what type of fine they have in mind or perhaps tomorrow he could be out of business. Then, I had another person ask me how much I knew about the Uniform Fire Code in Montana. Not a whole lot, I replied. He told me about an all-day seminar on these rules in Plentywood, Montana and suggested I educate myself. It's conducted by **Rich Levendowski** from the Fire Marshal's office which is under the Attorney General's office. I went to the seminar and it really was an education and an eye opener.

I care about safety as much as anybody else, but at this seminar I learned what the odds were of something like this happening. For example, **Mr. Levendowski** would begin by saying one of the reasons we have this rule is that this happened in Phillipsburg in 1955 or this incident happened in Deer Lodge in 1902. Someone from the audience asked what the odds of something like this happening were. His reply was maybe 1 in 100,000 or once in a lifetime. I began to ask myself if all of this is really necessary and what we could do to roll it back.

This bill addresses three basic areas. The first one is "rules promulgated by the Department may not require diked areas or heat activated or other shut-off devices for storage tanks". All farms and ranches in Montana are in violation of this. If they have weeds by their tanks, don't have signs and/or heat activated devices on their tanks and don't have concrete dikes, they're in violation. It would cost a lot to bring all of these around

Montana up to code. To build the dike to build the tank would cost about \$1,000 and the heat activated and/or shut-off devices would cost about \$300. This bill also gives people a break and requires that a notice be given which gives everyone a chance to correct any violations found. I would appreciate your approval of this bill.

{Tape: 1; Side: A; Approx. Time Count: 3:29 p.m.}

Proponents' Testimony:

REP. JAY STOVALL, HD 16, BILLINGS: I'm here to give you a little background on some of these Fire Codes. I was on the Task Force that revised the Fire Codes and basically dealt with agriculture above ground fuel storage tanks. We went over all these devices and different things at great length. I listened to all the concerns and reasons why they are necessary. I was the only agriculture person on the Task Force. Many of the others on the Task Force were people that sell these devices. There is some indication that this costs around \$300 per above ground storage tank in Montana. It's estimated that it would cost \$5 Million to put all these devices on old tanks. I tried to get the Task Force to recommend that it would be a good idea to put them on instead of making it a requirement, but I was out-voted.

That's one of the reasons this bill is before you today. Right now it's Fire Code that says you have to put these devices on your tank. I didn't know **REP. KITZENBERG** was bringing this bill in. I would have if I had thought about it. These devices are not really necessary. The issue of public safety might be true in the city or close to town, but most farms and ranches are out where the only people involved are family or people that work for them so it's not a public safety issue. The Task Force found that these devices are not required in Wyoming at all. Please pass **REP. KITZENBERG'S** bill. Everybody in agriculture would thank you.

Lorna Frank-Karn, MT Farm Bureau: We are in support of HB 224 and hope the Committee will concur.

Jason Campbell, MT Stockgrowers Association & MT Cattlewomens Association: The fact that Fire Code was going to be revised and these particular changes were going to be made first came to our attention in August of 1995. I worked closely with **Rich Levendowski** from the Fire Marshal's office and spent quite a bit of time visiting with him. I got copies of all the reports of incidents from Montana farms and ranches because we were concerned about this. I also called several local retailers who sell these devices that the regulations are calling for. About as inexpensive as you can go is \$150 per tank, but \$250 would be the average. Depending on the capacity of the tank, the size of tank and the size of hose, you could spend up to \$600 per tank. One of the fellows told me that he didn't know if the break-away nozzles would even work on a gravity feed tank without enough

hydraulic pressure behind it to actually make the device close. There was some question there. We feel this is a private property issue. These are individually owned fuel tanks on farms and ranches used mainly by family members. We made a rough estimate of above ground fuel tanks by figuring that most places would have two to three at various locations throughout the farm or ranch operation. With 23,000 farms and ranches in Montana, that's 69,000 tanks. Let's say half of those are not equipped with these devices required by the new Fire Code. At \$150 per tank, the cost is about \$5 Million to retro-fit these tanks with the required nozzles. That doesn't include dikes and labeling signs. This represents a significant cost to the industry. Based on the number of incidents we've seen over the last 10 to 15 years, we don't understand why this needs to be done. The new Fire Code increased the on-farm storage of a single tank up to 12,000 gallons and the aggregate up to 48,000 gallons. If you had 12,000 gallons in one tank and were worried about losing that amount of fuel because of an accident, you would probably want to have some kind of device on it. That would be the individual's choice. There haven't been enough incidents to warrant this level of government regulation. We urge you to pass HB 224.

Bob Stephens, MT Grain Growers Association: We support HB 224.

Larry Brown, Agricultural Preservation Association: I have personal experience with this. I have worked for a regulatory agency in an underground tank program and I am currently employed by an engineering firm in Helena. Part of our environmental division deals with the Phase 1 environmental assessments and the development of spill prevention controlled countermeasure plans. I would like to echo the testimony that you've heard in terms of the costs. It doesn't take long to run up a \$3 to \$10 Thousand bill on these small tanks putting in the proper berming, leak detection systems and doing environmental assessments. I can appreciate where the fire regulations as well as the underground tank program is coming from in terms of putting regulations together. The point has been very well made that the risk has to be assessed very carefully; risk versus cost and whether or not certain industries should be exempt or not, what the tank is used for and how much is stored. The State and the agricultural industry could spend an awful lot of money in the regulatory process as well as to retro-fit their facilities to meet the codes. I recommend you weigh that very carefully as you evaluate this bill. We support it although we think there's nothing better than having good safety practices, but maybe the regulations as they are right now go a little bit too far.

{Tape: 1; Side: A; Approx. Time Count: 3:39 p.m.}

Opponents' Testimony:

Beth Baker, MT Department of Justice: I want to start by outlining what the State Fire Marshal is responsible for under state law. The Fire Marshal is responsible for the enforcement

of fire safety standards in all areas of Montana outside of a city or town with an established fire inspection program. In essence, we're the ultimate rural fire department. Since the early 1970's we have adopted the Uniform Fire Code of Montana. With the legislature's expressed permission, the Fire Marshal may adopt Uniform Codes. Many cities also adopt a Uniform Fire Code for application within city limits. The Uniform Fire Code does govern storage of fuel in above ground containers. The Uniform Fire Code is an unwieldy document. It's developed by urban code writers in California and definitely has some areas where it does not fit Montana. Because of that, the Attorney General created an Above Ground Storage Task Force in 1994 to study the issue of storage of fuel in tanks on farms and ranches as well as rural service stations and develop recommendations to make a Montana solution. The Task Force consisted of legislators, representatives of the tank manufacturing industry, fire service officials and farmers and ranchers. Former **SEN. BOB HOCKETT** was also on the Task Force and represented the agricultural community in addition to **REP. STOVALL**. The Task Force issued its recommendations in 1994 and worked for several months to produce this product.

Throughout the course of its deliberation, the Task Force consistently considered the impact of its recommendations on the environment, public safety and affordable costs. The effect of the rule that was adopted in response to this Task Force is to ease government regulation, not to put more burdensome regulation on farmers and ranchers. It's to ease the requirements of the Uniform Fire Code that have been in place for some 20 years. The 48,000 gallon limit was a product of this Task Force's work and the rules we adopted thereafter. It had limited above ground storage to 1,100 gallons in any location. This was obviously impractical for Montana farms and ranches. The rules now allow storage of up to 12,000 gallons in individual tanks with an aggregate of 48,000 gallons of fuel. The rules also keep in place minimum safety requirements to mark and label tanks, install break-away valves on hose lines and allows a 36 month compliance period which began in March of 1996. Diking requirements are for new installations only and do not apply to existing tanks.

Section 2, the warning section of the bill and how that fits in with our current enforcement practices and laws is that the State Fire Marshal is required by state law to inspect schools, homes for the disabled, daycare centers, places of public accommodation such as hotels and motels, state owned facilities, jails and other public buildings. We have a priority schedule for inspection and have 10 Deputy State Fire Marshals statewide. They perform those inspection functions focusing on places such as schools and homes for the disabled where the life safety risk is greatest. The State Fire Marshal does not conduct inspections on private homes or private farms and ranches. In the last four years, the Fire Marshal has inspected two farms or ranches and both were at the request of the owner. Part of the reason owners

will ask the Fire Marshal to come in is that they are concerned about federal requirements and their own eligibility for compensation from the State Petrol Board. Most importantly, the State Fire Marshal does not have authority under state law to impose fines or assess administrative penalties. We have a statute that says violations of the rules of the Fire Marshal are a misdemeanor so we have to go to court if we're serious about pursuing a violation. Those are typically handled through the County Attorney's office. In the eight years I've worked at the Attorney General's office we have pursued one violation for above ground storage tank violations and that was at a public facility where the owner had been warned and worked with since before I started and had failed to come into compliance and was jeopardizing public safety. Through this rulemaking process, we hope to provide an educational function for tank owners. Through federal grant funding, we have already conducted approximately 30 programs across the state to inform the business and ranching community about federal and state regulations governing fuel storage. We're in the process of developing an installation guide for people to use.

This is not about regulation for the sake of regulation. This body has charged the Department of Justice with responsibility to pass laws governing life safety and prevention of property and personal damage from fire. In the last decade there has been one death and three injuries on Montana farms and ranches related to fuel storage tanks above ground. Fire valves and break-away valves could have prevented these accidents, not to mention the potential danger to firefighter safety and surrounding property owners. Picture a tank containing 12,000 gallons of fuel exploding in eastern Montana on a nice windy day. It won't be long before that fire spreads to your neighbor's property. The Chairman of the Attorney General's Task Force, **Aaron Holzden** of the Bozeman Fire Department was unable to be here today. He also opposed the bill in the House and may have been surprised by **REP. STOVALL'S** comments.

This report, to my knowledge, was a consensus product of the Task Force. I would refer you to the Task Force report saying they received a letter from the Stockgrowers Association recommending that the Task Force exempt farms and ranches from fuel storage regulations or at a minimum, recommending rather than requiring installation of special safety devices. The Task Force determined that most, if not all, above ground storage tanks on farms and ranches are in noncompliance with the Fire Code. The recommended modifications minimize the cost to the farmer and rancher. Should compliance be required based on current codes, the cost would be several thousands of dollars rather than a few hundred. The Task Force concluded it was their responsibility to assure reasonable life safety be addressed. We oppose this bill because we do believe it is a serious public safety issue.

{Tape: 1; Side: B; Approx. Time Count: 3:49 p.m.}

William Rodgers: I am here to oppose this bill. I have several reasons, but my wife sat up half the night trying to write this letter. Through many tears she got it done. The reason I'm having a hard time is in 1988 we had a gas explosion, outside tanks, no safety. The gas explosion was due to static electricity. Nobody can foresee that so any safety device that can be on any outside tank is needed. We had a son that we lost that was 10 years old. I would like to have somebody read this. I can't.

SEN. LINDA NELSON: Read letter from **Mr. Rodgers'** wife concerning the loss of their son in an above ground fuel storage tank explosion/fire.

Mr. Rodgers: Everybody talks about the price of putting safety devices on their tanks, but what is the price of a human life worth. If you can save one life, what is that worth? How many thousands of dollars is it going to take to go through legislature or go through whatever to make people understand that you can't put a dollar value on human life.

Ross Fitzgerald, Farmer and Fire Chief of Power, MT; MT State Volunteer Fire Fighters Association: I agree with REP.

KITZENBERG on all the regulation and the overburdensome cost thereof. Nothing gravels me more than having somebody run my life and assuming I'm the stupid one of the operation. However, when it comes to fire, fire safety and life safety I guess I have to throw that hat away and reveal probably a more intrinsic and inherent feeling that I have regarding that. I've been on some pretty good sized fires and a lot of them were fuel fires. In fact, one incident in Teton County involved three 9,000 gallon fuel tanks. One of them had a ruptured line. I wasn't on the scene, but the Fairfield Volunteer Fire Department and two other departments were there. With that type of fuel flow, it was virtually impossible to stop it as there was an untold number of gallons of foam.

There are some issues we need to keep in mind as we look at trying to make sense of laws and Fire Codes. I don't think the Fire Marshal Bureau is a headhunting agency. We've used them on several occasions for investigation of fires to determine cause and origin. We've learned a lot from the agency and have good rapport with them.. Fundamentally, we're looking at farm and specifically, family safety as well as worker safety. That comes under the guise of untold liability and personal loss. The safety of onlookers and particularly my firefighters and incident responders are paramount in my mind. We didn't cause the problem. We're there to try to mitigate it for a positive outcome. Another factor is environmental safety and liability. That is a new thing we all have to be aware of. That costs money. That is probably a consideration of the producer, owner and operator along with product loss which is probably the most minor part of the whole equation. My focus is on the larger tanks and as the Task Force consensually admitted, there needs to

be some safety devices particularly as our farms and ranches are getting larger. Fuel is being bought by tanker loads for economic reasons. A tanker load is 8,000 gallons or more. The larger the tank, the more liability and safety factor. At present, I don't know of any purposeful inspections being done. This agency is more of an advocacy for safety. Of all the tanks you heard were out there, I'm sure most of them aren't even close to any safety compliance. That's the responsibility of the operator. There is an advocacy role here in education. The 36 month implementation plan may not be long enough. There are many rules we don't understand and this may be one of them with costs ranging from \$200.00-\$500.00. Concerning loss and liability, it's pretty cheap insurance. A suggested amendment, in opposing **REP. KITZENBERG'S** bill, is to strike line 30, page 1 and page 2, lines 1-2. Keep the new section that gives the Bureau the chance to work with and educate our farmers and ranchers. I suspect the insurance industry hasn't figured this into some of their liability premiums.

Written Testimony:

Missoula Rural Fire District (EXHIBIT 2)

{Tape: 1; Side: B; Approx. Time Count: 4:01 p.m.}

Questions From Committee Members and Responses:

SEN. DON HARGROVE: Do we require grounding rods for outdoor, above ground tanks?

Bruce Suenran, State Fire Marshal's office: I don't believe we require grounding protection. What **Mr. Rodgers** referred to in the fueling of large tankers, they ... (speech garbled)

SEN. HARGROVE: Is a static ground, copper rod that goes into the ground required?

Mr. Suenran: I don't believe we do. I would have to check to be sure.

SEN. HARGROVE: Do we require a concrete dike on any new installations?

Mr. Suenran: The requirement is for a liquid type tank and the technology allows us to do concrete or whatever is allowable. In this part of the country we have problems with water freezing in the winter-time. It tends to crack concrete.

SEN. HARGROVE: Can you use dirt?

Mr. Suenran: Yes, if you start with a liner or some other impervious liner.

SEN. HARGROVE: Between Sub-paragraph 6 at the top of page 2, line 3 it says they're guilty of a misdemeanor and then line 6 says there won't be any prosecution. Is there a conflict the way this is written in your view?

Ms. Baker: There is a technical conflict with the way the bill is written. What I'm more worried about with Section 2 is that it makes it sound like it's only for farms or ranches that we're going to issue warning violations. As a practical matter, that's how the Fire Marshal works. We cannot issue administrative penalties, so we always issue a report to the property owner and say here is what you need to correct and ask, in many cases if it's a business, for a correction plan. The only time we would pursue prosecution is if they continue to violate the law and show they have knowledge of the regulation and are just totally disregarding it.

SEN. HARGROVE: Along the same lines, I heard that you actually do what is now required in Section 2. Is that in practice?

Ms. Baker: That's correct, but we do it for more than just farmers and ranchers.

SEN. HARGROVE: It seems like this is one of those cases where the law requires things that we don't really do. Is that part of the reason why this bill came out? It sounds like that farmer was frustrated with something that you're saying would never happen to him, yet it's kind of a "damocles sword" hanging over his head.

Ms. Baker: That's a good observation. The reason this bill has come out is, in our efforts to try to make the regulations more reasonable, we've drawn more attention to the regulations in the first place. Our hope is to be able to work with the ranching community to make sure everybody is aware of the safety issues for these kinds of tanks and try to get them in compliance. A comment was made about the 36 months. That is set in the rules, but we are working in an educational capacity. We are not going to be prosecuting people for not hooking their tanks up.

SEN. GERRY DEVLIN: You said that most of the rules you're operating under now were rules that the Department did. When did the enabling act come about to rulemake on storage tanks?

Ms. Baker: It was before I was born, but I can't say exactly when.

SEN. DEVLIN: There has been a Task Force and you made rules after the Task Force met. Is that correct?

Ms. Baker: Right. What we did was in conjunction with the Department's readoption, the Uniform Fire Code is updated every few years. It was when the 1994 Fire Code was being reviewed for adoption that we decided we needed to take a better look at the

above ground tank rules that were in the Fire Code. When we adopted the 1994 Fire Code, we adopted it with Montana amendments that were the result of the Task Force's recommendations.

SEN. DEVLIN: Did the rules, that came about as far as a coffer dam that was more or less lined or made of cement, come out of that Task Force?

Ms. Baker: That was part of those provisions in the Fire Code the Task Force felt should be retained as in the rules. They have been in the Fire Code as well as federal law. The reason that distinction is important is the diking becomes an issue when there is a leak from the tank and there is, perhaps, contamination. If the tank owner wants to get compensation for the costs of the cleanup from a petroleum lease compensation fund, the tank owner is required to show that they were in compliance with all applicable state and federal regulations. So if they don't have the dike, they're out of compliance with the federal regulation and they can't get the compensation.

SEN. DEVLIN: You mentioned something about 1,100 gallons and under. I didn't catch what you were talking about. Are those exempt?

Ms. Baker: The 1,100 gallon is what the Uniform Fire Code prescribes as the limit for any tank in a particular location. In other words, you can't have a tank that has more than 1,100 gallons if you're going to store it in an above ground tank. That's where our Task Force said that's not reasonable for Montana farms and ranches. We recommend you raise it to 12,000 gallon tanks with an aggregate capacity of 48,000. Our rules now provide for that as an exception to the Uniform Fire Code.

SEN. DEVLIN: If I were to have a 1,000 gallon above ground tank on my farm or ranch, what regulations am I under?

Ms. Baker: Perhaps you're thinking about the exemption for underground tanks.

SEN. DEVLIN: I just wondered because you mentioned 1,100.

Ms. Baker: Right. The reason I was referring to that is the 1,100 is a ceiling under the Uniform Fire Code. You can't have more than that. Our regulations are allowing more than that. The federal law sets the limit at 660 gallons. If you're less than that you don't have to have the spill protection plan.

SEN. DEVLIN: You don't have to be under any regulation if you're under 600 gallons?

Jean Riley, Executive Director, Petroleum Tank Release Compensation Board: If it's under 660 gallons on the individual tank, you would still be required to have those if where that tank is placed could possibly result in contamination reaching a

waterway. Anything that flows is considered a waterway. That's federal law and that's the Spill Prevention Control and Counter Measure Plan.

SEN. DEVLIN: I have a 500 gallon tank. Do I have to build a coffer dam around it?

Ms. Riley: You may be required to have some diking if there was a spill from that tank and it could result in getting into a drainage ditch or a waterway, surface waters. That is a federal requirement.

SEN. DEVLIN: Everything drains somewhere in Montana.

Ms. Riley: The definition of navigable waters is fairly large. Containment can be that it does not get to a drainage ditch or something like that. That is where you may not be required to go as far, but there are some requirements. The main concern is they are trying to prevent it from getting into surface waters.

SEN. DEVLIN: Would that be the only thing you would have to worry about?

Ms. Riley: On the federal law, that is correct.

SEN. DEVLIN: Who enforces that?

Ms. Riley: That is enforced by EPA out of Denver.

SEN. DEVLIN: How many Marshals do you have running around looking at tanks?

Ms. Baker: None. We have 10 Deputies who cover all of the Fire Marshal's responsibilities under state law. We have one who has been charged with trying to develop the educational materials that I mentioned and is the expert on aboveground tanks. We are not inspecting tanks unless a farmer or rancher asks for our assistance.

SEN. DEVLIN: Do you have to register one of these tanks with the state?

Ms. Baker: No. They have to be marked so that whoever is on the property would know what was in them and so if someone was coming to refuel them, they would make sure they had the right tank.

{Tape: 1; Side: B; Approx. Time Count: 4:15 p.m.}

VICE CHAIRMAN RIC HOLDEN: Can you briefly describe to me what these heat actuated instruments are that the Department wants me to put on my tanks?

Mr. Suenran: The heat actuated valve is a valve that has a thermal couple device on it that actually holds the valve open

and when the usable link is burned through, it closes the valve and shuts off the fuel from the tank. The breakaway valve is a situation where you drive off from the gas pump, the surge and pressure cause the valve to close. They are two different kinds of valves.

VICE CHAIRMAN HOLDEN: We heard a figure, **Ms. Baker**, that there might be 69,000 tanks in Montana not counting 55 gallon barrel drums. In your analysis of the situation, how many of these blew up last year?

Ms. Baker: There has been a growing trend toward aboveground tanks because of the problems with underground tanks. That's part of the reason this issue came to the forefront in the first place. In the last 10 years there has been one death and three injuries from tank explosions on Montana farms and ranches. I don't know if there were other fires. I can't answer that question. We don't know of any last year.

VICE CHAIRMAN HOLDEN: Is **Joe Mazurek** against this bill? In other words, he would support that farmers and ranchers dike these tanks and retrofit them with heat actuated valves and shut-off devices. Is that true?

Ms. Baker: **Attorney General Mazurek** signed the rules that became the subject of this bill. Again, those rules have been in the Fire Code for many years. It wasn't our idea to begin with. The rules have been adopted by the Fire Marshal since the 1970's. **Joe Mazurek** created the Task Force to try to come up with recommendations for which of those rules ought to apply on Montana farms and ranches. He did accept those recommendations.

VICE CHAIRMAN HOLDEN: I understand you're a farmer, **Mr. Fitzgerald**. According to what **Ms. Baker** just said, these rules have been on the books for quite some time. I was wondering if you have installed these devices around your fuel tanks on your farm?

Mr. Ross Fitzgerald: No. One reason is I wasn't aware of them until I became more involved with this whole aboveground, underground tank discussion. The same as with the underground, we need to provide some slack to get some awareness to our farms and ranches. I don't argue with the concept, but I have to sit down and ascertain which tanks and how I'm going to handle that hazard.

SEN. REINY JABS: If you have a 500 gallon tank, you don't need all these dikes and sensor things under federal law. How about state law?

Ms. Baker: I'm not 100 percent sure, but I believe the tanks we're talking about are tanks from which fuel can be dispensed. Primarily those are larger than 500 gallons.

SEN. JABS: There are a lot of farmers that have 500 gallon tanks and they'll have two or three together. Is this small farmer required to have all these regulations to protect that 500 gallon tank?

Ms. Baker: I'm not sure. That question hasn't come up before.

Mr. Suenran: I'm not sure that there is a secondary containment requirement on all tanks where you have the possibility to spill. The size of that depends on the tank. I'm not sure that we established a minimum tank size for the fire valves.

Ms. Baker: I'll be glad to check this out and get a better answer, but looking at the rules there does not appear to be any minimum requirements. I think the rules would apply to all size tanks. We are primarily concerned about the larger tanks and that is what the focus of the Task Force's work was on.

SEN. WALT MCNUTT: I think we're sending some mixed signals because, in my business, we got a questionnaire about two years ago from DEQ and the Fire Marshal asking if we stored fuel on our property. I'm a farm implement dealer and we had diesel fuel to put in our farm tractors. We do happen to be in a waterway where runoff water can go down a couple blocks. As a result of that, we took all that out because the regulations are too severe for us to even have fuel to put in our tractors to sell them. There is some confusion here and I would like it to be addressed. We had a 500 gallon tank so I think it applies. The size of the tank is not the issue. You don't get exempt for tank size.

Ms. Baker: This bill would not have anything to do with your business because it is limited to farms and ranches. The Task Force also looked at issues with respect to rural service stations to try to deal with aboveground storage there. Concerning your business situation, there are requirements outside the scope of this bill that apply.

SEN. HARGROVE: I think we're getting mixed up between the EPA requirements for contamination and fire requirements that are two entirely different things. Can someone tell me if there have been any questions from people that causes you to think it's a problem or are you just taking a position on the bill because it happens to be before us?

Ms. Frank-Karn: We have a member in **REP. KITZENBERG'S** area who is very concerned with this bill. He did bring it to our attention. He said the problem was the cost to him to put the cement berm around his tank. I think he said he had two tanks and for him to put that around there was going to be very expensive in addition to the shut-off valve. He didn't want to go through that expense because he felt that in his particular position where his tank is that it is really not going to be a public problem. He may have a problem with it on the ranch, but he felt the cost was too prohibitive.

SEN. HARGROVE: Is this the same person that brought it to you, **REP. KITZENBERG?**

REP. KITZENBERG: One of them. He was at a Farm Bureau meeting where this was being discussed.

Mr. Brown: Two of our members are in a similar capacity to this gentlemen in terms of being head of rural fire protection districts and they are also farmers and ranchers. Their concern with the situation is there is underground tank regulations, aboveground tank regulations and Fire Codes. The cost that goes with each one respective to the site that they're being used is what is of concern here. Again, it is how much risk does one take and how much responsibility does each individual take upon themselves to insure that their facilities are safe within whatever regulations apply.

SEN. GREG JERGESON: You heard the letter read from the family that had a tragic loss. What value does your organization put on that life?

Ms. Frank-Karn: Our organization would put a lot of value on that life. We do feel that there is a responsibility there for the individual farmers to make sure their particular tank would not cause that kind of problem. I don't have any idea the circumstances that brought that on. A 10 year old, particularly a child who was visiting the farm, in my opinion should not have been in that building turning the pipe on. That should have been the responsibility of an adult.

{Tape: 1; Side: B; Approx. Time Count: 4:28 p.m.}

SEN. JABS: That accident was from static electricity and the truck they were fueling should have been grounded. If the farm tank would have had all this stuff on it, the berm around it and the shutoff valve, would it have prohibited that explosion?

Mr. Suenran: A heat actuated fire valve would have closed off the fuel from the tank and would have eliminated the flow of fuel into that building and they would have been able to get that child out more than likely.

SEN. JABS: Would it have stopped the original explosion or something? You're just assuming they could have gotten that child out.

Mr. Suenran: That's probably true.

SEN. LINDA NELSON: We're hearing a lot of talk about the cost of cement for building these dikes and, on the other hand, we're hearing that the cement is apt to crack. In my area it is very apt to crack. What would I be looking at to build a dike out of? Could you compare the cost of that versus cement?

Mr. Suenran: We don't have a retroactive requirement for dikes. It's solely for new tanks. There are all kinds of liquid kinds of things. I don't have any idea on the expense of it.

Mr. Brown: Generally we assess the cost at \$1.00 per gallon for the tank. Tanks have come a long way in terms of their technology. There are tanks within a tank and so forth. For instance, we just did this on a site at Canyon Ferry for a 3,000 gallon tank. We designed the concrete vault around the 3,000 gallon tank to contain one and a half times the volume of the tank and then the tank was a tank within a tank and a roof over the vault to eliminate or reduce the possibility of precipitation getting inside the vault and causing a situation to freeze and thaw and overflow and so forth. That facility is going to cost around \$9,000 just for the vault.

SEN. DEVLIN: When you say you put a roof over this thing to keep the water out, don't you also make a collection for fumes underneath there that are quite volatile?

Mr. Brown: It could have that design built into it. An example is a tank has underground piping that goes out to a distribution line and the vent system, the pipe is actually contained in another pipe or another enclosed concrete trench that is vented in certain places. You can build as elaborate of system as you can afford or you feel that the risk warrants. Again, the costs can escalate very much.

SEN. DEVLIN: Are you saying there is no foolproof way we can address the fire problem or get completely away from it?

Mr. Brown: To 100 percent, no. You can design for leak containment, fume control, minimize your risk for accidents, etc. Who knows if someone will back into the facility with a truck or the driver of the filling truck isn't going to drive away and pull the valve off. There is going to be some risk always. You try to minimize that risk through your spill prevention control and counter measure plan. You weigh that facility based on what you're trying to protect, whether it's ground water, surface water, fire, etc.

SEN. DEVLIN: The valves that cutoff on a gravity flow tank are not likely to turn it off if you tear the hose.

{Tape: 2; Side: A; Approx. Time Count: 4:33 p.m.; Comments: End of tape, some testimony lost.}

Mr. Brown: ...is not going to dissolve as a result of being in contact with the fuel, but yes, you can tear them.

SEN. DEVLIN: You would have to stick it in the tank and drive away. What I'm getting at, on a gravity flow I open the nozzle and there is a surge that goes through. That doesn't turn it off

so if that hose got broke off, would that piece of equipment turn it off?

Mr. Brown: In designing these facilities there is always a weak link. The weak link is that valve or your nozzle. That will be weaker than your hose. If you drive away at a service station and leave the nozzle stuck in your gas tank the pop-off valve didn't allow one drop of fuel to drip out on the ground. It worked very well, but that breakaway was the weak point in that link. I'm not so sure that would be used on a farm or ranch.

CHAIRMAN MESAROS: If I understand this correctly, I could have as small a tank as 500 gallons and if it's a new installation it would fit under all of the guidelines. I would have to build a berm and have the safety shutoff valves. Is that correct?

Mr. Suenran: I'm not exactly sure about the valves on the smaller tanks. I would have to get an answer to that. On any tank, you're going to have to have some kind of secondary containment to contain the spillage or whatever out of that tank. In a small tank that could be as simple as a small dike or a curb around it, not a five foot high dike.

CHAIRMAN MESAROS: Say you have a 500 gallon tank which is clearly a small tank and there is not a lot of gravity flow. What type of shut-off devices are there that could activate at such a low pressure?

Terry Phillips, Deputy State Fire Marshal, Great Falls, MT: The breakaway coupling we're talking about was explained to me by an individual who installs these in Great Falls. It is designed to break where this coupling is. When it breaks it has an actuation system that stops the fuel from flowing in the upper part of the hose and also closes off a piece of hose that pulls away at the coupling and traps the fuel inside that length of hose. You are stopping it from having any type of spill from the hose that broke off or from the tank. I understand it works on a spring loaded mechanism, at least the ones that were explained to me.

Closing by Sponsor:

REP. KITZENBERG: We've been through this hearing in the House and one of the arguments used against this bill was the fact that it's not currently being enforced. Many of you were around when underground tanks weren't being enforced. In 1985 and 1986 you had voluntary compliance on underground on tanks. Pretty soon we're to the point of the problems we're having now with underground tanks and how expensive they are to install. The same thing can happen to aboveground tanks. Because of all the problems we're currently experiencing with underground tanks we're having farmers, for cost effective reasons, going to aboveground tanks. One of the reasons they aren't being enforced is that the Assistant Fire Marshal staff is understaffed. If they had the manpower and the determination and decided, like


they did with underground tanks, that they were going to enforce it, with these rules on the books they could enforce and fine them. Maybe we can ease these and prevent all kinds of fines. Safety always comes into play and I can appreciate this. However, in a rural situation, by the time they get there the idea is to contain the blaze and not necessarily to fight it. I wish we could prevent all accidents and deaths from happening in Montana. If we were to do that and pass the necessary legislation, we'd have a book twice the size of what's in front of us. The problem is, by the time you pass so many rules and regulations, you lose your cost effectiveness. This has happened to a lot of industries in Montana. You have to raise the question of risks versus costs. The fact that 69,000 tanks are affected would be a tremendous cost to those involved to do all of these things.

One of the things that got me excited from the seminar in Plentywood was a question I asked of **Rich Levendowski**. If the State Fire Marshal can't answer some of these questions, how is the average farmer and rancher supposed to answer. I asked if dirt would work anymore. He answer was absolutely not, it's a permeable situation and fuel will go through that. So I asked what you have to use. The answer I received was cement. **SEN. NELSON** raised the problem you have with cement. In terms of size, it deals with the top end so my interpretation is that the 500 gallon tanks would apply. From 79-04.8.5.1, "the capacity of permanent and temporary aboveground tanks containing Class 1 or 2 liquids shall not exceed 12,000 gallons individual capacity and an aggregated capacity of 48,000 gallons..." My understanding is that this law covers anything below that.

I'm trying to be realistic and look at the risks versus the costs in farming and ranching today. I especially like the notification of violation. This is important as a lot of these things end up being an extra tax on doing business. There is common sense involved in this bill. There is too much openness and possibilities for inviting in more government regulation, intrusion, nuisance and fines. Let people be responsible for safety on their own basis, realizing they will be liable. I have no problem with their educational things, but I'm worried it will go beyond that.

ADJOURNMENT

Adjournment: 4:49 p.m.



SEN. KEN MESAROS, Chairman

ANGIE KOEHLER, Secretary

KM/AK