

SB320  
Testimony of  
Montana Environmental Information Center

Mr. Chairman, committee members, my name is Jeff Barber. I am testifying today on behalf of Montana Environmental Information Center in opposition to SB320. We have no objection to Section 1 of SB320 that defines the various types of animal feeding operations. Our opposition to this bill stems from two issues.

First, we question the wisdom of statutorily adopting regulations and fees for feedlots. SB320 adopts, by reference, the federal regulations for feedlots. It does this on page 3 lines 7 through 9 and sets the permit fees on page 3 lines 17-19.

Generally speaking we don't believe it is good practice to place fees and regulations into statute. In our opinion it is better for Board of Environmental Review to engage in such activities. Because it meets every other month, the BER is in a better position to modify rules and fees when necessary. We don't believe the legislature should short-circuit that process.

Our second and most strenuous objection to SB320 stems from the level of environmental analysis given to feedlot permits in this bill. Part of the reason this bill is before you is because of a lawsuit MEIC successfully litigated against DEQ regarding a feedlot located near Custer. This feedlot was perched above the confluence of the Big Horn and Yellowstone rivers. Neighbors of the feedlot were concerned that it would cause pollution to their surface and ground water. More importantly, however, they were able to demonstrate that the feedlot's water needs were going to adversely impact their existing wells. In order to explain our opposition to this bill, I need to briefly describe the lawsuit.

The Cattle Development Center or CDC was authorized under DEQ's previous general permitting scheme for feedlots. General permits are granted for five years. Once adopted, an individual or company need only notify DEQ that it intends to comply with the terms of the general permit to operate. There is no public notice about the new operation, no environmental review, no hearings, no anything.

CDC's neighbors asked DEQ to do site-specific environmental analysis for the Custer feedlot. They were told that the environmental analysis was already done for the statewide general permit and essentially they were too late. All of their attempts to get CDC removed from the normal bureaucratic procedure for permitting a feedlot were rebuffed. Ultimately they asked our organization for help. We filed suit against DEQ and CDC. Judge Honzel ruled in our favor largely because of the lack of site-specific analysis done for CDC. He prohibited DEQ from authorizing any new facilities under the general permit, ordered DEQ to prepare a programmatic environmental impact statement on feedlots and suspended CDC's existing authorization.

Judge Honzel made this ruling, in part, because DEQ was acting without sufficient information. A 1994 report from the department concluded that CAFOs were having an impact on surface and ground water quality in Montana but further research was needed to evaluate those impacts. That research was never done. The report also approximated that there were 150 CAFOs in Montana but it could not give a definitive figure. So it further recommended that DEQ identify through ground and air searches all CAFOs in Montana. That work was never done either.

Because DEQ had never attempted to identify the number and location of CAFOs in Montana and because it had never thoroughly examined the water quality impacts of the CAFOs that Judge Honzel ruled in our favor in the CDC suit. He ordered DEQ to complete a programmatic environmental impact statement on the CAFO permitting program. When completed This EIS would give us a comprehensive picture of feedlots in Montana and allow the permitting program to go forward.

Rather than comply with that ruling, we have SB320. On page 3, line 25, at the end of the line, SB320 says, "A programmatic environmental impact statement is not required for permitting conducted under [section 2]. Section 2 is the part of this bill that reinstates the CAFO general permit. This one sentence allows the CAFO program to move forward even though we still have no idea how many exist much less what their effect is to Montana's surface and ground water quality.

One of two things is going to happen with the final sentence of Section 3. First it could be removed and I have a proposed amendment that would do this. If so, DEQ could move forward with the programmatic EIS. In the alternative, as I have suggested to all parties testifying on this bill, we could reach an agreement that would get much the same information as a programmatic EIS but do so more efficiently and at less cost and likely satisfy Judge Honzel's ruling.

The second thing that could happen is the last sentence of Section 3 remains in the bill and it passes. If that happens and DEQ issues permits without having completed the kind of comprehensive analysis contemplated by Judge Honzel, this issue will be back in court and remain unresolved for some time.

The feeding industry is getting a lot in this bill. It is getting relief from permit fees. It's getting back the general permit program that will provide for faster permitting decisions. What they should not get is a free pass on their environmental analysis. We would rather this issue not go back to court and so would ask you to amend the bill.

Thank you for the opportunity to testify. I'll try to answer any questions.

SB320  
Proposed Amendment

1. Page 3, Line 25

**Following:** "75-1-201."

**Strike:** "A" through the end of the sentence.

