

SWANK ENTERPRISES/ GENERAL CONTRACTORS

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January 23, 2005

EXHIBIT 2
DATE 01/25/05
HB 2

The Honorable Ken Hansen, Gregory D. Barkus, and Bob Hawks
State Senators
State Capitol
Helena, Mt. 59620

The Honorable Rosalie Buzzas, Walter L. McNutt, John L. Musgrove, Rick Ripley
State Representatives
State Capitol
Helena, Mt. 59620

(406) 444 4875
Re: HB 2 DEQ

Dear Senators Hansen, Barkus, and Hawks and Representatives Buzzas, McNutt, Musgrove and Ripley:

Swank Enterprises would like to express its opposition to a general fund appropriation in HB 2 in which we understand the Department of Environmental Quality is seeking \$2 million dollars for study of the Reliance Refinery site and two other sites in Kalispell, Mt. A similar \$2 million appropriation was sought from the orphans share in SB 143 which has been pending in the Senate Energy and Telecommunications Committee since its hearing on January 11, 2005. I have attached relevant portions of the DEQ testimony explaining the relationship between the two bills.

Swank opposes this \$2 million appropriation.

Swank Enterprises, is a family owned construction company which has operated in the State of Montana for 40 years. Swank employs about 350 Montana citizens in well paying jobs. Unfortunately, Swank is the owner of a small piece of property in Flathead County which was purchased for the purpose of storing construction equipment. This property was contaminated many years ago from a refinery which operated in the 1920s. Swank has never done anything to cause or contribute to this problem. Swank believes it has no liability for the problem.

In approximately 1997, Swank was approached by the DNRC asking for an in kind contribution of workers and equipment to restore the site. At the time, Swank was told

there would be sufficient funds to clean up all the affected properties.

As a matter of background, the DNRC owns most of the contaminated property having taken it from the defunct Reliance Refinery during the 1930s and having leased it to other refineries through the 1950's and early 1960's. The DNRC had received a grant from the legislature in 1997 of approximately \$582,300 to clean up the site. The grant application and supporting consulting work was prepared by Roger Noble, an environmental consultant from Kalispell, Mt. The DEQ supported the grant, advising the legislature that it (DEQ) would provide its technical expertise as an "in kind" contribution. The DEQ praised the grant and its letter of support was included with that of various public and private entities in the grant application. The grant application indicates the work was to be completed within 24 months.

For the next *seven* years, the DNRC submitted information to the DEQ attempting to get its approval for the proposed project. The DEQ failed to act upon the submissions of the DNRC and the DNRC warned that failure to utilize the grant could result in the loss of the grant and loss of funds to clean up the site. As part of the process, the DNRC submitted a voluminous Remedial Action plan to the DEQ. This Remedial Action Plan was intended to be the definitive study which would fill all of the gaps in the previous studies. The DEQ failed to review the Remedial Action plan for almost two years. (December 2002-August 2004). The grant was lost due to the inaction of the DEQ.

Likewise, Swank submitted its own proposal to the DEQ which refused to act upon Swank's proposal. Swank has many times asked the DEQ what it will require with respect to Swank's property. The DEQ has refused to provide a response, wanting only to study the matter further.

In August 2004, the Montana Department of Environmental Quality filed a lawsuit against seven parties including Swank. It apparently does not, after fourteen years of study, have a solution to the problem. However, it seeks to recover about \$250,000 from the parties for its "Department Overhead" while it "studied" the problem. The DEQ has done little, if any, remedial work. While there is contamination at the site, it is not such a huge problem. The DNRC had a solution and a grant to implement it until it was lost due to the inaction of the DEQ.

The DEQ is now seeking a \$2 million dollar appropriation from the legislature to study the problem some more and added two other sites. The two other sites, Kalispell Pole and Timber and Yale have historically been considered to be separate sites.

The Reliance site has been studied for fourteen years. It has been studied by the DNRC's hired environmental consultant for seven years. The DNRC's consultant was aware of the Yale and KPT sites and considered them when he drafted his proposed remedial action for the Reliance site.

The Reliance site study cost \$115,000. The Reliance solution would have cost

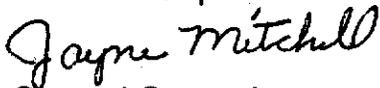
\$582,300. It is reasonable to presume that if the DEQ gets \$2 million to study the problem some more, it will want even more for the solution.

The DEQ has not been diligent in attending to this site. It does not need an additional \$2 million added to its budget for additional studies. Please consider the unfortunate landowners who will no doubt be billed for these additional costs.

Swank has never done anything to contaminate this site. It is only involved as a landowner. It has not polluted the site. Please defeat the \$2 million appropriation for additional studies.

Sincerely,

Swank Enterprises

A handwritten signature in cursive script that reads "Jayne Mitchell".

General Counsel
cc Dean Swank

The loan proposed from orphan share would offset these shortfalls.

The orphan share account is used to fund the percent of remediation activities at a contaminated site which are attributable to bankrupt or otherwise insolvent entities. The fund balance builds up in this account because the funds are typically paid out at the completion of a cleanup project, which may take several years. These funds have been used on sites with a high percentage of orphan share (an average 48 percent) where the applicant can fund remedial activities upfront and work through a reimbursement process. Although the department has submitted a budget for significant expenditures of orphan share in the current biennium, it is unlikely it will all be spent before the end of the biennium. Only, about \$1,750,000 of this biennium's budget will be spent, unless the potentially liable parties undertaking cleanup file for early reimbursement under the hardship clause of CALA (Controlled Allocation of Liability Act). Thus, up to \$600,000 could be used to backfill Hazardous Waste CERCLA and EQPF during the 2006-2007 biennium, without a negative impact on the orphan share.

Remaining funds and future income to the Orphan Share account would be used to reimburse the orphan share of remediation at the S&W Sawmill in Darby and a petition has been received from the City of Bozeman to use funds for remediation of the orphan share of an asbestos cleanup at the site of new Bozeman Library. Sufficient funding would remain in the account to reimburse S&W and Bozeman when their respective cleanups are completed. A payout on Bozeman is expected during this biennium and an S&W payout is likely in the next biennium.

Should a loan be provided to HWC and EQPF during the biennium, existing law provides for reimbursement of the orphan share account by the appropriate fund whenever at fiscal year end, the balance in the Hazardous Waste CERCLA account or the EQPF account, respectively, exceeds the appropriation for the coming year.

- * Under this bill the department would also use \$2,000,000 from the orphan share fund, if it is not available from the general fund, to complete a two-year investigation of contamination and cleanup methods appropriate to the former Reliance Refinery facility and adjoining facilities in Kalispell. There is an existing liability to the state for cleanup of this state-owned and adjacent facilities. Amendments to this bill would specify that the department would not recover this \$2,000,000 from other liable parties but would consider it a part of the state's obligation at these facilities. Many of the other potentially liable parties at this site are defunct. The department proposes that the state take a leadership role at this site and when a cleanup methodology is selected, the department would seek cost-recovery from the remaining solvent potentially liable parties for the non-orphan liabilities at the overall facility. The funds expended would offset future state liabilities for an orphan share.
- * This bill needs to be coordinated with HB2.

In summary, this bill will ensure certain funds don't go negative and provide contingency funding to ensure progress towards cleanup at the former reliance refinery facility. The department respectfully requests your support.