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Jan. 22, 2005

EXHIBIT 13
DATE 1.24.05
MS 303

Jim Peterson
Chairman Natural Resources Committee
House of Representatives

Members of the Natural Resources Committee
House of Representatives
State of Montana
Helena, Montana

Dear Mr. Peterson and Members of the Natural Resources Committee,

I've had the occasion to review House Bill 303, sponsored by Gail Gutsche.

I support the amendments in House Bill 303 to Sections 75-2-211 (11)(c), 75-2-211 (Effective July 1, 2005), (11)(c), and (6)(c), entitled (Temporary) Permits For Construction, Installation, Alteration or Use.

Recently I have had the opportunity to review the appeal procedures relative to appealing a permit decision issued by the Department of Environmental Quality (DEQ) for the Hardin power plant. On reviewing historical events regarding power plant post-construction air quality complaints by private citizens, I discovered that it is very difficult for the public to effect changes post construction and very expensive for power plants to retrofit necessary pollution control devices. Thus, it is essential for both the public and power plant operators to get appropriate pollution control devices in place during initial construction, and not after the plant has already been constructed.

In light of the fact that DEQ issues construction permits and subsequent amendments that establish emission limits without the public being able to have much effect on DEQ's determinations, the public should not be discouraged from struggling during the permitting phase to protect their own health and welfare. There should not be prohibitively restrictive bonding conditions placed upon private citizens who request a stay pending an appeal to the Board of Environmental Review. Good sense dictates that if changes in the pollution controls need be made, they should be made after Board review and decision and before power plant construction is completed.

Private citizens should be entitled to ask for a stay of construction pending a determination by the Board of Environmental Review (Board) without having to post a bond. The stay is necessary to the general public's health and welfare in that it allows disputed air pollution issues to be resolved before construction is completed. This allows the public the protection it needs against possible future irreparable health damages, and

allows the power plant to implement any necessary air quality control design changes during construction of the power plant, and not as a retrofit.

The existing statute allows a hearing officer or the Board to impose an onerous bond upon a private citizen, which they cannot afford, in order to obtain a stay. Power plant operators ask for such a bond to deter public appeal. This has a chilling effect upon the public's right to insist that the State afford them appropriate health and welfare protection, and procedural due process.

Deletion of the bonding requirement is in the public interest, does not create a hardship for the power plant contractor and affords a citizen appellant the opportunity to be heard before it's too late to do anything about it. Procedural impediments should not be constructed nor permitted to deny a private citizen a fair hearing on such an important issue as air quality. Air quality is especially important to children, the elderly and those with compromising health conditions.

Please support this Bill and pass it in Committee, so that the Bill might go to the floor of the House for a full debate. Thank you.

Sincerely,


William J. Eggers III