SENATE AGRICULTURE
EXHIBIT NO. 2
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BILL NO. SB 320

SB320
Testimony of
Montana Environmental Information Center

Mr. Chairman, committee members, my name is Leslie McClain. 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 on page 3, lines 5 through 7 and sets the permit fees on page 3 lines 14-16.

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. The BER is able to more timely and thoroughly examine the relevant issues and involve all the interested parties in the rule making process. It can and has devoted entire days to rule making on important issues. Because it meets every other month, the BER is also in a better position to modify rules when necessary. In short, we don't believe the legislature should short circuit the current rule making process by adopting Section 2 part(1) of this bill. For similar reasons, we believe it is also more appropriate for the BER to retain its authority to set permit fees. In fact, the fiscal note lists many problems in codifying the federal regulations and fees in the technical notes

Our second objection to SB320 stems from the restriction on 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 prosecuted 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.

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 state-wide 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 an EIS with site-specific analysis on feedlots and suspended CDC's existing authorization. It's partly because of that decision that you have this bill before you today.

That's a lot of boring history but the important part to remember is the lawsuit only happened because there wasn't any way to take CDC out of the normal method for authorizing feedlots and give some neighboring farmers and ranchers an opportunity to air their concerns. This bill is similarly flawed. Look at the Fiscal Note! Technical notes #1 and #2 point out the technical problems with this bill involving discrepancies between the court order for an EIS before general permits can be further issued and this bill authorizing DEQ to issue these general permits. Tech. Note #2 recommends that the effective date of the bill be delayed until and EIS is prepared.

SB320 mandates that only the minimal level of environmental review occur (page 3, line 17-20) and the only off ramp from that process is if the department **develops** site-specific information that warrants an individual discharge permit (page 3, line10-12). Unfortunately the very nature of general permits will likely ensure that no site-specific information is ever developed so there are two relatively modest changes that need to be made to this language. First, change the word "develops" on page 3, line 11 to "discovers". This change would allow the department to take into account information it receives from other individuals to make its determination. Also, on page 3, line 12, the "may" should be changed to a "shall." This change would **require** that an individual discharge permit be issued to a feedlot if DEQ determines that the general permit is not protective of water quality.

The final change needed in this bill would add at the start of line 17 a phrase that says "Unless, upon receiving written objection from a person that has an interest that is, or may be, adversely affected," and replace the last sentence of that section starting on line 20 with "Upon receiving written objection, the department shall conduct the level of environmental review deemed necessary by Title 75, chapter 1, part 2.

These changes would ensure that we never get into a situation like what happened with CDC. It would give people a chance to kick a permit out of the normal process if there was a good reason to do so, but it still preserves the lowest level of environmental review for all other operations.

Thank you for the opportunity to testify. Unfortunately our person that normally works on feedlots, Jeff Barber, is in another hearing so I don't know if I'll be able to answer any questions. He will be contacting you later to discuss this bill further.