SENATE STATE ADMIN. ENS
EXHIBIT NO. 5
DATE 1.11.05
BILL NO. SB 143

SWANK ENTERPRISES/ GENERAL CONTRACTORS

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Testimony of Swank Enterprises Dated 11 January 2005

Dear Members of the Committee:

Swank Enterprises would like to express its opposition to Section 2(10) of S.B.143 in which the Department of Environmental Quality is seeking a $2 million dollar appropriation for study of the Reliance Refinery site and two other sites in Kalispell, MT. Swank strongly opposes that 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 1920's. Swank has never done anything to cause or contribute to this problem. Swank believes it has no liability for this 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 1930's, and having leased it to other refineries during the 1950's and 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 in 24 months. For the next seven years the DNRC submitted information to the DEQ attempting to get its approval to act upon the submissions of the DNRC. 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 Swanks proposal. Swank has many times asked the DEQ what it will require with respect to Swanks property. The DEQ has refused to provide a response wanting only to study the matter further.

In August 2004, the DEQ filed a lawsuit against seven parties, including Swank Enterprises. 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 while it "studies" 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 legislative to study the problem some more and has 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. 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 approximately $115,548. The Reliance solution would have cost $582,300. There is no justification for $2 million in additional studies alone. The orphans share account is for the purpose of paying for the cleanup costs of the defunct companies. It is not for the purpose of providing an additional appropriation to the DEQ's budget under the guise of "studies". It is reasonable to presume that if the DEQ gets the $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. Please consider the unfortunate land owners who will no doubt be billed for these additional costs.

Swank Enterprises has never done anything to cause contamination.

Please delete Section 2(10) of S.B. 143.

Sincerely,

Jayne Mitchell

Jayne Mitchell
General Counsel