MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON NATURAL RESOURCES AND COMMERCE

Call to Order: By **CHAIRMAN RICK RIPLEY**, on January 24, 2005 at 8:00 A.M., in Room 317-C Capitol.

ROLL CALL

Members Present:
Rep. Rick Ripley, Chairman (R)
Sen. Ken (Kim) Hansen, Vice Chairman (D)
Sen. Gregory D. Barkus (R)
Rep. Rosalie (Rosie) Buzzas (D)
Sen. Bob Hawks (D)
Rep. Walter McNutt (R)
Rep. John L. Musgrove (D)

Members Excused: None.

Members Absent: None.

Staff Present: Britt Nelson, Committee Secretary
Barbara Smith, Legislative Branch
Doug Schmitz, OBPP Representative

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing & Date Posted: HB 2
Executive Action:

HEARING ON THE DEPARTMENT OF ENVIRONMENTAL QUALITY

Barbara Smith, Associate Fiscal Analyst, explained the handouts which she had given to the committee members before the meeting: handout one was the total Department of Natural Resources and Conservation(DNRC) budget, handout two was the St. Mary's packages 2414 and 2327, handout three was DNRC's language requests, and the last handout was a description of the Department of Environmental Quality(DEQ) recruitment. She had also provided a profile for the agency which was handed out the previous day.

EXHIBIT(jnh18a01)
EXHIBIT(jnh18a02)
EXHIBIT(jnh18a03)
EXHIBIT(jnh18a04)
EXHIBIT(jnh18a05)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 4.6}

Richard Opper, Director of the Department of Environmental Quality(DEQ), provided a rundown of his work history and what brought him to the Director's position at the DEQ. He then provided an overview of the Department. He classified the Department as regulators who provided services necessary to maintain a clean environment.

Mr. Opper introduced the Central Management Program. This Program includes the Director's Office, Financial Services, Legal Services Division, Personnel, Information and Technology Division, and Montana Environmental Protection Act Board. He explained that the Department is separated into four divisions: 1) the Planning, Prevention and Assistance Division, which is responsible for statute policy and standards that relate to air quality and water quality, they also handle solid waste management issues and the Total Maximum Daily Load Program(TMDL), 2) the Enforcement Division, 3) the Remediation Division which works closely with the Petroleum Tank Release Compensation Board, and 4) the Permits and Compliance Division. Following this he briefly went over the breakdown of DEQ funding sources.

{Tape: 1; Side: A; Approx. Time Counter: 4.6 - 24}

Tom Livers, Deputy Director of the Department of Environmental Quality, presented the power point presentation covering funding, recruitment and retention -- a Legislative Fiscal issue.

EXHIBIT(jnh18a06)

{Tape: 1; Side: A; Approx. Time Counter: 24 - 46.5}

Mr. Livers commented that there were some smaller issues that he wanted to address. He mentioned that there had been 19.5 full time employee requests which had been reduced to 17.5 because a couple of the positions in Remediations had been moved into Permitting.

{Tape: 1; Side: A; Approx. Time Counter: 46.5 - 49.5}

SEN. HAWKS asked Mr. Livers what the cost of turnover was to the agency.

Mr. Livers responded that they were tracking the recruitment costs, though he was unsure of the numbers. On each recruitment they take an estimate of the costs. They know that it is significant, costing them enough to make it a major issue.

SEN. HANSEN mentioned the comment Mr. Opper made concerning the DEQ's work with feedlots. He wanted Mr. Opper to explain the major problems small businesses face with the increase in permitting costs.

Richard Opper answered that there were new regulations handed down by the Environmental Protection Agency, which required individualized permits and included a much more extensive process. He informed the committee that they were no longer able to offer the Generalized Permitting Use Permit. Now they are required to issue individual permits which takes a lot more time and increases costs. He indicated that they were trying to address the increased costs and the punitive damages that occur from them. He mentioned they were trying to come up with a fee process that would be less costly to the Department and less onerous for the feedlot owners.

SEN. HANSEN followed up on his question, asking whether they were going to make a distinction between the size of the feedlots and the fees they have to pay.

Mr. Opper indicated that they tried to provide a price break for medium sized Concentrated Animal Feeding Operations(CAFO) versus large CAFOs. With the new regulations they are not able to allow

the previous distinctions but they hope to find a way to make the permits affordable for operations of all sizes.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 9.7}

CHAIRMAN RIPLEY inquired if the fees and fines were federally set or set within the Director's Office.

John Arrigo, Administrator of the Enforcement Division, answered that each of the environmental laws which they enforce have a maximum amount and they perform a penalty calculation depending upon the specifics of each case. The fees he noted, for most of the laws, were set in rule.

Steve Welch, Administrator of the Permitting Division, reiterated that most of the fees, specifically for CAFOs, were set in rule and commensurate with the cost of the program.

{Tape: 1; Side: B; Approx. Time Counter: 9.7 - 11.4}

CHAIRMAN RIPLEY asked if the maximum amount was set by federal law and then the Department would set the rules and establish the fees.

Steve Welch replied that the Department not only set the rule and established the fees they also set the maximum fee amounts.

SEN. BARKUS wondered what happened with the 2002 turnover rates.

Tom Livers responded that they had experienced turnover in large amounts until 2002. He spoke of a few different factors effecting this rate; the fact that there were easier places to work, less controversial and better paying. Because of the better paying jobs in the private sector there was a large turnover rate. He expressed that the Department had been able to make some progress in these areas and the numbers where coming down.

SEN. BARKUS interpreted what Mr. Livers said to mean, that in 2001 and earlier there was a turnover rate between 8 and 35%.

Mr. Livers indicated that there was a rate above 10 and more likely 15-25%.

SEN. BARKUS wanted to know at what level of the Department the turnover was occurring.

Mr. Livers speculated that it was throughout the agency however, not as much in the supervisory positions. He indicated that the majority of turnover was among the scientists and engineers who had better opportunities in the private sector.

{Tape: 1; Side: B; Approx. Time Counter: 11.4 - 17.7}

SEN. BARKUS noted that $29 million of State Special Revenue came in bond forfeitures. He wanted to know how much of the total bonds that represented.

Steve Welch answered that they held around $550 million of reclamation bonds.

SEN. BARKUS asked if fines that were levied by the agency were included in this estimate.

Mr. Livers explained that they were not included. He mentioned that most of the fines they levy go to specific uses or into the general fund.

SEN. BARKUS inquired if the $30 million represented 20% of the total agency budget.

Tom Livers responded in the affirmative.

{Tape: 1; Side: B; Approx. Time Counter: 17.7 - 19.9}

CHAIRMAN RIPLEY wanted to know the makeup of the committee that the Department had formed to address the retention issues.

Mr. Livers asserted that the committee did not include members of the bargaining union. He elaborated that at this point there were mostly supervisors on the committee.

CHAIRMAN RIPLEY asked how many members there were.

Tom Livers responded that there were eight to ten.

CHAIRMAN RIPLEY followed up asking, of the eight to ten members, how many were front-line supervisors.

Mr. Livers answered that approximately seven were front-line supervisors.

CHAIRMAN RIPLEY enquired if the turnover rate changed after the Department moved to pay plan 20.

Mr. Livers speculated that the change in pay plans had a significant factor in the drop of the turnover rate. He pointed out that the change had occurred between 2002 and 2003 where there was a noticeable drop in turnover.

CHAIRMAN RIPLEY suggested that it helped recruit new employees as well as retain the upper level employees.

Tom Livers agreed with this statement.

HEARING ON THE DEPARTMENT OF ENVIRONMENTAL QUALITY: CENTRAL SERVICES DIVISION

Tom Livers covered the Central Management Program power point presentation. He covered the Director's office, Financial Services, Information Technology, Business Process Management, and the major Decision Package dealing with this Division. He also addressed the issue of CAFOs as well as their funding and fees.

EXHIBIT(jnh18a07)

{Tape: 1; Side: B; Approx. Time Counter: 19.9 - 46.6}

REP. BUZZAS requested that Mr. Livers describe the difference in size between large and medium sized CAFOs.

Mr. Livers presented that in order to qualify as a CAFO there had to be 1,000 head of cattle.

Steve Welch indicated that the next level was 3,000 head.

Tom Livers noted that they were trying to keep the small CAFOs out of the permitting process.

Richard Opper related that for livestock CAFOs, a small operation was 0-299 head, medium was 300-999 and a large CAFO was 1,000 plus.

{Tape: 1; Side: B; Approx. Time Counter: 46.6 - 51.2}

SEN. HANSEN claimed that what he had been trying to get at before was the difference between sales barns and feedlots. He asked Mr. Opper to elaborate on those differences.

Mr. Opper expressed that the Department was not as concerned with sales barns as they were with feedlots so he would not be able to expand upon SEN. HANSEN'S question.

Tom Livers reported that the Decision Package had shown up because of the Environmental Information System(EIS). He remarked that in a couple of days, when more knowledgeable staff members were available, they might be able to better answer the question.

REP. MUSGROVE wondered how much the agency worked with Tele-working.

Mr. Livers answered that they did occasionally work with it but they did not have anything official. They generally used it on an individual basis, with employees who were open to it and capable of using it.

SEN. BARKUS referred to the Financial Services overview. He was curious why there was customer service under the Financial Services Division and not the Director's Office.

Mr. Livers responded that customer services was not focused in the Financial Services Division. The customer services reference SEN. BARKUS was concerned with was only a specific priority for Financial Services. He claimed that the entire agency was concerned with customer services not just the Financial Services Division.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 8.7}

Richard Opper elaborated on Mr. Livers answer. He added that the Department had a regulatory function and that caused issues with the public and those being regulated. He conveyed that the Enforcement Division has almost a tenth of the staff of the Permitting Division. He suggested that this was an indication of where their priorities lay. He expressed that they tried to work with individuals to get their permits to help their businesses succeed. He speculated that the people who are most vocal are the ones who have been fined or were violators of regulations. He purported that there were many things they could make better and they were constantly trying to make improvements.

Tom Livers followed up on Mr. Opper's answer indicating that one of the challenges they faced as their budget tightened, was the need to focus strictly on those things mandated by statute. He mentioned that some of the areas compromised were things that

influenced customer services. There is typically not enough money to do everything that they want to do.

{Tape: 2; Side: A; Approx. Time Counter: 8.7 - 14}

Mr. Livers proceeded to discuss the Decision Packages associated with the Centralized Services Division in more detail. The DPs he discussed were: **DP 1004 -- Mt. Environmental Policy Act Biennial Restricted**; with this DP he addressed the Legislative Fiscal Division issue, **DP 1009 -- Non-proprietary Central Management Operating Adjustments**, **DP 1011 -- Board of Environmental Review Biennial Request**, and **DP 1008 -- Concentrated Animal Feed Operations Environmental Impact Statement.**

{Tape: 2; Side: A; Approx. Time Counter: 14 - 24}

HEARING ON THE DEPARTMENT OF ENVIRONMENTAL QUALITY: PLANNING, PREVENTION AND ASSISTANCE DIVISION

Art Compton, Administrator of the Planning, Prevention and Assistance Division, introduced his Division. He reported that within the Planning, Prevention and Assistance Division they work with air quality, water quality, energy issues, public water supplies, and waste management. He labeled the Division as the non-regulatory portion of the Department. Most of the programs he mentioned dealt with providing technical, engineering, and financial assistance to local communities, small businesses and conservation districts.

Mr. Compton presented the three bureaus and the Fiscal Administration Unit contained within the Division. The first bureau he introduced was the Technical and Financial Assistance Bureau. Basically this bureau is concerned with public water supplies. The next bureau he addressed was the Water Quality Planning Bureau. Within this bureau are the Non-point Source Programs and Total Maximum Daily Load(TMDL) Programs. This bureau provides technical assistance to watershed groups and conservation districts in their attempts to protect and enhance their water quality. The third bureau he discussed was the Air, Energy and Pollution Prevention Bureau. This bureau is where air monitoring, small business assistance and small business outreach for waste and energy programs occur. The last component of the Division he discussed was the Fiscal Administrative Unit. This Unit deals with contract management and financial oversight.

Mr. Compton went into further detail about each of the bureaus. He began with the TMDL Program as well as Non-point Source Implementation Programs associated with the Water Quality Planning Bureau. He then expanded upon the Technical and Financial Assistance Bureau. He mentioned the State Revolving Fund, Wetlands Program, and Source Water Protection Program.

{Tape: 2; Side: A; Approx. Time Counter: 24 - 41.4}

Art Compton covered the Air, Energy and Pollution Prevention Bureau last. This bureau provides advocacy outreach and training funding for renewable energies, energy conservation, recycling, energy analysis, technical assistance, air quality monitoring programs, and small business assistance.

{Tape: 2; Side: A; Approx. Time Counter: 40.3 - 49.8}
{Tape: 2; Side: B; Approx. Time Counter: 0 - 1.4}

Mr. Compton next provided the committee with information about the various accomplishments of the Division. The SRF Program cumulatively closed $28.9 million in small community sewage and drinking water infrastructure loans. With the Source Water Program they are roughly 85% complete with the assessment phase. There have been twice as many TMDLs done this year than had been accomplished last year. He mentioned that what drove the TMDL Program was data. He explained that they had completed 193 stream assessments last year, all providing essential data. The Division also made headway with the State Buildings Energy Program, which saved $7.5 million this year. The final accomplishment he discussed was the glass pulverizer.

{Tape: 2; Side: B; Approx. Time Counter: 1.4 - 4.5}

Art Compton finished the Division overview with some descriptions of the TMDL program. He mentioned DP 2007 which asked for five new full time equivalents(FTE) and four one-time only FTE. This was their largest DP and one of the most important to the Division. The need for these FTE was driven by the fact that they have 600 streams left to assess by 2006. They hope to be in the implementation phase by 2012. The funding for this DP is general fund for $850,000, $3.5 million federal funds with a total of $4.5 million.

{Tape: 2; Side: B; Approx. Time Counter: 4.5 - 13.8}

QUESTIONS FROM THE COMMITTEE AND THE ANSWERS

REP. BUZZAS asked if they would be measuring only previously unmeasured streams until 2012 or would they be checking on streams they had already assessed.

Mr. Compton responded that between 2005 and 2012 they would be engaged in TMDL development. There are around 850-900 water bodies that were on the Impaired Water List, meaning they are not fully supporting their beneficial uses. Without sufficient credible data, the water bodies are removed from the original list, compiled by a piece of legislation in 1996. As per the agreement they are in the process of reassessing all of the chosen waters. Depending on the data collected, the bodies of water will be removed or maintained on the list. If they stay in the Impaired Water List they must have a TMDL done. Between 2005 and 2012 they will be spending more time on implementation and less time planning. By 2011, 1300-1400 streams will have been assessed. He mentioned that 'voluntary' was the key word for this program. Non-point Source TMDLs have to be done according to federal and state laws however, no one has to implement anything on a Non-point Source TMDL. In these cases implementation will be purely voluntary.

{Tape: 2; Side: B; Approx. Time Counter: 13.8 - 22.1}

SEN. HAWKS inquired if the standards were stream specific or if they were dealing with absolute standards that had been sent down to them. He wanted to know also, if they somehow separated out naturally occurring pollutants.

Art Compton replied that the naturally occurring levels of pollution were something that they worked very hard on in the assessment phase in order to identify their presence because, if found, they would not have to perform a TMDL. Of the human caused elements the ones considered natural are those that might be identified through an assessment as coming from reasonable land and conservation practices. They attempt to identify the natural causes so they don't waste time or money trying to fix something natural. He also noted that almost all of their standards were statewide. **Mr. Compton** also noted that there were some site-specific standards but the majority were statewide.

SEN, BARKUS wanted to know how they prioritized the streams on which they have had to performed TMDL studies.

Mr. Compton explained that generally, in the early years, it was where they felt the water quality issues were most pressing and

where there would be the least public debate. He expressed that there had to be a good consensus by the community, that the waters they were dealing with were in fact impaired waters. They also tried to head off problems which would arise with issuing permits that relied on TMDL studies such as development of coal bed methane companies.

SEN. BARKUS wondered how much money the State of Montana would end up saving by 2012 using TMDL studies.

Mr. Compton responded that the invested amounts would be considerable. The program is a flagship program and is held as DEQ's top program dealing with one of the biggest resource drains on the Department.

{Tape: 2; Side: B; Approx. Time Counter: 22.1 - 33.9}

Art Compton addressed the DPs for the Planning, Prevention and Assistance Division. The first DP he discussed was **DP 2001 -- Water Quality Planning Bureau Operations Adjustment.**

SEN. BARKUS requested that Mr. Compton clarify the $326,000 for contracted services. He wanted to know if Mr. Compton meant that the money would be used to study the contracts associated with TMDL studies.

Mr. Compton answered that the subcommittee last year had requested two things: 1) increase the use of contracts to accomplish the TMDL study and 2) use elements of the university system to make the TMDL Program more effective and efficient. What he had meant was that they were projecting an increase in contract service for the TMDLs.

Mr. Compton proceeded to discuss the DPs, moving on to **DP 2002 -- Fiscal and Administrative Unit Operations Adjustment.** There were no questions regarding this DP so he proceeded to **DP 2003 -- Technical and Financial Assistance Bureau Operational Base Adjustments.**

SEN. HAWKS asked if there was some overlap relationship with DNRC and the particular activity expressed in **DP 2003.**

Art Compton replied that there was no overlap, but collaboration and cooperation. The DEQ reviews the engineering specifications while the Department of Natural Resources and Conservation issues the grant funding.

{Tape: 2; Side: B; Approx. Time Counter: 33.9 - 47.5}

Tom Livers readdressed the question. He noted that since it is an Environmental Protection Agency program the DEQ runs and manages the funding provided by the EPA. In turn, he reported, the DEQ subcontracts with the DNRC for the loan work.

CHAIRMAN RIPLEY inquired about the dollar amount, $46,201, for State and Tribal Agreement Grants(STAG). He was curious how much funding they had received last year.

{Tape: 2; Side: B; Approx. Time Counter: 47.5 - 50.9}

Susan McEachern responded that it was a five year grant from which they receive an allotment each year. She estimated the amount from last year to be around $180,000.

Mr. Compton continued his description of the DPs associated with the Division. He started with **DP 2004 -- Air, Energy and Pollution Prevention Bureau Operating Adjustments.** There were no comments or questions concerning this DP so Mr. Compton moved forward and discussed **DP 2007 -- Water Quality Monitoring TMDL Completion.** He clarified that the 9 full-time employees included five additional FTE, which would increase the TMDL staff to 25. The other four FTE he mentioned were one time only field staff for the next biennium. Of the five full-time employees; one would be used as a TMDL writer, one would go to the monitoring staff and one would be on the data management staff.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 9.5}

REP. MUSGROVE assumed that they were not going to ask for any more extensions on the program, that 2012 was a solid date.

Art Compton supported SEN. MUSGROVE'S assumption. There was no doubt in his mind that they would have to accomplish their efforts by that time.

Mr. Compton continued with his descriptions of the DPs. The next DP he introduced was **DP 2019 -- Database Maintenance Costs, OTO.** With no questions or comments he proceeded to discuss **DP 2021 -- Statewide FTE Reduction, DP 2022 -- Water Quality Monitoring TMDL Completion, OTO, DP 2012 -- BLM Funding for Water Quality Monitoring,** and **DP 2016 -- Wetlands Grants Authority.** The final proposal he went over was the language appropriation for the Division.

{Tape: 3; Side: A; Approx. Time Counter: 9.5 - 18.9}

Ms. McEachern cited that the language would allow the Division to take the 2003 authority, which they had received to spend on drinking-water and waste-water grants, and revert it back to 2002 State Special Revenue. She indicated that they would then be able to spend the State Revolving Funds that they get back from the repaid loans. This would eventually give them the ability to self-maintain those programs once the federal funding ended.

{Tape: 3; Side: A; Approx. Time Counter: 18.9 - 20.4}

DEPARTMENT OF ENVIRONMENTAL QUALITY: ENFORCEMENT DIVISION

John Arrigo, Administrator of the Enforcement Division; Program 30, handed out a copy of his power point presentation. He introduced various members of his staff and covered the Division's functions and responsibilities. He mentioned some pieces of legislature; **LC 1306, LC 1307 and LC 1308,** that would be affecting the Division and how it was run.

EXHIBIT(jnh18a08)

{Tape: 3; Side: A; Approx. Time Counter: 20.4 - 37.4}

REP. MUSGROVE updated the LC's positions for the committee.

REP. BUZZAS wanted to know what the general substance was contained in underground tanks.

Mr. Arrigo replied that usually it would be refined products such as products at gas stations. He mentioned that the Division regulates storage tanks with other substances however, 99% is gas.

SEN. HANSEN asked for a clarification on one of the slides which showed one percent of the complaints as 'other'. He was also curious about the 'spills' section of the same graph, he wanted to know the breakdown of what would be rail and what would be over-the-road type spills.

Mr. Arrigo informed the committee that the 'other' section referred to a variety of citizen complaints.

Ed Thamke, Supervisor of the Case Management Bureau, elaborated that the main components of the 'other' category were county issues such as failing septic tanks and sewer systems.

In response to SEN. HANSEN'S other question, **Mr. Thamke** explained that they did not categorize spills according to the source, derailment or truck wreck, rather they try to categorize them as to whether or not they got to surface water or remained in the soil.

SEN. BARKUS inquired about penalties under the Air Quality Act. In 2001 they went to General Funds and now they are going to State Special Revenue, he wondered if there was a reason for the change.

Mr. Arrigo answered that SEN. COBB had introduced a bill in 2001 which created the Alternative Energy Revolving Loan Account. He funded the Account with penalties from the Clean Air Act.

SEN. BARKUS followed up on his question asking about the Underground Mine Reclamation Act. He commented that there were small penalties from 1998 until 2002 when they jumped to $302,000, after 2002 they returned to $3-4,000. He wanted to know if there was a specific incident in 2002 that caused such a large increase.

John Arrigo replied that the average penalty under the Strip Mine Act was less than $1,000. However, he mentioned that there was the Mountain Ink Coal Mine in Roundup that had gone out of business and had approximately $500,000 of penalties.

{Tape: 3; Side: A; Approx. Time Counter: 37.4 - 50.2}

The mine had agreed to pay of $300,000 of their penalty.

SEN. BARKUS remarked that under the Water Quality Act in 1997 there had been a $1 million fine going to General Funds and then for six years there had been relatively little and then, in 2004, they had a $150,000 fine. He wanted to know if there had been anything of significance occurring to cause the increases.

Mr. Arrigo indicated that it reflected the variability of the types of cases that they deal with. In 1995 EPA and the State of Montana initiated an enforcement action against Pegasus Gold Corporation. As part of that settlement the State was paid $1 million. He remarked that there were average cases from then until 2002. In fiscal year 2004 they settled with the Yellowstone Mountain Club for $76,000 cash and the rest offset by the purchase of the glass pulverizer.

SEN. HAWKS asked Mr. Arrigo to reiterate the pass through of the funds to certain projects or priorities within the Department.

John Arrigo recounted that the EPA has a program called Supplemental Environmental Projects(SEPS). These projects are something a violator can do which would help prevent or reduce pollution. They can do these projects in lieu of paying a penalty. He explained that they generally follow EPA guidance on what SEPS they will accept. The Environmental Quality Commission was concerned with the Division's decision making policy on how much money to accept and which projects to accept. He stated that they could not force a SEP on any company. The only thing they can do is review and approve what they propose. He reported that **LC 1307** would authorize the Department to accept SEPs in lieu of cash payments. If this bill passes, it would provide rules and will be much more bracketed than the process they follow now.

SEN. HAWKS inquired who would set the priorities to where the funds will be used.

Mr. Arrigo replied that there was no account where the funds were deposited and the DEQ does not decide how they are funded. On a case by case basis, if the penalty is over $10-15,000, they allow the possibility of conducting a supplemental project to avoid paying the full penalty in cash. He stressed that the SEP was a privilege and not a right all companies are entitled to. He explained that discussions then begin between the company and the DEQ so each one is negotiated. Usually the proposals are put forth by the violator, not the Department.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 7.6}

SEN. HAWKS commented that it seemed like the people governing the policy of where the State places these funds were the violators. It seemed to him that this might be a priority addressed by the Department. He suggested language be added in that regard.

CHAIRMAN RIPLEY returned to the topic of the Alternative Energy Revolving Account. He wanted to know how many loans were out presently.

Mr. Arrigo replied that he was unsure as to the number of loans though he believed it was a small number. He did indicate that the loan amount was capped at $10,000.

Mr. Compton speculated that they had let out eight loans under the Alternative Energy Loan Program. He felt that they had repaid six and there were two outstanding. He related that the two outstanding balances came to about $46,000. Because of the

proposed legislature, raising the cap from $10,000 to $40,000, they are anticipating the program will expand substantially

John Arrigo returned to the DPs, introducing **DP 3001 -- Enforcement Operations Adjustments.** There were no questions so he continued to **DP 3002 -- Enforcement Vehicle Lease.**

{Tape: 3; Side: B; Approx. Time Counter: 7.6 - 14.7}

CHAIRMAN RIPLEY asked how many of their 900 complaints were valid.
Mr. Arrigo stated that they did not have the number but that they try to keep track of how the complaints were closed. He reported that under the last fiscal year, out of 900 complaints 84 were closed because there was no violation. There were others he mentioned that were not significant violations that were closed by resolving them or referring them to another agency or program.

{Tape: 3; Side: B; Approx. Time Counter: 14.7 - 16.5}

SEN. HAWKS wanted to know the motivations behind some of the arrangements negotiated with regards to the payments. He was curious if the projects allowed the companies to have tax breaks.

Mr. Arrigo responded that in their settlements they specifically say they may not deduct their payment from their taxes. There is no possibility that the cleanup be used as a write-off. The DEQ receives EPA guidance which describes which types of projects are allowable. They give the violators guidance to find projects that meet these criteria. He expressed that the Department likes SEP because they result in a reduction or prevention of pollution which occurred in the area of the violation.

{Tape: 3; Side: B; Approx. Time Counter: 16.5 - 20.6}

HEARING ON THE DEPARTMENT OF ENVIRONMENTAL QUALITY: REMEDIATION DIVISION

Sandi Olsen, Administrator of the Remediation Division, provided the committee with a copy of the power point presentation for the Remediation Division.

EXHIBIT(jnh18a09)

She discussed the responsibilities of the Division and their accomplishments, following the slides in the power point presentation she provided to the committee.

{Tape: 3; Side: B; Approx. Time Counter: 20.6 - 42.1}

REP. BUZZAS enquired if the last DP Ms. Olsen covered was one project or three.

Ms. Olsen responded that it was three sites that should be one project. However, there had been a decision which indicated that each piece of property should be handled separately. They are trying to treat them globally under the mentioned appropriation to maximize the use of their funding.

REP. BUZZAS followed up, asking if the sites were all within proximity of each other.

Ms. Olsen remarked that they were all located near where the Stillwater River flows into the Whitefish River.

{Tape: 3; Side: B; Approx. Time Counter: 41.6 - 44.6}

SEN. BARKUS found significant the use of the term 'potentially responsible parties'. He was concerned with the fact that the land had changed hands and they might not be able to distinguish who was responsible and who owns the land. He wanted to know if the responsible parties had been mitigated or negotiated in the past.

Ms. Olsen agreed that the land had changed hands many times. She indicated that the statute defined who the potential responsible parties were. She clarified that the definition included parties who owned the property, contributed to the contamination on the property, etc. The statute she pointed out does not allocate liability to the various owners through time. There is a process for the allocation of liability that individuals can voluntarily enter into under statute. If a potential party feels that they do not have a responsibility in the site, the statute also has a number of defenses and potentially responsible parties that could submit information regarding their reasoning.

{Tape: 3; Side: B; Approx. Time Counter: 44.6 - 50.8}

REP. MUSGROVE requested that Ms. Olsen address the topic of self insuring or privatization of insurance for situations like the one being discussed.

Sandi Olsen noted that there were significant historic liabilities. She asserted that Terry Wadsworth of the Petroleum Tank Release Compensation Board would be better suited to answer that question.

Ms. Olsen proceeded to discuss the Decision Packages pertaining to the Remediation Division. She covered; **DP 4001 -- Hazardous Waste Cleanup Operations Adjustment, DP 4002 -- Mine Waste Cleanup Operations Adjustment, DP 4003 -- Fiscal and Administrative Operations Adjustments, DP 4004 -- Technical Services Operations Adjustment, DP 4006 -- Hazardous Waste Cleanup EQPF Biennial Authority, DP 4008 -- Mine Waste and Abandoned Mine Land Authority, DP 4009 -- Lockwood Biennial Authority Base, DP 4010 -- Orphan Share Biennial Authority Operation Adjustment, DP 4011 -- Ustfields One-time Only, DP 4005 -- Brownsfield Grant Authority, DP 4007 -- Lust Cost Recovery Biennial Authority, DP 4012 -- Libby asbestos Troy Biennial Authority, DP 4013 -- CERCLA Bond Sales,** and **New Package 4014 -- a Cap on Spending.** There were no questions or comments by the committee concerning these Decision Packages.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 16}

Richard Opper thanked the committee for their attention and stated that he and the members of his Department would be more than happy to answer any questions.

{Tape: 4; Side: A; Approx. Time Counter: 16 - 18.1}

ADJOURNMENT

Adjournment: 11:45 A.M.

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REP. RICK RIPLEY, Chairman

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BRITT NELSON, Secretary

RR/bn

Additional Exhibits:

EXHIBIT(jnh18aad0.PDF)