

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on March 8, 1999 at 3:05 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HJ 23, 3/08/1999; HB 331,
3/08/1999; HB 346, 3/08/1999;
HB 58, 3/08/1999
Executive Action: HJ 23

HEARING ON HJ 23

Sponsor: REPRESENTATIVE MONICA LINDEEN, HD 7, HUNTLEY

Proponents: None.

Opponents: None.

Opening Statement by Sponsor:

REPRESENTATIVE MONICA LINDEEN, HD 7, HUNTLEY, stated Pompeys Pillar, the most well known historical monument associated with the Lewis & Clark Expedition, was located in her District. A woman from New York City petitioned the U.S. Board on Geographic Names to change the name to Pompey Tower. A petition was circulated and turned into the Montana Department of Natural Resources and Conservation to retain the present name. **HJ 23** was drafted to retain the name of Pompeys Pillar and ask **DNRC** to convey these arguments to the U.S. Board on Geographic Names in order that the current name be retained.

Proponents' Testimony: None.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SENATOR KEATING asked if Captain Clark's name had been preserved? **REP. LINDEEN** stated a clear glass covered Captain Clark's name to preserve it.

Closing by Sponsor:

REPRESENTATIVE MONICA LINDEEN, HD 7, HUNTLEY, thanked the committee for their support of this resolution.

EXECUTIVE ACTION ON HJ 23

Motion/Vote: **SEN. MAHLUM** moved that **HJ 23 BE CONCURRED IN.**

Motion carried 8-0 by voice vote. **SENATOR COLE** will carry bill to Senate Floor.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 4.2; Comments : None.}

HEARING ON HB 331

Sponsor: **REPRESENTATIVE CHRIS AHNER, HD 51, HELENA**

Proponents:

Jay Spickelmier, Manager, Hydrometrics, Inc.
Joan Miles, Director, Lewis & Clark City/County Health Department
Teri Casey, East Helena City Council
Frank Crowley, ASARCO
Don Allen, Western Environmental Trade Association
Denise Mills, Remediation Division Administrator, Department of
Environmental Quality
Steve Wade, Burlington Northern and Santa Fe Railway Co.
Steve Pilcher, Atlantic Richfield Company

Opponents: None.

Opening Statement by Sponsor:

REPRESENTATIVE CHRIS AHNER, HD 51, HELENA, presented HB 331 as per **EXHIBIT**(nas52a01).

Proponents' Testimony:

Jay Spickelmier, Manager, Hydrometrics, Inc. and Superfund site Manager for ASARCO at the East Helena site, stated in order to reduce potential exposure of humans with a land use change or to protect the remedy on a residential site already completed, institutional controls become an asset. Currently there is no clear statutory authority to adopt institutional controls. If this bill is passed EPA will be able to finalize preferred alternatives of institutional controls which are the best practical way to address residual cleanup issues. Passage of this bill will assist protection of the remedy already completed and will assist with the land use changes.

Joan Miles, Director, Lewis & Clark City/County Health Department, stated this has been a good cooperative effort between several industry, agency and environmental groups. This bill deals with the ability of a local board to put institutional controls in place. Frequently an institutional control is referred to as a remedy protection measure or community protection measure. The bill does not change hazardous waste laws, it neither discourages nor encourages the use of institutional controls, the local board of health cannot define what kind of control would be in place, and does not provide for a new type of regulation not already allowed by state and federal regulations. The bill does recognize if an institutional control is appropriate and it puts a formal mechanism in place to carry it out on a local level. The Health Department does not have any regulatory authority over the facility itself.

She also spoke on behalf of **Teri Casey of the East Helena City Council** who was unable to attend the hearing but wanted to go on record in support of the bill.

Frank Crowley, ASARCO, spoke in support of the bill. He feels the reason we are seeing institutional control bills come forward this session is because of the aging of some of the larger cleanups going on in the state. After getting the major cleanup done, they arrive at some of the collateral and residual issues. That is why institutional controls are coming to the core as the best way to take care of these. Secondly, they originally thought this authority already existed. This bill will allow the **DEQ** to do what the legislature asked it to do two sessions ago. He passed out copies of the East Helena Soil Cleanup Plan produced by **EPA** showing the preferred alternative is the one this bill allows to happen. **EXHIBIT (nas52a02)**.

Don Allen, Western Environmental Trade Association, spoke in support of **HB 331** because it will confirm the availability of another option for pressing cleanup of environmentally impaired properties. Institutional controls can increase the flexibility for both the agencies and the parties cleaning up sites in reaching solutions that are both cost effective and productive.

Denise Mills, Remediation Division Administrator, Department of Environmental Quality, spoke in support of **HB 331** which offers another mechanism to provide for reliable and enforceable institutional controls. By allowing the local public health authorities to adopt regulations for institutional controls that are selected as part of the remedy either by **DEQ** or **EPA**.

Steve Wade, Burlington Northern and Santa Fe Railway Co., spoke in support of **HB 331**. They support any mechanism that provides options when the closing stages of a cleanup are being reached. This bill provides one of those options for both the regulatory community and the entities responsible for the cleanup.

Steve Pilcher, Atlantic Richfield Company, spoke in support of **HB 331**. The authority to provide institutional controls in this bill provides another tool in the cleanup tool box. The authority in this bill coincides very well with **SB 462**, which allows for environmental protection easements as an institutional control, and could be used to enforce such easements.

{Tape : 1; Side : A; Approx. Time Counter : 4.2 - 25.3; Comments : None.}

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SENATOR McCARTHY questioned when do the signs come down? **Ms. Mills** stated signs will come down when the remedy is considered to be completely implemented. In some sites that could be 15-30 years and other sites might be in perpetuity. **SEN. McCARTHY** stated it should be covered in the Plan so people know it might be in perpetuity.

SENATOR KEATING questioned can a third party become involved in the procedure and in some way delay or prevent the accomplishment at task for whatever reason? **Mr. Crowley** stated as part of the local process of the Board of Health adopting a specific institutional control, a third party could come in and attempt to dissuade the body from implementing that control. He did not believe the third party could have any effect on modifying it because the legislature is only granting the local board the authority to adopt an institutional control that is selected or approved. **SEN. KEATING** questioned if it was for the purposes of delay, could it add to the cost of the project? **Mr. Crowley** stated technically anything that delays the process will increase the cost. **SEN. KEATING** stated he only brought it up because there is some sensitivity about people using rules, regulations and laws as a means of impeding projects that need to be done as efficiently, quickly and cheaply as possible.

SENATOR MAHLUM questioned if any local Boards of Health have the expertise to enforce environmental controls and Super Fund sites? **Ms. Miles** stated it would depend on what kind of regulatory mechanism you are talking about. This bill just gives local boards the ability to have ordinance power to enforce an institutional control that has already been identified by the regulatory agency. If **EPA** identified something they wanted them to do and their Board felt it was beyond what the Department could handle, they would opt not to adopt such an ordinance. **SEN. MAHLUM** stated his concern was some local health boards may presume they know more than they actually know and may step further than they should step. **Ms. Miles** said they could only do what **EPA** or **DEQ** identified as a potential mechanism they could put in place.

SENATOR COCCHIARELLA asked for a couple of examples of institutional controls that the health board may be involved in? **Ms. Miles** referred to the example in the East Helena area which was having a local program for people to notify them if they were going to excavate. Another one could be if certain areas were fenced off there might be an ordinance in place to require repair or replacement of fencing if it became damaged and the public could access the area.

SENATOR TAYLOR questioned what mechanism was used to set fees? **Ms. Miles** stated that section was already in law. They adopt fees like any other local regulation and would hold a public hearing.

Closing by Sponsor:

REPRESENTATIVE CHRIS AHNER, HD 51, HELENA, stated she has been a part of the advisory council at East Helena and over the past four years it has been a pleasure to watch **ASARCO, DEQ, EPA,** the County Health Department and the citizens of East Helena all sitting at the same table and watch the involvement and cooperation to come to this place. She requested a DO PASS.

{Tape : 1; Side : A; Approx. Time Counter : 25.3 - 42; Comments : None.}

HEARING ON HB 346

Sponsor: REPRESENTATIVE BOB RANEY, HD 26, LIVINGSTON

Proponents: None.

Opponents:

Cary Hegreberg, Montana Wood Products Association
Jim Mockler, Executive Director, Montana Coal Council
Bill Snoddy, McDonald Gold Project
Mary Allen, Western Environmental Trade Association

Opening Statement by Sponsor:

REPRESENTATIVE BOB RANEY, HD 26, LIVINGSTON, stated under present law when an Environmental Impact Statement (EIS) is issued, certain things must be done, i.e. mitigation, monitoring or stipulations of compliance. An **EIS** is created for public review but it is difficult for the public to access compliance reports. This bill states that by July 1 each year, the agency will summarize the compliance reports and make them available to the public. Part two takes it a step further by placing the reports on the state electronic bulletin board or that agency's web page. It would be a cost savings to the state to have the information available electronically. It promotes efficiency and faith in government.

Proponents' Testimony: None.

Opponents' Testimony:

Cary Hegreberg, Montana Wood Products Association, stated there are some fundamental questions that need to be asked of this legislation. If **DNRC** has to build in all this reporting, monitoring compliance and put together an annual report for each of these minor and some significant mitigation measures, then who pays? The more administrative costs built into the agency's timber sale program, the more likely they will not generate enough revenue to cover their costs, thus resulting in a below cost timber sale. They urge a DO NOT PASS.

Jim Mockler, Executive Director, Montana Coal Council, stated they already make annual reports on their coal mining reclamation progress. This bill goes considerably further than the annual report they now make to **DEQ**. To his knowledge their annual report has never been subject to public inspection, it is available to the public, even though it is extremely voluminous. He does not foresee a coal company filing a report that will go on a web site which gives a detailed report on how that contract's compliance. It is not a public document nor should it be. He feels the system is fair now and asks that the committee defeat the bill.

Bill Snoddy, McDonald Gold Project, stated this is a redundant bill. Mines operating under the MMRA are required to submit an annual report to **DEQ** detailing environmental monitoring, changes in disturbance, mitigation measures, etc. In all the years he has been an environmental manager of a metal mine in Montana he has never received a complaint that information was not available for anyone wanting it. By requiring the state to produce an additional report and making it available electronically there will be an increase in staff time that could be better spent regulating and inspecting than writing reports. He requested the bill be tabled.

Mary Allen, Western Environmental Trade Association, stands in opposition to the bill and hopes the committee will too.

Questions from Committee Members and Responses:

SENATOR GROSFIELD stated he did not feel mitigation measures, monitoring requirements, or stipulations were contained in an **EIS**. **REP. RANEY** stated there is something that triggers an **EIS** and when that is triggered then the state goes through the process and say there are things that must be mitigated and monitored. That would be the information reported. **SEN.**

GROSFIELD stated some permits for a good sized project are 15 to 20 volumes. Should all that information be reported? **REP. RANEY** stated no, the key word in Line 12 is summarize. The agency has to review anyway and, if it were a large report, summarize to a paragraph or two. The Fiscal Note says this will cost the agency nothing. It would be simple to do.

SENATOR GROSFIELD questioned what an annual compliance summary would amount to? **Mark Simonich, Director, DEQ**, stated they receive numerous annual reports which usually come in hard copy form although they are working toward getting more electronically. **SEN. GROSFIELD** questioned if they read this bill as having the information available on the web or to summarize the report and put a one page summary on the web? **Mr. Simonich** stated they were reading it to summarize the report. **SEN. GROSFIELD** questioned how they would deal with a requirement that was not met in the report? **Mr. Simonich** was not sure how it would be dealt with at this time. They may have to make a footnote explaining the situation.

SENATOR KEATING asked if they had received their appropriation yet for the data base conversions? **Mr. Simonich** stated they received a portion of the appropriation.

SENATOR MILLER stated this does not affect permits prior to this being enacted. Where does it disallow them? **Mr. Simonich** stated he would read it that the bill would not require them to collect any additional information from those permits that are already issued. **SEN. MILLER** stated if the legislature interpreted all annual reports should be made available then the impact would be greater than what the Fiscal Note reflects? **Mr. Simonich** stated there could be additional fiscal impacts. They took their best shot at trying to determine how much work it would be for them. They recognize they have a fair number of people working on their files all the time and the more that is available electronically then theoretically the less staff time would be necessary. **SEN. MILLER** stated if someone takes the time to come in to look at a file they would probably want more than a summary, they would want all the details. Would it be a possibility for someone to see the summary on the internet and then come in for more details? **Mr. Simonich** stated that would be a possibility. They may get more visits to the office but those visits may be more focused on the exact information they want.

SENATOR TAYLOR stated this legislation seems to be a little vague in what the agency would or would not provide. **REP. RANEY** stated he did not want to get into those details. All he wanted was to get the present information coming into the Department readily

available to the public. This is a bill to help move us more in to the electronic age.

SENATOR TAYLOR questioned if the concern with the bill was that it was not specific enough? How could it be acceptable? **Mr. Hegreberg** stated his testimony was directed toward **DNRC** timber sales contracts and he did not know if **DNRC** had a role in crafting the Fiscal Note or not. He does not think **DNRC** has a process of putting the compliance details of a contract in report form. They fear it will be burdensome to **DNRC** and they will ultimately end up paying for that.

SENATOR WILSON asked if this information could be obtained any other way without having to come into the office? **Mr. Simonich** stated they are making strides to get more information available electronically. For the most part their information is available only by hard copy in the office. The staff can copy and mail specific information if the person knows exactly what they are requesting. **SEN. WILSON** asked would it not be easier to have the information available electronically than calling on the phone and engaging the staff to research and mail it? He questioned why they were not a proponent on this bill? **Mr. Simonich** stated they try to restrict their testimony on bills that do not particularly relate to protection of the environment. They do not come in strictly on administrative types of matters. **SEN. WILSON** questioned would it not be easier for the Department to make the information available electronically rather than have the public call and ask for information? **Mr. Simonich** stated he believed that making information available electronically in this day and age was far superior to their current system. They are working toward getting there.

SENATOR MILLER questioned what happened to his reports? **Mr. Mockler** stated he may be confused with what this legislation will do. It is their experience with this type of legislation that the Department will come back and say they are not interested in the way they do their annual report. This is the way this will be done and it will be done on July 1. It would be OK with him to have the Department do that now. He does not feel legislation is necessary to put their annual reports on the internet. The bill should specify, however, additional information would not be required from the permittee and they would not object. It does not say that in this bill. The implication is there that the Department will design a report and they will have to design the web page. They do not want to be responsible for that. If the Department can do it then great.

Closing by Sponsor:

REPRESENTATIVE BOB RANEY, HD 26, LIVINGSTON, stated he was at a loss as to how to address the opponents of the issue mainly because the bill does not address free enterprise/private enterprise. It only addresses government agencies. This bill does not provide rule making so how could new rules be made as a result of this bill? This bill only tells state agencies the information that is to be made available to the public will now be made available electronically. The public has the right to know and that is all that he is asking to be done.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 37; Comments : None.}

HEARING ON HB 58

Sponsor: REPRESENTATIVE CINDY YOUNKIN, HD 28, BOZEMAN

Proponents:

Mark Simonich, Director, Department of Environmental Quality
Ronna Alexander, Petroleum Marketers Association
Steve Wade, Burlington Northern and Santa Fe Railway Co.

Opponents: None.

Opening Statement by Sponsor:

REPRESENTATIVE CINDY YOUNKIN, HD 28, BOZEMAN, presented **HB 58** which provides some simple but good modifications to the Petroleum Tank Release Compensation program. It clarifies the definition of an owner. The eligibility requirements for reimbursement will be met if the owner/operator was in compliance with all the rules at the time the release was discovered rather than at the time the release occurred. The new eligibility requirement is being added in the form of taking and continuing with corrective action until the release has been resolved. That will eliminate the possibility of reimbursement for the same work twice and will also encourage the continuation of a cleanup.

Proponents' Testimony:

Mark Simonich, Director, Department of Environmental Quality, spoke in support of the bill as per **EXHIBIT(nas52a03)**.

Ronna Alexander, Petroleum Marketers Association, spoke in support of **HB 58**. This bill will give the Board the ability to clarify in rule what compliance issues will actually be looked at for eligibility to the petroleum fund. This should speed up the claims process and the whole procedure. They encourage the committee's support.

Steve Wade, Burlington Northern and Santa Fe Railway Co., spoke in support of **HB 58**. He presented an amendment for further clarification on page 5, line 7 of the bill. **EXHIBIT (nas52a04)**. At the time the fund was created it was not anticipated there were those situations where a railroad owns property and leases it. If the person who leases that property installs and operates an underground storage tank and then abandons that property. The railroad is essentially left holding the bag. The amendment would allow the railroad recourse to the fund for cleanup in a situation where the lessee abandons the property. The railroad does not want reimbursement for the cleanup of their own fueling sites. They support the bill and hope the committee looks kindly on the amendment.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SENATOR COCCHIARELLA stated the amendment is somewhat objectionable and feels it is BN's responsibility to deal with their renter as the property owner. Why do they feel they should now get a better deal when they made a deal up front not to pay?

Mr. Wade stated initially the tax was imposed upon the railroad petroleum products. However, they did not want this fund used for multi-million dollar cleanups in Livingston, Havre, Missoula, and Whitefish fueling facilities. Most of the leases in question were entered into 50+ years ago and in most situations releases from underground storage tanks are not evident until the tanks are removed after the lessee has long left. These properties are scattered throughout Montana and the railroad does not have the ability to monitor every site they own and lease out to determine if there are leaking underground storage tanks. Most leases were executed long before the program started when it could be anticipated that business had insurance. That insurance was replaced in 1989 with this fund. They do not want to be in the business of suing someone's estate for reimbursement of the cleanup.

SENATOR COCCHIARELLA asked the financial status of this fund?

Mr. Simonich stated as of the end of February there was about \$3 million in the fund. **SEN. COCCHIARELLA** questioned if the Department know the number of sites? **Mr. Simonich** stated no they

did not. They could offer a list of the known sites but it would be difficult to estimate the number of potential sites.

SEN. COCCHIARELLA asked the impact of the amendment to the financial status of the fund? **Mr. Simonich** stated the amendment would draw additional payments from the fund. The tax which feeds the fund is in place and he is not aware of legislation to make that tax go away. The Board did not discuss the amendment but he offered it seems to be the fair thing to do. A great deal of money can be spent in litigation and many years go by before cleanup may be done. Perhaps if the railroads have better assurance they will be reimbursed for cleanup, they can get the cleanup done quicker and not spend time and money in Court.

SENATOR GROSFIELD asked for an example of this kind of site, i.e. a gas station within the city limits that was using some railroad land? **Mr. Wade** stated that was exactly what they are talking about. They have two sites right now that fit this situation.

SENATOR MAHLUM asked for clarification of the amount of money in the fund? **Mr. Simonich** said in his testimony he stated in the ten years the fund has been in place, through December, 1998, the Board has paid out or reimbursed \$33,277,404.11. There is \$3 million currently in the fund. **SEN. MAHLUM** asked if he was a small petroleum dealer that discovered a release but could not afford to do the \$50,000 cleanup, would the fund pay for cleanup? **Mr. Simonich** stated not normally. When a release is discovered the Department works with the owner on a corrective action plan. The owner does the work and submits their claims and receipts to the Board for reimbursement. Where a tank owner simply cannot afford to do the work, the Department will step in at some point to do the work and do it under 'trust', which are federal dollars matched with state money to do that cleanup. There is an understanding they will eventually recover whatever dollars they can from the tank owner. **SEN. MAHLUM** questioned if the tank owner paid the \$50,000 up front, would he be reimbursed the full \$50,000? **Mr. Simonich** stated the owner has to pay one-half of the first \$35,000, so \$17,500 comes out of the owner's pocket of the \$50,000.

SENATOR GROSFIELD questioned what does continuously mean on page 5, lines 1 and 2? **Mr. Simonich** stated there could be a variety of types of corrective action that might be put into place at a facility that has had leaks. There could be ongoing or continuous treatment necessary in some cases because the contaminant may have gotten into an area that cannot be dug out or into the groundwater. **SEN. GROSFIELD** stated concern on the phrasing of the sentence because this will go into the law book. He wonders if there is a way to change "continuously" to provide flexibility in the event there is an unintended break in the

corrective action. **Mr. Simonich** stated the House had the same concern. No one came up with adequate wording for an amendment but they would not be opposed to an amendment.

Closing by Sponsor:

REPRESENTATIVE CINDY YOUNKIN, HD 28, BOZEMAN, stated the rationale behind the amendment proposed by BN is that if it is a non-railroad operation, the petroleum products in those tanks are going to be subject to the 3/4 cent tax. They are contributing to the cleanup fund and should be able to benefit from the cleanup. She does not have a particular position on the amendment and will leave that to the committee's learned council. She requested the committee's support of the bill.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 36.5; Comments : None.}

ADJOURNMENT

Adjournment: 5:10 P.M.

SEN. WILLIAM CRISMORE, Chairman

JYL SCHEEL, Secretary

WC/JS

EXHIBIT (nas52aad)