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TODD EVERTS, Legislative Environmental Analyst

AGENCY OVERSIGHT SUBCOMMITTEE MINUTES

January 13, 2004 Rm. 102, Capitol Building

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee exhibits are on file in the Legislative Environmental Policy Office.

SUBCOMMITTEE MEMBERS PRESENT

MS. ELLEN PORTER
SEN. MICHAEL WHEAT
REP. DEBBY BARRETT, Vice Chairman
REP. PAUL CLARK
REP. CHRISTOPHER HARRIS, Chairman
REP. DONALD HEDGES

SUBCOMMITTEE MEMBERS EXCUSED

REP. JIM PETERSON
MR. HOWARD STRAUSE

STAFF PRESENT

LARRY MITCHELL, Research Analyst
KIP DAVIS, Secretary

AGENDA & VISITORS

Agenda, ATTACHMENT #1
Visitors' list, ATTACHMENT #2

I. CALL TO ORDER, ROLL CALL, AND ADOPTION OF MINUTES

The meeting was called to order at 8:40 a.m. by CHAIRMAN HARRIS, and the secretary went through the roll call (ATTACHMENT #3). The committee voted unanimously to approve the minutes of October 8, 2003 Subcommittee meeting.

II. PUBLIC COMMENT - ISSUES WITHIN THE JURISDICTION OF THE EQC

Mike Byrnes, President, Montana Wastewater Association, presented remarks he had submitted to Pat Crowley, Department of Environmental Quality (DEQ), (see *EXHIBIT #1*) concerning the proposed rule changes for Septage Cleaning and Disposal, specifically the changes to the licensing, inspection and certification, and reporting requirements and lack of promised training. **Mr. Byrnes** reported that all 25 members of his association had attended the public hearing conducted by DEQ and opposed these changes. **Mr. Byrnes** requested that the DEQ poll the legislature to determine the intent of the legislature concerning the changes to section 75-10-107, MCA.

REP. HEDGES questioned whether local county sanitarians had any input into these rule changes, and **Mr. Byrnes** replied that the local county sanitarians were the only ones DEQ talked to when writing the proposed rules, but he had been unable to obtain a copy of these comments.

III. AGENCY RULES - UPDATE AND TIMELINE PROCESS FOR COUNCIL INVOLVEMENT

TODD EVERTS, Staff Attorney, gave an overview of Executive Branch Administrative Rulemaking, detailing how the Environmental Quality Council (EQC) interacts in the Montana Administrative Procedure Act (MAPA) process (see *EXHIBIT #2*). MR. EVERTS emphasized that only the full EQC, rather than a subcommittee, has the authority to review and object to rules under MAPA and outlined the options available. REP. CLARK asked about what would occur if the legislature fails to address issues in an objected rule, and MR. EVERTS answered that the rule would be adopted after adjournment of the regular session. CHAIRMAN HARRIS expressed concern about the number of rules adopted without EQC review and requested more information about the numbers of emergency, annual, and biennial rules.

CHAIRMAN HARRIS then asked if the EQC review process could be used to review the proposed changes to the Septage Cleaning and Disposal rules and MR. EVERTS replied that it could. SEN. WHEAT recommended that the EQC get information from the DEQ concerning testimony given at the public hearing on the septage rules as well as the department response to **Mr. Byrnes**' letter. CHAIRMAN HARRIS asked whether it would be the pleasure of the committee to recommend to the full EQC that DEQ postpone the effective date of the septage rules until the EQC has a chance to hold a hearing to review these rules. REP. HEDGES so moved, and REP. BARRETT seconded. There were no objections.

CHAIRMAN HARRIS then asked for an update of any controversial rules being proposed. MR. EVERTS distributed *EXHIBIT #3*, a chart compiled by DEQ delineating their prioritized rulemaking activities, although he made no claims concerning the significance or controversial status of these rules. MR. EVERTS stated that although Fish, Wildlife, & Parks (FWP) did not have available an easily followed listing of proposed rulemaking, he had been in contact with

them and they would provide a list of projected rulemaking activities, some of which could well prove controversial.

REP. CLARK expressed interest in holding hearings, time permitting, on proposed bison hunt, game farm, and other FWP rules. REP. BARRETT suggested that, in the future, the Council receive lists of proposed rulemaking activity from all three agencies (DEQ, FWP, and Department of Natural Resources and Conservation) earlier in the interim. MS. PORTER requested more information on the new source review requirements.

REP. CLARK suggested that **Chris Smith, Chief of Staff, FWP**, who was in attendance, give a progress report on FWP rules, specifically game farm, bison hunt, and statewide river advisory rules. **Mr. Smith** responded that he did not know the timeline involved in the proposed game farm rules. Concerning the bison hunt rules, **Mr. Smith** informed the Committee that FWP is currently working on the Environmental Assessment (EA), which is expected to be completed in February or March, and would initiate any rulemaking after the EA is completed. REP. BARRETT questioned **Mr. Smith** about the status of the statewide river rules. **Mr. Smith** replied that the policy was currently being developed and that FWP would discuss with the Commission during either their February or March meeting to determine whether to formally adopt that policy through the rulemaking process. The policy would provide a direction for the planning and management of recreation on state rivers and **Mr. Smith** plans to recommend adoption of the policy. Rulemaking would follow, probably in April or May. REP. BARRETT asked if FWP planned to do an EA prior to adoption of the rules, and **Mr. Smith** responded that consultation with FWP legal counsel would be necessary to determine what kind of analysis is appropriate.

SEN. WHEAT reiterated the necessity of having advance notice of proposed rules if the EQC is to perform its legislative responsibility of review and oversight of administrative rules and requested that staff get this information from the departments and provide it to the Council.

IV. MISSOULA AIR QUALITY NON-ATTAINMENT DESIGNATION

The Subcommittee previously received a document entitled "Montana Air Quality Program--Local Programs and the Redesignation Process", included as *EXHIBIT #4*.

Robert Habeck, Air Quality Manager, DEQ, explained the non-attainment and redesignation process, stating that the state regulates air quality in conjunction with county air quality programs. Because of budget constraints, monitoring is done in "hot spots", which tend to be urban areas. A yearly review is done to determine if the monitors are in the best spot to protect public health. Following the review the air is tested. When federal or state air pollution standards are exceeded at a specific spot enough times then the Environmental Protection Agency (EPA) designates the area a "non-attainment" area, meaning the area has not attained compliance with clean air standards. State and local officials are responsible for putting together a control plan which identifies the causes of the pollution, shows rules or laws adopted at the local or state level to address them, and gives a 10-12 year demonstration of how the air will be cleaned up. When the control plan is implemented air quality frequently improves drastically and air quality monitors show the improved numbers but the EPA does not change the non-attainment designation, because it is an administrative process to go from non-attainment to attainment, not merely a change in air quality at the monitors. **Mr. Habeck** emphasized that it is not in the power of Missoula County or any state agency or executive to change the non-attainment designation--it can only be changed by the EPA, at the request of the governor, upon EPA

approval of the Missoula County Maintenance Control Plan. While an initial finding of non-attainment by the EPA requires the development of a control plan, once the control plan is approved, the decision to try for redesignation is voluntary--there is no federal or state requirement to try for redesignation. The relationship between Missoula County and the DEQ has been a good one--Missoula County has the most aggressive and dedicated program for this in the state--when they need help they ask for it.

CHAIRMAN HARRIS asked **Mr. Habeck** for a general, simplistic accounting of where Missoula stands in the redesignation process. **Mr. Habeck** reviewed the 5 steps necessary for reattainment, indicating that steps 1 through 3 and 5 are completed and only step 4 (EPA-approved maintenance plan) remains to be completed.

Jim Carlson, Director of Missoula City/County Environmental Health Department, presented a brief history of air quality issues in Missoula from 1974, when air quality emission standards for particulate were exceeded almost half of the days of the year and over 100 violations of carbon monoxide standards were measured per year, through the present, wherein Missoula has not exceeded particulate standards since 1989 or carbon monoxide standards since 1992, and steps taken to achieve those results. **Mr. Carlson** attributed the results to efforts by local government and local regulation of sources not usually regulated by the state.

Shannon Therriault, Missoula City/County Environmental Health Department, distributed a breakdown of Missoula's efforts toward redesignation (see *EXHIBIT #5*), a handout detailing redesignation elements and revised timeline (see *EXHIBIT #6*), and the current draft of the carbon monoxide redesignation request (see *EXHIBIT #7*), and reviewed those documents, explaining efforts on both the local and state levels and the difficulties caused by staff turnover at the state level.

REP. CLARK asked for the practical considerations of redesignation, specifically what would change for the City of Missoula if redesignation is achieved. **Ms. Therriault** replied that redesignation would be important to the business community, to not be known as a "dirty air town", as well as to the Health Department, to which it represents success and a community achievement. The potential also exists for less monitoring in the future and perhaps make permits easier to acquire.

CHAIRMAN HARRIS wondered how much of this had been paid for by federal grants. **Mr. Carlson** responded that Missoula receives $80,000 annually of 105 funds, which is a mix of state and federal funds, and spends another $60,000 annually of local tax money.

REP. HEDGES questioned whether the grant money would cease once redesignation had been achieved. **Mr. Carlson** replied that it would depend on Congress, but they had been funding clean air programs since the inception of the program, and that Missoula's funding has not changed in 8 years. **Ms. Therriault** added that the EPA recognizes that air quality continues to be an issue even after attainment had been reached. REP. HEDGES then asked if, after Missoula has been redesignated, permitting costs for an air quality permit would be lower and **Mr. Carlson** thought that it would.

MS. PORTER responded that the issue of permitting costs had not been addressed fully. Permitting for industry falls under the new source review requirements, now being revised by the DEQ, and new source review has different standards for attainment and non-attainment

areas. Permitting is very difficult in a non-attainment area. MS. PORTER distributed a handout titled "How Non-Attainment Status Affects Industry" (see *EXHIBIT #8*).

CHAIRMAN HARRIS asked **Mr. Carlson** and **Ms. Therriault** if there was anything the Legislature or DEQ could do to help speed up the process. **Ms. Therriault** replied that the continuity of staffing at DEQ has been the single largest hurdle, and the Legislature could assist by not instituting hiring freezes and by providing the agency with enough funding to pay competitive wages. CHAIRMAN HARRIS expressed the desire of the Subcommittee to assist, and to call upon them if there was any action they could take, and commended the Missoula contingent for their efforts.

MS. PORTER questioned whether the use of 2000 emission data was appropriate if data is deemed invalid after 3 years. **Ms. Therriault** answered that they hoped not--the 2000 inventory was almost complete and that it was fairly easy to roll data forward, but the final decision would rest with the EPA.

REP. HEDGES inquired into the flexibility of the measuring stations, whether they move as new busy spots are created, and if they measure worst cases at all times. **Mr. Carlson** replied that some monitors are stationary while others are moved according to traffic patterns, and that the EPA requires proof that monitoring take place at the heaviest intersection in town as well as modeling for the worst spot in that intersection.

MS. PORTER noted that Missoula's efforts have covered a span of 18 years and wondered how long the redesignation process should take. **Mr. Habeck** responded that this was "uncharted waters" and other areas in the state, whose non-attainment was at a level considerably less severe than Missoula's, had required up to 8 years to complete only the mandatory requirements of non-attainment whereas Missoula was pursuing voluntary redesignation.

V. ELK MANAGEMENT PLAN AND SAGE GROUSE MANAGEMENT PLAN - UPDATES

Gary Hammond, Bureau Chief Wildlife Division, Department of Fish, Wildlife, & Parks, gave out copies of the draft "Management Plan and Conservation Strategies for Sage Grouse in Montana" (*see EXHIBIT #9*). This draft has been revised and can be found at: http://www.fwp.state.mt.us/wildthings/sagegrouse/sagegrousemanagementplan.pdf
Mr. Hammond then reviewed the draft document and presented an update on the status of sage grouse in Montana, including a recent decision by the Fish & Wildlife Service that the Eastern Sage Grouse is not eligible for listing as an endangered species. The same decision had been reached a year previously for the Western Sage Grouse. A decision is expected concerning the Greater Sage Grouse in late March.

REP. BARRETT distributed an excerpt (see *EXHIBIT #10*) from a Forest Service document concerning sage grouse monitoring results and questioned whether, in the new 2004 proposed hunting regulations, the sage grouse hunting season would be extended and **Mr. Hammond** replied that it would not. REP. BARRETT then asked for details of what FWP had done since 1994, and what would be doing, in Region 3 to conserve sage grouse. **Mr. Hammond** enumerated specifics, including radio-collaring of birds, increased aerial surveillance, and an adaptive harvest management strategy which adjusts bag numbers according to population changes. REP. BARRETT asked about sources of funding for these actions and was informed that funding included FWP, BLM, and Forest Service money and volunteers from the Wildlife

Federation for various manpower requirements. REP. BARRETT also asked if FWP had sufficient data to establish a baseline in Region 3 to determine if a management plan is working and whether or not hunting had ever been curtailed there. **Mr. Hammond** believes they do have enough data for the Region 3 baseline and indicated that sage grouse hunting had never been curtailed in Region 3.

REP. CLARK wondered if sage grouse respond to transplanting and at what point would it be advisable to curtail hunting. **Mr. Hammond** replied that transplanting had not been ruled out but there were deeper problems involved with it, such as low bird numbers usually indicate a habitat problem which transplanting will not remedy, and while there is a point, usually bird population of 200 or less, where hunting could be curtailed more study was needed because arguments against hunting could also potentially pertain to grazing, although the Department has closed the season in a district near Billings to conduct a study on the effects of hunting.

REP. HEDGES was curious whether, when the bird count was taken, if the predator count was taken also, to track any parallels between increased predator count and lowered bird count. **Mr. Hammond** answered that no, predator counts had not been taken, but that the concern was there. In many areas raptor numbers have increased but bird counts have increased as well. There is a concern that, with changing habitats, historic predators of an area are being exchanged for more efficient predators, such as foxes replacing coyotes, and this could become a factor. The presence of West Nile virus, which is hard on sage grouse, is another possible factor the Department is looking at. Wildfire is another hazard for sage grouse because after wildfires destroy areas of sagebrush, which the birds must have, the typical regrowth is cheatgrass, which successfully competes with sagebrush seedlings.

REP. BARRETT observed that in the discussion of hunting vs. conserving the species the question of grazing doesn't fit, unless the focus is on preserving sagebrush rather than the sage grouse, and the hunting vs. conservation issue should be handled like it was for other species, such as grizzlies and wolves, in that if conservation is the goal then hunting should be suspended until the numbers are up.

Mr. Hammond distributed a handout (see *EXHIBIT #11*) concerning the Pioneer Elk Management Unit and reviewed general elk management plan development since 1992, including details of the new adaptive harvest management strategy, and offered a timeline of the Montana Elk Plan revision (see *EXHIBIT #12*).

REP. HEDGES asked if the prevalence of brucellosis in Wyoming livestock herds, which may have been traced to the elk feeding grounds, would trigger changes in Montana's elk herd management. **Mr. Hammond** replied that one main difference between Montana and Wyoming is that Montana prohibits elk winter feed grounds for that reason. Montana relies on harsh winter conditions and natural selection to cull the herds and strengthen the gene pool. Since Montana does not allow the establishment of winter feeding grounds, no change in elk management policies due to brucellosis needs to be made, with the possible exception of increased testing of the animals near Yellowstone Park and the Wyoming border.

REP. HEDGES then wondered if stacking hay in fields was essentially creating elk feeding grounds and if there could be a possible legal or statutory remedy to the problem. **Mr. Hammond** agreed that does occur, and is a major concern, but the Department works with landowners to help alleviate this problem. Landowners who allow public hunting can ask the

Department for help, which can include herders, late or damage hunts, or materials to build stack yards to help keep animals out. **Mr. Hammond** was unaware of any legal or statutory remedies to the de facto feeding grounds.

CHAIRMAN HARRIS questioned whether the artificial concentrations of elk at these feeding locations heightened the possibilities for disease. **Mr. Hammond** answered that yes, the disease factor was definitely increased by the artificial concentrations of animals. Stressed and overcrowded animals are always more at risk for disease, and Wyoming elk herds had very low incidences of brucellosis before the promulgation of the winter feeding grounds.

REP. CLARK asked if, after the management plan draft was accepted by the commission, future commissions would be bound by the plan and **Mr. Hammond** replied that there was no obligation on the part of future commissions to abide by the plan when issuing regulations. REP. CLARK then asked how the current elk population numbers in various areas were arrived at and was informed by **Mr. Hammond** that the Department relies on trend information, rather than statistics, based on what they have actually seen from the air.

REP. BARRETT commented that in the draft is a passage regarding federal lands with different populations and hunter access goals & objectives than the Montana plan and wondered which federal agencies were involved. **Mr. Hammond** responded that although they ask federal agencies to comment, the population numbers are not different between the state and federal agencies. REP. BARRETT followed with the statement that in Region 3 the BLM and Forest Service have followed the state elk management plan faithfully in the past, but are now undergoing new plans--a Forest Service plan and BLM resource management plan--and have publicly stated that they will no longer prioritize elk, but instead will move toward a more sustainable ecosystem management with the focus on all species, and questioned **Mr. Hammond** if the new federal management approach would be applied statewide and **Mr. Hammond** answered that yes, that was the direction the federal agencies were heading and the Department wasn't quite sure what it was going to mean for the state efforts. REP. BARRETT then asked for clarification of an area of the draft referring to the statewide habitat plan and was informed that FWP does not have a statewide habitat inventory, but instead the draft referred to the Habitat Montana plan which prioritizes expenditures of money made available in HB 526.

VI. WILDLAND FIRE/URBAN INTERFACE ISSUES

LARRY MITCHELL referred the Subcommittee to documents they received in their premeeting mailing. The first is entitled "DNRC Fire Cost Report" and is included as *EXHIBIT #13*. The second (see *EXHIBIT #14*) is a summary of wildland/urban interface issues prepared by Bob Harrington of DNRC. *EXHIBIT #15* is a printout of relevant MCA and ARM sections. Informational websites are included as *EXHIBIT #16*, and *EXHIBIT #17* is a breakdown of recent legislative efforts in this area. A copy of a recent article in *The Missoulian* is included as *EXHIBIT # 18*.

Rep. Christine Kaufmann, Helena, discussed bills introduced in past legislative sessions to fund firefighting costs and/or to shift firefighting costs to those living in the interface areas and the reasons those bills did not pass (see *EXHIBIT #19*). **Rep. Kaufmann** pointed out that wildfires are natural disasters and that it might be useful to look at how other natural disasters are handled by individuals and governments.

Bob Harrington, State Forester, DNRC, reviewed his paper "Summary of Wildland/Urban Interface Issues" (see *EXHIBIT #14*) and left copies of the National Forest Protection Association's 1144 Standard for Protection of Life and Property from Wildfires, the Fire Protection Guidelines, and the state Fire Risk Manual (see *EXHIBITS #20*, *#21*, and *#22*) with the Subcommittee. **Mr. Harrington** informed the Subcommittee of the efforts of a committee, organized and funded by DNRC, to study alternative funding for state fire suppression efforts. The committee is looking for proposals to submit to governor for inclusion in the gubernatorial legislative package, and is now analyzing five policy alternatives to diversify funding sources for fire suppression costs which could possibly satisfy legislative intent, which DNRC believes is to relieve some of the weight of fire suppression costs on the general fund.

Pat McKelvey, Office of Prevention and Mitigation, Lewis & Clark County, is a coordinator of the Tri-County Fire Group and offered a local perspective of their program. *EXHIBIT #23* is an overview and status report of the Tri-County Fire Group, including sample applications and audit forms, contractor qualifications, budget expenditures, and details of specific projects. **Mr. McKelvey** displayed a color-coded Fire Hazard Rating Map of Lewis & Clark County, explaining that in actuality it was a fuel hazard map, rather than a fire hazard, because the different colors rate the quantities of fuel materials in a given area, the likelihood a fire will spread rapidly, and the potential for damage to structures and lives. **Mr. McKelvey** distributed a handout explaining the different ratings and what they can mean (see *EXHIBIT #24*). He emphasized that they had not attempted to risk rate the entire forest area but instead focused on areas of development and private lands. **Mr. McKelvey** then explained that once the working group had identified the areas of highest hazard, they began to target market people in those areas through local newspapers (see *EXHIBIT #25*). *EXHIBIT #26* is a brochure sent to people inquiring into Tri-County Fire Working Group. Participants in this group can receive grants to fund their defensible space projects. *EXHIBITS #27 and #28* are a list of fuel modification guidelines and a defensible space home evaluation form, respectively. **Mr. McKelvey** stated that the projects operate on a 75% grant/25% landowner match basis, the grant money coming from national fire plan funds, directed through DNRC, state disaster and emergency services funds, and BLM funds. The Tri-County group has done over 300 homes so far in the tri-county area and are beginning to work on larger projects, such as building a large fuel break on the south side of Helena in the South Hills area.

Chris Carlson, State Farm Insurance Company, offered the perspective of the insurance companies on wildland fire/urban interface issues. **Mr. Carlson** began by stating that insurance companies know that wildfires will happen--they are natural disasters like hurricanes and earthquakes, and the question is when will they happen not if they will happen. The first issue concerning insurance companies is how to get people to create, and maintain, the defensible spaces around their homes. The companies have found that discounts on homeowner policies do not provide enough incentive, because the expense of creating the defensible space is much greater than any discount incentive the companies can offer. The real incentive is proving to be the availability of affordable insurance--companies are now refusing to insure homes in wildland fire/urban interface areas. In several western states the insurance companies have developed a Wildfire Mitigation Education Program, which audits the homes of policyholders in high risk areas for wildfire hazards and gives the homeowner a specified period of time to correct the problems. Noncompliance can mean nonrenewal of their policy. A strategy is being developed for the Northwest region, which includes Montana.

CHAIRMAN HARRIS asked a question of both **Mr. McKelvey** & **Mr. Harrington**, that supposing every homeowner in the high hazard areas of **Mr. McKelvey's** map were to comply with all recommendations for mitigation of fire fuels what impact would it have on reducing fire costs in a normal fire season. **Mr. McKelvey** answered that the cost benefits would be immeasureable, especially because of the domino effect--each home with defensible space has not only reduced risk for that structure but also for neighboring structures. **Mr. Harrington** replied that costs would be much lower and risks would be less, not only the risk to the structure but also to the lives of the firefighters. Defending structures with defensible space treatments is cheaper and more effective than defending structures without the mitigation measures. However, **Mr. Harrington** pointed out that the defensible zone around a home is a good start but is only part of the big picture--existent fire fuels outside the 150' zone around the home will also have an effect on the intensity and costs of wildfires.

CHAIRMAN HARRIS, noting that the costs of fighting wildfires increase dramatically if structures are involved, as opposed to undeveloped property, wondered exactly how much costs decrease if the mitigation measures are performed and if there is any literature available giving specific numbers or percentages. **Mr. Harrington** responded that DNRC had conducted some analyses of their responses to various types of fires, and fires on undeveloped property typically had only half the manpower and equipment requirements of property with structures and improvements. **Mr. Harrington** offered an estimate that fires on undeveloped property have costs of 25% to 50% of that of fires on property with structures. The resources necessary to fight fires around structures are much more expensive than what is necessary on undeveloped land. **Mr. Harrington** spoke of being personally aware of expenditures of $20,000-$40,000 for retardant and retardant drops to protect a single home.

CHAIRMAN HARRIS, referencing **Rep. Kaufmann's** comment that insurance companies are the primary beneficiaries of mitigation efforts around homes in interface areas, questioned Mr. Carlson whether this was true. **Mr. Carlson** replied that insurance companies indeed benefit from this. CHAIRMAN HARRIS then asked if there were more efforts the insurance companies could make to compensate the state for those expenses. **Mr. Carlson** told the Subcommittee that State Farm locally sponsored rural fire districts and grants were available through the State Farm philanthropy program for home safety programs.

Rep. Kaufmann commented that if a fuel hazard rating map existed for every county in Montana then areas of high risk could be plotted and, good sense would seem to indicate, measures could be taken to discourage building in the "red" areas. Those who do build in "red" areas would then pay a premium, either through higher insurance premiums or through a specific tax.

CHAIRMAN HARRIS asked **Mr. Harrington** to elaborate on the five policy alternatives under review by DNRC. **Mr. Harrington** replied that he had a rather cryptic and technical spreadsheet used by the Department, but he would be willing to put together a summary which he would make available to the Subcommittee.

REP. HEDGES questioned **Mr. Harrington** if studies had been done on whether animal grazing lessened the intensity of a fire in the forests. **Mr. Harrington** said that yes, it does help tremendously if the primary carrier (predominant fuel) of the fire are grasses, but it doesn't help if the primary carrier is timber. REP. HEDGES then asked if the closure of roads and trails in

non-motorized areas contribute to increased fire costs. **Mr. Harrington** responded that access to the fire by people and equipment is one of the most critical factors in fighting fires and whenever access is hampered or limited then costs would rise and successful fire containment becomes more problematic.

REP. BARRETT wondered if the fuel hazard maps shown to the Subcommittee include federal land, and **Mr. McKelvey** answered that while the maps themselves show all land ownership in an area there was no risk rating done on the federal lands. REP. BARRETT then asked if the two major fires in the Helena area in 2000 began on federal land, and **Mr. McKelvey** replied that the Bucksnort fire began on private land and the Cave Gulch fire on federal land. REP. BARRETT also asked for clarification of the funding the Tri-County Fire Working Group receives, and **Mr. McKelvey** explained that National Fire Plan money is pooled resources from the Forest Service, BLM, Park Service, and other agencies with fire responsibilities at the national level and funneled to the Western Wildland Urban Interface Grant Program through DNRC. Some direct funding is received from the BLM through a Community Assistance agreement.

REP. BARRETT, following up on **Mr. Harrington's** statement about the vital nature of the initial attack on a fire, asked **Mr. Harrington** if the state is limited to initial attacks only on fires beginning on state or private land and learned that although DNRC's priority is state and private lands, the state extends protection to federal lands in exchange for federal help with fires on state or private land. REP. BARRETT, noting that many wilderness fires are left to burn, wondered how many interface fires began as unfought wilderness fires. **Mr. Harrington** replied that there were at least two of these types of fires in 2003, although the Crazy Horse fire, which began in a wilderness area, was initial attacked from the beginning but became an interface fire anyway.

VII. PANEL - METHAMPHETAMINE CLEANUP STANDARDS/GUIDANCE - UPDATE

Two panels were presented to the Subcommittee. The first dealt with law enforcement, property owners', and environmental concerns. The second dealt with public health issues. Included in the packet for the Subcommittee is a listing of meth lab busts in nine western states, the website where the listing can be found, and lists of states with cleanup standards or guidance (see *EXHIBIT #29*) and a copy of the Washington statute setting decontamination standards (see *EXHIBIT #30*).

Mike Batista, Administrator of the Division of Criminal Investigation, Department of Justice, informed the Subcommittee that the meth problem in Montana has been increasing over the last 5 years. Last year there were 122 reported meth labs in Montana, and **Mr. Batista** and the Department believe that this number does not represent the entire picture because of underreporting of labs, especially in smaller counties and on the reservations. The Department, considering meth to be the number one public safety concern in Montana, has hired an analyst to perform a statewide threat assessment. The Department has received grant money out of Washington D.C. to fund enforcement and training requirements, public education, and some participation in treatment centers. The money has been used to outfit taskforces with necessary equipment for meth lab cleanup, to assist the local agencies with overtime costs associated with lab cleanup, and to assist the state crime lab with state-of-the-art equipment. The grant funds have also been used on public education seminars on drug-endangered children, awareness and education for stores selling products used by meth manufacturers, and rural initiative

education concerning the prevention and reporting of theft of anhydrous ammonia, which is used in agricultural applications. Money has also used to establish the Bridge Program, which gives support to treatment homes where female meth users can live with their children while receiving treatment. **Mr. Batista** said the Department held a conference in Great Falls during December to talk to interested persons and the community about all aspects of the meth problem. Another conference will be held in Polson in April.

CHAIRMAN HARRIS asked for a description of a typical meth lab. **Mr. Batista** offered a verbal picture of a filthy, squalid room filled with trash, lab equipment, chemicals, drug paraphernalia, pornography, and other unsavory items.

B.F. "Chris" Christiaens, Montana Landlords Association, gave insight to the concerns of landlords and property owners and the aftermath of discovery of a meth lab. **Mr. Christiaens** began by explaining that he had always insisted on a public forum for this topic because he feels that this problem requires multi-agency cooperation--not just law enforcement, but also the Departments of Public Health, Environmental Quality, and Revenue as well. **Mr. Christiaens** believes meth to be an instant addiction, rather than one built over time, and recommends bringing in someone from the addictive diseases area to discuss treatment. **Mr. Christiaens** noted that while there are many people in prison for meth use, production, or distribution, there are no treatment programs in the prisons. The first problem for landlords, according to **Mr. Christiaens**, is they don't know what exactly they are cleaning up, they only know it is hazardous materials. The state crime lab does not report to the landlord what chemicals were found on the premises. This problem goes beyond landlords with houses or apartments to rent--it affects hotels & motels as well. Another problem is who assumes liability if a landlord or motel owner cleans up the site of a meth lab to the best of their ability yet several years later a tenant or guest develops breathing problems or cancer. This aspect is perceived to be so overwhelming that some members of the Montana Landlords Association feel the proper response to discovery of a meth lab on their property is to make no attempt at cleanup, but instead to immediately have the property appraised at $0, remove it from the tax rolls, and turn it back over to the bank or lienholder and let them worry about it. **Mr. Christiaens** says meth lab cleanup begins at $3000 and may rise as high as $30,000 if there has been an explosion or fire. **Mr. Christiaens** suggests that landlords are victims of crime and should be able to access Crime Victim funds to aid in cleanup. **Mr. Christiaens** feels that establishing standards for meth lab cleanup should wait until funding is available to assist everyone involved--law enforcement, public health, public education, crime lab, and landlords.

Ed Thamke, Department of Environmental Quality, gave the Subcommittee an update on the status of cleanup standards in Montana, explaining that in order to establish standards for cleanup the focus needs to narrowed to specific chemicals used in a specific "cooking" process and that the nature of methamphetamine makes this very difficult because many different chemicals and many different ways of producing the drug are involved and many of the chemicals used are also present in common household, building, and agricultural products. **Mr. Thamke** said the first step is to research the types of chemicals used in methamphetamine production and to try to define the chemical groups or families, rather than the single elements, and then to work with the health community to determine whether or not these chemical families are deleterious and at what levels. **Mr. Thamke** called the Subcommittee's attention to a study performed by the National Jewish Research Center on chemical exposure associated with clandestine methamphetamine labs (see *EXHIBIT #31*), where the purpose was to assess the risks from exposure to the chemicals for first responders. **Mr. Thamke** emphasized that he

would rather have no standards for cleanup than bad standards, and feels that no standards should be set until there is money to fund good standards.

REP. CLARK asked how long methamphetamine labs have been around, and both **Mr. Thamke** and **Mr. Batista** answered approximately 30 years. REP. CLARK expressed amazement that in 30 years no lists of meth chemicals and byproducts or hazardous rankings had been created and **Mr. Batista** responded that there are lists of chemicals used in meth production but he has not seen any documentation or lists involving health risks associated with those chemicals. REP. CLARK then asked how this cleanup problem could be solved if law enforcement, public health, and environmental officials are all unwilling to take the lead. **Mr. Batista** replied that law enforcement is treating it as a safety health issue and, from the law enforcement perspective, what is needed is information that if chemicals A, B, and C are found in a lab then the health risk is X, and this needs to be answered by the medical profession. **Mr. Christiaens** told the Subcommittee that he had been working with the Center for Disease Control and had recently attended a seminar on meth lab cleanup and offered a handout detailing specific areas of concern (see *EXHIBIT #32*).

MS. PORTER, referencing *EXHIBIT #30*, asked **Mr. Thamke** how meth residue was defined, and how do those levels compare with levels found by first responders and learned that, in regard to the chemical analysis and analytical methodology, medical or crime labs are able to measure and test for methamphetamine as a residual chemical. Other substances are created during the production of meth, including phosphine gas and various hydrocarbons and acids. However, all of these chemicals are volatile and organic in nature and therefore dissipate and break down rapidly. First responders however, frequently are dealing with the chemicals themselves in quantity, not merely residues.

REP. BARRETT questioned how many landlords have fallen ill from exposure to meth lab chemicals and **Mr. Christiaens** did not know whether any had fallen ill.

CHAIRMAN HARRIS wondered if having meth lab operators included in the Violent Offender Registry was helpful to landlords and if landlords were using the registry, and whether anyone had yet been convicted and placed on the list. **Mr. Batista** replied that yes, people had been convicted and placed on the list and that the list is growing. **Mr. Christiaens** believed that the responsible landlords were using the registry, and he had recommended to his association members that they use the list.

Mr. Thamke offered to the Subcommittee a video tape borrowed from the EPA titled "Clandestine Drug Lab--The Problem, The Dangers, The Future" (see *EXHIBIT #33*) and a flyer called "The Bitterroot Against Methamphetamines" concerning an upcoming meeting in Hamilton.

Maggie Bullock, Administrator of Public Health & Safety Division, Department of Public Health and Human Services, was asked to offer insights into the kind of cleanup standards available and whether they are effective in protecting public health. **Ms. Bullock** informed the Subcommittee that the Department of Public Health and Human Services had been involved with the Departments of Justice and Environmental Quality in discussions of this issue, and they are aware of what other states are doing, but the lack of resources has limited how fully this

issue could be addressed. **Ms. Bullock** said they could look harder at this, but haven't had the funding available to do so.

Carolyn Comeau, Washington State Department of Health, by conference call, addressed the Washington and Oregon state cleanup standards. **Ms. Comeau** said that the Washington State Health Department was satisfied with their standards for methamphetamine, lead, mercury, and volatile organics. While the Oregon standards are tougher, the goal of the Washington standards is remediation of lab sites. New Arizona standards and the standards set for Salt Lake City are similar to those used in Washington.

Dr. Michael Spence, State Medical Officer, Department of Public Health and Human Services, told the Subcommittee that meth is a dangerous chemical and anyone involved in, or in the vicinity of, the cooking process were subject to being burned, breathing toxic fumes, or developing rashes from chemical exposure. However, in studying the medical literature on meth labs which date back 1971 and the earliest discoveries of meth labs, after examining 100 reports **Dr. Spence** could find absolutely no evidence of any kind to suggest that anyone who was not cooking the drug or a first responder had been harmed by or had any deleterious effects from exposure to a place that has been cleaned. There over 80 chemicals used in the various methods of producing methamphetamine and these chemicals are known, the toxic effects of them are known, and the health consequences of exposure to them above a certain level are known, so the setting of standards is possible, but these same chemicals are present in new carpet, new cars, paint, and other common household products, possibly at even higher levels than a meth lab. These same chemicals are used, and spilled, daily in high school and college chemistry labs yet there are no standards for cleanup of chemistry labs. **Dr. Spence** gave the Subcommittee a copy of an article by Dr. William Robertson of Seattle (see *EXHIBIT #34*).

Dan Strausbaugh, Federal Agency for Toxic Substances and Disease Registry, explained his agency's interaction with state and county agencies with regard to meth labs. The goal of the ATSDR is provide a level of public health support to state, county, and city agencies as a public health technical resource.

Joan Miles, Director of County Public Health, Lewis & Clark County Health Department, confessed to being confused about what she had been hearing, about whether is there a public health risk or not, and is confused about what to tell the people who call her asking if they, or their buildings, are safe. **Ms. Miles** said that from the public health perspective they think the risk of harm after a meth lab is cleaned up is an issue and so do other states. **Ms. Miles** told the Subcommittee that what they need is a consistent statewide policy so they know what to tell the people of the community when they call with concerns about a meth lab and cleanup. Regardless of whether that call goes to local public health or law enforcement officials, a state agency such as DEQ or DPHHS, or a federal agency the same answers and information need to be available to everyone. Clear guidance and policies are needed about what people are expected to do about meth lab cleanup. **Ms. Miles** then gave a copy of article she had written for the *Montana Policy Review* to the Subcommittee (see *EXHIBIT #35*).

CHAIRMAN HARRIS asked **Mr. Batista** if, from the federal funds they receive, funding is available for the development of cleanup standards, and **Mr. Batista** replied that they were at the end of that funding, and he was not aware of any other funds available. **Mr. Batista** pointed out that the U.S. Drug Enforcement Administration already pays for the removal and disposal of

chemicals found at a meth lab. CHAIRMAN HARRIS then asked if the removal phase could be stretched to include removal of meth residues and residual byproducts and **Mr. Batista** answered that it would depend on the proposal and costs involved.

CHAIRMAN HARRIS questioned **Ms. Comeau** as to whether there is a cleanup standard available that is workable for landlords to enable them to give a clean bill of health for a dwelling to prospective tenants. **Ms. Comeau** told the Subcommittee that they do not allow landlords to clean up meth labs because it is not a straightforward process. Washington certifies contractors to do the cleanup. The contractors are required to take a 40-hour hazmat course as well as Washington's 3-day training course. CHAIRMAN HARRIS inquired into the costs of meth lab cleanup and **Ms. Comeau** replied that costs averaged $6000 for a 1200 sq. ft. home. CHAIRMAN HARRIS then asked **Ms. Comeau** if she agreed with Dr. Spence's point that medical literature doesn't reflect health problems associated with methamphetamine and **Ms. Comeau** agreed that the data was not available and likely would not be available because studies to determine toxic levels of meth in children would be unethical. Washington uses what data is available, primarily in utero studies and studies on animals, and those studies prove that exposure to meth has been detrimental to the neurological system. CHAIRMAN HARRIS questioned whether Washington has found their standards to be workable and **Ms. Comeau** replied that yes, they were workable. Washington has taken a feasibility-based approach to the problem--they chose levels that could be detected and levels that could be cleaned up to.

CHAIRMAN HARRIS questioned **Mr. Christiaens** whether he felt it was sensible to have standards available so landlords can know when a rental dwelling is sufficiently cleaned up and **Mr. Christiaens** answered that standards were fine if people were available to certify the property after cleanup and if the people doing the cleanup know exactly what it is they are cleaning up, but funding must be available for proper training for the people involved. CHAIRMAN HARRIS asked a follow-up question of **Ms. Bullock**, that supposing the funding was available, if DPHHS could provide the training and certification that **Mr. Christiaens** felt was necessary. **Ms. Bullock** felt that they could, although it would involve other departments and would not be unilateral, and **Ms. Bullock** was interested in hearing how Washington funded their training and certification and what the costs were.

CHAIRMAN HARRIS directed Ms. Bullock's question to **Ms. Comeau**, and the Subcommittee learned that Washington sponsors private companies to conduct the training and certification program and funds **Ms. Comeau**'s position, as well as providing funding to 34 local health jurisdictions who work on-site with the property owners and certified contractors. **Ms. Comeau** stressed that, if standards and enforcement are mandated, then funding must be attached to the mandating legislation.

REP. CLARK asked **Ms. Comeau** how the process to set the standards in Washington got started and which agency took charge and **Ms. Comeau** answered that the process began in 1989 with enough citizen complaints about meth labs to the legislature that in 1991 the legislature enacted rules to mandate cleanup of property and it evolved from there. **Ms. Comeau** explained that Washington had the same problem as Montana--agencies lacking funding and resources to tackle the problem, so the legislature mandated, and funded, the Health Department to handle it. REP. CLARK asked if that meant that the Health Department was the coordinating agency for drug lab response and if the Health Department was responsible for issuing certification that the cleanup had been done and the standards met and

who assumed liability for the cleanup. **Ms. Comeau** clarified that the Washington Health Department was responsible for remediation of drug labs, not overall coordination of the multiagency drug lab response, and that certification was issued, and liability assumed, by the local health jurisdiction.

MS. PORTER questioned **Ms. Comeau** whether Washington had received any feedback from property owners on how they feel about the meth lab cleanup standards, and **Ms. Comeau** responded that the response they had received was overall positive, but that frequently depended on whether or not there was a large bill to be paid by the property owner. A problem developed, **Ms. Comeau** explained, when Washington looked at creating a fund for assistance to property owners for meth lab cleanup because they often found the property owner had some level of involvement with the lab, either through the lab operator being a family member or through negligent rentals.

CHAIRMAN HARRIS asked **Mr. Thamke** if, assuming the funding is there, DEQ would prefer to handle this issue, rather than DPHHS, and **Mr. Thamke** said no, because DEQ has no statutory authority within residential structures, although DEQ would assist in any appropriate way, and because this is primarily a health question. CHAIRMAN HARRIS then asked if DEQ's interagency taskforce would have recommendations and if so, when, and **Mr. Thamke** replied that the recommendations are the same as 2 years ago, namely that to specifically address this problem and to continue to help the people of Montana requires legislative mandate.

CHAIRMAN HARRIS asked **Ms. Miles** that if it should happen that the final meth lab cleanup work--inspection and certification of cleaned up lab sites--falls on the counties, if they had the capability and desire to handle it. **Ms. Miles** responded that it goes back to having the expertise and resources, and thereby the funding, necessary. Because meth labs are often a rural problem, **Ms. Miles** feels that perhaps a regional approach might be best, but the county health departments are ready to be part of the solution. If adequate funding for training and certification was available county health departments would be prepared to handle the cleanup inspection and certification.

Mr. Batista informed the Subcommittee of a website, maintained by the Department of Justice, where information about various aspects of the methamphetamine problem in Montana can be found: http://methfreemt.org

VIII. MEPA LITIGATION UPDATE

MR. MITCHELL reviewed *EXHIBIT #36*, which gives details of two Supreme Court decisions and outlines the specifics and current status of four other cases. MR. MITCHELL informed the Subcommittee that staff has been tracking MEPA litigation since 1975 and details of every MEPA court decision are included in three 3-ring binders which are maintained in the LEPO office.

IX. EQC STATUTORY DUTIES REVIEW

- ***General Subcommittee Procedure***
  MR. MITCHELL explained that, under MEPA, the Council has broad oversight authority over DEQ, FWP, and DNRC for the purpose of cleaning up outdated or unnecessary statutes and directed the Subcommittee's attention to information

included in the meeting packet, including an overview of the statutory duties of the EQC, including pertinent statutes (see *EXHIBIT #37*), rating sheets for Subcommittee use (see *EXHIBIT #38*), and a handout with statutes stating the water policy duties of the EQC (see *EXHIBIT #39*). MR. MITCHELL pointed out that although the EQC is ordered to "analyze, verify, and comment on the adequacy of and information contained in the water information system maintained by the natural resource information system" the Subcommittee's work plan says that any water policy or energy issues will be deferred to the energy subcommittee or the full Council.

- ***NRIS Advisory Committee***

  Jim Hill, Director of Natural Resources Information System, State Library, gave a PowerPoint presentation (see *EXHIBIT #40*) covering the purpose of NRIS, information available through NRIS, and how this information is being used.

REP. BARRETT asked for clarification that the job of NRIS is to disseminate information, not to generate it, with one exception, and **Mr. Hill** explained that the Natural Heritage Program employs people who actually go into the field to collect information on native plants and animals. REP. BARRETT asked if FWP personnel were used in these field counts and **Mr. Hill** answered yes, as well as in several other capacities. REP. BARRETT then asked if the FWP conservation easement boundaries were available on NRIS and **Mr. Hill** replied that they were.

REP. CLARK, following up on REP. BARRETT'S question on FWP conservation easements, described difficulties he had experienced in the past trying to find information on easement boundaries, perimeters, and the different parameters around utilization of those easements and asked if all of that information was available through NRIS and learned that yes, it should be available through what is called the "stewardship layer". REP. CLARK asked **Mr. Hill** to look into this.

REP. CLARK then asked if, since NRIS has information on plant and animal data as well as information on drought monitoring, the two have ever been combined to track the effects of drought on plant and animal and determine high risk populations, and **Mr. Hill** replied no, not to his knowledge, although the Natural Heritage Program does do some analysis of those types of information.

CHAIRMAN HARRIS asked **Mr. Hill** if the NRIS website kept track of hits and if it is being used frequently by the state universities. **Mr. Hill** answered that yes, the website does keep track of numbers of people using it and they are directly serving 1700-1800 users per year, but it is very difficult, because of privacy issues, to know exactly who these people are and who they might be connected with. Surveys have been done to elicit this type of information and **Mr. Hill** would check into this and forward the information to the Subcommittee.

REP. HEDGES asked for clarification about how to read the numbers in a chart in the PowerPoint presentation and **Mr. Tom Patton** explained that the number regarding a well depth was misleading and was an artifact of the data transfer.

Mr. Hill reviewed a handout concerning EQC involvement in the NRIS Advisory Committee and a summary of committee actions and implementation of mandated goals (see *EXHIBIT #41*).

CHAIRMAN HARRIS questioned whether if the Advisory Committee were to end if it would have a major effect on NRIS and **Mr. Hill** responded that it would certainly have some impact, because the Advisory Committee has been effective as a sounding board and outreach source as well as presenting concerns of the various agencies.

REP. BARRETT asked whether NRIS received any non-governmental funds and **Mr. Hill** replied that, while funding is received from many sources, it is all from government agencies of some type.

- ***Ground Water Assessment Steering Committee***

  Tom Patton, Ground Water Assessment Program Manager, Montana Bureau of Mines & Geology, reviewed handouts of the Ground Water Assessment Program (*EXHIBIT #42*), access to the GWIC website (*EXHIBIT #43*), a sample Ground Water Characterization Program report (*EXHIBIT #44*), and a summary of the Ground Water Assessment Steering Committee Annual Activities (*EXHIBIT #45*).

CHAIRMAN HARRIS expressed concern that Mr. Patton felt that there was not enough legislative input from the EQC, and **Mr. Patton** replied that there had been no EQC attendance at recent Ground Water Assessment Steering Committee meetings because of scheduling conflicts.

CHAIRMAN HARRIS asked whether the universities are using the MBMG website, if the use is by students or faculty, and how the word is getting out to the universities, and **Mr. Patton** told the Subcommittee that the universities are using the website extensively--MSU tends to use it more than U of M, and at U of M use is higher among graduate students--and they are able to track student use through log-in fields. Word of mouth is the most successful outreach tool.

REP. BARRETT questioned whether the funding the Bureau receives from the coal trust is used on this program and **Mr. Patton** replied that he was unaware of any coal trust funds supporting this program. Funding comes from two sources: RIT interest funds and money from the resource indemnity ground water assessment tax.

X. MISSOULA WHITE PINE SASH - REDEVELOPMENT UPDATE -- RESPONSE TO LEGISLATOR INQUIRY

Included in the Subcommittee packet is a copy of a letter from Rep. Gail Gutsche and Sen. John Ellingson to Director Jan Sensibaugh, DEQ, concerning this issue (see *EXHIBIT #46*).

Andy Heltibridle, Project Officer Missoula White Pine Sash Facility, Department of Environmental Quality, gave a brief history of the site as a wood-treating facility from 1920-1996. In the 1930s, to treat the milled wood to prevent rot and insect damage, they began soaking the wood in a solution which includes dioxins and pentachlorophenol (PCP). The southern end of the property was used for treatment and the northern end was used for storage (see *EXHIBIT #47*). In the early 1990s tanks and pipes were removed and the petroleum and

PCP contamination discovered in the southern portion of the property. Subsequent investigation discovered that contamination in the northern portion of the property was considerably less extensive than in the southern end. In the northern portion PCP and dioxin concentrations are found mostly in surface soils and decrease significantly with soil depth, and thus has been considered for development. Basic risk assessment was completed in October 2001, which set conservative remediation goals for dioxins in the soil based on commercial or residential uses. PCP goals set by the basic risk assessment were not low enough to protect the ground water, so PCP remediation goals were set by using the Fate And Transport Model, which uses conservative assumptions to generate remediation goals that protect underlying aquifers at the facility. Different remediation goals have been set for the northern and southern portions of the facility--for PCPs the goals are 185 parts per billion for the northern portion and 2 parts per billion for the southern portion of the facility. These numbers, **Mr. Heltibridle** feels, protect both direct exposures as well as the ground water. At issue now is commercial versus residential remediation goals for dioxins in soil, the difference being the top 2 feet of soil. The Sparrow Group is currently conducting a seismic survey of the northern portion with the plan to excavate all unsuitable fill material and contaminated soils above the remedial goals, which means they plan to remove at least the top 2 feet of soil and perhaps more, depending on the results determined by the seismic survey. The soil removed will be disposed of off-site at a licensed facility. Following soil removal, site closure sampling will be done on 1/2-acre grids to see if remediation goals are being met. If the goals are met, then utility mains will be installed and the property graded and 2 feet of clean fill brought in to cover the property. The next step would be to build residential housing and commercial properties. DEQ considers the Sparrow Group's plan as an interim action, and other interim actions taken in the past or currently underway include semiannual and annual ground water monitoring and "hot spot" removal of previously sampled material found to contain higher levels of contamination. Soil vapor extraction and a total fluids recovery system are in place and operating on the southern portion of the facility. Any proposed interim action at a facility must be deemed, by the DEQ, to be consistent with the final remedy chosen for a facility. **Mr. Heltibridle** said that this particular interim action plan by Maxim and The Sparrow Group has drawn attention because of the magnitude of remediation necessary and the consequences of residential use, but he emphasized that there has been no sidestepping of the Comprehensive Environmental Cleanup and Responsibility Act (CECRA) process. The DEQ feels the CECRA process to be more appropriate for this facility than the Voluntary Cleanup and Redevelopment Act (VCRA) for several reasons, including that the facility is "under order" which, under CECRA law, means a voluntary cleanup plan cannot be submitted. Under CECRA a public comment period is not required to perform an interim action whereas under VCRA public comment is required, however **Mr. Heltibridle** says The Sparrow Group has expressed willingness to hold a public comment period. Referencing a flow chart comparing the CECRA and VCRA processes (see *EXHIBIT #48*), **Mr. Heltibridle** pointed out that under CECRA the requirements for feasibility studies are much more exhaustive than those for VCRA. Under CECRA, feasibility studies do not have to be completed before an interim action can take place. In this case, the DEQ feels that the soil removal plan is the most conservative and protective remedial strategy available and thus it would be wasteful of funding and resources to examine less-effective strategies. **Mr. Heltibridle** elaborated on enforcement options the DEQ has if The Sparrow Group engages in interim actions not consistent with DEQ requirements, including issuing public health advisories and requiring necessary cleanup, cease and desist orders, or applying for a judicial restraining order. If a developer does not meet required standards for residential development then the DEQ will not support that development. If the DEQ approves an interim action, assistance is provided in the form of prioritized project oversight.

CHAIRMAN HARRIS asked for clarification about what would happen if, after the top 2 feet of soil is removed, the confirmation sampling reveals quantities exceeding the 185 parts per billion/30 parts per trillion standards, and **Mr. Heltibridle** explained that more soil would be removed until the standards are achieved. CHAIRMAN HARRIS then asked if studies had been done on the surface water flow and any possible recontamination from it and **Mr. Heltibridle** replied that, relying on past indicators, surface water flow is from the less-contaminated northeast to the more-contaminated southwest.

REP. CLARK asked what is being done in the southern sector while the northern sector is being remediated. **Mr. Heltibridle** answered that a feasibility study is underway. REP. CLARK asked if it was possible that the northern sector would be cleaned up and developed before work on the southern sector even begins and **Mr. Heltibridle** replied that it was indeed possible. REP. CLARK then asked what efforts would be taken to keep children out of the toxic southern sector after the northern area is developed and **Mr. Heltibridle** explained that right now contaminated soil in the southern sector is covered by buildings or parking lots. When remediation begins excavation areas will be fenced, and the DEQ is currently looking at reinjection into existing wells on site and these would merely require capping.

REP. CLARK expressed concern that a potentially hazardous situation could develop with residential housing with children just down the street from the highly toxic southern sector and questioned the hurry to develop the northern sector before cleaning up the southern. **Denise Martin, Site Response Section Manager, Department of Environmental Quality**, responded, informing the Subcommittee that the southern sector of the Missoula White Pine Sash facility is already adjacent to residential areas and to address those concerns there has been soil sampling conducted in those adjacent areas. The southern sector is commercially active at this time and interim measures have been taken to limit direct exposure to the contaminants, including removal of surface contaminants, construction of parking lots, and landscaping. The DEQ feels that although work remains to be done to clean up the contamination it does not pose an unacceptable risk to nearby residents. REP. CLARK asked **Ms. Martin** if the DEQ is concerned about children playing and digging in that area now, and **Ms. Martin** replied that, based on what the DEQ has seen and how the facility is set up, it would be difficult for children to be in the area. REP. CLARK then questioned **Ms. Martin** about why the hurry to redevelop before the entire facility is cleaned up. **Ms. Martin** answered that the DEQ has tried to work with all the various people involved in a cleanup this extensive, and although she can see how the perception of this being "hurried" has come about, there has been no sidestepping of the protectiveness issue.

REP. CLARK asked about the status of the ponds on the northern sector. **Mr. Heltibridle** replied that the ponds were filled in about 1996 and no longer exist. **Ms. Martin** explained that when the remediation investigation began samples were taken from the native soil interface in the area of the ponds and what the DEQ found leads them to believe that few contaminants were dumped or leached into that area.

CHAIRMAN HARRIS commented to **Mr. Heltibridle** and **Ms. Martin** that, when formulating a response to the letter by Rep. Gutsche, the questions and legitimate concerns in the letter should be thoroughly addressed. **Ms. Martin** responded that the DEQ had looked at those concerns and listened to those of the Missoula City/County Health Department and was aware of the concern that interim actions might take place without a public comment period. The

Sparrow Group was willing to have a period for public comment but, **Ms. Martin** pointed out, this would slow the process down.

MS. PORTER asked if sampling had been conducted at the 2-foot depth on the northern portion and if so what kind of contaminant numbers were found at that depth and **Mr. Heltibridle** answered that yes, recent sampling had been done at that depth, and the contaminant levels of PCP were 4 parts per billion down to nondetectable levels. MS. PORTER followed with a question concerning a proposal heard the last time this issue was before the Council to release a portion of this site for the construction of City of Missoula facilities and **Mr. Heltibridle** and **Ms. Martin** responded that the Department had not released the site but that the city construction had proceeded. An office building was built at the corner of the City of Missoula property and the City of Missoula park property.

MS. PORTER asked **Amy Reynolds, past project officer for the CECRA Program for Missoula White Pine Sash**, to respond to questions about the ponds and **Ms. Reynolds** told the Subcommittee that before the ponds were filled in samples were taken of the sediment and little contamination was found. The overburden on the ponds is a plain fill.

CHAIRMAN HARRIS asked **Ms. Martin** to provide a copy of the Department's response to Rep. Gutsche's letter to the Subcommittee. Ms. Martin replied that she would, and if anyone had any further questions to please contact **Mr. Heltibridle** at 841-5067.

XI. INSTRUCTIONS TO STAFF

CHAIRMAN HARRIS asked if the Subcommittee felt it was appropriate to look into possible legislative action to develop meth lab cleanup standards and to recommend to the EQC that staff research this issue and present the Council with options for legislation and received the consensus of the Subcommittee. This is to be placed on the agenda for the next meeting.

CHAIRMAN HARRIS requested that the septage rule issue also be placed on the next agenda, to hear from the DEQ, sanitarians, and the wastewater association. REP. BARRETT asked for a summary of the public hearing that DEQ held.

MR. MITCHELL informed the Subcommittee that the specific tasks in their interim work plan were nearly completed and the agenda being developed for the March meeting was quite short as a result. MR. MITCHELL recommended that the Subcommittee look at how their statutory duties are handled, specifically processes for hearing about them, making decisions concerning them, and making recommendations to the full Council. MR. MITCHELL requested that the Subcommittee members review the ranking sheets, included as *EXHIBIT #39*, and decide what, if anything, they wish to do.

REP. CLARK asked that the bison hunt and game farm rules be placed on the next agenda.

REP. BARRETT suggested that a presentation of the five funding alternatives for wildland/urban interface fires be on the next agenda. MR. MITCHELL noted that he had been attending the meetings of the DNRC working group looking into funding alternatives and would continue to do so if desired. REP. BARRETT asked MR. MITCHELL for an update on what the three legislative divisions have learned.

CHAIRMAN HARRIS asked if the Subcommittee wished to recommend to the full EQC that the NRIS Advisory Committee and the Ground Water Assessment Steering Committee were valuable and that EQC staff participation in them is valuable and received the consensus of the Subcommittee.

REP. CLARK, referencing the forthcoming response to the letter from Rep. Gutsche to Jan Sensibaugh, requested that the DEQ include in the letter a statement, in writing, concerning the public comment period and the role of the DEQ in the public comment period.

MS. PORTER asked for an updated timeline concerning Missoula's reattainment efforts.

ADJOURN

CHAIRMAN HARRIS adjourned the Subcommittee at 5:50 p.m.

Further information regarding the EQC Agency Oversight Subcommittee including agendas, minutes, membership, interim work plan, and reports can be found at the following web site address:
http://www.leg.state.mt.us/css/lepo/2003_2004/subcommittees/agency_oversight/default.asp

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