



ENVIRONMENTAL QUALITY COUNCIL

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SONJA NOWAKOWSKI, Research Analyst
HOPE STOCKWELL, Research Analyst
CYNTHIA PETERSON, Secretary
TODD EVERTS, Legislative Environmental Analyst

MINUTES

Approved March 4, 2010

DATE: January 8, 2010

Room 172
Capitol Office Building

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

REP. CHAS VINCENT, Chair
SEN. BRADLEY MAXON HAMLETT, Vice Chair
SEN. JIM KEANE
SEN. RICK RIPLEY
SEN. JIM SHOCKLEY
SEN. MITCH TROPILA
SEN. BRUCE TUTVEDT
REP. SUE DICKENSON
REP. JULIE FRENCH (via telephone)
REP. MIKE MILBURN
REP. CARY SMITH
REP. FRANKE WILMER
MR. BRIAN CEBULL
MS. DIANE CONRADI
MS. MARY FITZPATRICK
MR. MIKE VOLESKY

STAFF PRESENT

JOE KOLMAN, Research Analyst
SONJA NOWAKOWSKI, Research Analyst
HOPE STOCKWELL, Research Analyst
DEBRA POLHEMUS, Secretary
TODD EVERTS, Legislative Environmental Analyst

VISITORS

Agenda ([Attachment 1](#))
Visitors' list ([Attachment 2](#))

COMMITTEE ACTION

- The EQC voted to authorize publication of "Permitting in Montana - A Reference Guide to Three Environmental Permits."
- The EQC voted to send a letter to Department of Environmental Quality (DEQ) asking the agency to undertake comprehensive rulemaking for the Comprehensive Environmental Cleanup and Responsibility Act (CECRA) and requesting that a stakeholder advisory group be formed.
- The EQC voted to object to the notice of proposed rulemaking by the Board of Environmental Review (BER) regarding greenhouse gas emissions.

CALL TO ORDER AND ROLL CALL

00:00:01 Chairman Vincent, Chairman of the Environmental Quality Council (EQC), reconvened the meeting at 8:30 A.M. The secretary noted the roll ([Attachment 3](#)).

AGENDA

Committee review

00:00:13 Todd Everts, Legislative Environmental Analyst, Legislative Services Division (LSD), discussed rulemaking authority pertaining to cabin leasing, greenhouse gases, and the Comprehensive Environmental Cleanup and Responsibility Act (CECRA) ([EXHIBIT 1](#)).

HJR--30 Study of Fire Suppression

00:00:55 Leanne Heisel, Research Analyst, LSD, announced that she will distribute a summary of the fire suppression information at the March meeting.

00:02:19 Barbara Smith, Legislative Fiscal Division (LFD), discussed her summary of the 2009 Fire Season Expenditures ([EXHIBIT 2](#)).

00:04:46 Mary Sexton, Director, Department of Natural Resources and Conservation (DNRC), reviewed the 2009 expenditures and fire activities within Montana,

which she said had a good fire season with only \$5.8 million in expenditures. Ms. Sexton stated that DNRC obtained the authority from the Fire Suppression Interim Committee in 2008 to spend \$1.25 million to build 27 more engines in addition to the 15 usually built each year. She also reported that the DNRC received federal funding of \$8 million and treated over 4,000 acres for fire hazard fuel reduction.

00:08:54 Bob Harrington, Forestry Division Administrator, DNRC, stated that he had just returned from a conference that discussed federal fire policy. Mr. Harrington showed the PowerPoint presentation the DNRC made at the conference ([EXHIBIT 3](#)). Mr. Harrington provided copies of DNRC's perspectives on federal fire policy ([EXHIBIT 4](#)).

Public comment

00:26:42 Richard Van Auken, Fire Chief, Teton County, discussed the impact new federal policy has on local governments. Mr. Van Auken stressed the value and importance of volunteer fire fighters, especially in Eastern Montana.

Questions and discussion

00:30:06 Senator Ripley asked if the state was anticipating full reimbursement for fire fighting expenditures incurred on federal lands, and Director Sexton responded that the majority of funds had been received and full receipt was anticipated.

00:31:22 Representative Dickenson inquired about the quantity of resources on federal land that could be used for biomass production, and wondered if the federal government would be a partner in providing resources for biomass. Mr. Harrington reported that much depends on Congress and any proposed energy bill, and whether they provide an incentive making biomass more economically feasible. He also noted that the federal government is not well-equipped to work with disease or bug-infested timber on federal lands.

00:35:53 Senator Hamlett commented on the phrase "fires that escape initial attack," and wondered if the federal policy is the same as the Montana policy being one of full suppression fire attack at all phases. Mr. Harrington reported that the federal government is still committed to full suppression in most areas, with the exception of remote areas where the federal policy sometimes is to have the area return to its original landscape.

00:39:43 Senator Shockley inquired whether it would be beneficial for the state policy to recognize the differences in initial attack of fires in remote areas versus more urban locations. Mr. Harrington reported that the state reviews its policy frequently and will follow the policy of returning fire to the landscape in a controlled or prescribed burn only.

00:42:59 Chairman Vincent asked if and when fires are managed for resource benefit should the agency be prepared to assume all costs of the fire. Mr. Harrington

responded that if a fire is managed 100 percent for resource benefit, and no suppression effort is made, the agency agrees it will pay 100 percent of the cost.

Further presentation - HJR 1 -- Study of Biomass (energy transmission issues)

00:54:28 John Fitzpatrick, representing NorthWestern Energy, discussed energy transmission issues relative to biomass.

Questions and discussion

01:02:09 Senator Tutvedt inquired about the Mountain States Transmission Intertie (MSTI) project which will export wind power out of Montana. Mr. Fitzpatrick responded that the economy of the state is not built upon the resources the local economy uses (e.g. copper). Mr. Fitzpatrick further stated that this project would provide economic development in several counties plus the state would benefit from tax revenues. Senator Tutvedt further inquired about the economic feasibility of producing biomass. Mr. Fitzpatrick agreed that the economics of biomass is the main constraint because its profit circulates around the cost of fuel.

01:12:01 Representative Wilmer asked about the progress on two transmission lines, the Montana-Alberta Tie line and the Chinook line. Mr. Fitzpatrick stated he was uncertain considering these are not NorthWestern's projects, but understood the Montana-Alberta line would start construction this spring and was uncertain of the status of the Chinook line.

01:13:00 Senator Shockley stated that in testimony given yesterday the wholesale cost to generate electricity using wood from forests is \$0.12. Senator Shockley asked Mr. Fitzpatrick if he thought that number was a reasonable estimate. Mr. Fitzpatrick responded that the range of prices from a third party who has come to NorthWestern to discuss contracts have been between \$95 and \$150. Senator Shockley inquired about the certainty of litigation that would result in any attempt to cut down trees on federal lands. Mr. Fitzpatrick responded that getting the biomass off federal land is of primary concern.

01:20:51 Representative Dickenson asked about rural co-ops and their transmission capacities and whether they used NorthWestern Energy lines. Mr. Fitzpatrick responded that most co-ops do not operate transmission lines. Representative Dickenson stressed she favored the use of agricultural biomass in addition to wood biomass and asked what would be needed to have six to eight facilities that could use agricultural biomass. Mr. Fitzpatrick stated that the biggest constraint for an agricultural biomass facility is that the product is widely disbursed and the transportation cost would not be feasible.

01:25:55 Representative Wilmer asked about the loss of trees due to pine beetle infestation and whether access to these trees was difficult. Mr. Fitzpatrick responded that the largest percentage of beetle kill is on national forest land and that the federal government is not allowing logging of the dead trees on this land.

- 01:26:52 Ms. Conradi asked whether NorthWestern Energy had a minimal trigger to put power on their lines. Mr. Fitzpatrick responded that NorthWestern did not have a minimal trigger. Ms. Conradi inquired to the benefit of using biomass as a firming power. Mr. Fitzpatrick responded that a biomass plant cannot be used for firming. Mr. Fitzpatrick further stated that disbursement is not that important and that since electricity moves at the speed of light, once it goes into the grid, the power is there.
- 01:28:44 Senator Hamlett asked how far power could be efficiently transmitted. Mr. Fitzpatrick responded probably any distance and what is important is the line losses. Mr. Fitzpatrick estimated that power could still be efficiently transmitted up to 500-600 miles.
- 01:30:22 Chairman Vincent shared that Oregon had entered a long-term contract (ten years) with the U.S. Forest Service (USFS), but the courts overturned the contract.
- 01:32:04 BREAK

AGENCY OVERSIGHT: FISH, WILDLIFE & PARKS (FWP) - Wolf Management

- 01:46:04 Ken McDonald, Bureau Chief, Wildlife Division, FWP, introduced FWP staff members.
- 01:47:18 Bob Lane, Chief Legal Counsel, FWP, recapped Montana's recent wolf hunt. Mr. Lane reported that out of the 75 wolf kill quota, 72 were actually harvested. He further stated that a primary issue is whether the wolf species should be delisted.
- 02:02:05 Ken McDonald, FWP, discussed the 2009 Montana Wolf Hunting Season. ([EXHIBIT 5](#)).

Public comment

- 02:05:55 Senator Debby Barrett, (SD 36), stated that the agency has a choice whether or not to use incremental management for wolves. Senator Barrett stated that incremental management is not adequately helping mitigate livestock losses experienced by landowners ([EXHIBIT 6](#)).
- 02:08:27 Carol Giem, Giem Ranches, Inc., Twin Bridges, discussed her experiences with wolf depredation.
- 02:12:57 Jon Konen, representing Rebish & Konen Livestock, Beaverhead and Madison Counties, reported that since 2002 his ranches have had 461 confirmed wolf kills, and that it took a long time to issue elimination orders even after so many massive killings of livestock. Mr. Konen also suggested that funds generated from the licenses for wolf hunting should go to a livestock loss and mitigation program to help livestock owners. Mr. Konen also believed that the hunting quota is too low and that the boundaries of the districts are way too wide.

- 02:21:33 John Youngberg, representing Montana Farm Bureau Federation, (MFBF), expressed concern about the incremental management program.
- 02:24:12 John Baucus, Sieben-Baucus Ranch, north of Helena, commented that they have been dealing with wolves for 12 years, and the issue of incremental management is important. Mr. Baucus's ranch has not only lost livestock but guard dogs too. Mr. Baucus felt that the cost the landowner bears is very large.
- 02:29:21 Jim Brown, representing the Montana Wool Growers' Association, Dillon, stated that his group supports the concept of whole pack management in dealing with wolves. Mr. Brown further stated that the bearers of the cost are primarily the land and livestock owners, and that only one in seven wolf kills receives compensation.
- 02:32:53 John Helle, Dillon, stated that his ranch also experienced many wolf kills and expressed concern about the lack of coyote control due to a focus on wolf control.
- 02:39:36 Fred Hirschy, Jackson and Wisdom, expressed frustration trying to verify the number of livestock wolf kills.
- 02:43:18 Eric Hansen, Hansen Livestock, stated that his ranch as had several confirmed cattle and sheep kills and yet only one wolf has been killed.
- 02:45:02 Bob Ream, FWP Commission, former Montana Representative, stated that he has studied wolf issues extensively and recognizes the problems expressed through the testimony presented. Mr. Ream noted that the wolf population is presently five times the level that existed in 1987.
- 02:49:18 Craig Glazier, U.S. Dept of Agriculture (USDA), Wildlife Services, stated that his department is the one that investigates wolf kills.

Questions and discussion

- 02:50:36 Senator Tutvedt asked what number of wolf packs existed in 2009. Carolyn Sime, Wolf Program Coordinator, FWP, stated that while the information for 2009 is presently being compiled, the department is expecting a ten percent increase in the population over 2008. Ms. Sime further reported that in 2008, there were 84 wolf packs with 34 breeding pairs.
- 02:55:37 Senator Shockley questioned whether the rules require the department to be incremental in its approach. Ms. Sime responded that specifically in the Beaverhead County situation, the significant sheep losses were from two wolf packs plus additional wolves, and FWP eliminated both packs. Senator Shockley asked why the department did not try this approach first rather than the incremental approach. Ms. Sime responded that numerous wolves repopulate the area and it is extremely difficult to identify which wolf is creating the losses.

- 03:01:58 Mr. Cebull inquired about the slow response time landowners experience after a wolf kill. Ms. Sime reported that the goal is to respond with 24 hours, and that the decision of incremental management versus full elimination is made at the field level. Mr. Cebull inquired about the \$325,000 that was generated in license fees last year and whether part or all of it could be used for livestock mitigation and livestock owner reimbursement. Hope Stockwell, Research Analyst, LSD, commented since the license fees were not appropriated to a specific account, the revenue went to the FWP general fund.
- 03:04:51 Senator Ripley stated he would like to see a formula for reimbursement of all costs including time, labor, and aborted cows. Senator Ripley further stated that the incremental approach did not appear to be working and wondered what the plans were to make improvements. Mr. McDonald replied that the state must maintain the management authority, and recognized that trapping might be an effective tool.
- 03:09:38 Senator Hamlett asked a hypothetical question of Mr. Hirschy and wondered what the consequences would be if a rancher were in his pasture and his cattle were attacked by wolves and the rancher takes the "direct management" approach and shoots the wolves. Mr. Hirschy responded that nothing would happen; however, it is difficult to see wolves because they are nocturnal.
- 03:11:02 Representative Smith asked whether wolves are ever killed for health reasons. Ms. Sime responded that FWP does not require the entire wolf carcass to be brought in, just the skull and pelts. She further stated that harvested samples are not tested because the department does not have the intestinal tract. Ms. Sime stated that tapeworm has been documented in Montana wolves.
- 03:15:44 Senator Tropila asked about the financial loss of the large kill day. Mr. Konen responded that of the bucks or rams, he would have received between \$250 to \$700 at auction, and the average replacement for the bucks was \$500.
- 03:18:40 Senator Hamlett inquired about allowing the landowners who experienced any depredations to hunt or kill wolves on their property if that would be negative to the general public. Ms. Sime reported that most depredations occur on private land but the unregulated taking of wolves could have a negative consequence on the management plan. Senator Hamlett inquired what time of day wolves could be hunted. Ms. Sime responded one half hour before sunrise to one half hour after sunset.
- 03:23:46 Senator Tutvedt inquired about the number of wolf packs in Montana and the estimated number of uncounted packs. Ms. Sime said that she will furnish more information at the March meeting. She additionally reported that FWP is working on additional ways to estimate numbers of wolves more accurately.
- 03:26:55 Chairman Vincent asked the department to furnish the committee with the total state and federal program cost of managing the wolves.

Environmental Public Health Tracking Update

- 03:27:45 Hope Stockwell, LSD, introduced presenters on developing a hospital discharge data collection system.
- 03:30:04 Todd Harwell, Chief of Chronic Disease Prevention, Public Safety Division, Department of Public Health & Human Services (DPHHS), introduced the proposal to establish a hospital discharge data collection system to monitor health trends (**EXHIBIT 7**).
- 03:35:12 Bob Olson, Vice President, Montana Hospital Association (MHA), reported that all major facilities are going to be participants in the system and that outpatient services data will also now be included. Mr. Olson commented that the data will be used for market analysis, reviewing services, and quality control and some data elements will not be included, such as age, zip code, and ethnicity information.
- 03:37:50 Dr. Douglas Moore, Indian Health Service (via telephone), expressed interest in working with the state on sharing data and partnering in the project. Dr. Moore emphasized the importance of setting up Memorandums of Understanding to verify how the information is to be handled.
- 03:41:15 Ruth Linfield, RN, Chief of Quality and Improvement, Montana Veterans Healthcare System, shared that the Veterans Administration (VA) cannot release provider information, or veteran specific data.

Public comment

There was no public comment.

Questions and discussion

- 03:43:23 Representative French (via telephone) stated that some data fields are not collected including zip code, names, ethnicity, and she asked why small rural hospitals are not participating. Mr. Olson responded that with small rural hospitals there is a sufficient workload and resource difficulties for them to cooperate. He further stated that electronic record keeping assists smaller hospitals with transmitting data, but not all smaller facilities have this technology.
- 03:50:17 Representative Dickenson wondered if the information could be obtained directly from the state without going through the MHA. Mr. Moore responded that once a letter of understanding is agreed to, the information could go either direction. Representative Dickenson inquired about the cost of obtaining the information. Mr. Harwell said the state pays \$25,000 annually to obtain access to the information. Representative Dickenson asked what the justification was for the MHA to charge the state for this data. Mr. Olson responded that the MHA spends much more than \$25,000 to collect this data, and if the state were to try and obtain this information, it would cost far in excess of the \$25,000 charge.

03:58:10 LUNCH

HB 42 Forest Management Plan

- 04:40:51 Chas Van Genderen, Parks Division Administrator, FWP, discussed the fuel load assessment in Montana. (**EXHIBIT 8**). Mr. Van Genderen circulated a chart recapping the Timber Management Projects from 2006-09 in Montana State Parks (**EXHIBIT 9**).
- 04:44:59 Ken McDonald, FWP, presented a summary of progress on implementation of HB 42 from the wildlife perspective (**EXHIBIT 10**).

Public comment

There was no public comment.

Questions and discussion

- 04:48:36 Senator Tropila asked if there has been cooperation between the DNRC and FWP. Mr. McDonald replied there had, especially at the regional level where regular consulting occurs between the agencies.
- 04:50:27 Senator Keane asked about the level of funds that go to the smaller, lesser known, more primitive parks such as Headwaters State Park. Mr. Van Genderen said that the department is looking more internally at the practices and hopes to make parks better for the citizens, which will entail looking for more revenue streams outside of state money.
- 04:55:26 Chairman Vincent asked how much of the 41,000 acre Fish Creek acquisition is the department going to turn into park lands. Mr. McDonald replied that 6,000 acres would be park area and the remaining would be a wildlife management area. Chairman Vincent asked if funding is a question at all state parks. Mr. Van Genderen responded that the last Legislature gave \$10 million to purchase new lands, but no additional money for the increase in operating costs. Chairman Vincent asked whether any type of fuel load assessment on the property has been conducted. Mr. McDonald responded that the initial assessment showed 500 miles of roads and timber resources are limited since the land has been logged, burned, and logged again.
- 05:04:48 Senator Shockley inquired about Senator Barrett's bill that stated the department must spend 25 percent of its budget on maintenance. Mr. McDonald responded that SB164 (good neighbor bill) stated that 20 percent of land acquisition should be set aside for land maintenance. He further shared that Habitat Montana also requires an annual plan for the operations and maintenance issues of the parks. Ms. Stockwell further reported that it included a provision to have an annual report given to EQC in September each year.

Permitting Primer Publication Update

05:10:07 Ms. Nowakowski introduced "Permitting in Montana" a reference guide for obtaining environmental permits (**EXHIBIT 11**) for:

- Opencut Mining,
- Wastewater, and
- Air Quality

Questions and discussion

05:13:12 Mr. Cebull asked whether a permit is needed for a wind farm in Montana. Ms. Nowakowski responded no permit is needed.

Motion and Vote

05:13:53 Ms. Conradi moved to authorize publication of the "Permitting in Montana - A Reference Guide to Three Environmental Permits." There was no further discussion and the motion was approved unanimously by voice vote.

Presentation (continued)

05:14:41 Bonnie Lovelace, Bureau Chief, Water Protection Bureau, DEQ, presented information on the business processes the DEQ is charting, similar to the "Permitting in Montana" document, including an Enforcement Complaints Flowchart (**EXHIBIT 12**).

Public comment

There was no public comment,

Questions and discussion

There were no questions or discussion.

SB 97-- Petroleum Tank Release Fund

05:19:12 Hope Stockwell, LSD, gave a PowerPoint presentation (**EXHIBIT 13**) and circulated an update of the revenue and expenses for the Petroleum Tank Release Fund (**EXHIBIT 14**).

Questions and discussion

05:25:15 Representative Wilmer asked the name of the lawsuit Ms. Stockwell referenced in the presentation. Ms. Stockwell was not sure of the specific title, but identified the law firm in West Virginia as Bailey & Glasser, LLP.

05:26:13 Representative Dickenson wondered whether the fuel tax decreases illustrated on the chart were due to the increasing efficiency of vehicles and the decreasing

road travel of the public. Representative Dickenson also wondered if the Legislature needed to find a way to increase funding for this account. Terry Wadsworth, Executive Director, Petroleum Tank Release Compensation Board, stated that the board secured a loan to cover the amount of shortfall in 2007, but that the revenues in relation to expenditures are on the way to balancing. Mr. Wadsworth further stated that the concern of dipping revenue is generally not due to public consumption as much as diesel and trucking activity, which is directly reflective of the economic situation.

Public comment

05:34:58 Ronna Alexander, representing the Petroleum Distributors and Convenience Store Association, recognized that the fund is walking a fine line between self-sustaining solvency and seeking other revenues and is pleased that the board has resisted the pressure to borrow more money.

Update on Water Policy Interim Committee

05:38:46 Joe Kolman, Research Analyst, LSD, circulated an update on the workings of the Water Policy Interim Committee and the agenda for next week's meetings ([EXHIBIT 15](#)).

Public Comment

There was no public comment.

Questions and discussion

05:42:45 Ms. Conradi asked about the tenor of the discussion on wetlands. Mr. Kolman replied that wetland water permits are given with the demonstration of beneficial use and that the department is processing those which are generally for water fowl or wildlife.

Update on Energy and Telecommunications Interim Committee

05:44:23 Ms. Nowakowski, LSD, stated the Energy and Telecommunications Interim Committee (ETIC) will meet next week. She stated that the required review of Montana's energy policy per Senate Bill 290 was started in September 2009 and is ongoing.

Public comment

There was no public comment.

Questions and discussion

There were no questions or discussion.

05:49:01 BREAK

Agency Oversight--DEQ: CECRA Rulemaking (Comprehensive Environmental Cleanup & Responsibility Act)

- 06:00:57 Todd Everts, Legislative Environmental Analyst, LSD, explained that the EQC has the authority to review agency rulemaking processes to ensure that the format of the rule is correct, the agency has the authority to adopt the rule, and that the rule is necessary (**EXHIBIT 16**).
- 06:07:27 Mike Trombetta, Bureau Chief, Hazardous Waste Site Cleanup Bureau, DEQ, explained the department's proposed rules.

Public comment

- 06:17:57 Leo Berry, Attorney, Helena, representing Burlington Northern Santa Fe Railway, expressed concern with the proposed rules. Mr. Berry stated that a large problem is that there are no comprehensive set of rules to implement CECRA. Additionally, Mr. Berry questioned the process of how to get on the Superfund list and how to be removed from the Superfund list. To aid the EQC, Mr. Berry circulated a current list of Montana Superfund sites (**EXHIBIT 17**).

Questions and discussion

- 06:25:20 Mr. Cebull commented that the DEQ had successfully partnered with stakeholder groups and asked Mr. Berry if he would like to see the same partnering to work on rules for CECRA. Mr. Berry responded that he would favor that effort. Mr. Cebull inquired of the DEQ if they would consider putting together a group of stakeholders to accomplish this task. Mr. Trombetta said that they had not contacted any stakeholders because this effort was not to establish new rules but rather to clarify present rules. He stated that in the future a cooperative committee would be beneficial.
- 06:27:34 Senator Tutvedt stated that it appears easy to get on the Superfund list yet extremely difficult to get off. Mr. Trombetta responded that the department has delisted 60 Superfund sites and agreed that there are very few rules for the CECRA statute. Senator Tutvedt asked if there is a clear way off of the list. Mr. Berry responded that there are two key issues: The first is having a comprehensive set of rules; the second is issuing "No Action" letters to allow people to sell or develop the property. Senator Tutvedt asked about the procedure for a comprehensive rulemaking process. Mr. Berry believed that policies should be better identified and not writing the rules down leaves unbridled discretion within the agency. Senator Tutvedt inquired what the EQC would do to begin this process.
- 06:33:06 Mr. Everts responded that the EQC could draft a letter asking the agency to conduct rulemaking at that level or draft a bill to ask the agency to conduct rulemaking.
- 06:33:58 Senator Shockley stated that his experience is that it is extremely difficult to get off the list and inquired why a deed restriction is not used. Mr. Trombetta stated

that institutional controls are used quite often, but the department cannot delist a site that has public health concerns.

- 06:36:56 Denise Martin, Site Response Section Manager, DEQ, stated the department has been using restrictive covenants and notices to alert potential buyers specifically with ground water issues. Ms. Martin said that at the Darby Lumber site, the department is exploring institutional controls and is working with a potential developer, but that contaminated ground water is still an issue.
- 06:42:05 Mr. Volesky stated that any group could petition the department for rulemaking and inquired whether Mr. Berry's clients had considered this. Mr. Berry replied that the director of DEQ had made an offer to have the regulating community offer suggestions and his client was considering this.
- 06:44:06 Senator Ripley inquired whether the 60 delisted sites mentioned previously were still on the list (Exhibit 16). Mr. Trombetta replied that the 60 had been removed from the list.
- 06:52:10 Senator Shockley noted the BNSF site in Livingston had been a high-priority site for many years. Mr. Trombetta responded the site had been through the decision making process and the department is recovering thousands of gallons of free product from the railroad and tremendous progress is being made.
- 06:53:56 Chairman Vincent inquired whether the department was planning on noticing the 209 people on the current list. Mr. Trombetta said the current statute says the noticing process must notify all potentially liable parties and not just current owners, but any parties who may have been part of the contamination process, which is a very difficult process. He further elaborated that the department must investigate the site and the landowners, determine where the raw materials came from, and determine where the end products went.
- 06:56:33 Senator Tutvedt specifically asked Mr. Berry whether he was requesting the EQC to request that a committee be formed of interested parties in comprehensive rulemaking authority. Mr. Berry responded that step would receive a positive response.
- 06:57:36 Senator Hamlett asked for the definition of a "transporter" relating to potentially liable parties to contamination of a site. Ms. Kathryn Hauck-Hausrath, Attorney, DEQ, stated that the definition can be found in Section 7.15 of CECRA.

Directions for staff

- 06:59:39 Senator Tutvedt moved that the department continue with its stakeholder working group and conduct comprehensive rulemaking on CECRA.

Discussion

- 07:00:01 Representative Dickenson commented that the EQC needs to be realistic, that this is not a simple task, and the department may not have resources available to accomplish the directive. this.
- 07:01:08 Mr. Cebull asked to clarify that the EQC is requesting a comprehensive layout of the road map and suggested a friendly amendment to form a stakeholder advisory group.
- 07:02:03 Mr. Volesky asked Mr. Berry what he believed would be most helpful. Mr. Berry responded that even though the department met with a stakeholder group, the group was not inclusive of all stakeholders. Mr. Berry stated that the expanded group should continue to meet and discuss the proposed rules.
- 07:03:16 Senator Tutvedt withdrew his motion.

Motion and Vote

- 07:03:25 Mr. Cebull moved that the EQC send a letter to the DEQ for this or any future rulemaking regarding CECRA and request that they form a stakeholder advisory group, and that they undertake comprehensive rulemaking.
- 07:04:30 The motion carried unanimously by voice vote with Senator Hamlett voting Senator Tropila by proxy.

Agency oversight -- Board of Environmental Review Greenhouse Gas Emission Rulemaking

- 07:05:53 Todd Everts introduced Director Opper who presented the technical aspects of this proposed rulemaking.
- 07:06:56 Richard Opper, Director, DEQ, presented an overview of the proposed greenhouse gas emission rule. Director Opper said the federal government will make the decision on regulating greenhouse gases, and that the DEQ is attempting to control the subsequent impact on residents and small businesses. If the rule is adopted, Director Opper believed it would ease the impact of the permitting process.

Public comment

- 07:21:13 Dave Galt, Executive Director, Montana Petroleum Association (MPA), expressed concern about the direction the EPA is taking on greenhouse gases, prior to any federal legislation or adoption of rules. Mr. Galt stated that MPA believes the EPA does not have the regulatory authority to regulate greenhouse gases and of great concern are the "tailoring" rules. Mr. Galt believed that the EPA has seriously underestimated the number of entities that will be affected by these proposed changes ([EXHIBIT 18](#)).

- 07:28:24 Bud Clinch, Executive Director, Montana Coal Council, stated his organization is extremely concerned that this rule will have a strong effect in Montana and that it will require thousands of new permits and regulation requirements.
- 07:32:17 John Youngberg, representing the Montana Farm Bureau Federation (MFBF), stated that this new rule is a "cow tax" and would have a dire affect on the agricultural industry.
- 07:35:04 Jim Parker, Manager, Environmental Compliance Services, PPL Montana, expressed concern that at the end of the process there would exist a Montana-only rule/regulation similar to the Montana mercury rule.
- 07:37:56 Jon Bennion, representing the Montana Chamber of Commerce, agreed with all prior comments. Mr. Bennion stated that the key word is uncertainty, which is not a positive word for small businesses.
- 07:39:20 Jay Bodner, representing the Montana Stock Growers Association (MSGA), was uncertain how agriculture would fit in with this rule and thought there would be a benefit to having Montana wait to move ahead and see what happens nationally.
- 07:41:41 Hailey Beaudry, Engineer, Columbia Falls Aluminum Company, said that the company is presently negotiating with a power company to make the plant operational. However, Mr. Beaudry stated that when Montana is the only state to take these steps it causes great uncertainty in the business community and bankers are very cautious and are not allowing investments in areas of uncertainty.
- 07:44:55 Hope Stockwell, LSD, circulated faxes to be included with public comments (**EXHIBIT 19**).

Questions and discussion

- 07:45:23 Mr. Volesky commented that through rulemaking authority, Montana already incorporates the ability to automatically update its rules as federal rules change.
- 07:46:39 Dave Klemp, Bureau Chief, Air Quality Permitting & Compliance Section, DEQ, stated that each state is in a unique position and some states are delegated states and they automatically adopt the federal standards.
- 07:48:56 Mr. Volesky commented on the threshold for permitting criteria pollutant at 25 tons per year and when you add CO₂ or other greenhouse gases to that, 25 tons does not make sense. Mr. Volesky recommended allowing upwards movement, so Montana is regulating fewer facilities.
- 07:53:33 Representative Wilmer stated that this effort started from a 2007 Supreme Court case with a lawsuit (*Massachusetts vs. EPA*) brought under the Clean Air Act. Director Opper replied that the EPA rule would address the six greenhouse gases added to the list of pollutants that need to be regulated. Representative

Wilmer inquired whether other states had added greenhouse gases to their list of pollutants. Director Opper replied that no other states had.

- 07:57:34 Senator Tutvedt commented that the state should go slow or just wait considering the Montana Chamber, and representatives from the agricultural industry, petroleum industry, and mining industry have all spoken out against this proposal. Director Opper replied that if the EPA acts soon, that there would be a period of exposure and Montana would have to operate outside of new law, or be prepared to issue a large amount of permits.
- 07:59:42 Ms. Conradi asked if the EPA rule would be challenged. Dave Rusoff, Staff Attorney, DEQ, said that the regulation is clear that the state rule would have the same outcome as the federal rule.
- 08:01:09 Representative French asked if the federal government allows the state to have time for rulemaking to come into compliance with federal laws. Director Opper replied that if the federal government introduces a new program, then the state is usually given time to come into compliance. However, this is not the case now because all the federal government will be doing is adding more pollutants to the present list of pollutants. Representative French inquired what would happen if the state did not have its tailoring rule in place if the EPA's new regulations were approved. Director Opper reported that the department would immediately need to issue thousands of new permits, or the state could openly defy the federal government and continue operating with previous standards. Representative French asked how cattle producers would be affected. Director Opper replied that if the EPA passes the rule, it would lessen the effect on the agricultural community. Mr. Klemp stated that a state is prohibited from regulating agricultural lands and only the federal government can regulate them.
- 08:09:52 Senator Shockley inquired about the Best Available Control Technology (BACT) rules. Mr. Rusoff replied that the language in the state rules will automatically trigger that any owner or operator submitting for a permit application over 25 tons per year will be required to submit an analysis. Senator Shockley asked if there is a BACT to control CO₂. Mr. Klemp responded that when reviewing greenhouse gases it is not just CO₂, but methane gas and four others as well.
- 08:17:40 Senator Ripley asked what the consequences would be if the state responded similar to the Federal ID act and said that the state cannot afford it and does not want to do it. Director Opper replied that the EPA would challenge the state legally, and the state would be in violation of federal requirements, and EPA could then be the primary regulator and overseer of air quality issues.
- 08:19:42 Representative Milburn asked about the effect the uncertainty of the federal government rules will have on the agricultural community. Mr. Youngberg responded that the agricultural community is mostly concerned and frustrated with the endangerment ruling. Representative Milburn stated that he was nervous about making Montana rules based on what we believe the EPA might be doing. Representative Milburn questioned whether the state should send the EPA a message that Montana will need time for rulemaking after the EPA adopts a rule.

Director Opper stated that DEQ has initiated the rulemaking process, so that Montana can implement the rules once the EPA standards are decided.

08:28:04 Senator Hamlett questioned the different statistics presented today concerning the number of cows a ranch could have before it would exceed the threshold of 25,000 tons per year. Mr. Volesky replied it would be 12,500 head.

08:29:15 Representative French asked if there was a possibility for the state of Montana to negotiate when they will begin to abide by the federal government rules. Director Opper replied Montana could also be sued by constituents for not following federal regulations, and he also felt that there should be a period of negotiation between the state and federal government.

08:32:07 Representative Wilmer commented about what might happen when a state refuses to comply with federal regulations noting that sometimes the federal government withholds funding which would have budgetary consequences.

Committee action

08:33:21 Representative Milburn questioned the legality of preempting the federal government in rulemaking.

08:34:02 Todd Everts, LSD, stated that the Legislature delegates rulemaking authority to agencies under the Montana Administrative Procedures Act and the EQC has a variety of options for intervening in the rulemaking process:

- object to the rulemaking notice itself (which will have the impact of delaying the adoption of the rule until the last publication of the Montana Administration Register within a 6-month period);
- request an economic assessment;
- withdraw objection, if the EQC meets as a body; and
- object to the rule itself (which will delay the adoption of the rule until the next legislative session).

Mr. Everts stated that as staff attorney he is required to flag issues for legality and constitutional issues, and had identified the following potential issues:

- Did the BER clearly identify that the rule is necessary?
- Does the BER have the authority to adopt the rules?
- Is this rulemaking subject to the Montana Environmental Policy Act (MEPA)?

08:40:59 Representative Milburn asked for an explanation about the BER and their authority to adopt rules. Ms. Conradi responded that the legislative and regulatory authority already exists. Mr. Everts noted that this was contingent upon the action of the EPA.

08:45:37 Representative Milburn asked if the EQC were to object to the notice, could the BER continue on, and does this allow them to continue with the process or

whether it stops the process. Mr. Everts responded that they could continue and that the objection would just delay the date of adoption.

Motion and vote

- 08:46:13 Representative Milburn requested that the EQC demand more time and, if the EPA makes a ruling, that the state be given sufficient time to implement procedures. Representative Milburn moved that the EQC object to the notice of the proposed rulemaking (the permitting threshold of greenhouse gases).
- 08:47:34 Representative Dickenson reminded the EQC who the BER is and what their job has been. Representative Dickenson is opposed to the objection to the notice and requested the process continue.
- 08:51:15 Senator Keane responded that he supports the motion because he is a legislator and feels a duty to object to most mandates.

The motion passed 10-6 with Representatives Dickenson, French, and Wilmer, Senator Tropila, Ms. Conradi and Ms. Fitzpatrick voting nay and Senator Tropila, Mr. Cebull, and Mr. Pattison voting by proxy ([EXHIBIT 20](#)).

Additional public comment

There was no additional public comment.

Adjournment

Chairman Vincent adjourned the EQC meeting at 5:45 P.M.

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