



# ENVIRONMENTAL QUALITY COUNCIL

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## AGENCY OVERSIGHT SUBCOMMITTEE MINUTES

March 9, 2004

Rm. 102, Capitol Building

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Exhibits and tapes are on file at the Legislative Environmental Policy Office.

### **COMMITTEE MEMBERS PRESENT**

REP. DEBBY BARRETT, Vice Chairman  
REP. PAUL CLARK  
REP. CHRISTOPHER HARRIS, Chairman  
REP. DONALD HEDGES  
REP. JIM PETERSON  
SEN. MICHAEL WHEAT  
MR. HOWARD STRAUSE

### **COMMITTEE MEMBERS EXCUSED**

MS. ELLEN PORTER

### **STAFF PRESENT**

LARRY MITCHELL, Research Analyst  
KIP DAVIS, Secretary

### **Visitors**

Agenda, [ATTACHMENT #1](#)  
Visitors' list, ATTACHMENT #2

## COMMITTEE ACTION

- Adopted January 13, 2004, Subcommittee minutes.

### I. CALL TO ORDER AND ROLL CALL

The meeting was called to order at 8:10 a.m. by CHAIRMAN HARRIS, and the secretary went through the roll call ([ATTACHMENT #3](#)).

**II. Public Comment** - on any matter not contained in this agenda and that is within the jurisdiction of the EQC. -- None

### III. Agency Oversight Issues Followup

- Methamphetamine lab bill draft discussion. A draft bill, for discussion purposes only, is included as [EXHIBIT #1](#). A paper discussing possible funding options for a meth lab cleanup program is included as [EXHIBIT #2](#).

**Dr. Mike Spence, State Medical Officer, DPHHS**, told the Subcommittee that he had talked to his counterparts and health officials in 8 states (Minnesota, Wisconsin, Missouri, Kansas, Utah, Arizona, Washington, and Oregon) regarding meth lab cleanup activities and standards and there is a consensus on several issues. Standards can be set at detectable levels and should entail standards to get rid of the most toxic chemicals, especially heavy metals, volatile organic compounds, and the methamphetamine itself. Washington law does not include standards for iodine, which is a metal, but the state now recommends that iodine should be included. Most of the chemicals found in a meth lab are the same chemicals found in household cleaning products and school chemistry labs and cleanup can be performed to designated standards by either the homeowner or a certified cleaning service, depending on state laws. Most of the chemicals involved do not penetrate painted walls, so can be washed off, and if the chemicals penetrates a carpet it does not do so invisibly--there are visible signs and, although carpet may have to be removed, the remainder of the cleaning can and is being done to standards. After the property is cleaned up to the standard required the property should be inspected by professionals who take samples which are sent to commercial labs to test for residue. If no residue is found the property can be considered clean. The other states are also in consensus on the point that the onus should be borne by the homeowner or property owner, because they have the option of who to rent their property to, just as other onus of other contaminants, such as lead, are borne by the homeowner.

CHAIRMAN HARRIS asked **Dr. Spence** if he considered the levels of standards set in the draft bill to be appropriate and **Dr. Spence** answered that it was the current standard being applied by other states. CHAIRMAN HARRIS, noting that the specific standard in the draft bill might be a surrogate for other contaminants, asked if **Dr. Spence** if he felt that was reasonable. **Dr. Spence** replied that if a property was cleaned to that standard it would be an acceptable surrogate marker for the property being cleaned. CHAIRMAN HARRIS asked if it is possible to test to that standard and does Montana have adequate laboratories for the testing and **Dr. Spence** replied that was an easy standard to test for in commercial labs, although the state lab is not capable of handling the testing at this time. CHAIRMAN HARRIS questioned if there are any other laboratories in state government capable of doing the testing and **Dr. Spence** answered that he had not looked into whether there are or not. CHAIRMAN HARRIS asked if

there was any danger to the average homeowner who is involved in cleaning up a meth lab. **Dr. Spence** replied that it would be less than prudent to say that any homeowner could walk in and clean up any property but any homeowner could easily contract to have it done because Kleen King and other existing companies in Montana can do the required cleanup. CHAIRMAN HARRIS, noting that the draft bill would have the DPHHS certify the cleanup crews, asked **Dr. Spence** if he agreed with that approach and **Dr. Spence** answered that he agreed with the certification of the crews who would take the samples and send them for testing.

REP. CLARK questioned Dr. Spence if, from his research in other states, other states are taking the responsibility on a state level for deeming an area "certified clean" and asked who was responsible for certifying a property "certified clean" and safe for continued use. **Dr. Spence** answered that the other states follow the procedure that once a meth lab is identified and the chemicals removed by law enforcement then the cleaning crew comes in, and when the cleanup is complete a certified inspector takes samples which are sent to a lab. When the lab results come back showing that the standards have been met, the property owner is given certification that the property is clean.

SEN. WHEAT questioned the state's involvement, asking why, if a private company comes in and cleans the property and certifies that it is clean, the state should recertify the property and why can't the state just license companies to do this and **Dr. Spence** replied that it is an option and, if a company certifies that a property has been cleaned to standards, that could be adequate.

REP. BARRETT asked if **Dr. Spence** is aware of any recent federal funding available to the state for this issue and **Dr. Spence** replied that there was no federal funding available at the current time and that other states rely on appropriations from their general funds.

MR. STRAUSE asked **Dr. Spence** if he was in favor of dual system of certification, with one system having the homeowner submitting an affidavit saying that the property is professionally cleaned and the state gives approval and the second involving the homeowner performing the cleanup himself which the state would then certify. **Dr. Spence** answered that either scenario could work in Montana, with the homeowner paying for the sampling and testing of the samples. With regard to certified cleaning companies, **Dr. Spence** is not sure that the state is equipped to conduct a certification process but the state could make sure that cleaning companies have access to necessary training. MR. STRAUSE, noting that the draft bill puts the burden of certifying cleaning companies on the state, asked **Dr. Spence** if the state could do it and **Dr. Spence** replied that he has no objection but is unsure if the state has the knowledge and capability to do the job, and if a cleaning company goes through a training program it would seem to be adequate certification. MR. STRAUSE, remarking that he knows of a carpet company that sent their employees away for certified asbestos and mold cleanup training, asked if there are places to send companies to train and will the companies want to do it. **Dr. Spence** told the Subcommittee that he had discussed this with a cleaning company in Montana and the company representative said that they could do it and would want to send their crews to hazmat training, which would not be a problem, and the crews would then travel throughout the state. The training is available in other states, with Washington being the closest.

CHAIRMAN HARRIS, noting that the draft bill appropriates \$50,000 for this to the DPHHS, asked if the agency would be able to do the job with less money and **Dr. Spence** answered that \$50,000 isn't nearly enough to address all of the needs associated with meth lab cleanup

certification but it would cover the costs of one full-time coordinator to direct the program within the agency. Some source of funding, perhaps a fee, would be required to allow the counties to recoup the expenses of sending a sanitarian to test or certify former lab sites. CHAIRMAN HARRIS noted that the Department of Justice is receiving federal grant money for methamphetamine enforcement purposes and asked if there had been any discussions with the Department of Justice to shift any of this money to DPHHS to aid in this purpose and Dr. Spence replied that, to his knowledge, no discussions of this type had been held.

CHAIRMAN HARRIS questioned what the agency thinks about this type of legislation for Montana and **Dr. Spence** deferred the question to Maggie Bullock, who is the administrator of the Public Health and Safety Division of DPHHS.

**Maggie Bullock, Administrator--Public Health and Safety Division, DPHHS**, told the Subcommittee that during the meetings between the DPHHS and the DEQ they learned that the states that have the public health department doing the cleanup certification are the states where environmental quality and public health are within the same agency. Since the draft bill puts the responsibility for certification on public health we did hold a meeting and, because of instructions received regarding the executive planning process--that there will be no new general fund money, the approach was a minimalistic one to follow Washington State's lead and adopt their cleanup standards, which will be incorporated into DPHHS's website. One thing that the draft bill did not take into account was that people will call the county health departments first, rather than the state, and the county will have the onus of responding to those requests. The bill does allow for a fee structure for training of the sanitarians who will be responsible for taking the samples of a cleaned structure but it provides the money for the state, rather than the counties, and it will be the counties who need the funding if the local sanitarians are the ones performing the sampling. A good beginning for the program would be if standards were adopted, training provided for the sanitarians, and a list compiled of companies certified to perform the cleanup which would be paid for by the property owner. **Ms. Bullock** suggested that the Subcommittee ask Joan Miles, of the Lewis & Clark County Health Department, to speak to them on this issue, adding that the county handles this type of program regularly, while the state does not. **Ms. Bullock** also said that, although meth lab cleanup standards would not be the agency's number one request of the Legislature, as this issue goes forward the DPHHS would like to be involved in the bill drafting if the agency is to be given responsibility under the bill. The agency has discussed with the Department of Justice the possibility of shifting some of the federal grant money to the DPHHS to fund these efforts and Mike Batista was agreeable to looking into this, but the later word was that these grant funds would run out by the end of the calendar year.

CHAIRMAN HARRIS asked Joan Miles, who was in attendance at the meeting, to address the Subcommittee with the county health department's views.

**Joan Miles, Director of the Lewis & Clark County Health Department**, commented that her department had recently received calls from a property owner who had just discovered a meth lab and from local landlords who wanted the county to start saying that the meth lab properties were cleaned sufficiently because they were dissatisfied with results on the state level. **Ms. Miles** said that she supports the approach contained in the draft legislation regarding having the cleanup conducted by commercial companies certified for the work and not by the homeowner himself and noted that even small cleaning companies that she had talked with were nervous about dealing with unknown hazardous chemicals. The counties would like to be involved on the

local level, such as sampling, but would need the ability to assess fees for the work performed and the training issue would be critical. **Ms. Miles** confessed to being perplexed as to why the responsibilities were placed under the purview of the DPHHS rather than the DEQ, who, although they say they have no jurisdiction over indoor air quality or contaminants, are responsible for the radon, carbon monoxide, asbestos, and lead-based paint programs and the meth lab cleanup program would seem to be a part of that regulatory and enforcement structure.

CHAIRMAN HARRIS asked if **Ms. Miles** agreed with Dr. Spence's assessment of the standards listed in the draft bill and **Ms. Miles** answered that she did--some chemicals were probably missing but the standards in the draft bill could be good indicators.

CHAIRMAN HARRIS asked **Ms. Miles** to describe her vision of the role of a county sanitarian in this, especially if the homeowner contracts with a trained and certified company to perform the cleanup and the cleaning company certifies that the cleanup meets state standards. **Ms. Miles** answered that she sees two possible scenarios: one where the state could entirely certify cleaning companies who would perform the cleanup and send notification to the state; and another where the sanitarians would go to the site and collect samples to be sent to a commercial lab and would issue the certification of cleanup, although **Ms. Miles** feels this process may not be necessary if the cleaning companies are certified and trained to perform the cleanup.

**Julie Mazzuca, Idaho**, told the Subcommittee that she owns a meth lab cleanup company that is certified in Oregon, with reciprocal privileges in Washington, and would like to expand into Montana, and her experiences would allow her to answer many of the questions the Subcommittee has asked. **Ms. Mazzuca** explained that Marine and Environmental Testing, located in Portland, Ore., offers a 3-day training program for certification that costs about \$1200 per participant and, as a prerequisite, each participant must take the OSHA hazwalker training course, which costs about \$700 per person and is available in many states. Her company uses a local lab in Coeur d'Alene, which charges around \$70 per sample tested, and can actually clean to non-detectable levels of methamphetamine and associated chemicals although they work with the standards set by the state of Washington. **Ms. Mazzuca** said that she does not recommend that homeowners be allowed to do their own cleanup and, from a records standpoint, her company performs all of its own post-testing and maintains legally defensible records, which includes photographing all samples, chain-of-custody forms, and lab results, all of which go in the final report that is given to the homeowner or person contracting for the cleanup.

REP. CLARK questioned which chemicals, other than the methamphetamine itself, **Ms. Mazzuca** was most concerned about and **Ms. Mazzuca** replied that she didn't know which are the most hazardous or which poses the greatest risk with exposure but Colorado has good standards involving threshold levels of the chemicals (see [EXHIBIT #3](#)). REP. CLARK then asked if her company had different cleaning methods for different chemicals or one way of cleaning that handles all of the contaminants and **Ms. Mazzuca** answered that her company uses one method, a proprietary industrial detergent and process, and it works very well.

SEN. WHEAT questioned what percentage of the properties **Ms. Mazzuca** has cleaned up were rental properties and whether most of the properties were owned by landowners. **Ms. Mazzuca** explained that the majority of her business comes through real estate agencies and property

management companies and most of the properties are owned by landlords. **Ms. Mazzuca** stated that she approves of the assignment of liability in the draft legislation because freedom from future liability is an incentive to a homeowner to have the property cleaned.

MR. STRAUSE asked if, since the bill would relieve the liability on the homeowner, the company has bonding and insurance and **Ms. Mazzuca** explained that her company is a limited liability company and does not have insurance at this time because the rates were astronomical because meth lab cleanup is such a new concern, although it is important to have insurance before doing any work involving federal grants.

CHAIRMAN HARRIS asked if, when cleaning up a meth lab site fitting the description "worst case scenario", hazardous waste training, as opposed to hazmat training, necessary to deal with the proper disposal of the chemicals and **Ms. Mazzuca** replied it is a hazmat team, who goes into the lab site with the police, who removes the chemicals and the hazmat teams receive federal funding to deal with the problem. If any bulk chemicals remain the cleanup crews are trained to call in the police to deal with removal. There are no hazardous chemicals, outside of residues, at the lab site and the training covers recognition of health risks and personal protective gear. CHAIRMAN HARRIS then asked if **Ms. Mazzuca** saw any problems inherent to offering reciprocal certification to companies already certified in Oregon or Washington and **Ms. Mazzuca** did not.

CHAIRMAN HARRIS then postponed discussion of the draft bill until later in the meeting.

- Fire funding letter/DNRC Task force/Legislative branch update

MR. MITCHELL called the Subcommittee's attention to a firefighting funding alternatives paper produced by a working group put together by the DNRC to study alternative funding sources (see **EXHIBIT #4**). The working group had 3 meetings and at the last meeting, in February, decided not to proceed with recommendations for changes in funding because of the controversy involved. Four alternatives to general fund money are discussed. Because the Subcommittee expressed interest in learning what other state divisions have done on this issue, a report by the Legislative Fiscal Division for the Legislative Finance Committee (LFC) is included as **EXHIBIT #5**. The Legislative Audit Division, at the request of the LFC, is looking at what drives the cost of firefighting--specifically how much the presence of structures in areas that were formerly wild are increasing firefighting costs, and that effort is described on page 5.

- Holcim, Inc. EIS - time frame update

MR. MITCHELL told the Subcommittee that this agenda item was included at the request of REP. BARRETT.

**Tom Ellerhoff, Administrative Officer, DEQ**, explained that the current goal of his agency is to have the draft environmental impact statement for Holcim, Inc., completed by April. **EXHIBIT #6** is a copy of e-mail messages explaining how the DEQ will keep Holcim, Inc., informed about the progress of the environmental review.

REP. PETERSON asked if the company doing the environmental review has been able to stay within their estimated costs or have there been extraordinary expenses the Department has had to cover and **Mr. Ellerhoff** answered that the company has stayed within their estimated costs.

CHAIRMAN HARRIS questioned what is the next step and asked **Mr. Ellerhoff** to sketch out the time frame from here to the final decision. **Mr. Ellerhoff** explained that after the draft EIS is completed there will be a public hearing. Information from that hearing will be incorporated into the final environmental impact statement, which the Department hopes to have ready in late June or early July. The record of decision should be available in late July. CHAIRMAN HARRIS wondered whether the Department was leaning one way or the other at this time on the decision and **Mr. Ellerhoff** answered that the Department tries to be objective and will look at the applicable laws and available information when the time comes to make a decision. CHAIRMAN HARRIS noted that concerns have been expressed about the weather and wind data, including that the wind data was gathered from outside the siting area and asked if those problems have been corrected. **Mr. Ellerhoff** said that he wasn't sure if that data had been reviewed to the point where the Department personnel know if they like it or not and deferred the question to Dave Klemp.

**Dave Klemp, Air Permitting Supervisor, DEQ**, agreed that the question of the use of the air data has come up at every public meeting. **Mr. Klemp** explained that there are only a couple of locations in the state that have upper level air data, which the Department modelers feel is the most appropriate data to use for this purpose, available and very little information is available on the upper air in the Gallatin area. The Department does need to clarify and explain how the air data is being used, which is to determine mixing heights, but the location at which the data was collected does not undermine the accuracy of the data.

CHAIRMAN HARRIS, seeking clarification, asked if the data is being used for "dilution of pollution", not as part of a fate and transport model equation. **Mr. Klemp** said that the data was being used for the establishment of mixing heights, not how the concentrations would be distributed in the Gallatin Valley.

MR. STRAUSE, noting that this is the first major EIS that began after the changes to MEPA during the last session, questioned what would happen if the Department discovered data that indicates that possible discharges as a result of the process will affect Montanan's right to a clean and healthful environment and there are no specific statutes prohibiting that type of discharge--would the Department address that in the EIS or would they ignore it because of the amendments to MEPA. **Mr. Ellerhoff** said that the Department tries to address all impacts and, in instances where the impact doesn't fall under jurisdiction of our laws, the Department still addresses it and if it is an important impact we will try to find ways to mitigate it. Even if the Department can't require an applicant to do something we will still address the impact and offer possible solutions, and this is the standard operating procedure for the Department when performing environmental reviews.

- DEQ Enforcement Legislation workgroup update

**John Arrigo, Administrator-Enforcement Division, DEQ**, reviewed **EXHIBIT #7**, which explains the efforts of a DEQ working group to standardize enforcement procedures and laws within the DEQ. The working group was formed to get feedback on possible legislation to help the enforcement process. The working group is preparing draft legislation to make the requested changes to statute.

CHAIRMAN HARRIS asked how much leeway does the Legislature have to develop penalty formulas if the EPA says that the state must follow EPA procedures or risk losing the federal



funding. **Mr. Arrigo** answered that the enforcement agreement the state has with the EPA sets standards for timely and appropriate enforcement and defines what is a significant violation but the EPA does not mandate that penalties be calculated in any particular way. CHAIRMAN HARRIS questioned whether the Department really needed a legislative fix for the calculation of penalties, or whether it was within the inherent authority of the Department already. **Mr. Arrigo** explained that the Department is presently calculating penalties but, with the applicable laws being different for each type of permit violation--air, water, and waste, it is difficult for the public and regulated community to know which laws are applicable to which situation and it is difficult for the agency to maintain trained staff in all of those different areas. Also, the Department is not sure it is authorized to consider factors not specifically provided for in law. If the statutes are amended the Department would devise one set of rules that would apply to all penalties.

REP. PETERSON questioned if, when the Department makes this proposal to the Legislature, they will also propose deleting conflicting statutes. **Mr. Arrigo** explained that the Department envisioned writing new sections for Titles 82 and 75 that would delineate factors to be used in penalty calculation and delete conflicting language from other statutes.

- DEQ Letter - White Pine Sash/Sparrow Resources

MR. MITCHELL called the Committee's attention to a letter from the DEQ to Rep. Gutsche and Sen. Ellingson responding to concerns about the Sparrow Group's verbal promise to accept public comment on the proposed cleanup levels for the site of its future residential development to be built on the former Missoula White Pine Sash state superfund site (see [EXHIBIT #8](#)).

- EQC Letter - Missoula airshed non-attainment area

MR. MITCHELL explained that [EXHIBIT #9](#) is a letter written in response to the Subcommittee's request that they be kept advised of any progress toward getting Missoula's non-attainment designation changed.

**IV. Department of Natural Resources and Conservation compliance and enforcement report** - FY 2001, 2002, 2003. [EXHIBIT #10](#) is a chart showing the historic reporting of DNRC programs to the EQC. A press release regarding the forestry BMP results is included as [EXHIBIT #11](#). A compliance report of the forestry programs is included as [EXHIBIT #12](#), and [EXHIBIT #13](#) is a compliance report of the water resource program. [EXHIBIT #14](#) is a compliance and enforcement report of the oil and gas division.

**Bud Clinch, Director, DNRC**, gave the Subcommittee a report on the Department's enforcement and compliance reporting procedures and explained that, although the Department encompasses seven divisions, only three involve regulatory responsibilities--the forestry, water resources, and oil and gas divisions. The forestry division oversees 3 programs that meet the threshold of reporting requirements--BMP notification, hazardous fuel reduction, and the streamside management zone programs, and each deals with forest management activities across all ownership of land--private, state, or federal (see [EXHIBIT #12](#)). The BMP notification program requires individuals who intend to perform forest practices (timber sales, road right-of-way clearances, thinning in a forest setting) to notify the Department before any action is taken. The purpose of this is to allow the Department to keep abreast of actions in the forests and to make sure that those actions are in compliance with state law. The Department estimates that the compliance rate is 98%, with the estimate being based on the reports of



DNRC field crews, and that this compliance rate is stable. The hazard reduction agreement act set standards for the treatment of slash produced by logging operations and the intent was to allow the Department to monitor, minimize, and reduce forest fuels. Associated fees support the efforts of the Department to perform inspections, monitor operations, and refund bonds that are collected from the buyer at the milling facility. Compliance with this program is about 99% and, based on the number of new agreements entered into each year, the ongoing agreements running from year to year, and a statistic that tells the number of operators that failed to complete their agreement, the Department predicts this trend will continue and the compliance rate will remain stable. The streamside management zone law is intertwined with the voluntary best management practices program which has grown to be a model envied by other western states because of the relationship between the wood products producers and the regulatory agency. The Department estimates a 96% compliance rate with this program and the compliance rate has been growing over the last few years. The second DNRC division with regulatory authority is the water resources division. **Mr. Clinch** said that there are four regulatory programs within the water resources division--the water measurement, floodplain management, and dam safety programs and the Board of Water Well Contractors (see *EXHIBIT #13*). The water measurement program developed in the early 1990s when the Department was ordered to identify and designate chronically dewatered watercourses within the state and water users on those designated watercourses were required to install measuring devices on all points of diversion. Only two streams have been designated under this program--the Musselshell River and Mill Creek, which a tributary of the Yellowstone River. The reasons that only two streams have received this designation are partially because the last major drought ended in the mid- 1990s and an increasing lack of Department resources have resulted in a lack of FTE's assigned to the program but primarily because Montana has shifted its emphasis in water management issues to a more collaborative approach involving watershed management groups. The Department is currently involved with collaborative water measurement issues on the Big Hole, Clark Fork, and Blackfoot Rivers. Compliance with the water measurement program on the Musselshell River is up to a rate of about 60%-70% and the Department predicts continued improvement in these numbers. On Mill Creek the compliance rate did reach a high of 90% but those numbers have been dropping off. The floodplain program sets out rules and standards for construction of various facilities with designated floodplains and floodways and is aimed at reducing devastating damage in the case of a flood and bringing communities into compliance with the National Flood Insurance Act. While the Department does not have specific enforcement responsibilities in this area it provides technical support and assistance to local governments because most of the enforcement regulations fall on the local level. The Department's compliance and enforcement duties consist of tracking the compliance of the various communities located in floodplain or floodway areas, and in the 121 designated communities the compliance rate is 95% and the Department predicts an increase in compliance over time. The Dam Safety Act ensures that dams are operated and maintained in a safe condition and of the 88 high-hazard dams within the state all but 2 are in compliance. The remaining two dams have minor issues to deal with before they too are in compliance. The Department does see their involvement with and emphasis on dam safety increasing because all of the dams within the state are aging structures with a variety of maintenance problems. The fourth program within the water resources division with a regulatory function is the Board of Water Well Contractors. The Department issues licenses to the 272 water well contractors in Montana and the enforcement and compliance issue is making sure that the contractors are in compliance with their licensing requirements as well as an inspection and enforcement program associated with the actual drilling of wells and response to complaints. Statistics indicate that there is nearly 100% compliance with those enforceable actions and **Mr. Clinch** anticipates that

this will continue. The Board of Oil and Gas is an independent, quasi-judicial entity attached to the DNRC for administrative purposes only and has regulatory authority over oil and gas operations, seismic activities, setback enforcements, cleanup, and the underground injection control program. The Board gathers a number of statistics that indicate enforcement and compliance issues and all of the indicators show that there is a high rate of compliance and this level is expected to remain stable or increase (see *EXHIBIT #14*).

CHAIRMAN HARRIS noted that a fair amount of the Department's time and effort must go into compiling these reports and questioned if they are useful to the Department and has the Department learned anything when compiling these reports. **Mr. Clinch** answered that none of the statistics or trends revealed in the compliance and enforcement reports are news to the Department, because they are already familiar with them from other reports the Department has compiled, and that the reports to the Subcommittee do not help Department.

REP. HEDGES questioned if, in performance of best management practices, anything was being about fire and how last year's fires may affect the water quality of streams in the area. **Rob Etheridge , Service Forestry Bureau Chief, DNRC**, answered that, from a BMP perspective, yes. Since 2000, when the impacts on water quality from fires have risen, the Department has been working with their partners in the Montana Logging Association and the wood products industry to develop an extensive BMP training program where the Department, at least once a year, talks to wood workers. Also, over the last 2 or 3 years, the Department has identified actions to mitigate the accelerated impacts of fires and is working with contractors on a site-specific basis.

MR. STRAUSE, noting that in the past several major forest fires have started on logged land, asked if the Department had given any thought to coming up with a BMP to help prevent that from happening in the future. **Mr. Clinch** replied that, when looking at fires started on logged land, it is important to consider how the fire is started--whether it is naturally caused by lightning or whether it was an equipment start. There is a set of enforceable fire restrictions in place relative to logging operations in terms of equipment maintenance and design and fire suppression equipment that must be on site and then, during the fire season, there is a series of various levels of restriction that apply.

REP. BARRETT asked **Mr. Clinch** if his Department sees any trends indicating that rivers with watershed groups are receiving the majority of the agency assistance at the expense of rivers without watershed groups. **Mr. Clinch** answered that he doesn't see that happening because, although the Department provides technical and financial assistance to new watershed groups, after the first 12-18 months of the group's operations the Department assistance becomes minimal and the resources, both technical and financial, are used to respond to newly forming watershed groups.

**V. Department of Agriculture compliance and enforcement report - FY 2001, 2002, 2003.** A report on the Department of Agriculture's pesticide and ground water enforcement programs is included as **EXHIBIT #15**.

**Steve Baril, Field Services Bureau Chief, Department of Agriculture**, reviewed *EXHIBIT #15*, giving the Subcommittee an overview of the Department's pesticide program. **Mr. Baril** said that, although the numbers may vary from year to year due to varying weather, crop, and economic conditions, the Department is not seeing any clear trends developing at this time.

**Dan Sullivan, Technical Services Bureau Chief, Department of Agriculture**, reviewed *EXHIBIT #15*, providing an overview of the Department's ground water protection program. **Mr. Sullivan** explained that the broad concept of the ground water act is to prevent the impairment of ground water from agricultural chemicals and, if the chemicals are detected through monitoring, to minimize, mitigate, or reduce those levels of chemicals to protect the present and future uses of ground water. The Department has taken the approach that educating the regulated community is more effective than issuing mandatory restrictions, and the Department is currently conducting surveys to determine the effectiveness of this educational approach.

REP. HEDGES noted that the state has literally thousands of wells that service farms, ranches, and small communities operating on a daily basis and asked if there was a database that included nitrate or pesticide levels from those ground waters. **Mr. Sullivan** replied that there is no intensive statewide monitoring program for that, although the Department has placed its monitor wells in areas where pesticide contamination could take place. The Department has done some limited testing of this in the past and a limited database does exist.

SEN. WHEAT asked what was the total volume of pesticide applications within the state and **Mr. Sullivan** answered that he didn't have those numbers but the Department collects records for sales and applications every 5th year and that data could be used to determine statewide applications. SEN. WHEAT then asked if, in areas where there are monitoring wells, there is any annual determination of the volume of pesticide applied and is there a program to monitor the surface water around the time the applications are made. **Mr. Sullivan** replied that the Department does not generally collect that data, except in areas where the Department has an interest and the Department does not have an active surface water program.

REP. HEDGES asked if the Department monitors stormwater drainage from urban areas. **Mr. Sullivan** answered that his Department does not, although perhaps other public health agencies do. REP. HEDGES then commented that it would seem that there is more tonnage per acre of fertilizer laid down on the lawns in Missoula than elsewhere in Bitterroot Valley, and more on Billings lawns than in the Yellowstone area, and questioned if **Mr. Sullivan** felt this was a true assumption. **Mr. Sullivan** answered that there is a concern about the urban use of fertilizers and pesticides but the Department does not regulate those unless there is a specific complaint.

## **VI. Agency Rules - Department of Fish, Wildlife and Parks**

- Commercial wildlife rule revisions
- Alternative livestock, shooting preserves, roadside menageries and zoos

**Tim Feldner, Manager of Commercial Wildlife Permitting Program, FWP**, reviewed *EXHIBIT #16*, which lists proposed changes to Department rules regarding commercial wildlife. **Mr. Feldner** explained the terms "wild animal menagerie" which means having a wild animal, such as a bear or a large cat, as a pet and not for public exhibition; "roadside menagerie" which means the place any wild animal is kept with the purpose of public viewing for profit; and "zoo" which means an area with animals that is run by a licensed non-profit organization. All of the proposed rules have been drafted and the rules for the menageries and zoos should be finalized this summer, with the alternative livestock and shooting preserves and game bird farms following soon thereafter.

CHAIRMAN HARRIS asked why does it take so long for the Department to incorporate legislative changes into their rules. **Mr. Feldner** replied that when changes are made to statute it also involves changes in Department roles or responsibilities which does slow things down and, generally, the Department prefers to wait and see what the final statutes look like before making revisions to the ARMs.

REP. CLARK commented that he would like to know the process by which the Department takes provisions in a bill and turns them into ARM rules, especially the checks and balances involved and how the Department translates legislative intent.

CHAIRMAN HARRIS questioned who regulates traveling circus animals and **Mr. Feldner** answered that traveling zoos or circuses are regulated by the USDA unless they are based in Montana, in which case they would be regulated by the Department.

- Bison hunt considerations.

**Chris Smith, Chief of Staff, FWP**, reviewed **EXHIBIT #17**, which lists the steps and proposed timeline for the bison hunt rules, and gave the Subcommittee an overview of the development and implementation of the administrative rules for the bison hunt. To date, the Department has received 28 letters and 123 e-mails concerning issues that should be included in the environmental statement. **Mr. Smith** said that the Department envisions this hunt as being more like typical big game hunting (as opposed to the bison hunts that took place in the 1980s), whereby a hunter receives a permit and then hunts in the designated area during the specified times on their own, without being accompanied by FWP or DOL personnel, but the specifics will depend on the public input received during the scoping period. **EXHIBIT #18** is a press release seeking public comment on the proposed bison hunt rules.

CHAIRMAN HARRIS noted that a big part of a bison hunt is the carcass removal and questioned if the Department is proposing any rules to deal with that. **Mr. Smith** replied that one issue the Department is considering, especially through the environmental assessment, is the treatment of the gut pile. Typically hunters field dress the animal and leave the gut pile, but with bison and the concerns over brucellosis transmittal the Department is considering requiring hunters to remove the gut pile, or at least the reproductive organs. In respect to removal of the rest of the carcass, as with any other game animal the hunter will be required to salvage the edible meat. CHAIRMAN HARRIS then asked how the edible meat could be salvaged and **Mr. Smith** answered that it would depend on where the animal is taken--it may be in an area where a vehicle or trailer can be brought to the carcass, otherwise the carcass must be reduced to manageable pieces and packed out.

REP. CLARK, noting the non-fearful and even indifferent attitude of Yellowstone bison towards people, questioned how the Department could establish rules to make this resemble a fair chase. **Mr. Smith** replied that, in his personal opinion, over time the bison will recognize that way they interact with people outside the park is different than inside the park and that the animals will respond differently in areas where they can be hunted. REP. CLARK asked if there has been any consideration of caliber requirements and **Mr. Smith** answered the Department had discussed this issue and, like other states that offer bison hunting, Montana will probably have minimum caliber requirements.

MR. MITCHELL told the Subcommittee that, in response to their request for updates on proposed agency rules, a list of proposed rules from the FWP (see [EXHIBIT #19](#)) and the DNRC (see [EXHIBIT #20](#)) is included in the committee packet.

REP. BARRETT, noting that the proposed DNRC rules are for bills from the 2003 session while the proposed FWP rules go back years, questioned if there was a time limit for the drafting of rules. MR. MITCHELL replied that he did not know if there was a time limit and deferred the question to **Bob Lane, Chief Legal Officer, FWP**, who answered that there was no time limit for rule adoption and some changes in statutes don't need corresponding changes in rules but sometimes, as the Department gains experience with the new statutory directives, rules might be needed to deal with problems or to clarify the statutes.

**VII. \$4 State Parks Fee/Vehicle Registration** Included in the committee mailing is [EXHIBIT #21](#), a packet which contains newspaper articles, the history of SB336, minutes from the conference committee hearing on SB336, copies of old and new mail registration cards and opt-out form, a response from the FWP to questions posed by MR. MITCHELL, a statement from Sen. Mahlum explaining the rationale behind the bill, and Sen. Mahlum's suggestion for an addition to the mail-in registration card. [EXHIBIT #22](#) is a copy of the pertinent statute.

**Sen. Robert Story** told the Subcommittee that he has three concerns about the manner in which this fee has been handled. The first concern is that this doesn't work well for owners of multiple vehicles. The statute does not state that an individual may opt-out of taking a specific vehicle into the parks--it says that an individual is opting-out of going to the state parks and while the FWP accepts that vehicle owners may choose to take only one of their vehicles into the parks and therefore only pay the fee for one vehicle that is not what the law actually says. **Sen. Story** said that his second concern is for what occurred in January, when vehicle registration cards went out in the mail without the \$4 fee (or the 50 cent fee for veterans issues) being included. People received a second card in the mail explaining that they needed to add \$4.50 to their original registration fee. The third concern is that people are unable to opt-out of the fee without going to the courthouse because the waiver is not included on the mail-in card. The system that is now in place makes this more cumbersome than it has to be. All of the information required on the opt-out form is already included on the mail-in registration card and the mail-in card could be restructured to provide the opt-out waiver and the FWP should bear the expense of revising the card.

CHAIRMAN HARRIS asked **Sen. Story** what was the reaction in the Senate when he raised these issues of concern. **Sen. Story** answered that there was not much reaction because the real impetus was to get the fee in place to raise needed money for the parks system.

**Dean Roberts, Administrator--Motor Vehicle Division, Department of Justice**, addressed how the law is being implemented and how problems are being addressed. **Mr. Roberts** explained the when the original vehicle registration cards were sent out in January without the \$4 fee being included (as well as the 50 cent fee for veterans) discussions were held about the problem and, because the law would not allow the Department to simply skip charging the \$4 fee on the January registrations, cards were sent out explaining the oversight (see [EXHIBIT #23](#)). The confusion among the general public began then and the calls to the Department made it clear that the public needed to be better informed about the issue. The FWP continued with a public education program that has worked very well and, after the new cards came out in February (see [EXHIBIT #24](#)), the calls to the Department dropped dramatically. **Mr. Roberts**

said that he has talked to the county treasurers and they do not see this as an issue any longer. REP. CLARK asked if the "total due" number on the registration card included the \$4 fee and **Mr. Roberts** answered that it does.

CHAIRMAN HARRIS commented that the problem is that the statute requires a person to certify that they will not use the state parks and card does not offer an option or even a place to make that certification. **Mr. Roberts** replied that the county treasurers and his Department are making the determination that if a registration is sent in \$4 short it is assumed that the person is opting out of the fee and thereby making the certification by default.

SEN. WHEAT said that he would like to know how much it cost the taxpayers of the state for this goof-up on the registration cards. **Mr. Roberts** answered about \$25,000.

**Doug Monger, Administrator-Parks Division, FWP**, told the Subcommittee that this is an important new funding source for the Department and the Department is relying on it to replace the almost \$750,000 that the Department used to receive from general fund money and park day-use fees. Because SB336 took away the Department's ability to charge the day-use fees it also required new agency rules so the Department began last September to notify the public about the change. There was a direct mailing to over 13,000 households, press releases, and a 2-month public comment period associated with the new FWP Commission rules and the Department was careful to note to the public throughout that this was a voluntary fee. One area of importance to the Commission when adopting the new rules was to address the concerns that Sen. Story mentioned regarding individuals with multiple vehicles. Although it results in a slight difference between the literal translation of the statute and the Department's annual fee rules, the Commission wanted to implement this law with what they thought was the proper translation reflecting the true intent of the legislature and so the Department is treating this on an individual vehicle basis--whether that vehicle goes into the parks, not whether that person uses the parks. The county treasurers and the Department are considering a signed check used to pay the registration to be the equivalent of a signed affidavit of non-use. The Department has implemented a program to refund money to any member of the public who requests it and who paid the \$4 without knowing they had the opportunity to opt-out of the fee.

CHAIRMAN HARRIS asked what is the percentage of people opting out of the fee and **Mr. Monger** answered about 20%. CHAIRMAN HARRIS, seeking clarification, asked if that was 20% of the vehicles or 20% of the people and **Mr. Monger** answered that it was 20% of the vehicles and noted that the Department does not keep track of the number or percentage of people.

SEN. WHEAT questioned how the revenue from the fee will compare to the revenue lost by SB336. **Mr. Monger** replied that, at this point, the numbers are looking favorable. The fiscal note attached to SB336 assumed an opt-out rate of 50% and predicted that \$1 million would be generated by this fee and, if the revenues continue at the current rate, the Department could conceivably collect almost \$1 million more this year than planned.

CHAIRMAN HARRIS noting that the Department is making a practical interpretation of legislation which is far from ideal asked if it wouldn't make sense for the Department to come back and tell the Legislature "here's what wrong and here's how to fix it". **Mr. Monger** answered that, although he doesn't like having an agency interpretation that is different from the statute, he isn't sure that the first year, with the fee having been in place only 9 months, is the proper

time to tweak new legislation because there may be other areas that need fine tuning that the Department isn't aware of yet. Because the summer recreation season hasn't arrived yet, **Mr. Monger** recommends waiting until the 2007 Legislature to change the language of the statute.

REP. BARRETT questioned if any of the revenue is for buying new parks. **Mr. Monger** replied that the statute doesn't designate where the money has to go within the FWP and that the Department currently has a \$25 million maintenance backlog. The only new acquisition being contemplated by the Department is Brush Lake in northeast Montana, which was a specific line item from the 2003 session, and federal funding will be used. REP. BARRETT then asked about Tower Rock and **Mr. Monger** explained that Tower Rock, although it is being called a new park, was previously owned by the Department of Transportation and it is in the process of being transferred to the FWP because of the Lewis & Clark connection.

REP. CLARK asked **Mr. Roberts** if his Department anticipated making any changes beyond those made on the March registration card. **Mr. Roberts** answered no. REP. CLARK commented that a fairer way to handle this would be to list a "total due" amount on the card that did not include the \$4 then list the \$4 fee with its acronym explanation (LTMVPK) and a second "total due" that did include the fee.

SEN. WHEAT asked why, if the intention was to make this clearer on the card, was it worded with a reference to the MCA, which only attorneys and a few other people would recognize, instead of stating it clearly. **Mr. Roberts** answered that the reason was there was simply not enough room on the card. This can be looked at as similar to income tax deductions--no one tells you exactly what deductions you have a right to take. It is your responsibility as a citizen to know that you can opt-out of the fee. SEN. WHEAT commented that with income taxes you get sent a brochure that tells you how to fill out the form and where to go to find those deductions and the problem here is how make people aware of their options. **Mr. Roberts** replied that the problem is with the limited space available on the mail renewal cards. Over 1 million mail renewal cards are sent each year and the current size costs 23 cents per card--larger cards will cost 37 cents per card.

CHAIRMAN HARRIS commented that his concern is that the statute says that someone must certify that they will not use the state parks or fishing access sites and while the affidavit accomplishes this the mail-in card does not.

REP. CLARK stated that he anticipated that a mailed-in registration with a check for the lesser fees would trigger an immediate letter to the person saying "since you didn't pay the fee you need to sign this saying you won't use the parks".

CHAIRMAN HARRIS commented that this approach would generate an enormous amount of paperwork and postage.

MR. STRAUSE commented that, before getting carried away with this, it should be compared to the old system to see how it works. Under the old system the necessity of affixing a sticker had it's own share of problems and unfair applications and perhaps we should wait and think before getting upset about this system.



**VIII. Agency Rules - DEQ Septic tank pumper rule proposal** The original rules proposal is included as **EXHIBIT #25**. The final draft of the proposed rules, as amended, is included as **EXHIBIT #26**.

**Pat Crowley, DEQ**, offered a background to the proposed rules and explained that the rules were last changed in 2001, to bring them into line with the federal regulations of the Clean Water Act. Field inspections have shown that the most common violations of current rules are that people: fail to till in the material within 6 hours (which is a state and federal rule), don't lime to a pH of over 12 for 30 minutes (which is an alternative method of dealing with the infectious nature of the material), don't maintain proper records, and have poor land application practices and litter control. The proposed rule changes would require the installation of screening and splash plates and, because the pumpers objected by saying the screens would freeze, screening would not be required during the months of Dec.-Feb. but all litter must be picked up in the spring. The Department is proposing truck/screen inspections, with only one certification required of each truck to be performed by local sanitarians. The proposed rules would allow photo documentation of a truck or site, which can be mailed to the Department. The proposed rules specifically allow for withdrawal of site approval and denial of license for health or nuisance reasons, because the current rules do not explicitly give sanitarians the right of site withdrawal. The current rules are also not explicit about the ability of sanitarians to inspect a site after the initial approval inspection and the new rules would correct that oversight and specifically allow the DEQ to inspect these sites and the inspections are not restricted to normal business hours because of the need to confirm compliance with the 6-hour till-in regulation. The Department proposes tightening up the application form so as to have the full legal name of the business or person and the landowner on whose land the material will be applied and, because the pumpers have complained about the difficulties of dealing with absentee landowners, allowing agents to sign the acknowledgment involving inspections and site use and crop use restrictions. The Department has agreed to accept semi-annual record submissions rather than the proposed quarterly submissions. There was a bad cross reference in the rule regarding grease trap waste and the Department has corrected that error.

**Mike Byrnes, President, Montana Wastewater Association**, commented that this was the first time he had seen the final proposed rule changes, as amended, and therefore was unprepared to address specifics of the amended changes and would instead focus on comments representing the industry. The septic industry does not feel that there is any need for more rules--the need is for more education of the industry by the DEQ as to what the rules are. Currently the Department just sends copies of the rules to licensed operators, with no explanation of the Department's expectations and no descriptions of how a site or records should look. Idaho, as well as other states, offers a class that everyone with a septic license must attend on a regular basis and this would be a good idea for Montana because education is much better and more effective than simply writing more and more rules. Especially when the rules are written without any collaboration with the industry. **Mr. Byrnes** said that he questioned Mr. Crowley and learned that the Department had talked only with the county sanitarians before these proposed rules were written and that no input was sought from members of the industry until the public meeting in November. The industry would like to see a rule that requires the DEQ to collaborate with the industry before proposing new rules, such as what happened in 2001 when a new state code for pumpers was being proposed and the DEQ was told to collaborate with the industry with the result that the legislation passed easily with no confrontation or controversy. The septic industry has no problem working with the DEQ on any issue. Education is the key to avoiding problems in the future and the industry would like to

learn what the DEQ wants or expects recordkeeping or a dump site to look like. Perhaps mandatory meetings with the licensed operators and the DEQ could solve some of these problems. **Mr. Byrnes** closed by saying that Sen. Elliott had planned on attending this meeting in support of the industry but car trouble prevented his traveling to Helena. SEN. WHEAT, seeking clarification, asked **Mr. Byrnes** if he was saying that his industry didn't have any notice of these proposed rules or was it the changes to the proposed rules and **Mr. Byrnes** said that it was the changes to the proposed rules that he hadn't seen before today. SEN. WHEAT then asked if he, or his industry, was given any opportunity to provide input to the agency since the November meeting and **Mr. Byrnes** replied that he had not. SEN. WHEAT questioned if **Mr. Byrnes** had ever called the agency to discuss this and **Mr. Byrnes** answered that he did talk to Mr. Crowley once and thought that he came away with the understanding that copies of the changes to the proposed rules would be sent out to license holders but this is the first time he has seen them.

SEN. WHEAT asked **Mr. Crowley** to respond to **Mr. Byrnes'** comments. **Mr. Crowley** said that these proposed rules are stamped "draft", that they are not final yet, and that they haven't yet been released by John North, chief legal counsel for the DEQ. Every septic tank pumper in the state was mailed a copy of the proposed rulemaking, which is standard practice of the Department. SEN. WHEAT asked if he anticipates getting copies of the changes to the proposed rules to members of the industry in time for them to comment on them and **Mr. Crowley** said that as soon as John North releases them they will be mailed out under the rulemaking process as required by law, with a response to each and every comment received. SEN. WHEAT asked **Mr. Crowley** if he feels that his Department is collaborating with the industry. **Mr. Crowley** replied that they have listened to the industry but there are certain things that the Department must address to correct environmental degradation.

REP. CLARK asked **Mr. Crowley** if, when proposing rule changes, it would be helpful and would avoid conflict for the Department to get together with the industry and offer educational presentations as to why the rule changes are necessary because any business group, if handed rules from a state agency that they had no input on, would be upset. **Mr. Crowley** answered that the Department is trying to put together an program for the septic tank pumpers to educate them as to the proper methods and procedures according to state rules and the program is about three-fourths finished. The goal is to offer the program throughout the state and discuss the operational practices necessary to do the job correctly.

REP. CLARK asked **Mr. Byrnes** if he felt that some of the hesitation on the part of his business associates would be lessened if they were participating in the actual rulemaking process. **Mr. Byrnes** answered definitely. His organization was angry because they were not even consulted when the proposed rules were being written and, if they had been, this adversarial situation could probably have been avoided in the first place. Scoping meetings or requests for comments prior to the rule writing could alleviate much of this kind of problem.

SEN. WHEAT asked if the wastewater association membership would be willing to pay more for their license fee to help fund some educational programs and **Mr. Byrnes** replied that he didn't feel it would be much of a problem--the 2001 Legislature upped the fee to \$125 from \$25. SEN. WHEAT suggested that, because the DEQ's educational program is about three-fourths complete, perhaps the license fee could be increased and the extra money earmarked for education. **Mr. Byrnes** replied that there may be another way to accomplish this--rather than

change the license fee there could be a rule promulgated that requires a mandatory continuing education class every 3 years and have a fee associated with that.

SEN. WHEAT commented that the industry should see what can be worked out with the agency before the Legislature gets involved.

CHAIRMAN HARRIS stated that he concurred with SEN. WHEAT and observed that the DEQ is under very severe budget constraints and, although the Department might want to collaborate more with the industry, the industry needs to reach out to the agency. Few industries get the special attention you are asking for and it requires meeting the Department halfway--Mr. Crowley is responding to your comments and picking up the phone to set up a meeting might help the problem.

**Rick Thompson, Section Supervisor--Solid Waste Programs, DEQ**, said that the Department is not adverse to forming a committee to meet on a regular basis with the pumper industry. It is being done with the solid waste industry and a solid waste advisory committee has been formed that meets every quarter. The Department would like to do this with the pumpers if they will meet us half way and come to Helena for meetings and help to set up a committee so there will be representation from the various parts of the state. **Mr. Thompson** said that he would like to invite **Mr. Byrnes** to call him and they will organize such a committee for the septic pumper industry. It is difficult to write rules in a vacuum and the Department doesn't want to leave the industry folks out.

**John Ward, Local Septic Tank Pumper**, commented that he would like to feel positive about this, and what Mr. Thompson said sounded good, but the industry has heard it before. The slide show was, in **Mr. Ward's** opinion, a blatant statement of the pumpers assumed criminality yet **Mr. Crowley** said that this was the first time that field inspections found any problems. The industry has had promises from the agency before about a collaborative effort but, when the time comes for that effort, they don't call us. The Department wanted a single point of contact, which is **Mike Byrnes**, but they don't call him either. The DEQ does make a collaborative effort, but it is with the sanitarians and doesn't include the industry. There are educational programs available--the sanitarians attend a professional symposium in Nevada. Professionals in this industry do want to work with the state, or they wouldn't be here today, but the industry is consistently being blindsided--we did have advance notice of the Nov. 19 meeting. If the Department does what they have promised today it will be the first time they have kept their promise.

SEN. WHEAT commented to **Mr. Ward** that he understands how he feels, but **Mr. Thompson** is extending a hand of cooperation to the industry and the industry would be encouraged to let the past be past and to work with the Department now. At the next meeting the Subcommittee would like to know what each of you, the association and the Department, have done towards collaboration. **Mr. Ward** replied that they will try again, for the third time. CHAIRMAN HARRIS pointed out that there will be an additional opportunity to respond to the amended proposed rules and the industry should take that opportunity to sit down with the DEQ.

## **IX. Statutory Duties**

MR. MITCHELL reviewed a chart, included in the committee mailing, listing the Agency Oversight Subcommittee's statutory review activities during this interim (see **EXHIBIT #27**) and

the actions taken by the Subcommittee to date. Most of the duties have been completed and MR. MITCHELL requested that the Subcommittee discuss this and decide on a course of action.

CHAIRMAN HARRIS noted that the Subcommittee had done a good job on the compliance reports and the more controversial of the agency rulemaking proposals and, assuming that the Subcommittee is in a satisfactory position on those issues, questioned what other areas need the Subcommittee's attention.

MR. MITCHELL said that the general charge to the EQC is to review all things environmental, balancing the needs of society with the needs of the environment, and to make recommendations concerning policy and programs and, with that broad oversight authority, the question is whether there is any need for the specific reviews mentioned in the water leasing statute, the NRIS program, the megalandfill law, or the solid waste or water policy plans. There is no reason why not, other than it puts more obligations on the Council to not to be able to pick and choose the thing it wants to work on during an interim. The statutory one-liners can be ignored if the Council chooses to ignore them. Do the statutes need to be that specific in regard to oversight reviews or can these programs be allowed to operate without being required to report to the Council every 2 years, although the authority exists under Part 3 of MEPA to require a report of any state agency or program that affects the environment? Is the general generic authority of the EQC sufficient or are specific statutory duties required in statute?

REP. CLARK suggested that the Subcommittee could review the duties on the list and decide which ones to keep and which to get rid of, because his sense was if all of the duties were taken off of the list we won't see certain issues for a decade unless someone reminds us.

REP. HEDGES said that his feelings would echo those of REP. CLARK. If an issue is going to be ignored the Subcommittee should choose to ignore it rather than have it happen from an oversight and the list of duties should be left as they are.

REP. BARRETT observed that she views the Subcommittee as the statutory MEPA police because as long as MEPA exists these duties will exist. It is necessary that someone get this information and make sure there are checks and balances. If not, when these issues do come before us they will come as a conflict and this is a good way to avoid that.

SEN. WHEAT stated that he agrees with REP. BARRETT--there has to be some entity that has oversight authority and agencies need to know that they must report to someone. It is better to be more inclusive than exclusionary.

CHAIRMAN HARRIS, seeking clarification, asked if the Subcommittee has both a general oversight authority and statutory duties, which can be ignored.

MR. MITCHELL explained that the Subcommittee has general oversight authority, under MEPA, over the DNRC, the DEQ, and the FWP, and specific statutory duties involving the DEQ, the DNRC, and the Department of Agriculture, which are required to report on a biennial basis on certain programs. So the Subcommittee has generic authority over 3 agencies all the time--any program or any policy--and can require other agencies to report if a particular policy, program, project, or controversy has environmental implications. Both the generic duties under MEPA and the specific statutory duties are listed in the Subcommittee's Final Workplan (see [EXHIBIT #28](#)).

MR. MITCHELL said that, although he is getting a sense that the Subcommittee felt that "good enough is well left alone", he felt a discussion of how to address all of the other specific duties was in order.

MR. STRAUSE commented that, looking at it from a non-legislator point of view, it seems like everything we've done is valuable but, in the last 5 years, a lot of time has been taken up by these statutory one-liners and it seems like we then lose sight of the bigger role of the EQC. The Council is supposed to look at conditions and trends in the quality of environment, both now and in the future, but we've haven't been given the big picture on either air or water quality and without that information it is hard to decide if something needs to be changed. One of the Council's duties is to document and define changes in the natural environment which does happen in microcosm but not for the broader picture.

REP. BARRETT noted that her concern is what to do when an issue comes before the Subcommittee or full Council and we hear a presentation and ask questions but then there is no followup later.

CHAIRMAN HARRIS observed that Congress has oversight committees in both the House and the Senate, as well as the Government Accounting Office and other oversight institutions, and in Montana we don't have luxury or burden of that type of structure so the responsibility comes down to the Legislature and interim committees. CHAIRMAN HARRIS said that he is comfortable with specific statutory oversight duties being on books, as well as the broad authority under MEPA, because the Council or Subcommittee can choose how much time, if any, to devote to each area.

SEN. WHEAT commented that the Subcommittee should be able to rely more on the legislative auditors and questioned if the Subcommittee has the authority to go to LAD as a committee and request an audit. MR. MITCHELL answered that any legislator can request an audit from LAD.

CHAIRMAN HARRIS said that, in the absence of any other suggestions by the Subcommittee members or a motion to change the status quo, the Subcommittee is satisfied with the status quo in regard to the Council's statutory oversight duties.

## **X. Statutory Duty Review - Solid Waste Management Plan**

**Louise Moore, DEQ**, distributed copies of the Montana Integrated Solid Waste Management Plan (see **EXHIBIT #29**) and offered the Subcommittee an update on the Solid Waste Management Act and the progress made in preparation of the plan, as well as three issues that have arisen out of the plan. The Solid Waste Management Act was passed in 1991 and established three requirements for the state: the first was to set a solid waste reduction target of 25% of the solid waste in the state by 1996; the second was to establish a source reduction recycling program; and the third is the solid waste management plan. The waste reduction target was a very ambitious goal and success is very hard to measure. A solid waste reduction plan was put together that required the Department to set priorities, with waste reduction being the first priority, reuse of materials is second, recycling is third, composting is fourth, with disposal being the last priority and to look at special wastes, such as electronic, hazardous household, batteries, and infectious. The state government was required to purchase and procure recycled goods and to be a leader in the state's recycling effort and to establish a source reduction recycling program, which is working well. The solid waste management plan

has several key elements: identifying the state's disposal capacity for the future, educating the public and landfill operators, including rural communities in the programs, developing a timeline for the implementation of strategy, including the involvement of local officials, the public, the solid waste recycling industry, and environmental groups in planning, and the plan must be reevaluated every 5 years. The original plan was completed in 1994 and a rewrite was considered in 1999 but abandoned. For the 2004 reevaluation, the Department developed a version of the plan containing only facts and figures and created a task force to look at those facts and figures and offer recommendations. The task force has completed three meetings and the revised plan should be completed in 60-90 days, at which time it goes out for public comment. Three issues have arisen out of the reevaluation of the plan. The goal of 25% waste reduction by 1996 is too ambitious and never had a good starting point. What goal should we really be establishing in this version of the plan and should the Legislature be asked to change the goal in statute and, when it is determined what our goal should be, how should it be measured--amounts going into landfills or the progress of the recycling program and are we primarily concerned with volume or toxicity? The second issue is that the major difficulties to recycling in Montana haven't changed in the last 10 years--low populations, large land mass, and distance from the market. The greatest success has been in developing local markets and that will continue to be the focus. One recommendation of the task force would be to set aside a portion of the solid waste fees or add a special assessment on solid waste fees to fund the recycling program in Montana, such as buying a glass crusher or to offer household hazardous waste disposal days. The third issue is that incentives for recycling are still needed--the business tax credit and individual tax deduction is due to expire in 2005.

REP. HEDGES asked if the state has done a comparative analysis about what happens in states like Oregon, which has a deposit on aluminum cans, versus Montana, which doesn't and **Ms. Moore** answered that we haven't analyzed that specifically yet, but "bottle bills" are effective tools to aid recycling.

REP. CLARK commented that the 1994 plan offers many good recommendations and ideas and questioned how many of recommendations have been put into law. **Ms. Moore** said that she didn't have those numbers but she could say that many of them were worked on and will come out with the next task force recommendations.

REP. CLARK questioned what happens to the glass in Trout Creek that they can recycle glass when the larger cities can't and **Ms. Moore** answered that the larger cities don't have the local market. A major success story in Montana's recycling efforts is the establishment of the Headwaters Cooperative, which is a group of small rural counties who have worked to establish a market for recycled glass with the cement kilns.

SEN. WHEAT wondered if there was any effort by the DEQ to collaborate with the universities to assist in development of technology related to recycling and reusing waste products and **Ms. Moore** answered that the Department is working with the University of Montana on a composting project and with MSU through their extension service.

MR. STRAUSE said that we seem to be going backwards in terms of waste management planning, because the statistics seem to indicate that we dispose of more waste on a per person basis now than we did 10 years ago, and asked if the trend was getting better or worse. **Ms. Moore** explained that we don't know what the per-person volume was 10 years ago--the Department was using an EPA estimate. **Ms. Moore** said that she doesn't believe that we're

disposing of more waste per person, but there is no way of knowing or proving it. Discussions with solid waste people lead her to believe that we are making progress in keeping stuff out of landfills, such as junk vehicles or appliances, but more work needs to be done with paper, cardboard, and glass. **Ms. Moore** feels that the state is better off now than 10 years ago but cannot quantify it.

CHAIRMAN HARRIS, noting that he is familiar with recycling used oil, commented that, with the adoption by Montana of federal used oil standards and the fact that used oil is in great demand, this would be an area worth looking into for the state.

MR. STRAUSE observed that time and again we ask for baseline data and what was it 10 years ago and we find that the information isn't available--and without that information it is hard to know where the state is going and what may need to change. The lack of adequate baseline studies is hampering decisions.

CHAIRMAN HARRIS agreed that MR. STRAUSE had a valid point, but noted that the state, and especially the DEQ, doesn't have the extra money to conduct these studies.

#### **XI. Statutory Duty Review - Mega Landfill permit applications**

**Rick Thompson, DEQ**, offered a synopsis of the Mega-Landfill Siting Act and explained that a mega-landfill is any new or existing solid waste landfill that accepts more than 200,000 tons of solid waste or any ash monofill that accepts more than 35,000 tons of solid waste incinerator ash. An existing solid waste facility that, as of Dec. 31, 1991, accepted over 100,000 tons of solid waste per year but less than 300,000 tons per year is not a mega-landfill, and this includes the large urban and county landfills in Montana. The intent and purpose of the Act was to prevent the degradation of environment and to provide adequate remedies to prevent the depletion of the state's natural resources and the Act provides for administration and enforcement to obtain the stated goals. Some of the highlights of act are that a company, before applying, would have to produce for the Department a long-range plan for 2 years and perform a study showing that the current waste disposal means are adequate. A major provision of the Act is the requirement of a certificate of site suitability from the Board of Environmental Review, which involves study of the social, economic, and environmental factors of the area. Megalandfills have a different fee structure--the filing fee is \$40,000 with an additional charge of 20 cents per ton over 200,000 tons, and timeline for licensing.

CHAIRMAN HARRIS asked if there were any mega-landfills in Montana and how many applications have been received. **Mr. Thompson** replied that there were no mega-landfills within the state and no applications have been received, although there was one inquiry from the Crow tribe. CHAIRMAN HARRIS wondered what would happen if, for example, Billings should approach the 300,000 ton limit--are they required to go through the mega-landfill process. **Mr. Thompson** answered that is how the statute is geared--if an existing facility approaches the limit they would have to apply for a license, although the landfill operations would be allowed to continue while the licensing process is underway.

MR. MITCHELL explained to the Subcommittee that the Mega-Landfill Siting Act passed in 1991, because someone from Chicago had proposed a mega-landfill near Miles City and there was a great deal of concern about Montana receiving waste from other states.



REP. BARRETT asked if Montana has the most restrictive mega-landfill act and **Mr. Thompson** replied that the current federal landfill regulations make all of the states about the same.

## **XII. Subcommittee Report**

CHAIRMAN HARRIS, returning to the meth lab cleanup standards issue, asked the Subcommittee if there was a consensus that legislation on cleanup standards is needed.

REP. HEDGES, answering in the affirmative, commented that he would like to see the cost paid for by fines and by confiscating the property and assets of drug dealers.

CHAIRMAN HARRIS said that there is an existing mechanism for restitution in the statutes now and that restitution could go to cleanup of the lab site and we could make it more explicit.

SEN. WHEAT commented that he doesn't have a problem with establishing standards for cleanup but he doesn't feel the state should be involved in the cleanup or certification process. Landlords should bear the costs of cleanup and certification from private cleaning companies and laboratories and the people who do the cleaning should bear the liability. It is a problem that should be resolved by the private sector.

REP. CLARK said that he agrees that there should be standards in statute and that he believes this can be handled at the county level, between the county sheriff and the county sanitarian, with oversight from the DPHHS to make sure the sanitarians have the resources to get the training they need and to make the decision as to who is qualified as a cleanup crew. Another necessary standard to set would be a time table for cleanup, especially when an out-of-state landowner is involved. Also, standards need to be set as to the landowners responsibility once a meth lab is discovered.

REP. PETERSON explained that he was not sure that he fully comprehended the magnitude of problem, but if there is a problem then it makes a lot of sense to having standards concerning what is an adequate level of clean up. Landowner shouldn't be able to plead completely innocent and should bear responsibility for the financial burden of cleanup. REP. PETERSON said that he is reluctant to involve the state in the cleanup responsibilities and the state should not be burdened with another financial responsibility at this time.

MR. STRAUSE said that he feels we should set a cleanup standard and let the free enterprise system work from there. There probably has to be some state involvement in the certification process and we can probably follow Washington's, or another state's, lead. Restitution isn't going to help fund any program.

REP. BARRETT suggested that any steps should be taken as cautiously and conservatively as possible and there should be something at the state level to help the responsible landlords and renters.

REP. HEDGES commented that the state would have to be careful about putting the responsibility for cleanup entirely on the landowner. Suggestions of putting a surcharge on insurance or rental income are not fair, because large amounts of rental income within the state have nothing to do with this problem.

CHAIRMAN HARRIS said there was a need to get some kind of funding for the coordination and certification work that some agency is going to have to do and it isn't coming from the general fund. There might be federal grant money available but he was open for any reasonable suggestion to come up with the \$50,000 necessary to start this program.

REP. HEDGES asked how much money is generated in the state by the auctioning of the property of drug dealers.

SEN. WHEAT, although he did not have the answer to REP. HEDGES' question, said there is a crime victims fund to help a landowner whose property is burgled and trespassed upon by the operators of a meth lab.

MR. STRAUSE noted that he had learned, after talking to the chief of police in Great Falls, that it will be very difficult to get that drug forfeiture money from the police departments.

SEN. WHEAT asked why can't the landlords' association do this on their own and why does it have to be the government doing this for them.

CHAIRMAN HARRIS said that he would volunteer to call Sen. Christiaens to see if his organization would want to create an account for voluntary contributions or federal grant money to be used to start this program. CHAIRMAN HARRIS then said that he would report to the full EQC that, although there is a consensus that cleanup standards need to be set, the Subcommittee is still looking at the issue.

### **XIII. Instructions to Staff**

MR. MITCHELL reminded the Subcommittee that, although the full EQC has a May meeting, a July meeting, and a final meeting in September, this Subcommittee does not have a meeting scheduled in May. MR. MITCHELL told the Subcommittee that they have about completed their statutory duties work and agenda items for future meetings can be issues of committee-driven interest or followup issues.

SEN. WHEAT requested that a letter be sent to Mr. Thompson and Mike Byrnes asking them to report back at next Subcommittee meeting as to how their collaborative effort is going. MR. MITCHELL replied that he could do this.

MR. MITCHELL asked the Subcommittee if they wanted to have a May meeting, and if so, what topics should be on the agenda.

REP. PETERSON commented that he feels the Subcommittee is far enough along in their final workplan to skip May.

CHAIRMAN HARRIS stated that the Subcommittee can fill up the July meeting agenda with ideas that have already been expressed and, by July, the Subcommittee will have a full day's agenda.

MR. MITCHELL asked if this will be an agenda driven by the committee members themselves and, if so, whether ideas for the agenda items should be submitted to him or the chair/vice chair.

REP. CLARK recommended that agenda ideas be submitted through the chair and vice chair. CHAIRMAN HARRIS promised, for the July meeting, a full agenda that will cover relevant topics.

**ADJOURN--3:35 p.m.**

**4:00 p.m.      CONVENE EQC MEETING**