



Petroleum Tank Release Fund Subcommittee
60th Montana Legislature

SENATE MEMBERS
ROBERT STORY JR

HOUSE MEMBERS
SUE DICKENSON
CYNTHIA HINER
RICK RIPLEY

COMMITTEE STAFF
HOPE STOCKWELL, Research Analyst
TODD EVERTS, Staff Attorney
CYNTHIA PETERSON, Secretary
BARBARA SMITH, Fiscal Analyst

MINUTES

Date Approved:¹

June 4, 2008

Room 422
State Capitol Building

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

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COMMITTEE MEMBERS PRESENT

SEN. ROBERT STORY JR
REP. SUE DICKENSON
REP. CYNTHIA HINER
REP. RICK RIPLEY

STAFF PRESENT

HOPE STOCKWELL, Research Analyst
TODD EVERTS, Staff Attorney
CYNTHIA PETERSON, Secretary
BARBARA SMITH, Fiscal Analyst

¹These minutes were completed after the interim recessed and were not approved by the committee.

Visitors

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

COMMITTEE ACTION

The Subcommittee took no action.

CALL TO ORDER AND ROLL CALL

- 00:00:01 Sen. Bob Story, Chairman of the Petroleum Tank Release Fund Subcommittee (Subcommittee) called the meeting to order at 1:00 p.m. The secretary noted the roll ([Attachment 3](#)).
- 00:03:44 Hope Stockwell, Legislative Research Analyst, reviewed the agenda. Ms. Stockwell stated she has spoken with Janice Pearson, Environmental Protection Agency (EPA), who reported cleanup work is declining nationally, although still moving forward. Montana is participating in a federal audit to identify bottlenecks in cleanups.

ISSUES RELATED TO PRIVATE INSURANCE - Hope Stockwell

- 00:06:20 Ms. Stockwell submitted "Financial Responsibility Courts for the Petroleum Tank Release Compensation Board" and "Insurance Summary for Top 21 Releases" ([EXHIBIT 1](#)). Ms. Stockwell offered to obtain additional information regarding the amounts collected from insurance companies, the status of subrogation actions, and specific dates of the releases, which mostly occurred in the mid-80s and early 90s.
- 00:10:30 Terry Wadsworth, Executive Director, Petroleum Tank Release Compensation Board (PTRCB) addressed the financial responsibility counts and stated the numbers are not quite accurate but provide an idea of the range of values that might occur and the areas where owners could use coverage. Chairman Story asked about terms listed on the left-hand side of the chart, and Mr. Wadsworth reviewed the terms.
- 00:15:29 Ms. Stockwell submitted and reviewed "Table 1 - 1997 Estimate in EPA Report," which indicates premium prices for tank owners and operators for private insurance ([EXHIBIT 2](#)). Ms. Stockwell stated she spoke with an insurance company in Iowa and premium prices depend on various factors. Ms. Stockwell clarified homeowners insurance will only cover catastrophic releases for home heating oil and will not cover slow releases or damage to land. Therefore, it would be necessary to create a new insurance product, which would result in higher premiums. Additionally, Ms. Stockwell spoke with John Youngberg, Montana Farm Bureau Federation, who identified a "don't ask don't tell policy," when writing insurance policies and while tank releases are not specifically excluded up front and if it is known a tank is present, the tank will be excluded from coverage. Ms. Stockwell explained above-ground storage tanks are more

common with farmers and ranchers than in the past. Tom Healy, an insurance agent in Havre, explained to Ms. Stockwell that above-ground storage tanks are easier to address since you can see them leaking and address the leak. Mr. Healy stated underground tanks are excluded from the policies he sells. Mr. Healy also explained that sudden accidental leaks could be covered, but coverage would be limited. Ms. Stockwell reported that insurance companies would rather insure the whole \$1 million of coverage rather than just covering the deductible since the deductible would be a known certain amount. Ms. Stockwell stated if the system were to change to a co-pay system, there would be no way to determine what five percent would be. Also, the insurance companies did state premiums would increase depending on the risk and amount of coverage. Ms. Stockwell reported she had discussed the matter with Barbara Smith, Legislative Fiscal Analyst, who had suggested the Petroleum Tank Release Compensation Fund "the Fund" could be switched to premium assistance, as opposed to paying for cleanups. Ms. Stockwell also stated Mr. Youngberg had informed her there is a 1985 case pending before the Montana Supreme Court for a gas station the Montana Farm Bureau Federation insured.

Public Comment

- 00:24:16 Greg Van Horssen, State Farm Insurance, offered to answer any questions.
- 00:25:14 Jacqueline Lenmark, American Insurance Association, thanked Ms. Stockwell and Mr. Wadsworth for the opportunity to discuss the proposals.
- 00:27:25 Ronna Alexander, Petroleum Marketers Convenience Store Association, addressed the purpose of the Fund and stated the impetus for the Fund came from the EPA requirement for \$1 million of coverage. Ms. Alexander provided a history of the Fund. The EPA requirement does not require insurance on small tanks, but Montana chose to go far beyond what is done in other states. Ms. Alexander supported limiting the exposure from small tanks and suggested fixing the problem would require multiple changes in the system. Ms. Alexander explained the current practice in other states. Ms. Alexander disagreed that pollution coverage could typically be obtained for \$2,000 a year, and emphasized it is unknown what would happen if private insurance were required and the effect that exclusions would have on premiums. Ms. Alexander was supportive of private insurance, but was unsure how to get started.
- 00:37:23 Mr. Wadsworth agreed with Ms. Stockwell that insurance companies would prefer to provide the entire \$1 million. Mr. Wadsworth identified the key piece as being that if you have an active underground storage tank with no contamination, then insurance is available. However, if you have or have had a release, the ability to obtain insurance could be questionable. Mr. Wadsworth submitted information he received via e-mail from Robert Barker, UCPM Environmental Insurance, Inc. (**EXHIBIT 3**). Mr. Wadsworth identified exclusion and first dollar coverage as issues in other states.

Subcommittee Questions

- 00:41:14 Rep. Dickenson asked whether transitioning the Fund into a premium assistance fund would be legal and constitutional.
- 00:41:54 Mr. Everts offered to research the issue. Chairman Story noted similar things are done with health insurance.
- 00:42:15 Mr. Van Horssen stated the statute would have to be modified and it would be necessary to ensure that products are available that would do exactly what the Fund is currently doing. Mr. Van Horssen believed it would be prudent to ensure there are products available and determine the price of those products.
- 00:43:47 Chairman Story pointed out a person could spend a substantial amount of time fighting insurance companies to get them to pay. Chairman Story specifically asked how the process works in Texas.
- 00:45:09 Mr. Wadsworth addressed Chairman Story's concern and clarified in Texas if an insurance company is not covering the clean up, the regulatory agency cleans up the contamination and seeks payment from the owner, and the owner must work with the insurance company.
- 00:45:59 Chairman Story sought information regarding the life of an insurance policy, and Ms. Lenmark stated in the broad spectrum of policies, policies have changed over the years and some policies written back in time may have been occurrence policies. Ms. Lenmark suggested having guidelines uniformly enforced would provide insurance companies comfort in developing coverage and bringing the coverage to Montana. Ms. Lenmark stressed the importance of having a stable and uniformly enforced administrative regulatory system and judicial environment.
- 00:49:46 Chairman Story asked Mr. Everts to address the issue of traveling liability. Mr. Everts responded the liability risk could attach to the owner operator or could attach to the insurer at the time of the leak.
- 00:50:59 Rep. Dickenson commented that in looking at the big spills, everyone that had insurance needed a subrogation program. Rep. Dickenson thought most big operators would have a history of leaks and would be excluded from insurance coverage. Rep. Dickenson was uncertain whether requiring private insurance would be the best option. Rep. Dickenson asked how it is ascertained when a leak started.
- 00:52:56 Mike Trombetta, Hazardous Waste Site Cleanup Bureau, Department of Environmental Quality (DEQ), responded sometimes it is easy to ascertain, but the difficulty increases if no specific event exists. Mr. Trombetta explained it may never be known when some releases occurred. Mr. Trombetta stated the courts often have a difficult time determining when releases occurred.

00:54:08 Ms. Alexander reminded the Subcommittee the responsibility lies with the tank owner, and every tank owner is required to have a leak detection monitoring system, inspections, and tank tightness tests. Ms. Alexander believed it is now very easy to determine whether there is a leak.

00:55:31 Rep. Ripley pointed out that some farmers/ranchers lease their tanks and wondered who would bear the liability if there was a leak. Ms. Alexander believed the property owner would be responsible.

00:56:44 Mr. Van Horrsen understood the tank owner/operator is the first responsible party in the liability chain.

00:57:52 Ms. Stockwell commented that one state is offering some type of assurance to future operators that they will not be held liable for contamination.

00:59:01 Chairman Story believed that currently, the state acts as the primary insurer and then attempts to recover payment from private insurance. Chairman Story solicited requests from the Subcommittee on how it would like to proceed on the insurance issue.

01:01:15 Rep. Ripley stated he was not comfortable making any decisions regarding insurance coverage.

01:01:49 Rep. Hiner agreed with Rep. Ripley.

01:02:01 Chairman Story asked the Subcommittee whether it wanted to do more than what had already been done.

01:02:21 Rep. Dickenson agreed, but thought the Subcommittee should find a way to address Fund solvency.

01:03:10 Chairman Story recalled Mr. Wadsworth's proposal and reference to a higher deductible and giving owners more responsibility and asked Mr. Wadsworth to provide an explanation.

01:03:47 Mr. Wadsworth explained the proposal would raise the co-pay to 50 percent of \$50,000, plus 5 percent of the remaining cost. Mr. Wadsworth explained the proposal would encourage insurance by allowing insurance coverage to be applied to the co-pay. Mr. Wadsworth identified a need to encourage insurance by changing the statutory language.

01:05:10 Chairman Story noted the insurance industry is reluctant to provide coverage.

01:06:20 Mr. Wadsworth identified the issue as who provides first-dollar coverage. Mr. Wadsworth explained that self insured parties will not pay out of their own pocket before coming to the Fund. Mr. Wadsworth did not believe that first-dollar coverage should have to come from the Fund.

- 01:09:24 Chairman Story requested clarification on why insurance companies would want to insure the whole thing rather than just a portion.
- 01:09:47 Mr. Van Horrsen explained when an insurance company insures a risk, the company wants to be able to control the risk. Mr. Van Horrsen emphasized if the risk or exposure is larger, the premiums will be larger. Mr. Van Horrsen explained that companies want to have a hand in the cleanup, but admitted that it may not be possible in Montana.
- 01:12:14 Chairman Story commented that if there were to be a transition to private insurance, changes would need to be made in the DEQ's authority.
- 01:12:59 Mr. Van Horrsen was uncertain of the details, but stated insurance companies need to have input, or very clear rules that they can rely on for monitoring, testing, and providing insurance companies with the ability to have a say in the work that is going to be performed and the cost of the work.
- 01:14:44 Chairman Story requested an analogy of a similarly regulated environment. Mr. Van Horrsen urged the Subcommittee to look at the type of information that needs to be disclosed to an auto insurance company.
- 01:15:51 Rep. Dickenson addressed enforcement by DEQ and asked how a partnership would work with insurance companies.
- 01:16:42 Daniel Kenney, Remediation Division, DEQ, could envision insurance companies developing a list of environmental cleanup contractors, and suggested a competitive bidding process could drive costs down and result in sites being cleaned up to state standards.
- 01:18:31 Rep. Dickenson asked Mr. Wadsworth to address the proposal to add five percent if cleanup becomes more extensive as it progresses. Mr. Wadsworth agreed five percent would keep the owner/operator involved in the cleanup. Rep. Dickenson asked Mr. Wadsworth if he would be willing to eliminate or reduce the proposed five percent. Mr. Wadsworth responded the Board would be willing to consider eliminating five percent in order to make the fund viable.
- 01:20:16 Chairman Story commented insurance would probably apply to people who do not have any problems, and pointed out that problems still remain with old tanks and abandoned facilities.
- 01:21:10 Mr. Wadsworth stated the proposal is to encourage, rather than require, insurance coverage. Mr. Wadsworth suggested building a process to insure underground storage tanks and provide a regulatory framework for above-ground storage tanks. Mr. Wadsworth noted insurance companies do not want to come into a program without a regulatory framework. Mr. Wadsworth was interested in providing a conducive environment for insurance to play a more active role. Chairman Story suggested starting a dialogue with agricultural producers.

- 01:24:18 Jacqueline Lenmark, American Insurance Association, addressed partnerships with the insurance industry and stated companies have a policy to help and assist with education about issues that would make their property more insurable and could reduce the cost of premiums.
- 01:25:54 Greg Cross, Petroleum Tank Release Compensation Board, commented the very issues that prevent a solution from being reached are the same issues the PTRCB faces. Mr. Cross depicted the liability of the Fund as an ongoing march and believed the march will continue and some sites will, at some point, bump up against \$1 million. Mr. Cross stated the owner/operator will then be responsible for any amount over \$1 million. Mr. Cross explained that many sites that receive a "no further action letter," realistically need observation into the future. Mr. Cross emphasized that there has been an excellent job of education and that education is not the primary problem. Mr. Cross explained the process is very expensive and the process has no end. Mr. Cross believed once a spill is addressed to a certain degree, then it must be monitored to a lesser degree.
- 01:30:08 Chairman Story wanted to know whether home heating oil is still used or whether home heating oil is a dying fuel source.

RISK BASED MONITORING SYSTEM OVERVIEW - DEQ

- 01:30:23 Mike Trombetta gave a PowerPoint presentation entitled "Monitored Natural Attenuation and Risk-Based Corrective Action at Underground Storage Tanks Sites" ([EXHIBIT 4](#)).

Questions from the Subcommittee

- 01:47:36 Rep. Ripley asked whether the DEQ standards are the same as the EPA standards. Mr. Trombetta responded the EPA does not have ground water standards, and when the EPA cleans up, it cleans to drinking water standards and risk to human health, so DEQ standards are, in essence, higher. Rep. Ripley asked if when the fill is removed, the smear zone could be pumped, resulting in less monitoring. Mr. Trombetta stated that can be done in many cases, but not in a clay soil site. Mr. Trombetta explained the amount of monitoring has changed through time. Mr. Trombetta stated in a large, expensive cleanup, there is a need to know where the spill is or whether there are human or environmental receptors. Rep. Ripley thought if the spill is in a clay-type soil and the contamination is being held, it would seem feasible to pump. Mr. Trombetta responded the opposite is true since petroleum can find its way through the clay, making it difficult to pump.
- 01:52:11 Rep. Dickenson requested a comparison between the EPA drinking water standards and DEQ-7. Mr. Trombetta explained the two sets of standards are identical for contaminants most often found in petroleum.
- 01:52:58 Chairman Story addressed Montana's non-degradation policy and how the policy ties into DEQ's standards. Mr. Trombetta clarified non-degradation refers to

permitting; and once the water is contaminated, it has to be cleaned up to DEQ-7 standards.

01:54:04 Mr. Everts explained the purpose behind the non-degradation statutes is to protect existing and potential uses of Montana's water.

01:55:59 Mr. Trombetta continued his presentation.

Questions from the Subcommittee

02:03:43 Rep. Dickenson asked whether the DEQ communicates with people in the Department of Agriculture who monitor wells for pesticides and herbicides. Mr. Trombetta responded the DEQ samples ground water for other constituent solvents and organic chemicals that are used in urban areas. Mr. Trombetta identified a Ground Water in Ag program within the DEQ, and stated the DEQ receives money from the Department of Agriculture.

02:07:25 Rep. Dickenson asked whether there was a central gathering place for all the data compiled from the various state departments. Mr. Trombetta responded there was no centralized system, and that creating a database of that size would be very resource intensive.

02:10:07 Mr. Trombetta continued his presentation.

Questions from the Subcommittee

02:17:22 Rep. Ripley recalled Mr. Trombetta's reference to sites that are on other schedules. Mr. Trombetta explained some sites are on an every-other-year monitoring schedule. However, the majority of sites are on a quarterly monitoring schedule.

02:18:58 Chairman Story addressed the post-clean up process and asked whether anything else has to be done once monitoring begins. Mr. Trombetta agreed that occurs, but not often. Mr. Trombetta suggested a source could be missed or a there could be a complication in the aquifer. Mr. Trombetta estimated that it happens less than ten percent of the time. Chairman Story asked whether the DEQ has enough information to predict the result. Mr. Trombetta agreed that was the case in many areas, but that results can vary. Chairman Story asked whether because of past experience, DEQ can begin digging without doing much preplanning. Mr. Trombetta clarified they do not always know the size of the release. Therefore, the DEQ always does some investigation before it begins digging.

How DEQ Prioritizes its Remediation Work under Financial Constraints - DEQ

02:22:50 Mr. Trombetta submitted and reviewed "Petroleum Release Site Prioritization Matrix 3/4/2008" ([EXHIBIT 5](#)). Mr. Trombetta made the presentation for Sandi Olsen, who could not be present at the meeting.

Questions from the Subcommittee

02:28:25 Rep. Ripley asked for clarification that some project managers are currently managing 200 sites. Mr. Trombetta stated the project manager with the highest number manages 175 sites in Kalispell, but the average number of sites per project manager is approximately 100. Rep. Ripley asked whether the priority rating would determine how many sites could be managed by a project manager. Mr. Trombetta agreed and explained that DEQ has hired an FTE to manage long-term monitoring sites. Chairman Story asked how much work had to be done on a site before the site receives a priority rating. Mr. Trombetta explained once a release is reported, the DEQ takes a 24-hour report and assigns a tentative priority rating. At that time, the owner/operator has 30 days to complete a report, and then the DEQ assigns a priority rating. Chairman Story asked whether an old site goes through the same process to get a priority rating. Mr. Trombetta explained of the 76 releases reported in 2007, approximately 45 percent were historic contamination.

ADMINISTRATIVE COST ANALYSIS - Barb Smith

02:48:38 Barbara Smith, Legislative Fiscal Analyst, submitted and reviewed "Petroleum Tank Compensation Board - Base Budget" ([EXHIBIT 6](#)).

Questions from the Subcommittee

02:54:49 Rep. Dickenson asked where money comes from to do subrogation. Ms. Smith responded the money comes from a language appropriation in HB 2.

02:55:21 Rep. Ripley asked why the positions were open in 2007. Tom Livers, Deputy Director, DEQ, explained some of the positions were open because the DEQ was ahead on work plans and to assist with funding problems. Chairman Story addressed Mr. Livers and recalled that this year when DEQ came in for its budget, it offered \$300,000 in EPA money to assist the Fund. Mr. Livers explained the transfer went into the state superfund, which is a cost-recovery program. Mr. Livers explained the DEQ received extra money and that additional authority is needed to rotate the money through the process. Mr. Livers reported the DEQ needs the money in the superfund program to accomplish more cleanup work, but that the money and spending authority is needed up front, and then recovered from the Potentially Responsible Parties (PSPs).

02:59:35 Ms. Smith added at the end of the 2007 Legislative Session, \$1.4 million was appropriated, but the DEQ only utilized \$1.1 million, and moved the authority to other programs. Ms. Smith clarified the appropriation was only for state special authority. Ms. Smith explained the current FTE status and reported nine open positions in the Remediation Division, and that 7.5 were from HB 2 funding, and one was off of a budget amendment.

03:01:15 Rep. Ripley wondered why the \$300,000 decision was not made prior to the Legislative Session. Mr. Livers explained the course correction was made during the interim to cover the cost of the work plans.

WHAT OTHER STATES ARE DOING

03:03:06 Ms. Stockwell submitted and reviewed "Status of State Fund Programs" (**EXHIBIT 7**) and "Summary of State Fund Survey Results 2007 (**EXHIBIT 8**). Ms. Stockwell reported that many states are utilizing risk-based management as the most effective use of time and money. Ms. Stockwell said Montana may be different because of its high water-quality standards and the constitutional right to a clean and healthful environment. Ms. Stockwell directed the Subcommittee to "Table 1: Design Characteristics of State Financial Assurance Funds" (**EXHIBIT 9**). Ms. Stockwell stated the EPA had reported Missouri and Iowa utilize private insurance, and stated that owners/operators in Iowa generally work with one company. Ms. Stockwell said Janice Pearson at EPA suggested the State Assurance Fund in Colorado could be a good example, and that Colorado assesses a gas tax and tank fees. Ms. Stockwell reviewed policies in other states. Ms. Stockwell addressed increasing the minimum claim amount from \$200 to \$1,000. Ms. Stockwell also stated properties in other states can be closed if there is full disclosure of the contamination and the disclosure would follow the property's ownership.

Public Comment

03:18:54 Mr. Wadsworth commented on Risk Based Corrective Action (RBCA) on page 9 of Mr. Trombetta's handout (Exhibit 4), and the breadth of the challenges in Montana to assist the Fund. Mr. Wadsworth clarified in some states, if the soil concentrations are not leaking pollution to the groundwater in amounts higher than the state standard, the petroleum can be left in place. In other states, if the groundwater is above state standards but the plume is shown to be steady and there are no risk receptors, then they can close the site. Mr. Wadsworth agreed the closure could contain a deed restriction. Additionally, other states may allow a reactive wall to be on the down gradient side of the pollution.

03:22:16 Chairman Story asked whether utilizing a reactive wall is a nondegradation rule issue or a statutory issue with regards to petroleum cleanup or DEQ-7. Mr. Wadsworth identified Chairman Story's question as the problem to be solved.

03:23:07 Mr. Wadsworth addressed page 11, Exhibit 4, and the concept of a plume expanding or contracting. Mr. Wadsworth explained in other states if the plume is expanding, additional cleanup is required. However, if the plume is stationary or receding and there are no other receptors in the area, the site can be closed. Mr. Wadsworth suggested that the groundwater would remain contaminated regardless of whether the groundwater is watched or closed, and watching the groundwater would cost Montana money. Mr. Wadsworth commented on Tables 1 and 4 and asked the Subcommittee to keep in mind that not all of the states cover heating oil and above-ground storage tanks.

03:26:42 Ms. Alexander, Petroleum Marketers, apologized about explaining state water quality standards in her position paper. Ms. Alexander supported risk-based closure. Ms. Alexander identified DEQ-7 as a technical document that sets water-quality standards and drinking-water standards for Montana. Additionally,

DEQ has Guidance Document 7, which adds additional contaminants and exceeds the standards for drinking water. Ms. Alexander explained the guidance document has never gone through the formal rule making process. Ms. Alexander wondered why Montana would spend money on sites that have groundwater contamination that is not a risk to the environment or human health. Ms. Alexander explained the EPA would like sites closed quicker and cheaper. Ms. Alexander suggested the Legislature could look at the value of the program and the other options. Ms. Alexander urged the consideration of risk-based closure and reasonable solutions in an effort to make the Fund viable.

03:36:05 Greg Cross, Presiding Officer, PTRCB, depicted the PTRCB as a very talented board that is fiscally responsible for keeping Montana's environment clean. Mr. Cross explained the PTRCB is working with the DEQ to find a solution. Mr. Cross stated the current approved work plans would require \$10-11 million, and there is only \$4 million available. Mr. Cross reiterated the need to find a solution to keep the Fund viable.

Questions from the Subcommittee

03:38:30 Rep. Ripley required more information about modifying DEQ-7 and asked what needed to be done to get to risk-based closure. Mr. Trombetta deferred the question to Mr. Everts for clarification.

03:39:37 Mr. Everts explained § 75-5-301, MCA, required the Board of Environmental Review (BER) to adopt classifications and standards for state waters and DEQ-7 was the result. Chairman Story asked whether the statute delineates the value of the standards. Mr. Everts responded there is a long list of parameters for how to go about adopting the standards, and the non-degradation provisions are intertwined with the Code of Federal Regulations. Mr. Everts added he was unclear about the details of the guidance document. Mr. Trombetta explained the guidance document was not created in rule and contains a two-tiered process. If contamination is above DEQ 7, the site cannot be closed. Additionally, if there is a human health receptor impacted, the site cannot be closed. Mr. Trombetta explained there are hundreds of chemicals contained in petroleum. Mr. Trombetta recognized the frustration and the burden on the Fund. Rep. Ripley requested copies of the RBCA and the guidance document. Rep. Ripley wondered how it is determined that it is more economical to conduct long-term monitoring or better to clean up a site and close it. Mr. Trombetta responded it is a site-by-site determination. Mr. Trombetta stated DEQ is looking more closely at leaving contamination in the ground and just performing monitoring and that DEQ is allowing more contamination to remain in the ground because DEQ does not have enough resources. Mr. Trombetta reminded the Subcommittee that Montana has a strong constitution and strong environmental statutes.

03:50:53 Rep. Dickenson addressed Ms. Alexander's scenario and asked why DEQ would continue to monitor a site. Mr. Trombetta responded that if everything were below DEQ-7 and there was no potential of risk to humans, DEQ would close the

site. Mr. Trombetta admitted a mistake could be made and that he would need the particulars about the site Ms. Alexander was referring to.

- 03:53:12 Mr. Wadsworth pointed out the state does allow contamination of state waters through mixing zones and that risk-based cleanup is the same fundamental concept.
- 03:54:30 Chairman Story provided a history of the groundwater mixing zone legislation.
- 03:55:25 Mr. Everts clarified there is still authority in statute to create mixing zones.
- 03:56:12 Chairman Story addressed the modeling concept and asked how close DEQ is to being able to utilize modeling to close sites. Mr. Trombetta agreed modeling has been used to address soil contamination. Mr. Trombetta stated ground water is a receptor under the Water Quality Act, so the law does not allow the site to be closed.
- 03:57:40 Chairman Story requested clarification on the difference between a site that is closed and one that is receiving long-term monitoring. Mr. Trombetta explained a closed site received a no further action letter. For a site that is receiving long-term monitoring, there must be a determination that there is no risk to human health and a low risk to the environment, but those sites will not receive a no further action letter. Chairman Story wondered whether the state is accepting any liability when it issues a no further action letter. Mr. Trombetta responded the DEQ has reopened sites when necessary and the no further action letter contains reopen language. Chairman Story asked whether there was a liability issue that causes the DEQ to be slow in closing sites. Mr. Trombetta responded the DEQ instituted a peer-review process to close sites and that very few sites have to be reopened. Chairman Story noted if a site is never closed, it would never have to be reopened.

EPA REGULATIONS REGARDING CLOSED SITES

- 04:02:58 Ms. Stockwell directed the Subcommittee to "Montana Backlog Background" (**EXHIBIT 10**) and "Addressing the Cleanup Backlog Phase 2 Study" (**EXHIBIT 11**).

Public Comment

- 04:07:24 Mr. Trombetta testified the DEQ is working closely with Ms. Pearson at the EPA and is agreeable to having an outside party assist the DEQ in determining how to close sites. Mr. Trombetta reiterated the DEQ cannot close sites that are above the standards.
- 04:08:49 Mr. Cross asked the Subcommittee to notice the expense involved with the work plans. Mr. Cross suggested a need to consider how Montana spends its money.
- 04:10:34 Mr. Kenney addressed Chairman Story's comment that the DEQ may not close sites because of potential liability and clarified the DEQ would like to close the

sites and added the DEQ staff is dedicated. Mr. Kenney saw a need to bring more sites to closure within the standards of the Water Quality Act.

Subcommittee Discussion

- 04:11:39 Chairman Story asked the Subcommittee how it would like to proceed. Chairman Story noted the Subcommittee had gathered the appropriate information, but the Subcommittee was not charged with drafting specific legislation.
- 04:12:36 Rep. Ripley agreed with Chairman Story and suggested the Subcommittee should report to the Legislative Finance Committee or the EQC.
- 04:13:55 Rep. Dickenson was concerned about how complete a condensed version of the Subcommittee's work would be and believed the Subcommittee should provide a complete sense of the issue to the other committees. Rep. Dickenson did not want to see the non-degradation standard changed. Rep. Dickenson was concerned about protecting public health and summarized the question as how to come up with the funding to do an even better job of protecting public health. Rep. Dickenson saw the need for the Subcommittee to develop a position statement to take back to the committees.
- 04:16:18 Rep. Hiner agreed that the Subcommittee had learned a substantial amount of information and stated how the Subcommittee relays the information back to the full committees is important. Rep. Hiner agreed with Rep. Dickenson about not changing water-quality standards. Rep. Hiner suggested drafting a formal report to discuss with the full committees.
- 04:17:46 Chairman Story agreed a formal report is necessary, but was uncertain whether the Subcommittee could identify the exact problem. Chairman Story noted one of the problems is that not enough sites are closed, but that there are valid reasons why sites are not closed. Chairman Story wondered whether more money would fund the work or just create more work. Another question would be whether there should be a change in who pays for the Fund. Chairman Story noted the \$1 million cap was set a long time ago, and cautioned raising the cap could make the problem worse. Chairman Story suggested state revenue is flat and could decrease as people use less gas. Chairman Story suggested Ms. Stockwell and Mr. Everts compile a synopsis of the Subcommittee's work for the Subcommittee's review. The report will also be posted on the website.
- 04:23:48 Ms. Stockwell asked the Subcommittee to review the minutes from the previous Subcommittee meeting and approve the minutes via telephone conference.

ADJOURN

- 04:24:42 There being no further business to come before the Subcommittee, the meeting adjourned at 5:26 p.m.

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