



PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

ENVIRONMENTAL QUALITY COUNCIL INTERIM COMMITTEE
67th Montana Legislature

SENATE MEMBERS

Pat Flowers
Steve Hinebauch
Mike Lang
JP Pomnichowski
Cary Smith
Gene Vuckovich

HOUSE MEMBERS

Willis Curdy
Steve Gunderson
Bradley Hamlett
Jim Keane
Theresa Manzella
Kerry White

COMMITTEE STAFF

Joe Carroll - Attorney
Joe Kolman -
Legislative
Environmental
Analyst
Nadine Spencer -
Secretary
Hope Stockwell -
Research Analyst

PUBLIC MEMBERS

Scott Aspenlieder
John Brenden
Patrick Holmes, Gov. Rep.
Rex Rogers
Matt Vincent

MINUTES LOG

April 27, 2020
Capitol Building, Remote Room 102
Helena, Montana

Please note: This document is a Minutes Log and provides annotation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video recording of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of the meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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ROLL CALL

Members Present Remotely:

Rep. Jim Keane, Chair (D)
Sen. Mike Lang, Vice Chair (R)

Scott Aspenlieder, Public Member
John Brenden, Public Member
Rep. Willis Curdy (D)
Sen. Pat Flowers (D)
Rep. Steve Gunderson (R)
Rep. Bradley Hamlett (D)
Sen. Steve Hinebauch (R)
Patrick Holmes, Governor Designated Representative
Rep. Theresa Manzella (R)
Sen. JP Pomnichowski (D)
Rex Rogers, Public Member
Sen. Cary Smith (R)
Matt Vincent, Public Member
Sen. Gene Vuckovich (D)
Rep. Kerry White (R)

Staff Present Remotely:

Joe Carroll, Attorney
Joe Kolman, Legislative Environmental Analyst
Nadine Spencer, Secretary
Hope Stockwell, Research Analyst

Committee Business Summary

The Environmental Quality Council (EQC):

- Voted to make an informal objection to MAR Notice No. 17-406: Supplemental Notice of Proposed Adoption.

AGENDA (Attachment 1)

Call to Order/Roll Call

14:28:21 Rep. Keane called the meeting to order at 2:28 p.m. The secretary called the roll. [\(Attachment 2\)](#)

Proposed Radioactive Waste Rule

14:29:59 Rep. Keane said he received a call from Sen. Lang regarding his concern about implementation of rules during the interim and about the rule from the Department of Environmental Quality (DEQ) on radioactive waste brought into Montana.

14:31:14 Sen. Lang discussed his concern.

14:32:59 Rep. Keane asked Sen. Lang about making a motion.

14:33:22 Joe Kolman, legislative environmental analyst, Legislative Services Division (LSD), said the DEQ will provide an overview of the proposed rule.

Background

14:33:37 Shaun McGrath, director, DEQ, provided information on the department's rulemaking process for technologically enhanced naturally occurring radioactive materials (TENORM). He said as a result of the comments

received on the first proposed rule, revisions were made and a supplemental rule was put out for public comment. He said the department is on track to have a final rule issued in May.

14:39:04 Jenny Chambers, Waste Management and Remediation Division administrator, DEQ, said the department provided a fact sheet with detailed information on TENORM rules. [\(Exhibit 1\)](#)

EQC Options

14:45:30 Joe Carroll, staff attorney, LSD, provided information on the options the Council has regarding the proposed rule.

EQC questions and discussion

14:47:16 Rep. White asked Mr. McGrath about reducing the radionuclide concentration limit for a naturally occurring material and if it could prevent material from being hauled or disposed of for other Superfund or cleanup sites in the state. Mr. McGrath redirected the question to Ms. Chambers.

14:50:29 Rep. White asked about field testing and enforcement for truck loads moving through the state. Mr. McGrath redirected the question to Ms. Chambers.

14:52:37 Ms. Chambers said she will provide information on how the department will ensure compliance and the technology available for operators to manage disposal facilities in accordance with DEQ regulations.

14:54:37 Rep. Keane asked Mr. McGrath about the 200 picocuries per gram (pCi/g) truckload limit in the initial rule and maintaining the site-wide average of 50 pCi/g accepted at the waste management facility.

15:00:34 Sen. Lang thanked Mr. McGrath and Ms. Chambers and said he recommends that the EQC do an informal objection to the rule.

Motion

15:01:56 Sen. Lang moved that the EQC make an informal objection to MAR Notice No. 17-406: Supplemental Notice of Proposed Adoption.

15:02:14 Rep. Keane asked Mr. McGrath about DEQ's rulemaking process and the informal objection.

15:03:33 Mr. Kolman provided information on the process for the informal objection.

Public comment

15:05:07 Seth Newton. [\(Exhibit 2\)](#)

15:14:02 Rep. Joel Krautter, HD 35.

15:16:25 Maggie Copeland.

15:20:42 John Ahlquist, Glendive. [\(Exhibit 3\)](#)

15:24:25 Dick Iversen, Sidney. [\(Exhibit 4\)](#)

15:27:55 Alan Olson, Montana Petroleum Association. [\(Exhibit 5\)](#)

15:31:36 Robert Morris, certified health physicist.

- 15:34:26 Catherine Card, Billings. [\(Exhibit 6\)](#)
- 15:40:26 Tom Halverson, Richland County. [\(Exhibit 7\)](#)
- 15:43:58 John Mercer, Sidney. [\(Exhibit 8\)](#)
- 15:47:22 Laurel Clawson, Plentywood. [\(Exhibit 9\)](#)
- 15:53:06 Travis Ross, environmental health supervisor, Missoula City-County Health Department.
- 15:55:47 Deborah Hanson, Miles City. [\(Exhibit 10\)](#)
- 15:58:00 The Council also received additional written public comment. [\(Exhibit 11\)](#)

EQC questions and discussion

- 15:58:33 Rep. White asked Ms. Chambers about Oaks Disposal Service facility and the entity responsible for testing costs.
- 16:00:29 Rep. White asked Ms. Chambers about concerns regarding the Oaks facility and if any non-compliance violations have been issued.
- 16:02:07 Rep. White asked Ms. Chambers to provide information on the 21-day waiting period for testing radioactive waste and testing equipment available.
- 16:03:27 Sen. Smith asked about passing a law to prohibit taking waste from another state. Mr. McGrath said it would not be allowed under the interstate commerce clause.
- 16:04:37 Rep. Hamlett asked Mr. McGrath about permitting for the Oaks facility. Mr. McGrath redirected the question to Ms. Chambers.
- 16:07:09 Rep. Hamlett said this is a critical issue and should be brought before the 2021 Legislature.
- 16:08:10 Mr. Brenden commented on calculating a rolling average and the interstate commerce clause. He said he agrees with the motion and requested more information on the location of the disposal sites.
- 16:11:36 Mr. Rogers said he does not support the motion and is concerned about the time and effort that has gone into the process. He commented on blending radioactive material and increasing a worker's exposure.
- 16:13:28 Rep. Keane said the informal objection will allow further discussion on the rule.
- 16:13:52 Mr. Vincent commented on the rule and said the original rolling average was based on six years of data. He said he would like more information about the complexities and variabilities that were used to determine the data for the revised rule.
- 16:16:37 Ms. Chambers said the department will provide the background information.
- 16:22:06 Mr. Vincent asked Ms. Chambers about the reason for keeping the total effective dose equivalent limit of 100 millirems per year. Ms. Chambers said she will provide additional information.

- 16:26:08 Sen. Flowers commented on the extensive public involvement and work done by the department and said he recommends not delaying adoption of the rule.
- 16:27:54 Rep. Gunderson asked about collaboration between North Dakota and Montana.
- 16:28:48 Mr. McGrath said there has been an exchange of information among the various states but a joint standard has not been developed.
- 16:29:04 Rep. Gunderson asked Mr. McGrath if the department has a working relationship with North Dakota.
- 16:30:17 Rep. Gunderson commented on the need to take a closer look at the issue and to ensure that all stakeholders have input. He also commented on the importance of working with North Dakota.
- 16:31:26 Rep. White said he wants to be able to review the information requested from the DEQ and will object to the rule.
- 16:34:35 Sen. Lang said he has additional questions and stands by his motion for an informal objection.
- 16:35:45 Rep. Keane commented on his concerns.
- 16:37:45 Sen. Pomnichowski urged the Council to honor the work that has already been done on the rule and said she does not support the motion.

Vote

- 16:40:10 The motion carried 10 - 6 by roll call vote with Mr. Rogers, Rep. Curdy, Rep. Hamlett, Sen. Flowers, Sen. Hinebauch, and Sen. Pomnichowski, voting no. **(Attachment 3)**
- 16:42:54 Mr. McGrath said the department will provide the Council with the information it requested, and their attorneys will work with the EQC staff to discuss next steps. He said the DEQ will continue to work with interested parties and stakeholder groups.
- 16:43:31 Mr. Aspenlieder said he recommends keeping future discussions limited to the rule and not about the Oaks disposal facility. Rep. Keane agreed.
- 16:44:49 Rep. White said he would like an update from the DEQ about the other facilities that may be approved to receive radioactive waste. Mr. McGrath said the department will provide the information.
- 16:45:51 Rep. Gunderson said he would like to receive information on the status of the Oaks disposal facility and if there have been any violations. Mr. McGrath said the department will provide the information.

ADJOURNMENT

- 16:46:58 Rep. Keane adjourned the meeting at 4:46 p.m.