

Senate Committee on Agriculture and Natural Resources February 8, 1991 -
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SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

February 8, 1991Hearing Room C 8:30 a.m.

Tapes 35 - 37

MEMBERS PRESENT:Sen. Dick Springer Sen. Joyce Cohen, Vice-Chair
Sen. Shirley Gold Sen. Bob Kintigh Sen. Tricia Smith Sen. Eugene
Timms

MEMBER EXCUSED: Sen. John Brenneman

VISITING MEMBER:Rep. Bill Dwyer

STAFF PRESENT: Peter Green, Committee Administrator Chris Beck,
Research Associate Stuart Farmer, Committee Assistant

MEASURES CONSIDERED: SB 93 - Procedure for Imposing Civil
Penalty by Dir. of DEQ or Energy Facility Siting Council, PH & WS SB 184
- Civil Penalty EQC may Impose for Extreme Violation, PH SB 259 -
Extends Penalty Applicable to Discharge of Oil to Include Hazardous
Substances, PH SB 330 - Fees for Sewage Treatment Permits to Cover
Regulatory Expenses, PH

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statements made during this session. Only text enclosed in quotation
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proceedings, please refer to the tapes.

TAPE 35, SIDE A.

004 CHAIR SPRINGER CALLS THE MEETING TO ORDER AT 8:30 AM. SB 259 -
Extends Penalty Applicable to Discharge of Oil to Include Hazardous
Substances, PH Witnesses: Rep. Bill Dwyer, Dist. 42 Fred Hansen,
Director of DEQ Jim Whitty, Association of Oregon Industries

013 REP. DWYER: SB 259 came out of Joint Interim Committee on Environment and Energy. It is an addendum to current law which was HB 3080. It recognizes that there are other substances that pose similar hazards to the environment and allows those civil remedies to apply to these other substances. Gives the agencies that are charged with protecting the public more administrative authority.

035 CHAIR SPRINGER: thanks Rep. Dwyer for his testimony and introduces Fred Hansen, Director of Department of Environmental Quality.

SB 184 - Increase of Civil Penalty EQC Imposes for Extreme Violations, PH Witnesses: Fred Hansen, Director of Department of Environmental Quality Holly Duncan, Enforcement Section of DEQ Susan Schneider, City of Portland Lou Bruno, Portland Office of Transportation Bill Henley, Portland Fire Bureau Brad Higbey, Portland Bureau of Environmental Services Jim Whitty, Associated Oregon Industries

045 HANSEN: Introduces Holly Duncan, Enforcement Section of DEQ. Historical overview of past two decades of department. States primary environmental regulatory agency. Evaluation of Department's enforcement policies and practices (See Exhibit A). 075 > Five major Provisions of SB 184: Section 2 provides a maximum civil penalty of \$100,000 for extreme violations. 110 > Second provision; sections 3 & 5 would increase civil penalty authority for solid waste and noise violations from \$500 per day to \$10,000 per day. This increase would create consistency among all programs enforced by the Department. 117 > Thirdly, sections 6,7,8 & 9 would add "hazardous substances" to HB 349 3. 132 > Fourth, section 10 would remove the requirement that the department must direct a cleanup for a liable party to be statutorily required to immediately clean up a spill. 139 > Fifth, section 13 repeals ORS 468.125. This new warning requirement provides a permittee an opportunity to bring the permitted facility into compliance. The proposed changes to the environmental enforcement statutes would increase the Department's ability to use enforcement procedures efficiently.

287 CHAIR SPRINGER: asks for clarification of notice, as mentioned in section 14, as defined by the attorney general. Whether notice has been sent, how that is accomplished.

305 DUNCAN: replies that administrative regulations require the use of certified mail.

328 SEN. KINTIGH: asks that now that the department would no longer supervise the cleanup, would you still be inspecting the cleanup. You are trying to get out of being there minute by minute?

337 HANSEN: accentually, yes.

392 CHAIR SPRINGER: asks if the issue of SB 259 is also addressed in SB 184 . If so is there anything there that needs to be brought to the attention of the committee?

405 DUNCAN: the major difference between hazardous substance in SB 184 and SB 259 is the definition. SB 259 is coming up with a new definition, in SB 184 is the definition under the state super fund remedial action law. The primary difference is the existing statutory definition of hazardous substances includes CERCLA federally determined hazardous substances.

TAPE 36, SIDE A.

001 SEN. SMITH: asks if the spill that occurred at Mill Creek last year would have fallen under the provisions of SB 184 ?

006 DUNCAN: yes, HB 3080 was used for the Mill Creek spill so that the civil penalty that was recovered went into the Oil Spillage Control Fund.

045 CHAIR SPRINGER: thanks Mr. Hansen and Ms. Duncan for their testimony and introduces Susan Schneider, City of Portland to speak with regard to SB 184.

050 SCHNEIDER: introduces Mr. Henley, Mr. Bruno, Mr. Higbey to discuss concerns about SB 184 .

062 HENLEY: states that the PFB is opposed to section 10 primarily due to elimination of the phrase "under the direction of the department." Presently the PFB only has resources to stabilize and control a hazardous materials spill. Resources do not carry into the area of cleanup nor the direction of cleanup. They feel that someone must carry on to see that the incident is fully mitigated.

103 BRUNO: Public Works Operations Manager for the City of Portland. Also speaks against the deletion of the phrase "under the direction of..." on line 33 of page 4. This responsibility will fall to local governments. Most localities will be unable to do an adequate job. Small cities will be even less effective. Feels that DEQ is most qualified to direct cleanup.

133 SEN. SMITH: what about the Hazardous Materials Response Teams that are being set up as a result of federal legislation?

139 HENLEY: states that he has been involved with that process with the State Fire Marshal's office and the capability of these teams is primarily a control and stabilization function.

146 SEN. SMITH: is there some compromise language that would address both your concerns and that of the Director of DEQ ?

155 SCHNEIDER: states that they have spoken with DEQ and it is clearer after hearing their testimony as to what DEQ is trying to achieve and they would be happy to discuss matters to reach a compromise.

163 CHAIR SPRINGER: is concerned that PFB has more resources than DEQ and that after a certain amount of time the on scene commander feels that the immediate hazard has been contained and determines that it is now a cleanup job so leaves the scene. This doesn't serve the public safety well.

173 HENLEY: states that they would not leave a scene without making sure that someone is there to follow it up. Our concern is that if no one is there they will have to tie up equipment that would be used to answer other emergencies.

206 HIGBEY: two point; section 2 which imposes \$100,000 fine for the listed statutes. believes that some of the statutes due to a drafting error. Such as ORS 448.305 granting cities authorities to do certain thing with respect to their watershed. Doesn't believe that if there was some error in providing state aid that the state would be subject to potentially a \$100,000 fine. 229 > second concern; the addition of the phrase "hazardous substance" to the Oil Spillage Control Fund. By the definition in SB 184, Chlorine would be included which are used in purifying both drinking water and sewage treatment. This could be

interpreted as a violation as proposed in SB 184 . Feels that this could easily be rectified.

276 HANSEN: Promoted discharges could easily be exempt. The language was intended to cover negligent discharges.

TAPE 35, SIDE B.

104 CHAIR SPRINGER: thanks Mr. Hansen for addressing the various questions and introduces Jim Whitty.

106 WHITTY: with Associated Oregon Industries speaks against both SB 184 and SB 259. Sees a technical problem with SB 259 in section 2 sub-section 3 has no reference for "hazardous materials" is not defined in Chapter 468. Feels that this term is too broad.

123 CHAIR SPRINGER: states that definitions clearly are going to be worked on as a result of this hearing and asks if he has any problems with SB 184.

126 WHITTY: has no concern with SB 184. Believes that adequate penalties already apply and that in SB 259 in section 3, line 13 is redundant.

235 CHAIR SPRINGER: asks Mr. Whitty if he has any evidence that DEQ is waiting for technical violations and then applying full penalties?

237 WHITTY: states that he has no evidence, he believes that this is just bad policy and is concerned that a future Director of DEQ may evoke full penalties under the law.

251 CHAIR SPRINGER: moves into work session on SB 93, introduces Mike Grainey, Department of Energy.

SB 93, Procedure for Imposing Civil Penalty by Dep. of Energy or EFSC, WS Witnesses: Mike Grainey, Department of Energy Jim Anderson, Pacific Power and Light Howard Ferris, Pacific Power and Light Paul Cosgrove, Anadurke Drilling

272 GRAINEY: committee adopted amendments -2 and reviews the -3 amendments. States that the entire first page and lines 1 through 6 on the second page deal with making clarifications in the civil penalty provisions. No objection to those clarifications; any fine that the council or the director imposes is limited to that fine, can't be fined again by the other; second the fine would be stayed pending completion of administrative appeals; third, the basis of the fine are clarified. (See Exhibit B). 340 > Three remaining issues: question of transmission line in an existing corridors that would be upgraded from 69 Kv to 230 Kv. Original bill would have given sitting council jurisdiction over all new 230 Kv lines whether they are in existing corridors or not. This could create a disincentive to use existing right of ways, a compromise was in the -2 amendments lines 21 through 23.

372 ANDERSON: wishes to address the lines of the -2 amendments that relate to existing rights of way. Introduces Howard Ferris (See Exhibit B).

395 FERRIS: Does not object to bill if certain exemptions are added to the language of the bill. The exemption of the up-grade of existing transmission lines to 230 Kv. Believes the bills intent is to regulate facilities which have significant impact to property owners and the environment. Have suggested changes to SB 93 allowing for up-grades of

existing lines to 230 Kv. Existing easements can be utilized, so public concern is less than building new lines. Re-building and up- grading should not require an extensive process as a new line.

TAPE 36, SIDE B.

001 FERRIS: requests that the language in SB 93 include language that would allow for the up-grade of existing lines to 230Kv.

021 CHAIR SPRINGER: asks what is involved in an EFSC review ?

028 ANDERSON: states that the council holds a public hearing in the area where the facility would be. In the case of transmission lines there have been questions of land use and property values and magnetic fields.

230 SEN. COHEN: MOTION: to adopt the language on lines 19 - 23 on the amendments SB 93 -2.

256 CHAIR SPRINGER: seeing no objection, so ordered.

266 ANDERSON: addresses line 24 - 25 of the -2 amendments. Designed to clarify geothermal, solar and wind.

289 SEN COHEN: MOTION: to adopt lines 24-25 of the SB 93-2 amendment.

293 CHAIR SPRINGER: seeing no objection, so ordered.

299 GRAINEY: two concerns raised on geothermal. 1) to assure that the council would not be getting involved in drilling and exploration. That was not the intent of the bill. 2) How to deal with distance between geothermal power plants. No agreement was reached. Department has suggested the concept of unitization. This could apply to multiple companies or a company that might have a claims on multiple types of land.

383 COSGROVE: the issue in ODOE amendment 3, page 2, lines 10 - 15. Describes that if there is no unitization agreement then the energy management areas defined to be that area that is within one mile measured from generator to generator of a facility. Issue has been addressed under the Federal PERPA Act which had limits for geothermal in 1980. In California this issue has been addressed they did not put this matter in their statutes and left it for rule making (See Exhibit C).

TAPE 37, SIDE A.

001 COSGROVE: con't. The intent of this legislation is to determine whether a project is in or out of EFSC jurisdiction.

050 SEN. COHEN: MOTION: that the SB 93 - 3 amendments be adopted. 078 > VOTE: 4 -2; Sen Brenneman excused; Sen Kintigh and Sen Timms object.

088 SEN. COHEN: MOTION: that the bill be given a DO PASS recommendation referred to Judicial by prior reference. 092 > VOTE: 5 - 0; Sen. Brenneman and Sen. Kintigh excused.

106 ADMIN. GREEN: introduces LC 2641 and LC 2762.

114 CHAIR SPRINGER: MOTION: that LC 2641 and LC 2762 be adopted as committee bills. Seeing no objection, so ordered.

SB 330 - Fees for Sewage Treatment Permits Cover Regulatory Expenses, PH Witnesses: Candice Bartow, President of League of Oregon Cities Floyd

Collins, Chair of the Oregon Sewage Agency

124 BARTOW: testifies on behalf of SB 330. Focuses discussion on substantial fee increase contained in bill (See Exhibit D).

158 COLLINS: has no position, asks the question what programs should be adopted and implemented by the State. Which programs should be returned to the Federal government. Needs to be a comprehensive dialogue with the DEQ. Concerned about how much of the subsequent fees can be passed to local governments and the impact to rate payers.

172 SEN. SMITH: asks Mr. Collins for an outline of the Federal mandates.

174 COLLINS: Some come from the Clean Water Act; wet lands, storm water monitoring, discharge from waste water treatment plants, new sludge regulations, new pre-treatment programs. The Safe Drinking Water Act amendments; surface water rule, requirements for corrosion control, lead studies.

190 SEN. SMITH: how do we return the administration back to EPA ? Can we just pass the ball back to them ?

193 COLLINS: there are provisions that states can return the delegated authority back to the Federal government.

250 CHAIR SPRINGER: adjourns the hearing at 10:45 am.

Prepared by

Reviewed by

Stuart Farmer
Assistant

Peter Green Committee
Committee Administrator

EXHIBIT LOG:

A - Testimony by the Department of Environmental Quality - Fred Hansen - 10 Pages
B - SB 93-2 Amendments - Mike Grainey - 2 Pages
C - SB 93-3 Amendments - Mike Grainey - 2 Pages
D - Testimony by the League of Oregon Cities - Candice Bartow - 2 Pages