

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office

May 5, 1999

LB 870

there's a list of (a) through (d) which sets out the bad actor criteria: has intentionally misrepresented or withheld a material fact; has habitually or unintentionally or intentionally violated; has had any permit revoked due to a violation of environmental laws; has otherwise demonstrated through clear and convincing evidence, et cetera. It seemed to me that, at least from my perspective, I didn't have a problem with those criteria, and I didn't want to get into a situation where we were further "micromanaging" and relying upon DEQ to prove some kind of intentional act. In other words, If a person had 20 unintentional discharges, because you couldn't prove any of them were intentional, I think DEQ ought to be able to consider that under the other criteria, and they could consider it under the other criteria. So it didn't seem to me that they should be hamstrung by such a provision; that we ought to leave it to them to determine. If a number of violations of the environmental laws of another state, if a number of those have occurred, even though the proof had never gone to the act of...to the question of intentionality, that there ought to be and should be some level of negligence reflecting a basic incompetence or lack of desire to meet the environmental laws, and that DEQ ought to be able to take that into consideration in looking at the bad actor provisions.

SENATOR BROMM: My...I guess one of my concerns is, by removing the language, we're not telling DEQ that we are condoning or...or encouraging them to...

SPEAKER KRISTENSEN: One minute.

SENATOR BROMM: ...revoke a permit just because there has been one unintentional discharge at another site.

SENATOR BEUTLER: Oh, absolutely not. I would state that for the record that that's certainly not my intent. My intent is to return flexibility to them and I would expect them to give the benefit of the doubt to anyone who's been a good operator who happens to have a problem one time or in one situation.

SENATOR BROMM: And that was...

SENATOR BEUTLER: I would be really offended if they took down