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**MINUTES
JUNE 1, 2007**

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:03 a.m., on Friday, June 1, 2007, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joseph Russell, Don Marble, Heidi Kaiser (via telephone), Bill Rossbach, Robin Shropshire, and Larry Mires

Board Attorney Present: Katherine Orr, Attorney General's Office, Department of Justice

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Cheryl Romsa

Department Personnel Present: Richard Opper, Director; Tom Livers, Deputy Director; Kris Brewer, Director's Office; John North, Chief Legal Counsel; Jane Amdahl, Legal; James Madden, Legal; David Russoff, Legal; Keith Christie, Legal; Ed Hayes, Legal; Jenny Chambers, Acting Administrator, Enforcement Division (ENF); Frank Gessaman, ENF; Bob Bukantis, Planning, Prevention & Assistance Division (PPAD); Charles Homer, Permitting & Compliance Division (PCD), Air Resources Management Bureau (ARMB), PCD; Don Vidrine, PCD, ARMB; Eric Merchant, PCD, ARMB; David Klemp, PCD, ARMB; Oline Barta, PCD, ARMB; Tina Engel, PCD, ARMB; Tom Reid, PCD, Water Protection Bureau; and Jon Dilliard, PCD, Public Water Supply Bureau

Interested Persons Present (Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.): Robin Meguire, Montana Environmental Information Center; Nellie Israel; Joan Humiston; Barbera Varnes; Mike Cormuir, US Forest Service; Candace Payne, Southern Montana Electric; Mary Beth Marks, US Forest Service; and Don Allen, Western Environmental Trade Association

I.A.1 Review and Approve Minutes

Ms. Shropshire MOVED to approve the minutes of the March 29 meeting. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.

II.A.1.a In the matter of CR Kendall Corporation's request for a hearing to appeal DEQ's decision to deny a minor permit amendment under the Metal Mine Reclamation Act, BER 2002-09 MM.

Ms. Orr said she had received a status report and that the case had been stayed pending the issuance of an EIS, expected to be completed in 2008.

II.A.1.b In the matter of the issuance of the Air Quality Permit for the Roundup Power Project, Permit No. 3182-00, BER 2003-04 AQ.

Ms. Orr had no further information beyond that provided in the agenda.

II.A.1.c In the matter of the Montana Environmental Information Center's appeal of Air Quality Permit No. 3182-01, issued for the Roundup Power Project, BER 2005-21 AQ.

Ms. Orr said Bull Mountain had filed a Motion to Dismiss for Mootness, which she denied on May 22.

II.A.1.d In the matter of violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.

Ms. Orr had no further information beyond that provided in the agenda.

II.A.1.e In the matter of the request for hearing of Kountry Korner Enterprises, d/b/a Kountry Korner Café, regarding violations of the Montana Public Water Supply Laws, BER 2006-09 PWS.

Ms. Orr said the parties are still contemplating a settlement.

II.A.1.f In the matter of the appeal by Willow Creek Sewer District regarding violations of the Water Quality Act, BER 2006-13 WQ.

Ms. Orr said the parties are still contemplating a settlement.

II.A.1.g In the matter of the Notice of Appeal and Request for Hearing of the Citizens Awareness Network, Women's Voices for the Earth, and the Clark Fork Coalition regarding DEQ's approval of the Thompson River CO-Gen, LLC, Air Quality Permit No. 3175-04, BER 2006-18 AQ.

Ms. Orr said a three-day hearing had been held in May and that the parties were to submit proposed findings on June 29 and she would have a proposed decision for the Board's review and approval at the September meeting.

- II.A.1.h In the matter of violations of the Metal Mine Reclamation Act by Marty J. and Sinda M. Puryer, as individuals and d/b/a Paul Kurth Mining, for the failure to post reclamation bond, BER 2006-21 MM.
- Ms. Orr said a hearing is set for July.
- II.A.1.i In the matter of the appeal by the City of Bozeman regarding the DEQ's final decision for MPDES Permit No. MT0022608, BER 2006-23 WQ.
- Ms. Orr said the parties are still attempting to negotiate.
- II.A.1.j In the matter of the appeal by the Butte-Silver Bow Public Works Department regarding final MPDES Permit No. MT0022012, BER 2006-27 WQ.
- Ms. Orr said the parties are still attempting to negotiate.
- II.A.1.k In the matter of violations of the Water Quality Act and the Public Water Supply Laws by Brady County Water and Sewer District, BER 2006-29 WQ.
- Ms. Orr said the parties are still attempting to negotiate.
- II.A.1.l In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Westmoreland Resources, Inc., d/b/a Western Energy Co., BER 2006-30 SM.
- Ms. Orr reminded that this is the case coming before the Board in July. She made some suggestions for a process for the hearing. She cited several rules from MCA and ARM as being relevant to the case.
- II.A.1.m In the matter of violations of the Clean Air Act of Montana by Flathead County, BER 2007-01 AQ.
- Ms. Orr said the parties were in the process of settlement discussion.
- II.A.1.n In the matter of the appeal by Missoula County Public Works Department regarding MPDES Permit No. MT0020168 and DEQ's response to public comments and submitted documents regarding the permit, BER 2007-02 WQ.
- Ms. Orr said the parties were in the process of settlement discussions.
- II.A.1.o In the matter of the appeal by Jill and Joseph Slevin regarding Gallatin County's denial of a request for waiver to build a home, BER 2007-03 SUB.
- Ms. Orr said the parties were in the process of settlement discussions.
- II.B.1 Cases in Litigation -- In the matter of the Petition for Review of Hazardous Waste Final Permit No. MTHWP-03-01 issued to Flying J Petroleums, Inc., BER 2003-14 HW.
- Ms. Orr said that not much has happened in this case. She said the department had filed a motion for a scheduling conference with the judge, but that the judge had not scheduled that yet.

II.C.1 | Legislative Briefing

Mr. Livers said there had been two bills that proposed changes to the makeup of membership in the Board, but that both bills died in committee. He said there were two significant coal bed methane bills: HB 383, which died in Senate; and SB 407, which passed both houses but was vetoed by the Governor. He said there were a couple of mining bills also: SB 180 did not come out of its original Senate committee; and HB 460, which originally contained many of the provisions that had been in SB 180, was amended to focus on interim bonding and became law. Mr. Livers said there were a few mercury emissions bills and a couple of fee cap increases, all of which died. He said Senate Resolution 8 confirmed Joe, Heidi and Larry.

Mr. North said there had been several administrative procedures bills, of which only three of any significance passed: HB 70, SB 71, and SB 466.

III.A.1 | In the matter of DEQ's request to initiate rulemaking to amend ARM 17.8.501, 17.8.505, and 17.8.514 for the annual adjustment of air quality operation and open burning fees.

Mr. Homer explained that this is the annual adjustment of air quality fees, based on the legislative appropriation. He explained that because of HB 2 being passed in the Special Session, a new notice was now submitted and that they still did not know the final appropriation. He proceeded to explain a few other changes being made.

Chairman Russell called for a motion to initiate the rulemaking and to appoint Ms. Orr the hearings examiner. Mr. Rossbach so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.A.2 | In the matter of DEQ's request to initiate rulemaking to update the air quality incorporation by reference rules at ARM Title 17, Chapter 8.

Mr. Homer explained that this rulemaking was an annual change to the rules to incorporate federal changes into the rules. He said it also included some minor administrative changes.

Chairman Russell called for a motion to initiate the rulemaking and to appoint Ms. Orr as hearings examiner. Ms. Shropshire so MOVED. Mr. Mires SECONDED the motion. Chairman Russell called for public comment; no one responded. The motion CARRIED with a unanimous VOTE.

III.B.1 | In the matter of final action regarding violations of the Water Quality Act at Cenex Harvest States fueling facility on Highway 83 in Condon, BER 2006-28 WQ.

Chairman Russell called for a motion to authorize him to sign the order dismissing the case with prejudice. Mr. Marble so MOVED. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.B.2 | In the matter of final action on the appeal by Dan Fuchs, Broken 7 Subdivision, regarding Gallatin City-County Health Department's denial of a request to change a provision of the original certificate of subdivision approval, BER 2006-22 SUB.

Chairman Russell called for a motion to authorize him to sign the order of dismissal with prejudice. Mr. Mires so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.B.3 | In the matter of final action regarding violations of the Montana Strip and Underground Mine Reclamation Act by BMP Investments, Inc., at the Bull Mountains Mine #1, BER 2006-24 SM.

Chairman Russell called for a motion to authorize him to sign the order of dismissal with prejudice. Mr. Marble so MOVED. Mr. Mires SECONDED the motion. Further discussion took place.

Mr. Rossbach MOVED to table the item until further information was received from DEQ staff. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.

The department returned with the requested information and Mr. Rossbach MOVED to take the item off the table. Mr. marble SECONDED the motion. The motion CARRIED with a unanimous VOTE.

Ms. Amdahl provided the information requested by the Board.

Chairman Russell called for a motion to authorize him to sign the order dismissing the case with prejudice. Ms. Shropshire so MOVED. Mr. Marble SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.1 | In the matter of the request for hearing by John Pendleton regarding alleged violations of the Montana Public Water Supply Laws at the Ponderosa Mobile Home Court in Corvallis, BER 2007-04 PWS.

Chairman Russell called for a motion to appoint Ms. Orr permanent hearings examiner for this case. Mr. Marble so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.2 | In the matter of the appeal by the Town of Superior, BER 2007-05 WQ, regarding final MPDES Permit No. MT0020664, issued to the Town of Superior.

Discussion took place regarding the case. The Board chose to take no action on this matter at this time. This will be on the July agenda for action by the Board with regard to whether the Board will appoint a permanent hearings examiner or hear the matter itself.

III.D.1 | In the matter of the acquisition of repository site for the McLaren tailings.

Mr. Koerth provided information about the Abandoned Mine Reclamation Program and explained that the purchase of this property is to benefit the program. He gave a Power Point presentation with information regarding the program and its projects, and about the subject property. He recommended that the Board pass a resolution directing the purchase of the property.

Discussion took place among the Board regarding the issue and Mr. Koerth responded to their questions.

Ms. Humiston spoke in favor of the property purchase and encouraged the Board members to visit Cooke City.

Ms. Israel and Ms. Varnes urged the Board to approve the purchase of the property.

Mr. Rossbach MOVED to authorize the Board to acquire the three properties at the appraised values and to authorize the Board Chair to sign appropriate documents. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

II.C.2 Temporary Water Quality Standards for the New World Mining District – Update

Ms. Marks provided a summary of the results of surface water quality data collected in 2006 that showed positive impact of reclamation efforts. She updated the Board on progress made at the site.

IV. General Public Comment

Chairman Russell called for public comment. No one responded.

V. Adjournment

Mr. Marble MOVED to adjourn. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.

The meeting adjourned at 11:11 a.m.

Board of Environmental Review June 1, 2007, minutes approved:

JOSEPH W. RUSSELL, M.P.H.
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE