

MINUTES
JULY 27, 2007

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:11a.m., on Friday July 27, 2007, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

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

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

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Richard Opper, Director; Tom Livers, Deputy Director; Kris Brewer, Director's Office; John North, Chief Legal Counsel; Keith Christie, Legal; Ed Hayes, Legal; Jim Madden, Legal; Claudia Massman, Legal; David Rusoff, Legal; Frank Gessaman, Enforcement Division; Judy Hanson, Permitting and Compliance Division (PCD); Eric Merchant, PCD Air Resources Management Bureau (ARMB); Debbie Skibicki PCD/ARMB; Neil Harrington, PCD Industrial & Energy Minerals Bureau (IEMB); Chris Yde, PCD/IEMB; Rachel Clark, PCD Public Water Supply & Subdivisions Bureau (PWSSPWSS), Jon Dilliard, PCD/PWSSPWSS; Eugene Pizzini, PCD/PWSSPWSS, Eric Regensburger, PCD/PWSSS; Bob Bukantis, Planning, Prevention & Assistance Bureau

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Tony Pouilitis, American Wildlands; Shawn Regnerus, American Wildlands; Abigail Dillon, Montana Environmental Information Center / Citizens for Clean Energy ; Don Allen, Western Environmental Trade Association

- I.A. Review and approve June 1, 2007, meeting minutes.
- Ms. Kaiser MOVED to approve the June 1, 2007, meeting minutes. Mr. Rossbach 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 had no further information beyond that provided in the agenda.
- 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 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.d 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 stated she has issued an order that parties have until September 12 to file exceptions and will probably issue an order that responses are due on September 18.
- 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 in the process of setting a new hearing schedule.
- 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 had no further information beyond that provided in the agenda.
- 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 had no further information beyond that provided in the agenda.
- 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 that a hearing is set for September.

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 had no further information beyond that provided in the agenda.

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 had no further information beyond that provided in the agenda.

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 had no further information beyond that provided in the agenda.

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 had no further information beyond that provided in the agenda.

II.A.1.n In the matter of the appeal by the 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 that the parties have prepared a stipulation, but it was too late to be presented to the Board now. An *Order to Dismiss* will be presented to the Board at the September 28, 2007, meeting.

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 had no further information beyond that provided in the agenda.

II.A.1.p 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.

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

II.B.1 In the matter of the Petition for Review of Hazardous Waste Final Permit No. MTHWP-03-01 issued to Flying J Petroleum, Inc. (BER 2003-14 HW).

Ms. Orr said the judge did not grant the Board's motion to dismiss but set out a briefing schedule. Flying J has until August 10 to file their brief, and DEQ and the Board have until September 21 to file their responses.

- III.A.1 In the matter of the DEQ's request to initiate rulemaking to amend ARM 17.38.101 and 17.38.106 to allow the department to collect fees commensurate with the costs of engineering plan and specification review and to clarify existing rules.

Mr. Pizzini explained that this rulemaking is to adopt an engineering review fee structure. He also explained some of the changes.

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

- III.B.1 In the matter of the amendment of ARM 17.30.617 and ARM 17.30.638 regarding Outstanding Resource Waters (ORW) and the Gallatin River.

After a brief discussion, Ms. Shropshire MOVED to extend the comment period to January 4, 2008. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.C.1 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 and to continue with Ms. Orr as the interim Hearing Examiner. This will be on the September agenda for action by the Board with regard to whether the Board will appoint a permanent hearings examiner or hear the matter itself.

- III.C.2 In the matter of the appeal by Southern Montana Electric (SME) regarding its Air Quality Permit No. 3423-00 for the Highwood Generation Station, BER 2007-06 AQ.

- III.C.3. In the matter of the appeal by Citizens for Clean Energy (CCE) and Montana Environmental Information Center (MEIC) regarding Air Quality Permit No. 3423-00 issued to Southern Montana Electric (SME) for its Highwood Generation Station, BER 2007-07 AQ.

Ms. Orr said that the parties have proposed consolidating these cases for the prehearing matters. Discussion took place regarding the number of expert witnesses expected and an approximate timeframe for the hearing.

Chairman Russell called for a motion to hear these two cases as a consolidated case. Mr. Rossbach so MOVED. Mr. Marble SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.4. In the matter of violations of the Water Quality Act by North Valley Hospital, Flathead County, BER 2007-08 WQ.

Chairman Russell recused himself from this matter and appointed Mr. Rossbach to act as Chair for this matter.

Mr. Marble MOVED to appoint Ms. Orr as the permanent hearing examiner for this matter. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.5 In the matter of violations of the Montana Public Water Supply laws by Gallatin National Forest at Soda Butte Campground, BER 2007-09 WQ.

Mr. Rossbach MOVED to appoint Ms. Orr as the permanent hearing examiner for this matter. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.6 In the matter of violations of the Montana Public Water Supply laws by Malsam Water Conditioning, Inc., d/b/a Culligan of Great Falls, Inc., at Culligan Water Conditioning Great Falls, BER 2007-10 PWS.

Mr. Rossbach MOVED to appoint Ms. Orr as the permanent hearing examiner for this matter. Mr. Skunkcap SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.7 In the matter of violations of the Opencut Mining Act by Big Rock, LLC, at the Wheeler Gravel Pit, Missoula County, BER 2007-11 OC.

Mr. Marble MOVED to appoint Ms. Orr as the permanent hearing examiner for this matter. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.8 In the matter of the appeal by ExxonMobil regarding its final MPDES Permit No. MT-0028321 for its Billings Refinery, BER 2007-12 WQ.

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

III.C.9 In the matter of violations of the Open Cut Mining Act by John Schlecht, d/b/a John Schlecht Excavating, at the Schlecht Sand and Gravel Pit, Ravalli County, BER 2007-13 OC.

Ms. Kaiser MOVED to appoint Ms. Orr as the permanent hearing examiner for this matter. Mr. Skunkcap SECONDED the motion. The motion CARRIED with a

- unanimous VOTE.
- III.C.10 In the matter of violations of the Montana Public Water Supply Laws by Broadway Flying J, Belgrade, BER 2007-14 PWS.
- Mr. Rossbach MOVED to appoint Ms. Orr as the permanent hearing examiner for this matter. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.C.11 In the matter of violation of the Water Quality Act by Jack Mountain Estates Subdivision, Jefferson County, BER 2007-15 WQ.
- Mr. Mires MOVED to appoint Ms. Orr as the permanent hearing examiner for this matter. Mr. Skunkcap SECONDED the motion. The motion CARRIED with a unanimous VOTE
- III.D.1 In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Westmoreland Mining, LLC, d/b/a Western Energy Co., BER 2006-30 SM.
- Mr. Marble MOVED to direct the chair to not sign the *Order of Dismissal*. Ms. Shropshire SECONDED the motion. Chairman Russell called for the vote by roll call. Mr. Marble, yea, Mr. Skunkcap, yea;; Mr. Mires, yea; Ms. Shropshire, yea; Mr. Rossbach, yea; Ms. Kaiser, nay; Chairman Russell, nay. The motion CARRIED with a 5-2 VOTE.
- IV. General Public Comment
- Chairman Russell called for general public comment. No one responded.
- V. Adjournment
- Chairman Russell called for a motion to adjourn. Mr. Marble so MOVED. Mr. Skunkcap SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- The meeting adjourned at 10:52 a.m.

Board of Environmental Review July 27, 2007, minutes approved:

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

DATE