

MINUTES
NOVEMBER 30, 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 November 30, 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, Bill Rossbach, Robin Shropshire, Gayle Skunkcap, and Larry Mires (by telephone, Mr. Mires left the call at 12:30pm)

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

Board Secretary Present: Kris Brewer

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers, Deputy Director; John North, Chief Legal Counsel; John Arrigo, Enforcement Division (ENF), Frank Gessaman, ENF, Nichole Olmstead, ENF, Jane Amdahl, Legal; Ed Hayes, Legal, Jim Madden, Legal; Claudia Massman, Legal; Norm Mullen, Legal; David Rusoff, Legal; Judy Hanson, Permitting and Compliance Division (PCD); Charles Homer, PCD Air Resources Management Bureau (ARMB); Dave Klemp, PCD/ARMB; Vickie Walsh, PCD/ARMB; Christine Weaver, PCD/ARMB; Warren McCullough, PCD Environmental Management Bureau (EMB); Wayne Jepson, PCD/EMB, Jon Dilliard, PCD Public Water Supply & Subdivisions Bureau, Ed Thamke, PCD Waste & Underground Tank Management Bureau, Tom Reid, PCD Water Protection Bureau; Art Compton, Planning, Prevention & Assistance Bureau (PPAD), Mark Bostrom, PPAD, Bob Bukantis, PPAD, Ann Harrie, PPAD, Chris Levine, PPAD, George Mathieus, PPAD, Aimee Reynolds, Remediation Division, Hazardous Waste Site Cleanup Bureau

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Jenny Harbine, Citizens for Clean Energy and Montana Environmental Information Center, Travis Meyer, City of Conrad, John P. Shevlin, City of Conrad, Rick Mulder, Department of Agriculture, Trevor Selch, Department of Fish, Wildlife and Parks, Dean L. Stiffarm, Sr., Fort Belknap Tribes, Anne Hedges, Montana Environmental Information Center; Mark Fix, Northern Plains Resource Council, Clint McRae, Rocker Six Cattle Co., Brenda Lindlief-Hall, Tongue River Water Users Association

- I.A. Review and approve July 27, 2007, meeting minutes.
- Minutes were not provided to the Board. Minutes will be reviewed and approved at the January 22, 2008 meeting.
- I.B. Set 2008 Meeting Schedule
- After a brief discussion of each set of possible dates, the dates for the 2008 BER meetings were set as follows: January 22, April 4, May 30, August 8, September 26 and December 5.
- II.A.1.k In the matter of the appeals by Southern Montana Electric (SME), Citizens for Clean Energy (CCE) and Montana Environmental Information Center (MEIC) regarding Air Quality Permit No. 3423-00 issued to SME for its Highwood Generation Station, BER 2007-06 & 07 AQ.
- Discussion took place regarding the prehearing and hearing schedule. The prehearing for pretrial motions was set for December 21, with January 11 set aside as a tentative date if more time is needed for the Board to deliberate. Also discussed was the possibility of video taping the December 21 meeting as one board member will not be able to attend in person, only by telephone. It was decided that the prehearing would be taped.
- Ms. Orr discussed the motions filed to date in this case, explained to the Board the basis of the motions and asked how the Board would like to proceed on them. A brief discussion followed.
- Mr. Rossbach MOVED to hear the motion to strike an expert and authorize Hearing Examiner Orr to make a determination on the motion to strike. Ms. Shropshire 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.
- 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.
- II.A.1.c In the matter of Violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.
- II.A.1.d In the matter of the appeal by Willow Creek Sewer District regarding violations of the Water Quality Act, BER 2006-13 WQ.
- II.A.1.e 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.
- II.A.1.f 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.
- II.A.1.g 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.
- II.A.1.h In the matter of the appeal by the Butte-Silver Bow Public Works Department, regarding Final MPDES Permit No. MT0022012, BER 2006-27 WQ.
- II.A.1.i In the matter of violations of the Clean Air Act of Montana by Flathead County, BER 2007-01 AQ.
- II.A.1.j 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.
- II.A.1.l In the matter of violations of the Water Quality Act by North Valley Hospital, Flathead County, BER 2007-08 WQ.
- II.A.1.m 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.
- II.A.1.n 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.
- II.A.1.o In the matter of the appeal by ExxonMobil regarding its final MPDES Permit No. MT-0028321 for its Billings Refinery, BER 2007-12 WQ.
- II.A.1.p 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.
- II.A.1.q In the matter of violation of the Water Quality Act by Jack Mountain Estates Subdivision, Jefferson County, BER 2007-15 WQ.
- II.A.1.r In the matter of Violations of the Water Quality Act by the Montana Department of Transportation and Ascorp, Inc., D/B/A Debco Construction, at Sportsman's Campground – East, Silver Bow County, Montana, BER-2007-17 WQ.
- II.A.1.s In the matter of violations of the Opencut Mining Act by Prairie Sand and Gravel, Inc., at the state site in Roosevelt County, Montana, BER 2007-18 OC.

II.A.1.t In the matter of violations of the Opencut Mining Act by Kenneth Mikesell at the Kenneth Mikesell site, White Sulphur Springs, Montana, BER 2007-19 OC.

Ms. Orr had no further information beyond that provided in the agenda for items II.A.1.a – j and II.A.1.l - t.

BER Paperless

Discussion took place regarding the Board moving towards electronic filing and reducing the amount of paper used. It was decided that starting with the SME hearing and then with the Board meetings in 2008, that paper board packets will no longer be sent out, instead the packet will be sent out in an electronic format.

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 reported that oral argument on the petition for judicial review were held on October 17, 2007, and that she has not yet heard from the Court.

II.C.1 Zortman-Landusky Briefing

II.C.2 Enforcement Briefing

II.C.3 Montana-Wyoming Settlement Briefing

III.A.1 Amend certain water quality standards in Circular DEQ-7 and update rules in ARM to recently updated EPA methods.

Mr. Bukantis provided an overview of the changes in DEQ Circular-7 and the rules. He also noted two corrections to the *Presiding Officer's Report*, ARM 17.55.111 should be struck and the next one should be 17.55.507. A brief discussion took place.

Chairman Russell called for a motion to initiate the rulemaking. Mr. Rossbach so MOVED. Mr. Marble SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.A.2 Amend ARM 17.30.610 to change the water-use classification for two water body segments in the Dry Fork of the Marias River drainage.

Mr. Bukantis provided an overview of the rule change and a brief discussion took place. Mr. Shelvin, Mayor of Conrad, commented in support of the rule change.

Chairman Russell called for a motion to initiate the rulemaking. Mr. Rossbach so MOVED. Mr. Marble SECONDED. The motion CARRIED with a unanimous VOTE.

- III.B.1 In the matter of violations of the Montana Water Quality Act by 48 North, Pc. at Spring Creek Estates Subdivision, Kalispell, Montana, BER 2007-21 WQ.
- Mr. Skunkcap 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.B.2 In the matter of violations of the Opencut Mining Act by Stephen M. Swan, d/b/a Swan Creek Concrete Company at the South Boulder Grazing Site, Jefferson County, Montana, BER 2007-22 OC.
- Mr. Marble 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.B.3 In the matter of the appeal by CHS Inc. regarding it's Title V operating permit No. OP1821-01 for the Laurel Refinery, Laurel, Montana, BER 2007-23 AQ.
- Mr. Rossbach MOVED to appoint Ms. Orr as the permanent hearing examiner for this matter. Mr. Marble SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.B.4 In the matter of the appeal by the City of Whitefish regarding its MPDES permit No. MT0020184 for the Wastewater Facility, Whitefish, Montana, BER 2007-24 WQ.
- 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.B.5 In the matter of violations of the Opencut Mining Act by Joe Beasley at the Silverstone Site, Flathead County, Montana, BER 2007-25 OC.
- 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.B.6 In the matter of the appeal by Adios Recycling regarding DEQ's denial of its Motor Vehicle Wrecking Facility License, Alberton, Montana, BER 2007-26 JV.
- 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.1 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.

Chairman Russell called for a motion to authorize him to sign the order of dismissal. Mr. Marble MOVED. Mr. Skuncap SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.2 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.

After some discussion regarding the penalty amount Chairman Russell called for a motion to authorize him to sign the order of dismissal. Ms. Kaiser recused herself from the vote. Mr. Skunkcap MOVED. Mr. Rossbach SECONDED the motion. The motion CARRIED with one opposed VOTE.

III.C.3 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.

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

III.C.4 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 authorize him to sign the order of dismissal. Ms. Kaiser MOVED. Mr. Marble 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.

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

III.C.1 In the matter of the violation of the Metal Mine Reclamation Act by Big Sky Masonry Stone, Inc., Wheatland County, Montana, BER 2007-16 MM.

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

III.C.1 In the matter of violations of the Montana Public Water Supply Laws by Oasis Water Fill, LLC. at Oasis Water Fill, BER 2007-20 PWS.

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

IV.A.1 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 2:09 p.m.

Board of Environmental Review November 30, 2007, minutes approved:

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

DATE