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**MINUTES  
MARCH 27, 2009**

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:18 a.m., on Friday, March 27, 2009, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joseph Russell, Bill Rossbach, Heidi Kaiser, Marvin Miller, Joe Whalen, and Larry Mires

Board Members Absent: Robin Shropshire

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: Tom Livers, Deputy Director; John North, Jane Amdahl, Carol Schmidt, and Ed Hayes, Director's Legal; Judy Hanson, Permitting and Compliance Division (PCD); Dave Klemp, Debra Wolfe, Dan Walsh, Hoby Rash, Vicki Walsh, and Charles Homer, Air Resources Management Bureau, PCD; Steve Kilbreath and Rachel Clark, Public Water Supply and Subdivisions Bureau, PCD; Todd Teegarden, Planning, Prevention & Assistance Division; John Arrigo and Dan Kenney, Enforcement Division

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Jeff Chaffee, Bison Engineering; Kenneth Reich (via telephone), Southern Montana Electric

**I.A.1** Review and approve minutes of January 23, 2009, regularly scheduled Board meeting.

Chairman Russell called for a motion to approve the January 23, 2009, meeting minutes. Mr. Mires so MOVED. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.

**I.B.** Welcome new Board members, orientation, refresher.

The Board members introduced themselves and identified the sector they represent on the Board according to statute.

Mr. North discussed 2-15-3502, MCA, which creates the Board, and 2-15-124, MCA, which designates the Board quasi-judicial. He described the Board's: rulemaking authority, the rulemaking process, the Board's authority over contested cases, and the contested case process. Mr. North provided an ethics packet and suggested that the members might want to review it and keep it for reference. He pointed out the categories on acceptance of gifts, financial interests, official action, and employment contracting. Mr. North also discussed public meetings: what a public meeting entails; notice requirements; open/public meeting laws; and penalties.

Ms. Orr provided more detail of the contested case process, referring to the Montana Administrative Procedures Act, the Model Rules, and various Rules of Civil Procedure.

**I.C.** Set December meeting date.

After discussion among the Board, Ms. Kaiser MOVED that the Board adopt the 11<sup>th</sup> as the date for the meeting in December. 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 this case is stayed pending the completion of an EIS.

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

Ms. Orr said this case is stayed due to a bankruptcy proceeding.

**II.A.1.c** 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.

Ms. Orr said this case has also been stayed and that the parties will be asked to update her regarding the status.

- II.A.1.d | In the matter of violations of the Hazardous Waste Act by the Three W's, Inc., and Montana Waste Systems, Inc., BER 2008-07 HW (MT Waste Systems).
- Ms. Orr said there have been several extensions in this case and the parties are attempting to settle the case.
- II.A.1.e | In the matter of the appeal by Eastgate Water and Sewer Association of Helena Sand and Gravel, Inc.'s Opencut Permit No. HSG-017, BER 2008-08 OC.
- Ms. Orr pointed out that the Board has retained jurisdiction to hear this case. She said that the parties had been attempting to settle, but this appears to have been unsuccessful.
- II.A.1.f | In the matter of violations of the Hazardous Waste Act by the Three W's, Inc., and Montana Waste Systems, Inc., BER 2008-09 HW (Three W's).
- Ms. Orr said the parties have requested multiple extensions attempting to settle the case and that it was unknown presently how the settlement discussions were going.
- II.A.1.g | In the matter of violations of the Montana Water Quality Act by Wilderness Club, LLC, at the Wilderness Club Eureka, Lincoln County, BER 2008-13 WQ.
- Ms. Orr said the same was true of this case as it was of the last.
- II.A.1.h | In the matter of the appeal and request for hearing by Montana Environmental Information Center, Citizens for Clean Energy, Sierra Club, and National Parks Conservation Association of the Southern Montana Electric Generation and Transmission Cooperative Highwood Generating Station Air Quality Permit No. 3423-01, BER 2008-23 AQ.
- Ms. Orr said this case is stayed until June 17 of this year.
- II.A.1.i | In the matter of violations of the Montana Water Quality Act by Jim Gilman Excavating, Inc., at Augusta-South, Lewis and Clark County, BER 2008-24 WQ.
- Ms. Orr said this is a fairly new case and the parties should be filing a prehearing and hearing schedule.
- II.A.1.j | In the matter of the appeal by the USDA Forest Service Northern Region of the air quality major open burning permit fee for calendar year 2009, BER 2009-01 AQ.
- Ms. Orr said the parties have been requested to file a proposed prehearing and hearing schedule, but they're having some trouble and she may need to issue a decision regarding what the schedule should be.

II.A.2.a 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 provided some background regarding this case.

II.A.2.b In the matter of the appeal by Citizens for Clean Energy and Montana Environmental Information Center regarding Air Quality Permit No. 3423-00 issued to Southern Montana Electric for its Highwood Generating Station, BER 2007-07 AQ.

Ms. Orr provided some background regarding this case. Mr. Reich also provided some up-to-date information on the case.

II.B. Legislation briefing.

Mr. North gave a brief overview of the three remaining bills dealing with the Administrative Procedures Act: Senate Bills 20, 90, and 123. He also provided information regarding other bills and their status.

Mr. Livers gave the Board a status report on Senate Bill 95.

III.A.1 In the matter of final action regarding the amendment of ARM 17.40.318 and adoption of New Rule I pertaining to state revolving fund and public water and sewer projects eligible for categorical exclusion from MEPA review.

Mr. Teegarden provided a briefing of the process for this rulemaking and asked for the Board's approval of the amendments and adoption of the new rule. He said a public hearing had been held, which no one attended, and no public comments were received.

Chairman Russell called for a motion to adopt the proposed amendments and the new rule, adopt the 521 and 311 analyses and the Hearing Examiner's report. Mr. Rossbach so MOVED. Mr. Miller SECONDED the motion. Chairman Russell called for public comment and no one responded. The motion CARRIED with a unanimous VOTE.

III.A.2 In the matter of final action regarding an addition to Administrative Rules of Montana (ARM) Title 17, Chapter 8, Subchapter 1 to exempt from incorporation by reference an emission standard for mercury, which has been vacated by the courts.

Ms. Wolfe provided some background regarding the rulemaking and said the DEQ recommends the Board adopt the rule as proposed.

Chairman Russell called for public comment on the rulemaking. There was no comment.

Mr. Whalen MOVED that the Board adopt the amendments as proposed. He then made a MODIFIED MOTION to adopt the new amendments as proposed, the 521 and 311 analyses, and the Presiding Officer's report. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.B.1 In the matter of violations of the Metal Mine Reclamation Act by Saturday Sunday, LLC, Deer Lodge County, BER 2009-02 MM.

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

- III.B.2 In the matter of violations of the Opencut Mining Act by Daniels County at the D. Hanrahan Pit, Daniels County, BER 2009-03 OC.

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

- III.B.3 In the matter of violations of the Montana Public Water Supply Laws by Hugh Black-St. Mary Enterprises, Inc., at the St. Mary Lodge and Resort Public Water Supply System, Glacier County, BER 2009-04 PWS.

Chairman Russell called for a motion to appoint Ms. Orr as the permanent hearing examiner for this matter. Mr. Whalen so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.B.4 In the matter of the appeal by the River Rock County Water and Sewer District regarding its MDEQ Permit No. MTX000147 for its wastewater treatment facility, BER 2009-05 WQ.

The Board chose not to assign this to a hearing examiner at this point, but to let Ms. Orr continue to handle matters for now.

- III.B.5 In the matter of violations of the Montana Underground Storage Tank Act by Flying J Inc. at Flying J Travel Plaza, 112000 Browns Gulch Road, Butte, Silver Bow County, BER 2009-06 UST.

Chairman Russell called for a motion to appoint Ms. Orr as the permanent hearing examiner for this matter. Ms. Kaiser so MOVED. Mr. Rossbach 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.

Chairman Russell called for a motion to authorize him to sign the order of

dismissal. Mr. Mires so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.C.2 In the matter of violations of the Water Quality Act by Park County, Gardiner, BER 2008-01 WQ.

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

- III.C.3 In the matter of violations of the Opencut Mining Act by TMC, Inc. at the Nuss Pit, Gallatin County, BER 2008-10 OC.

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

- III.C.4 In the matter of violations of the Montana Public Water Supply Laws by Loyal Order of the Moose #639, Helena, BER 2008-14 PWS.

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

- III.C.5 In the matter of violations of the Montana Underground Storage Tank Act by Dutton School District 28 at Dutton Public School, Dutton, BER 2008-16 UST.

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

- III.C.6 In the matter of violations of the Montana Underground Storage Tank Act by Tom Pelican and Theresa Pelican at Swan Lake Stage Stop, 72241 Highway 83, Swan Lake, Lake County, BER 2008-18 UST.

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

- III.C.7 In the matter of the violations of the Opencut Mining Act by Helena Sand and Gravel, Inc. at the Lake Helena Drive Pit, Lewis and Clark County, BER 2008-12 OC.

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

IV. General Public Comment

Chairman Russell called for public comment on any matter that pertains to the Board. There was no response.

Mr. Rossbach initiated discussion regarding contested cases being resolved and the Board not having a say in the resolution.

V. Adjournment

Mr. Whalen MOVED to ADJOURN. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.

The meeting adjourned at 11:48 a.m.

Board of Environmental Review March 27, 2009, minutes approved:



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

5/29/2009  
DATE