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MINUTES
October 2, 2009

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:02 a.m., on Friday, October 2, 2009, in Room 152 of the Capitol Building, 1301 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present (via telephone): Chairman Joseph Russell, Robin Shropshire, Larry Anderson, Marvin Miller, Heidi Kaiser, Larry Mires, and Joe Whalen

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, Jim Madden, Carol Schmidt, David Rusoff, and Jane Amdahl – Legal; Jon Dilliard, Eugene Pizzini, Steve Kilbreath, and Denver Fraser – Public Water Supply & Subdivisions Bureau; David Klemp, Vickie Walsh, Julie Merkel, Tina Engel, Charles Homer, Jenny O'Mara, and Debra Wolfe – Air Resources Management Bureau; John Arrigo – 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 & Southern Montana Electric (SME); Mary Jaraczkeski – SME; Ryan Purdy (via telephone) – Wilderness Club;

- I.A.1 | Review and Approve July 24, 2009, minutes
- Mr. Mires inquired about some highlighted text in the minutes. Ms. Wittenberg indicated that it was an oversight and that the highlighting would be removed from the final document.
- Mr. Mires MOVED to approve the minutes with the change noted. Mr. Miller 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. [*No discussion took place regarding this agenda item.*]
- II.A.1.b | In the matter of violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ. [*No discussion took place regarding this agenda item.*]
- II.A.1.c | 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 (SME) Highwood Generating Station Air Quality Permit No. 3423-01, BER 2008-23 AQ.
- Ms. Orr said there is a pending Motion to Dismiss and an agreement by the appellants that this case should be dismissed; however, there is disagreement as to whether it should be dismissed with or without prejudice. She said she hoped to issue an order the following week.
- II.A.1.d | In the matter of violations of the Metal Mine Reclamation Act by Saturday Sunday, LLC, Deer Lodge County, BER 2009-02 MM.
- Ms. Orr said there had been cross motions for summary judgment and she had issued a proposed order granting the Department's motion for summary judgment. She said there is an opportunity for exceptions to be filed and since there is a penalty component, a factual hearing will need to be held.
- II.A.1.e | 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, PWSID #MT0002754, ST. Mary, Glacier County, BER 2009-04 PWS. [*No discussion took place regarding this agenda item.*]
- II.A.1.f | In the matter of the Notice of Violations of the Montana Water Quality Act by North Star Aviation, Inc. at Ravalli County Airport, Ravalli County, BER 2009-10 WQ. [*No discussion took place regarding this agenda item.*]
- II.A.1.g | In the matter of violations of the Clean Air Act of Montana by Sheep Mountain Properties, LLC, Jefferson County, BER 2009-11 AQ.

Ms. Orr said there is a motion to compel and for sanctions pending, which she will rule on soon.

- II.A.1.h In the matter of violations of Montana Public Water Supply Laws by Anaconda Country Club, Anaconda, Deer Lodge County, BER 2009-12 PWS.

Ms. Orr said this case will probably be dismissed at the next meeting.

- 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 said she had nothing to add to the update provided on the agenda.

- II.A.2.b 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 Generating Station, BER 2007-07 AQ.

Ms. Orr said she had heard that this case is going to be dismissed.

- III.A.1 In the matter of the proposed adoption of the amendments of ARM 17.8501, 17.8.505, and 17.8.514 for the annual adjustment of air quality operation and open burning fees.

Ms. Wolfe said a public hearing took place July 27, 2009, and no public comment was received. She said the DEQ recommends that the Board adopt the rule as set forth in the notice of rule amendment.

Mr. Whalen MOVED to adopt the rules with the \$38.24 per ton fee, and accept the Presiding Officer's report and the House Bill 521 and 311 Analysis. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.A.2 In the matter of proposed adoption of the amendments of the Air Quality Incorporation by Reference Rules at ARM 17.8.102, 17.8.302, 17.8.767, 17.8.802, 17.8.822, 17.8.902, and 17.8.1002.

Ms. Wolfe said a public hearing was held July 27, 2009, and no comments were received.

Chairman Russell asked if any member of the public would like to comment on the rulemaking. No one responded.

Chairman Russell called for a motion to adopt the rulemaking as proposed, and to accept the Presiding Officer's report and the 521 and 311 Analysis. Mr. Mires so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.A.3 In the matter of the proposed adoption of the amendments of ARM Title 17, Chapter 38, Subchapters 1 and 2.

Mr. Pizzini said a public hearing was held September 3, 2009, and that, with one exception, the comments are documented in the Presiding Officer's Report. He said written comment from Kathy Moore, Lewis & Clark County Health Department, was not addressed in the Presiding Officer's Report; however, it was addressed in the response to comments and the Notice of Amendment, Adoption, and Repeal. He noted that the minutes from this meeting would be attached to the Presiding Officer's Report and placed in the permanent rule file. He said the DEQ recommends the Board adopt the proposed changes as amended during the comment period.

After some discussion, Chairman Russell called for public comment. There was no response. He then called for a motion to adopt the rule as submitted and accept the Presiding Officer's report, the House Bill 521 and 311 Analysis, and the Department's responses to comments. Ms. Shropshire so MOVED. Mr. Whalen SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.A.4 In the matter of the proposed adoption of the amendments to ARM 17.30.702, 17.36.101, 17.36.102, 17.36.103, 17.36.104, 17.36.323, 17.36.345, 17.36.911, 17.36.912, 17.36.914, 17.36.916, 17.36.918, 17.36.922, 17.38.101, 17.55.102, Department Circular DEQ-4, and the adoption of New Rules I and II pertaining to gray water reuse.

Mr. Kilbreath said there had been few comments on the proposed rules and changes had been made to the proposed rules based on those comments. He requested that the Board move to adopt the rules.

Chairman Russell called for a motion to adopt the gray water rules as published and accept the Presiding Officer's report, the House Bill 521 and 311 Analysis, and the department's responses to comments. Ms. Kaiser so MOVED. Mr. Miller SECONDED the motion. Chairman Russell called for public comment; there was no response.

Mr. Whalen said he didn't think some comments had been completely addressed: kitchen waste and maintenance of the storage tanks; and high sodium or alkaline deposits being made on top soils. He said he is concerned that soil fertility is being sacrificed for water conservation, and that it should be examined closer. Further discussion took place.

Chairman Russell called for a VOTE. Mr. Whalen voted against the rule and the motion CARRIED 6-1.

III.B.1 In the matter of violation of the Montana Underground Storage Tank Act by Stockton Oil Company at Soco Express #10, Yellowstone County, BER 2009-14 UST.

Mr. Mires MOVED to appoint Ms. Orr the permanent hearings examiner for this case. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.B.2 In the matter of violations of the Montana Septage Disposal and Licensure Laws by Craig Sundberg, d/b/a Sunny's Septic Service and Excavating, Anaconda, Deer Lodge County, BER 2009-15 SDL.
- Mr. Whalen MOVED to appoint Ms. Orr the permanent hearings examiner for this case. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.B.3 In the matter of violations of the Metal Mine Reclamation Act by Paradine Mining, Inc., Broadwater County, BER 2009-16 MM.
- Ms. Shropshire MOVED to appoint Ms. Orr the permanent hearings examiner for this case. Mr. Whalen SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.B.4 In the matter of violations of the Montana Septage Disposal and Licensure Laws by Steven Kunkel, d/b/a Montana Septic Service, at Great Falls Wastewater Treatment Plant, Great Falls, Cascade County, BER 2009-17 SDL.
- Mr. Whalen MOVED to appoint Ms. Orr the permanent hearings examiner for this case. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.B.5 In the matter of violations of the Montana Underground Storage Tank Act by Juniper Hill Farm, LLC, at Lakeside General Store, Lewis and Clark County, BER 2009-18 UST.
- Mr. Mires MOVED to appoint Ms. Orr the permanent hearings examiner for this case. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.C.1 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 provided a summary of the case.
- Chairman Russell called for a motion to authorize him to sign the order of dismissal. Mr. Miller so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.C.2 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.
- Ms. Orr provided a summary of the case and said there was a 41(a) dismissal request before the Board. Discussion took place regarding why the case was being dismissed with prejudice.

- 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.3 In the matter of the request for hearing by Sandy Rose regarding the Notice of violation of the Montana Public Water Supply Laws by Canyon Ferry Mansion, Inc., at Canyon Ferry Mansion, PWSID #MT0004387, Helena, Lewis and Clark County, BER 2009-08 PWS.
- Ms. Orr briefed the Board on the history of the case.
- Chairman Russell called for a motion to authorize him to sign the order of dismissal. Ms. Kaiser so MOVED. Mr. Miller SECONDED the motion. Chairman Russell called for a VOTE. Mr. Whalen voted against the motion and the motion CARRIED 6-1.
- Brief discussion took place regarding the settlement terms in this case.
- III.C.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.
- Ms. Orr provided a summary of the case and said there was a 41(a) dismissal request before the Board. Discussion took place regarding why the case was being dismissed without prejudice.
- Chairman Russell called for a motion to authorize him to sign the order of dismissal. Mr. Mires so MOVED. Mr. Whalen SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.C.5 In the matter of Montana Public Water Supply Laws by Headwaters Livestock Auction, LLC at Headwaters Livestock Auction, Three Forks, Broadwater County, BER 2009-13 PWS.
- Ms. Orr provided a summary of the case. Discussion took place regarding the settlement terms of the case.
- Chairman Russell called for a motion to authorize him to sign the order of dismissal. Mr. Miller so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.C.6 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 provided a summary of the case and said there was a 41(a) dismissal request before the Board.

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

III.D.1 In the matter of violations of the Montana Water Quality Act by Wilderness Club, LLC., at the Wilderness Club Eureka, Lincoln County, Montana, BER 2008-13 WQ.

Ms. Orr said she had issued an order denying Wilderness Club's motion for summary judgment and that she would be issuing a final order setting the case for hearing since she had not received a motion for reconsideration.

Mr. Purdy, on behalf of Wilderness Club, objected to the proposed order and any action to be taken.

Discussion took place regarding proper course of procedure. Mr. Whalen MOVED to adopt the Proposed Order Denying the Motion for Summary Judgment. Mr. Mires SECONDED the motion. Further discussion ensued. The motion was amended to: "The Board votes to adopt the proposed order and instructs the Hearings Examiner to write an order for the Chairman's signature that says that the proposed order is final." Mr. Whalen and Mr. Mires both agreed. The motion CARRIED with a unanimous VOTE.

IV. General Public Comment

Chairman Russell called for public comment. No members of the public responded.

V. Adjournment

Chairman Russell called for a motion to adjourn. Mr. Mires so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.

The meeting adjourned at 11:11 a.m.

Board of Environmental Review October 2, 2009, minutes approved:


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

Dec 11, 2009
DATE