



Montana Board of Environmental Review

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MINUTES JULY 23, 2010

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:01 a.m., on Friday, July 23, 2010, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

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

Board Members Present via Phone: Robin Shropshire

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

Board Secretary Present: Misty Gable

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers, Deputy Director (via telephone); John North, Claudia Massman, Carol Schmidt, David Rusoff, Norman Mullen, and Robert Olsen – Legal; Judy Hanson – Permitting & Compliance Division; George Mathieus – Planning Division; Jenny Chambers – Water Protection Bureau; Jon Dilliard, Eugene Pizzini, and Becky Frankforter – Public Water Supply & Subdivisions Bureau; Chuck Homer – Air Resources Management Bureau; Rick Thompson – Waste and Underground Tank Management Bureau; Bob Bukantis, Mark Bostrom, and Rod McNeil – Water Quality Planning Bureau; Todd Teegarden – Technical and Financial Assistance Bureau; John Arrigo – Enforcement Division

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Don Allen – Western Environmental Trade Association; Brenda Lindlief-Hall – Tongue River Water Users Association

- I.A.1 | Review and approve May 14, 2010, teleconference meeting minutes.
- Mr. Mires MOVED to approve the May 14, 2010, teleconference minutes. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- I.A.2 | Review and approve May 28, 2010, teleconference meeting minutes.
- Mr. Miller MOVED to approve the May 28, 2010, teleconference minutes. Ms. Kaiser 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 Metal Mine Reclamation Act by Saturday Sunday, LLC, Deer Lodge County, BER 2009-02 MM.
- Ms. Orr reported that a hearing was held on July 19, 2010, and Counsel for Saturday Sunday did not appear; that there was a motion for a default and the default was granted; and that an order was issued for default, ordering Saturday Sunday to pay the penalties, and that this matter will come before the Board at the next meeting.
- II.A.1.c | 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.d | 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 reported that there is a pending motion to consolidate with one of the new cases, and that a response from the Appellant has not been filed yet, but a ruling will be imminent.
- II.A.1.e | 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.
- Ms. Orr reported that there has been an agreement between the parties, and that a motion to vacate and dismiss is pending.
- II.A.1.f | 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.
- Ms. Orr stated that a hearing was held on June 4, 2010, and a decision is

forthcoming.

II.A.1.g In the matter of the request for hearing regarding the revocation of certificate of approval ES#34-93-C1-4 for the Fort Yellowstone Subdivision, Park County, BER 2009-20/22 SUB. [*No discussion took place regarding this agenda item.*]

II.A.1.h In the matter of the request for hearing by the City of Great Falls regarding the DEQ's Notice of Final Decision for MPDES Permit No. MT0021920, BER 2009-21 WQ.

Ms. Orr stated that an agreement in principle has been reached.

II.A.1.i In the matter of violations of the Public Water Supply Laws by Aces Wild, LLC at Aces and Eights Casino, PWSID #MT0003321, Glasgow, Valley County, BER 2010-07 PWS. [*No discussion took place regarding this agenda item.*]

II.A.1.j In the matter of violations of the Montana Underground Storage Tank Act by Jeanny Hlavka, individually and d/b/a J.R. Enterprise, LLC, at the Fort Peck Station, 301 Missouri Avenue, Fort Peck, Valley County, BER 2010-08 UST.

Ms. Orr reported that a motion for a stay of proceedings pending an application for eligibility was filed and that it was denied on July 20, 2010.

II.A.2.a In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Signal Peak Energy, LLC, at Bull Mountain Mine #1, Roundup, Musselshell County, BER 2009-23 SM.

Ms. Orr reported that she received a stipulation for settlement, and a proposed order of dismissal.

II.A.2.b In the matter of the appeal and request for hearing by the City of Belgrade of DEQ's Notice of Final Decision regarding Montana Ground Water Pollution Control System Permit No. MTX000116, Belgrade, Gallatin County, BER 2010-06 WQ.

Ms. Orr stated that a second order granting extension of time was issued on July 15, 2010.

II.B.1 Briefing on the Triennial review of Montana water quality standards.

Mr. Bukantis discussed the comments DEQ received during the comment period: Syngenta Corporation commented on how DEQ handles carcinogenicity with some of the pesticides listed in the standards; American Chemet, which is proposing adoption of EPA's 2007 Aquatic Life National Recommended Water Quality Criterion for the copper biotic ligand model as a copper standard, also commented; other comments were received regarding EC and SAR. Mr. Bukantis stated that the DEQ will organize all of the information and comments and will prepare a report with the DEQ's recommendations on where to go from there. Mr. Bukantis responded to Board

member questions.

Mr. North added that taking comment on items outside the scope of the changes that are proposed is a requirement of EPA rules under the Federal Clean Water Act, and that there is a statutory provision in the Montana Water Quality Act that says the Board is to review the water quality standards every three years to determine if changes or additions need to be made.

II.B.2 Briefing on Individual Wastewater Discharge Permit Appeal Activity.

Ms. Chambers provided an overview and summary of the two main types of discharge permits. She stated that the average for permit appeals is only about seven percent with no particular trend. DEQ does not consider this an inordinately high number and DEQ does not have specific recommendations on program modifications to reduce the number of appeals. In fiscal year 2011, the Water Protection Bureau will implement pre-application and pre-permitting processes that will increase communication with permittees. Ms. Chambers responded to Board member questions.

II.B.3 Briefing on Gallatin River Outstanding Resource Water Designation.

Mr. Livers stated that the DEQ is encouraged by the work going on between the parties and that it is still moving forward. He also provided background on the rulemaking.

II.B.4 Briefing on the Proposed Legislation for 2011.

Mr. Livers provided a description of the DEQ-proposed bill on wastewater re-use standards that would directly impact the Board, as well as a brief overview of the DEQ-proposed bills that would not affect the Board. Mr. Livers, Mr. North, and Mr. Mathieus responded to questions from Board members.

III.A.1 In the matter of rule adoption for amendment to ARM 17.50.403 and 410; solid waste fee rules.

Mr. Thompson stated that the DEQ recently revised and adopted solid waste rules ARM 17.50 Subchapter 5, which included the repeal of 17.50.503. He said ARM 17.50.403 and 410 contained cross-references to 17.50.503. Mr. Thompson explained that the proposed amendments would correct outdated citations, and would make minor editorial changes that will not have an impact on the new rules. Mr. Thompson reported that no comments were received. He said that the DEQ is asking the Board to adopt the amendments as proposed.

Chairman Russell called for public comment; there was no response. He then called for a motion to adopt the rule as proposed, and to adopt the House Bill 521 and 311 analyses. Mr. Whalen so MOVED. Mr. Miller SECONDED the motion. The

motion CARRIED with a unanimous VOTE.

- III.A.2 In the matter of proposed adoption of amendments to ARM Title 17, Chapter 38, subchapter 2.

Mr. Pizzini said a public hearing was held on May 11, 2010, and that no comments were received. He said the proposed amendments do not add any new significant requirements, that they actually reduce some of the requirements that are already in place and that they remove potential areas of confusion for the public. Mr. Pizzini said the DEQ recommends adoption of the proposed amendments.

Chairman Russell asked for public comment. There was no response. Chairman Russell called for a motion to adopt the amendments as submitted, approve the Presiding Officer's report, and the House Bill 521 and 311 analyses. Ms. Kaiser so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.A.3 In the matter of the request to adopt the proposed amendments to DEQ-7 and incorporate the updated water quality standards in DEQ-7 by amending ARM 17.30 subchapters 5, 6, 7, and 10; ARM 17.36.3; ARM 17.55.1; and ARM 17.56.5.

Mr. McNeil stated that no comments were received pertaining to the proposed rule changes for DEQ-7, but reported that the DEQ received one letter of support from the EPA recommending that the Board adopt the proposed changes to DEQ-7. He said the DEQ supports the rules as recommended. Mr. McNeil and Ms. Chambers responded to questions from Board members.

Chairman Russell called for public comment; there was no response. He then called for a motion to adopt the amendments as proposed and accept the Presiding Officer's report, the House Bill 521 and 311 analyses, and the Department's responses to comments. Mr. Whalen so MOVED and Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.B.1 In the matter of the appeal and request for hearing by Roseburg Forest Products Co. of DEQ's Notice of Final Decision regarding Montana Ground Water Pollution Control System Permit No. MTX000099, BER 2010-09 WQ.

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.2 In the matter of violations of the Clean Air Act of Montana by Todd Michael Mihalko, Jefferson County, Montana, BER 2010-10 AQ.

Mr. Mires MOVED to appoint Ms. Orr as permanent hearings examiner for this

case. Mr. Miller SECONDED the motion and the motion CARRIED unanimously.

III.C.1 In the matter of violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.

Ms. Orr provided a summary of the case.

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

III.C.2 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.

Ms. Orr provided a summary of the violations of the case.

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

III.C.3 In the matter of the appeal and request for hearing by Fidelity Exploration & Production Co. of the DEQ's denial of the request for modification of Fidelity's MPDES Permit No. MT0030457, BER 2009-24 WQ.

Ms. Orr said the parties had filed a stipulation for dismissal under Rule 41(a).

Chairman Russell called for a motion to authorize him to sign the order to dismiss the case. Mr. Anderson so MOVED. Mr. Miller SECONDED the motion and it CARRIED with a unanimous VOTE.

III.C.4 In the matter of the request for hearing by AquaFlo, LLC, of DEQ's Notice of Final Decision regarding Montana Ground Water Pollution Control System Permit No. MTX000121 and the Permit Fact Sheet, Helena, Lewis and Clark County, BER 2010-03 WQ.

Ms. Orr said the parties filed a stipulation for dismissal under Rule 41(a).

Chairman Russell called for a motion to authorize him to sign the order to dismiss the case. Mr. Miller so MOVED and Mr. Whalen 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 the Red Cliff Estates Homeowners Association, Inc. at Red Cliff Estates HOA PWSID #MT0004268, Clancy, Jefferson County, Montana, BER 2010-05 PWS.

Ms. Orr provided a summary of the case.

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

- III.C.6 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 a summary on the case.

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

- III.C.7 In the matter of violations of the Montana Public Water Supply Laws by Jason Ellsworth at SFE Unapproved, Hamilton, Ravalli County, BER 2010-01 PWS.

Ms. Orr presented a summary on the violations of the case.

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

- III.D.1 In the matter of the approval requirement regarding the program amendment of Gallatin Local Water Quality District boundary expansion.

Mr. North provided a brief background of the amendment.

Mr. Teegarden said that Gallatin County's Water Quality District was established in 1997 and since then they have had several requests to expand the district. Mr. Teegarden stated that the district is not regulatory in nature, but focuses on monitoring, public education, and water quality data. He said the Department is involved with the oversight of the local water quality districts. Mr. Teegarden responded to questions from the Board.

IV. General Public Comment

Chairman Russell asked if anyone in the audience would like to address the Board on matters pertaining to the Board.

Ms. Lindlief-Hall talked about the issue of the Fidelity contested case regarding the Whole Effluent Toxicity tests.

Discussion took place regarding Rule 41(a) and the Board's authority under that rule.

V. Adjournment

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

The meeting adjourned at 11:30 a.m.

Board of Environmental Review July 23, 2010, minutes approved:



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

Nov 24 2010
DATE