



P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • Website: www.deq.state.mt.us

**MINUTES
OCTOBER 8, 2010**

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:03 a.m., on Friday, October 8, 2010, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present via Telephone: Chairman Russell, Robin Shropshire, Larry Mires, Heidi Kaiser, Joe Whalen, and Marvin Miller

Board Members Absent: Larry Anderson

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

Board Secretary Present: Misty Gable (Acting)

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers (Deputy Director); John North and Norman Mullen – Legal; Judy Hanson – Permitting & Compliance Division; Jenny Chambers – Water Protection Bureau; Jon Dilliard and Eugene Pizzini – Public Water Supply & Subdivisions Bureau; David Klemp, Charles Homer, Bob Habeck, Becki Frankforter, 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.*): No members of the public were in attendance

Mr. Livers did a roll call. Board members identified were Ms. Shropshire, Ms. Kaiser, Mr. Mires, Mr. Miller, and Chairman Russell. It was later noted that Mr. Whalen also was on the phone; however, he did not have voice capability so he could not be heard.

Mr. Livers took a moment to recognize the work of former board member Don Marble, who recently passed away.

I.A.1 Review and approve July 23, 2010, teleconference meeting minutes.

Mr. Mires MOVED to approve the July 23, 2010, meeting minutes. 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 Metal Mine Reclamation Act by Saturday Sunday, LLC. Deer Lodge County, BER 2009-02 MM.

Ms. Orr stated that she had issued an order on default and that a final proposed order would be submitted to the Board for approval at its December 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.

Ms. Orr said a status conference had been held and that the October 21 hearing date had been vacated. She said the parties were given 60 days to work out a settlement.

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 said a motion for summary judgment had been filed and that oral argument on that motion is scheduled for October 19, 2010.

II.A.1.e In the matter of violations of the Clean Air Act of Montana by Todd Michael Mihalko, Jefferson County, BER 2010-10 AQ.

Ms. Orr said there was a motion for consolidation of this case with the Sheep Mountain case (BER 2009-11 AQ), but that she had not acted on that on motion, essentially letting it die.

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 said there had been a hearing on the proposed penalties and that she issued a proposed order. She said errors in the order had been brought to her attention and that she would decide whether to amend the order. She said the Petitioner has through October 15 to file exceptions to the order.

- 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.

Ms. Orr said a request for extension was filed October 4, requesting extension until January 7, 2011, to determine whether to settle the case.

- 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 said the parties are moving toward settlement with this case.

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

Ms. Orr said the parties have agreed on a proposed schedule and that she will issue an order adopting the proposed schedule.

- II.A.1.j 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. [No discussion took place regarding this item.]

- II.B.1 In the matter of the Department's report to the Board regarding the air quality permit fees anticipated for the next calendar year pursuant to ARM 17.8.510.

Mr. Habeck explained that the department has decided that the current fee schedule would suffice through 2011. He said the department significantly reduced expenses in order to avoid increasing the fees because the state has seen such severe economic adversity. Mr. Habeck said the application and administrative fees can also remain the same as currently published in the rules.

- III.A.1 In the matter of the DEQ's request for initiation of rulemaking to amend ARM 17.38.204 to correct adoption by reference of 40 CFR, Part 141.64(a)(1).

Mr. Pizzini explained that the intent of the rulemaking is to correct a mistake from a previous adoption that inadvertently omitted the adoption by reference of the MCLs for bromate and chloride. He said that this is a mandatory adoption, so the department

would like to do it without a public hearing. Mr. Pizzini also noted that a current primacy application is on hold with EPA because these MCLs were not adopted.

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

Mr. Livers asked for clarification that the Board's intent was for the department to move forward with the rulemaking without a public hearing. Chairman Russell concurred.

- III.A.2 In the matter of DEQ's request to initiate rulemaking to update the air quality incorporation by reference rules at ARM 17.8.102.

Ms. Wolfe explained that this is the annual rulemaking to incorporate by reference the federal statute and regulation, and state administrative rules adopted during the previous year. She said a draft rule notice had been submitted for the Board's consideration.

Chairman Russell called for a motion to initiate rulemaking and appoint Ms. Orr as hearings officer. Mr. Mires so MOVED. Mr. Miller SECONDED the motion. Chairman Russell called for public comment; there was no response. The motion CARRIED with a unanimous VOTE.

- III.B.1 In the matter of violations of the Montana Underground Storage Tank Act by Hi-Noon Petroleum, Inc., at Noon 456, Missoula County, BER 2010-11 UST.

Chairman Russell called for a motion to appoint Ms. Orr the permanent hearings officer for this case. Ms. Kaiser so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.B.2 In the matter of the appeal and request for hearing by Holcim Incorporated regarding the DEQ's Notice of Final Decision for MPDES Permit No. 0000485, BER 2010-13 WQ.

Chairman Russell called for a motion to appoint Ms. Orr the permanent hearings officer for this case. Mr. Mires so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.C.1 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 explained the relationship between this case and the next (BER 2010-12 SDL) and said there was a third case filed in District Court in which the parties agreed to dismiss both of these administrative actions. She recommended that the Board

adopt the dismissal order and have the Chairman sign it. She noted that a reference in the order to Montana Rules of Civil Procedure 41(a)(2) should be changed to 41(a)(1)(ii).

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

III.C.2 In the matter of revocation of Septage Disposal License No. S-870 held by Steven Kunkel, d/b/a Montana Septic Service, BER 2010-12 SDL.

Ms. Orr asked that the Board adopt the order of dismissal for this case, as referenced in the previous case, with the noted change to the Rule of Civil Procedure.

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

III.C.3 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 explained that the Board had not delegated this case. She said the parties entered into an Administrative Order on Consent and requested dismissal under 41(a). She recommended that the Board adopt the order.

Chairman Russell called for a motion to authorize him to sign the order. Ms. Kaiser RECUSED herself from this action. Mr. Miller so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.4 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 said there is a request for dismissal under 41(a)(1)(ii), that the parties have agreed to a reapplication, and that the permit will be withdrawn.

Chairman Russell called for a motion to authorize him to sign the order. Ms. Shropshire 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 Public Water Supply Laws by Aces Wild, LLC, at Aces and Eights Casino, PWSID #MT0003321, Glasgow, Valley County, BER 2010-07 PWS.

Ms. Orr said the order of dismissal is under Rule 41(a)(1)(ii).

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

III.D.1 General Public Comment

Chairman Russell called for public comment on matters that pertain to the Board's jurisdiction. No members of the public were present.

The Board thanked Ms. Orr for all her work, noting that it was keeping her busy.

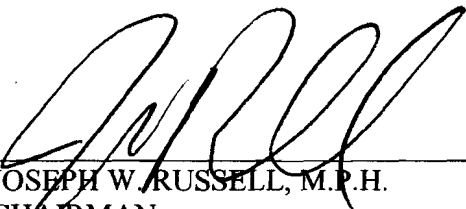
Mr. Livers noted that three terms will be up at the end of the year: Ms. Kaiser, Mr. Mires, and Chairman Russell.

IV. Adjournment

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

The meeting adjourned at 9:49 a.m.

Board of Environmental Review October 8, 2010, minutes approved:



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

12/03/2010

DATE