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**MINUTES
DECEMBER 3, 2010**

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:10 a.m., on Friday, December 3, 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, Robin Shropshire, Larry Mires, Larry Anderson, 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: Richard Opper (Director), Tom Livers (Deputy Director); John North, Jim Madden, Claudia Massman, Ed Hayes, and Jane Amdahl – Legal; Judy Hanson – Permitting & Compliance Division; Jenny Chambers and Christine Weaver – Water Protection Bureau; Jon Dilliard, Eugene Pizzini, Steve Kilbreath – Public Water Supply & Subdivisions Bureau; David Klemp, Debra Wolfe, Eric Merchant, Dan Walsh, and Paul Skubinna – Air Resources Management Bureau; Redge Meierhenry, Waste & Underground Tank Management Bureau; George Mathieus, Planning Prevention & Assistance Division; Todd Teegarden, Technical & Financial Assistance Bureau; Mark Bostrom, Bob Bukantis and Rod McNeil – Water Quality Planning Bureau; John Arrigo and Frank Gessaman – Enforcement Division

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Ron Laubach; Debbie Laubach; Thomas Morrison, Juniper Hill Farm; Alan English, Gallatin Local Water Quality District; Brenda Lindlief Hall, Tongue River Water User's Association; Kim Wilson, Montana Alberta Tie Limited

- I.A.1 Review and approve October 8, 2010, Board teleconference meeting minutes.
- Mr. Whalen MOVED to approve the October 8, 2010, meeting minutes. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous Vote.
- I.B. Set 2011 meeting schedule.
- The proposed dates were reviewed and the Board decided to change the May date to the 13th. The meeting dates for 2011 are January 28, March 25, May 13, July 22, September 23, and December 2.
- 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 Notice of Violations of the Montana Water Quality Act by North Star Aviation, Inc. at Ravalli County Airport, Ravalli County, BER 2009-10 WQ.
- II.A.1.d 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.
- II.A.1.e 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.
- II.A.1.f 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.
- II.A.1.g 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. MT 0000485, BER 2010-13 WQ.
- Ms. Orr said items II.A.1.a through II.A.1.g, with the exception of II.A.1.c, are proceeding to hearing. She also noted that item II.A.1.g has a *Third Request for Extension* pending.
- II.A.1.c In the matter of violations of the Clean Air Act of Montana by Todd Michael Mihalko, Jefferson County, Montana, BER 2010-10 AQ.
- Ms. Orr said this item will be up for dismissal at the January meeting.
- III.A.1 In the matter of the amendment of ARM 17.8.604 regarding the burning of wood and wood byproducts, and ARM 17.8.610(2), 17.8.612(10), 17.8.613(8), 17.8.614(8), and 17.8.615(6) regarding air quality permit appeals.
- Ms. Wolfe explained the proposed amendments and requested that the Board initiate the rulemaking and conduct a public hearing.
- Ms. Wolfe and Mr. Klemp responded to questions from the Board regarding permit appeals, stays, and BACT, and further discussion took place.
- Chairman Russell called for a motion to initiate the rulemaking and appoint Ms. Orr as the presiding officer. Ms. Kaiser so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.A.2 In the matter of the amendment of ARM 17.8.763 regarding the notification of owners and operators of air quality permit revocation.

Ms. Wolfe explained the amendment being proposed by the department. She requested the Board initiate the rulemaking and hold a public hearing.

Mr. Walsh and Ms. Wolfe responded to questions from the Board.

Chairman Russell called for a motion to initiate the rulemaking and appoint Ms. Orr as the presiding officer. Mr. Whalen so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.

Chairman Russell called for public comment on this and the previous rulemakings. There was no response.

III.A.3 In the matter of the amendment of ARM 17.30.201 regarding water discharge permit fee schedule, and ARM 17.30.1341 to add a general permit category for pesticides.

Ms. Chambers introduced the rulemaking saying the primary purpose of the rulemaking was to provide an administrative framework to allow the department to proceed with the development of a Montana pollutant discharge elimination system general permit for pesticides and also to provide a fee schedule and necessary information that's required under the Montana Water Quality Act.

A lengthy discussion took place, and Ms. Chambers and Mr. Madden responded to questions from the Board.

Chairman Russell called for public comment on the proposed rulemaking. There was no response. He called for a motion to initiate the rulemaking and to appoint Ms. Orr as the presiding officer. Ms. Shropshire so MOVED. Mr. Anderson SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.A.4 In the matter of the amendment of ARM 17.30.617 to designate a portion of the Gallatin River as an outstanding resource water (ORW), and ARM 17.30.638 regarding ORWs.

Mr. Livers explained that a request to extend the rulemaking had been received from one of the parties and that the department concurs with the request. He said this is likely to come before the Board a few more times, since the rulemaking can only be extended by six months at a time. He noted that good discussion is taking place between the parties and that progress is being made.

Mr. Teegarden discussed a proposed snow-making site, making snow out of highly-treated wastewater on a site by the storage pond. Mr. Livers and Mr. Teegarden responded to questions from the Board.

Chairman Russell called for public comment on the proposal to extend the comment period. No one responded. He called for a motion to initiate the rulemaking, thereby extending the public comment. Mr. Mires so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.B.1 In the matter of violations of the Public Water Supply Laws by Gregory C. MacDonald at Highwood Mobile Home Park, PWSID #MT0004681, Cascade County, Montana, BER 2010-14 PWS.

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

III.B.2 In the matter of the appeal and request for hearing by Ronald and Debbie Laubach regarding the DEQ's final decision to amend the MATL's certificate of compliance, BER 2010-15 MFS.

Ms. Orr explained that the action pending before the Board was to decide whether to appoint her as the hearing examiner. She also noted that there was a pending request for the Board to hear the case; that the request is opposed by MATL; that she had issued a prehearing order; and that there is a pending motion to intervene.

Mr. Mires MOVED to appoint Ms. Orr as the permanent hearing examiner for this matter. Mr. Miller SECONDED the motion.

Mr. Laubach requested to hold public hearing at this point. Chairman Russell denied the request.

Discussion took place among the Board regarding the possibility of the Board hearing this matter itself. It was decided to let Ms. Orr handle the matter. Chairman Russell called for a VOTE and the motion CARRIED unanimously.

III.B.3 In the matter of the appeal and request for hearing by Maurer Farms, Inc.; Somerfeld & Sons Land & Livestock, LLC; Larry Salois, POA; Jerry McRae; and Katrina Martin regarding the DEQ's final decision to amend the MATL's certificate of compliance, BER 2010-16 MFS.

Ms. Orr said there were procedural motions pending in this case. A brief discussion took place regarding impact of decisions between this case and the previous case.

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

III.B.4 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, Montana, BER 2010-17 SM.

Ms. Orr explained the issues of the case. Ms. Kaiser recused herself from matters pertaining to the case.

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

III.B.5 In the matter of the appeal and request for hearing by Meat Production Inc., a.k.a. Stampede Packing Co., regarding the DEQ's notice of final decision for Montana Ground Water Pollution Control System (MGWPCS) Permit No. MTX000100, BER 2010-18 WQ.

Ms. Orr explained the nature of the appeal. Chairman Russell noted that he has some history with this site, but that he did not believe it posed a conflict.

Chairman Russell called for a motion to appoint Ms. Orr as the permanent hearing examiner. Ms. Shropshire 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 Underground Storage Tank Act by Hi-Noon Petroleum, Inc., at Noon 456, Missoula County, Montana, BER 2010-11 UST.

Ms. Orr said the parties had entered into an administrative order and that they are requesting dismissal under Rule 41(a).

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

III.C.2 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 had filed a stipulation and request for dismissal.

Chairman Russell called for a motion to allow him to sign the order on behalf of the Board. Mr. Miller so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.3 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 the parties had agreed to enter into an administrative order on consent, and request dismissal by the Board.

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

III.C.4 In the matter of violations of the Metal Mine Reclamation Act by Saturday Sunday, LLC. Deer Lodge County, BER 2009-02 MM.

Ms. Orr explained that there had been previous cross motions for summary judgment in this case that the Board had previously decided, and that a hearing was held on the issue of penalties. She the appellant did not appear at the hearing and the DEQ's motion for default was then granted through a proposed order, and that an order was now before the Board to approve the proposed order.

Chairman Russell called for a motion to allow him to sign the order on behalf of the Board. Mr. Anderson so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.D.1 Gallatin Local Water Quality District program amendment

Mr. English referenced a strategic plan and a map that were included in the Board's meeting materials, and described the areas of expansion of the water district. He said statute

requires the Board to approve any modifications of the work plan, which was originally approved by the Board in 1997. Mr. English responded to questions from Board members regarding the effect of this on the Gallatin ORW issue and water board composition.

Mr. Whalen MOVED for the Board to approve the new plan. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.D.2 Consideration of and action on public comment regarding adoption of copper biotic ligand model, modification of existing pesticide standards, and modification of category classification (carcinogen delisting) for certain pollutants.

Mr. Livers explained that the DEQ is not asking the Board to take any action on this item, but that it is listed under action to preserve the Board's ability to take action if it so chooses.

Mr. Bukantis said some constructive comments were received, relative to DEQ-7, which are also consistent with the department's goals for DEQ-7. He said the DEQ would like to roll the comments and responses into the 2011 version of DEQ-7, and continue to look at the biotic ligand model.

Mr. Bukantis provided details of the comments received and discussed changes the EPA is making regarding specific pesticides. He also provided details of EPA's new water quality standard for aquatic life for copper, the copper biotic ligand model.

Mr. Bukantis answered questions from Board members, and the Board took no action on this item.

III.D.3 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 a hearing on this case took place on June 4, 2010, and she issued a proposed order on September 21. She said an exception and response to exceptions had been filed. She said the Board needed to hear oral argument on whether the findings of fact should be reopened. She also said that a notice of clerical errors was filed.

Mr. Morrison described the events that led up to the violation and asked the Board to reduce the fine.

Ms. Amdahl noted that the record for this case had not been presented to the Board to review, so the Board should deny the exceptions raised by Juniper Hill. She further noted that Juniper Hill was notified of violations in September 2008 but took no action until April 2009, and that the original penalty has already been reduced by more than \$4,500.

After Ms. Orr responded to questions from him, Chairman Russell called for a motion to support the hearing examiner's position and to assess a \$2,100 penalty. Ms. Kaiser so MOVED. Mr. Whalen SECONDED the motion. A brief discussion took place. Chairman Russell called for a VOTE and the motion CARRIED unanimously.

Ms. Orr noted that the order would require some changes as outlined in the notice of clerical errors.

Chairman Russell called for a motion to allow Ms. Orr to make the necessary changes to her order. Mr. Mires so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.

IV. General public comment

Mr. Laubach said he would like DEQ to adopt a policy or statute to send certified letters to each property owner that would be affected by DEQ decisions, and he talked about certificates issued by DEQ. He asked the Board to entertain a motion to take action to make things right, to get DEQ to be more flexible, to make a policy to notify the landowners individually.

Mr. Wilson stated that a comprehensive environmental review was performed on the original certification of the MATL line.

V. Adjournment

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

The meeting adjourned at 12:56 p.m.

Board of Environmental Review December 3, 2010, minutes approved:



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

01/20/2011
DATE