



Montana
Board of Environmental Review

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TELECONFERENCE MINUTES
JANUARY 28, 2011

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:05 a.m., on Friday, January 28, 2011, via teleconference, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Larry Mires

Board Members Present (via telephone): Chairman Joseph Russell, Marvin Miller, Heidi Kaiser, Robin Shropshire, 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: Tom Livers (Deputy Director); John North and David Rusoff – Legal; Judy Hanson – Permitting & Compliance Division; Jon Dilliard, Eugene Pizzini, and Shelley Nolan – Public Water Supply & Subdivisions Bureau; David Klemp and Debra Wolfe – Air Resources Management Bureau; John Arrigo – Enforcement Division

Interested Persons Present: *no members of the public were present*

- I.A.1 | Review and approve December 3, 2010, Board teleconference meeting minutes.
- Mr. Mires MOVED to approve the December 3, 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.
- 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.c | 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, BER 2009-20/22 SUB.
- No discussion took place regarding II.A.1.a, II.A.1.b, and II.A.1.c.
- II.A.1.d | 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 noted that a motion for summary judgment had been filed, as well a response to the motion. She said a reply could be forthcoming.
- II.A.1.e | 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.
- Ms. Orr said a hearing on this matter is scheduled for February 28, but that it could be moved to May or June.
- II.A.1.f | 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 she had issued a fourth order granting extension of time for the parties to file a proposed schedule.
- II.A.1.g | 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.
- Chairman Russell and Ms. Kaiser both noted that the appellant had contacted them trying to discuss the case. Each said they informed Mr. McDonald that they could not discuss the matter with him.

II.A.1.h 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.

II.A.1.i 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 the MATL had filed a motion to dismiss in both these cases and that Mr. Laubach had submitted a briefing in response. She said oral argument for BER 2010-16 MFS is scheduled for February 3.

II.A.1.j 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.

II.A.1.k 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.

No discussion took place regarding items II.A.1.i and II.A.1.j.

II.A.2.a 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 Juniper Hill had filed a motion for rehearing, and that the DEQ had filed opposition to that motion. She indicated that disposition, in some form, would occur at the next meeting.

III.A.1 In the matter of the amendment of ARM 17.38.204 regarding the adoption by reference of 40 CFR 141.65(a).

Mr. Pizzini said the Board had initiated the rulemaking at its October 8, 2010, meeting and, as proposed, no hearing was held. He said notices of the rulemaking were sent to interested parties and that no comments were received. He said the DEQ recommends the Board adopt the rule amendments as proposed.

Chairman Russell asked if there was anyone in the audience who would like to speak to the matter. No one responded.

Chairman Russell called for a motion to adopt the rule as written and accept the 521/311 Analysis. Mr. Miller so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.A.2 | In the matter of the amendment of ARM 17.8.102 regarding the Air Quality Incorporation by Reference rules.
- Ms. Wolfe provided background information on the rulemaking; she said a hearing was held December 6, 2010, and no comments were received. She said the DEQ recommends adoption of the amendments as proposed.
- Chairman Russell called for public comment on the matter. No one responded.
- Chairman Russell called for a motion to adopt the amendments, and to accept the Presiding Officer's report and the 521/311 Analysis. Ms. Kaiser so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.B.1 | In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Signal Peak Energy, LLC, at the Bull Mountain Mine #1, Roundup, Musselshell County, BER 2010-19 SM.
- Mr. Whalen MOVED for the Board to hear this matter. Mr. Anderson SECONDED the motion. Ms. Kaiser RECUSED herself from taking action on this item. The motion CARRIED with a unanimous VOTE.
- III.B.2 | In the matter of violations of the Montana Public Water Supply Laws by Belle Creeke Dental, PWSID #MT0004553, Butte, Silver Bow County, BER 2010-20 PWS.
- Chairman Russell called for a motion to appoint Ms. Orr as the permanent hearing examiner for this matter. Mr. Miller so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.B.3 | In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Carbon County Holdings, LLC, at Carbon County Holdings, Carbon County, BER 2011-01 SM.
- Chairman Russell called for a motion. Ms. Whalen MOVED for the Board to hear this matter. Ms. Anderson SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.C.1 | 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 explained that this case was settled under Rule 41(a).
- Chairman Russell called for a motion to authorize the Board Chair to sign the dismissal order. Mr. Mires so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.

IV. General public comment


Chairman Russell asked if any member of the public would like to comment on issues before the Board. There was no response.

V. 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 9:30 a.m.

Board of Environmental Review January 28, 2011, minutes approved:



JOSEPH W. RUSSELL, M.P.H.
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW
3/25/2011
DATE