



Montana
Board of Environmental Review

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MINUTES
MARCH 25, 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, March 25, 2011, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joseph Russell and Larry Mires

Board Members Present via Telephone: Robin Shropshire, Larry Anderson, and Joe Whalen

Board Members Absent: Heidi Kaiser and Marvin Miller

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 Jane Amdahl – Legal; Judy Hanson – Permitting & Compliance Division; Jenny Chambers – Water Protection Bureau; Jon Dilliard, Eugene Pizzini, Steve Kilbreath, Rachel Clark, and Shelley Nolan – Public Water Supply & Subdivisions Bureau; David Klemp, Julie Merkel, Charles Homer, Eric Merchant, Dan Walsh, and Debra Wolfe – Air Resources Management Bureau; Bob Bukantis – Water Quality Planning Bureau; John Arrigo – Enforcement Division

- I.A.1 | Review and approve January 28, 2011, meeting minutes.
- Chairman Russell called for a motion to approve the January 28, 2011, meeting minutes. Mr. Mires so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.A.2 | In the matter of DEQ's request for the Board to initiate rulemaking to amend ARM 17.36.922 and 17.36.924.
- Due to DEQ Staff scheduling conflicts, the Board chose to hear this matter early, but waited to take action until reaching its regularly-scheduled place on the agenda, to allow for possible public comment.
- Mr. Kilbreath briefed the Board on this proposed rulemaking, which pertains to the DEQ hearing appeals of local health board variance decisions. He responded to questions from Board members and discussion took place.
- Upon reviewing this item, the department noted a few errors in the notice that could be easily corrected.
- Chairman Russell called for public comment regarding the proposed rulemaking. There was no response. He called for a motion to initiate the rulemaking with the corrections noted by the department and to appoint Ms. Orr as the Presiding Officer. Mr. Whalen so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a 4-0 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 matter.*
- II.A.1.b | In the matter of 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 there had been a notice of appearance of counsel for North Star Aviation and that the parties had been asked to submit a prehearing schedule.
- 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, Park County, BER 2009-20/22 SUB. *No discussion took place regarding this matter.*
- 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. *No discussion took place regarding this matter.*

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. *No discussion took place regarding this matter.*

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. *No discussion took place regarding this matter.*

II.A.1.g 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 said she had issued an order denying MATL's motion to dismiss on March 16. She said the parties requested that the hearing date of March 29 be postponed, and that the hearing is now scheduled for April 21.

II.A.1.h 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 appellants had filed a motion for summary judgment on March 16, and that a hearing on the matter is scheduled for April.

II.A.1.i 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 2010-17 SM. *No discussion took place regarding this matter.*

II.A.1.j 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 this matter.*

II.A.1.k In the matter of violations of the Montana Public Water Supply Laws by Bellecreeke, LLC, at Belle Creeke Dental, PWSID #MT0004553, Butte, Silver Bow County, BER 2010-20 PWS.

Ms. Orr said she issued a third order granting extension on March 22.

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 2010-19 SM. *No discussion took place regarding this matter.*

II.A.2.b 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. *No discussion took place regarding this matter.*

II.B.1 In the matter of the January 20, 2011, letter from EPA regarding EPA's action on revisions to Montana's surface water quality standards.

Mr. Bukantis explained that the letter was EPA's approval of the water quality standards package submitted last year. He said the letter did identify a few minor errors in DEQ-7 that will be corrected in the next version, which is in the works.

A brief discussion took place regarding HR872, and Ms. Chambers provided further information.

III.A.1 In the matter of DEQ's request for the Board to initiate rulemaking to amend 17.38.101 and 17.38, Subchapter 5.

Mr. Pizzini provided an overview of the requested rule amendments regarding a reduction in certain engineering review fees, deviation from the checklist process, and clarification of the water hauler rules. He noted two errors in the proposed rulemaking notice, which he said would be corrected in the final notice.

Discussion took place and Mr. Pizzini responded to questions from the Board.

Chairman Russell called for a motion to initiate the rulemaking, to appoint Ms. Orr as the Presiding Officer, and to make the corrections previously noted by Mr. Pizzini. Ms. Shropshire so MOVED. Mr. Mires SECONDED the motion. Chairman Russell called for public comment regarding the proposed rulemaking. There was no response. The motion CARRIED with a 5-0 roll-call VOTE.

III.B.1 In the matter of final action regarding the amendment of air quality rules in ARM 17.8, Subchapter 6.

Ms. Wolfe provided review of the recent open burning rulemaking process, saying the Board had initiated the rulemaking at its meeting in December 2010 and that a hearing was held in January 2011. She said the department supports the amendments.

Chairman Russell called for public comment regarding the rulemaking. There was no response. He called for a motion to adopt the rule as presented, and to accept the Presiding Officer's Report and the House Bill 521 and 311 analyses. Ms. Shropshire so MOVED. Mr. Whalen SECONDED the motion. The motion CARRIED with a 4-0 VOTE.

III.B.2 In the matter of final action regarding the amendment of air quality rules in ARM 17.8, Subchapter 7.

Ms. Wolfe provided an overview of the rulemaking. She said the Board initiated the rulemaking, and a public hearing was held in January.

Chairman Russell called for public comment regarding the rulemaking. There was

no response. He called for a motion to adopt the rules and to accept the Presiding Officer's report and the 521 and 311 analyses. Mr. Mires so MOVED. Mr. Whalen SECONDED the motion. The motion CARRIED with a 4-0 VOTE.

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

Ms. Orr provided a briefing of the recent events in the case.

Chairman Russell called for a motion to authorize him to sign the order dismissing the case. Ms. Shropshire so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a 4-0 VOTE.

- III.D.1 In the matter of violations of the Opencut Mining Act by Deer Lodge Asphalt, Inc., at the Olsen Pit, Powell County, BER 2011-02 OC.

Ms. Orr provided information on this new contested case.

Chairman Russell called for a motion to appoint Ms. Orr as the permanent hearings examiner for this matter. Mr. Whalen so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a 4-0 VOTE.

- III.E.1 In the matter 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 explained that after the Board signed an order in December 2010 imposing penalties, Juniper Hill Farms filed a request for rehearing. She provided her perspective regarding the matter and noted that the Board had before it both a proposed order granting the request and a proposed order denying the request.

Chairman Russell called for a motion that the Board not take up this matter again. Ms. Shropshire so MOVED. Mr. Mires SECONDED the motion. After a brief clarification that the Board would sign the order denying the request for rehearing, the motion CARRIED with a 4-0 VOTE.

- IV. General Public Comment

Chairman Russell called for public comment. There was no response; no members of the public were present.


Mr. Livers reminded the Board that the next Board meeting is scheduled for May 13. He also noted that the Governor's Office reappointed Ms. Kaiser, Mr. Mires, and Chairman Russell.

V. | Adjournment

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

The meeting adjourned at 10:36 a.m.

Board of Environmental Review March 25, 2011, minutes approved:



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

5/13/2011
DATE