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**MINUTES**  
**JANUARY 22, 2008**

**Call to Order**

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:11 a.m., on Tuesday January 22, 2008, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

**Attendance**

**Board Members Present:** Chairman Joseph Russell, Heidi Kaiser, Don Marble, Bill Rossbach, Gayle Skunkcap, and Larry Mires

**Board Members Absent:** Robin Shropshire

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

**Board Secretary Present:** Kris Brewer

**Court Reporter Present:** Laurie Crutcher, Crutcher Court Reporting

**Department Personnel Present:** Tom Livers, Deputy Director; John North, Chief Legal Counsel; Jane Amdahl, Legal; Judy Hanson, Permitting and Compliance Division (PCD); Dave Klemp, PCD Air Resources Management Bureau (ARMB); Eric Merchant., PCD/ARMB

**Interested Persons Present** (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Charles Bodock, Abigail Dillen, Jenny Harbine, Anne Hedges, Timothy Preso, Cheryl Reichert, *Citizens for Clean Energy and Montana Environmental Information Center*, Don Quander, *ExxonMobil*; Mark Lambrecht, *PPL Montana*; Mike McCarter, Jeff Chaffee, Joe Lierow, Richard Sugarman, William C. FitzGerald, Tim Gregori, Gary McCutchen, *Southern Montana Electric*, Don Allen, *Western Environmental Trade Association*

- I.A.1. Review and approve September 28, 2007, meeting minutes.
- Mr. Mires MOVED to approve the September 28, 2007, meeting minutes. Mr. Skunkcap SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- I.A.2.. Review and approve November 30, 2007, meeting minutes.
- Mr. Mires MOVED to approve the November 30, 2007, meeting minutes. Mr. Rossbach 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 issuance of the Air Quality Permit for the Roundup Power Project, Permit No. 3182-00, BER 2003-04 AQ.
- II.A.1.c In the matter of Violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.
- II.A.1.d In the matter of the appeal by Willow Creek Sewer District regarding violations of the Water Quality Act, BER 2006-13 WQ.
- II.A.1.e 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.
- II.A.1.f In the matter of the appeal by the City of Bozeman regarding the DEQ's final decision for MPDES Permit No. MT0022608, BER 2006-23 WQ.
- II.A.1.g In the matter of the appeal by the Butte-Silver Bow Public Works Department, regarding Final MPDES Permit No. MT0022012, BER 2006-27 WQ.
- II.A.1.h In the matter of violations of the Clean Air Act of Montana by Flathead County, BER 2007-01 AQ.
- II.A.1.i In the matter of the appeal by the Town of Superior, BER 2007-05 WQ, regarding final MPDES Permit No. MT0020664, issued to the Town of Superior.
- II.A.1.j In the matter of the appeals by Southern Montana Electric (SME), Citizens for Clean Energy (CCE) and Montana Environmental Information Center (MEIC) regarding Air Quality Permit No. 3423-00 issued to SME for its Highwood Generation Station, BER 2007-06 & 07 AQ.

- II.A.1.k | In the matter of violations of the Water Quality Act by North Valley Hospital, Flathead County, BER 2007-08 WQ.
- II.A.1.l | In the matter of violations of the Opencut Mining Act by Big Rock, LLC, at the Wheeler Gravel Pit, Missoula County, BER 2007-11 OC.
- II.A.1.m | In the matter of the appeal by ExxonMobil regarding its final MPDES Permit No. MT-0028321 for its Billings Refinery, BER 2007-12 WQ.
- II.A.1.n | In the matter of violations of the Open Cut Mining Act by John Schlecht, d/b/a John Schlecht Excavating, at the Schlecht Sand and Gravel Pit, Ravalli County, BER 2007-13 OC.
- II.A.1.o | In the matter of violation of the Water Quality Act by Jack Mountain Estates Subdivision, Jefferson County, BER 2007-15 WQ.
- II.A.1.p | In the matter of Violations of the Water Quality Act by the Montana Department of Transportation and Ascorp, Inc., D/B/A Debco Construction, at Sportsman's Campground – East, Silver Bow County, Montana, BER-2007-17 WQ.
- II.A.1.q | In the matter of violations of the Opencut Mining Act by Prairie Sand and Gravel, Inc., at the state site in Roosevelt County, Montana, BER 2007-18 OC.
- II.A.1.r | In the matter of violations of the Montana Water Quality Act by 48 North, Pc. at Spring Creek Estates Subdivision, Kalispell, Montana, BER 2007-21 WQ.
- II.A.1.s | In the matter of violations of the Opencut Mining Act by Stephen M. Swan, d/b/a Swan Creek Concrete Company at the South Boulder Grazing Site, Jefferson County, Montana, BER 2007-22 OC.
- II.A.1.t | In the matter of the appeal by CHS Inc. regarding it's Title V operating permit No. OP1821-01 for the Laurel Refinery, Laurel, Montana, BER 2007-23 AQ.
- II.A.1.u | In the matter of the appeal by the City of Whitefish regarding its MPDES permit No. MT0020184 for the Wastewater Facility, Whitefish, Montana, BER 2007-24 WQ.
- II.A.1.v | In the matter of violations of the Opencut Mining Act by Joe Beasley at the Silverstone Site, Flathead County, Montana, BER 2007-25 OC.
- II.A.1.w | In the matter of the appeal by Adios Recycling regarding DEQ's denial of its Motor Vehicle Wrecking Facility License, Alberton, Montana, BER 2007-26 JV.

Ms. Orr had no further information beyond that provided in the agenda for items II.A.1.a – II.A.1.w.

II.B.1. In the matter of the Petition for Review of Hazardous Waste Final Permit No. MTHWP-03-01 issued to Flying J Petroleum, Inc. (BER 2003-14 HW).

Ms. Orr reported that the Department filed a notice of entry of judgment in the case on January 15, 2008. Ms. Orr anticipates that Flying J will file an appeal with the Montana Supreme Court.

III.A.1 In the matter of the amendment of ARM 17.30.617 to designate the mainstem Gallatin River from the Yellowstone National Park boundary to the confluence of Spanish Creek as an Outstanding Resource Water (ORW) and to amend ARM 17.30.638 to add a new subsection.

Mr. Livers gave a brief history of the rulemaking to date. Mr. Rossbach MOVED to accept the supplemental notice, allowing the Department to change the reasonable accommodations request deadline date to a more appropriate date. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.B.1 In the matter of the appeal by ExxonMobil regarding its Air Quality Operating Permit No. OP1564-02 for the Billings Refinery, Yellowstone County, Montana, BER 2007-27 AQ.

Mr. Marble MOVED to appoint Ms. Orr as the permanent hearing examiner for this matter. Mr. Mires SECONDED the motion. Mr. Rossbach and Ms. Kaiser recused themselves due to possible conflicts of interest. The motion CARRIED with a 4-0 VOTE.

III.B.2 In the matter of violations of the Water Quality Act by Park County, Gardiner, MT, BER 2008-01 WQ.

Ms. Kaiser MOVED to appoint Ms. Orr as the permanent hearing examiner for this matter. Mr. Marble SECONDED the motion. The motion CARRIED with a unanimous VOTE.

II.C.1 In the matter of violations of the Metal Mine Reclamation Act by Marty J. and Sinda M. Puryer, as individuals and d/b/a Paul Kurth Mining, for the failure to post reclamation bond, BER 2006-21 MM.

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

II.C.2 In the matter of violations of the Montana Public Water Supply laws by Malsam Water Conditioning, Inc., d/b/a Culligan of Great Falls, Inc., at Culligan Water Conditioning Great Falls, BER 2007-10 PWS.

- Chairman Russell called for a motion to authorize him to sign the order of dismissal. Ms. Kaiser MOVED. Mr. Marble SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- II.C.3 In the matter of violations of the Opencut Mining Act by Kenneth Mikesell at the Kenneth Mikesell site, White Sulphur Springs, Montana, BER 2007-19 OC.
- Chairman Russell called for a motion to authorize him to sign the order of dismissal. Mr. Marble MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- IV.A Public Comment
- Chairman Russell called for general public comment. No one responded.
- V. Adjournment
- Chairman Russell called for a recess at 9:40am. A hearing for case BER 2007-07 AQ started at 10:40am and was continued on January 23, 2008. Chairman Russell called for a motion to adjourn. Mr. Rossbach so MOVED. Mr. Skunkcap SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- The meeting adjourned at 6:30 p.m. on January 23, 2008.

Board of Environmental Review January 22, 2008, minutes approved:

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

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DATE