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**MINUTES**  
**APRIL 21, 2008**

**Call to Order**

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:15a.m., on Monday April 21, 2008, in Room 330 of the City-County Building, 316 North Park Avenue, Helena, Montana.

**Attendance**

**Board Members Present:** Chairman Joseph Russell, Heidi Kaiser, Don Marble (via phone), Bill Rossbach, Robin Shropshire, Gayle Skunkcap, and Larry Mires

**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; Jim Madden and Norm Mullen, Legal; Judy Hanson, Permitting and Compliance Division (PCD); Dave Klemp, PCD Air Resources Management Bureau (ARMB); Chuck Homer, Eric Merchant., PCD/ARMB, John Arrigo, Enforcement Division, Bob Bukantis, Ann Harrie, Planning, Prevention and Assistance Division

**Interested Persons Present** (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Abigail Dillen, Anne Hedges, James D. Jensen, *Citizens for Clean Energy* and *Montana Environmental Information Center*, Hope Stockwell, *Legislative Environmental Policy Office*, Lisa Galleops-Thompson, Tim Gregori, *Southern Montana Electric*

- I.A.1. Review and approve January 22, 2008, meeting minutes.
- Mr. Rossbach MOVED to approve the January 22, 2008, meeting minutes. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- II.A.1.b. In the matter of the Petition for Review of Hazardous Waste Final Permit No. MTHWP-03-01 issued to Flying J Petroleums, Inc., BER 2003-14 HW.
- Hearing Examiner Katherine Orr gave a brief summary of the case to date and let the Board know that the parties will be addressing the remaining issues.
- II.A.1.d 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.
- Hearing Examiner Orr will be mailing Findings of Fact and Conclusions of Law today (4/21/08).
- 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.c In the matter of Violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.
- II.A.1.e 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.f 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.g 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.h 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.i 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.j 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.k | 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.l | 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.

II.A.1.m | In the matter of violations of the Water Quality Act by Park County, Gardiner, MT, BER 2008-01 WQ.

Ms. Orr had no further information beyond that provided in the agenda for items II.A.1.a, c, and e - m.

III.A.1 | Amend certain water quality standards in Circular DEQ-7 and update rules in ARM 17.30.502, 17.30.619, 17.30.702, 17.30.1001, 17.36.345, 17.55.102, 17.55.102, 17.55.111, 17.55.507, and 17.56.608 pertaining to Department Circular DEQ-7., and to update reference in ARM 17.30.641, to recently updated EPA methods. The changes to the DEQ-7 include new water quality standards for several pesticides and metabolites; the addition of 304 (a) criteria for aquatic life for Diazinon and Nonylphenol, and amendment of the reference for toxic equivalency factors for dioxins.

Ann Harrie gave a brief history of the rulemaking to date. Board member Kaiser arrived at this time. Chairman Russell called for a motion to Amend the Administrative Rules as proposed, adopt the 521 and House Bill 311 analysis, the Presiding Officer's report, and the Department's responses to comments. Mr. Rossbach MOVED to adopt the rulemaking. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.A.2 | Amend ARM 17.30.610 to change the water-use classification for two water body segments in the Dry Fork of the Marias River drainage.

Board member Skunkcap arrived at this time. Ann Harrie gave a brief history of the rulemaking to date. Chairman Russell called for a motion to amend 17.30.610, adopt the Presiding Officer's Report, House Bill 311 and 521, and Department's responses to comments. Mr. Mires MOVED to adopt the rulemaking. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.B.1 | In the matter of violations of the Opencut Mining Act by James Timis at the Timis Excavation Site Flathead County, MT, BER 2008-02 OC.

Mr. Mires MOVED to appoint Katherine Orr the permanent hearings examiner. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.B.2 | In the matter of violations of the Montana Underground Storage Tank Act by CStore, Inc. at S and S Foods, Superior, Montana, BER 2008-03 UST.
- Ms. Kaiser MOVED to appoint Katherine Orr the permanent hearings examiner. Ms. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE
- III.C.1 | In the matter of the issuance of the Air Quality Permit for the Roundup Power Project, Permit No. 3182-00, BER 2003-04 AQ.
- Chairman Russell called for a motion to authorize him to sign the order of dismissal. Mr. Rossbach MOVED. Ms Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.C.2 | In the matter of the appeal by Willow Creek Sewer District regarding violations of the Water Quality Act, BER 2006-13 WQ
- Chairman Russell called for a motion to authorize him to sign the order of dismissal. Ms. Kaiser MOVED. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.C.3 | 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.
- Chairman Russell called for a motion to authorize him to sign the order of dismissal. Mr. Mires MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.C.4 | In the matter of violations of the Clean Air Act of Montana by Flathead County, BER 2007-01 AQ.
- Chairman Russell recused himself from voting on this case. John Arrigo clarified the final penalty. Mr. Rossbach called for a motion to authorize him to sign the order of dismissal. Mr. Mires MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.C.5 | In the matter of violations of the Water Quality Act by North Valley Hospital, Flathead County, BER 2007-08 WQ.
- Chairman Russell recused himself from voting on this case. John Arrigo clarified the final penalty. Mr. Rossbach called for a motion to authorize him to sign the order of dismissal. Ms. Shropshire MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.C.6 | In the matter of the appeal by ExxonMobil regarding its final MPDES Permit No.

MT-0028321 for its Billings Refinery, BER 2007-12 WQ.

Board members Kaiser and Rossbach recused themselves from voting on this case. Chairman Russell called for a motion to authorize him to sign the order of dismissal. Mr. Skunkcap MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.C.7 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.

John Arrigo clarified the higher penalty amount. Chairman Russell called for a motion to authorize him to sign the order of dismissal. Ms. Shropshire MOVED. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.C.8 In the matter of violation of the Water Quality Act by Jack Mountain Estates Subdivision, Jefferson County, BER 2007-15 WQ.

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

- III.C.9 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.

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

- III.C.10 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.

John Arrigo clarified for the Board that a penalty can be increased for historical reasons. Chairman Russell called for a motion to authorize him to sign the order of dismissal. Mr. Rossbach MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.C.11 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.

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

III.C.12 | In the matter of violations of the Opencut Mining Act by Joe Beasley at the Silverstone Site, Flathead County, Montana, BER 2007-25 OC.

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

III.C.13 | 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.

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

II.A.1.d | 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.

Hearing Examiner Orr explained in more detail the Findings of Fact and Conclusions of Law that will be mailed today (4/21/08).

V.A | Public Comment

Chairman Russell called for general public comment. No one responded.

VI. | Adjournment

Chairman Russell called for a recess at 10:10am. Board deliberations for case BER 2007-07 AQ started at 10:30am. Chairman Russell called for a motion to adjourn. Mr. Rossbach so MOVED. Mr. Skunkcap and Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

The meeting adjourned at 4:05 p.m. on April 21, 2008.

Board of Environmental Review April 21, 2008, minutes approved:

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

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DATE