

MINUTES
MAY 30, 2008

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:11a.m., on Friday May 30, 2008, in Room 111 of the Metcalf Building, 1520 East 6th Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joseph Russell, Heidi Kaiser (via phone), 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: Richard Opper, Director; Tom Livers, Deputy Director; David Rusoff, Legal; John Arrigo and Ed Coleman, Enforcement Division; Judy Hanson, Permitting and Compliance Division (PCD); Dave Klemp, PCD Air Resources Management Bureau (ARMB); Tina Engel, Chuck Homer, Eric Merchant, Debbie Skibicki, Paul Skubinna, and Vickie Walsh, PCD/ARMB; Neil Harrington, PCD Industrial & Energy Minerals Bureau; Rebecca Holmes, PCD Waste & Underground Tank Management Bureau; Bob Bukantis and Randy Apfelbeck, Planning, Prevention and Assistance Division; John Koerth, Remediation Division

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): John Prinllkki, *Beartooth Electric*; Abigail Dillen (via phone), Anne Hedges, *Citizens for Clean Energy* and *Montana Environmental Information Center*; Shirley Hofland, Marlene Ploazek, Jean A. Polkquaptswa, Rebecca Smith, Jack Tuholske, Noel Weaver, *Citizens Awareness Network*; Todd O'Hare, *Rio Tinto*; Shanni Barry, Mike Uda, Thompson River Power; Kenneth Reich and Richard Sugarman (via phone), Jeff Chaffee, Joe Dirkson, William C. Fitzgerald, Tim Gregori, Chris Hiltunen, Alan See, *Southern Montana Electric*; Allan Kirk, *Tetra Tech*; Mary Beth Marks, *USDA Forest Service*; Ray Wallander, *Wayzeta Investment Partners*; Don Allen, *Western Environmental Trade Association*

- I.A.1. Review and approve April 21, 2008, meeting minutes.
- Mr. Mires MOVED to approve the April 21, 2008, meeting minutes. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- II.A.1.c. In the matter of the appeal by the Butte-Silver Bow Public Works Department, regarding Final MPDES Permit No. MT0022012, BER 2006-27 WQ.
- Hearing Examiner Katherine Orr informed the Board that the parties have reached an agreement but have not submitted an order of dismissal yet.
- II.A.1.e 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.
- Hearing Examiner Katherine Orr informed the Board that the parties have reached an agreement but have not submitted an order of dismissal yet.
- 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 Violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.
- II.A.1.d 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.f 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.g 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.h 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.i In the matter of violations of the Water Quality Act by Park County, Gardiner, MT, BER 2008-01 WQ.
- II.A.1.j 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.
- II.A.1.k 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. Orr had no further information beyond that provided in the agenda for items II.A.1.a, b, d, and f - k.

III.A.1 Amend ARM 17.8.505 and 17.8.514 for the annual adjustment of air quality operation and open burning fees.

Eric Merchant summarized the proposed changes. Chairman Russell called for a motion to initiate the rulemaking and to appoint Ms. Orr the hearings examiner. Mr. Rossbach so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.A.2 Update the Air Quality Incorporation by Reference Rules at ARM 17.8.102, 17.8.301, 17.8.901, 17.8.1007, 17.8.1206, 17.8.1212, 17.8.1232, 17.8.1234, 17.8.1234, 17.8.1302, 17.8.1402, 17.8.1502, and 17.8.1509 (annual update and housekeeping changes).

Eric Merchant summarized the proposed changes. Chairman Russell called for a motion to initiate the rulemaking and to appoint Ms. Orr the hearings examiner. Mr. Mires so MOVED. Mr. Skunkcap SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.B. In the matter of a three year review regarding temporary water quality standards adopted for the New World Mining District.

John Koerth gave a short introduction of the reason for the updates every three years to the Board. Mary Beth Marks summarized the project to date and reviewed the Progress Report with the Board. Allen Kirk provided some technical input regarding the report.

Mr. Rossbach MOVED to keep the temporary standards in place and request the Forest Service provide the Board with information on ground water when it is compiled and available. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.1 In the matter of appeal of March 11, 2008, letter by Schellenger Construction Co., Inc. and Tutvedt Family Partnership at the Tutvedt 2 Mine Site , Flathead County, Montana, BER 2008-04 OC.

Neil Harrington was asked to address the issue of the Boards jurisdiction in this case, but Ms. Orr indicated that she will address this issue as the Hearings Examiner. Chairman Russell called for a motion to appoint Ms. Orr as the permanent hearing examiner for this matter. Ms. Shropshire MOVED. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.D.1 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.

Chairman Russell called for a motion to authorize him to sign the order of

dismissal. Mr. Mires MOVED. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE (Ms. Kaiser and Mr. Marble not present).

- III.D.2 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.

The Board heard oral arguments and deliberated on the exceptions and the clarification request. Chairman Russell called for a motion. Mr. Rossbach MOVED to adopt the findings and proposed order with the addition of the essentially agreed to modified language on the order of remand. Mr. Mires SECONDED the motion. The motion CARRIED by QUORUM (Ms. Kaiser, Mr. Marble and Mr. Skunkcap not present).

- III.D.4 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.

Chairman Russell called for a motion to authorize him to sign the order of dismissal. Mr. Mires MOVED. Mr. Rossbach SECONDED the motion. The motion CARRIED by QUORUM (Mr. Marble and Ms. Kaiser not present).

- III.D.5 In the matter of violations of the Montana Public Water Supply laws by the City of Helena at the City of Helena Public Water Supply System, Helena, Montana, BER 2008-05 PWS.

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 by QUORUM (Mr. Marble and Ms. Kaiser not present).

IV. Public Comment

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

- III.D.3 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.

Chairman Russell called for a motion remanding Permit No. 3423-00, the air quality permit for the Highwood Generation Station, to the Department for a thorough top-down BACT analysis of PM_{2.5} and stating that a top-down BACT analysis conforming to the New Source Review manual would be deemed sufficiently thorough. Mr. Rossbach MOVED. Mr. Mires SECONDED the motion. Mr. Rossbach and Mr. Mires accepted a friendly amendment stating that a surrogate analysis for PM_{2.5} would not be acceptable. The amendment CARRIED with a unanimous VOTE. The motion

as amended CARRIED with a unanimous VOTE.

Ms. Orr offered amendments to the final order. Mr. Rossbach MOVED to accept these amendments. Mr. Mires SECONDED the motion. The amendment CARRIED with a unanimous VOTE.

VI. Adjournment

Chairman Russell called for a motion to adjourn. Mr. Marble MOVED. Mr. Skunkcap SECONDED the motion. The motion CARRIED with a unanimous VOTE.

The meeting adjourned at 1:30 p.m. on May 30, 2008.

Board of Environmental Review May 30, 2008, minutes approved:

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

DATE