



Montana Board of Environmental Review

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MINUTES SEPTEMBER 27, 2012

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 2:32 p.m., on Thursday, September 27, 2012, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joseph Russell, Marvin Miller, Heidi Kaiser, Larry Mires, Larry Anderson, and Joe Whalen

Board Members Absent: Robin Shropshire

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

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Susan Johnson, Lesofski Firm

Department Personnel Present: Tom Livers (Deputy Director); John North, Jim Madden and David Dennis – Legal; Judy Hanson – Permitting & Compliance Division; Jon Dilliard, Eugene Pizzini, and Denver Fraser – Public Water Supply & Subdivisions Bureau; Charles Homer, Bob Habeck, and Debra Wolfe – Air Resources Management Bureau; Ed Coleman – Industrial & Energy Minerals Bureau; Rod McNeil – Water Quality Planning Bureau; John Arrigo and Frank Gessaman – Enforcement Division

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): There were no members of the public present during this meeting.

- I.A. Review and approve July 27, 2012, Board meeting minutes.
- Mr. Mires MOVED to approve the July 27, 2012, Board meeting minutes. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous vote.
- II.A.1.a In the matter of violations of the Montana Septage Disposal and Licensure Laws by James Vaughn, d/b/a Any Time Septic & Porta-Potty, Lake County, BER 2011-06 SDL.
- Ms. Orr said this case is ready for ruling on DEQ's renewed motion for summary judgment, and an answer was filed on September 20.
- II.A.1.b In the matter of violations of the Public Water Supply laws by the city of Ronan Public Water Supply System, PWSID #MT0000318, Ronan, Lake County, BER 2012-04 PWS.
- Ms. Orr said a hearing is scheduled in January for this matter.
- II.A.1.c In the matter of violations of the Montana Solid Waste Management Act by Valley County Refuse District #1 at the Valley County Landfill, Glasgow, BER 2012-06 SW.
- Ms. Orr said a hearing is scheduled in January for this matter.
- II.A.2.a In the matter of violations of the Opencut Mining Act by Brad Blakeman at the Camas Prairie Gravel Pit, Sanders County, BER 2012-01 OC.
- Ms. Orr said a contested case hearing would be held on this matter the following morning. She said she expects that Mr. Blakeman would appear.
- II.A.2.b In the matter of the request for hearing by William E. Smith, on behalf of Mike Adkins, regarding Park County's denial to validate Adkins Class III Waste Tire Monofill License No. 517, BER 2012-05 SW.
- Ms. Orr reminded the Board that a telephonic hearing was held September 11 and the Board heard oral argument on pending motions and ruled on those. She said Chairman Russell had an order for his signature to confirm the Board's ruling.
- II.A.3.a 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, Valley County, BER 2010-08 UST.
- Ms. Orr stated that this matter is ripe for an order on summary judgment.
- III.A.1 In the matter of the proposed amendment of ARM Title 17, Chapter 38, Subchapter 1, Public Water and Sewer Plans, Cross Connections, and Drilling Water Wells.
- Mr. Pizzini said the department is proposing two minor changes to the existing engineering fee rules, which would result in a reduction of cost to systems submitting

plans under those amendments, and New Rule 1, related to the identification and repair of significant deficiencies. He said the legislature requires the department to collect fees commensurate with the cost of reviewing plans and specifications, but that past legislative audits show the department was not recovering its costs for conducting engineering review. He said that during the Board's adoption of increased engineering fees, the department assured the Board that if any fees were found to be excessive, DEQ would return to the Board to correct it.

Mr. Fraser, Mr. Dilliard, and Mr. Pizzini responded to questions from board members.

Chairman Russell asked if anyone in the audience would like to speak to the matter. There was no response.

Chairman Russell called for a motion to initiate the rulemaking and appoint Ms. Orr as the presiding officer. Mr. Miller so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous vote.

III.B.1 In the matter of proposed final adoption of the revision of Circular DEQ-2, Design Standards for Municipal Wastewater Collection and Treatment.

Mr. LaVigne reminded the Board that DEQ had briefed the Board on this rulemaking in March and the Board proceeded with initiation in May. He said a public hearing was held in July and there were no public attendees. He also said no public comments were received on the rulemaking during the comment period, and that the department is requesting adoption of the re-use standards and the updated changes to DEQ-2.

Chairman Russell called for public comment on the rulemaking. No one responded.

Chairman Russell called for a motion to adopt the rulemaking, the 521 and 311 Analyses, and the Presiding Officer's Report. Mr. Whalen so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous vote.

III.B.3 In the matter of DEQ's request for final adoption of amendments to ARM 17.8.801 and 17.8.818 related to ozone implementation. (Taken out of order.)

Ms. Wolfe described the amendments and said no comments were received. She said the department is requesting adoption of the rules as proposed.

Chairman Russell asked if anyone in the audience wanted to comment on the rulemaking. There was no response.

Chairman Russell called for a motion to adopt the rulemaking and accept the Presiding Officer's Report. Ms. Kaiser so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous vote.

III.B.2 In the matter of proposed final adoption of amendments to water quality standards rules in ARM Title 17, Chapters 30, 36, 55, and 56. (Taken up after III.B.3.)

Mr. McNeil said the rules were initiated in March, a public hearing was held in July, and changes were made based on the comments received.

Mr. North and Mr. McNeil responded to question concerning what changes are within the scope of rulemaking as well as other questions from the Board.

Chairman Russell asked if anyone in the audience would like to comment on the matter. There was no response.

Chairman Russell called for a motion to adopt the rule as amended, as well as the 521 and 311 Analyses, the Presiding Officer's Report, the department's responses to comments, and DEQ-7. Mr. Miller so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous vote.

III.C.1 In the matter of final action regarding the appeal and request for hearing by Roseburg Forest Products Co. BER 2010-09 WQ.

Ms. Orr said the parties have reached agreement and submitted a stipulation for dismissal. She said an order to dismiss has been submitted to the Board for signature.

Chairman Russell called for a motion to authorize him to sign the order dismissing the case. Ms. Kaiser so MOVED. Mr. Whalen SECONDED the motion. The motion CARRIED with a unanimous vote.

III.C.2 In the matter of final action regarding violations of the Public Water Supply Laws by Olson's Lolo Hot Springs, Inc., BER 2011-09 PWS.

Ms. Orr said the parties have reached agreement on the compliance plan in this matter. She said the parties are requesting dismissal based on their stipulation for dismissal. A brief discussion ensued.

Chairman Russell called for a motion to authorize him to sign the dismissal order. Mr. Anderson so MOVED. Mr. Whalen SECONDED the motion. The motion CARRIED with a unanimous vote.

III.C.3 In the matter of final action regarding violations of the Opencut Mining Act by Ell Dirt Works, LLC, BER 2011-11 OC.

Ms. Orr described the case and the penalty obtained in the AOC.

Chairman Russell called for a motion to authorize him to sign the dismissal order. Mr. Miller so MOVED. Ms. Kaiser SECONDED the motion. Further discussion took place. The motion CARRIED with a unanimous vote.

III.C.4 In the matter of final action regarding violations of the Water Quality Act by SK Construction, Inc., BER 2011-20 WQ.

Ms. Orr presented copies of the signed Administrative Order on Consent.

Chairman Russell called for a motion to authorize him to sign the order dismissing the case. Mr. Mires so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous vote.

III.C.5 In the matter of final action regarding violations of the Opencut Mining Act by the City of Ronan, BER 2011-23 OC.

Ms. Orr said the stipulation in this case indicates that all provisions of the administrative compliance and penalty order were fully satisfied and that a Rule 41(a) dismissal is requested.

Chairman Russell called for a motion to authorize him to sign the dismissal order. Mr. Whalen so MOVED. Mr. Anderson SECONDED the motion. The motion CARRIED with a unanimous vote.

III.C.6 In the matter of final action regarding violations of the Opencut Mining Act by Russell Olsen at PaveCo Pit, BER 2012-07 OC.

Ms. Orr provided information surrounding the appeal and said the department moved to dismiss the appeal on the basis that the appeal was not timely. She noted that Mr. Olson did not participate at any stage, did not respond to the motion to dismiss, and did not file exceptions. Brief discussion on the matter took place.

Chairman Russell called for a motion to authorize him to sign the order dismissing the matter. Ms. Kaiser so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous vote.

III.D.1 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 2012-08 SM.

Ms. Orr described the violations and penalty at the heart of the appeal.

Chairman Russell called for a motion to appoint Ms. Orr as the hearings examiner for this matter. Mr. Mires so MOVED. Mr. Miller SECONDED the motion. Ms. Kaiser RECUSED herself from further action on this matter.

Discussion took place regarding desire for the Board to hear this matter itself. The motion FAILED 5-0. This matter remains unassigned.

III.D.2 In the matter of the request for hearing by Hawthorne Springs Property Owners Association; H Lazy Heart, LLC; Patchy, Inc.; and other residents regarding Opencut Mining Permit No. 2258, issued to Farwest Rock Products, Missoula County, BER 2012-09 OC.

Ms. Orr provided details of the appeal. She responded to questions from Board members.

Chairman Russell called for a motion to appoint Ms. Orr as the permanent hearings examiner for this matter. Mr. Anderson so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous vote.

III.D.3 In the matter of the request for hearing by Earth Justice, Montana Environmental Information Center, Sierra Club, and National Wildlife Federation regarding the Administrative Order on Consent issued to PPL Montana, LLC, BER 2012-10 MFS.

Ms. Orr explained the details of the appeal. She indicated that it may be a lengthy proceeding and suggested the Board take no action on the matter at this time.

Chairman Russell called for a motion to not assign this matter at this time. Mr. Anderson so MOVED. Mr. Mires SECONDED the motion. Ms. Kaiser recused herself from any further action in this matter. The motion CARRIED 5-0. This matter has not been assigned.

IV. General Public Comment

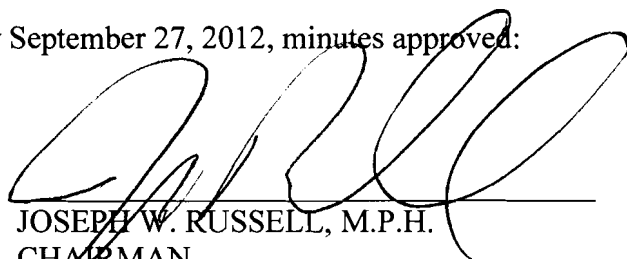
Chairman Russell called for general public comment. There was no response.

V. Adjournment

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

The meeting adjourned at 4:28 p.m.

Board of Environmental Review September 27, 2012, minutes approved:



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

DATE