

**MINUTES
DECEMBER 5, 2008**

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:07 a.m., on Friday, December 5, 2008, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

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

Board Members Absent: Bill Rossbach

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

Board Secretary Present: Joyce Wittenberg, Department of Environmental Quality

Court Reporter Present: Laurie Crutcher

Department Personnel Present: Tom Livers, Deputy Director; John North, Ed Hayes, David Rusoff, James Madden, Jane Amdahl, Director's Office; Judy Hanson, Permitting & Compliance Division (PCD); Warren McCullough, Environmental Management Bureau, PCD; David Klemp, Julie Merkel, Charles Homer, Debbie Skibicki, Vickie Walsh, Eric Merchant, Deb Wolfe, Hoby Rash, Air Resources Management Bureau, PCD; Jon Dilliard, Shelly Nolan, Andrea Vickory, Eugene Pizzini, John Kandelin, Rachel Clark, Betsy Hovda, Public Water Supply Bureau, PCD; John Arrigo, Enforcement Division; Todd Teegarden, Planning, Prevention & Assistance Division

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Gary Zadick, Tim Gregori, Brian Holland, Southern Montana Electric (SME); Jeff Chaffee, Bison Engineering & SME; John Camden, Montana Rural Water (MRWS); Steve Wade, Browning, Kaleczyk, Berry & Hoven & MRWS; David Warner, Carpenters; Don Allen, Western Environmental Trade Association; Ole Stimal, Central Labor Council

Interested Persons Present via Telephone (*Disclaimer: Names are spelled as best they can be.*): Chris Stephens; Chantel McCormick, Linda Palagi, Department of Commerce; Mike Koenig; Abigail Dillen, Earth Justice

- I.A.1 | Review and approve October 3, 2008, meeting minutes.
- Ms. Wittenberg noted that a board member had emailed her with a grammatical error, prior to the board meeting.
- Chairman Russell called for a motion to approve the minutes with the change submitted. Mr. Mires so MOVED. Mr. Skunkcap SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- I.B. | Set 2009 meeting schedule.
- Mr. Mires said that a July 31 board meeting would not work for him, but that July 24 or August 7 would. Board members agreed that July 24 would work for their schedules.
- Ms. Kaiser requested that the meeting in January be moved to the 23rd. Board members were in agreement.
- Mr. Mires also noted that he would most likely have to attend the March 27 meeting via teleconference.
- Chairman Russell called for a motion to accept the 2009 calendar as submitted with the January and July date changes as discussed. Ms. Kaiser so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- II.A.1.i | In the matter of the appeal by Eastgate Water and Sewer Association of Helena Sand and Gravel, Inc.'s Opencut Permit No. HSG-017, BER 2008-08 OC.
- Hearing Examiner Katherine Orr updated the Board saying the parties had asked for a stay in this case to allow them time to resolve their differences, and she is inclined to grant that motion.
- II.A.1.1 | In the matter of the violations of the Opencut Mining Act by Helena Sand & Gravel, Inc. at the Lake Helena Drive Pit, Lewis and Clark County, BER 2008-12 OC.
- Hearing Examiner Katherine Orr said a scheduling order was issued and discovery was to be completed by this day.
- 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.c | 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.d | In the matter of the appeal by Southern Montana Electric (SME) regarding its Air Quality Permit No. 3423-00 for the Highwood Generation Station, BER 2007-06 AQ.
- II.A.1.e | In the matter of the appeal by ExxonMobil regarding its Air Quality Operating Permit No. OP 1564-02 for the Billings Refinery, Yellowstone County, BER 2007-27 AQ.
- II.A.1.f | In the matter of violations of the Water Quality Act by Park County, Gardiner, BER 2008-01 WQ.
- II.A.1.g | In the matter of violations of the Opencut Mining Act by James Timis at the Timis Excavation Site, Flathead County, BER 2008-02 OC.
- II.A.1.h | In the matter of violations of the Hazardous Waste Act by the Three W's, Inc., and Montana Waste Systems, Inc., BER 2008-07 HW (MT Waste Systems).
- II.A.1.j | In the matter of violations of the Hazardous Waste Act by the Three W's, Inc., and Montana Waste Systems, Inc., BER 2008-09 HW (Three W's).
- II.A.1.k | In the matter of violations of the Opencut Mining Act by TMC, Inc. at the Nuss Pit, Gallatin County, BER 2008-10 OC.
- II.A.1.m | In the matter of violations of the Montana Water Quality Act by Wilderness Club, LLC., at Eureka, Lincoln County, BER 2008-13 WQ.

Hearing Examiner Katherine Orr had nothing further to add to the information that was provided in the agenda for the above contested cases.

- III.A.1 | In the matter of the proposal to initiate rulemaking to amend ARM 17.40.318 and adopt New Rule I pertaining to state revolving fund and public water and sewer projects eligible for categorical exclusions from MEPA review.

Mr. Teegarden provided a summary of the proposed initiation and rule adoption, and responded to questions from the Board regarding the proposal.

Chairman Russell called for a motion to initiate the rulemaking and appoint Katherine Orr as the Presiding Officer. Mr. Mires so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.A.2 | In the matter of the proposal for an addition to the Administrative Rules of Montana Title 17, Chapter 38, Subchapter 1 to exempt from incorporation by reference an emission standard for mercury, which has been vacated by the courts.

Ms. Wolfe provided a summary of the proposed rule initiation and adoption. Mr. Rash responded to questions from board members regarding the proposal.

Chairman Russell called for a motion to initiate the rulemaking and to appoint Ms. Orr the Presiding Officer. Ms. Kaiser so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.C.5 | In the matter of the appeals of the Record of Decision under the Major Facility Siting Act related to the Montana Alberta Tie Ltd. Transmission line, by Jerry McRae and Katrina Wilson Martin (BER 2008-19 MFS), Chris Stephens (BER 2008-20 MFS), and
- III.C.6

III.C.7 Michael Koenig (BER 2008-21 MFS).

Board members agreed that it would be in all the parties' best interests to assign a hearing officer to these cases. Mr. Mires MOVED to appoint Katherine Orr as permanent hearing examiner for case No. BER 2008-19 MFS. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

Mr. Mires MOVED to appoint Ms. Orr as permanent hearing examiner for case Nos. BER 2008-20 & 21 MFS. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.B.1 In the matter of the proposal to adopt amendments to the administrative rules of Montana Title 17, Chapter 38, Subchapters 1 and 2, as modified in response to public comment.

Mr. Pizzini provided background information regarding the rulemaking. He explained that after the public hearing, a question and answer session was held to clarify comments made and questions asked during the hearing. Mr. Pizzini said the DEQ recommends the Board adopt the proposed rules as amended during the comment period.

Chairman Russell called for public comment.

Mr. Wade said that Montana Rural Water Systems thinks that the changes to PWS5 are making the process more complex and asked that it be sent back to the DEQ for them to work with the stakeholders.

Further discussion took place and Mr. Pizzini said the department believes it has addressed the comments adequately and is ready to move forward with the rulemaking.

There being no further public comment, Chairman Russell called for a motion to amend the rules, adopt the presiding officer report, adopt the HB311 or the stringency and the takings requirements, and the response to comments. Mr. Mires so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.1 In the matter of violations of the Montana Public Water Supply laws by Loyal Order of the Moose #639, Helena, BER 2008-14 PWS.

Ms. Orr explained the nature of the appeal.

Chairman Russell called for a motion to appoint Ms. Orr the permanent hearings examiner for this case. Mr. Skunkcap so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.2 In the matter of violations of the Montana Underground Storage Tank Act by Dutton School District 28, Dutton, BER 2008-16 UST.

Ms. Orr explained the nature of the appeal. A brief discussion took place.

Chairman Russell called for a motion to appoint Ms. Orr the permanent hearings examiner for this case. Ms. Kaiser so MOVED. Mr. Marble SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.3 In the matter of violations of the Montana Septic Disposal and Licensure laws by Missoula Septic Service, Inc., Missoula, BER 2008-17 SDL.

Ms. Orr explained the nature of the appeal.

Chairman Russell called for a motion to appoint Ms. Orr the permanent hearings examiner for this case. Mr. Marble so MOVED. Mr. Skunkcap SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.4 In the matter of the Montana Underground Storage Tank Act by Tom Pelican and Theresa Pelican at Swan Lake Stage Stop, Lake County, BER 2008-18 UST.

Ms. Orr explained the nature of the appeal. A brief discussion took place.

Chairman Russell called for a motion to appoint Ms. Orr the permanent hearings examiner for this case. Mr. Mires so MOVED. Mr. Marble SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.8 In the matter of the appeal by the USDA Forest Service Northern Region of the air quality major open burning permit fee for the calendar year 2009, BER 2008-22 AQ.

Chairman Russell called for a motion to appoint Ms. Orr the permanent hearings examiner for this case. Ms. Kaiser so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.9 In the matter of the appeal and request for hearing by the Montana Environmental Information Center, Citizens for Clean Energy, Sierra Club, and National Parks Conservation Association of the Southern Montana Electric Generation and Transmission Cooperative Highwood Generating Station Air Quality Permit No. 3423-01, BER 2008-23 AQ.

Discussion took place about the appeal and about the affidavit that had not yet been filed. Chairman Russell called for a motion to reserve the right for the Board to hear the matter, but to appoint Ms. Orr to take care of prehearing matters outside of scheduled meetings. Mr. Mires so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.D.1 | In the matter of the appeal by Plum Creek Manufacturing, Inc, of its Montana Groundwater Pollution Control System Permit No. MTX00092, BER 2008-06 WQ.

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

III.D.2 | In the matter of revocation of air quality permit No. 2733-02, Livingston Sand and Gravel, Inc., Livingston, BER 2008-15 AQ (Crazy Mountain Rock).

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

IV. | General Public Comment

Chairman Russell called for public comment.

Mr. Stimal made a comment about the permitting process in regard to Highwood.

V. | Adjournment

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

The meeting adjourned at 11:00 a.m.

Board of Environmental Review December 5, 2008, minutes approved:

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

DATE