



P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • Website: [www.deq.state.mt.us](http://www.deq.state.mt.us)

**MEETING MINUTES  
DECEMBER 7, 2012**

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:00 a.m., on Friday, December 7, 2012, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joseph Russell, Marvin Miller, Larry Anderson, Larry Mires, and Robin Shropshire

Board Members Present via Telephone: Joe Whalen

Board Members Absent: Heidi Kaiser

Board Attorney Present: Katherine Orr, Agency Legal Services Bureau

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: John North, James Madden, David Dennis, Kirsten Bowers, Norman Mullen, and Carol Schmidt – Legal; Steve Kilbreath – Director's Office; Judy Hanson – Permitting & Compliance Division; Jon Dilliard, Barbara Kingery, and Eugene Pizzini – Public Water Supply & Subdivisions Bureau; David Klemp, Debra Wolfe, Charles Homer, Bob Habeck, Whitney Jurenic, and Julie Merkel – Air Resources Management Bureau; Ed Coleman – Industrial & Energy Minerals Bureau; Paul Skubinna and Tom Reid – Water Protection Bureau; John Arrigo and Dan Kenney – Enforcement Division; George Mathieus – Planning, Prevention & Assistance Division; Eric Urban, Eric Regensburger and Mark Bostrom – Water Quality Planning Bureau; Todd Teegarden – Technical & Financial Assistance Bureau

Interested Persons Present: Anne Hedges – Montana Environmental Information Center

- I.A.1 | Review and approve September 27, 2012, Board meeting minutes.
- Chairman Russell called for a motion to approve the minutes as written. Mr. Mires so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous vote.
- Roll call was taken to confirm attendance.
- I.B | Set 2013 Meeting Schedule
- The Board set the 2013 meeting schedule as proposed: January 25, March 22, May 17, July 19, October 4, and December 6. Board members were advised to contact the Board Secretary if any issues with the schedule should arise.
- 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, BER 2011-06 SDL.
- Ms. Orr said that a prehearing conference took place in November and the parties provided oral argument on the pending motion for summary judgment; that she had notified the parties that she was granting partial summary judgment; and that the matter would be before the Board in January. She noted that the issue of penalties is a fact determination and will have to go to hearing.
- II.A.1.b | In the matter of violations of the Public Water Supply Laws by the city of Ronan Public Water Supply System, BER 2012-04 PWS. *(No discussion took place regarding this matter.)*
- II.A.1.c | In the matter of violation of the Montana Solid Waste Management Act by Valley County Refuse District #1 at the Valley County Landfill, BER 2012-06 SW. *(No discussion took place regarding this matter.)*
- II.A.2.a | 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, BER 2012-09 OC. *(No discussion took place regarding this matter.)*
- II.A.3.a | 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 this matter has been suspended pending the decision by the Sixth Judicial District on the petition for judicial review.
- II.A.3.b | 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 said there had been a document filed to remove this to District Court as a matter of an automatic right, but that no motion had been filed to do so. She indicated that she will be welcoming the parties to do so, and that a dismissal may be coming in January.

II.B.1 DEQ Air Quality Permit Fees Briefing

Mr. Habeck said the department does not intend to request the Board initiate rulemaking to change the air quality fees, so the current fees will remain in place.

III.A.1 In the matter of DEQ's request to initiate rulemaking to amend ARM 17.30, subchapter 13 and to adopt New Rule I pertaining to the Montana Pollutant Discharge Elimination System (MPDES) permit program to maintain compliance with federal regulations governing concentrated animal feeding operations (CAFOs).

Mr. Reid said the primary reason for the proposed changes is to update and maintain consistency with federal regulations and to adopt state standards as required by federal regulations. He described major parts of the rulemaking and said the department worked with agency and industry stakeholders, that copies were provided to EPA and comments were received, and that the rule adopts by reference material from NRCS and MSU Extension Services.

Mr. Reid responded to questions from the Board.

Chairman Russell asked if any member of the public was present and would like to comment on the rulemaking. There was no response.

Chairman Russell called for a motion to initiate the rulemaking. Ms. Miller so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous vote.

III.A.2 In the matter of DEQ's request to initiate rulemaking to revise Circular DEQ-4, Montana Standards for Subsurface Wastewater Treatment Systems.

Ms. Kingery described the changes and provided background information regarding DEQ-4. She said it was updated substantially in 2004 and another chapter was added in 2009. She identified the many groups that the department worked with in developing the version before the Board at present.

Ms. Shropshire confirmed she had spent some time with Ms. Kingery going over some of her own comments and that she was pleased with the document.

Chairman Russell commented regarding some formatting inconsistencies.

Chairman Russell asked if any member of the public was present and would like to comment on the rulemaking. There was no response.

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

III.B.1 In the matter of DEQ's request for final adoption of amended rule ARM 17.8.102 Air Quality rules incorporation by reference.

Ms. Wolfe said a hearing was held on September 7, no comments were received, and that the department recommends adoption of the proposed amendments.

Chairman Russell asked if any member of the public would like to comment on the rulemaking. There was no response.

Chairman Russell called for a motion to adopt the rule as proposed, the Presiding Officer's Report, and the 521 and 311 Analysis. Mr. Anderson so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous vote.

III.B.2 In the matter of DEQ's request for final adoption of New Rule, which incorporates by reference department Circular DEQ-13.

Mr. Teegarden said a public meeting was held on November 13 regarding the Nutrient Trading Policy, and that some minor changes were implemented based on comments received. He reminded the Board that the trading policy is strictly voluntary. He said the department requests the Board adopt the rule incorporating the policy.

Mr. Teegarden responded to questions from the Board.

Chairman Russell asked if anyone in the audience wanted to comment regarding the rulemaking. No one responded.

Chairman Russell called for a motion to adopt the rule, the 521 and 311 Analysis, the department's responses to comment, 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 17.30, subchapter 13, regarding permit exclusions and application requirements for discharge permits issued under the Montana Pollutant Discharge Elimination System (MPDES) program.

Mr. Reid said the Board voted to initiate the rulemaking on July 27, a hearing was held September 5, the public comment period closed September 12, and no comments were received. He said the department requests the Board adopt the amendments as proposed.

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

Chairman Russell called for a motion to adopt the rule as proposed, the Presiding Officer's Report, and the 521 and 311 Analysis. Mr. Miller so MOVED. Mr. Anderson SECONDED the motion. The motion CARRIED with a unanimous vote.

III.B.4 In the matter of final action regarding amended rule 17.30.617 to designate a portion of the mainstem Gallatin River as an Outstanding Resource Water.

Mr. North provided background information for the rulemaking and said it had been a continuing matter before the Board since 2001. He said a pilot test proved snow making to be a viable alternative for protecting the river and implementing it could take two to three years. Mr. North said the department recommends the Board take no action, effectively ending the rulemaking, and that all the stakeholders had expressed approval for this course of action. He noted that the Board could reinstitute rulemaking for adoption of the ORW status at a future date.

Mr. North, Mr. Teegarden, and Mr. Regensburger responded to questions from the Board.

Chairman Russell asked if anyone wanted to make a motion to keep the rulemaking alive. No one responded and no action was taken on this matter.

III.C.1 In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Signal Peak Energy, LLC at the Bull Mountain Mine #1, BER 2012-08 SM.

Ms. Orr provided background information for this matter and said a Rule 41(a) dismissal has been requested.

Chairman Russell called for a motion to authorize him to sign the order dismissing this matter. Mr. Mires so MOVED. Mr. Miller 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 Jeanny Hlavka, individually and d/b/a J.R. Enterprise, LLC, at the Fort Peck Station, BER 2010-08 UST.

Ms. Orr said the Board had granted a motion for summary judgment in this matter in 2011, but that it was appealed to District Court, which remanded it back to the Board for further proceedings. She said the issues have been addressed and she recommends the Board sign the order granting summary judgment.

Chairman Russell called for a motion to authorize him to sign the order granting the second motion for summary judgment. Mr. Anderson so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous vote.

III.D.1 In the matter of violations of the Public Water Supply Laws by Trailer Terrace Mobile Park, LLC, Dennis Deschamps, and Dennis Rasmussen at the Trailer Terrace, BER 2012-11 PWS.

Ms. Orr provided information regarding the matter.

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

III.D.2 In the matter of the notice of appeal and request for hearing by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ.

Ms. Orr provided detailed information regarding the matter.

Chairman Russell called for a motion to appoint Ms. Orr as the permanent hearings examiner for this matter. Mr. Miller so MOVED. Mr. Mires SECONDED the motion. Mr. Whalen and Mr. Anderson expressed interest in the Board hearing the matter. The motion FAILED 4-2.

III.D.3 In the matter of violations of the Montana Solid Waste Management Act by Asphalt Plus, LLC, a corporation, and Michael C. and Melinda M. Oedekoven, as individuals, at 425 Johnson Lane, Billings, BER 2012-13 SW.

Ms. Orr briefed the Board on the matter.

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

III.E.1 In the matter of violations of the Opencut Mining Act by Brad Blakeman at the Camas Prairie Gravel Pit, BER 2012-01 OC.

Ms. Orr reminded that the Board had held a contested case proceeding in September and had decided there was liability on the part of the appellant. She said the Board had tasked her with determining if the Board could alter the requested penalty amount, and that she had determined the Board could.

After further discussion, Mr. Anderson MOVED to have the parties confer among themselves to develop a reclamation plan for Mr. Blakeman to implement, that the department would approve and monitor, then bring the plan to the Board for a final decision on the penalty. Mr. Miller SECONDED the motion. The motion CARRIED 5-1.

#### IV. General Public Comment

Chairman Russell asked if anyone in the audience would like to address the Board on any matters that pertain to the Board. There was no response.

Chairman Russell requested a briefing from Mr. Kilbreath at the next Board meeting regarding the impacts in eastern Montana relating to the development in the Bakken.

V. Adjournment

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

The meeting adjourned at 11:28 a.m.

Board of Environmental Review December 7, 2012, minutes approved:



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

\_\_\_\_\_  
DATE