

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

BOARD MEETING )  
March 21, 2014 )

TRANSCRIPT OF PROCEEDINGS

Heard at Room 111 of the Metcalf Building  
1520 East Sixth Avenue  
Helena, Montana  
March 21, 2014  
9:00 a.m.

BEFORE CHAIRMAN ROBIN SHROPSHIRE,  
BOARD MEMBERS LARRY MIRES; JOAN MILES,  
JOSEPH RUSSELL, CHRIS TWEETEN,  
and HEIDI KAISER (by telephone)

PREPARED BY: LAURIE CRUTCHER, RPR  
COURT REPORTER, NOTARY PUBLIC

1           WHEREUPON, the following proceedings were  
2 had and testimony taken, to-wit:

3                           \* \* \* \* \*

4           CHAIRMAN SHROPSHIRE: It is 9:02 and  
5 I'll call this meeting of the Board of  
6 Environmental Review to order. We have got some  
7 people on the phone. Tom, can you do a roll call,  
8 please.

9           MR. LIVERS: Members of the Board, for  
10 the record, Tom Livers, Deputy Director. Ms.  
11 Canty, who I believe is not available.

12                           (No response)

13           MR. LIVERS: Ms. Kaiser.

14           MS. KAISER: Good morning.

15           MR. LIVERS: Ms. Miles.

16           MS. MILES: I'm here.

17           MR. LIVERS: Mr. Mires.

18           MR. MIRES: Here.

19           MR. LIVERS: Mr. Russell.

20           MR. RUSSELL: Here.

21           MR. LIVERS: Mr. Tweeten.

22           MR. TWEETEN: Present.

23           MR. LIVERS: Chair Shropshire.

24           CHAIRMAN SHROPSHIRE: Present. The  
25 first item on the agenda is review and approval of

1 the minutes from our January meeting. Any  
2 comments, questions from the Board?

3 MR. MIRES: There is a correction on the  
4 first page, the first paragraph. It reads that we  
5 met on Friday, July 26th, 2013, and it should be  
6 Tuesday, January 25th, 2014.

7 MS. MILES: Good catch.

8 CHAIRMAN SHROPSHIRE: Anything else?

9 MR. RUSSELL: I have one comment. Thank  
10 you for editing my terse comments to Mark out of  
11 the minutes.

12 CHAIRMAN SHROPSHIRE: Is there a motion  
13 to approve with corrections?

14 MR. MIRES: I would so move.

15 CHAIRMAN SHROPSHIRE: It's been moved by  
16 Larry. Is there a second?

17 MS. MILES: I'll second. Joan.

18 CHAIRMAN SHROPSHIRE: Seconded by Joan.  
19 Any further discussion?

20 (No response)

21 CHAIRMAN SHROPSHIRE: All those in  
22 favor, signify by saying aye.

23 (Response)

24 CHAIRMAN SHROPSHIRE: Opposed.

25 (No response)

1 CHAIRMAN SHROPSHIRE: Motion carries  
2 unanimately. The next item are briefing items.  
3 Katherine.

4 MS. ORR: Ms. Chairwoman, members of the  
5 Board. Good morning, everyone. There is really  
6 nothing to add to the agenda, so it sort of speaks  
7 for itself. If anyone has any questions, I'd be  
8 glad to answer them.

9 Signal Peak Energy is possibly going to  
10 be submitted and have disposition on summary  
11 judgment; and Western Energy and the Department  
12 are working out terms of the permit, so the  
13 proceedings will be suspended pending those  
14 attempts. And other than that, I don't have  
15 anything to add unless there is a question.

16 CHAIRMAN SHROPSHIRE: Any questions from  
17 the Board?

18 (No response)

19 CHAIRMAN SHROPSHIRE: Hearing none, I  
20 guess we will move on to action items.

21 MR. LIVERS: Madam Chair, members of the  
22 Board, the first action item is a little bit  
23 different than a typical rulemaking. Periodically  
24 this Board will review changes on local air  
25 quality regs, and with that, I'd like to turn it

1 over first to Eric Merchant from the Department to  
2 set the table a little bit, and explain the action  
3 and what will be before the Board today.

4 MR. MERCHANT: Madam Chair, members of  
5 the Board, for the record, my name is Eric  
6 Merchant, and I'm with the Department's Air  
7 Resources Management Bureau, and we work very  
8 closely with the county programs. I want to just  
9 start by introducing and providing the Board with  
10 some context regarding proposed revisions to the  
11 Missoula County Air Quality Program regulations.

12 Several local programs in the state of  
13 Montana, including Missoula, implement air quality  
14 regulatory programs as approved by the Board under  
15 the Montana Code Annotated 75-2-301. The local  
16 air program's purpose and role is to protect and  
17 maintain local air resources. This is often more  
18 effectively done at the local level. An example  
19 of that, an obvious example of that, would be  
20 regulatory provisions for people's wood stoves,  
21 that type of thing, smoke in a given area. That's  
22 more effect effectively done at a local level.

23 The Board role in this process: The  
24 Board may approve a local air pollution control  
25 program as an essential element in securing and

1 maintaining air quality if the program is  
2 consistent with the applicable statutory  
3 requirements.

4           The Department's role: The Department  
5 works very closely with the local air quality  
6 programs to ensure that their rules or rules  
7 changes are consistent with the statute and  
8 appropriate.

9           Periodically these programs, as I said,  
10 or Tom suggested, these local county program  
11 regulations must be updated in response to  
12 changing local conditions, state and federal  
13 regulations, that kind of thing.

14           In contrast, as Tom alluded to, in  
15 contrast to a typical Board rulemaking effort, and  
16 according to the requirements of 75-2-301, MCA,  
17 rule initiation and the associated public  
18 processes take place at the local level on the  
19 area impacted by the rules. So Missoula County  
20 went through a rigorous process that's identified  
21 in the statute as required under 75-2-301.

22           The Department has determined in this  
23 case that Missoula's proposed rule revisions are  
24 procedurally and substantively consistent with the  
25 applicable statutory requirements for the adoption

1 and implementation of, in this case, changes to a  
2 regulatory program.

3 With that, I'm going to introduce Ben  
4 Schmidt, who is over from Missoula County -- he's  
5 in the Missoula County Air Quality Program -- and  
6 he's going to talk about the proposal itself,  
7 update to their existing Board approved program,  
8 and request that the Board take final action to  
9 approve these rule revisions. Do you have any  
10 questions?

11 MS. MILES: Madam Chair, this is Joan.  
12 I just have one or two questions for Eric, if I  
13 may.

14 CHAIRMAN SHROPSHIRE: Go ahead.

15 MS. MILES: Eric, I've been away from  
16 this for awhile, so just a little more background.  
17 Can you tell me, number one, how many local  
18 programs are there in the state; and number two,  
19 when a county takes over an air quality program,  
20 do they do it comprehensively, or is it sometimes  
21 just for certain types of particulate matter, or  
22 certain emissions. I don't recall how those  
23 operate. Thanks.

24 MR. MERCHANT: Ms. Miles, Madam Chair,  
25 members of the Board. To answer the first

1 question, there are several local county programs  
2 in the state that have air quality programs. And  
3 to expand on that and in answer to the second one,  
4 they're relatively specific to issues generally  
5 speaking. Missoula County has a relatively  
6 comprehensive air quality program. They do  
7 permitting, they do compliance, they do ambient  
8 air quality monitoring. So they have more than  
9 the typical program.

10 Typically what we would be doing is  
11 there would be maybe some compliance inspections  
12 that are done in a given area, or there would be  
13 -- they would run ambient air quality monitors and  
14 support our monitoring section that way. In  
15 several cases, it is very specific to smoke  
16 management, and that would be issuance of permits  
17 for minor burners to conduct burning during  
18 appropriate seasons. So that's regulated through  
19 that type of a system.

20 CHAIRMAN SHROPSHIRE: Joan, do you have  
21 follow up?

22 MS. MILES: No. That's great. Thank  
23 you.

24 CHAIRMAN SHROPSHIRE: Any other  
25 questions?



1 (No response)

2 MR. MERCHANT: With that, I'll introduce  
3 Ben.

4 MR. SCHMIDT: Ms. Chairperson, members  
5 of the Board. Thank you for your time. I'm  
6 Benjamin Schmidt with the Missoula City-County  
7 Health Department.

8 Missoula City-County Health Department  
9 -- which I'll just call it the Department -- is  
10 requesting that the Montana State Board of  
11 Environmental Review simultaneously approve two  
12 records of adoption for the Missoula City-County  
13 Air Pollution Control Program.

14 On November 15th, 2012, the Missoula  
15 City-County Air Pollution Control Board approved  
16 changes to Chapters 4, 6, 7, 8, 9, and 14 of the  
17 Missoula City-County Air Pollution Control  
18 Program. These changes were then approved by the  
19 Missoula City Council and the Missoula Board of  
20 County Commissioners on February 25th, 2013. You  
21 can see the November 2012 record of adoption for  
22 complete details on that process.

23 After these rules were passed at the  
24 local level, the Department received comments that  
25 one of these rule changes may conflict with State

1 law. It was also noticed that reference errors  
2 were present in the proposed rule changes. To  
3 correct a potential conflict with the State law  
4 and the reference errors, the Department started  
5 the local rulemaking process again with the intent  
6 to fix the conflict with State law and the  
7 reference errors found in the previous changes.

8 At that time the Department requested  
9 that the rule changes approved earlier by the Air  
10 Board, the City Council, and the County  
11 Commissioners, not be put before the Montana State  
12 Board of Environmental Review until a second  
13 Missoula City-County Air Pollution Control Program  
14 rulemaking process could be completed at the local  
15 level. That's why you have two records of  
16 adoption before you today.

17 On October 17th, 2013, the Missoula  
18 City-County Air Pollution Control Board approved  
19 changes to Chapter 3, 6, 8, and 15 of the Air  
20 Pollution Control Program. These changes were  
21 then approved by the Missoula City Council and the  
22 Missoula Board of County Commissioners on December  
23 9th, 2013.

24 The second set of rule changes fixed a  
25 conflict with State law, corrects several

1 reference errors found in the rules, clarified  
2 some of the rules, and corrects reference errors  
3 in the November 8th, 2012 applicability of  
4 75-2-301 findings document, and corrects reference  
5 errors in the November 15, 2012 75-2-301 written  
6 findings document.

7           Because of the reference errors that we  
8 had in the rules, the supporting documents  
9 basically follow along with these errors, so they  
10 were just corrected in one sweep. You can see the  
11 October 2013 record of adoption for complete  
12 details on this process.

13           By approving both records of adoption at  
14 the same time, potential conflicts with State law  
15 are avoided, and several reference errors are  
16 fixed. All public notice requirements and  
17 processes were met in this rulemaking process. In  
18 the materials sent earlier to the Board,  
19 justification for rules more stringent than State  
20 rules were supplied. This meets the requirements  
21 of Montana Code Annotated 75-2-301, Sections 3 and  
22 4.

23           I would like to say that as part of this  
24 process, Missoula does maintain an interested  
25 parties email list, and as these processes went

1 along, the first one and the second one, those  
2 groups were kept notified of the meetings that  
3 were coming up and the beginning of the whole  
4 process with the Air Pollution Control Board and  
5 Air Quality Advisory Council, which gives  
6 recommendation to the Air Board.

7 Another thing we did as part of this  
8 process is, for instance, our solid fuel burning  
9 device chapter put some labeling requirements in  
10 there, a change in labeling requirements for  
11 people who sell stoves in Missoula County. These  
12 label requirements basically say this stove can be  
13 sold in this area, or not in this area.

14 It is just to make it more clear to the  
15 customer, and to make it a level playing field  
16 also with stove dealers, and people know up front  
17 where the requirements lie when they go to a  
18 vendor. A typical person isn't going to know our  
19 rules when they just go in shopping. And because  
20 of that, we did send to all of the businesses that  
21 sell wood stoves a notice of this rulemaking  
22 process.

23 Only one of the vendors gave us a call  
24 asking if they would be affected by that, Trader  
25 Brothers specifically just south of Lolo, and

1 after that we heard no other comments. They just  
2 wanted clarification that they were involved in  
3 that.

4 Thank you, Chairperson, members of the  
5 Board. I am available if you have any comments or  
6 questions.

7 CHAIRMAN SHROPSHIRE: Thank you. Any  
8 questions from the Board?

9 (No response)

10 CHAIRMAN SHROPSHIRE: I guess the motion  
11 would be to amend the Missoula County air quality  
12 regulations?

13 MR. SCHMIDT: Yes.

14 CHAIRMAN SHROPSHIRE: Is there a motion  
15 to amend.

16 MS. MILES: I would move that. This is  
17 Joan.

18 CHAIRMAN SHROPSHIRE: It has been moved  
19 by Joan. Is there a second?

20 MR. RUSSELL: Second, and then a  
21 question.

22 CHAIRMAN SHROPSHIRE: It has been  
23 seconded by Joe. So let's open it up for your  
24 question, Joe.

25 MR. RUSSELL: Well, as I recall, one of

1 the Board's duties here is to make sure that the  
2 process -- I just wonder if our motion should  
3 state that we have reviewed the record of  
4 adoptions, and the process in the statutes has  
5 been followed for adopting or amending local air  
6 pollution control programs.

7 CHAIRMAN SHROPSHIRE: I don't know if  
8 that's something that you want to address, just to  
9 confirm that.

10 MR. RUSSELL: We have one. And the  
11 thing is the BER -- I mean we are accepting their  
12 regulations, but they're local regulations. So  
13 what we're charged with is to make sure that the  
14 rulemaking process was followed at the local  
15 level, and DEQ's role is to make sure that the  
16 rule is -- I'll use the term -- congruent or  
17 consistent with the State -- the act in --  
18 (inaudible) --

19 CHAIRMAN SHROPSHIRE: Joe, I agree with  
20 what you're saying, but to me, that is assumed in  
21 this process. It would be unusual in a motion to  
22 say that we followed the process, but I understand  
23 what you're saying.

24 MR. RUSSELL: I would differ, because we  
25 do it every time we adopt a rule. We always adopt

1 the Hearing Examiner's report, and we also adopt  
2 the 521 and 311 analysis, as part of our decision  
3 making process. So we're not really making a rule  
4 for the locals. We're making sure that they  
5 follow due process.

6 MR. LIVERS: Members of the Board, this  
7 is Tom. Let me throw something out, and then  
8 maybe Eric or John might want to weigh in. I  
9 wonder if a more precise wording might be  
10 something like, "Approve the amendment of Missoula  
11 City-County air quality regulations, and the  
12 amendment process," and I don't know that we'd  
13 have to go much more specific than that. But the  
14 amendments aren't final until the Board takes  
15 action, but it probably is a little more precise  
16 to say, "We are approving the local amendment, and  
17 the process by which those were taken."

18 MS. MILES: This is Joan. I tend to  
19 agree with what Joe said, and what you're saying,  
20 that the motion should reflect particularly our  
21 role in this process. So I would modify that  
22 motion, and use the wording that you just used,  
23 Tom.

24 MR. RUSSELL: I would accept that to my  
25 second.

1                   CHAIRMAN SHROPSHIRE: So to approve the  
2 amended Missoula City-County air quality  
3 regulations and the process by which those  
4 amendments were adopted; is that acceptable?

5                   MR. LIVERS: That sounds good.

6                   CHAIRMAN SHROPSHIRE: It has been moved  
7 and seconded.

8                   MR. LIVERS: Before we take a vote, if  
9 you'd ask for public comment.

10                  CHAIRMAN SHROPSHIRE: And is there any  
11 public comment?

12                  (No response)

13                  CHAIRMAN SHROPSHIRE: Hearing none, all  
14 those in favor, signify by saying aye.

15                  (Response)

16                  CHAIRMAN SHROPSHIRE: Opposed.

17                  (No response)

18                  CHAIRMAN SHROPSHIRE: The motion carries  
19 unanimously.

20                  MS. MILES: Madam Chair, this is Joan.  
21 Can I deviate from the business at hand for just  
22 one second, and if Ben Schmidt is still there,  
23 just extend congratulations to the Missoula  
24 City-County Health Department. They were just  
25 yesterday awarded a national accreditation. There



1 are now 31 public health departments in the  
2 country that have gone through a voluntary  
3 accreditation process to ensure that they're  
4 operating at high performance, high quality, high  
5 level of services to their community, and Missoula  
6 was the first health department in Montana to  
7 receive accreditation, so I just wanted to extend  
8 congratulations.

9 MR. RUSSELL: I would echo that because  
10 it is a very difficult process, because we're in  
11 it.

12 CHAIRMAN SHROPSHIRE: Congratulations.

13 MR. SCHMIDT: Thank you. I will pass  
14 this on to Ellen Lahey. She'll like to hear that  
15 the BER gave that congratulations.

16 MS. MILES: Please do. Thanks.

17 CHAIRMAN SHROPSHIRE: Thanks, Joan. The  
18 next item on the agenda is initiation of  
19 rulemaking which relates to Title 17, Chapter 36,  
20 Subchapter 9, etc.

21 MR. LIVERS: Madam Chair, members of the  
22 Board, Barb Kingery is going to walk us through  
23 this.

24 MS. KINGERY: Good morning, Madam Chair,  
25 and members of the Board. As Tom said, I'm Barb

1 Kingery. I'm with the Subdivisions Section here  
2 at DEQ. And you have before you a package of  
3 rules that the Board has authority over. I want  
4 to kind of frame this for you a little bit before  
5 I hop into what we're doing here.

6 In the last legislative session, and  
7 then through Circular DEQ4, which is a  
8 construction standard for subsurface wastewater  
9 treatment systems, and initiation of rulemaking  
10 for Circulars DEQ1, 3, 10, and 16, which I think  
11 happened at the last Board meeting, we have found  
12 that we need to update our rules, and I'm going to  
13 walk you through this process a little bit here.  
14 And some of those rules are Board rules, and some  
15 of those rules are Department rules.

16 And what you have before you today are  
17 the Board rules. And I just kind of wanted to  
18 sort of frame it in some sort of context for you,  
19 so you guys understood what was going on here.  
20 What I'd like to do, if I could, is kind of talk a  
21 little bit about what we're proposing, and I'll  
22 have to ask for your indulgence because we'll be  
23 flipping back and forth between pages, because I  
24 think that's the most logical way to approach  
25 this.

1           So what I'd like to start with before  
2 are those changes we're proposing that had to do  
3 with the circulars that we've been working on.  
4 And if you could look at your package back on  
5 page, I believe it is 22, we're going to talk  
6 first about some public water rules; and 17.38.106  
7 talks about fees for review of systems that relate  
8 to the circulars I mentioned before -- Circular 1,  
9 3, 4, and then 10 and 16, which are the two new  
10 ones.

11           What we found when we were doing a  
12 little hunting through our rules and the fees is  
13 that when we adopted Circular DEQ4 back in  
14 October, we didn't change the public water review  
15 fees that go with that document. And what we did  
16 -- we're not proposing to add any new fees, we're  
17 not proposing to change the fees that are out  
18 there right now, but when we adopted the new  
19 circular, we adopted new chapter headings and new  
20 chapter numbers.

21           And so this is sort of a housekeeping  
22 exercise here to make sure that the fees that we  
23 previously were changing now match in rule the  
24 chapter numbers and the chapter headings, because  
25 that's how 17.38.106 is configured.

1           When we found that out, we thought, "Oh,  
2 shoot. We just initiated one, three, ten, and  
3 sixteen. We need to make that correction there,  
4 too." So I want to emphasize that the changes to  
5 106 are not an increase in fees, it is nothing new  
6 that has been changed. It is just a nomenclature,  
7 numbering, that kind of a thing, chapter names.  
8 So those are the proposed changes that we're doing  
9 in 106, and that's on Page 22.

10           MR. LIVERS: Barb, if I could, Madam  
11 Chair. I apologize for the interruption.

12                           (Recess taken)

13           CHAIRMAN SHROPSHIRE: I think we're  
14 ready to reconvene. Is everybody on the phone?  
15 Joe? Joan? Heidi? Chris? Everybody there?  
16 Let's reconvene. Barb, take it away.

17           MS. KINGERY: We'll pick up again with  
18 another of the public water rules that we're  
19 proposing for you, and it's found on Page 21 of  
20 your packet, and it is 17.38.101. And here we're  
21 going to start -- I'm going to start taking you  
22 down kind of a twisty path of rules.

23           So 17.38.101 is where we talk about the  
24 design of public water systems and our review  
25 procedures there; and under (d), 4(d), the public

1 water rules adopt the Department subdivision  
2 rules. So there is 17.36.320 through 320 --

3 UNKNOWN SPEAKER: Now joining name not  
4 recorded.

5 MR. LIVERS: Chris?

6 MR. TWEETEN: Yes, it is Chris.

7 MS. KINGERY: So we're on 17.38.101 is  
8 where we are. We're talking about 4(d).

9 MR. LIVERS: It's on Page 21 of the rule  
10 packet.

11 MS. KINGERY: And what this one does is  
12 these public water rules adopt the Department  
13 subdivision rules. And as I mentioned before,  
14 through legislation, we had to update, we wanted  
15 to update our subdivision rules. So these are the  
16 ones you guys pick up and adopt by reference. So  
17 we're proposing a couple of changes here in  
18 17.38.101.

19 One of the things we're going to do is  
20 we're going to walk through the subdivision ones  
21 in just a moment here that you adopt by reference.  
22 But currently you adopt 17.36.327. 327 is a  
23 subdivision, a Department rule that talks about  
24 existing systems. And under public water reviews,  
25 we want a different procedure for reviewing of

1 public sewer systems that are existing than the  
2 subdivision rules. There is a little different  
3 level of review that we would require under that,  
4 under the public water rules.

5 So we are proposing to strike adoption  
6 by reference 17.36.327 out of these public water  
7 rules. We already have the provisions to review  
8 those under this Section 101. And so it just made  
9 things confusing for applicants who were proposing  
10 existing public sewer systems that needed to be  
11 reviewed. So that's sort of a cleanup item again,  
12 too.

13 The other thing that we're doing here is  
14 this 17.38.101 talks about requirements for  
15 professional engineer designs; and under our  
16 current regulations, we would require a public  
17 sewer system that is over 2,500 gallons per day to  
18 be submitted and reviewed by a professional  
19 engineer. Those changes we're proposing to clean  
20 up and put into 101. They're still in the  
21 subdivision rules, but we felt that this  
22 reference, having all of the PE requirements being  
23 in one place, made more sense when we're talking  
24 about public sewer systems. So that's the other  
25 change we're proposing here.

1           We're deleting one section that isn't  
2 applicable as far as review goes because it's sort  
3 of contradictory, to be honest with you, and we're  
4 adding this one.

5           MR. MIRES: Why the change from  
6 registered engineer to just professional engineer?  
7 Is there a reasoning for that?

8           MS. KINGERY: A professional engineer --  
9 We want the professional engineering designs to  
10 come in for people who are registered in the State  
11 of Montana. We don't want a Florida engineer to  
12 be submitting plans. So our definitions, our  
13 reference to the definition calls it a registered  
14 engineer, and so we wanted to make definitions and  
15 language in the rule consistent.

16          MR. MIRES: I thought I read in here --  
17 I was looking for it -- I thought it would scratch  
18 the registered part to simply professional, or did  
19 I misread that?

20          MS. KINGERY: Maybe I'm confusing the  
21 two. We tried to make the language or the syntax  
22 consistent with the definitions, is what we did.  
23 And the definitions -- and I don't have that in  
24 front of me right here, so I should get back to  
25 you with that.

1           MR. MIRES: I'll keep looking and see if  
2 I can find it. Thank you.

3           MS. KINGERY: Please do. So those are  
4 the big changes we made there. Now, like I said,  
5 I'm going to have you flip pages for me, and we're  
6 going to talk about the Department rules that you  
7 guys adopt by reference.

8           MR. RUSSELL: Since I've been working in  
9 DEQ4, as Barb knows, for our own county, DEQ4  
10 defines it as a professional engineer licensed or  
11 otherwise authorized to practice engineering in  
12 Montana, pursuant to Title 37, Chapter 67, MCA.

13           MR. MIRES: Thank you, Joe.

14           CHAIRMAN SHROPSHIRE: So for  
15 clarification, that will be the new -- it will be  
16 professional engineer in Montana, will be the  
17 change.

18           MS. KINGERY: It is. That's our intent  
19 here. Rachel, she's with our Public Water  
20 Section, she brought up for me. It is  
21 professional engineer.

22           CHAIRMAN SHROPSHIRE: Thank you.

23           MS. KINGERY: So moving forward. We're  
24 going to talk a little bit about these rules that  
25 are Department rules that the Board adopts by



1 reference, and if I could have you flip now to  
2 Page 1, we'll talk about these rules quickly here.  
3 There is just a few of them on here.

4 17.36.320, and quite a bit of this is  
5 clean up and syntax to try and clarify that there  
6 may be -- these are the design and construction  
7 standards for all sewage systems. And like I  
8 said, we tried to clean things up a little bit  
9 here.

10 I want to reference something for you.  
11 I just mention that we moved this section into  
12 17.38, but No. 2 under this talks about  
13 information that has to do with --

14 UNKNOWN SPEAKER: Now joining. Joan.

15 MS. MILES: Sorry. I guess --

16 CHAIRMAN SHROPSHIRE: Is that you, Joan?  
17 (No response)

18 CHAIRMAN SHROPSHIRE: Sorry to  
19 interrupt, Barb. I just want to check. Chris,  
20 are you on the line?

21 MR. TWEETEN: Yes, I am.

22 CHAIRMAN SHROPSHIRE: Joe.

23 MR. RUSSELL: Present and accounted for.

24 CHAIRMAN SHROPSHIRE: Joan?

25 (No response)

1           CHAIRMAN SHROPSHIRE: Maybe Joan is  
2 having some technical difficulties. Heidi, are  
3 you there?

4           (No response)

5           MR. RUSSELL: Before we go any further,  
6 Robin, this confusion. Well, I'm deep in it.  
7 What page numbers are we using? When you went  
8 back to Page 1, is this 17.36.320?

9           MS. KINGERY: It is. That's correct,  
10 Joe.

11          CHAIRMAN SHROPSHIRE: Sorry, Joe. Just  
12 one second. I just wanted to see if --

13          UNKNOWN SPEAKER: Now joining. Joan.

14          CHAIRMAN SHROPSHIRE: Joe, can you ask  
15 your question again?

16          MR. RUSSELL: In my state of confusion,  
17 I was having trouble following what page number.  
18 So I think I'm on the right track now. We're on  
19 Page 1 that's actually citing the ARM 17.36.320?

20          MS. KINGERY: That's correct. Do you  
21 want to go forward?

22          CHAIRMAN SHROPSHIRE: Let's go ahead. I  
23 don't know if Heidi is on, but let's continue.

24          MS. KINGERY: So it is correct. When I  
25 looked here, we did strike registered, and we did

1 put in professional. You're correct. So that's  
2 why I wanted to bring out No. 2 here.

3 As part of the Department rules, we're  
4 proposing some criteria for these professional  
5 engineers also, and we wanted to keep the  
6 Department requirement separate from the public  
7 water one. So that's a good clarifying point you  
8 bring there.

9 One of the other things that we're  
10 proposing in 17.36.320 is clarification from  
11 Circular 4, this is under No. 4, regarding  
12 replacement areas; and this is to provide  
13 consistency between Circular 4 and these rules.  
14 What we are allowing here is if you have a sand  
15 mound you may -- and it is a "may" -- use that  
16 same footprint as part of your replacement area --  
17 some counties allow that, some counties do not --  
18 and a little bit of discussion about size  
19 reductions. So that's some information we added  
20 here under 17.36.320.

21 MR. RUSSELL: Robin, I have a question  
22 for Barb. So without further testing, usually  
23 sand mounds fail up in the sand interface. But  
24 what if literally you really had saturated  
25 conditions at that affected absorption area, in

1 the basal area. Is there any way to preclude  
2 moving forward with that?

3 MS. KINGERY: Mr. Russell and Madam  
4 Chair, yes, there is. Because it is a "may," the  
5 counties can look at how that failure happened and  
6 require a separate replacement area. You don't  
7 always know that that happens in -- so that's why  
8 some counties have required separate replacement  
9 areas at the time of review. This was one of  
10 those cases where we thought we would give the  
11 discretion to the local reviewing authority.

12 MR. RUSSELL: And oftentimes it is the  
13 only site left.

14 MS. KINGERY: Sometimes -- you're  
15 correct -- we need to have some flexibility with  
16 the replacement area.

17 CHAIRMAN SHROPSHIRE: Any follow up?

18 MR. RUSSELL: No. Thank you.

19 MS. KINGERY: The other thing I just  
20 want to point out on this 320 is that we had a  
21 table here before, this Table 2, and we're  
22 proposing to eliminate that. All of the  
23 information that is in this table has now been put  
24 in narrative, and we feel it is a lot cleaner way  
25 to deal with it.

1           So moving forward here. I'll go to the  
2 next one that you guys adopt by reference, and it  
3 is on Page 5 of this packet here, and it is  
4 17.36.321. Again, we were working through some  
5 syntax changes and just clarification.

6           But the big ones I want to point out to  
7 you on 17.36.321 is that we now have a provision  
8 in here to allow pursuant to a waiver holding  
9 tanks for -- I'll call it -- residential systems  
10 that would be used for replacement. And this is a  
11 tool that we felt we needed to add.

12           There are places that permit holding  
13 tanks and places that do not, and up until this  
14 point we have not had this ability to allow a  
15 holding tank. One of the things -- as replacement  
16 only, not as a primary system, but only as a  
17 replacement. One of the provisions to this waiver  
18 process would be concurrence with the local health  
19 department, so it is going to be fairly isolated  
20 situations.

21           MR. RUSSELL: Robin, just a comment.  
22 From a local perspective, that concurrence is  
23 really nice. Thanks for putting that in there.

24           MS. KINGERY: Sure. We rely on our  
25 local sanitarians to help us through this process

1 for sure.

2 On Page 6 -- and this is 17.36.322 --  
3 I'm going to just kind of walk through this one.  
4 This is under sewage system siting, and what we  
5 are proposing is kind of a three-tiered system to  
6 siting. If you are 15 percent or less of your  
7 slope of your drainfield, we're going to allow you  
8 to have a gravity fed system; anywhere between  
9 five and 25 percent, you're allowed to have a  
10 pressure dosed system, not gravity; between 25 and  
11 35 percent, pursuant to a waiver, we would allow a  
12 pressure dosed system, but only through a waiver.

13 And how this changes is right now -- I  
14 want you guys to understand how it works now -- if  
15 you are between zero and 15 percent, you're good  
16 to go; if you are between 15 and 25 percent, you  
17 have a waiver. And it has been Department policy  
18 to only grant that waiver if you're pressure  
19 dosed. We want you to form distribution of these  
20 systems on steep slopes.

21 We feel that you can construct, given a  
22 good design, up to 35 percent if you're pressured  
23 dosed and uniform distributed on there. We're  
24 still asking for information about slope stability  
25 and that kind of a thing, and soils; but this is a

1 change. This is sort of broadening the amount of  
2 area that would be available for development.

3 UNKNOWN SPEAKER: Now joining. Heidi.

4 CHAIRMAN SHROPSHIRE: Go ahead, Joe.

5 MR. RUSSELL: Just for clarification,  
6 and I'm going back to the definitions. When the  
7 Department calls pressure dose, do you mean the  
8 use of a pump, or do you mean uniform pressure  
9 distribution?

10 MS. KINGERY: I'm going to go back to  
11 the definitions in Circular DEQ4, and pressure  
12 dose actually there is uniform distribution. So  
13 we talk about dosing, but when we talk about  
14 pressure dosing, we talk about uniform  
15 distribution.

16 MR. RUSSELL: Because it gets a little  
17 gray when you actually get into the section where  
18 you have all of the pictures of the different "D"  
19 boxes, because technically pressure dosed -- I get  
20 it, but I just want to make sure that -- and I  
21 know I'm on the same page with you -- but we try  
22 to use the terminology "uniform pressure  
23 distribution."

24 UNKNOWN SPEAKER: Now joining name not  
25 recorded.

1 MS. KINGERY: I'll just double check  
2 that, but my memory from DEQ4 is that we talk  
3 about dosing, and dosing can be either pressure  
4 dosing or gravity fed dosing. The pressure dosing  
5 is the uniform distribution, and the other is  
6 where you use a pump to get up to a "D" box, and  
7 then it trickles out.

8 MR. RUSSELL: Which is not much better  
9 than gravity.

10 MS. KINGERY: I concur. Not much better  
11 than gravity.

12 MR. RUSSELL: I digress, but I remember  
13 my first just "D" box dose system, and I was so  
14 excited, and I ran to the end, opened four inch  
15 perforated pipe just waiting for that fluid to get  
16 to the end, to be so discouraged that in a 100  
17 foot lateral, it got about ten feet. It is not  
18 pressure distribution.

19 MS. KINGERY: You're right there. The  
20 other thing I want to bring forward here, just for  
21 your understanding, is under the same rule, No. 6  
22 now, we are proposing that for lots that are two  
23 acres or less in size, that the location of the  
24 system be physically identified, and that can be  
25 either through staking, or through GPS



1 coordinates, or something like that.

2 For lots that are greater than two  
3 acres, we want to have the provision to require  
4 that, knowing that not every large lot has a large  
5 area available for development. So that's another  
6 change that we're moving -- it was one, and we're  
7 moving to two. We want to make sure that we  
8 certainly have enough space for what we're  
9 approving here.

10 I'll move on to Page 8, which is  
11 17.36.323, and these are setbacks. And I want to  
12 call to your attention under No. 1. This is  
13 another place where public water rules and  
14 subdivision rules have a tie -- we want to make  
15 sure this tie-in is very clear to people out  
16 there. Under the public water rules, they are  
17 allowed to deviate from any of these rules -- and  
18 I should have clarified that up front -- but they  
19 have the provision to deviate.

20 And this setback Table 2 that's listed  
21 before you here, we wanted to make sure. There  
22 are provisions in here for waivers, but the public  
23 water rules can deviate from any of these setbacks  
24 that we have proposed here, even the ones that  
25 don't specifically call out that provision. So

1 this setback table that we've configured here is  
2 one that we try to clarify things with.

3 One of the sort of subtle changes that  
4 we're making here has to do with well isolation  
5 zones, and this is under current law or current  
6 rules. A well isolation zone can't cross the  
7 mixing zone -- let me say that again -- an  
8 existing well isolation zone can't cross a mixing  
9 zone. We're proposing to make that for both  
10 existing wells and proposed wells, so that's sort  
11 of a subtle change in here.

12 We've added provisions for waivers where  
13 we feel like waivers are helpful; but like I said,  
14 under the public water rules, that has always been  
15 an option for you guys.

16 MR. RUSSELL: Robin, question for Barb.  
17 Barb, you still use the citation for five, unless  
18 it is somewhere else. It is actually X'd out in  
19 the footnote.

20 MS. KINGERY: Well, let me think. Let  
21 me look at that real quick. Three remains the  
22 same, but is renumbered five.

23 MR. RUSSELL: Oh, okay. I got it.  
24 (Inaudible)

25 MS. KINGERY: These are kind of

1 difficult. You actually need two sets in front of  
2 you, the existing ones and the new proposed ones,  
3 often to get through these.

4 MR. RUSSELL: What was three? Because  
5 it is not actually here.

6 MS. KINGERY: What was three?

7 MR. RUSSELL: It doesn't have to be  
8 verbatim. Just kind of give me the Cliff note  
9 version.

10 MS. KINGERY: "Sewer lines and sewer  
11 mains may be located in roadways and on steep  
12 slopes if the lines and mains are safeguarded  
13 against damage."

14 MR. RUSSELL: That makes -- from where I  
15 see the footnoting.

16 Second thing. "A waiver may be granted  
17 pursuant," so three is still -- three is the  
18 process of getting a waiver. Do you think it is  
19 okay for -- I mean most wells are drawing water  
20 out of an aquifer that a waiver would be granted  
21 to reduce the setback from 100 feet to something  
22 less.

23 And then I guess I have a more global  
24 question. This administrative rule is used by the  
25 Department, and it is also used in a subdivision

1 review process by locals that are contracted to do  
2 the work, right?

3 MS. KINGERY: That's correct.

4 MR. RUSSELL: So that clearly would  
5 conflict with our local regulations. We wouldn't  
6 want a drainfield unless -- The concept of a  
7 waiver is completely necessary at the DEQ level  
8 because you don't have a board that grants  
9 variances, so I get that part. But what's the  
10 applicability at the local level with this? Is  
11 this only -- This is only to be used during the  
12 subdivision process and we would throw those  
13 waivers towards you to conduct, or are some  
14 counties going to have to adopt these setbacks  
15 because they're not really cited in DEQ4?

16 MS. KINGERY: I'm not sure I quite got  
17 your question, but let me see if I answer it, and  
18 then let's see if I get there.

19 These rules will be used by the  
20 Department, and any of our contracted agents,  
21 contracted counties to review subdivisions. And  
22 those subdivisions, anytime there is a waiver, it  
23 is reviewed at the Department level. So if  
24 Flathead County sends those to us, and then we do  
25 a review here, and then we send back the results

1 of the committee decision to her. So I think that  
2 -- is that what you were going for there?

3 MR. RUSSELL: Most county regulations --  
4 I shouldn't say that. Barb, we've talked about  
5 our regulations. We have two documents. We have  
6 what really is DEQ4 as a construction standard,  
7 and then we have a regulation, because every  
8 county has got to address these setbacks. They  
9 have to have setback requirements adopted as  
10 regulation, and I think that was -- and Joan may  
11 recall -- that was the requirement in 1993 when  
12 all counties had to adopt septic system  
13 regulations.

14 MS. KINGERY: That's correct. And Joe,  
15 I might bring you forward to another section here  
16 real quick that might answer your question, and  
17 I'm going to have you guys flip to Page No. 19.  
18 And I'm going to back up just a little bit so you  
19 guys understand, put in these in reference for  
20 you.

21 I believe what Mr. Russell is talking  
22 about is the State minimum standards, and the  
23 Board has authority over the State minimum  
24 standards for septic systems. And we have a  
25 setback table here that mirrors the one we're

1 looking at right now under 17.36.918. These are  
2 the minimum standards that every county has to  
3 adopt. And in this one, we don't have a provision  
4 for waivers because we know that it can go through  
5 the local variance process.

6 MR. RUSSELL: And if you don't mind,  
7 Robin. That's where wells and springs, there is  
8 100 foot setback to absorption systems on that?

9 CHAIRMAN SHROPSHIRE: Was that a  
10 question?

11 MR. RUSSELL: Well, I'm still a little  
12 confused, because we have that one table where you  
13 could grant a waiver to the setback to a well or  
14 spring, or other wells, the third substantive row;  
15 but in the other site you say that a waiver could  
16 be granted to that.

17 CHAIRMAN SHROPSHIRE: So I have a  
18 question, and it is sort of related to this, but  
19 more process related. Can someone help me  
20 understand. Some of this is under the purview of  
21 the Board, and some is under the purview of the  
22 Department, and are we mixing those two a little  
23 bit?

24 MS. KINGERY: What you have before you  
25 are the ones that the Board is going to be looking

1 -- that you have authority to look at, and it is  
2 because you have adopted the Department rules by  
3 reference.

4 And so when we talk about this, there  
5 are other rules out there -- and I was going to  
6 get to that in a little bit here -- but the  
7 subdivision rules, which is a package which we've  
8 pulled these particular ones that you, the Board,  
9 have authority over. These are the ones that you  
10 guys are going to be reviewing and adopting.

11 CHAIRMAN SHROPSHIRE: In the discussion  
12 of the waiver, is that within our purview or is  
13 that not?

14 MS. KINGERY: Like I said before, public  
15 water can waive from any of these requirements,  
16 the provisions for the Department to grant a  
17 waiver, because these are under your scrutiny as a  
18 member of the Board. We are also asking you to  
19 look at these rules, too, as they relate to a  
20 subdivision. We're not going to have a separate  
21 -- pull these out and have a separate review of  
22 them.

23 CHAIRMAN SHROPSHIRE: And Joe, I guess  
24 this is for you. Do you feel like the scope as it  
25 is now allows us to incorporate changes, or do you

1 think that the scope needs to be modified? Does  
2 that make sense? I'm kind of jumping ahead, but  
3 I'm just trying to understand sort of the line of  
4 your questioning.

5 MR. RUSSELL: Over time this parallel  
6 rulemaking comes up. When it comes to pure  
7 subdivision activity, that's a Department  
8 rulemaking process. The problem is there is some  
9 crossover stuff, like the setback stuff, that  
10 comes up.

11 Mine was actually not minutiae, but the  
12 fact that the Department could grant a waiver for  
13 an absorption system setback to a well or spring,  
14 which as I recall -- and I think Barbara confirmed  
15 that -- that we adopted minimum standards based on  
16 a law change in 1993 that said all counties will  
17 have septic system regulations that meet these  
18 minimum standards, and one of the minimum  
19 standards that can be varied at the local level is  
20 setbacks to wells.

21 MS. KINGERY: Chairman Russell, if I  
22 could just hop in here to just sort of give you an  
23 idea of what our waivers look like. So let's just  
24 say for example we have a waiver from a setback  
25 between a well and a drainfield that is before the



1 Department as part of the waiver committee  
2 process.

3 We always ask for local comment on  
4 those, even the ones that don't specifically say  
5 so on here. As a procedural thing we always ask  
6 for that because we, the Department, do not want  
7 to approve a system for construction that can't  
8 then go and be permitted at the local level. So  
9 whenever a waiver comes in, we always get a  
10 comment from the local health department. And  
11 often we'll say, "If this is one that would  
12 require a variance, please go through the variance  
13 process first before we grant ours."

14 MR. RUSSELL: I think that clears up my  
15 concern about where waivers could be granted, but  
16 it really comes down to procedure.

17 MS. KINGERY: We try and kind of keep  
18 that in mind. We know we don't want to approve  
19 something from a Department perspective that a  
20 homeowner can't go out and construct.

21 MR. RUSSELL: Because the county comes  
22 in and says, "No, you can't do that."

23 MS. KINGERY: Exactly. It doesn't make  
24 sense. But like we mentioned before, some of  
25 these waivers we specifically want Department

1 approval on before we even go forward on.

2 Interestingly enough, sometimes on these waivers  
3 we get comments from the counties where perhaps it  
4 is not disallowed as part of the local rules, but  
5 they don't like it. And so in that case we try  
6 and work with both the developer, the owner, the  
7 county, and try and resolve those conflicts.

8 That's what the waiver process is for.  
9 It is not an automatic green light. It is a way  
10 that we can look at things, and slow down and make  
11 sure that it's done correctly.

12 CHAIRMAN SHROPSHIRE: Joe, do you have  
13 any more comments?

14 MR. RUSSELL: No. That's good. Thank  
15 you.

16 MS. MILES: This is Joan. I'm glad to  
17 hear that conversation because I was sort of  
18 thinking the same thing where Joe is going, that I  
19 didn't want to see the counties superseded if they  
20 would not be granting a variance. So I think the  
21 way that you've described that process now is a  
22 little bit more comfortable.

23 MR. RUSSELL: Can I bring up the word  
24 "Skinner"?

25 MS. KINGERY: Yes, we learned our

1 lessons there. So that's the setback table as it  
2 relates in the Department rules, which again, like  
3 I said, you guys have purview over and authority  
4 over.

5 I'm going to move on now I believe to  
6 Page 13, and it's 17.36.325, and this is the site  
7 evaluation component. And to be very honest with  
8 you, nothing really is changing in this section.  
9 We're cleaning things up, moving things around,  
10 trying to make it consistent with Circular DEQ4,  
11 and just trying to make it read a little better,  
12 put a few tags in there. Not every system that  
13 comes through a subdivision review is a Circular 4  
14 section system; sometimes they're Circular 2,  
15 which are municipal systems essentially -- to just  
16 kind of put a real simple label on it.

17 So these are the four Department rules  
18 you guys are looking at. And like I said, they  
19 are adopted by reference.

20 The last type of rule you guys are going  
21 to be looking at today are the State Minimum  
22 Standard Rules, and these begin on Page 15 under  
23 17.36.912. And there is two sections to the State  
24 Minimum Standards, and we kind of just went over  
25 this again, but I'll just refresh your memory.

1           These are the rules that every county in  
2 the state have to adopt as part of their local  
3 permitting process and their local review process.  
4 And we are proposing under 17.36.912 some  
5 definition changes. These are two fold. One is  
6 to comply with the current definitions within  
7 Circular DEQ4, and the other is to sort of  
8 correlate these minimum standard definitions with  
9 the proposed Department subdivision definitions.  
10 And I won't go too far into details there, but if  
11 you have any questions, let me know.

12           The other change we're proposing to the  
13 State minimum standards, that we sort of touched  
14 on already, is on Page 19, and that's that  
15 17.36.918. This is the setback table.

16           MR. RUSSELL: Just another question.  
17 Because we're going through this process -- It is  
18 not like this stuff just races through my head all  
19 the time, but it's only when I throw it in there.  
20 But just so you know, this isn't an inconsistent  
21 flood plain definition, but I went to the DNRC  
22 site, and got the flood plain definition. I think  
23 that it is good if you take out the flood of the  
24 100 year frequency, and get the once every 100  
25 years, or one percent chance of flooding every

1 year. And maybe it is good not to get this  
2 specific.

3 But if you look -- We put in there also  
4 zones A and AE on the FIRM map, Flood Insurance  
5 Rate Maps, Federal Emergency Management Agency,  
6 and that could be -- they don't change them that  
7 often, but we felt it was important to put that in  
8 there in areas that were mapped.

9 MS. KINGERY: I'll speak to that just  
10 real briefly. This did reference those FIRM maps,  
11 and the FIRM maps are created by FEMA primarily  
12 for flood insurance purposes. And what we found  
13 was those areas that you mentioned, when you dig  
14 into the definition of what FEMA calls a flood  
15 plain, and what they map as a flood plain, could  
16 have up to one foot of water on that property.  
17 And so we wanted to make sure that -- We don't  
18 like any kind of situation where there could be  
19 standing water on top of a drainfield, and that's  
20 kind of why we went to this more general  
21 definition here. It wasn't always clear to  
22 everybody that there could be standing water there  
23 up to a foot in depth.

24 MR. RUSSELL: Actually I think FEMA took  
25 that one foot out of their definition because a

1 lot of what we used to call Zone B or 500 year  
2 flood plain is now mapped in, but now they don't  
3 require -- they just covered it. So that's why I  
4 felt comfortable about putting it back in.

5 But I understand keeping it generic.  
6 That's fine.

7 MS. KINGERY: Like I said, we didn't  
8 want to be tied to the flood insurance maps  
9 either. We felt like septic systems and flood  
10 insurance are two different beasts out there.

11 So those are the rules. I thank you for  
12 being so indulgent of me. I tried to sort of hit  
13 the topic highlights here. It is a complicated  
14 rule package as far as who is responsible for  
15 what. What we would propose to you guys, and like  
16 you to contemplate if you don't mind, is to  
17 initiate rulemaking on this package you have  
18 before you.

19 And what we would like to do is do a  
20 concurrent joint announcement also, and do a  
21 concurrent public comment period, and maybe a  
22 joint public hearing on both, because as you can  
23 see, they both tie together very closely. And  
24 then I think that the public would best be served  
25 by seeing both before them at the same time. So

1 I'm available for questions.

2 CHAIRMAN SHROPSHIRE: Just in terms of  
3 the joint rulemaking process in mind, does anybody  
4 have any problem with that?

5 MS. MILES: This is Joan. I think that  
6 that is a good idea, but I do think there needs to  
7 be a pretty clear maybe executive summary or  
8 overview of why this is going on together, and how  
9 they relate to each other, because we really had  
10 to get talked through that today. So I think that  
11 maybe that needs to be in writing so people can  
12 understand that.

13 CHAIRMAN SHROPSHIRE: I guess the  
14 question I have, too, is would we initiate  
15 rulemaking jointly, or do we just simply initiate  
16 rulemaking and you guys can coordinate the joint  
17 portion of it?

18 MR. LIVERS: It would be the latter.

19 CHAIRMAN SHROPSHIRE: So the motion  
20 wouldn't be to initiate joint rulemaking, it's  
21 just to initiate rulemaking on the portions that  
22 we have purview?

23 MR. LIVERS: Correct, and then we would  
24 work to coordinate the timing on the public  
25 comment process and the hearing.

1 MR. RUSSELL: This is Joe again, Robin.  
2 We've done this a couple times, and in times past,  
3 we saw the whole revision, and not just the Board  
4 side of it. But this has worked well in the past.  
5 We've done several of these where the Board has  
6 some rulemaking authority and the Department has  
7 some.

8 CHAIRMAN SHROPSHIRE: Any other  
9 discussion?

10 (No response)

11 CHAIRMAN SHROPSHIRE: Any comments from  
12 the public?

13 (No response)

14 CHAIRMAN SHROPSHIRE: I'm going to  
15 attempt to frame a motion for somebody to move.  
16 I'll use this as a draft here because I'm not  
17 entirely sure that this is correct. So the motion  
18 that I guess would propose is to initiate  
19 rulemaking to amend the sewage system  
20 requirements, subdivision rules, and onsite --  
21 hold on. Let me go back.

22 Katherine, are you available to do this?

23 MS. ORR: Yes.

24 CHAIRMAN SHROPSHIRE: To be the Hearing  
25 Examiner?



1 MS. ORR: Yes.

2 CHAIRMAN SHROPSHIRE: -- to appoint  
3 Katherine as the permanent Hearings Examiner, and  
4 to initiate rulemaking to amend sewage system  
5 requirements, subdivision rules, and onsite  
6 subsurface water rules. Does that sound right?  
7 Did I forget anything?

8 MS. KINGERY: And the public water  
9 rules.

10 CHAIRMAN SHROPSHIRE: Okay. Thank you.

11 MR. RUSSELL: I was just looking at the  
12 dates, and I'm guessing those are acceptable to  
13 the Department, too, right?

14 CHAIRMAN SHROPSHIRE: Can you elaborate  
15 on that? Do you understand his question?

16 MR. RUSSELL: Like the dates for the  
17 comment period.

18 MR. LIVERS: Yes, the Department can  
19 coordinate those dates.

20 CHAIRMAN SHROPSHIRE: So are you okay,  
21 Joe? Any more questions, comments?

22 (No response)

23 CHAIRMAN SHROPSHIRE: I'll entertain a  
24 motion to appoint Katherine as the permanent  
25 Hearing Examiner, and to initiate rulemaking to

1 amend the sewage system requirements, subdivision  
2 rules, onsite surface wastewater and public water  
3 rules.

4 MS. KAISER: I will move.

5 CHAIRMAN SHROPSHIRE: It's been moved by  
6 Heidi.

7 MR. MIRES: Second.

8 CHAIRMAN SHROPSHIRE: Seconded by Larry.  
9 Any further discussion?

10 (No response)

11 CHAIRMAN SHROPSHIRE: All those in  
12 favor, signify by saying aye.

13 (Response)

14 CHAIRMAN SHROPSHIRE: Opposed.

15 (No response)

16 CHAIRMAN SHROPSHIRE: Motion carries  
17 unanimously. Thanks, Barb.

18 MR. LIVERS: The next action item, pinch  
19 hitting for Bob Smith will be Ed Coleman.

20 MR. COLEMAN: Madam Chair, members of  
21 the Board, my name is Ed Coleman, and I'm the  
22 Bureau Chief over the Department's Coal and  
23 Uranium Program. I'm requesting the adoption of  
24 the proposed amendment to the rules that implement  
25 Montana's Strip and Underground Mine Reclamation

1 Act.

2 As proposed, the rulemaking includes  
3 modifications to ARM Title 17, Chapter 24,  
4 Subchapter 9, which are the rules under which the  
5 Department regulates in situ coal and uranium  
6 mining. The initial rulemaking was required by  
7 Senate Bill 292 of the 2011 legislative session,  
8 which required the Board to adopt rules necessary  
9 to regulate underground mining using in situ coal  
10 gasification by October 1st, 2011, which we  
11 successfully accomplished. The bill also stated  
12 that the rule regulating in situ coal gasification  
13 may not be more stringent than the comparable  
14 federal regulations or guidelines.

15 Prior to the passage of Senate Bill 292,  
16 two rules existed specifically regulating in situ  
17 coal gasification. ARM 17.24.902 provides permit  
18 application requirements, and ARM 17.24.903  
19 provides general performance standards for in situ  
20 coal gasification. Both of these rules provide  
21 that appropriate provisions of Subchapters 3  
22 through 8, and 10 through 13, are applicable to in  
23 situ coal permit applications and operations. ARM  
24 17.24.902 and 903 are substantially similar to  
25 comparable federal regulations which are contained

1 in 30 CFR 785.2(2), and 30 CFR Part 828.

2 Following the passage of Senate Bill  
3 292, the Department has reviewed Subchapters 3  
4 through 8, and 10 through 13, to identify which  
5 rules within those subchapters apply to in situ  
6 operations. The Department determined that most  
7 rules would apply to those operations. Rather  
8 than adopting rules that duplicate existing rules,  
9 the Department recommended and the Board adopted a  
10 rule ARM 17.24.905 which lists those rules that  
11 would never apply to in situ operations.

12 However, during its review of the  
13 adopted rules, the Office of Surface Mining, which  
14 is our federal counterpart, determined that ARM  
15 17.24.905(1)(b), which eliminates ARM 17.24.320,  
16 which is the plans for disposal of excess soil,  
17 was less stringent than the federal law which  
18 currently requires applications for in situ coal  
19 mining to include plans for disposal of excess  
20 soil.

21 This rulemaking is a housekeeping effort  
22 to conform application requirements for in situ  
23 coal operations to federal law, thereby responding  
24 to OSM's concerns. Because there were no public  
25 comments made during the comment period, the

1 Department recommends that the Board adopt the  
2 proposed rule change. Thank you for your time.  
3 I'm available if you have any questions.

4 CHAIRMAN SHROPSHIRE: Thanks, Ed. Any  
5 questions from the Board?

6 (No response)

7 CHAIRMAN SHROPSHIRE: I'll entertain a  
8 motion to adopt the amendment of ARM 17.24.905 as  
9 set forth in the attached draft notice of  
10 amendment.

11 MS. MILES: So moved. This is Joan.

12 CHAIRMAN SHROPSHIRE: It's been moved by  
13 Joan. Do I have a second?

14 MR. RUSSELL: You may need to adopt the  
15 311 and 521 analysis. Is there a 521 in this one?

16 CHAIRMAN SHROPSHIRE: Can I change that?  
17 So it's a motion to adopt the amendment and the  
18 attached enclosures. Joe, one of the enclosures  
19 is the 311 checklist.

20 MR. LIVERS: Madam Chair, on this one  
21 there is a 311 analysis, but not a 521. So it  
22 would be adopting the 311 analysis.

23 CHAIRMAN SHROPSHIRE: So it would be to  
24 adopt the amendment and the 311 analysis. So it  
25 has been moved by Joan. Are you okay with that?

1 MS. MILES: Yes, that's fine. However  
2 you need to word that properly.

3 CHAIRMAN SHROPSHIRE: Was that Joan or  
4 Heidi?

5 MS. MILES: That was Joan.

6 CHAIRMAN SHROPSHIRE: All right. So it  
7 has been moved by Joan. Do I have a second?

8 MR. RUSSELL: I'll second that. This is  
9 Joe.

10 CHAIRMAN SHROPSHIRE: Seconded by Joe.

11 MS. KAISER: Robin, this is Heidi. I  
12 need to recuse myself from participating in taking  
13 action on this issue.

14 CHAIRMAN SHROPSHIRE: Thanks, Heidi.  
15 Any public comment?

16 (No response)

17 CHAIRMAN SHROPSHIRE: All those in  
18 favor, signify by saying aye.

19 (Response)

20 CHAIRMAN SHROPSHIRE: Opposed.

21 (No response)

22 CHAIRMAN SHROPSHIRE: Motion carries.  
23 Here is a question. Does it carry unanimously if  
24 Heidi recuses herself? Is that still unanimous?

25 MS. ORR: I would say yes.

1                   CHAIRMAN SHROPSHIRE: Motion carries  
2 unanimously.

3                   MR. LIVERS: The second to the last one  
4 will be adoption of rule for limited opencut  
5 operations following some statute changes. We  
6 have Chris Cronin from our Opencut Program.

7                   MR. CRONIN: Good morning, Madam Chair,  
8 members of the Board. My name is Chris Cronin,  
9 and I'm the supervisor of the Department's Opencut  
10 Mining Program.

11                   Today I'm requesting the adoption of New  
12 Rule I with one noncontroversial wording change.  
13 This rule pertains to the administrative  
14 requirements and procedures for limited opencut  
15 operations. If adopted, the new rule will be  
16 added at ARM Title 17, Chapter 24, Subchapter 2,  
17 which are the rules under which the Department  
18 regulates opencut mining of sand, gravel, scoria,  
19 soil, clay, bentonite, and peat.

20                   The new rule is necessary to implement  
21 the provisions for limited opencut operations in  
22 Section 5 of Senate Bill 332, which was approved  
23 during the 2013 session, and is now codified in  
24 82-4-431, Subchapter 2, MCA.

25                   Under the 2013 Act Revisions, an

1 operator who holds an opencut mining permit may  
2 conduct a limited opencut operation without  
3 obtaining an additional permit or amending an  
4 existing permit if the criteria in 82-4-431,  
5 Subchapter 2, MCA are met.

6 To do so, the operator must submit  
7 appropriate site and operation information on a  
8 form provided by the Department. New Rule I would  
9 clarify the procedure for submitting the site and  
10 operation information to the Department, the time  
11 limits for reclamation of a limited opencut site,  
12 and the time limits for submittal of an  
13 application to continue or expand a limited  
14 opencut operation.

15 Finally, New Rule I provides that 10,000  
16 cubic yard limitation for limited opencut  
17 operation does not include the volume of soil and  
18 overburden that is stripped and stockpiled on the  
19 site for reclamation purposes. This clarification  
20 is needed to uphold the intent of a limited  
21 opencut operation, which is to allow operators to  
22 conduct smaller, short term projects, without  
23 having to complete the full opencut permitting  
24 process.

25 The new rule was proposed in the Montana



1 Administrative Register as Notice 17-351. No  
2 hearing was held, and no public comments were  
3 received. The Department submitted one  
4 noncontroversial wording change, and emailed it to  
5 the opencut stakeholder group.

6 Receiving no objection, the Department  
7 proposes to strike the words "required by" and  
8 replace them with "acceptable to" in Paragraph  
9 2(b) of the rule. This change would make uniform  
10 the language used in Paragraphs 2(b) and (2)(d)  
11 regarding the format of location information  
12 provided to the Department. It would not alter  
13 the meaning of the rule. The resulting consistent  
14 use of the term "acceptable to" in the rule will  
15 avoid confusion, and allow more flexibility in the  
16 event of future changes in computer technology.

17 New Rule I sets forth administrative  
18 procedures necessary to implement Section 5 of  
19 Senate Bill 332, and the Department believes that  
20 the adoption of New Rule I with the one  
21 noncontroversial wording change directly supports  
22 the intent of the 2013 act revisions.

23 Thank you for considering this request.  
24 I'd be happy to answer any questions.

25 CHAIRMAN SHROPSHIRE: Any questions from

1 the Board?

2 (No response)

3 CHAIRMAN SHROPSHIRE: All right. I have  
4 a question. The public comment, where is that  
5 supposed to -- where is that supposed to be asked  
6 properly?

7 MR. LIVERS: Madam Chair, the public  
8 comment just has to happen before the final action  
9 is taken. So it could happen before or after the  
10 motion is made.

11 CHAIRMAN SHROPSHIRE: Does it matter?

12 MR. LIVERS: I don't think it matters.  
13 It's just required to happen before the vote is  
14 taken.

15 CHAIRMAN SHROPSHIRE: So I could ask for  
16 it now?

17 MR. LIVERS: Yes.

18 CHAIRMAN SHROPSHIRE: Is there any  
19 public comment?

20 (No response)

21 CHAIRMAN SHROPSHIRE: There was a 311  
22 analysis done on this, but not a 521?

23 MR. LIVERS: Correct.

24 CHAIRMAN SHROPSHIRE: I just wanted to  
25 clarify that. I will entertain a motion to adopt

1 New Rule I as set forth in the attached notice of  
2 adoption, and incorporate the 311 checklist.

3 MS. KAISER: So moved. This is Heidi.

4 CHAIRMAN SHROPSHIRE: It's been moved by  
5 Heidi.

6 MR. MIRES: Seconded.

7 CHAIRMAN SHROPSHIRE: Seconded by Larry.  
8 Any discussion?

9 (No response)

10 CHAIRMAN SHROPSHIRE: All those in  
11 favor, signify by saying aye.

12 (Response)

13 CHAIRMAN SHROPSHIRE: Opposed.

14 (No response)

15 CHAIRMAN SHROPSHIRE: Thank you. Motion  
16 carries unanimously. Moving on.

17 MR. LIVERS: Now we're at final action  
18 on rulemaking for Temporary Water Quality  
19 Standards, New World Mining District, Eric Urban.

20 MR. URBAN: Good morning, Madam Chair,  
21 members of the Board. My name is Eric Urban. I'm  
22 the Program Manager for the Department's Water  
23 Quality Standards Section.

24 On January 21st, the Board initiated  
25 rulemaking to amend the Temporary Water Quality

1 Standards for the streams associated with the New  
2 World Mining District. On February 20th,  
3 Katherine Orr conducted a public hearing on those  
4 proposed amendments. The proposed amendments  
5 modify the effective time frame for the temporary  
6 water quality standards. This time frame is set  
7 to expire on June 4th of this year. The proposed  
8 amendment extends the temporary standards to June  
9 4th, 2019.

10 A single comment was received during the  
11 comment period, and it was in favor of the  
12 proposed amendments. So to keep it brief, I would  
13 propose -- the Department recommends adoption as  
14 proposed in the MAR Notice 17-352. So if there is  
15 any questions.

16 CHAIRMAN SHROPSHIRE: Any questions?

17 (No response)

18 CHAIRMAN SHROPSHIRE: Any public  
19 comment?

20 (No response)

21 CHAIRMAN SHROPSHIRE: So I will  
22 entertain a motion for the Board to adopt the  
23 proposed amendments to Title 17, Chapter 30,  
24 Subchapter 6, Temporary Water Quality Standards  
25 for the New World Mining District as noticed in

1 MAR 17-352, and also adopt the 521 and 311  
2 notices, checklists.

3 MR. RUSSELL: Robin, you also have a  
4 Hearing Examiner report that we received this  
5 morning.

6 CHAIRMAN SHROPSHIRE: Thanks, Joe. And  
7 adopt the Hearing Examiner report.

8 MR. MIRES: So moved.

9 CHAIRMAN SHROPSHIRE: It's been moved by  
10 Larry.

11 MR. RUSSELL: Seconded by Joe.

12 CHAIRMAN SHROPSHIRE: Seconded by Joe.  
13 Any other questions, comments?

14 (No response)

15 CHAIRMAN SHROPSHIRE: All those in  
16 favor, signify by saying aye.

17 (Response)

18 CHAIRMAN SHROPSHIRE: Opposed.

19 (No response)

20 CHAIRMAN SHROPSHIRE: Motion carries  
21 unanimously. The next item on the agenda is final  
22 action on contested cases. Tom.

23 MR. LIVERS: Madam Chair, members of the  
24 Board, this settlement was reached under Rule  
25 41(a) of the Rules of Civil Procedure, so the

1 Board does not have authority to condition the  
2 settlement terms. So I wanted to make that clear.  
3 But given the fact that there was a lot of  
4 interest here, the Board had opted to hear these  
5 cases itself, we wanted to give a little bit of a  
6 briefing, both procedurally what occurred, and  
7 then technically what the significant pieces of  
8 the settlement are. So with that, I'd like to  
9 turn it over to our attorney, Norman Mullen, who  
10 is DEQ's attorney on these two cases.

11 MR. MULLEN: Good morning, Madam Chair,  
12 members of the Board. My name is Norm Mullen,  
13 staff attorney for the Department of Environmental  
14 Quality. My main area of responsibility is air  
15 quality. I represent the Department on the  
16 contested cases that are now being addressed, and  
17 I'd like to address both of the cases for brevity  
18 hopefully. The settlements are very similar, and  
19 the process and the mediation that took place were  
20 basically joint, so I'd like to cover both BER  
21 2013-01-AQ and 2013-02-AQ together.

22 I'll focus on the legal aspects of the  
23 cases that led to the parties stipulating to  
24 dismiss the appeals with that stipulation and a  
25 proposed order before the Board now. Dave Klemp,

1 the Air Resource Management Bureau Chief, is here  
2 to talk about more of the substantive aspects and  
3 the implications of the settlement.

4 As the Board is aware, the appeals were  
5 bought by the Montana Environmental Information  
6 Center and the Sierra Club in January of 2013  
7 after the Department had issued an operating  
8 permit for each of the Colstrip and Corette  
9 facilities. The appeals challenged the  
10 Department's issuance of those permits for those  
11 electrical generating plants. The operating  
12 permits, as the Board is probably aware, are also  
13 referred to as Title V permits because that's the  
14 Federal title in the Clean Air Act that deals with  
15 operating permits.

16 The appeals challenged, among other  
17 things, how the permits disclosed certain federal  
18 requirements and adequacy of the frequency of  
19 particulate monitoring. The Board originally  
20 assigned the case to Hearing Examiner Orr for  
21 resolution of preliminary matters, but as Mr.  
22 Livers mentioned, the Board retained the case for  
23 itself, so the full Board would hear the  
24 evidentiary issues and eventually rule on the case  
25 after a contested case hearing, which is like a

1 trial.

2 After many months of discovery and  
3 motions, the civil procedure process which goes  
4 along with a contested case, three days of  
5 depositions, a full day almost of oral arguments  
6 before the Hearing Examiner, and significant work  
7 by the parties and the Hearing Examiner on motions  
8 and orders, the parties had reached agreement on  
9 many issues; some of the issues had dropped out  
10 because of stipulations to dismiss, or --  
11 generally many issues had dropped out on  
12 stipulations to dismiss because the parties  
13 resolved them. The Department, for instance,  
14 issued amended modified permits to address some of  
15 the issues raised.

16 So the only remaining issue had to do  
17 with the frequency of monitoring, and especially  
18 the parties had come very close, but still had  
19 issues on continuous monitoring for particulate  
20 matter at both facilities, and they disagreed on  
21 the technical aspects concerning calibration,  
22 correlation of the monitors to the particulate --  
23 because it is not a direct measurement, it has to  
24 be calibrated and correlated to give a  
25 relationship between opacity, which is what the



1 monitors look at, and particulate -- and also how  
2 the data from the monitoring would be obtained by  
3 the Department and released to the public.

4 Of course, once the Department obtains  
5 data, generally it is going to be open to the  
6 public through public records requests, so that is  
7 important to the environmental groups; and the  
8 other party, the company, wanted to make sure that  
9 it got to generate data that was necessary, but  
10 not have to give it out all the time, other than  
11 through normal processes.

12 A contested case hearing on both matters  
13 was scheduled after the Board meeting on January  
14 21st, and it was projected to last much of the  
15 week; but because the parties were close to  
16 agreement, they requested, and the Hearing  
17 Examiner ordered, that the hearing be postponed  
18 for mediation so that the parties could try to  
19 address these last issues on installation, and  
20 calibration, and data concerning the continuous  
21 monitors for particulate.

22 Mediation was held on February 12th of  
23 this year, and lasted about 15 hours. It went  
24 from 9:00 in the morning until midnight. And the  
25 parties signed a settlement agreement at the end

1 of the mediation to have continuous particulate  
2 monitors installed, calibrated, and operated as  
3 compliance assurance monitoring indicators, and  
4 have the Department request and receive data from  
5 PPL Montana at least quarterly.

6 The parties used that stipulation and  
7 drafted a proposed settlement agreement, and then  
8 drafted a stipulation to dismiss the contested  
9 cases before the Board. And part of the packet  
10 that was submitted to you includes the settlement  
11 agreements for each case, the stipulations to  
12 dismiss, and proposed orders for the Board for the  
13 Chair's signature.

14 So the parties request that the Board  
15 direct the Chair to sign the proposed orders, and  
16 Dave Klemp, as I mentioned, Chief of the  
17 Department's Air Resources Management Bureau, will  
18 talk about the settlement and its implications in  
19 more detail. If anyone has questions about what  
20 I've just mentioned, I'm available.

21 (No response)

22 MR. MULLEN: Thank you.

23 MR. KLEMP: Good morning, Madam Chair,  
24 members of the Board. For the record, my name is  
25 David Klemp, and as Norm mentioned, I'm the Bureau

1 Chief of the Air Resources Management Bureau. I  
2 did want to talk a little bit about the technical  
3 aspects of this settlement, and I'll try not to  
4 repeat some of the stuff that Norm went over.  
5 I'll hit it at a fairly high level, so certainly  
6 if there are any questions, I'd be more than happy  
7 to attempt an answer.

8 Before I explain some of this stuff, I  
9 do want to express that we're very excited about  
10 this settlement, not only because it is a  
11 settlement of a contested case in front of this  
12 Board of Environmental Review, but it also  
13 resolves two petitions that were filed to EPA  
14 against the two Title V permits that were issued,  
15 and that's really important.

16 The main reason is because of the  
17 commitments that are expressed in the settlement,  
18 and basically it is a commitment for PPL to  
19 install some monitors that will be correlated to  
20 measure particulate matter on a real time basis.  
21 And we certainly think that all of the parties --  
22 PPL, EarthJustice, Sierra Club, Montana  
23 Environmental Information Center, Norm Mullen,  
24 Julie Merkel of the Department --

25 Norm mentioned the amount of time that

1 they put into this, and I really want to thank  
2 them and commend them for their efforts, because  
3 in essence what we have is another indication that  
4 these facilities -- Colstrip Units 1 through 4, as  
5 well as the Corette facility -- will remain in  
6 compliance with their applicable requirements.

7 More specifically, as a result of this  
8 settlement, PPL has agreed to install these  
9 monitors on Units 1 and 3 within six months of the  
10 execution of this settlement, which was February  
11 12th, 2014, and within 12 months on Units 2 and 4.

12 The settlement for Corette is a little  
13 bit different. It depends on the operating status  
14 of Corette. They have agreed that within six  
15 months of April 15th, 2015 -- which is the  
16 compliance date for the mercury air toxic  
17 standard, the Federal EPA regulations -- so within  
18 six months of that, if that facility is  
19 operational, they will have those monitors  
20 installed at the Corette facility.

21 So as Norm kind of mentioned, these  
22 monitors for both of the facilities will serve as  
23 an additional indicator of compliance for the  
24 compliance assurance monitoring plan that is  
25 required under Title V of the Federal Clean Air

1 Act for these facilities.

2 The settlement also contains -- if  
3 you've read it -- the initial correlation  
4 requirements, as well as the ongoing correlation  
5 requirements. What we are going to do, as  
6 specified in the settlement, is amend the  
7 facilities' Title V permits to include the  
8 provisions of these settlements.

9 And really what this offers us as a  
10 Department, company, the public, is really some  
11 special insight into these monitors. We've been  
12 talking about particulate matter monitors for  
13 many, many years, and really don't know how viable  
14 these monitors are for a given facility. So this  
15 is the opportunity that I'm so excited about, is  
16 for us to see first hand really how these work,  
17 how valuable they may or may not be in the world  
18 of air quality, which as most of you know, is  
19 rapidly changing.

20 So one of the questions that we get most  
21 often is, "Now what? Does every facility in the  
22 state now need to put on a monitor and correlate  
23 it to particulate matter?," and the answer to that  
24 question is we don't know. We still need to  
25 learn. We still need to issue our Title V

1 permits, our preconstruction permits, in  
2 accordance with the regulations; we need to make  
3 demonstrations; we need to accept comment from the  
4 public and other groups on how well we've hit the  
5 mark.

6 And so we are going to look at this;  
7 we're going to apply what we learn to each and  
8 every facility Title V permit that will be issued.  
9 And Title V permits are a little different. They  
10 get issued every five years. And so there is  
11 opportunities for us to review the previous  
12 compliance demonstrations to ensure that they  
13 either remain adequate or become more adequate as  
14 we move forward issuing permits.

15 So I've kind of hit that at a very high  
16 level, and I didn't want to repeat everything that  
17 is in the settlement. I'm certainly available to  
18 attempt to provide an answer should the Board have  
19 any questions. Thank you.

20 CHAIRMAN SHROPSHIRE: I'll probably have  
21 a few questions, but do any Board members have  
22 questions?

23 (No response)

24 CHAIRMAN SHROPSHIRE: So in terms of the  
25 correlation you were talking about, can you

1 elaborate on the correlations that you'll be  
2 looking at? Does that clear it up?

3 MR. KLEMP: Yes, Madam Chair. I think  
4 so. And it specifies in the briefing. What I  
5 believe the Chair is talking about is Section 2,  
6 and I just have Colstrip's 2(c), and that  
7 basically the facility is going to install the  
8 monitors in accordance with the manufacturer's  
9 specifications.

10 And as Norm mentioned, these monitors --  
11 this is not like a sulphur dioxide monitor or a  
12 carbon monoxide. You don't calibrate these  
13 monitors and compare it against a set of  
14 standards. What this is is basically an opacity  
15 monitor, and they're installing an opacity  
16 monitor, and they're conducting a series of  
17 Reference Method 5, EPA Reference Method 5 source  
18 tests, and they're taking the value that they  
19 gather from that source test, and establishing a  
20 correlation between the opacity measurement and  
21 the particulate matter.

22 And some of the issues is how rigorous  
23 does that need to be, and you'll see that EPA  
24 Performance Specification 11 is not required, and  
25 basically what that required was 15 pairs, so 30

1 Reference Method 5 tests, to establish an initial  
2 correlation at various operating levels. And it  
3 is not nearly that robust. However, I do want to  
4 say for the ongoing calibration, it is going to be  
5 done on a quarterly basis.

6 So there is a series of initial  
7 correlations, as well as ongoing, so we will have  
8 data constantly added to the correlation between  
9 the monitor and the particulate matter standard.

10 CHAIRMAN SHROPSHIRE: So will that  
11 include start-up and shut-down?

12 MR. KLEMP: Madam Chair, I'm not sure  
13 that we would correlate a monitor for conditions  
14 under start-up and shut-down. I'm not sure unless  
15 you were in start-up or shut-down that you could  
16 actually establish a correlation that could be  
17 used. So I think that would be very difficult.

18 I do want to point out, Madam Chair,  
19 that start-up and shut-down does not provide an  
20 excuse or a reason not to be in compliance with  
21 the limits that apply.

22 CHAIRMAN SHROPSHIRE: I'm not as fluent  
23 in Method 5 as I probably should be. In terms of  
24 particulate, does that break it apart into 2.5,  
25 and how are the different particulates broken



1 apart in that? Do you look at PM2.5 separately  
2 from PM10, or is it total particulates?

3 MR. KLEMP: Madam Chair, Reference  
4 Method 5 is basically the filter catch, so that's  
5 what we call the front half, which should not have  
6 a lot of the smaller particulate. What you have  
7 with a lot of these facilities is particulate  
8 matter limits that go back 20, 30 years, and the  
9 PM10 standard came out in the late 1980's, and the  
10 PM2.5 standard came out in the late 1990s.

11 So the limitation that is on these  
12 facilities is the front half or the larger  
13 particulate. They do not have a separate PM2.5 or  
14 PM10 limits. So the Reference Method 5 is used  
15 for larger particulate.

16 CHAIRMAN SHROPSHIRE: Any other  
17 questions?

18 MS. KAISER: Robin, this is Heidi again.  
19 I also need to recuse myself on this matter, and  
20 actually the next one on the agenda also.

21 CHAIRMAN SHROPSHIRE: Thanks, Heidi. So  
22 I have in front of me an order to dismiss this  
23 case with prejudice, or just dismiss the case?

24 MS. ORR: Madam Chair, I think the  
25 wording of the dismissal would be that it would be

1 with prejudice.

2 CHAIRMAN SHROPSHIRE: So I would  
3 entertain a motion to authorize the Board Chair to  
4 sign the order.

5 MS. MILES: This is Joan. I'll move  
6 that.

7 CHAIRMAN SHROPSHIRE: It's been moved by  
8 Joan.

9 MR. RUSSELL: I'll second that.

10 CHAIRMAN SHROPSHIRE: Seconded by Joe.  
11 All those in favor, signify by saying aye.

12 MS. MILES: Discussion?

13 (Response)

14 CHAIRMAN SHROPSHIRE: Maybe I was  
15 jumping ahead. I felt like I gave lots of  
16 opportunity for discussions. Any discussion?  
17 Joan, do you have any questions?

18 MS. MILES: I just want to say that I  
19 also commend and appreciate the parties for their  
20 work to bring this to a resolution, so I just  
21 wanted to put that on the record.

22 CHAIRMAN SHROPSHIRE: Thank you. All  
23 those in favor, signify by saying aye.

24 (Response)

25 CHAIRMAN SHROPSHIRE: Opposed.

1 (No response)

2 CHAIRMAN SHROPSHIRE: Motion carries  
3 unanimately.

4 We have another final action on a  
5 contested case, and is there going to be briefing  
6 on that?

7 MR. LIVERS: Madam Chair, the briefing  
8 covered both of the cases, but you'll need to take  
9 action on this.

10 CHAIRMAN SHROPSHIRE: So there is no  
11 more updates.

12 MR. LIVERS: Correct.

13 CHAIRMAN SHROPSHIRE: So I will  
14 entertain a motion to authorize the Board Chair to  
15 sign the order on the matter with prejudice.

16 MR. MIREs: So moved.

17 CHAIRMAN SHROPSHIRE: It's been moved by  
18 Larry.

19 MR. RUSSELL: I'll second it. Joe.

20 CHAIRMAN SHROPSHIRE: Second by Joe.  
21 Any discussion?

22 (No response)

23 CHAIRMAN SHROPSHIRE: Hearing none, all  
24 those in favor, signify by saying aye.

25 (Response)

1 CHAIRMAN SHROPSHIRE: Opposed.

2 (No response)

3 CHAIRMAN SHROPSHIRE: Motion carries  
4 unanimately.

5 I think that we're on to the general  
6 public comment. Any member of the audience or on  
7 the phone care to discuss anything or comment to  
8 the Board?

9 (No response)

10 CHAIRMAN SHROPSHIRE: Hearing none, I  
11 guess I'll entertain a motion to adjourn.

12 MR. MIRES: So moved.

13 CHAIRMAN SHROPSHIRE: It's been moved by  
14 Larry.

15 MS. MILES: Second by Joan.

16 CHAIRMAN SHROPSHIRE: Seconded by Joan.  
17 All those in favor, signify by saying aye.

18 (Response)

19 CHAIRMAN SHROPSHIRE: Motion carries  
20 unanimately.

21 (The proceedings were concluded  
22 at 10:58 a.m. )

23 \* \* \* \* \*

24

25

C E R T I F I C A T E

STATE OF MONTANA )

: SS.

COUNTY OF LEWIS & CLARK )

I, LAURIE CRUTCHER, RPR, Court Reporter,  
Notary Public in and for the County of Lewis &  
Clark, State of Montana, do hereby certify:

That the proceedings were taken before me at  
the time and place herein named; that the  
proceedings were reported by me in shorthand and  
transcribed using computer-aided transcription,  
and that the foregoing - 77 - pages contain a true  
record of the proceedings to the best of my  
ability.

IN WITNESS WHEREOF, I have hereunto set my  
hand and affixed my notarial seal  
this                      day of                      , 2014.

LAURIE CRUTCHER, RPR  
Court Reporter - Notary Public  
My commission expires  
March 12, 2016.