

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

BOARD MEETING )  
JULY 27, 2012 )

TRANSCRIPT OF PROCEEDINGS

Heard at Room 111 of the Metcalf Building  
1520 East Sixth Avenue  
Helena, Montana  
July 27, 2012  
9:21 a.m.

BEFORE CHAIRMAN JOSEPH RUSSELL,  
BOARD MEMBERS LARRY MIRES, HEIDI KAISER,  
ROBIN SHROPSHIRE, JOE WHALEN, and MARVIN MILLER

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

3                           \* \* \* \* \*

4           CHAIRMAN RUSSELL: All right. Thanks,  
5 Katherine, and thanks for your reading of the  
6 preamble into the record. I always love to hear  
7 that.

8           The next item on the agenda is review  
9 and approval of the minutes of May 18th, 2012  
10 Board meeting.

11           MR. MILLER: I so move.

12           CHAIRMAN RUSSELL: It's been moved to  
13 adopt those minutes. Is there a second?

14           MR. WHALEN: I'll second that motion.

15           CHAIRMAN RUSSELL: It's been moved and  
16 seconded. Any further discussion?

17           (No response)

18           CHAIRMAN RUSSELL: Hearing none, all  
19 those in favor, signify by saying aye.

20           (Response)

21           CHAIRMAN RUSSELL: Opposed.

22           (No response)

23           CHAIRMAN RUSSELL: Motion carries  
24 unanimously.

25           The next item on the agenda is to set

1 the November/December meeting date. Tom.

2 MR. LIVERS: Thank you, Mr. Chairman.  
3 For the record, I'm Tom Livers, Deputy Director at  
4 DEQ.

5 It was the Board's preference when we  
6 set the meeting schedule to hold off on this last  
7 meeting until it got a little further into the  
8 year, and people had a better sense of their  
9 schedules. I would say it is not limited to the  
10 two dates, but the real choice comes down to  
11 either the last Friday in November -- which is  
12 November 30th, it would be the week after  
13 Thanksgiving -- or the first Friday in December,  
14 December 7th.

15 Obviously we're not wed to having it on  
16 a Friday, but that is the tradition, so these  
17 would be the likely candidates. The Department  
18 probably has a slight preference for the later  
19 date, December 7th. It just gives a little more  
20 time for initiating or proposing to initiate three  
21 rules this meeting, and likely they would be  
22 adopted at the December meeting. It gives a  
23 little more time for scheduling all the  
24 activities, the comments, response. But certainly  
25 if the Board had a preference for the November

1 30th date, we could easily make that work as  
2 well.

3 MR. WHALEN: No conflicts.

4 CHAIRMAN RUSSELL: All right. Heidi.

5 MS. KAISER: I would prefer the 7th.

6 CHAIRMAN RUSSELL: Well, only because  
7 you prefer the 7th, I would prefer the 7th also.  
8 So unless there is any conflicts that draw from  
9 that, let's just go ahead and use the 7th as our  
10 proposed meeting date, and then we'll find out --  
11 If there are any, if we get a little further out  
12 and there is some conflicts, we can certainly move  
13 that around with proper notification.

14 MR. LIVERS: Thank you.

15 CHAIRMAN RUSSELL: The next item on the  
16 agenda is the contested case updates. Katherine.

17 MS. ORR: Mr. Chairman, members of the  
18 Board, I will just go over on the agenda things  
19 that have changed since the formation of the  
20 agenda.

21 On Item III(A)(1)(a), in the matter of  
22 violations of the Montana Septage Disposal and  
23 licensure laws by James Vaughn, doing business as  
24 Any Time Septic and Port-a-Potty, Lake County,  
25 there was a status conference on July 24th earlier

1 this week, and the stay of proceedings was lifted,  
2 and there has been a hearing set for November  
3 14th.

4 On the next item, involving Lolo Hot  
5 Springs, this item has been settled.

6 On Item III(A)(1)(e), which is on the  
7 back of the page, in the matter of violations of  
8 the Open Cut Mining Act by the City of Ronan at  
9 Ronan, Lake County, BER 2011-23, this appears to  
10 be settling as well.

11 And the next item on the agenda  
12 involving Roseburg Forest Products Company is also  
13 settling.

14 The next item in the matter of  
15 violations of the Open Cut Mining Act by Brad  
16 Blakeman at the Camas Prairie Gravel Pit, Sanders  
17 County, this was a matter reserved to the Board,  
18 and it appears to be going to hearing, and that  
19 will be for the September meeting. It is a little  
20 hard to tell how many witnesses there will be  
21 since our prehearing conference is September 4th,  
22 but that could take half a day to a full day. I  
23 just wanted to let you know.

24 And then the next item, which is in the  
25 matter of violations of the Montana Underground

1 Storage Tank Act by Jeanny Hlavka -- which as you  
2 may know has gone to District Court, and now is  
3 back from District Court -- there was a motion for  
4 summary judgment filed which is on your agenda  
5 item, but also now there has been a response to  
6 the second summary judgment motion that was filed  
7 on July 23rd, and a reply brief in support of the  
8 Department's motion was received on July 26th, so  
9 that will soon be deemed submitted, and I'll be  
10 ruling on that.

11 That's all I have for that portion of  
12 the agenda.

13 CHAIRMAN RUSSELL: All right. Thank  
14 you. The next item on the agenda is initiation of  
15 rulemaking, and the first one up is to amend rules  
16 governing the Montana Pollution Discharge  
17 Elimination System permit program in Title 17.30  
18 Subchapter 13. Tom.

19 MR. LIVERS: Thank you, Mr. Chairman.  
20 Tom Reid from our Water Protection Bureau within  
21 Permitting and Compliance Division will present  
22 this initiation.

23 MR. REID: Mr. Chairman and members of  
24 the Board. Good morning. My name is Tom Reid,  
25 and I work in the Permitting and Compliance

1 Division, Water Protection Bureau.

2 Today we are requesting that the Board  
3 initiate rulemaking to amend Title 13, Chapter 30,  
4 Subchapter 13, and appoint a Hearing Examiner to  
5 conduct a hearing on these rules.

6 Subchapter 13, along with 11, 12, and  
7 14, constitute the Montana Pollutant Discharge  
8 Elimination System, or MPDES program. These rules  
9 govern the discharge of pollutants to State  
10 surface water, exclusive of the Federal and Indian  
11 reservations within the State of Montana.

12 The primary reason for these amendments  
13 are to update new rules, or update the rules in  
14 order to maintain consistency with equivalent  
15 Federal rules. We are also proposing to repeal a  
16 rule which is considered not necessary, and is in  
17 an obsolete format. It's an incorporation by  
18 reference. I'll talk about that in a minute.

19 This rulemaking does not result from or  
20 implement any new statute or Federal or State  
21 statute. I will give a brief summary of the  
22 proposed amendments, and would be happy to answer  
23 questions as we go along.

24 First you will notice a lot of  
25 reformatting in these rules. These rules, some of

1 these rules haven't been amended in probably a  
2 decade or more, and the Secretary of State has  
3 changed the format, so we are forced to format,  
4 reformat these, and renumber in many cases,  
5 eliminate double earmarks, and gender biases.  
6 These were masculine rules, and in some areas they  
7 referred to "he," so we've tried to clean those  
8 up, and a lot of that is just formatting issues.

9           The first rule, which begins on Page 1,  
10 is just Definitions, 1304, and we're updating  
11 these definitions just to define technical terms  
12 that are used in this subchapter, Subchapter 13,  
13 and make them consistent with definitions in  
14 Subchapter 12, which we just updated last year,  
15 and the Board adopted new rules updating  
16 Subchapter 12, and Subchapters 11 and 14 in the  
17 Montana Water Quality Act, and the Federal rules.  
18 So we've got a lot of definitions to balance  
19 there.

20           The next rule begins on Page 3, which  
21 are permit exclusions, and 1310 lists a number of  
22 activities that may discharge a pollutant, but are  
23 not required to obtain an MPDES permit.

24           And the one exclusion that we're adding,  
25 to be consistent with the Federal regulation and



1 the Federal Courts, is to clarify that a discharge  
2 -- or a water transfer, which is basically a  
3 transfer from one water body to another water body  
4 -- does not require an MPDES permit, provided that  
5 there are no pollutants that are introduced as a  
6 result of that transfer; but if you were to take  
7 water from one basin, and direct it over into  
8 another basin, and no pollutants were added, then  
9 that does not require an MPDES permit.

10 The statute currently exempts  
11 groundwater which is discharged to surface water  
12 from permit requirements.

13 The next rule is really the bulk of this  
14 package, and it begins on the next page, Page 4,  
15 which is 17.30.1322. 1322 describes application  
16 requirements for all of the application  
17 requirement -- all of the facilities that we  
18 permit. And I'd like point out this is for  
19 individual discharge permits. This will not  
20 affect notice of intents that are part of a  
21 general permit. So these are for individual  
22 permits, like the City of Helena has an individual  
23 wastewater permit.

24 We have seven different formats and six  
25 different categories of MPDES permits. This

1 subchapter also contains variance requirements for  
2 facilities to apply for variances mainly under the  
3 Federal Clean Water Act where those variances in  
4 still in effect.

5 We are removing some application  
6 requirements or variances and time extensions that  
7 were given under the Federal Clean Water Act back  
8 in 1972 and 1977. Those allow facilities three  
9 years to request variances for time frames to  
10 build water treatment plants when the initial  
11 Federal statute went into effect. This is  
12 consistent with the Federal regulations. EPA  
13 dropped those several years ago.

14 1322, this rule also contains  
15 application requirements for cooling water intake  
16 structures, which were part of the amendments to  
17 Subchapter 12. So facilities that had a discharge  
18 of industrial waste, say PPL, cooling water, they  
19 take water in, and they'd also discharge water, so  
20 those facilities that have cooling water intake  
21 structures are also subject to application  
22 requirements in this section.

23 These application requirements specify  
24 what information is to be submitted and what  
25 material is -- and when the material is received

1 by the Department, an application determined  
2 complete. We can't begin processing an  
3 application until all these requirements have been  
4 submitted.

5 I'd like to point out that we have one  
6 area where we differ from the Federal regulation,  
7 is that we have included a requirement for new  
8 dischargers to provide estimates or information on  
9 effluent characteristics that would affect water  
10 quality standards for which the Board has adopted  
11 standards, but the Federal regulations do not  
12 include those standards. An example would be EC  
13 and SAR.

14 Our application forms, primarily -- the  
15 Federal Clean Water Act primarily focuses on  
16 priority pollutants, conventional,  
17 non-conventional, and toxic pollutants, and those  
18 are the ones that fall under MPDES rules. But  
19 when a new application comes in for -- I'll just  
20 use coal bed methane because it's been in front of  
21 the Board before, and the Board has adopted  
22 standards -- we had no actual authority to request  
23 that information, so we're putting those  
24 provisions in this rule, in 1322.

25 Finally, towards the end there on Page

1 31, we are requesting that the Board repeal 1303,  
2 which is a rather bulky table that contains cross  
3 references between Federal rule and State rule.  
4 This format is obsolete, and it contains  
5 references to 47 different Federal rules and  
6 statutes, including the Endangered Species Act,  
7 and other things that we do not need to  
8 incorporate into our State MPDES regulations.

9           So rather than try to clean up this  
10 table, we're proposing that it be repealed, and  
11 that as each rule that adopts Federal regulations,  
12 we'll adopt those Federal regulations within that  
13 rule, so it becomes clearer how these rules are  
14 applied within the State MPDES program.

15           In closing, I would mention that these  
16 rules went to WPCAC, the Water Pollution Control  
17 Advisory Council, on June 29th, and they were also  
18 mailed out to stakeholders on June 22nd. WPCAC  
19 supported the rulemaking in the format as they  
20 were proposed before you today, and we haven't had  
21 a lot of interest so far from stakeholders,  
22 because I would categorize these rules primarily  
23 as administrative rules.

24           With that, I would be happy to answer  
25 any questions.

1           CHAIRMAN RUSSELL: Tom, I just ran  
2 across this, and this may have a good reason. But  
3 in the exemptions, do you exempt silvicultural  
4 activities for nonpoint sources? Would there be a  
5 point source for a silvicultural activity?

6           MR. REID: Mr. Chairman, yes,  
7 silvicultural activities such -- there is, and  
8 there is a definition in the Federal rule. There  
9 are Federal effluent guidelines for certain  
10 logging -- The difference between point and  
11 nonpoint source.

12           It's like a CAFO. Log washing areas,  
13 especially up in Alaska where they do store and  
14 wash logs, those are point sources. Those are  
15 defined as point sources.

16           I believe that definition is in the  
17 current rule. Yes. Silvicultural point sources  
18 are defined in 1304, the current rule, 1304-56.  
19 And I can read it if you'd like.

20           CHAIRMAN RUSSELL: No. I ran across it  
21 in the permit application. It came across here,  
22 and then it's exempt as a nonpoint source, and I  
23 didn't know there were activities, silvicultural  
24 activities that were actually considered point  
25 sources.

1 MR. REID: This rule refers to log  
2 sorting or log storage facilities, not logging  
3 operations. I know that's controversial right now  
4 in terms of storm water discharges from those  
5 areas.

6 CHAIRMAN RUSSELL: I know it is the  
7 sacred cow in Montana to exempt ag, and a lot of  
8 pollution comes from these sites, and we just  
9 ignore it. Well, we don't ignore it, we just  
10 don't do anything.

11 MR. REID: We don't regulate them, Mr.  
12 Chairman, under the MPDES program.

13 CHAIRMAN RUSSELL: All right. Anything  
14 for Tom? Joe.

15 MR. WHALEN: Thank you, Mr. Chairman. I  
16 don't know if you can hear me, Tom. The first  
17 question of probably three is: Is it correct to  
18 understand that all current dischargers will be  
19 renewing their permits under the proposed  
20 rulemaking within the next five years?

21 MR. REID: Mr. Chairman, Mr. Whalen,  
22 yes. MPDES permits can -- The length of an MPDES  
23 permit, all permits, even general permits, is  
24 capped at five years. So anybody renewing these  
25 in the next five years would be under these rules.

1           MR. WHALEN: Two follow-up, if I may,  
2 Mr. Chairman. The second question is: We're  
3 basically incorporating Federal rulemaking, not by  
4 reference, but by definition within this new  
5 rulemaking, correct?

6           MR. REID: Mr. Chairman, Mr. Whalen,  
7 that's correct.

8           MR. WHALEN: There is nothing extra in  
9 here beyond what is currently written in EPA rules  
10 with respect to measurement and monitoring  
11 requirements of MPDES permit holders?

12          MR. REID: Mr. Chairman, Mr. Whalen, the  
13 answer to that question is no, with the exception  
14 of what I just pointed out.

15          MR. WHALEN: EC and SAR.

16          MR. REID: Yes. Well, anywhere where  
17 the Board has adopted a water quality standard  
18 where we don't have those specifically picked up  
19 in the MPDES rules. The list of pollutants that  
20 are normally required in an MPDES permit are given  
21 in 40 CFR 122 Appendix "A" and "J," one for  
22 POTW's, and the other one for industrial  
23 facilities.

24                 So we incorporate those currently by  
25 reference, but those do not list EC and SAR. And

1 I used that as an example, and there may be other  
2 things, some groundwater pesticides that are not  
3 in the Federal rule. So that to me -- and we have  
4 looked at this thoroughly, both Legal and from a  
5 program perspective, and I don't see any. The  
6 intent was not to have anything that differs from  
7 the Federal rule.

8 MR. WHALEN: The final question is, Mr.  
9 Chairman: Putting yourself in the position of the  
10 director of a POTW, what does the Department  
11 anticipate in terms of changes, day-to-day  
12 management changes, in terms of measuring and  
13 monitoring of that treatment system as a result of  
14 this rulemaking? Staff requirements, the amount  
15 of reporting that needs to be done to the  
16 Department, expense, etc.

17 MR. REID: Mr. Chairman, Mr. Whalen, we  
18 don't expect any change in terms of the level of  
19 requirements. We're hoping to clarify what the  
20 existing regulations are. Each one of these  
21 subsections in 1322 speaks to a different type of  
22 wastewater discharge, so a facility may have three  
23 different forms that they would have to submit,  
24 one for non-processed wastewater, one for  
25 processed wastewater, and one for storm water.



1           And in the past we've incorporated some  
2 of these by reference. And in some areas like  
3 POTW's, we're silent. We didn't incorporate by  
4 reference, other than a little piece that was in  
5 effect back in 1999, that's what we picked up.

6           What I can say is that we've been using  
7 the same Federal form since 2000, and that would  
8 be Form 2(a) for POTW's, and that form isn't going  
9 to change one bit as a result of this rulemaking.

10           What we would like to do is, instead of  
11 using EPA forms, is change those forms so that  
12 they say "DEQ" on them, and we've thought it was  
13 best to clarify these application requirements  
14 before we made that update.

15           MR. WHALEN: Thank you, Mr. Reid. No  
16 further questions, Mr. Chairman.

17           CHAIRMAN RUSSELL: Any other questions?  
18 Robin.

19           MS. SHROPSHIRE: I had seen recently  
20 that EPA has delayed implementing the 316(b)  
21 updates, and I was curious if that impacted this  
22 rulemaking at all.

23           MR. REID: Mr. Chairman, Ms. Shropshire,  
24 no. They promulgated 316(b). 316(b) regulations  
25 have been in effect since I believe 1977, probably

1 1972. The original set of rules were challenged  
2 and thrown out; then EPA was sued because they  
3 didn't repromulgate new rules, and it's been a  
4 long sordid history.

5           The current rules -- The 316(b)  
6 requirements were thrown out for existing  
7 facilities, were invalidated; and so the Board  
8 adopted rules for cooling water intake structures  
9 -- which is 316(b) of the Federal Clean Water Act  
10 -- we only adopted those rules for new facilities  
11 which is concurrent with the Federal rule that  
12 requires that.

13           We have not specified in this  
14 application, or in this rule amendment, anything  
15 to do with existing cooling water intake  
16 structures, because that is a subject of Federal  
17 rulemaking. And so once they complete that  
18 rulemaking process, we will probably come back and  
19 amend those when that has been settled at the  
20 Federal level.

21           MS. SHROPSHIRE: Thank you.

22           CHAIRMAN RUSSELL: Other questions?

23           (No response)

24           CHAIRMAN RUSSELL: All right. Thanks,  
25 Tom. Before we take this up, is there anyone in

1 the audience that would like to speak to this  
2 matter before the Board takes this up?

3 (No response)

4 CHAIRMAN RUSSELL: Katherine, are you  
5 able to take care of this one?

6 MS. ORR: I am.

7 CHAIRMAN RUSSELL: All right. Good.  
8 With all that said, would anyone like to make a  
9 motion to initiate rulemaking to amend ARM 17,  
10 Chapter 30, Subchapter 13, and appoint a Hearings  
11 Examiner.

12 MS. SHROPSHIRE: So moved.

13 CHAIRMAN RUSSELL: It's been moved by  
14 Robin. Is there a second?

15 MS. KAISER: Second.

16 CHAIRMAN RUSSELL: Seconded by Heidi.  
17 Any further discussion?

18 (No response)

19 CHAIRMAN RUSSELL: Hearing none, all  
20 those in favor, signify by saying aye.

21 (Response)

22 CHAIRMAN RUSSELL: Opposed.

23 (No response)

24 CHAIRMAN RUSSELL: Motion carries  
25 unanimously.

1           The next item on the agenda is  
2     initiation of rulemaking where there is no  
3     existing rules. A new water quality rule would be  
4     adopted and incorporated by policy. Tom.  
5     Nutrient trading.

6           MR. LIVERS: Thank you, Mr. Chairman.  
7     This is for nutrient trading, and the initiation  
8     presentation will be by Todd Teegarden, who is  
9     Chief of our Technical and Financial Assistance  
10    Bureau, in our Planning and Prevention Assistance  
11    Division.

12           MR. TEEGARDEN: For the record, I'm Todd  
13    Teegarden, Chief of the Technical and Financial  
14    Assistance Planning Division, and I'm here to give  
15    a brief overview of DEQ nutrient trading policy  
16    that we presented a couple meetings ago as a  
17    briefing item, and now we'd like to request  
18    initiation of the rulemaking.

19           This policy has been in the making for a  
20    couple years, and it has taken a whole bunch of  
21    staff time, and we're proud of where it has come,  
22    the evolution of the document.

23           Just to recognize some of the staff, and  
24    quite a few are here today to help me answer  
25    questions if there is any at the end regarding

1 different aspects of this policy, because it does  
2 piece together a lot of different areas that the  
3 Department works on. And I'm Todd Teegarden;  
4 Jenny Chambers in the Permitting Division; Eric  
5 Regensburger, Planning Division; Mark Bostrom in  
6 the Planning Division; and Claudia Massman helped  
7 draft and finalize this, and now David Dennis is  
8 our legal contact for the policy.

9           Just a quick background. Trading is a  
10 market based approach to improve water quality.  
11 It's supported by EPA as a tool to meet TMDL load  
12 allocations, offset new and increased loads, or to  
13 comply with water quality based effluent limits  
14 for nutrients.

15           Just a point, too. EPA has their own  
16 draft policy. It came out in 2003, and there are  
17 about 30 different state programs throughout the  
18 country that have trading programs, and there is  
19 14 states that have their own programs, so we  
20 would be adding to the 14 if this is approved.

21           The biggest driver for trading is the  
22 cost associated with meeting load allocations or  
23 waste load allocations via TMDL's. Wastewater  
24 treatment plants are very cost effective to get to  
25 low levels of treatment. Oftentimes it is less

1 costly to look at the nonpoint source or the other  
2 aggregate loads in a watershed.

3           Here is an example from the Chesapeake.  
4 I threw this out. But it makes the point about  
5 what it would cost to do urban nitrogen protection  
6 practices. This is in the Chesapeake. Between  
7 280 and 2,600 pounds of nitrogen removed; whereas  
8 if you look at reducing agriculture, and it's  
9 \$1.70 to \$4.40. So orders of magnitude  
10 difference.

11           Just a quick summary of examples of load  
12 variations in the watersheds. I would like to  
13 point out that the chart on the left here is most  
14 common. Very few watersheds have the point source  
15 loads being the majority of the load. But this  
16 just shows you how you've got a natural load  
17 component, a point source or wastewater treatment  
18 pound load, and then a nonpoint source; which  
19 original TMDL's aggregated nonpoint sources loads,  
20 and they're getting much more I guess quantifiable  
21 into each point source, whether that be septic,  
22 or timber, or roads, or the airshed, and natural.  
23 So those load allocations are becoming more  
24 apparent in TMDL documents.

25           Who may participate in tradings? Point

1 sources via the MPDES permit; nonpoint sources;  
2 septic tanks; logging; agriculture; etc. I would  
3 mention storm water. It can be nonpoint source or  
4 point source, depending on the point source load;  
5 and then certainly third parties.

6 Trading programs come in a variety of  
7 different mechanisms. They can be directly point  
8 source/nonpoint sources; you can have brokers in  
9 the middle that help make the deals; you can have  
10 aggregators who were out there to make money and  
11 deal with points, and buy and sell. Throughout  
12 the country and the world, there is a lot of  
13 different mechanisms to make a trading program  
14 work.

15 Our policy. We decided to make it  
16 strictly just for nitrogen and phosphorus at this  
17 point. I would like to point out that the Water  
18 Quality Act does allow trading for other  
19 parameters -- TMDL's in MCA 75-5-703. Our point  
20 was to look at nitrogen and phosphorus, again,  
21 which has been a big effort from the Department  
22 via the nutrient numeric numbers that are being  
23 worked on through the nutrient work group, etc.

24 I would like to emphasize. This is a  
25 flexible, voluntary alternative for meeting

1 numeric nutrient criteria as referenced in Senate  
2 Bill 367.

3 We intended it to be a framework  
4 document, not a very lengthy or detailed document.  
5 We want to leave it open for workability within  
6 the watershed based on the needs, so we kept it,  
7 intentionally kept it pretty general.

8 And I want to emphasize that trading  
9 should occur within a watershed boundary, and  
10 upstream trading is preferred, and would be the  
11 majority of the trades, although we'll consider  
12 downstream, if they're close, and you don't have  
13 hot spots, etc.

14 Trading participants. The policy allows  
15 point source to point source trading, point  
16 source/nonpoint source, or nonpoint to nonpoint.

17 The stakeholders that we worked with  
18 throughout the evolution of this document really  
19 emphasized they wanted some examples and criteria  
20 on how we might define some nonpoint source loads,  
21 so what we did was: Load credits can be  
22 calculated, described in Appendix A or any other  
23 method that the applicant may want to use.

24 So we decided to make an Appendix A with  
25 two different sections, one being all best



1 management practices except septics, and we linked  
2 in what other states have -- Idaho, Oregon, Ohio.  
3 NRCS has trading ratio calculations, and so does  
4 EPA.

5 And then the second part of our appendix  
6 is the septic trading method, and we've included a  
7 trading model for nitrogen, phosphorus,  
8 attenuation factors for septic system dischargers  
9 to groundwater on a watershed scale.

10 And Eric Regensburger in the Department  
11 has been working on this for quite some time, and  
12 in modeling TMDL's has put together a pretty  
13 simplified watershed approach to looking at septic  
14 tanks, and what might be modeled, and what is  
15 actually getting to the stream in terms of  
16 nitrogen and phosphorus.

17 This is a quick summary of some of his  
18 work in different watersheds. You've got the  
19 Gallatin, Bitterroot, Little Blackfoot, Flint  
20 Creek, the Helena Planning Area, and a couple  
21 more. I would emphasize that the Helena Planning  
22 Area, which has 9,090 septic systems, Eric did  
23 this calculation, and you compute out the delivery  
24 ratio for nitrogen and phosphorus, add 2.1 or 8.3.

25 And our stakeholders were very pleased

1 when they saw some way of quantifying this without  
2 having to hire detailed consultants to pay a large  
3 amount of money to try to model what the delivery  
4 ratio might be.

5 And again, these are intended to be kind  
6 of watershed approach. We can look at a smaller  
7 footprint, again, with at least a certain amount,  
8 maybe 100 or more type of septic systems. And  
9 Eric is here to answer questions if you have  
10 questions later on that.

11 I had mentioned the public scoping.  
12 We've been doing that for a couple years. We  
13 created a nutrient trading subgroup from the  
14 nutrient work group that's been working on the  
15 nutrient criteria, and added other interested  
16 individuals and work groups.

17 We presented the trading policy to the  
18 nutrient work group a couple times. We held a two  
19 day nutrient trading policy workshop in April of  
20 2011. We had I believe six subgroup meetings and  
21 conference calls. We took informal comments, and  
22 edited two different versions of this draft on  
23 public comments. We created a link on the  
24 nutrient work group website to provide  
25 information.

1           And so I feel that we have got pretty  
2 good public input at this point from the folks  
3 that we know have been interested in nutrient  
4 trading.

5           With that, I would open it up to  
6 questions to myself or other folks in the  
7 Department.

8           CHAIRMAN RUSSELL: Thanks, Todd.  
9 Questions for the Department?

10           Just a quick one on -- Is it receiving  
11 water or watershed? How is this going to be  
12 applied? Everything that I do is based on an  
13 ongoing Flathead Lake TMDL with little reaches  
14 above there that could be a receiving water, so  
15 there is -- So how will this be applied? And then  
16 tell me the real magic of applying nitrogen to  
17 surface water from a septic system.

18           MR. TEEGARDEN: The intent of the  
19 program is to allow trading within a watershed or  
20 a stream segment. If you have an interested group  
21 that wants to look at how do we reduce loads  
22 within this stream reach, certainly participants  
23 within that area could get together and work out a  
24 trade. Again, the point sources in the area that  
25 would be involved certainly have a permit to the

1 receiving stream in the area, and that conditions  
2 of the trade would be in that specific permit.  
3 Did I answer that question?

4 CHAIRMAN RUSSELL: So it would be  
5 specific to the receiving water.

6 MR. TEEGARDEN: Mr. Chairman, yes.

7 CHAIRMAN RUSSELL: Although septic  
8 systems certainly could be a lot more nebulous in  
9 the whole concept of application of nutrient  
10 discharge from a septic system.

11 MR. TEEGARDEN: Mr. Chairman, yes.  
12 Certainly those are -- Depending on the area and  
13 the resource you're trying to evaluate, it could  
14 be pretty localized, or it could be an area like  
15 the City of Helena, which we looked at the entire  
16 watershed, which has a couple different streams,  
17 Ten Mile and Prickly Pear running into it.

18 CHAIRMAN RUSSELL: Further questions for  
19 the Department? Robin.

20 MS. SHROPSHIRE: On the air side in the  
21 trading programs, one of the issues is how do you  
22 measure the emissions, so that when you buy a ton  
23 of NOx, you know that it is accurate. And so I'm  
24 not sure I understand the -- if you were going to  
25 compare the air trading programs to this, how

1 you're ensuring that a pound of nitrogen is really  
2 a pound of nitrogen. Does that question make  
3 sense?

4 MR. TEEGARDEN: Mr. Chairman, Ms.  
5 Shropshire, I believe I can answer that.  
6 Depending on nitrogen or phosphorus -- pardon me.  
7 Would you repeat your question?

8 MS. SHROPSHIRE: I don't understand how  
9 it is being quantified, in the sense that -- Am I  
10 actually -- Can you verify that a pound of  
11 nitrogen equals a pound of nitrogen?

12 MR. TEEGARDEN: Mr. Chairman, Ms.  
13 Shropshire, the trading ratio is two components.  
14 It has got a delivery ratio and an uncertainty  
15 ratio.

16 And there has been quite a bit of  
17 research throughout the years of trading policy  
18 evolution and credits that the source has to have  
19 a definable nitrogen component of it, or  
20 phosphorus, whether that be ag, or domestic  
21 discharge; and you will model the delivery ratio.  
22 In terms of a septic tank, you would have a  
23 delivery ratio, and then depending on the other  
24 best management practices, you have an uncertainty  
25 ratio.

1           And I would say that most programs are  
2 pretty conservative when they establish those  
3 ratios -- they make them three to one, four to one  
4 -- to help with that uncertainty ratio, because  
5 you want to be certain that you're at least  
6 getting a wash in the trade, but hopefully  
7 improving water quality. The intent here is to  
8 make improvements to water quality at a less cost  
9 or lower cost. Did I answer your question?

10           MS. SHROPSHIRE: But I guess to follow  
11 up, it is all based on modeling? You're not  
12 measuring any actual values in the water?

13           MR. TEEGARDEN: Mr. Chairman, Ms.  
14 Shropshire, there is -- If you have monitoring,  
15 certainly monitoring can be done to try to  
16 quantify and keep track, to even verify the trade;  
17 and if there is uncertainties we could ask for  
18 monitoring. That is in the policy.

19           From the septic tank aspect alone, the  
20 model that Eric presented and is in the policy is  
21 a simplified version, but again, someone else can  
22 propose their own modeling if they want to try to  
23 propose that ours is being too conservative or  
24 something like that. But we feel good that this  
25 is a conservative approach.

1 MS. SHROPSHIRE: How do you anticipate  
2 enforcing it or monitoring it, and the time burden  
3 to the Department for that?

4 MR. TEEGARDEN: Mr. Chairman, Ms.  
5 Shropshire, the permit will be the vehicle for the  
6 trade, and at this point, we're just going -- kind  
7 like of development of the policy. We intend to  
8 tag team when a trading proposal comes into the  
9 permit shop, getting this work group together, and  
10 tag team, and evaluating it, looking at other  
11 states.

12 And so our intent is to use existing  
13 staff. We are in our program hiring a technical  
14 assistance position, of which we've put a little  
15 component of potentially managing trades. That  
16 person could just facilitate some of the dialogue  
17 should trading become popular. It is to be seen  
18 how many trades are going to be out there, what  
19 the interest will be.

20 MS. SHROPSHIRE: Is it conceivable that,  
21 say, I come into a watershed, that I buy all the  
22 credits available, and rack up the price for  
23 everybody else? Is that possible?

24 CHAIRMAN RUSSELL: But there aren't any  
25 -- just because they're now down to me. These are

1 existing systems, so you're not going buy anything  
2 up. Someone already owns them. If you're going  
3 to buy them, you've got to have a reason to.

4 MS. SHROPSHIRE: Kind of like a water  
5 right?

6 CHAIRMAN RUSSELL: I don't like water  
7 right law, so I don't know if I could ever go  
8 there. But the thing is -- I thought about the  
9 same thing. In Flathead County -- because I know  
10 -- there is a few platted subdivisions that have  
11 never been built, and so I thought about this  
12 whole logic where they've been approved, they've  
13 been approved for septic systems. So do you go  
14 out there and buy those credits, so you can sell  
15 them to a municipality?

16 But this rule works on existing systems  
17 and replacement, so there is no credit to go buy  
18 up. It is not like any other environment. You're  
19 really trading one thing for another that exists.  
20 There is no excess credit out there.

21 MS. SHROPSHIRE: So there is a finite  
22 number of credits in a watershed.

23 MR. TEEGARDEN: Mr. Chairman, Ms.  
24 Shropshire, correct.

25 MS. SHROPSHIRE: And the goal is to



1 decrease those number of credits.

2 MR. TEEGARDEN: Mr. Chairman, Ms.  
3 Shropshire, correct. The intent is to reduce  
4 loadings to come back into compliance with the  
5 TMDL and water quality standards, and get back to  
6 beneficial uses of the watershed.

7 MS. SHROPSHIRE: What's the motivator?  
8 What's going to motivate somebody to participate?

9 MR. TEEGARDEN: Mr. Chairman, Ms.  
10 Shropshire. As TMDL's are developed, there is  
11 going to be load allocation and waste load  
12 allocation.

13 Certainly the waste load allocations,  
14 the permittees, their incentive is, "We've got to  
15 reduce our load to 'X.' How do we do that, and  
16 which is the best cost? What's the most cost  
17 effective way of doing that?" That could be a  
18 plant upgrade; it could be a combination of plant  
19 upgrade and trading; or maybe it is just more cost  
20 effective to trade with either another point  
21 sourcer, or go find nonpoint source trades.

22 MS. SHROPSHIRE: Thank you.

23 CHAIRMAN RUSSELL: So the ratio is -- If  
24 I can get -- For every septic system I get off --  
25 and this is somewhat -- I get to put two houses on

1 a municipal system, if you're just dealing with  
2 nitrate and just a basic model.

3 MR. TEEGARDEN: Mr. Chairman, correct.

4 CHAIRMAN RUSSELL: I thought if you take  
5 one house off a septic system, wouldn't you be  
6 able to put two on a municipal system, based on  
7 the -- You're putting a lot more nitrogen out in  
8 the septic system than you are in a --

9 MR. REGENSBURGER: Mr. Chairman, my name  
10 is Eric Regensburger. I work for the Water  
11 Quality Water Protection Bureau.

12 The concept is right. The numbers are  
13 reversed. So for every septic system you hook up,  
14 you might get half of another septic system that  
15 you can add on because of the delivery ratios,  
16 where a septic system puts out so many pounds.  
17 Only a fraction of that is going to get to the  
18 river itself, versus a plant which discharges  
19 directly to the river, so you know exactly what  
20 they put out and what goes to the river, so if  
21 you --

22 CHAIRMAN RUSSELL: So when you --  
23 because that was another question I have. When  
24 you're dealing with surface water discharging,  
25 you're dealing with nitrogen. There are some

1 types of nitrogen that you can discharge from a  
2 purely aquatic life standpoint that don't have  
3 nearly the impact as other things, like ammonia,  
4 right? So you're looking at total nitrogen.

5 MR. REGENSBURGER: Correct. We're  
6 looking at total nitrogen, under the assumption  
7 that nitrogen generally goes to nitrate in the  
8 environment. Rural waste water is mostly ammonia  
9 based. That is quickly and usually easily  
10 transformed into nitrite and nitrate in either a  
11 wastewater treatment plant or a septic system.  
12 They're both very efficient at converting that  
13 ammonia to nitrate. The part that's difficult is  
14 converting the nitrate to nitrogen gas and getting  
15 rid of it totally.

16 CHAIRMAN RUSSELL: So if my logic was  
17 180 degrees wrong -- which it sounds like it was  
18 -- why would you up hook a septic system and put  
19 them on a -- and hook up that house? You're not  
20 gaining anything.

21 MR. REGENSBURGER: Mr. Chairman, you're  
22 gaining -- From a financial aspect, you're  
23 increasing your base so you have more money for  
24 upgrades; and even at a two-to-one ratio, two  
25 septic for every one you hook up, that still

1 might be more efficient than going down to super  
2 low nutrient levels, especially nitrogen.

3           Across the country generally what we've  
4 seen is that going down into ten or eight  
5 milligrams per liter of nitrogen, it's generally  
6 more effective to do upgrades to the plant when  
7 you get down to the lower nitrogen levels that  
8 might be required in the future, where trading and  
9 septic hook-ups become more advantageous cost  
10 wise.

11           And then again, some cities just want to  
12 hook up septic just for environmental concerns,  
13 and this just gives them another reason to do  
14 that, an actual cost reason and an actual benefit.

15           CHAIRMAN RUSSELL: People just actually  
16 hook up to septic to -- Where do you live?  
17 Missoula?

18           MR. REGENSBURGER: I don't live in  
19 Missoula, but Missoula is pretty aggressive, hook  
20 up septic when they didn't even get credit. Now  
21 they might get credit for some of those hook-ups.  
22 When they did them, that was more for on their  
23 own.

24           CHAIRMAN RUSSELL: I live in the  
25 Flathead. I'm not sure.

1 MS. SHROPSHIRE: When you say hook up  
2 septic, you mean to the --

3 CHAIRMAN RUSSELL: Municipal systems.

4 MR. REGENSBURGER: Mr. Chairman, Ms.  
5 Shropshire, correct. Yes, a hook up is actually  
6 putting a pipe to that home that goes to the  
7 wastewater treatment plant, and cutting off the  
8 drainage field basically.

9 MS. SHROPSHIRE: So it eliminates --

10 MR. REGENSBURGER: Yes, correct. The  
11 drainfield and septic tank are totally obsolete,  
12 never to be used again.

13 CHAIRMAN RUSSELL: I think this is great  
14 work, and no doubt that it is necessary, and I  
15 think that it just gives us another tool to work  
16 in communities that have predicaments associated  
17 with nutrients in the wastewater.

18 MR. REGENSBURGER: Mr. Chairman, thank  
19 you.

20 CHAIRMAN RUSSELL: Further questions?

21 MR. WHALEN: Thank you, Mr. Chairman.  
22 It's probably best that I address these questions  
23 to Todd. Is he still here? Mr. Chairman, I've  
24 got three questions, and just brief comment.

25 The first question, Todd, is: When you

1 mentioned stakeholders, could you, for the benefit  
2 of the Board, describe just a representative  
3 sample of those stakeholders who were involved in  
4 developing these policies.

5 MR. TEEGARDEN: Mr. Chairman, Mr.  
6 Whalen. Certainly the subgroup was developed from  
7 the nutrient work group, which is sort of all  
8 dischargers, whether that be private mining,  
9 agricultural, certainly community systems,  
10 municipal folks. There is environmental groups on  
11 that work group; there is consultants.

12 It is just a wide group of people, and  
13 that's where this started, was presenting this to  
14 that work group. Interested parties from that  
15 group then got on the subgroup. So we certainly  
16 had the League of City and Towns, engineering  
17 consultants, hydrologists, and then also the  
18 privates, the mines and the other dischargers.

19 MR. WHALEN: In terms of representatives  
20 from agriculture, did you have representatives  
21 from people who operate CAFOs and people that are  
22 forage producers that might be considered trading  
23 partners from a nonsource point?

24 MR. TEEGARDEN: Mr. Chairman, Mr.  
25 Whalen. I don't think specifically. There is an

1 NRCS representative on the work group, he's aware  
2 of this; and the Montana Associations of  
3 Conservation Districts has a representative on the  
4 work group, so he's been involved with the process  
5 as well.

6 MR. WHALEN: Follow up, Mr. Chairman.  
7 My understanding of your description of upstream  
8 trading, when you say that initially the  
9 Department would like to look at initiating trades  
10 upstream or downstream with upstream sellers, my  
11 understanding is that the buyers of credits would  
12 be downstream, and the sellers of credits would be  
13 upstream. Is that basically how you see it?

14 MR. TEEGARDEN: Mr. Chairman, Mr.  
15 Whalen, that's correct.

16 MR. WHALEN: And then the final question  
17 is -- and it is interesting to me to listen to the  
18 observations from different parts of the state  
19 with respect to enthusiasm for the project.

20 I can see that in the eastern end of the  
21 state where large contributors of particularly  
22 nitrogen and phosphorus into the watersheds tend  
23 to be agricultural producers beyond public  
24 wastewater treatment facilities. I can see that  
25 one of the real challenges is going to be

1 establishing a baseline from those nonpoint source  
2 polluters, primarily agricultural producers, to  
3 determine how these credits will originate.

4           What is the Department's thinking in  
5 terms of developing those baselines in those  
6 watersheds for nonsource polluters?

7           MR. TEEGARDEN: Mr. Chairman, Mr.  
8 Whalen. A nonpoint source baseline is defined in  
9 the policy as the existing protective practice  
10 that's in place, so it will be a snapshot of  
11 today, which in the TMDL waste load allocation  
12 should quantify what that number is for a certain  
13 nonpoint source load, whether that be ag load  
14 or --

15           So it is the existing water protection  
16 practice that is in place at the time. Anything  
17 in addition to that will be creditable.

18           MR. WHALEN: Okay.

19           MR. TEEGARDEN: And would be available  
20 for trade.

21           MR. WHALEN: So if I'm growing alfalfa  
22 under pivot, and I'm applying nitrogen, are you  
23 basing these figures on inputs? Are we on the  
24 right track here? I'm trying to get a handle as  
25 to how an alfalfa grower is going to determine



1 what is --

2 MR. TEEGARDEN: Mr. Chairman, Mr.  
3 Whalen. If I might, I might ask Mark Bostrom to  
4 describe how the TMDL is quantified, because the  
5 TMDL will have a load allocation for that  
6 parameter.

7 MR. WHALEN: Alfalfa is a bad example.  
8 I can see it fixes nitrogen, but corn might be a  
9 better example.

10 MR. BOSTROM: Mr. Whalen, for the  
11 record, Mark Bostrom with Water Quality Planning  
12 Bureau.

13 The TMDL is going to establish the  
14 baseline generally, and I realize there is a lot  
15 of variables that's not going to be in the TMDL,  
16 particularly in the east. It's pretty much  
17 focused in the west because of our lawsuit. But  
18 TMDL is going to establish that baseline.

19 As credits get generated, when  
20 activities, BMP's or whatever, can go above and  
21 beyond what the load allocation is in that  
22 baseline, and so if there is a load allocation of  
23 ten to a particular activity, and they can do  
24 eight by doing additional treatments, then they  
25 can generate two units, or two credits, or pounds,

1 or whatever, and use that as a tradeable item to  
2 the waste load allocation, like a wastewater  
3 treatment plant.

4 MR. WHALEN: Thank you. That sort of  
5 illustrates the dynamic credit production as  
6 opposed to something more static, which is what we  
7 were to understand a little bit earlier, which I  
8 appreciate, because as someone who could  
9 participate as a seller of credits -- not  
10 personally, but just hypothetically -- it is  
11 useful to know that through management practices,  
12 those credits can be produced, and therefore kind  
13 of liberate this idea that credits are finite  
14 within a watershed. They're not so much finite.  
15 They depend upon management practices.

16 MR. BOSTROM: Mr. Whalen, that's  
17 correct. There also becomes a certain point of  
18 diminishing returns in that, too, so you can't  
19 reduce a nonpoint source down to zero. You're  
20 going to be able to get some treatments that are  
21 better than a load allocation expressed in the  
22 TMDL. But yes, there is going to be a limit to  
23 that, and eventually that becomes so expensive  
24 that the trade no longer has economic benefit.

25 MR. WHALEN: Then my final comment --

1 thank you for your response -- is to thank the  
2 Department for developing the policy. This is  
3 pretty exciting stuff. It may not be  
4 revolutionary because it's been done in other  
5 states, but once word gets around out in the east  
6 that there is possibility for developing this  
7 market, you're going to make a lot more friends as  
8 a result of this work. I think it will be greeted  
9 with some fairly wild enthusiasm. I hope that's  
10 the case.

11 CHAIRMAN RUSSELL: Probably not so much  
12 in the west.

13 MR. WHALEN: Par for the course.

14 MR. MIRES: Mr. Chairman, I don't know  
15 who this would go to or how it is going to apply  
16 here, and maybe it isn't even relevant. But is  
17 this something that can be used in a positive  
18 manner for the solution for the issue in the  
19 Gallatin River, the folks that are dealing with  
20 this Outstanding Resource Water issue? Can this  
21 be applied for an alternate source without having  
22 to go down that channel?

23 MR. TEEGARDEN: Mr. Chairman, Mr. Mires,  
24 I don't believe so. Again, because there is no  
25 trades or quantified numbers to trade with there,

1 they want to basically reduce loading. I'm  
2 thinking of how that might work there, but I don't  
3 see how that would help them out.

4 MR. MIREs: Thank you.

5 CHAIRMAN RUSSELL: Thanks, Todd. Any  
6 further questions?

7 (No response)

8 CHAIRMAN RUSSELL: Anyone in the  
9 audience that wants to speak to this matter before  
10 the Board takes up --

11 (No response)

12 CHAIRMAN RUSSELL: Seeing none, I would  
13 entertain a motion to initiate rulemaking on this  
14 matter.

15 MR. WHALEN: So moved, Mr. Chairman.

16 MR. MILLER: I'll second it.

17 CHAIRMAN RUSSELL: It's been seconded by  
18 Marv. Katherine, you're able --

19 MS. ORR: Yes.

20 CHAIRMAN RUSSELL: Do you think there'll  
21 actually be -- since you've done so much ground  
22 work, will there be much of opponents and  
23 proponents of this rule that come forward?

24 MR. TEEGARDEN: Mr. Chairman, I believe  
25 most of the folks that are interested or would be

1 impacted by this have been aware of it, and I  
2 certainly don't expect a lot of comments, but time  
3 will tell.

4 CHAIRMAN RUSSELL: Because it doesn't  
5 happen very often, but I would love for the Board  
6 to hear this, but if it's going to go just like  
7 the last one, I think it would be kind of waste of  
8 time to confine the process to when the Board  
9 meets. So I'm not going to put that out there.

10 MR. WHALEN: That's a good point.

11 CHAIRMAN RUSSELL: It is interesting  
12 stuff, but if no one is going to come in and speak  
13 to the matter, if it has already been done, and it  
14 literally goes to the same function, we're going  
15 to still see all the written comments anyway.  
16 We're going take this up in a rulemaking process,  
17 so we'll still see them. But I remember back in  
18 the days when we went to the east and had some  
19 very lively public hearings on a few matters, but  
20 if this one is not going to go that way, I just  
21 don't want to confine the Department to our  
22 schedule at that point. So any further  
23 discussion?

24 MR. WHALEN: I'm considering withdrawing  
25 my motion. Larry, did you have a comment? You

1 looked like you were --

2 MR. MIRES: No. I'm kind of agreeing  
3 with what Joe said. I don't think we should hold  
4 it up simply if we're not going to get good  
5 returns. I think this needs to move forward.

6 CHAIRMAN RUSSELL: If it is not going to  
7 be a lively discussion in front of the Board, if  
8 all these discussions have already happened, all  
9 we do is limit their ability to make time lines.  
10 Did you have --

11 MR. BOSTROM: Chairman Russell, Mr.  
12 Whalen, and Mr. Mires. I think pretty much  
13 everybody is going to be on board with this. It's  
14 a voluntary program, so you can participate in it  
15 as you see fit.

16 The majority of things that would  
17 provide comment are going to be kind of mechanics  
18 of the program, which we left with a lot of  
19 latitude because we would like to see some  
20 innovation in this. So there may be some  
21 questions of just how this is going to work and  
22 how this is going to be structured, but I don't  
23 think that there is going to be a lot of opponents  
24 to it per se.

25 CHAIRMAN RUSSELL: I'm starting to feel

1 that way, too.

2 MR. WHALEN: My only question is if  
3 there might be some PR benefit to the Department  
4 in having a lively Board hearing, but I guess the  
5 chances of that are kind of null, so I will not  
6 withdraw the motion.

7 CHAIRMAN RUSSELL: All right. We'll see  
8 all the comments anyway. Larry, are you okay with  
9 that?

10 MR. MIRES: I am.

11 MR. LIVERS: We sometimes get nervous at  
12 lively Board hearings.

13 MR. WHALEN: Especially ahead of Senate  
14 confirmations.

15 CHAIRMAN RUSSELL: Seeing no further  
16 discussion -- Robin.

17 MS. SHROPSHIRE: Mr. Chairman, can you  
18 repeat the -- Was it just the motion to --

19 CHAIRMAN RUSSELL: Initiate the rule and  
20 have Katherine do it.

21 MS. SHROPSHIRE: Thanks.

22 CHAIRMAN RUSSELL: Then I started  
23 confounding the process by that. So all those in  
24 favor, signify by saying aye.

25 (Response)

1           CHAIRMAN RUSSELL: Opposed.

2           (No response)

3           CHAIRMAN RUSSELL: Motion carries. The  
4 next item on the agenda is rulemaking to amend ARM  
5 17.8.102.

6           MS. WOLFE: Thank you. Good morning,  
7 Mr. Chair, and members of the Board. For the  
8 record, my name is Debra Wolfe, and I'm here to  
9 represent the Department regarding the amendment  
10 of air quality rules.

11           The Department requests that the Board  
12 initiate rulemaking to amend 17.8.102 -- and you  
13 should have that in your packet -- to adopt the  
14 current edition of the Federal and State statutes  
15 and regulations that are incorporated by reference  
16 in the air quality rules.

17           The Department is asking the Board to  
18 initiate rulemaking to amend the air quality rule  
19 provisions to ensure that Montana's air quality  
20 rules are at least as stringent as Federal air  
21 quality regulations, maintain our primacy, and  
22 maintain any Federal delegation of Montana's air  
23 quality program, and implement the Federal  
24 emissions standards pursuant to the Federal  
25 program of emissions control. Thank you.



1           CHAIRMAN RUSSELL: All right. Questions  
2 for the Department?

3           (No response)

4           CHAIRMAN RUSSELL: Katherine, are you  
5 available?

6           MS. ORR: I am.

7           CHAIRMAN RUSSELL: Anyone in the public  
8 who would like to speak to this matter?

9           (No response)

10          CHAIRMAN RUSSELL: Any public out there?

11          (No response)

12          CHAIRMAN RUSSELL: All right. I would  
13 entertain a motion to move forward with amending  
14 17.8.102. Is there a motion?

15          MR. MIRES: So moved.

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

18          MR. WHALEN: I'll second, Mr. Chairman.

19          CHAIRMAN RUSSELL: Seconded by Joe. Any  
20 further discussion?

21          (No response)

22          CHAIRMAN RUSSELL: Hearing none, all  
23 those in favor, signify by saying aye.

24          (Response)

25          CHAIRMAN RUSSELL: Motion carries

1 unanimously. Let's take a break, about ten  
2 minutes, and then we'll get rolling on the  
3 adoption of the rule.

4 (Recess taken)

5 CHAIRMAN RUSSELL: Let's go ahead and  
6 get started again. And the next item on the  
7 agenda is adoption, or possibly adoption of final  
8 rule in the matter of ARM 17.24 Subchapter 9.  
9 Tom.

10 MR. LIVERS: Thank you, Mr. Chairman.  
11 The presentation will be by Bob Smith of our  
12 Industrial Energy and Minerals Bureau.

13 MR. SMITH: Mr. Chairman, members of the  
14 Board. My name is Bob Smith, and I'm the Permit  
15 Coordinator for the Department's Coal and Uranium  
16 Program, requesting the adoption of the proposed  
17 rules to amend the rules that implement the  
18 Montana Strip and Underground Mine Reclamation  
19 Act.

20 As proposed, the rulemaking including  
21 modification to ARM Title 17, Chapter 24,  
22 Subchapter 9, which is the rules under which the  
23 Department regulates coal and uranium mining. The  
24 proposed revision is involved under the general  
25 category of implementing legislative changes.

1           This rulemaking was required by State  
2 Bill 292 by the 2011 legislature which requires  
3 the Board to adopt rules necessary to regulate  
4 underground mining using in situ coal  
5 gasification. That statute also provides that  
6 those rules may not be more stringent than the  
7 comparable Federal regulations or guidelines.

8           Prior to the passage of 82-4-207, MCA,  
9 the Board adopted two rules specifically  
10 regulating in situ coal gasification. ARM  
11 17.24.902 provides permit application  
12 requirements, and ARM 17.24.903 provides  
13 performance standards for in situ coal  
14 gasification.

15           Both of these rules provide that  
16 appropriate provisions Subchapters 3 through 8 and  
17 10 through 13 are applicable to in situ coal  
18 permit applications and operations. ARM 17.24.902  
19 and 903 are substantially similar to the  
20 comparable Federal regulations, which are  
21 contained in 30 CFR 785-22, and 30 CFR Part 828.

22           Following the passage of 82-4-207, MCA,  
23 the Department of Environmental Quality reviewed  
24 Subchapters 3 through 8 and 10 through 13 to  
25 identify which rules within those subchapters

1 apply to in situ operations.

2 The Department determined that most  
3 rules would apply to those operations. Rather  
4 than adopting rules that duplicate existing rules,  
5 the Board is proposing to adopt a rule that lists  
6 those rules that would never apply to in situ  
7 operations. By adoption of the new rule, the  
8 Board would identify those rules that do not apply  
9 to in situ coal mining operations, and thereby  
10 also identifying the rules that do apply.

11 Because there was no public comment made  
12 during the comment period, and our correspondence  
13 with the Board of Oil and Gas also provided no  
14 additional comments, the Department recommends  
15 that the Board adopt the new rule as proposed.

16 That concludes my testimony. If there  
17 is any questions, I'll take those really quick,  
18 and if not, John North has some final words on  
19 that.

20 CHAIRMAN RUSSELL: All right. Thank  
21 you.

22 MR. NORTH: Mr. Chairman, members of the  
23 Board, John North, Chief Legal Counsel with the  
24 Department.

25 I realized this morning that the Board

1 did not have a House Bill 521 and House Bill 311  
2 analysis. I'd done the analysis on it, but had  
3 never committed it to paper.

4 So what I'm passing out is a 521 and 311  
5 analysis. Essentially what it says is that House  
6 Bill 521 does not apply to the Strip Mine Act, so  
7 it does not apply to this rulemaking; but as Bob  
8 Smith indicated, there is a provision in the  
9 statute that requires this rule, that the rules  
10 can't be more stringent than comparable Federal  
11 rules or guidelines unless more stringent rules  
12 are required by the act itself.

13 I've done the comparison to the existing  
14 Federal rules to these proposed amendments and new  
15 rule, and it is my opinion that they're not more  
16 stringent, or probably more precisely that they  
17 comply with that requirement. And I've also  
18 included the takings checklist, and the conclusion  
19 is that there is no taking or damaging  
20 implication, and no further analysis is necessary.  
21 Thank you.

22 CHAIRMAN RUSSELL: Thanks, John.

23 Questions for the Department?

24 (No response)

25 CHAIRMAN RUSSELL: Hearing none, I would

1 entertain a motion to adopt the rule, and accept  
2 the Department's 521 and 311 analysis.

3 MR. MILLER: I so move.

4 CHAIRMAN RUSSELL: It's been moved by  
5 Marv. Is there a second?

6 MR. MIRES: I would second.

7 CHAIRMAN RUSSELL: It's been seconded by  
8 Larry. Further discussion?

9 MS. KAISER: Mr. Chairman, I would like  
10 to recuse myself from taking action on this item.

11 CHAIRMAN RUSSELL: All right. Anything  
12 further? I know there isn't anyone out there, but  
13 is there anyone in the public that wants to speak  
14 to this?

15 (No response)

16 CHAIRMAN RUSSELL: No. Okay. Seeing  
17 none, all those in favor, signify by saying aye.

18 (Response)

19 CHAIRMAN RUSSELL: Opposed.

20 (No response)

21 CHAIRMAN RUSSELL: Motion carries  
22 unanimously. Thanks. All right. Katherine.

23 MS. ORR: Mr. Chairman, members of the  
24 Board, the first item here under the final action  
25 on contested cases is in the matter of CR Kendall

1 Corporation's request for hearing to appeal DEQ's  
2 decision to deny a minor permit amendment under  
3 the Metal Mine Reclamation Act.

4 And that pretty much is a good  
5 description of the underlying action here. And  
6 there have been several iterations, I guess, of  
7 what the plan, the closure plan would involve; and  
8 now there has been an agreement about that, and CR  
9 Kendall will be funding an EIS, and that will go  
10 forward not under this action. So you have a  
11 41(a) dismissal in front of you and a proposed  
12 order.

13 CHAIRMAN RUSSELL: With that, I would  
14 ask for a motion to authorize the Board Chair to  
15 sign Case No. BER 2002-09 MM.

16 MS. SHROPSHIRE: So moved.

17 CHAIRMAN RUSSELL: It's been moved by  
18 Robin. Is there a second?

19 MR. WHALEN: Second, Mr. Chairman.

20 CHAIRMAN RUSSELL: It's been seconded by  
21 Joe. Discussion by the Board?

22 MS. SHROPSHIRE: Is this the CR Kendall  
23 case that has been on our plate since 2002?

24 CHAIRMAN RUSSELL: BER 2002.

25 MS. SHROPSHIRE: It is going away?

1           CHAIRMAN RUSSELL: It is going away from  
2 us.

3           MS. SHROPSHIRE: I had to make a note of  
4 that. It has only been ten years.

5           CHAIRMAN RUSSELL: I've been here all  
6 bloody ten of them. All right. So I actually  
7 will call for a vote on that. All those in favor,  
8 signify by saying aye.

9           (Response)

10          CHAIRMAN RUSSELL: Opposed.

11          (No response)

12          CHAIRMAN RUSSELL: Motion carries  
13 unanimously. Katherine.

14          MS. ORR: The next case on the agenda  
15 involves the appeal and request for hearing by the  
16 City of Helena regarding DEQ's notice of final  
17 decision for a Montana Pollutant Discharge  
18 Elimination System permit, and the parties have  
19 apparently reached agreement regarding what the  
20 permit will contain.

21                 The notice of final decision -- just to  
22 give you a little background -- by the Department  
23 was issued on May 26th, 2011; there was an appeal  
24 of that on June 15th, 2011; and now you have a  
25 notice of dismissal and proposed order before you



1 today.

2 CHAIRMAN RUSSELL: All right. Thanks.

3 And I do have an order dismissing this Case No.

4 BER 2011-08 WQ, and would ask for a motion to

5 authorize the Board Chair to sign.

6 MS. KAISER: So moved.

7 CHAIRMAN RUSSELL: It's been moved by

8 Heidi. Is there a second?

9 MR. MIRES: Second.

10 CHAIRMAN RUSSELL: It's been seconded by

11 Larry. Further discussion by the Board?

12 (No response)

13 CHAIRMAN RUSSELL: Hearing none, all

14 those in favor, signify by saying aye.

15 (Response)

16 CHAIRMAN RUSSELL: Opposed.

17 (No response)

18 CHAIRMAN RUSSELL: Motion carries

19 unanimously. Katherine.

20 MS. ORR: Mr. Chairman, members of the

21 Board, the next item on the agenda No. 3 involves

22 In the Matter of Violations of the Montana Strip

23 and Underground Mine Reclamation Act by

24 Westmoreland Resources, Inc. at the Absaloka mine,

25 and there are two of these cases. The first one,

1 BER 2012-02, involved the failure to monitor water  
2 levels in 39 monitoring wells during the first  
3 quarter of 2011.

4 And the NOV was issued on January 30th  
5 of this year, and the hearing was requested on  
6 February 27th, 2012. The penalty requested was  
7 \$2,600, and the penalty being paid is \$2,500. And  
8 you have a stipulation to dismiss and proposed  
9 order in front of you with an AOC.

10 CHAIRMAN RUSSELL: Okay. We'll take  
11 these in order. I have a dismissal order for Case  
12 No. BER 2012-02 SM, and would ask for a motion to  
13 authorize the Board Chair to sign.

14 MR. WHALEN: So moved, Mr. Chairman.

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

17 MR. MILLER: Second.

18 CHAIRMAN RUSSELL: It's been seconded by  
19 Marv. Any further discussion by the Board?

20 MS. KAISER: I'd like to recuse myself  
21 from this matter, as well as the next item.

22 CHAIRMAN RUSSELL: 03. Okay. Call for  
23 the question. All those in favor, signify by  
24 saying aye.

25 (Response)

1 CHAIRMAN RUSSELL: Opposed.

2 (No response)

3 CHAIRMAN RUSSELL: Motion carries  
4 unanimately by those that are voting. All right.  
5 This one has already been teed up, so you don't  
6 have anything to add?

7 MS. ORR: It's a different violation,  
8 and I can go into it if you want or not.

9 CHAIRMAN RUSSELL: Do you want to hear  
10 anything on this one, Board?

11 MR. WHALEN: Yes, please.

12 MS. ORR: There was a failure to timely  
13 -- the violation alleged in the notice of  
14 violation dated February 16th of this year was  
15 there was a failure to timely publish a blasting  
16 schedule in the local newspaper, and that's it.  
17 And the penalty requested was \$2,500, and \$2,400  
18 is being paid under the stipulation, under the  
19 AOC. And you have a stipulation to dismiss under  
20 41(a) in front of you and a proposed order.

21 CHAIRMAN RUSSELL: And dismissal order  
22 for Case No. BER 2012-03 SM, and I would ask the  
23 Board to initiate a motion to authorize the Board  
24 Chair to sign.

25 MR. MILLER: So moved.

1           CHAIRMAN RUSSELL:  It's been moved.  Is  
2 there a second?

3           MS. SHROPSHIRE:  Second.

4           CHAIRMAN RUSSELL:  It's been moved and  
5 seconded by Robin.  Is there further discussion by  
6 the Board?

7           (No response)

8           CHAIRMAN RUSSELL:  Seeing none, all  
9 those in favor, signify by saying aye.

10          (Response)

11          CHAIRMAN RUSSELL:  Opposed.

12          (No response)

13          CHAIRMAN RUSSELL:  Motion carries  
14 unanimously.  New contested cases.

15          MS. ORR:  Mr. Chairman, members of the  
16 Board.  The first one involves violations of the  
17 Public Water Supply laws by the City of Ronan  
18 Public Water Supply System.

19                 The City of Ronan is deemed to be a  
20 supplier of water, and a community water system,  
21 and the violation that was alleged in the notice  
22 of violation was a failure to provide filtration  
23 treatment; and a violation of surface water  
24 treatment -- of the surface water treatment rule  
25 because of that, or given that; and a failure to

1 provide notice for a technique requirement  
2 violation to the Department.

3 And the relief asserted in the notice of  
4 violation is corrective action, in which the City  
5 of Ronan would provide the proper filtration and  
6 notices, and come under a compliance plan.

7 CHAIRMAN RUSSELL: Questions for  
8 Katherine?

9 (No response)

10 CHAIRMAN RUSSELL: All right. I'm not  
11 sure I'm in the right place now. Was this worked  
12 up in your schedule? Did we get a schedule for  
13 the potential fine? Did you see one in the Board  
14 packet?

15 MS. ORR: I didn't see one.

16 MR. ARRIGO: Mr. Chairman, members of  
17 the Board. For the record, my name is John  
18 Arrigo, Enforcement Division Administrator.

19 The Department did issue an  
20 administrative compliance order in this case to  
21 Ronan, and they are appealing that.

22 CHAIRMAN RUSSELL: But I didn't see your  
23 schedule in here. Usually --

24 MR. ARRIGO: Schedule?

25 CHAIRMAN RUSSELL: How you determined

1 your fine and penalties.

2 MR. ARRIGO: In this situation, we are  
3 not seeking a penalty. We just want a compliance  
4 plan to provide for appropriate filtration of the  
5 drinking water.

6 CHAIRMAN RUSSELL: So I guess why  
7 wouldn't you just write -- Why wouldn't you  
8 bargain into an AOC environment? If all you want  
9 to do is see compliance, why are we going this  
10 route, and not asking them to just get into an AOC  
11 right away?

12 MR. ARRIGO: Mr. Chairman, it's kind of  
13 a philosophical approach. Because this violation  
14 has gone on for an extended period of time, we  
15 want to ensure that they get on a compliance  
16 schedule to correct the problem. Therefore, we  
17 order them to submit a plan and schedule.

18 We will usually take their plan and  
19 schedule because we consider if they propose it,  
20 it is achievable, unless it is totally outrageous  
21 and eight years down the road.

22 MR. LIVERS: Mr. Chairman --

23 MS. ORR: Mr. Chairman, because this is  
24 a contested case, maybe the way to ask the  
25 question would be in the abstract, not in

1 reference to this case.

2 CHAIRMAN RUSSELL: Wasn't mine abstract  
3 enough?

4 MS. ORR: Well, that's a matter of  
5 interpretation. But you might ask --

6 CHAIRMAN RUSSELL: It is a philosophical  
7 issue, and pointed that way. If you're not asking  
8 for penalties, and you just want any party to  
9 comply with public health rules, why wouldn't you  
10 just get into an AOC environment?

11 MR. ARRIGO: Mr. Chairman, members of  
12 the Board. In any drinking water system that has  
13 an MCL violation, or a filtration or treatment  
14 violation like this, our approach is to issue a  
15 compliance order. In some cases, particularly  
16 wastewater discharge permit violations where the  
17 upgrades may take several years, and cost millions  
18 of dollars, we offer an AOC up front and negotiate  
19 a schedule.

20 These are not that magnitude of projects  
21 to install, say, disinfection for a bacteria MCL,  
22 or treatment for a nitrate MCL, or filtration. So  
23 rather than go through a long process of  
24 negotiating a schedule, we feel it is best to  
25 order them to submit a schedule, then it will move

1 faster.

2 CHAIRMAN RUSSELL: All right.

3 MS. SHROPSHIRE: I've got a question for  
4 Katherine. Do you understand why they're  
5 appealing it?

6 MS. ORR: Not to date, but I will.

7 MS. SHROPSHIRE: That's all I've got.

8 CHAIRMAN RUSSELL: So what we are faced  
9 with now is we have -- Katherine has been acting  
10 as the interim for this, and we can appoint her  
11 the permanent Hearings Examiner, or we can hear  
12 this ourselves.

13 MR. WHALEN: Mr. Chairman, I would move  
14 that we appoint a Hearings Examiner to this case.

15 CHAIRMAN RUSSELL: Is there a second?

16 MR. MILLER: I'll second.

17 CHAIRMAN RUSSELL: It's been moved and  
18 seconded. Further discussion?

19 (No response)

20 CHAIRMAN RUSSELL: Hearing none, all  
21 those in favor, signify by saying aye.

22 (Response)

23 CHAIRMAN RUSSELL: Opposed.

24 (No response)

25 CHAIRMAN RUSSELL: Motion carries



1 unanimously. Next.

2 MS. ORR: Mr. Chairman, the next case is  
3 called In the Matter of the Request for Hearing by  
4 William E. Smith on behalf of Mike Adkins  
5 regarding Park County's -- it should say --  
6 refusal to validate Adkins' Class III Waste Tire  
7 Monofill License. And this is a request for  
8 hearing on the behalf of Mike Adkins, who is the  
9 owner of the proposed waste tire facility.

10 And the DEQ approved the application for  
11 license of the Adkins' Class III Waste Tire  
12 monofill on May 4th of this year; and Park County,  
13 which is required by law to review and validate  
14 the license, refused to do so, and that the  
15 refusal to sign happened on May 18th, 2012.

16 And it was appealed by Mr. Adkins to the  
17 Board of Environmental Review, saying that the  
18 local health -- Park County and the Health Officer  
19 were acting in excess of their authority. And  
20 then this case has kind of heated up. There was a  
21 motion to intervene filed by a group called  
22 "Protecting Paradise" on July 11th, 2012, and the  
23 Goetz firm is handling that motion to intervene.

24 And as you saw in the agenda item  
25 already, there was an Amended Appeal Brief and

1     Petition for Declaratory Ruling filed on behalf of  
2     the Adkins, and there was a response to that filed  
3     on July 10th. Also received was the -- that was  
4     the Adkins' response brief in opposition to the  
5     motion to intervene and the motion for a ruling on  
6     the requirement for declaratory ruling. Then Park  
7     County filed a response to Appellant's Amended  
8     Appeal and Petition for Declaratory Ruling two  
9     days ago.

10             This might be one the Board would want  
11     to hear, if you're so inclined.

12             MR. WHALEN: I would concur with that,  
13     Mr. Chairman. I think the Board would be in more  
14     trouble if we don't hear this than if we do.

15             CHAIRMAN RUSSELL: Okay.

16             MS. SHROPSHIRE: Can you elaborate?

17             MR. WHALEN: It involves issues of air  
18     quality, water quality, local jurisdiction. We've  
19     got some ramping up of rhetoric on both sides of  
20     the issue. Press coverage is inflating rapidly.

21             CHAIRMAN RUSSELL: We may have to go to  
22     Park County to hear this one. Do you know that?

23             MR. WHALEN: Paradise Valley.

24             CHAIRMAN RUSSELL: I tend to concur. It  
25     is an interesting law where -- and it is not the

1 only place -- but local Health Officers have to  
2 validate these licenses, and I've signed many over  
3 my years as a Health Officer, and never called  
4 into question the fine work that the Department of  
5 Environment Quality has ever done.

6 MS. KAISER: Does the Board have  
7 authority to overrule Park County's decision?

8 CHAIRMAN RUSSELL: I believe that's what  
9 we are going to --

10 MR. MIRES: -- find out.

11 CHAIRMAN RUSSELL: So I guess the Health  
12 Officer from another county is going to rule on  
13 this one, help rule on that one. So we probably  
14 don't need to take any action on this. We'll  
15 leave you in your position as interim. Let's make  
16 this pretty clean. I will entertain a motion to  
17 have the Board hear this matter.

18 MR. WHALEN: So moved.

19 CHAIRMAN RUSSELL: And have Katherine do  
20 any interim work that is needed to be done.  
21 That's common.

22 MR. WHALEN: What does that mean?

23 CHAIRMAN RUSSELL: Prehearing  
24 activities. We wouldn't be doing all of those.  
25 Have you actually let this other party join?

1 MS. ORR: There has been no ruling on  
2 that yet.

3 CHAIRMAN RUSSELL: Well, we're going to  
4 have to leave that up to you because we're not  
5 going to be able to do that stuff.

6 MS. ORR: Certainly you can.

7 CHAIRMAN RUSSELL: I think we will.

8 MS. ORR: I mean you can rule on interim  
9 motions, too, if you'd like, but --

10 CHAIRMAN RUSSELL: But then we would --  
11 My challenge around that is timing, getting the  
12 Board together to take action as a board. That  
13 may be difficult.

14 MR. WHALEN: I'd like to hear Tom's  
15 input with respect to what we're discussing, to  
16 the degree that you're able, Tom. What do you  
17 kind of foresee with the Board involvement?

18 MR. LIVERS: Mr. Chairman, Mr. Whalen.  
19 I think this is one where I would ultimately defer  
20 the bulk of that response to Katherine. It's  
21 certainly an option of the Board, and she had  
22 pointed out you have the options of involvement in  
23 the prehearing as well.

24 And if your question is -- I think your  
25 question is in part on the prehearing involvement,

1 but also on the overall involvement. That's how  
2 I'm taking it. It would be a scheduling issue,  
3 and we'd want to talk to Katherine about what we  
4 would envision in terms of when this might happen.  
5 It is certainly doable. In terms of logistics,  
6 we'll make work whatever the Board chooses.

7           There might be -- and venue. It might  
8 make sense that this is heard in Park County. It  
9 probably does. But these are really Katherine's  
10 call, but I think --

11           MR. WHALEN: Follow up, Mr. Chairman.

12           CHAIRMAN RUSSELL: Joe.

13           MR. WHALEN: In terms of prehearing  
14 activity, how many different separate engagements  
15 would you anticipate by the Board in prehearing  
16 activities above and beyond the main hearing?

17           MR. LIVERS: Mr. Chairman, Mr. Whalen, I  
18 would assume that the substantive prehearing  
19 activity could perhaps be batched and handled at  
20 one time for the most part, and smaller things  
21 perhaps could be done on a conference call if  
22 necessary.

23           MR. WHALEN: No real budgetary issues  
24 for the Department if we go forward?

25           MR. LIVERS: Mr. Chairman, Mr. Whalen.

1 I appreciate that question. Thank you. I wasn't  
2 thinking. Earlier I was. It is always better to  
3 have more expenses in a base year, which this is  
4 not, but that's a minor issue. We'll make this  
5 work, and there will be some budgetary  
6 implications for us, but nothing that we can't  
7 manage. So thank you.

8 MR. WHALEN: Thank you, Tom. Thank you,  
9 Mr. Chairman.

10 CHAIRMAN RUSSELL: Any other comments,  
11 questions?

12 (No response)

13 CHAIRMAN RUSSELL: Hearing none, all  
14 those in favor of the motion signify by saying  
15 aye.

16 MS. SHROPSHIRE: You need a second.

17 CHAIRMAN RUSSELL: Marv, did you second  
18 that?

19 MR. MILLER: I didn't.

20 CHAIRMAN RUSSELL: Who did?

21 MS. KAISER: Nobody.

22 CHAIRMAN RUSSELL: Then I need a second.

23 MS. SHROPSHIRE: A second --

24 CHAIRMAN RUSSELL: Yes, the Board would  
25 hear it.

1 MR. WHALEN: What about the prehearing?

2 CHAIRMAN RUSSELL: I guess we do need --  
3 I guess we didn't really get that resolved. Do we  
4 want to just take up the entire matter, and then  
5 we'll work with Katherine on any prehearing stuff  
6 that needs to be done? Realizing that it will be  
7 done telephonically, and we will have to have a  
8 quorum of the Board to make those decisions.

9 MR. WHALEN: That would be my  
10 preference.

11 CHAIRMAN RUSSELL: I guess we're going  
12 to make it work.

13 MS. ORR: Okay.

14 CHAIRMAN RUSSELL: So the motion is for  
15 the Board to hear the entire matter. Is there a  
16 second? And that's your motion?

17 MR. WHALEN: Correct.

18 MS. SHROPSHIRE: Second.

19 CHAIRMAN RUSSELL: It's been seconded by  
20 Robin. Any further discussion?

21 (No response)

22 CHAIRMAN RUSSELL: Hearing none, all  
23 those in favor, signify by saying aye.

24 (Response)

25 CHAIRMAN RUSSELL: Opposed.

1 (No response)

2 CHAIRMAN RUSSELL: Motion carries  
3 unanimately. Okay. I hope we're not going down  
4 there in like February. It would be nice to see  
5 this in September.

6 MS. ORR: That seems unlikely.

7 MR. MIRES: October.

8 MS. ORR: This is a fact intensive case,  
9 so it will be awhile to work that up probably.

10 CHAIRMAN RUSSELL: I hope we can go as  
11 fast as we can, except we don't want to have the  
12 hearing in February in Park County.

13 MS. SHROPSHIRE: It may be really fast  
14 or may be slow.

15 CHAIRMAN RUSSELL: Or may be slower.  
16 We're shooting for sometime next --

17 MS. ORR: April. High water.

18 CHAIRMAN RUSSELL: Thank you. This will  
19 be fun.

20 The next item, Valley County Landfill,  
21 Glasgow, Montana.

22 MS. ORR: Mr. Chairman, members of the  
23 Board. This is a case involving violations of the  
24 Montana Solid Waste Management Act, specifically  
25 the failure to cover on at least -- the solid



1 waste landfill -- at least seven times, and the  
2 penalty being requested is \$750. And there was a  
3 scheduling order issued on July 17th.

4 CHAIRMAN RUSSELL: Okay. Do I have a  
5 motion to appoint Katherine the permanent Hearings  
6 Examiner?

7 MR. MILLER: So moved.

8 CHAIRMAN RUSSELL: It's been moved by  
9 Marvin. Is there a second?

10 MS. KAISER: I'll second.

11 CHAIRMAN RUSSELL: It's been seconded by  
12 Heidi. Any further discussion?

13 (No response)

14 CHAIRMAN RUSSELL: Hearing none, all  
15 those in favor, signify by saying aye.

16 (Response)

17 CHAIRMAN RUSSELL: Opposed.

18 (No response)

19 CHAIRMAN RUSSELL: Motion carries  
20 unanimously. The last one, someone up in Flathead  
21 County.

22 MS. ORR: Yes. Mr. Chairman, members of  
23 the Board. This is in the matter of violations of  
24 the Open Cut Mining Act by Russell Olsen at PaveCo  
25 Pit, and the violation has to do with the failure

1 to submit an annual progress report and a fee  
2 associated with it. And the penalty being  
3 requested is \$480.

4 The Request for Appeal was filed on July  
5 1st, 2012, and there is a motion to dismiss  
6 pending for failure to appeal within the allowed  
7 appeal period, and that was filed by the  
8 Department on July 13th, 2012.

9 CHAIRMAN RUSSELL: For \$480. I would  
10 entertain a motion to appoint Katherine the  
11 permanent Hearings Examiner on this.

12 MR. MIREs: So moved.

13 CHAIRMAN RUSSELL: It's been moved by  
14 Larry. Is there a second?

15 MR. MILLER: I'll second.

16 CHAIRMAN RUSSELL: It's been seconded by  
17 Marv. Is there any further discussion on this  
18 matter?

19 (No response)

20 CHAIRMAN RUSSELL: Hearing none, all  
21 those in favor of the motion, signify by saying  
22 aye.

23 (Response)

24 CHAIRMAN RUSSELL: Opposed.

25 (No response)

1           CHAIRMAN RUSSELL: Tom, anything we  
2 missed?

3           MR. LIVERS: No, Mr. Chairman. The only  
4 thing I might just remind the Board before the  
5 general public comment is that the next meeting is  
6 scheduled for Friday, September 28th. We heard  
7 from Katherine that one of the contested cases  
8 would involve a half day to a day, and I'm  
9 assuming the timing might be around that September  
10 meeting.

11           So it would help with the schedule --  
12 and certainly not knowing how many items are going  
13 to be on rulemaking offhand -- it would help if  
14 the members could look at their calendars and see  
15 if Thursday, September 27th is an option. I don't  
16 expect you folks to know now, but if we have known  
17 conflicts, it might be useful to know them at this  
18 point, because we may have to look at a different  
19 option for scheduling.

20           And I would assume that there might be a  
21 chance that some of the early activity in the Park  
22 County case that we just talked about might  
23 possibly be handled at that September meeting as  
24 well. That's not my call, and that may be too  
25 quick, but some of the prehearing work.

1           So I guess all I would ask is if folks  
2 at this point know for certain they have  
3 conflicts, it would be good to know that, and  
4 we'll look at alternatives. Otherwise, if you  
5 could let us know, either Joyce or me, know soon,  
6 that would be helpful. And I think what we would  
7 try to do is take advantage of Thursday, September  
8 27th for additional work, and probably need to  
9 plan on both Thursday and Friday.

10           CHAIRMAN RUSSELL: Thanks, Tom. Is  
11 there anyone -- This is the time of the meeting  
12 where anyone of the general public can make  
13 comments or pleads to the Board of Environmental  
14 Review. Is there anyone out there of the public?

15           (No response)

16           CHAIRMAN RUSSELL: Seeing none, I guess  
17 we'll -- So with that, I would entertain a motion  
18 to adjourn.

19           MS. KAISER: So moved.

20           CHAIRMAN RUSSELL: It's been moved by  
21 Heidi.

22           MR. MILLER: I second.

23           CHAIRMAN RUSSELL: Seconded by Marv.  
24 Any last minute comments?

25           (No response)

1           CHAIRMAN RUSSELL: Seeing none, all  
2 those in favor, signify by saying aye.

3           (Response)

4           CHAIRMAN RUSSELL: Opposed.

5           (No response)

6           CHAIRMAN RUSSELL: Meeting adjourned.

7           (The proceedings were concluded

8                           at 11:25 a.m. )

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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                      , 2012.

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