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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING)
OCTOBER 29, 2013)

TRANSCRIPT OF PROCEEDINGS

Heard at Room 111 of the Metcalf Building
1520 East Sixth Avenue
Helena, Montana
October 29, 2013
1:00 p.m.

BEFORE CHAIRMAN ROBIN SHROPSHIRE,
BOARD MEMBERS JOAN MILES, MARIETTA CANTY;
JOSEPH RUSSELL, LARRY MIRES,
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: We have a quorum.
5 I suggest we go ahead and get started. It is
6 1:00, and I'll call this Board of Environmental
7 Review meeting to order.

8 MR. NORTH: Madam Chair, since it is a
9 telephonic meeting, I think we should probably
10 call roll on the record.

11 CHAIRMAN SHROPSHIRE: John, can you do
12 that.

13 MR. NORTH: Sure. Mr. Russell.

14 MR. RUSSELL: Present.

15 MR. NORTH: Mr. Mires.

16 MR. MIRES: Present.

17 MR. NORTH: Ms. Miles.

18 MS. MILES: Here.

19 MR. NORTH: Ms. Kaiser.

20 MS. KAISER: Here.

21 MR. NORTH: Ms. Canty.

22 MS. CANTY: Here.

23 MR. NORTH: Mr. Tweeten.

24 MR. TWEETEN: I'm here.

25 MR. NORTH: Finally, Chairman

1 Shropshire.

2 CHAIRMAN SHROPSHIRE: Here. Just one
3 point is that we have one speaker phone, and so I
4 don't know if -- you have a mike up there if you
5 need it -- but if you guys on the phone can't hear
6 us, can you just interrupt, and we'll move it over
7 so that we make sure everybody can hear.

8 We've called the meeting to order and
9 we've taken roll. Everyone is in attendance. And
10 the first item on the agenda is in the matter of
11 the Department's proposed amendments to the
12 Administrative Rules of Montana -- I don't know
13 that I need to go through each of those things --
14 but affectionately known as the Department
15 Circular DEQ4.

16 MR. NORTH: Madam Chair, Barb Kingery
17 will address this matter for the Department.

18 MS. KINGERY: Madam Chair, and members
19 of the Board, my name is Barb Kingery. I'm from
20 the Subdivision Section of DEQ, and I'm here to
21 present DEQ4 to the Board this afternoon.

22 DEQ4 is affectionately known as the
23 Montana Standards for Subsurface Wastewater
24 Treatment Systems. It is used by the State both
25 here at DEQ and DPHHS; it is used by County Health

1 Departments; industry; developers; consultants;
2 anybody across the state who would like to install
3 an onsite septic system.

4 And this particular document was last
5 updated in 2002 with a slight modification in
6 2009, and in that time we saw many conflicts
7 within the document, some technical
8 inconsistencies, a number of deviations from the
9 same standards over and over again, advancing
10 technologies and many comments from the public
11 that said, "When are you going to update this?"
12 So the Subdivision Section is the group that is
13 responsible for DEQ4, and in 2009, we began the
14 long process of updating this circular.

15 And we began with a work group that
16 included people from industry, people from local
17 Health Departments and DEQ, and we had a task
18 force meeting and a series of public input, public
19 meetings for everybody to comment on them. We
20 started a blog, so those who couldn't attend in
21 person were able to comment on the blog. We then
22 started to reach out to different parts of the
23 state that used this particular document, and
24 solicited comments from them.

25 And then in August 2011, we went before

1 WPCAC, and they said, "Please go forward;" and
2 then in 2011, December 2011, we first came before
3 the Board here. And there were some comments from
4 members of the Board who wanted also to be part of
5 the adoption process, and the rewrite; and in
6 December 2012, we compiled those comments, and
7 came back, and initiated rulemaking.

8 So this past year we have had a number
9 of comment periods, so that we could incorporate
10 as many people as we could in this process. Last
11 May I think I came before this Board and said
12 we'll be coming forward again with it. And so
13 that's what you guys received in your packet
14 today, or that we're talking about today.

15 We received a number of comments through
16 that extended comment period. We actually had
17 three different comment periods, so everybody had
18 a chance to write in if they wanted to. We
19 received way over 300 comments, were able to group
20 them into maybe 260 or 280 comments, something
21 like that, that you guys saw before you. Those
22 comments came from counties, we had a handful of
23 counties that called in; industry; consultants;
24 engineers; just a variety of people commented.
25 And I can tell you reading through those comments,

1 I was very impressed with the thoughtful and
2 educated time that people had put into very
3 thoughtful comments for us.

4 In response to those comments we made a
5 number of changes. One thing we did was we tried
6 to give a wide variety of people design options in
7 this circular. One of the big comments we
8 received was that it seemed a little cumbersome,
9 so in response to that, we scaled it back.

10 The draft version that went out for
11 comment included many portions of DEQ2, which is
12 another circular for wastewater treatment that is
13 for public systems; and although DEQ4 and DEQ2 do
14 ping pong back and forth, we decided in the
15 interest of clarity and in the interest of sort of
16 streamlining the document, we pulled those
17 sections that related to public ones and DEQ2 out
18 of the Circular DEQ4. I think it makes for a much
19 more clean and precise document. And we have put
20 tags in DEQ4 that direct people to those sections
21 of DEQ2 when they need to go there.

22 We clarified the ET and the ETA system
23 requirements, and we also worked very hard with
24 our legal staff on format and consistency of
25 syntax throughout the document.

1 So what you have before you is
2 significantly larger than the one that's adopted
3 right now, but it is larger because we've added
4 pictures for clarity. Like I said, we've added
5 some emerging technologies that some of the
6 counties were using already and had not been
7 incorporated into the old document.

8 We changed the format around a little
9 bit to clarify different sections, different parts
10 of the wastewater treatment system, from site
11 design, to wastewater characterization, to final
12 trench design; just sort of tried to lay it out in
13 more logical fashion. We added an appendix that
14 included changed design calculation examples for
15 people who want to see how to do an actual design,
16 and what we would be looking for.

17 And like I said, I think it's a really
18 great document. We've had lots of input on it;
19 and it has been a real great experience, I can
20 tell you, to have so many people so interested in
21 this particular circular. I think truly we have a
22 much better document than what we're using right
23 now, thanks to all the input we've had.

24 So I'll keep this brief, and go forward,
25 and ask the Board for adoption of this document,

1 but I'll be here to answer any questions you guys
2 might have.

3 CHAIRMAN SHROPSHIRE: Thanks, Barb.

4 I'll open it up to questions from the Board.

5 MR. RUSSELL: This is Joe. I actually
6 concur with Barb. I think that the response, or
7 the comments and then the Department's responses
8 to comments have made this an outstanding
9 document. I'm ready to move.

10 CHAIRMAN SHROPSHIRE: I just want to
11 second that. I'm not seconding your motion, but
12 I'm seconding your comments. I've been a part of
13 the conversations, and I've seen the efforts that
14 the Department has put forth, in particular Barb,
15 and especially want to thank her for all the work
16 that's gone into this, and really appreciate it.

17 Any other comments before I entertain a
18 motion to approve the amended Circular DEQ4?

19 MR. NORTH: Madam Chair, I would just
20 point out that even though there is no public
21 here, on the record you should probably ask for
22 public comment.

23 CHAIRMAN SHROPSHIRE: Thank you. Any
24 member public wishing to comment?

25 (No response)

1 CHAIRMAN SHROPSHIRE: Here is a
2 question. When I ask for a motion to approve
3 this, do I need to read all those numbers, or can
4 I just say DEQ4? Any comment on that?

5 MS. ORR: I guess I'd read the numbers.

6 CHAIRMAN SHROPSHIRE: All right. So I
7 will entertain a motion to adopt proposed
8 amendments to Administrative Rules of Montana ARM
9 17.30.702, 17.36.345, 17.36.914, and 17.38.101
10 pertaining to Department Circular DEQ4.

11 MS. KAISER: I'll move that.

12 CHAIRMAN SHROPSHIRE: I've got a motion
13 from Heidi.

14 MS. CANTY: I'll second the motion.

15 MR. RUSSELL: Friendly amendment. You
16 also need to adopt all of the other portions of
17 this, the rule examiner's review, the stringency
18 and the takings requirements, and also the
19 Department's responses, the comments and
20 Department's responses to comments.

21 CHAIRMAN SHROPSHIRE: Thank you, Joe.
22 So I'll entertain a motion to adopt that with
23 Joe's friendly amendment.

24 MR. MIRES: Larry so moves.

25 CHAIRMAN SHROPSHIRE: It's been moved by

1 Larry.

2 MS. MILES: Second.

3 CHAIRMAN SHROPSHIRE: Seconded by Joan.

4 All those in favor, signify by saying aye.

5 (Response)

6 CHAIRMAN SHROPSHIRE: Opposed.

7 (No response)

8 CHAIRMAN SHROPSHIRE: Okay. Motion

9 carries unanimously. Thanks again, Barb.

10 The second item on the agenda is in the
11 matter of violations of the Sanitation and
12 Subdivisions Act and Public Water Supply Laws by
13 Steve R. and Shanna L. Lunderby. Katherine, do
14 you want update us on that.

15 MS. ORR: Members of the Board, this is
16 Katherine. Hello to everyone. This is a matter
17 before you to accept the proposed motion to
18 dismiss basically. It is a 41(a) motion. And
19 this is a case that is out of Sidney involving
20 subdivision violations and Public Water Supply Act
21 violations. And the subdivision violations
22 pertain to construction of units and RV places
23 beyond what had been approved, and there is a
24 discrete time period for that. That was from
25 December 16th, 2011 to June 27, 2013.

1 And the second violation was operation
2 of public water supply wastewater systems for the
3 bulk of those units, 13 of them, and one RV,
4 without approval or certification by the
5 Department; and that was an ongoing violation up
6 to the date of the notice of violation and
7 administrative compliance order.

8 The total penalties requested were
9 \$28,500, and the parties have apparently reached
10 agreement on that, and you have a motion to
11 dismiss in front of you. And the Department can
12 talk about this, but I would recommend that if
13 that is requested by the Board, that it happen
14 after approval of the dismissal, because then the
15 Board wouldn't have jurisdiction, and then facts
16 pertaining to the case can be shared with the
17 Board.

18 CHAIRMAN SHROPSHIRE: That makes sense.
19 Thank you.

20 MR. RUSSELL: I would make a motion to
21 authorize the Board Chair to sign the order of
22 dismissal for BER 2013-05 SUB.

23 CHAIRMAN SHROPSHIRE: It has been moved
24 by Joe. Do I have a second?

25 MS. KAISER: I'll second. This is

1 Heidi.

2 CHAIRMAN SHROPSHIRE: It's been moved
3 and seconded. All those in favor, signify by
4 saying aye.

5 (Response)

6 CHAIRMAN SHROPSHIRE: Opposed.

7 (No response)

8 CHAIRMAN SHROPSHIRE: Motion carries
9 unanimously. Any discussion on that?

10 MR. RUSSELL: I'd like to know how the
11 Department resolved this, if it is all right with
12 the rest of the Board.

13 MS. MILES: I concur with that, too.

14 MR. NORTH: This is John North. I was
15 actually the attorney on this matter because of
16 vacancies on my legal staff at the time. And
17 essentially the Department and Mr. Lunderby agreed
18 on what actions ought to be taken out there, and
19 Mr. Lunderby's attitude was, "Tell me what needs
20 to be done, give me time to do, and I'll do it;"
21 and on that basis, the Department and Mr. Lunderby
22 entered into an Administrative Order on Consent.

23 And I apologize that it wasn't provided
24 to the Board. Essentially what it did is gave him
25 -- by December 31st of this year he is to complete

1 construction of the systems as approved in the
2 certificate of subdivision approval; and then he
3 is to provide certification of that fact; and then
4 finally he is to, within a certain amount of time,
5 provide the as-builts. So in essence he agreed to
6 comply with the rules as required, and he also
7 agreed to pay a penalty of \$15,500, and he's
8 making that in installments, I think he has made
9 his first installment payment on that. So it was
10 a very satisfactory resolution of the matter.

11 MR. RUSSELL: Sounds like it.

12 MS. MILES: That wasn't clear to me in
13 the original materials we got, if they had waived
14 a fine or agreed to something different, so --

15 MR. NORTH: Again, I apologize. It was
16 probably my oversight for not providing it with
17 the agenda.

18 CHAIRMAN SHROPSHIRE: Thanks, John.

19 MR. NORTH: Madam Chair, if I could do
20 one other thing that relates back to DEQ4. As you
21 probably know Jim Madden -- who used to be Mr.
22 Subdivisions for the Department on the legal staff
23 -- has retired, and he's now been replaced by an
24 attorney who has come to us from the Flathead
25 County Attorney's Office, and his name is Paul

1 Nicol. And the reason I introduce him at this
2 point is because he came on board in early June,
3 and spent the first three and a half months I
4 think of his career here at DEQ working on DEQ4
5 with Barb. And so Paul is seated next to Barb
6 there.

7 MR. NICOL: And I'm still here. Thank
8 you.

9 MR. RUSSELL: You know coming from
10 Flathead County, he's a good attorney. That
11 wasn't just for Paul. That was actually for John.
12 Little do you know, John came from Flathead
13 County, too.

14 MR. NORTH: My first job was with the
15 Flathead County Attorney's Office. Thank you.

16 CHAIRMAN SHROPSHIRE: Well, all right.
17 The last thing on the agenda is reserved for
18 public comment. Is there anyone that would like
19 to address the Board on the phone? I don't see
20 any public in the room.

21 (No response)

22 MR. RUSSELL: Robin, before we go --
23 this isn't a public -- my calendar has got a lot
24 of stuff blocked out for BER. I don't know if
25 I've just been sporadically throwing stuff on

1 there to scare me, or if -- John and Robin, I
2 don't know if we can do this, but maybe kind of a
3 synopsis of things to come might be of value.

4 CHAIRMAN SHROPSHIRE: Thanks, Joe. And
5 I actually had the same thought this morning. I
6 was looking at my calendar, and I had some things
7 on there for December that I think may have been
8 changed and don't exist anymore.

9 MR. NORTH: I think we're just doing the
10 regular meeting on the 6th in December.

11 CHAIRMAN SHROPSHIRE: But the hearing is
12 not occurring as it was previously thought. The
13 hearing has been moved to January.

14 MR. NORTH: Yes.

15 CHAIRMAN SHROPSHIRE: Joe, I don't know
16 if that answer your question in a little more
17 detail.

18 MR. RUSSELL: I had -- (inaudible) --
19 which was a little spooky; and then January, the
20 third full week in January I have BER blocked out,
21 the 21st, 22nd, and 23.

22 CHAIRMAN SHROPSHIRE: I think that's
23 correct.

24 MS. CANTY: That's the Colstrip hearing,
25 right?

1 MR. NORTH: Yes.

2 CHAIRMAN SHROPSHIRE: So our regularly
3 scheduled meeting in December is the 6th, and then
4 the meeting in January, that whole -- say again
5 the dates.

6 MS. WITTENBERG: 21 through 23.

7 CHAIRMAN SHROPSHIRE: 21 through 23 in
8 January are scheduled for the hearing.

9 MS. MILES: Do you know where that will
10 be?

11 MS. WITTENBERG: Here.

12 MR. MIRES: Robin, for December 6th, are
13 we looking at a face meeting, or are we looking at
14 a teleconference? Any idea? So we can plan on
15 that.

16 CHAIRMAN SHROPSHIRE: I don't know the
17 answer to that.

18 MR. NORTH: I think we're looking right
19 now at an in-person meeting. One of the things
20 that is still scheduled to be on the agenda is the
21 nutrient rulemaking, and other things.

22 MR. MIRES: That helps immensely.

23 CHAIRMAN SHROPSHIRE: Anything else?

24 MS. MILES: And that's a morning
25 meeting?

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MR. NORTH: 9:00.

CHAIRMAN SHROPSHIRE: Well, seeing no further action, is there a motion to adjourn?

MS. MILES: So moved.

CHAIRMAN SHROPSHIRE: Moved by Joan.

MS. CANTY: I'll second it.

CHAIRMAN SHROPSHIRE: Seconded by Marietta. All those in favor, signify by saying aye.

(Response)

CHAIRMAN SHROPSHIRE: Opposed.

(No response)

CHAIRMAN SHROPSHIRE: All right. Passes unanimously. We'll see you December 6th.

(The proceedings were concluded

at 1:24 p.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 - 17 - 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 17th day of December, 2013.

Laurie Crutcher

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

