BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING
OCTOBER 29, 2020

TRANSCRIPT OF PROCEEDINGS - VIA ZOOM

Heard at Room 111 of the Metcalf Building
1520 East Sixth Avenue
Helena, Montana
October 29, 2020
9:00 a.m.

BEFORE CHAIR CHRIS DEVENY,
BOARD MEMBERS CHRIS TWEETEN, DEXTER BUSBY,
JEREMIAH LYNCH,
HILLARY HANSON, and DAVID LEHNHERR

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

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(Board Member Tweeten not present)

CHAIR DEVENY: It's 9:02, according to my computer, so I think we'll go ahead and get started. I'd like to call this meeting to order of the Board of Environmental Review. For the record, we're meeting via Zoom because of the Corona Virus Pandemic.

I'd like to ask everybody if possible to please mute their phones and their computers. With that, I'll take roll call. I'm here. Dexter Busby.

BOARD MEMBER BUSBY: I'm here.

CHAIR DEVENY: Jerry Lynch.

BOARD MEMBER LYNCH: Present.

CHAIR DEVENY: Hillary Hanson.

BOARD MEMBER HANSON: Here.

CHAIR DEVENY: David Lehnherr.

BOARD MEMBER LEHNHERR: Here.

CHAIR DEVENY: John DeArment.

(No response)

CHAIR DEVENY: Chris Tweeten.

(No response)
CHAIR DEVENY: Who did I miss? Okay.

Anyway we have a quorum. So with that, could DEQ go ahead and introduce the staff that are on, and then we'll ask for public introductions.

MR. DAVIS: Madam Chair, members of the Board, again, Tim Davis. I'm the Water Quality Division Administrator for DEQ. I have Kurt Moser, DEQ attorney. He'll be the one speaking on the stipulation today.

There's Jon Kenning, Melinda Horn, Hannah New, Rainie DeVaney, Kayla Glossner, Christine Weaver, and Sandy Scherer, as well as Deb Sutliff, who is still sitting in as the acting BER secretary. I would let the Board know that we are in the process of hiring the permanent BER secretary replacement at this time. So I think that's everyone from DEQ.

CHAIR DEVENY: Okay. Thank you. And we have Sarah Clerget, our Board attorney on with us. Sarah, is anybody else with you today?

MS. CLERGET: No.

CHAIR DEVENY: And how about members of the public?

MS. MARQUIS: Good morning, Madam Chair, members of the Board. This is Vicki Marquis. I'm
an attorney with Holland and Hart, here today representing CHS, and first of all, I want to thank you for having this special meeting and taking the time to deal with this today.

CHAIR DEVENY: Thank you, Vicki. Any other members of the public on today?

MS. SUTLIFF: Madam Chair, we have Laurie Crutcher. She is Clerk and Recorder today. Thank you, Laurie.

CHAIR DEVENY: Welcome, Laurie. Okay. With that, we'll go ahead. Sarah, I'll turn it over to give us a little background on the cases and why we're here today.

MS. CLERGET: So as you all may remember, and is outlined in the materials that was in your packet, you resolved most of the issues in this case before, and so there were only two, one and a half really, that were remaining. So this stipulation, both of the parties agree, and they put it in front of you for approval.

And I really want to commend the parties on the work that they've done on this case. I know it's a lot to have you guys here for a special meeting, but they really have worked hard on this, and it's really impressive, the
collaboration that Kurt and Vicki have done. I want to commend them for that, because they've worked really hard together with a lot of cooperating to make this happen.

So I think it's pretty straightforward. It's just a matter of the Board approving these last few pieces, and we had to wait for them until the arsenic rules as well. I think that's all I've got, unless the parties have more as you wish.

CHAIR DEVENY: If either of the parties have anything to add to that, this would be a good time.

MR. MOSER: Madam Chair, members of the Board, DEQ, we really don't have anything specific to add. We just thank Sarah for those comments. And we'd just ask that you move forward and approve this stip as presented.

CHAIR DEVENY: Thank you, Mr. Moser. And it's great when the parties can work together. And Vicki, did you have something to say?

(Board Member Tweeten present)

MS. MARQUIS: Madam Chair, members of the Board, I just echo what Kurt had said, and thank you, Sarah, for your kind words. And it's
been a good process in this case. We've been working on it for a long, long time, and so we appreciate everyone's work on it, and ask for the Board to approve the stipulation as presented. Thank you.

CHAIR DEVENY: Thank you, Ms. Marquis.

And let the record show that Chris Tweeten has joined the meeting. Welcome, Chris.

BOARD MEMBER TWEETEN: Thank you, Madam Chair.

CHAIR DEVENY: So with that, I guess really the business before the Board today is whether or not to approve or deny the stipulations that have been presented on these two cases. Is there any discussion on that among Board members? David?

BOARD MEMBER LEHNHERR: Madam Chair, I just have a question about what the action we're taking applies to. It looks like it applies to a permit that expires on October 31st of this year; is that correct, or am I misreading that?

CHAIR DEVENY: Mr. Moser, go ahead.

MR. MOSER: Madam Chair, members of the Board. That is true, although what happens after a permit is expired, if the permittee applies for
a renewal permit -- which in this case CHS has
done -- and the Department issues a letter
recognizing that, and then the permit is
administratively extended. So the conditions of
that permit continue in force until the agency
approves the renewal.

BOARD MEMBER LYNCH: This is Board
Member Lynch. Madam Chair. Kurt, if you could,
please tell me what the length of the permit will
be, or is generally.

MR. MOSER: Generally speaking permits
are for five years. They can be up to five years,
but because it is a very extensive process to go
through a permit review, and takes quite a bit of
time, typically the agency will approve a permit
for a five-year period.

After that, the permit will be
administratively extended for sometimes a number
of years until the next one is approved.
Generally the agency tries to shoot for no more
than two years being administratively continued.
Sometimes we're not successful at reaching that
number either.

BOARD MEMBER LYNCH: So I take it
there's a review process at the end of the five
years, a review process of some kind?

MR. MOSER: Yes. Every five years as a condition of a permit, a permittee has to submit a renewal if they plan to continue obviously, or would like the opportunity or potential, they will submit an application I believe six months prior to the permit's expiration, which it happened here.

BOARD MEMBER LYNCH: But the Department is not bound by this stipulation with regard to the new permit five years down the road, if circumstances change?

MR. MOSER: Yes. It's the Department's position that we re-evaluate a permit every time it's renewed. If a permit is modified during its term, then the review is bounded by the limitations of that modification; but if it's a renewal permit, then the Department looks at the entire, all of the circumstances and issues of a new permit.

BOARD MEMBER LYNCH: All right. Thank you.

CHAIR DEVENY: Any other questions from Board members? David, I'm seeing your hand.

BOARD MEMBER LEHNHERR: Madam Chair, I'm
just clarifying for myself. So if we approve this action, then CHS can have a permit for another five years. If we don't, what would happen?

MR. MOSER: Well, if you approve this action, then I guess the conditions that the parties have agreed to would be included in the permit, and this case, the two cases that are related on the Board's docket would be closed.

And then the agency would simply be beginning to evaluate the application that CHS had submitted for the next five years. This basically just closes a chapter.

I guess if the stipulation and order that have been submitted is not approved, then the parties would have to -- I guess it depends. It depends on what the Board would say. If there's a reason, we'd have to address that. So it's kind of hard to speculate, but potentially we would go back to a contested case proceeding.

BOARD MEMBER LEHNHERR: Thank you.

CHAIR DEVENY: Any other questions or comments from Board members, clarification that's needed?

(No response)

CHAIR DEVENY: Hearing none, I would
like to move that the Board approve the
stipulations that were set forth on these two
contested cases, and ask that they be approved by
the Board.

BOARD MEMBER LEHNHERR: I'll second that
motion.

CHAIR DEVENY: Where did that second
come from?

BOARD MEMBER LEHNHERR: David.

CHAIR DEVENY: Thank you, David. It's
been moved and seconded. Is there any further
discussion?

(No response)

CHAIR DEVENY: Hearing none, all those
Board members in favor, please signify by saying
aye.

(Response)

CHAIR DEVENY: Are any Board members
opposed?

(No response)

CHAIR DEVENY: Hearing none, the motion
passes. And with that, we are required to open
this meeting up for a quick public comment period.

If there's anybody in the public that wishes to
comment on any issues that were not discussed
today, this is an opportunity.

(No response)

CHAIR DEVENY: Hearing none, I'll move to adjourn this meeting.

BOARD MEMBER BUSBY: Second.

MR. DAVIS: Thank you, Madam Chair, Board members.

CHAIR DEVENY: It's been moved and seconded that this meeting be adjourned.

(The proceedings were concluded at 9:13 a.m.)

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CERTIFICATE

STATE OF MONTANA

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 - 11 - 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 1st day of November, 2020.

__________________________

LAURIE CRUTCHER, RPR
Court Reporter - Notary Public
My commission expires
March 9, 2024.
although - 3:3, 4:11, ahead [4]
agency [4] 12:16
applicants [3] 6:19, 6:19, 6:26
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