

**MINUTES
JANUARY 23, 2009**

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:05 a.m., on Friday, January 23, 2009, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joseph Russell, Heidi Kaiser, Larry Mires, Robin Shropshire, and Gayle Skunkcap

Board Members Present via Telephone: Don Marble and Bill Rossbach

Board Attorney Present: Katherine Orr, Attorney General's Office, Department of Justice

Board Secretary Present: Joyce Wittenberg, DEQ Director's Office

Court Reporter Present: Laurie Crutcher

Department Personnel Present: Tom Ellerhoff, John North, Jane Amdahl, David Rusoff, Norman Mullen, James Madden, Claudia Massman, and Ed Hayes, Director's Office; Charles Homer, Debra Wolfe, Vicki Walsh, and Carson Coates, Air Resources Management Bureau; Warren McCullough, Environmental Management Bureau; Frank Gessaman, Enforcement Division; Eric Regensburger, Public Water Supply & Subdivisions Bureau; David Bowers, Hazardous Waste Site Cleanup Bureau; George Mathieus and Bob Bukantis, Water Quality Planning Bureau

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): John Wardell, Environmental Protection Agency; Jeff Chaffee, Bison Engineering and Southern Montana Electric (SME)

Mr. Wardell presented a 'Friend of EPA' award to Chairman Russell on behalf of the Environmental Protection Agency to recognize his work with the Board.

I.A.1 Review and approve December 5, 2008, minutes.

There being no comments on them, Chairman Russell called for a motion to approve the minutes. Ms. Kaiser so MOVED. Mr. Skunkcap SECONDED the motion. The motion CARRIED with a unanimous VOTE.

II.A.1.c In the matter of the appeal by the Town of Superior, BER 2007-05 WQ, regarding final MPDES Permit No. MT0020664, issued to the Town of Superior.

Hearing Examiner Katherine Orr updated the Board saying the parties had filed a request for an extension and that it was pending.

II.A.1.i In the matter of violations of the opencut mining act by TMC, Inc. at the Nuss Pit, Gallatin County, Montana, BER 2008-10 OC.

Hearing Examiner Katherine Orr said she understood a stipulation to dismiss had been filed today.

II.A.1.1 In the matter of violations of the Montana Public Water Supply Laws by Loyal Order of the Moose #639, Helena, Montana, BER 2008-14 PWS.

Hearing Examiner Katherine Orr said a second request for extension was filed on January 22.

II.A.1.o In the matter of the appeals of the Record of Decision under the Major Facility Siting Act related to the Montana Alberta Tie Ltd. transmission line, BER 2008-19, 20, 21-MFS, by Jerry McRae and Katrina Wilson Martin, Chris Stephens, and Michael Koenig.

Hearing Examiner Katherine Orr explained that the three cases had been consolidated. She also said the parties had submitted more detailed statements of their claims, that they are presently in discovery and conducting depositions, and that the case is scheduled for hearing in May.

Mr. Mires began discussion on how the hearing date could be moved up in order to speed up the process.

II.A.1.e In the matter of violations of the Water Quality Act by Park County, Gardiner, MT, BER 2008-01 WQ.

Hearing Examiner Katherine Orr said the parties requested an extension of thirty days to submit a proposed prehearing schedule, which is pending.

II.A.1.a In the matter of CR Kendall Corporation's request for a hearing to appeal DEQ's decision to deny a minor permit amendment under the Metal Mine Reclamation Act, BER 2002-09 MM.

- II.A.1.b | In the matter of violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.
- II.A.1.d | In the matter of the appeal by Southern Montana Electric (SME) regarding its Air Quality Permit No. 3423-00 for the Highwood Generation Station, BER 2007-06 AQ.
- II.A.1.f | In the matter of violations of the Hazardous Waste Act by the Three W's, Inc., and Montana Waste Systems, Inc., BER 2008-07 HW (MT Waste Systems).
- II.A.1.g | In the matter of the appeal by Eastgate Water and Sewer Association of Helena Sand and Gravel, Inc.'s Opencut Permit No. HSG-017, BER 2008-08 OC.
- II.A.1.h | In the matter of violations of the Hazardous Waste Act by the Three W's, Inc., and Montana Waste Systems, Inc., BER 2008-09 HW (Three W's).
- II.A.1.j | In the matter of violations of the Opencut Mining Act by Helena Sand and Gravel, Inc. at the Lake Helena Drive Pit, Lewis and Clark County, Montana, BER 2008-12 OC.
- II.A.1.k | In the matter of violations of the Montana Water Quality Act by Wilderness Club, LLC, at the Wilderness Club Eureka, Lincoln County, BER 2008-13 WQ.
- II.A.1.m | In the matter of the Montana Underground Storage Tank Act by Dutton School District 28 at Dutton Public School, Dutton, BER 2008-16 UST.
- II.A.1.n | In the matter of violations of the Montana Underground Storage Tank Act by Tom Pelican and Theresa Pelican at Swan Lake Stage Stop, 72241 highway 83, Swan Lake, Lake County, BER 2008-18 UST.
- II.A.1.p | In the matter of the appeal and request for hearing by Montana Environmental Information Center, Citizens for Clean Energy, Sierra Club, and National Parks Conservation Association of the Southern Montana Electric Generation and Transmission Cooperative Highwood Generating Station Air Quality Permit No. 3423-01, BER 2008-23 AQ.

Hearing Examiner Katherine Orr had nothing further to add to the information that was provided in the agenda for the above contested cases.

- II.A.2.a | In the matter of the Notice of Appeal and Request for Hearing of the Citizens Awareness Network, Women's Voices for the Earth, and the Clark Fork Coalition regarding DEQ's approval of the Thompson River CO-Gen, LLC, Air Quality Permit No. 3175-04, BER 2006-18 AQ.

Hearing Examiner Katherine Orr noted that the filing of the Notice of Entry of Judgment started the appeal period to the Montana Supreme Court.

- II.A.2.b | In the matter of the appeal by Citizens for Clean Energy (CCE) and Montana Environmental Information Center (MEIC) regarding Air Quality Permit No. 3423-00 issued to Southern Montana Electric (SME) for its Highwood Generating Station, BER 2007-07 AQ.

Mr. Rossbach inquired about the November 13, 2008, decision of the U.S. Environmental Appeals Board in the case of *In re: Deseret Power Electric Cooperative*. Mr. Rusoff assured the Board members he would forward copies to them.

II.B. Upper Blackfoot Mining Complex Brief

Mr. Bowers updated the Board on the numerous significant actions and events that had transpired since the Board had rescinded the temporary water quality standards for this site. He responded to questions regarding the new state-of-the-art water treatment system, as well as other questions posed by Board members.

II.C Legislation Brief

Mr. North briefly described DEQ-proposed bills that would not affect the Board or the Board's duty, then detailed DEQ-proposed bills that would affect the Board. He also provided information concerning proposed bills that deal with the Administrative Procedures Act or the Board itself directly.

II.D Gallatin Outstanding Resource Water (ORW) BRIEFING

Mr. Bukantis provided a general explanation of ORW designation as a component of water quality standards, particularly the nondegradation piece, and a synopsis of the history, as well as an overview of the ORW designation process. He then provided background information regarding the Gallatin ORW effort.

Mr. Regensburger talked about point sources under ORW and connections between groundwater and surface water for ORW designation. He also discussed impacts of ORW designation.

III.A.1 In the matter of the Department's request to initiate rulemaking to amend ARM 17.30.617 to designate a portion of the Gallatin River as an Outstanding Resource Water and to amend ARM 17.30.638.

Mr. Bukantis said the department agrees with the Greater Yellowstone Coalition and would like to see the public comment period extended.

Chairman Russell called for public comment; there was no response. He called for a motion to initiate the rulemaking by publishing a supplemental notice and appointing a Hearing Examiner. Mr. Rossbach so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.A.2 In the matter of the Department's request to initiate rulemaking to adopt model organizational rulemaking and contested case rules as revised by the Secretary of State and the Attorney General pursuant to HB 70 of the 2007 Legislature.

Mr. Rusoff said the department is requesting the Board initiate and adopt rulemaking jointly with the department to incorporate by reference revisions of model rules that occurred last year by the Secretary of State's office and the Department of Justice in response to House Bill 70 from the 2007 legislative session. He said public comment is not expected.

Chairman Russell called for public comment; there was no response. He called for a motion to initiate the rulemaking and publish the notice. Mr. Mires so MOVED. Mr. Marble SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.B.1 In the matter of final adoption of the amendments of ARM 17.8.308, 17.8.504, 17.8.744, and 17.8.1205 regarding agricultural exemptions from air quality rules and changes regarding operating permit application and Montana Air Quality Permit Application processes and the associated fee rule.

Ms. Wolfe briefed the Board on the rulemaking effort to date.

Chairman Russell called for a motion to amend the regulations as noticed, adopt the hearing Officer's report, and the 521 and 311 analyses. Ms. Kaiser so MOVED. Mr. Mires SECONDED the motion. Chairman Russell called for public comment; there was no response. The motion CARRIED unanimously.

- III.C.1 In the matter of new contested case concerning violations of the Montana Water Quality Act by Jim Gilman Excavating, Inc., at Augusta-South, Lewis and Clark County, BER 2008-24 WQ.

Chairman Russell called for a motion to appoint Ms. Orr as the permanent hearing examiner for this case. Mr. Mires so MOVED. Mr. Marble SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.C.2 In the matter of new contested case submitted by the USDA Forest Service Northern Region regarding its air quality major open burning permit fee for calendar year 2009, BER 2009-01 AQ.

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

- III.D.1 In the matter of final action regarding the appeal by ExxonMobil of its Air Quality Operation Permit No. OP1564-02 for the Billings Refinery, Yellowstone County, BER 2007-27 AQ.

Ms. Kaiser recused herself from this matter.

Chairman Russell called for a motion to authorize him to sign the order of dismissal. Ms. Shropshire so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE and one recusal.

- III.D.2 In the matter of final action regarding violations of the Opencut Mining Act by James Timis at the Timis Excavation Site, Flathead County, BER 2008-02 OC.

Chairman Russell called for a motion to authorize him to sign the order of dismissal. Ms. Kaiser so MOVED. Mr. Skunkcap SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.D.3 In the matter of final action regarding violations of the Montana Septic Disposal and Licensure laws by Missoula Septic Service, Inc., Missoula, BER 2008-17 SDL.

Chairman Russell called for a motion to authorize him to sign the order of dismissal. Ms. Shropshire so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.D.4 In the matter of final action regarding the appeal by the USDA Forest Service Northern Region of the air quality major open burning permit fee for calendar year 2009, BER 2008-22 AQ.

Chairman Russell called for a motion to authorize him to sign the order of dismissal. Ms. Shropshire so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.

IV. General Public Comment

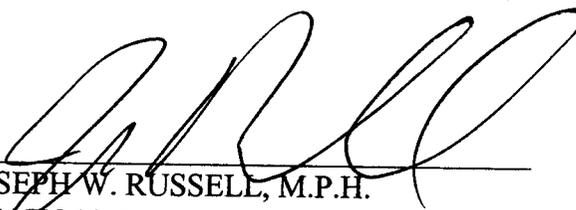
Ms. Shropshire began a brief discussion regarding PPL and its improvements with regard to mercury reductions.

V. Adjournment

Chairman Russell called for a motion to adjourn. Mr. Skunkcap so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.

The meeting adjourned at 12:02 p.m.

Board of Environmental Review January 23, 2009, minutes approved:



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

MARCH 27 2009
DATE