

MINUTES
MAY 29, 2009

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:02 a.m., on Friday, May 29, 2009, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joseph Russell, Robin Shropshire, Larry Mires, Marvin Miller, and Joe Whalen

Board Members Absent: Heidi Kaiser

Board Attorney Present: Chris Buslee, Attorney General's Office, Department of Justice

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Richard Opper, Director; Tom Livers, Deputy Director; Jim Madden, David Rusoff, Jane Amdahl, Carol Schmidt, and Norman Mullen, Director's Office Legal; John Arrigo, Enforcement Division; Dave Klemp, Deb Wolfe, Debbie Skibicki, Eric Merchant, Julie Merckel, Vickie Walsh, Tina Engel, Charles Homer, Jenny O'Mara, and Brent Lignell, Air Resources Management Bureau; Jon Dilliard, Steve Kilbreath, Eugene Pizzini, and Barbara Kingery, Public Water Supply Bureau; Jenny Chambers, Water Protection Bureau; Ed Thamke, Waste and Underground Tank Management Bureau; Warren McCullough, Environmental Management Bureau

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Jim Parker and Mark Lambrecht, PPL Montana; Tim Gregori and Gary Zadick, Southern Montana Electric (SME); Jeff Chaffee, Bison Engineering and SME; Don Allen, Western Environmental Trade Association

- I.A. Review and approve March 6, 2009, teleconference meeting minutes.
- Mr. Whalen MOVED to approve the March 6, 2009, teleconference meeting minutes. Mr. Miller SECONDED the motion. The motion CARRIED with a UNANIMOUS VOTE.
- I.B. Review and approve March 27, 2009, meeting minutes.
- Mr. Mires indicated a typo on Page 5 at Item 3.B.1.
- Chairman Russell called for a motion to approve the March 27, 2009, meeting minutes with the correction noted. Mr. Mires so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a UNANIMOUS VOTE.
- 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.
- There was no discussion regarding this matter.
- II.A.1.b In the matter of Violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.
- There was no discussion regarding this matter.
- II.A.1.c 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.
- Mr. Buslee noted that the Request for Extension of Stay was granted and extended to January 4, 2010.
- Mr. Livers pointed out that this was the same case he had emailed Board members about regarding an error on the agenda.
- II.A.1.d 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.e In the matter of violations of the Montana Water Quality Act by Wilderness Club, LLC., at the Wilderness Club Eureka, Lincoln County, Montana, BER 2008-13 WQ.
- II.A.1.f 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.

- II.A.1.g | In the matter of violations of the Montana Water Quality Act by Jim Gilman Excavating, Inc., at Augusta-South, Lewis and Clark County, BER 2008-24 WQ.
- II.A.1.h | In the matter of violations of the Metal Mine Reclamation Act by Saturday Sunday, LLC. Deer Lodge County, BER 2009-02 MM.
- II.A.1.i | In the matter of violations of the Montana Public Water Supply Laws by Hugh Black-ST. Mary Enterprises, Inc. at the ST. Mary Lodge and Resort Public Water Supply System, PWSID #MT0002754, ST. Mary, Glacier County, BER 2009-04 PWS.
- II.A.1.j | In the matter of the appeal by the River Rock County Water and Sewer District regarding its MDEQ Permit No. MTX000147 for its wastewater treatment facility, BER 2009-05 WQ.
- II.A.1.k | In the matter of violations of the Montana Underground Storage Tank Act by Flying J Inc. at Flying J Travel Plaza, 112000 Browns Gulch Road, Butte, Silver Bow County, BER 2009-06 UST.

There were no discussions regarding items II.A.1.d through II.A.1.k.

- 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.

There was no discussion regarding this matter.

- 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.

There was no discussion regarding this matter.

II.B. Legislation Wrap-up

Mr. Livers discussed House Bill 483. He also discussed the Board member confirmation hearings, noting that the Governor’s reappointment of Mr. Rossbach was not confirmed.

- III.A.1 | In the matter of DEQ’s request to initiate rulemaking to amend ARM 17.50.403 and 17.50.410 pertaining to the correction of outdated citations and references to solid waste rules.

Mr. Thamke requested that the Board initiate rulemaking for the proposed amendments to correct outdated citations and references, and he responded to

questions from Board members.

Chairman Russell called for a motion to initiate rulemaking without providing for a public hearing. Mr. Whalen MOVED to initiate rulemaking to amend Administrative Rules of Montana 17.50.403 and 17.50.410. Mr. Miller SECONDED the motion. Chairman Russell called for public comment; however, there was no response. The motion CARRIED with a unanimous VOTE.

III.A.2 In the matter DEQ's request to initiate rulemaking to amend ARM 17.30.702, 17.36.101, 17.36.102, 17.36.103, 17.36.104, 17.36.323, 17.36.345, 17.36.911, 17.36.912, 17.36.914, 17.36.916, 17.36.918, 17.36.922, 17.38.101, 17.55.102 and adopt New Rules I and II pertaining to Department Circular DEQ-4 and gray water reuse.

Mr. Kilbreath asked the Board to initiate rulemaking for a series of rules for gray water reuse and provided background regarding the rules. He also pointed out an error in the notice that would need to be corrected prior to being published. Mr. Kilbreath responded to questions from Board members.

Chairman Russell called for public comment on the request for rulemaking. No one responded. He called for a motion to initiate the rulemaking, publish the notice with the correction previously noted, and appoint Katherine Orr as the presiding officer. Mr. Mires so MOVED. Ms. Shropshire SECONDED the motion.

Mr. Whalen said he would like this matter to be heard by the Board. He MOVED to postpone consideration of the matter until the next regular Board meeting. Upon Mr. Livers' explanation of the rulemaking process, Mr. Whalen WITHDREW his motion. After some discussion about the Board's desire to hold the rule hearing itself, Mr. Mires RESCINDED his motion. Ms. Shropshire concurred.

Chairman Russell called for a motion to initiate the rulemaking, publish the notice, and hold the hearing before the Board. Ms. Shropshire so MOVED. Mr. Whalen SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.A.3 In the matter of the request to initiate rulemaking to amend ARM 17.8.501, 17.8.504, 17.8.505, and 17.8.514 for the annual adjustment of air quality operation and open burning fees.

Mr. Homer requested that the Board initiate rulemaking and appoint a presiding officer to hear amendments to the air quality fee rules. He provided background on what air quality fees are and responded to questions from Board members.

Chairman Russell called for public comment.

Mr. Lambrecht spoke in support of the rulemaking and the fee increases.

Chairman Russell called for a motion to initiate the rulemaking, with a noted amendment in the notice, and to appoint Katherine Orr the presiding officer. Mr. Miller so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.A.4 In the matter of the request to initiate rulemaking to update the Air Quality Incorporation by Reference Rules at ARM 17.8.102, 17.8.302, 17.8.767, 17.8.802, 17.8.822, 17.8.902, and 17.8.1002 (annual update and housekeeping changes).

Ms. Wolfe provided information regarding the proposed rulemaking. She said the department recommends the Board appoint a presiding officer and conduct a public hearing.

Chairman Russell called for public comment on the rulemaking. No one responded. He called for a motion to initiate rulemaking, publish the notice, and appoint Katherine Orr the presiding officer. Ms. Shropshire so MOVED. Mr. Whalen SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.B.1 In the matter of the adoption of model organizational rulemaking and contested case rules as revised by the Secretary of State and Attorney General pursuant to HB 70 of the 2007 Legislature, which transferred certain model rules from the Attorney General to the Secretary of State.

Mr. Madden requested that the Board approve a final adoption notice regarding incorporation by reference of some model rules under the Montana Administrative Procedures Act. He provided background regarding the rulemaking and said the intent of the rulemaking is to pick up some updates so that the rules will be current. He also responded to questions from Board members.

Chairman Russell called for a motion to adopt the amendments to ARM 17.4.101. Mr. Mires so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.C.1 In the matter of the request for hearing by Sandy Rose regarding the Notice of violation of the Montana Public Water Supply Laws by Canyon Ferry Mansion, Inc., at Canyon Ferry Mansion, PWSID #MT0004387, Helena, Lewis and Clark County, BER 2009-08 PWS.

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

- III.C.2 In the matter of the Notice of Violations of the Montana Water Quality Act by North Star Aviation, Inc. at Ravalli County Airport, Ravalli County, BER 2009-10 WQ.

Chairman Russell called for a motion to appoint Ms. Orr the hearings examiner for

this matter. Mr. Mires so MOVED. Mr. Whalen SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.C.3 In the matter of violations of the Clean Air Act of Montana by Sheep Mountain Properties, LLC, Jefferson County, BER 2009-11 AQ.

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

- III.D.1 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).

Discussion took place regarding cases dismissed under Rule 41(a), Montana Rules of Procedure.

Chairman Russell called for a motion to authorize him to sign the order dismissing this case. Mr. Mires so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.D.2 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).

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

- III.D.3 In the matter of the appeal by the USDA Forest Service Northern Region of the air quality major open burning permit fee for calendar year 2009, BER 2009-01 AQ.

Mr. Whalen MOVED that the Board authorize the Chair to approve and sign the order of dismissal. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- III.D.4 In the matter of violations of the Opencut Mining Act by Daniels County at the D. Hanrahan Pit, Daniels County, BER 2009-03 OC.

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

- III.D.5 In the matter of the request for hearing by William Gross regarding the notice of termination of his MDEQ MPDES Suction Dredge General Permit No. MTG70267, BER 2009-07 WQ.

Chairman Russell called for a motion to authorize him to sign the order of

dismissal. Mr. Mires so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.D.6 In the matter of the Notice of Violation of the Montana Underground Storage Tank Act by Amsden, LLC at The Corner Store, Powder River County, Montana, BER 2009-09 UST.

Mr. Whalen MOVED that the Board authorize the Chair to sign the order of dismissal. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

IV. General Public Comment

Chairman Russell called for public comment on matters pertaining to the Board. No one responded.

Mr. Livers discussed holding the hearing for the gray water rules in conjunction with the July 24 meeting.


Mr. Madden mentioned a possible summary judgment hearing in the Wilderness Club case being held at the July 24 meeting.

V. Adjournment

Chairman Russell called for a motion to adjourn. Mr. Whalen so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.

The meeting adjourned at 11:15 a.m.

Board of Environmental Review May 24, 2009, minutes approved:



 JOSEPH W. RUSSELL, M.R.H.
 CHAIRMAN
 BOARD OF ENVIRONMENTAL REVIEW
 7/27/2009
 DATE