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**TELECONFERENCE MINUTES
MAY 14, 2010**

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:03 a.m., on Friday, May 14, 2010, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joseph Russell, Marvin Miller, Heidi Kaiser, Larry Mires, and Joe Whalen

Board Members Absent: Robin Shropshire and Larry Anderson

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

Board Secretary Present: Misty Gable

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers (Deputy Director); John North, and David Rusoff – Legal; Judy Hanson – Permitting & Compliance Division; Eric Regensburger – Public Water Supply & Subdivisions Bureau; David Klemp, Charles Homer, Vickie Walsh, and Debra Wolfe – Air Resources Management Bureau; George Mathieus – Planning Division; Bob Bukantis and Vanessa Redmond – Water Quality Planning Bureau; John Arrigo – Enforcement Division

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Brenda Lindlief-Hall, Tongue River Water Users Association; Don Allen, Western Environmental Trade Association; Jim Carlson and Benjamin Schmidt, Missoula City-County Health Department

I.A. Review and approve March 19, 2010, teleconference meeting minutes.

Mr. Whalen MOVED to approve the March 19, 2010, teleconference minutes. Mr. Miller SECONDED the motion. The motion carried with a unanimous vote.

I.B. October meeting schedule

Discussion took place regarding a conflict with the October 1 meeting. It was decided to move the meeting to October 8, 2010.

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. [*No discussion took place regarding this agenda item.*]

II.A.1.b In the matter of Violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.

Ms. Orr reported that a stipulation to dismiss was filed with the Board. The case is not in front of the Board now because the stipulation was not received until after the packet went out, but will be before the Board at the next meeting.

II.A.1.c 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.

Ms. Orr stated that the case is set for hearing on October 20, 2010.

II.A.1.d In the matter of violations of the Metal Mine Reclamation Act by Saturday Sunday, LLC. Deer Lodge County, BER 2009-02 MM.

Ms. Orr stated that the remaining issue is calculation of the penalty and that is anticipated to go to hearing.

II.A.1.e 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.

Ms. Orr reported that there is a hearing set for June 14, 2010.

II.A.1.f 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.

Ms. Orr stated that a hearing is set for September 16, 2010.

- II.A.1.g In the matter of violations of the Clean Air Act of Montana by Sheep Mountain Properties, LLC, Jefferson County, BER 2009-11 AQ.
- Ms. Orr reported that the parties are still negotiating.
- II.A.1.h In the matter of violations of the Montana Septage Disposal and Licensure Laws by Steven Kunkel, d/b/a Montana Septic Service, at Great Falls Wastewater Treatment Plant, Great Falls, Cascade County, BER 2009-17 SDL.
- Ms. Orr stated that the issue remaining is penalties, and the parties are trying to complete the discovery stage. There has been a little resistance in providing the materials that were requested by the Department in discovery.
- II.A.1.i In the matter of violations of the Montana Underground Storage Tank Act by Juniper Hill Farm, LLC, at Lakeside General Store, Lewis and Clark County, BER 2009-18 UST.
- Ms. Orr stated that she is in the process of ruling on a motion for summary judgment, and the hearing is set for June 4, 2010.
- II.A.1.j In the matter of the request for hearing regarding the revocation of certificate of approval ES#34-93-C1-4 for the Fort Yellowstone Subdivision, Park County, BER 2009-20/22 SUB.
- Ms. Orr reported that the parties are attempting to reach settlement.
- II.A.1.k In the matter of the request for hearing by the City of Great Falls regarding the DEQ's notice of final decision for MPDES Permit No. MT0021920, BER 2009-21 WQ.
- Ms. Orr reported that the parties are attempting to reach settlement.
- II.A.1.l In the matter of violations of the Montana Public Water Supply Laws by Jason Ellsworth at SFE Unapproved, Hamilton, Ravalli County, BER 2010-01 PWS.
- Ms. Orr stated that the parties are discussing settlement.
- II.A.1.m In the matter of the request for hearing by AquaFlo, LLC, of DEQ's Notice of Final Decision regarding Montana Ground Water Pollution Control System Permit No. MTX00121 and the Permit Fact Sheet, Helena, Lewis and Clark County, BER 2010-03 WQ.
- Ms. Orr reported that another extension request is expected to be filed.
- II.A.2. a In the matter of the appeal and request for hearing by Fidelity Exploration & Production Co. of the DEQ's denial of the request for modification of Fidelity's

MPDES Permit No. MT0030457, BER 2009-24 WQ.

Ms. Orr stated that the parties are trying to determine whether they can settle.

II.A.2.b In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Signal Peak Energy, LLC at Bull Mountain Mine #1, Roundup, Musselshell County, BER 2009-23 SM.

Ms. Orr reported that the parties have reached a settlement in principle.

III.A.1 In the matter of the amendment of ARM 17.8.745 to reduce the per-ton threshold exempting de minimis changes from the requirement to obtain a Montana Air Quality Permit.

Mr. Homer explained that the rule allows facilities to make small changes in their equipment that have a minimal impact on emissions without modification to their air quality permit. The rule was initially adopted in 1996. A change to the State Implementation Plan (SIP) was submitted to EPA in 2002 and has been part of the backlog of SIP approvals of EPA. Mr. Homer stated that the Board held a hearing on March 11, 2010. A couple of comments received at the hearing expressed tepid approval. Mr. Homer stated that the commentators didn't agree with EPA's objections. He said the Department proposes that the Board take final action and approve the rule notice as proposed. Mr. Homer responded to Board member questions.

Chairman Russell called for questions from the Board; there was no response.

Chairman Russell called for public comment; there was no response.

Chairman Russell called for a motion to approve the proposed amendments, to accept the Department's 521 and 311 analysis, and to adopt the presiding officer's report and the Department's response to comments. Mr. Whalen so MOVED and Mr. Mires SECONDED. He called for a VOTE and the motion CARRIED unanimously.

III.A.2 In the matter of amending ARM 17.30.617 and 17.30.638 and the Department's request that the Board issue a notice of supplemental rulemaking to extend the comment period.

Mr. Livers provided an introduction stating that the Department is again asking for an extension of the public comment period. He said that the Department's belief is that there is still value in the extension. After the rulemaking was initiated parties on both sides of this issue began meeting to talk through concerns, look at solutions and look at different alternatives, and productive discussions were taking place. Mr. Livers explained that with the downturn in the economy, there has been a drop off in development pressure and less urgency to have discussions. DEQ believes that now is the best time for the parties to be talking. Mr. Livers responded to Board member

questions.

Chairman Russell called for additional questions from the Board; there was no response.

Chairman Russell called for a motion to initiate rulemaking for the purpose of extending the comment period for six months. Mr. Mires so MOVED and Mr. Miller SECONDED the motion. Chairman Russell asked for public comment; there was no response. Chairman Russell called for a VOTE and the motion CARRIED unanimously.

III.B.1 In the matter of violations of the Public Water Supply Laws by Red Cliff Estates Homeowners Association, Inc. at Red Cliff Estates HOA, Clancy, Jefferson County, BER 2010-05 PWS.

Ms. Orr provided background on the case. Ms. Orr explained that the parties have reached settlement and the stipulation for dismissal will come before the Board at its next meeting.

Mr. Mires MOVED to appoint Ms. Orr as the permanent hearings officer. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.B.2 In the matter of the appeal and request for hearing by the City of Belgrade of DEQ's notice of final decision regarding Montana Ground Water Pollution Control System Permit No. MTX000116, Belgrade, Gallatin County, BER 2010-06 WQ.

Discussion took place and the Board took no action on this item, retaining the option to hear this issue itself.

III.B.3 In the matter of violations of the Public Water Supply Laws by Aces Wild, LLC at Aces and Eights Casino, PWSID #MT0003321, Glasgow, Valley County, BER 2010-07 PWS.

Ms. Orr provided background on the case. Mr. Mires recused himself from the discussion and the vote. Chairman Russell called for a motion to appoint Ms. Orr as the permanent hearings officer. Mr. Miller so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.B.4 In the matter of violations of the Montana Underground Storage Tank Act by Jeanny Hlavka, individually and d/b/a J.R. Enterprise, LLC, at the Fort Peck Station, 301 Missouri Avenue, Fort Peck, Valley County, BER 2010-08 UST.

Chairman Russell called for a motion to appoint Ms. Orr as the permanent hearings officer. Mr. Miller so MOVED and Ms. Kaiser SECONDED. Mr. Whalen opposed and the motion CARRIED with a 4-1 VOTE.

III.C.1 In the matter of the appeal by the 7th Day Adventist Church/Christian School, Hamilton, Ravalli County, BER 2010-04 PWS.

Mr. Whalen MOVED to authorize the Chair to sign the order dismissing the case. Mr. Miller SECONDED the motion. Mr. Chairman called for a VOTE and the motion CARRIED unanimously.

III.C.2 In the matter of violations of the Public Water Supply Laws by High Spirits Entertainment, LLC at High Spirits Club and Casino, Florence, Ravalli County, BER 2010-02 PWS.

Mr. Arrigo responded to questions from the Board. Mr. Mires MOVED to authorize the Chair to sign the order dismissing the case. Mr. Miller SECONDED the motion. Mr. Chairman called for a VOTE and the motion CARRIED unanimously.

III.D.1 In the matter of Missoula City-County air pollution control program revisions.

Mr. Livers provided an introduction stating that Missoula City-County is seeking an order approving recent changes to its program.

Mr. Schmidt stated that changes were made to chapters 2, 4, 6, 9, and 14. Open houses were held in May and June of 2009, and public hearings were held in June, August, and September of 2009. Changes were made to the rule in response to public comment. Mr. Schmidt and Mr. Carlson answered questions from Board members.

Chairman Russell called for public comment; there was no response.

Chairman Russell called for a motion to accept the amendments as put forward. Ms. Kaiser so MOVED and Mr. Whalen SECONDED the motion. The motion CARRIED with a unanimous VOTE.

IV. General Public Comment

Chairman Russell asked if anyone in the audience or on the phone would like to speak on any matters that pertain to the Board. No one responded.

V. Adjournment

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

The meeting adjourned at 10:18 a.m.

Board of Environmental Review May 14, 2010, minutes approved:



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

7/23/2010
DATE