



Montana
Board of Environmental Review

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**MINUTES
MAY 18, 2012**

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 18, 2012, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

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

Board Members Absent: Larry Mires and Heidi Kaiser

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

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers (Deputy Director); John North, Norman Mullen, Claudia Massman, David Dennis, and Jane Amdahl – Legal; Jenny Chambers – Water Protection Bureau; Jon Dilliard, Eugene Pizzini, and Shelley Nolan – Public Water Supply & Subdivisions Bureau; Debra Wolfe, Vickie Walsh, Charles Homer, Whitney Walsh, and Stephen Coe – Air Resources Management Bureau; Ed Coleman and Eric Urban – Industrial & Energy Minerals Bureau; Mark Bostrom, Amy Steinmetz, and Rod McNeil – Water Quality Planning Bureau; Todd Teegarden, Paul LaVigne, and Terry Campbell – Technical & Financial Assistance Bureau; John Arrigo – Enforcement Division

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): None

- I.A Review and approve March 23, 2012, meeting minutes.
- Chairman Russell called for a motion to approve the March 23, 2012, minutes. Mr. Miller so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous vote.
- II.A.1.a In the matter of violations of the Montana Septage Disposal and Licensure Laws by James Vaughn, d/b/a Any Time Septic & Porta-Potty, Lake County, BER 2011-06 SDL.
- Ms. Orr said there is a Stay in effect for this matter until July 18, 2012.
- II.A.1.b In the matter of violations of the Public Water Supply Laws by Olson's Lolo Hot Springs, Inc. at Lolo Hot Springs, PWSID #MT0000805, Missoula County, BER 2011-09 PWS.
- Ms. Orr said the parties in this matter anticipate settlement on July 1, 2012.
- II.A.1.c In the matter of violations of the Opencut Mining Act by Ell Dirt Works, LLC, at the Gene Foss Pit 1, Richland County, BER 2011-11 OC. *(No discussion took place regarding this matter.)*
- II.A.1.d In the matter of violations of the Water Quality Act by SK Construction, Inc. on US Highway 2 near Bainville, Roosevelt County, BER 2011-20 WQ.
- Ms. Orr said a scheduling order was issued on May 11, 2012, and that a hearing is set for September 19, 2012.
- II.A.1.e In the matter of violations of the Opencut Mining Act by the City of Ronan at Ronan, Lake County, BER 2011-23 OC. *(No discussion took place regarding this matter.)*
- II.A.1.f In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Westmoreland Resources, Inc., at the Absaloka Mine, Big Horn County, BER 2012-02 SM.
- Ms. Orr said a hearing is scheduled for August 29, 2012.
- II.A.2.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.
- Ms. Orr said a status report was filed in this matter on May 3, 2012, and that a stipulation for dismissal will be submitted in the near future.
- II.A.2.b In the matter of the appeal and request for hearing by Roseburg Forest Products Co. of DEQ's Notice of Final Decision regarding Montana Ground Water Pollution Control System Permit No. MTX000099, BER 2010-09 WQ.
- Ms. Orr said a telephonic status conference for this matter is scheduled for June 19, 2012.
- II.A.2.c In the matter of the appeal and request for hearing by the City of Helena regarding the DEQ's Notice of Final Decision for Montana Pollutant Discharge Elimination System (MPDES) Permit No. MT0022641, BER 2011-08 WQ.
- Ms. Orr said an unopposed motion to modify the second scheduling order was filed on May 16, 2012, and that her ruling on the motion will be forthcoming.

II.A.3.a In the matter of violations of the Opencut Mining Act by Brad Blakeman at the Camas Prairie Gravel Pit, Sanders County, BER 2012-01 OC.

Ms. Orr said a hearing for this matter is scheduled for September 28, 2012, before the Board. She also noted that there had been a notice and consent to withdrawal of counsel.

II.A.4.a 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, Valley County, BER 2010-08 UST. *(No discussion took place regarding this matter.)*

III.A.1 In the matter of DEQ's request to initiate rulemaking to amend ARM 17.30.617 to designate a portion of the Gallatin River as an Outstanding Resource Water (ORW).

Mr. Livers explained that this is a request for an extension on the rulemaking and that at least one more extension will be requested before final adoption is requested. He said the snow effluent disposal pilot project is underway and runoff data is expected in June and should be the last data collection needed to evaluate the pilot project. He said DEQ and most of the parties involved believe that it will be feasible and that the increased sewage capacity will be an option.

Discussion took place regarding the legislative directive to conduct the EIS and the EIS process itself.

Chairman Russell called for a motion to extend the rulemaking and public comment period to November 2, 2012. Mr. Whalen so MOVED. Mr. Miller SECONDED the motion. Chairman Russell called for public comment on the matter. No one responded. The motion CARRIED with a unanimous vote.

III.A.2 In the matter of DEQ's request to initiate rulemaking to amend ARM 17.8.801 and 17.8.818 for major source permitting.

Ms. Wolfe said DEQ is requesting initiation of rulemaking to update requirements for ozone for sources subject to major source permitting rules. She provided information regarding ozone and the National Ambient Air Quality Standards for it.

Ms. Vicki Walsh responded to questions from the Board.

Chairman Russell called for public comment on the proposed rulemaking. No one responded.

Chairman Russell called for a motion to initiate the rulemaking and appoint Ms. Orr as the presiding officer. Mr. Miller so MOVED. Mr. Anderson SECONDED the motion. The motion CARRIED with a unanimous vote.

III.A.3 In the matter of DEQ's request to initiate rulemaking to revise Circular DEQ-2, design standards for municipal wastewater collection and treatment.

Mr. LaVigne said DEQ is requesting rule initiation for changes in Circular DEQ-2, design standards for larger municipal systems, which includes collection system information and various treatment technologies. He said the circular is a tool box of sorts, based on the *Ten*

States Standards, for consulting engineers and DEQ review engineers to provide consistency in the reviews. He said the proposed changes include: a lot of cleanup; significant modifications regarding land application; new sections on membranes and other treatment technologies; and the addition of reuse standards, classifications, and allowable uses.

Further discussion covered the National Environmental Policy Act, the Montana Environmental Policy Act, the Water Quality Act, and the Public Water Supply Act. Mr. LaVigne, Mr. Campbell, and Ms. Massman responded to questions from the Board.

Mr. Whalen expressed interest in the Board holding the hearing for this rulemaking.

Chairman Russell called for a motion to initiate the rulemaking and have the Board conduct the hearing. Mr. Whalen so MOVED. Ms. Shropshire SECONDED the motion. Chairman Russell called for public comment on the proposed rulemaking. No one responded. The motion CARRIED with a unanimous VOTE.

III.A.4 In the matter of DEQ's request to initiate rulemaking to establish new and revised water quality standards in Circular DEQ-7.

Mr. McNeil said this update of DEQ-7 is to clean up some issues that were missed in the triennial review and includes a major undertaking to add required reporting values to a large number of the constituents in DEQ-7. He said the document has been out for informal public comment twice this round and to WPCAC three times to discuss changes.

Mr. McNeil said the Department of Agriculture detected five new pesticides in groundwater supplies during 2010 and 2011, for which staff worked with an EPA toxicologist to develop standards. He said staff had also reviewed all the pesticide standards in DEQ-7 and modified 12 of them. Mr. McNeil said two new aquatic life standards were adopted and that there are nine new or revised human health standards. He described other changes in the document, including a change in Footnote 8, which indicates development of a draft numeric standard to be included under a separate circular, DEQ-12.

Mr. McNeil pointed out several corrections and modifications to Subchapter (6). Ms. Steinmetz, Ms. Chambers, and Mr. McNeil responded to questions from the Board.

Chairman Russell called for public comment on the proposed rulemaking. No one responded. He called for a motion to commence the rulemaking process and appoint it to Ms. Orr. Mr. Miller so MOVED. Mr. Whalen SECONDED the motion. The motion CARRIED with a unanimous vote.

III.B.1 In the matter of final action regarding DEQ's proposal to adopt the amendments to Title 17, Chapter 38, Sub-Chapter 3, Cross Connections in Drinking Water Supplies.

Mr. Pizzini said the Board initiated the rulemaking process on January 27 and that a public hearing was held before Ms. Orr on March 2. He said that comments were received from one municipal system and that DEQ believes the proposed responses adequately address the comments. He recommended the Board adopt the rule amendments as set forth in the notice.

Chairman Russell called for a motion to amend the rule 17.38 Subchapter (3) and to accept the Presiding Officer's report, the 311 and 521 analyses, and the department's responses to comments. Mr. Miller so MOVED. Ms. Shropshire SECONDED the motion. The motion

CARRIED with a unanimous vote.

A brief discussion took place regarding the omitted call for public comment. However, since no members of the public were present, the issue was deemed moot.

III.C.1 In the matter of violations of the Public Water Supply Laws by Jore Corporation at Jore Corporation, Lake County, BER 2011-05 PWS.

Ms. Orr said the parties reached agreement in this matter and that a Rule 41(a) dismissal is requested.

Chairman Russell called for a motion to authorize him to sign the order of dismissal. Mr. Anderson so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous vote.

III.C.2 In the matter of the request for hearing by Nancy Scott, Dale Whitton, Kimberly Mole, Jess Hodge, Katherine G. Potter, Sharon B. Johnson, Clinton C. Johnson, James, D. Ward, Korrie L. Ward, Marshall Warrington, Jr., Patricia Warrington, and John Hutton, regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for the Dorr Skeels site in Lincoln County, BER 2011-15 OC, BER 2011-12 OC, BER 2011-13 OC, and BER 2011-17 OC.

Ms. Orr explained that she had issued an order granting motion for summary judgment and that a proposed order to adopt that order is before the Board for approval. She provided further information about this appeal and the related appeals, items III.C.3 and III.C.4.

Chairman Russell called for a motion to authorize him to sign the order adopting the proposed order granting summary judgment. Mr. Miller so MOVED. Mr. Anderson SECONDED the motion. After further discussion, the motion CARRIED with a unanimous vote.

III.C.4 In the matter of the request for hearing by Glenn Miller, Rick Sant, Ralph & Edna Neils, Berneice A. Zucker, Patricia Anderson, Tina K. Moore, Marc Zahner, Donald E. White, Jacki Bruemmer, Betty Longo, Tracy Nicely, Michael Dunn, Dennis Thayer, James Hopkins, Debbie Zahner, James P. Tomlin, Howard C.A. Hunter, George Stachecki, Marie Mabee, Harold Mabee, Patricia Warrington, Lily S. Parker, Linda S. Fisher, Steven E. Fisher, Connie Karns, John Ritchie, Grant Denton, Karen & Ben Pelzel, Richard L. Johnson, N.E.W. Boss, Jane O. Drayton, Leonard H. Drayton, Warren Robbe, Katherine G. Potter, Robert B. Potter, Bonnie Gannon, Kim F. Taylor, Linda Cochran, Helen R. Lockard, Marshall Warrington, Jr., Bruce Kinney, Devan Kinney, Jon Kinney, Joel Kinney, Karen Legue, Angeline R. Allen, Gary Allen, Bonnie Sonnenberg, Bud Biddle, Eunice Boeve, Ron Boeve, Kathleen Burbridge, Harold Lewis, Ken Mole, and Lois M. Mole, regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for the Dorr Skeels site in Lincoln County, BER 2011-16 OC.

Chairman Russell called for a motion to authorize him to sign the order adopting the proposed order granting summary judgment for Case No. BER 2011-16 OC. Ms. Shropshire so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous vote.

III.C.3 In the matter of the request for hearing by Steven K. Endicott, Ruth Ann Endicott, and Robert W. Gambill regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for

the Dorr Skeels site in Lincoln County, BER 2011-14 OC and BER 2011-18 OC.

Chairman Russell called for a motion to authorize him to sign the order adopting the proposed order granting summary judgment for Case No. BER 2011-14 OC and BER 2011-18 OC. Mr. Whalen so MOVED. Mr. Anderson SECONDED the motion. The motion CARRIED with a unanimous vote.

III.C.5 In the matter of violation of the Metal Mine Reclamation Act by Noble Excavating, Inc. at Nickleback Rock Quarry, Lincoln County, BER 2011-24 MM.

Ms. Orr provided details of the matter and said that the Board has before it a stipulation for dismissal under Rule 41(a).

Chairman Russell called for a motion to authorize him to sign the order of dismissal for this matter. Mr. Anderson so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous vote.

III.D.1 In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Westmoreland Resources, Inc., at the Absaloka Mine, Big Horn County, BER 2012-03 SM.

Ms. Orr provided details of the appeal and the Board discussed Mr. Whalen's interest in hearing this matter. The Board took no action on this matter.

IV. General Public Comment

Mr. North announced Ms. Massman's upcoming retirement and her recently-hired replacement, Mr. Dennis.

Mr. Livers reminded the Board members that the next meeting is scheduled for July 27 and could possibly require a start on July 26 due to the rule hearing. He also announced that the July meeting would be in-person.

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 11:18 a.m.

Board of Environmental Review May 18, 2012, minutes approved.



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

7/27/2012

DATE