



# Montana Board of Environmental Review

P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • Website: [www.deq.state.mt.us](http://www.deq.state.mt.us)

## MINUTES July 27, 2012

### 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, July 27, 2012, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

### Attendance

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

Board Members Absent: Larry Anderson

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, David Dennis, Jim Madden, Jane Amdahl, and Norman Mullen – Legal; Jenny Chambers and Tom Reid – Water Protection Bureau; Jon Dilliard, and Rachel Clark – Public Water Supply & Subdivisions Bureau; Bob Habeck, Debra Wolfe, Julie Merkel, and Charles Homer – Air Resources Management Bureau; Ed Coleman and Robert Smith – Industrial & Energy Minerals Bureau; George Mathieus – Planning, Prevention & Assistance Division; Todd Teegarden, Eric Regensburger, Amy Steinmetz, Terry Campbell, Mike Abrahamson, and Paul LaVigne – Technical & Financial Assistance Bureau; Mark Bostrom – 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.*): No members of the public were present.

I. Rule Hearing

At 9:05 a.m., the Board held a public hearing regarding the proposed revisions of Circular DEQ-2, design standards for municipal wastewater collection and treatment. The hearing ended at 9:21 a.m., at which time the regularly scheduled meeting began.

II.A.1 Review & Approve May 18, 2012, Board Meeting Minutes

Mr. Miller MOVED to approve the May 18, 2012, Board meeting minutes. Mr. Whalen SECONDED the motion. The motion CARRIED with a unanimous vote.

II.B. Set November / December Meeting Date

Mr. Livers explained that the Board had not chosen a specific date for the final meeting in 2012, leaving it open for November 30 or December 7. He said DEQ would likely prefer the latter date for rule purposes, but that either date is workable.

Several Board members indicated a preference for December 7 also. The Board agreed on December 7 for the November/December meeting date.

III.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 a status conference had taken place on July 24. She said the stay of proceedings was lifted and a hearing is now set for November 14.

III.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 informed the Board that this case has been settled.

III.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.)*

III.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. *(No discussion took place regarding this matter.)*

III.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.

Ms. Orr said this case appears to be settling.

III.A.2.a 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 this matter is settling.

III.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 this matter was retained by Board and that it appears to be going to a hearing, which is scheduled to take place at the September Board meeting. She noted that the hearing could take a half to a full day.

III.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.

Ms. Orr said a motion for summary judgment was filed, as well as responses, and that she would soon rule on that.

IV.A.1 In the matter of DEQ's request to initiate rulemaking to amend rules governing the Montana Pollutant Discharge Elimination System (MPDES) permit program in ARM Title 17, Chapter 30, subchapter 13.

Mr. Reid said DEQ is requesting that the Board initiate rulemaking to amend ARM 13.30, subchapter 13, and appoint a hearing examiner to conduct a hearing on the rule amendments. He said the primary reason for the amendments is to update the rules to maintain consistency with federal rules. Mr. Reid provided a summary of the proposed amendments and said the amendments went to the Water Pollution Control Advisory Council (WPCAC) on June 29 and were mailed to stakeholders on June 22. He noted that WPCAC supported the rules and that there wasn't a lot of interest from stakeholders. Mr. Reid responded to questions from the Board.

Chairman Russell called for public comment. There was no response. He then called for a motion to initiate the rulemaking and to appoint Ms. Orr as the presiding officer for the rulemaking. Ms. Shropshire so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous vote.

IV.A.2 In the matter of DEQ's request to initiate rulemaking to add a new rule in ARM Title 17, Chapter 30, subchapter 17 adopting DEQ's new Nutrient Trading Policy.

Mr. Teegarden provided an overview of the nutrient trading policy, and said the policy had been in the works for a couple years and that the Board had been briefed on it in a previous meeting. He explained that trading is a market-based approach to improve water quality and added that the EPA supports it as a tool to meet TMDL loads. Mr. Teegarden said staff presented the trading policy to the nutrient work group a couple of times, held a nutrient trading workshop in April 2011, had additional

subgroup meetings and conference calls, took informal comment and edited drafts of the policy based on the comments, and created space on the nutrient trading group website to provide information.

Mr. Teegarden, Mr. Regensburger, and Mr. Bostrom responded to questions from the Board.

Chairman Russell called for public comment on the proposed rulemaking; there was no response. He called for a motion to initiate the rulemaking and to appoint Ms. Orr as the presiding officer. Mr. Whalen so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous vote.

IV.A.3 In the matter of DEQ's request to initiate rulemaking to amend ARM 17.8.102 to amend the air quality rules to adopt the 2010 edition of the Code of Federal Regulations and current updates to state statutes and regulations that are incorporated by reference in the rules.

Ms. Wolfe said DEQ is requesting that the Board initiate rulemaking to adopt the current edition of federal and state statutes that are incorporated by reference in the air quality rules.

Chairman Russell called for public comment on the proposed rulemaking; there was no response. He called for a motion to initiate the rulemaking and to appoint Ms. Orr as the presiding officer. Mr. Mires so MOVED. Mr. Whalen SECONDED the motion. The motion CARRIED with a unanimous vote.

IV.B.1 In the matter of DEQ's request for final adoption of amendments to ARM Title 17, Chapter 24, subchapter 9, in order to regulate underground mining using in situ coal gasification.

Mr. Smith said DEQ is requesting the Board adopt the proposed amended rules implementing the Montana Strip and Underground Mine Reclamation Act. He said the rulemaking was required by Senate Bill 292 in the 2011 legislature. He said there were no comments received during the public comment period.

Mr. North passed around House Bill 521 and House Bill 311 analyses, saying he had previously overlooked submitting it.

Chairman Russell called for a motion to adopt the rule, and accept the department's 521 and 311 analyses. Mr. Miller so MOVED. Mr. Mires SECONDED the motion.

Ms. Kaiser recused herself from taking action on this item.

Chairman Russell called for public comment on the proposed adoption; there was no response. He called for a vote and the motion CARRIED 5-0.

IV.C.1 In the matter of final action on 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 there had been several iterations of what the closure plan would involve, and that there had now been an agreement that CR Kendall will fund an EIS. She said the Board had a 41(a) dismissal before it and a proposed dismissal order.

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

IV.C.2 In the matter of final action on 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 the parties have reached agreement and she provided some background information about the case.

Chairman Russell called for a motion to authorize him to sign dismissal order. Ms. Kaiser so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED unanimously.

IV.C.3 In the matter of final action regarding 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 provided information about the case and said a stipulation to dismiss and a proposed order were before the Board.

Chairman Russell called for a motion to authorize him to sign the dismissal order. Mr. Whalen so MOVED. Mr. Miller SECONDED the motion.

Ms. Kaiser recused herself from this matter and the next (IV.C.4).

Chairman Russell called for a vote and the motion CARRIED 5-0.

IV.C.4 In the matter of final action regarding 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 information about the case and said a stipulation to dismiss under 41(a) and a proposed order were before the Board.

Chairman Russell called for a motion to authorize him to sign the dismissal order. Mr. Miller so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED 5-0.

IV.D.1 In the matter of violations of the Public Water Supply laws by the city of Ronan Public Water Supply System, PWSID #MT0000318, Ronan, Lake County, BER 2012-04 PWS.

Ms. Orr provided an overview of the violation.

Mr. Arrigo responded to questions regarding there being no proposed penalty.

Chairman Russell called for a motion. Mr. Whalen MOVED to appoint Ms. Orr as the hearing examiner for this matter. Mr. Miller SEONDED the motion. The motion CARRIED with a unanimous vote.

IV.D.2 In the matter of the request for hearing by William E. Smith, on behalf of Mike Adkins, regarding Park County's refusal to validate Adkins Class III Waste Tire Monofill License No. 517, BER 2012-05 SW.

Ms. Orr explained that DEQ had approved Adkins' application for the monofill license, but Park County refused to validate DEQ's decision, and that Mr. Adkins has appealed that refusal to the Board. She said a motion to intervene was filed by Protecting Paradise, to which Adkins filed a brief in opposition. She said Adkins also had filed a petition for declaratory ruling. Ms. Orr noted that this might be a case the Board would want to hear.

Chairman Russell entertained a motion to have the Board hear this matter. Mr. Whalen so MOVED. Ms. Shropshire SEONDED the motion. The motion CARRIED with a unanimous vote.

IV.D.3 In the matter of violations of the Montana solid Waste Management Act by Valley County Refuse District #1 at the Valley County Landfill, Glasgow, BER 2012-06 SW.

Ms. Orr said the violations involve failure to cover the landfill on at least seven occasions, and a \$750 penalty is requested.

Chairman Russell called for a motion to appoint Ms. Orr as the permanent hearings examiner for this matter. Mr. Miller so MOVED. Ms. Kaiser SEONDED the motion. The motion CARRIED with a unanimous vote.

IV.D.4 In the matter of violations of the Opencut Mining Act by Russell Olsen at PaveCo Pit, Flathead County, BER 2012-07 OC.

Ms. Orr said the violation had to do with failure to submit an annual progress report and the fee associated with it. She said the penalty requested is \$480. Ms. Orr noted that a motion to dismiss the matter is pending.

Chairman Russell called for a motion to appoint Ms. Orr as the permanent hearing examiner for this matter. Mr. Mires so MOVED. Mr. Miller SEONDED the motion. The motion CARRIED with a unanimous vote.

V. General Public Comment

Mr. Livers discussed the September meeting, saying it may need to be a longer one – two days – for the Camas Prairie appeal hearing and possibly some of the Adkins issues.

Chairman Russell called for public comment on matters in the Board's jurisdiction. There were no comments.

V. Adjournment

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

The meeting adjourned at 11:27 a.m.

Board of Environmental Review July 27, 2012, minutes approved:



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

\_\_\_\_\_  
DATE