

## MINUTES

May 17, 2013

### Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:06 a.m., on Friday, May 17, 2013, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

### Attendance

Board Members Present: Robin Shropshire

Board Members via Teleconference: Chairman Russell, Larry Mires, Marvin Miller, Joe Whalen

Board Members Absent: 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); Ed Hayes, Norman Mullen – Legal; Judy Hanson – Permitting & Compliance Division; Jon Dilliard, Eugene Pizzini, Rachel Clark, Barb Kingery – Public Water Supply & Subdivisions Bureau; David Klemp, Bob Habeck, Eric Merchant, Julie Merkel, Doug Kuenzli, Deb Wolfe – Air Resources Management Bureau; Deb Grimm – Waste & Underground Tank Management Bureau; John Arrigo, Judy Watkins – Enforcement Division

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Neal Blossom, Kraig Keltz, Dan Brimhall, and Frank Crowley for American Chemet; Anne Hedges for Montana Environmental Information Center

At the request of Chairman Russell, Mr. Livers took roll call of Board members present.

I.A.1 Review and approve March 22, 2013, Board meeting minutes.

Mr. Mires MOVED to approve the March 22, 2013, meeting minutes as written. Mr. Miller SECONDED the motion. The motion CARRIED with a 5-0 vote.

II.A.1.a In the matter of violations of the Public Water Supply Laws by Trailer Terrace Mobile Park, LLC, Dennis Deschamps and Dennis Rasmussen at the Trailer Terrace, PWSID No. MT0000025, Great Falls, Cascade County, BER 2012-11 PWS. *(No discussion took place regarding this matter.)*

II.A.2.a In the matter of the request for hearing by Hawthorne Springs Property Owners Association; H Lazy Heart, LLC; Patchy, Inc.; and other residents regarding Opencut Mining Permit No. 2258, issued to Farwest Rock Products, Missoula County, BER 2012-09 OC. *(No discussion took place regarding this matter.)*

II.A.3.a In the matter of the request for hearing by William E. Smith, on behalf of Mike Adkins, regarding Park County's denial to validate Adkins Class III waste Tire Monofill License No. 517, BER 2012-05 SW.

Ms. Orr said that, according to a status report filed by counsel for Protecting Paradise, a hearing was held April 11 at which time the court asked for additional briefing. The additional briefing was filed on April 30, and DEQ filed a motion to strike the post-hearing brief.

II.A.3.b In the matter of the notice of appeal and request for hearing by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ.

Ms. Orr said oral argument on the motion to intervene took place on May 7 and a ruling will be forthcoming.

II.A.3.c In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP2953-07 for the Colstrip Steam Electric Station, Colstrip, BER 2013-01 AQ. *(see II.A.3.d)*

II.A.3.d In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP0513-08 for the JE Corette Steam Electric Station, Colstrip, BER 2013-02 AQ.

Concerning both Colstrip cases (2013-01 and 2013-02), Ms. Orr said a joint motion is pending regarding issuance of a protective order to keep certain confidential

proprietary business information protected.

III.A.1 In the matter of the hearing regarding American Chemet Corporation's Lead Raw Materials Limit.

The hearing began at 9:12 a.m. Mr. Habeck provided context for the process, and Mr. Merchant provided DEQ testimony. Mr. Blossom presented for American Chemet. No other proponents and no opponents testified.

Chairman Russell called for a motion to authorize him to sign the order with a minor change. Mr. Miller so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a 4-1 vote.

III.B.1 In the matter of DEQ's request for initiation of rulemaking to re-notice revisions to Circular DEQ-4, Montana Standards for Subsurface Wastewater Treatment Systems.

Mr. Pizzini explained that staff determined that the adoption by reference may not have been properly noticed and this is why DEQ is requesting extension of the comment period through re-initiation of the rule. He said a public hearing was held January 11, 2013, and DEQ is not proposing a separate one for the amended notice. He said DEQ does propose to correct a pagination problem in the circular.

Chairman Russell called for a motion to grant the department's request to extend the notice. Ms. Shropshire so MOVED. Mr. Miller SECONDED the motion. Chairman Russell called for public comment on the matter; no one responded. The motion CARRIED with a 5-0 vote.

III.C.1 In the matter of violations of the Sanitation in Subdivisions Act by Levi Britton at the 80<sup>th</sup> Street Estates Subdivision, Billings, Yellowstone County, BER 2013-03 SUB.

Ms. Orr provided a summary of the case.

Chairman Russell called for a motion to assign this matter to Ms. Orr. Mr. Mires so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED 5-0.

III.D.1 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 the parties stipulated to dismissal with prejudice and that a proposed order of dismissal was before the Board for approval.

Chairman Russell called for a motion to authorize him to sign the order of dismissal for Case No. BER 2011-06 SDL. Mr. Miller so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED 5-0.

III.D.2 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 explained that after she issued an order granting DEQ's motion for summary judgment, the parties agreed on a penalty amount. She said the Board needs to determine whether to adopt by reference the proposed order on the motion for summary judgment, as well as a proposed order recommending imposition of penalties, thereby affirming the violation.

Chairman Russell called for a motion to affirm the hearing examiner's summary judgment order and the stipulation for penalties. Mr. Miller so MOVED. Mr. Whalen SECONDED the motion. The motion CARRIED 5-0.

III.D.3 In the matter of violations of the Montana Solid Waste Management Act by Asphalt Plus, LLC, a corporation, and Michael C. and Melinda M. Oedekoven, as individuals, at 425 Johnson lane, Billings, Yellowstone County, BER 2012-13 SW.

Ms. Orr said the parties have proposed a 41(a) dismissal, having resolved the corrective action and clean-up.

Chairman Russell called for a motion to authorize him to sign the order dismissing the case. Mr. Mires so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED 5-0.

#### IV. General Public Comment

Chairman Russell asked if any member of the public would like to address the Board on matters pertaining to the Board. There was no response.

Mr. Livers discussed the July 19 board meeting date, saying some conflicts had been identified. He said staff is looking at July 26 as the alternative, and asked Board members to check their calendars and let us know if that is workable.

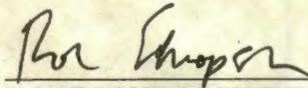
Mr. Livers then discussed the December and January meeting dates, and the possible PPL case hearings. He said a two-day block would be needed for each and asked Board members to check calendars.

#### V. Adjournment

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

The meeting adjourned at 10:20 a.m.

Board of Environmental Review May 17, 2013, minutes approved:



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ROBIN SHROPSHIRE  
CHAIR  
BOARD OF ENVIRONMENTAL REVIEW

10/4/2013  
DATE

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