

1 WHEREUPON, the following proceedings were
2 had:

3 * * * * *

4 (Mr. Skunkcap and Ms. Kaiser not present)

5 CHAIRMAN RUSSELL: With that, I'll call
6 this Monday April 21st Board of Environmental
7 Review meeting to order, and the first item on the
8 agenda is the minutes. I'm sure the Board has had
9 a chance to review the minutes of the last
10 meeting. Do I have a motion to approve?

11 MR. ROSSBACH: So moved.

12 CHAIRMAN RUSSELL: It's been moved by
13 Bill. Is there a second?

14 MR. MIRES: Second.

15 CHAIRMAN RUSSELL: It's been seconded by
16 Larry. All those in favor, signify by saying
17 aye.

18 (Response)

19 CHAIRMAN RUSSELL: Opposed.

20 (No response)

21 CHAIRMAN RUSSELL: The next item on the
22 agenda is a briefing update by Katherine on
23 contested cases.

24 MS. ORR: Good morning, Mr. Chairman,
25 members of the Board. In Item II(A) -- I won't go

1 through those individually, but just to note a few
2 things.

3 The Flying J case, which is Item (b),
4 we're now going to approach the remaining issues
5 in that case. And remember, there was a partial
6 summary judgment that was appealed to District
7 Court, and now we're back with the remaining
8 issues.

9 In the Thompson River Co-Gen case,
10 findings of fact, conclusions of law, and an order
11 are being mailed today, so that's probably going
12 to be an item for the hearing in May.

13 And other than that, I don't think there
14 is anything particularly noteworthy to bring to
15 the Board's attention in that item.

16 CHAIRMAN RUSSELL: Thank you. The next
17 item on the agenda is amendments or adoption of
18 final rules pertaining to updates of DEQ7,
19 Department Circular DEQ7. Tom.

20 MR. LIVERS: Thank you, Mr. Chairman.
21 We'll have a presentation on that today from Ann
22 Harrie from our Water Quality Standards Bureau
23 within our Planning Division. So if you want to
24 come forward, Ann.

25 And the good news for Ann and

1 potentially bad news for us, I understand she has
2 just been admitted to the University of Montana
3 School of Law, so congratulations.

4 MS. HARRIE: Thank you. Good morning,
5 Mr. Chairman, members of the Board. My name is
6 Ann Harrie, and I'm with the Water Quality
7 Standards Section with the Planning, Prevention,
8 and Assistance Division, and I'm here to today to
9 request that the Board agree to adopt changes in
10 Circular DEQ7, as well as the Administrative Rules
11 of Montana 17.30.641.

12 We came to you with this amendment on
13 November 30th, 2007, and at that time you agreed
14 to initiate rulemaking. We published the rule,
15 the notice of the decision on December 20th, 2007,
16 and there was a public notice for public comment,
17 as well as when the public hearing was going to
18 take place. We had the public comment period open
19 until January 30th, 2008, and the hearing took
20 place at the DEQ Metcalf Building on January 30th.

21 The only comment received were
22 constructive comments from the Department of
23 Agriculture regarding the way that the metabolites
24 were listed in the table, and we have since
25 corrected this. Basically the way that they were

1 listed, it looked like they could be additional
2 standards for the metabolites as well as the
3 parent compound when it's not supposed to be that
4 way. It's supposed to be total standard not to
5 exceed the parent compound.

6 After meeting with the Department of
7 Agriculture, we incorporated their changes, and
8 the metabolites are no longer listed with their
9 own standard, and they are instead listed as
10 cumulative. The language in the footnote now
11 reads, "The sum of the concentration of Chemical
12 'X' and the breakdown products XY, XZ, shall not
13 exceed the standards listed."

14 No other comments were received
15 regarding the changes to DEQ7 or the
16 Administrative Rules of Montana 17.30.641.

17 Just a highlight of the proposed changes
18 to the DEQ7, it will incorporate new water quality
19 standards and affect several rules, including
20 17.30.502, 17.30.619, 17.30.646, 17.30.702,
21 17.30.1001, 17.30.1007, 17.36.345, 17.55.102,
22 17.56.507, and lastly 17.56.608 pertaining to the
23 Circular DEQ7. The adoption would include eight
24 new standards for surface and ground water for
25 pesticides and their associated metabolites

1 detected in Montana ground water.

2 (Ms. Kaiser enters)

3 MS. HARRIE: It would also include the
4 adoption of aquatic standards for 304(a) criteria,
5 including Diazanon and Nonylphenol that were
6 established by the EPA in February 2006. The
7 update would reference a new method of calculating
8 toxic equivalency factors used for dioxides and
9 congeners, and also a little housekeeping
10 including how the arsenic was posted in the DEQ7.
11 And lastly, 17.30.641 of the Administrative Rules
12 of Montana would be updated to reflect the latest
13 sampling methods by the Federal Clean Water Act.

14 In summary, we request that the Board
15 adopt the changes to Circular DEQ7, as well as the
16 Administrative Rules of Montana 17.30.641. If
17 agreed, we would expect to file the notice on
18 April 28th, and they would be published on May 8th
19 and effective May 9th of this year. Thank you.

20 CHAIRMAN RUSSELL: Thank you. Any
21 questions for the Department?

22 (No response)

23 CHAIRMAN RUSSELL: All right. Thank you
24 very much.

25 MS. HARRIE: Do you want me to go on to

1 my next item?

2 CHAIRMAN RUSSELL: Sure. Is there
3 another item?

4 MR. LIVERS: Mr. Chairman, Ann will also
5 be giving the update on the water use
6 classification in Item 2, but I assume you
7 probably want to take action first on this.

8 CHAIRMAN RUSSELL: I think we would.
9 What I'm trying to find out is: I know all of the
10 comments were positive, but were there any
11 responses to anything in the record? Do you
12 recall any Department responses to comments?

13 MS. ORR: Mr. Chairman, you mean in the
14 notice itself? Let me take a look at that.

15 CHAIRMAN RUSSELL: It wasn't listed as
16 any responses to comments, and they were all
17 favorable, but that there was a change due to a
18 comment, so --

19 MS. ORR: Let me see if I can't pull
20 that up.

21 CHAIRMAN RUSSELL: I want to make sure
22 we adopt everything we need to.

23 MR. LIVERS: I'm looking, Mr. Chairman.
24 It may be that because they were pretty straight
25 forward, and not controversial, we simply made

1 those changes.

2 CHAIRMAN RUSSELL: Last night I tried to
3 find them, and I thought I'd try one more time.

4 MR. LIVERS: Mr. Chairman, we do have a
5 formal response to the comment. I'm just probably
6 not finding the link here. But Bob Bukantis had
7 just handed me a hard copy version of that, so I
8 think it is in the record.

9 CHAIRMAN RUSSELL: I just wanted to make
10 sure. Kris, do you know if it's here?

11 MS. BREWER: I'm looking.

12 CHAIRMAN RUSSELL: I've been looking
13 ever since Ann started to testify. I haven't been
14 able to find it. It probably doesn't matter,
15 since there was no opposition anyway. Tom, what
16 is that response there?

17 MR. LIVERS: Mr. Chairman, I'll just go
18 ahead and read it. It's pretty short. For the
19 record, I'm Tom Livers, Deputy Director, DEQ.

20 It's a response to the Montana
21 Department of Agriculture comments that Ann made
22 reference to in her testimony, and the response
23 is: "The Board and Department agree with the
24 comments, and have made the changes to the
25 Department's Circular DEQ7. The individual

1 metabolites were removed from the charts, and
2 footnotes were added to each pesticide for the
3 associated metabolites. The footnotes were added
4 to the end of the Department Circular DEQ7, and
5 are similar to the language provided for the
6 pesticide Trochoxamin. (Phonetic)

7 "Each footnote for the parent compound
8 will read: 'The sum of the concentrations of
9 quote, pesticide name, and its breakdown products,
10 (metabolite names), shall not exceed the standards
11 listed."

12 So that's the official response, and it
13 essentially tracks with the explanation Ann gave
14 in her testimony.

15 MS. BREWER: Joe, if you're looking at
16 that PDF document, it's on the far left, if you
17 click on bookmarks, and then "Draft Notice,"
18 that's what Tom is looking at. It's at the very
19 end of that document.

20 CHAIRMAN RUSSELL: All right. We'll
21 move forward on this. I will take a motion from
22 the Board to -- just based on public comments and
23 everything else -- to amend the Administrative
24 Rules as proposed, adopt the 521 and House Bill
25 311 analysis, the Presiding Officer's report, and

1 the Department's responses to comments.

2 MR. ROSSBACH: So moved.

3 CHAIRMAN RUSSELL: It's been moved by

4 Bill. Is there a second?

5 MR. MIRES: Second.

6 CHAIRMAN RUSSELL: It's been seconded by

7 Larry. Any further discussion?

8 (No response)

9 CHAIRMAN RUSSELL: Is there anyone in

10 the audience that would like to speak to this

11 before we take action?

12 (No response)

13 CHAIRMAN RUSSELL: Seeing none, All

14 those in favor, signify by saying aye.

15 (Response)

16 CHAIRMAN RUSSELL: Opposed.

17 (No response)

18 CHAIRMAN RUSSELL: All right. Motion

19 carries. Item No. 2, amend 17.30.610.

20 MR. LIVERS: Ann is back on deck.

21 (Mr. Skunkcap enters)

22 MS. HARRIE: Mr. Chairman, members of

23 the Board, I'm here to request that the Board

24 agree to adopt our amendments to Administrative

25 Rules of Montana 17.30610(1)(d)(3). This

1 amendment would change the boundary for the
2 classification change from B2 to B3 on the Dry
3 Fork of the Marias River upstream approximately
4 half a mile from I-15 to US Highway 91.

5 We came to you with this amendment on
6 November 30th, 2007, and you agreed to initiate
7 rulemaking. The rule was published on December
8 20th, 2007, and there was a public notice open to
9 public comment period during this time. The
10 public comment period ended on January 28th, and
11 the hearing took place at the City of Conrad City
12 Hall. We received a total of ten comments in
13 support of the classification change. We had a
14 very big turnout at the meeting, and we received
15 zero comments in opposition to the classification
16 change.

17 Just in summary, the change would amend
18 the classification as a result of the use
19 attainability analysis that we did on this segment
20 of the Dry Fork of the Marias River, as well as an
21 unnamed tributary. Our study found that the water
22 temperatures were way too high to support the
23 marginal propagation and growth of salmonid
24 fishes, and we believe that historically, water
25 temperatures were probably always too warm. In

1 your packet, you probably received a copy of the
2 latest use attainability analysis study.

3 We have been working closely with EPA
4 Region 8 during this whole time, and they are in
5 support of the classification change. We request
6 that the Board adopt the amendment to ARM
7 17.30.610(1)(d)(3), and if agreed, we can expect
8 to file the notice with the Secretary of State by
9 April 28th, and it would be published on May 8th,
10 and effective on May 9th, 2008. Thank you.

11 CHAIRMAN RUSSELL: Any questions?

12 (No response)

13 CHAIRMAN RUSSELL: No questions. Thank
14 you. All right. Based on public comment and the
15 Department's recommendation, I will entertain a
16 motion to amend 17.30.610, adopt the Presiding
17 Officer's Report, House Bill 311 and 521, and
18 Department's response to comments.

19 MR. MIRES: So moved.

20 CHAIRMAN RUSSELL: It's been moved by
21 Larry.

22 MR. ROSSBACH: Second.

23 CHAIRMAN RUSSELL: Seconded by Bill.

24 Any further discussion?

25 (No response)

1 CHAIRMAN RUSSELL: All those in favor,
2 signify by saying aye.

3 (Response)

4 CHAIRMAN RUSSELL: Opposed.

5 (No response)

6 CHAIRMAN RUSSELL: Motion carries.

7 Thank you. Back to Katherine.

8 MS. ORR: Mr. Chairman, members of the
9 Board, there are two new contested case appeals,
10 and the Board at this time is obligated to either
11 appoint me as the Hearing Examiner, or take these
12 cases itself.

13 The first one is an open cut case, and
14 it involves a mining operation that expanded
15 beyond the permitted 10,000 cubic yards, I think
16 it is, and there is a penalty requested of \$4,697.

17 CHAIRMAN RUSSELL: In his first letter,
18 Timis didn't even know how to spell Marion. I
19 thought that was pretty interesting. Well, I will
20 entertain a motion to appoint Katherine the
21 permanent Hearings Examiner on this. Is there a
22 motion? You certainly don't want to hear this
23 one.

24 MR. MIRES: So moved.

25 CHAIRMAN RUSSELL: It's been moved by

1 Larry.

2 MS. KAISER: Second.

3 CHAIRMAN RUSSELL: It's been seconded by
4 Heidi. All those in favor, signify by saying
5 aye.

6 (Response)

7 CHAIRMAN RUSSELL: Opposed.

8 (No response)

9 CHAIRMAN RUSSELL: All right.

10 Katherine, this will be a fun one.

11 MS. ORR: It will. They are. In the
12 Timis case, there is an issue about the definition
13 of open cut mining that should be interesting.

14 CHAIRMAN RUSSELL: That's why I think it
15 will be interesting, for that reason.

16 MS. ORR: Anyway, the next one is an
17 underground storage tank. It's an establishment
18 -- you probably saw it in the materials -- that
19 has four underground storage tanks, and there are
20 various violations concerning the monitoring, and
21 detection, and spill prevention.

22 CHAIRMAN RUSSELL: Do I have a motion to
23 appoint Katherine the permanent Hearings Examiner
24 on this?

25 MS. KAISER: So moved.

1 done is for the Board to approve that order which
2 I issued, and that's in the materials.

3 CHAIRMAN RUSSELL: Thank you. Regarding
4 Case No. 2003-04-AQ, I have an order of dismissal
5 in front of me. Do I have a motion to authorize
6 the Board Chair to sign?

7 MR. ROSSBACH: So moved.

8 CHAIRMAN RUSSELL: It's been moved by
9 Bill. Is there a second?

10 MS. SHROPSHIRE: Second.

11 CHAIRMAN RUSSELL: All those in favor,
12 signify by saying aye.

13 (Response)

14 CHAIRMAN RUSSELL: Opposed.

15 (No response)

16 CHAIRMAN RUSSELL: All right. Motion
17 carried unanimously.

18 MS. ORR: The next case, Mr. Chairman,
19 members of the Board, violations of the Willow
20 Creek Sewer District. This -- and I'm
21 paraphrasing. There is more to this obviously.
22 But to kind of generalize, there was a storm water
23 discharge that bypassed the treatment facility,
24 and there were no discharge monitoring reports.
25 There was a \$28,000 penalty requested, and that's

1 been reduced to \$7,500.

2 In this case, I had a status conference
3 with the parties. And the Administrative Order
4 does go into this a little bit, but part of the
5 problem is that there was a contractor who didn't
6 manage his contract correctly, and that's part of
7 the reason why there was this bypass.

8 CHAIRMAN RUSSELL: All right. Regarding
9 case No. BER 2006-13-WQ, I have an order of
10 dismissal in front of me. Do I have a motion to
11 authorize the Board Chair to sign?

12 MS. KAISER: So moved.

13 CHAIRMAN RUSSELL: It's been moved by
14 Heidi. Is there a second?

15 MR. ROSSBACH: Second.

16 CHAIRMAN RUSSELL: It's been seconded by
17 Bill. All those in favor, signify by saying aye.

18 (Response)

19 CHAIRMAN RUSSELL: Opposed.

20 (No response)

21 CHAIRMAN RUSSELL: In the matter of the
22 appeal by the City of Bozeman.

23 MS. ORR: Mr. Chairman, members of the
24 Board, you have before you a stipulation for
25 dismissal and a proposed order. This is a water

1 quality MPDES permit case, and you can see from
2 the stipulation that the Department revised its
3 permit, and that was the basis for this
4 stipulation for dismissal.

5 CHAIRMAN RUSSELL: All right. So in the
6 matter of Case No. BER 2006-23-WQ, I have an order
7 of dismissal. Do I have a motion to authorize the
8 Board Chair to sign?

9 MR. MIRES: So moved.

10 CHAIRMAN RUSSELL: It's been moved by
11 Larry. Is there a second?

12 MS. KAISER: Second.

13 CHAIRMAN RUSSELL: It's been seconded by
14 Heidi. All those in favor, signify by saying aye.

15 (Response)

16 CHAIRMAN RUSSELL: I think I heard ayes
17 from everybody. Anyone opposed?

18 (No response)

19 CHAIRMAN RUSSELL: Motion carries. I'm
20 on to the next one. Because of my involvement in
21 this case, I'm going to recuse myself and ask Bill
22 to handle Item No. 4.

23 MR. ROSSBACH: No. 4 is the matter of
24 the violations of the Clean Air Act of Montana by
25 Flathead County, BER 2007-01-AQ. Katherine, could

1 you report on that for us, please.

2 MS. ORR: Yes, Mr. Chairman, members of
3 the Board. This was a case involving a failure to
4 control admissions of --

5 (Phone ringing)

6 MS. BREWER: Can you hear me, Don?

7 MR. MARBLE: Yes, I can hear you now.

8 MS. ORR: Okay. Mr. Chairman, members
9 of the Board, and Don, this is a case involving a
10 failure of the County to control emissions of
11 airborne particulate matter on dirt roads. At one
12 time the dust reached 100 percent opacity, and
13 under the underlying notice of violation, there
14 was a request to submit a control plan to control
15 those emissions.

16 Originally the NOV asked for \$28,810 in
17 violation penalties, with \$18,200 suspended. And
18 now we don't have, I guess, an itemization of what
19 penalty was ultimately imposed. The parties
20 submitted a motion to dismiss basically and an
21 order of dismissal. They say they've entered into
22 an Administrative Order on Consent, and that's
23 what we have before us.

24 MR. ROSSBACH: Do we have anybody who
25 can tell us what the final resolution of the

1 penalty issue was? John.

2 MR. ARRIGO: Mr. Rossbach, members of
3 the Board, my name is John Arrigo, Administrator
4 of the DEQ Enforcement Division. And in this
5 case, we settled with the County for the penalty
6 that was assessed in the Notice of Violation and
7 Administrative Order.

8 However, the County resolved that
9 penalty by conducting a supplemental environmental
10 project, and it's a three year project. It
11 involves spending thousands of dollars for speed
12 limit signs to slow traffic, because they think
13 that's the primary cause of the dust; and then
14 they'll have a recommended lower speed limit for
15 other periods of time. They will also hire a
16 full-time Sheriff to enforce speed limits on the
17 County roads for summer periods when the dust is a
18 problem.

19 Then also they will spend, I think,
20 about \$10,000 a year for three years for actual
21 dust suppression by applying road oil or whatever.
22 They also formed a County Work Group to deal with
23 this problem, and help them prioritize the problem
24 roads, and come up with ways to address the dust
25 problem on a county wide basis.

1 So there is no actual cash penalty, but
2 I think looking at all of those proposed projects,
3 it totals approximately \$160,000, so they're
4 offsetting an \$18,000 penalty with an \$160,000
5 expenditure.

6 MR. ROSSBACH: Thank you. Do we have a
7 motion then to approve the order to dismiss the
8 case?

9 MR. MIRES: So moved.

10 MS. SHROPSHIRE: Second.

11 MR. ROSSBACH: It's been seconded by
12 Robin. Based upon -- then we have a motion and a
13 second. All those in favor, say aye.

14 (Response)

15 MR. ROSSBACH: All opposed.

16 (No response)

17 MR. ROSSBACH: Do you want me to handle
18 the next one?

19 CHAIRMAN RUSSELL: The next one I'm
20 going to have Bill handle also.

21 When we first initiated this process to
22 Katherine, the contractor in there wasn't named,
23 and we're within possibly a week or two of
24 entering into a contract with him. So I'm going
25 to recuse myself on this one, and ask Bill to

1 handle it.

2 MR. ROSSBACH: Katherine, can you give
3 us a brief update on this.

4 MS. ORR: Yes, Mr. Chairman, members of
5 the Board, Mr. Rossbach. This involves a
6 discharge of storm water in violation of a permit
7 to the Whitefish River, and there were no Best
8 Management Practices instituted during the time of
9 violation, and the turbidity measured in the river
10 was at a very high level.

11 The original penalty asked for was
12 \$30,036, and the penalty that is now obligated or
13 it must be paid is \$13,750.

14 MR. ROSSBACH: John, can I bug you again
15 to tell us -- Since you're here, I'd appreciate
16 your backgrounding us on the penalty issues.
17 That's clearly something that we as a board have
18 taken some interest in, and I would appreciate
19 your comments on that.

20 MR. ARRIGO: Mr. Rossbach, that's why
21 I'm here. In this case, there was a construction
22 of a hospital in the North Flathead Valley. They
23 were required to obtain a construction storm water
24 discharge permit. We received some complaints
25 that there was muddy water discharging from the

1 site. When we investigated, we documented an
2 exceedence of the turbidity standard in the
3 surface water that received this runoff. We
4 documented a second incident, and issued the order
5 to North Valley Hospital and to Swank
6 Construction, who were named in the discharge
7 permit, so they were also a responsible party.

8 We entered into settlement negotiations,
9 and decided that we didn't have enough evidence
10 for the second violation, so we basically agreed
11 to cut the penalty in half, and that's where we're
12 at the \$13,756, I believe.

13 MR. ROSSBACH: Okay. Any question or
14 comment from the Board?

15 (No response)

16 MR. ROSSBACH: Do you have a proposed
17 order then? Is that a part of this?

18 MS. ORR: There is a proposed order.

19 MR. ROSSBACH: I would like to entertain
20 a motion to approve the order pursuant to the
21 stipulation to dismiss and request for dismissal
22 that is part of our record.

23 MS. SHROPSHIRE: So moved.

24 MS. KAISER: Second.

25 MR. ROSSBACH: It's been moved by Robin,

1 and it's been seconded by Heidi to approve the
2 order. All those in favor, signify by saying aye.

3 (Response)

4 MR. ROSSBACH: Opposed.

5 (No response)

6 MR. ROSSBACH: Motion is carried. I
7 will turn the gavel back.

8 CHAIRMAN RUSSELL: Thanks, Bill, for
9 doing that. I appreciate it. The next item on
10 the agenda is in the matter of the appeal by Exxon
11 Mobile regarding the final MPDES permit, No.
12 MT-0028-321.

13 MS. ORR: Mr. Chairman --

14 MR. MARBLE: You're cutting in and out.

15 MS. ORR: Okay. Don, we are on Item 6
16 of II(C) of the agenda regarding in the matter of
17 the appeal of Exxon Mobile. This is an order of
18 dismissal in which the parties have decided to
19 dismiss the case under Rule 41(a) of the Montana
20 Rules of Civil Procedure, which involves a
21 stipulation for dismissal that's signed by all of
22 the parties. And it's basically a request that
23 the Board remove itself from jurisdiction, and
24 it's an indication that the parties arrived at a
25 settlement that's mutually acceptable to them, and

1 they don't need the jurisdiction of the Board for
2 enforcement of an AOC or whatever.

3 CHAIRMAN RUSSELL: Okay. Thanks,
4 Katherine. Before me I have an order of dismissal
5 of Case No. BER 2007-12-WQ, and would like a
6 motion to authorize the Board Chair to sign.

7 MR. SKUNKCAP: I'll motion that.

8 CHAIRMAN RUSSELL: It's been moved by
9 Gayle. Is there a second?

10 MR. MIRES: Second.

11 CHAIRMAN RUSSELL: It's been seconded by
12 Larry. All those in favor, signify by saying aye.

13 (Response)

14 CHAIRMAN RUSSELL: Opposed.

15 (No response)

16 CHAIRMAN RUSSELL: Moving on, in the
17 matter of violations of the Open Cut Mining Act by
18 John Schlecht. Katherine.

19 MS. ORR: Mr. Chairman, members of the
20 Board, this is an open cut mining case involving
21 increase of the permitted -- an expansion of the
22 mining of what was permitted without filing an
23 amended permit. The penalty that was requested
24 originally was \$805, and that's what's going to be
25 paid under this AOC. The parties have a

1 stipulation to dismiss under Rule 41(a). So
2 again, this would be a case where the Board is
3 dismissing this case on that basis.

4 CHAIRMAN RUSSELL: Open cut just
5 doubled. The last time we did all these it was
6 \$400 and something, as I recall. Didn't we have
7 three in a row?

8 MS. ORR: Yes, we did, and you'll have
9 some in this --

10 CHAIRMAN RUSSELL: We're back to the
11 \$400?

12 MS. ORR: I think there might be one
13 here.

14 CHAIRMAN RUSSELL: John, would you like
15 to address why this one is \$800 instead of \$400.

16 MR. ARRIGO: Mr. Chairman, we've
17 recently had a lot of enforcement actions against
18 open cut operations for their failure to submit
19 annual reports, and that's where we come up with
20 the kind of standard \$440 penalty. These others
21 are different violations, and we do unique penalty
22 calculations.

23 CHAIRMAN RUSSELL: Thank you very much.
24 With all that in mind, I have an order of
25 dismissal for Case No. BER 2007-13-OC. Do I have

1 a motion to authorize the Board Chair to sign?

2 MS. KAISER: So moved.

3 CHAIRMAN RUSSELL: It's been moved by
4 Heidi. Is there a second?

5 MR. ROSSBACH: Second.

6 CHAIRMAN RUSSELL: It's been seconded by
7 Bill. All those in favor, signify by saying aye.

8 (Response)

9 CHAIRMAN RUSSELL: Opposed.

10 MR. MARBLE: Aye.

11 CHAIRMAN RUSSELL: Next in the matter of
12 violations of the Water Quality Act by the Jack
13 Mountain Estates Subdivision, Jefferson County.

14 MS. ORR: Mr. Chairman, members of the
15 Board, this case involves a situation where there
16 was storm water discharges close to Helena here to
17 the tributaries to Jackson Creek in violation of
18 the discharge permit. There were no Best
19 Management Practices or storm water management of
20 removal of wastes. The original penalty requested
21 was \$23,400, and the penalty that's being paid is
22 \$13,200.

23 CHAIRMAN RUSSELL: All right. Does the
24 Board have any questions before we move forward on
25 this?

1 (No response)

2 CHAIRMAN RUSSELL: I have in front of me
3 an order of dismissal for Case No. BER 2007-15-WQ.
4 Do I have a motion to authorize the Board Chair to
5 sign?

6 MR. ROSSBACH: So moved.

7 CHAIRMAN RUSSELL: It's been moved by
8 Bill. Is there a second?

9 MS. KAISER: Second.

10 CHAIRMAN RUSSELL: It's been seconded by
11 Heidi. All those in favor, signify by saying aye.

12 (Response)

13 CHAIRMAN RUSSELL: Opposed.

14 (No response)

15 CHAIRMAN RUSSELL: Next is in the matter
16 of violations of the Water Quality Act by Montana
17 Department of Transportation and Ascorp, Inc.

18 MS. ORR: Mr. Chairman, members of the
19 Board, this is a water quality case involving also
20 a storm water discharge with a discharge of
21 sediment into the Big Hole River. The penalty
22 requested originally was \$7,350. The final
23 penalty is \$3,325.

24 CHAIRMAN RUSSELL: I have in front of me
25 an order of dismissal for Case No. BER 2007-17-WQ.

1 Do I have a motion to authorize the Board Chair to
2 sign?

3 MR. MIRES: So moved.

4 CHAIRMAN RUSSELL: It's been moved by
5 Larry. Is there a second?

6 MS. KAISER: Second.

7 CHAIRMAN RUSSELL: It's been seconded by
8 Heidi. All those in favor, signify by saying
9 aye.

10 (Response)

11 CHAIRMAN RUSSELL: Opposed.

12 (No response)

13 CHAIRMAN RUSSELL: All right. Moving
14 on. In the matter of violations of the Open Cut
15 Mining Act by Prairie Sand and Gravel. Katherine.

16 MS. ORR: Yes, Mr. Chairman, members of
17 the Board. This is an open cut mining case. And
18 the underlying violation was the failure to file
19 an annual progress report with the Department, and
20 the original penalty asked was for \$480, and
21 that's what they'll be paying for this violation.

22 CHAIRMAN RUSSELL: I have an order of
23 dismissal for Case No. BER 2007-18-OC. Do I have
24 a motion to authorize the Board Chair to sign?

25 MR. SKUNKCAP: Excuse me, Mr. Chairman.

1 I have a question on those violations. Is there a
2 phase on there, like the first offense when they
3 fail to make those quarterly reports?

4 CHAIRMAN RUSSELL: We'll ask John.

5 MR. ARRIGO: Mr. Chairman, Mr. Skunkcap,
6 under the Open Cut Mining Act, the permitted
7 gravel pits are required to submit an annual
8 report which notifies the Department how much
9 material they removed. In our penalty rules, we
10 have a factor for the history of violation. If
11 this was a first violation, we wouldn't increase
12 it for history. If they do it again, the penalty
13 could be increased by up to 30 percent for their
14 historical violation. We hope that by taking
15 these actions of fining them, they'll not violate
16 again. That's the whole idea here.

17 MR. SKUNKCAP: On some of that stuff,
18 did any of them give back to restoration projects
19 on those areas, like the open cut, and like that
20 storm water runoff for that sediment?

21 MR. ARRIGO: You mean as part of our
22 settlement, did they agree to restore?

23 MR. SKUNKCAP: No. It's just a
24 question. Giving back to restoration projects,
25 habitat.

1 MR. ARRIGO: We sometimes settle cases
2 with the supplemental project as we did with
3 Flathead County on the dust case, and those
4 supplemental projects can be a wide range of
5 pollution prevention or pollution reduction.

6 I think in the past, we've had one case
7 where we fined the Montana Department of
8 Transportation for some storm water violations.
9 Their remedy was to put money into a fund to
10 purchase habitat. So that does happen on
11 occasion, but not very often. Usually it's some
12 sort of direct pollution reduction. We've had
13 some projects where there has been some fencing
14 installed to prevent damage to a stream bank,
15 those kind of restoration things. A wide variety
16 of supplemental projects.

17 MR. SKUNKCAP: Thank you. Thank you,
18 Mr. Chairman.

19 CHAIRMAN RUSSELL: So I think we have a
20 motion and a second. We had a little discussion.
21 Did we get a motion and a second? Just in case.

22 MR. ROSSBACH: So moved.

23 CHAIRMAN RUSSELL: It's been moved by
24 Bill? Is there a second.

25 MS. SHROPSHIRE: Second.

1 CHAIRMAN RUSSELL: It's been seconded by
2 Robin. All those in favor, signify by saying aye.

3 (Response)

4 CHAIRMAN RUSSELL: All right. The next
5 matter is Open Cut Mining Act by Stephen M. Swan.

6 MS. ORR: Mr. Chairman, members of the
7 Board, this is another failure to file an annual
8 progress report; but upon investigation, the
9 Department found out that there were extenuating
10 circumstances for that, and they withdrew the
11 underlying Notice of Violation, and the case is
12 being dismissed on the basis of mootness.

13 CHAIRMAN RUSSELL: Okay. Thank you.
14 With that, I have an order of dismissal of Case
15 No. BER-2007-22-OC. Do I have a motion to
16 authorize the Board Chair to sign?

17 MR. ROSSBACH: So moved.

18 CHAIRMAN RUSSELL: It's been moved by
19 Bill. Is there a second?

20 MR. MIRES: Second.

21 CHAIRMAN RUSSELL: It's been seconded by
22 Larry. All those in favor, signify by saying aye.

23 (Response)

24 CHAIRMAN RUSSELL: Opposed.

25 (No response)

1 CHAIRMAN RUSSELL: All right.
2 Katherine. The next one is in the matter of
3 violations of the Open Cut Mining Act by Joe
4 Beasley.

5 MS. ORR: Mr. Chairman, members of the
6 Board, this is another open cut mining case of
7 failure to submit an annual progress report. The
8 original penalty that was requested was \$400, and
9 they are paying that.

10 And I must add that there are other
11 corrective actions that are being taken that are
12 in these AOC's. I haven't reported those to the
13 Board, and I can in the future if you want, but I
14 thought since they're a little more complex, you
15 can read that.

16 CHAIRMAN RUSSELL: With that, I do have
17 an order of dismissal of Case No. BER 2007-25-OC.
18 I need a motion to authorize the Board Chair to
19 sign.

20 MS. KAISER: So moved.

21 CHAIRMAN RUSSELL: It's been moved by
22 Heidi. Is there a second?

23 MS. SHROPSHIRE: Second.

24 CHAIRMAN RUSSELL: It's been seconded by
25 Robin. All those in favor, signify by saying aye.

1 (Response)

2 CHAIRMAN RUSSELL: Opposed.

3 (No response)

4 CHAIRMAN RUSSELL: The last one is in
5 the matter of the appeal by Audios Recycling
6 regarding DEQ's denial of its motor vehicle
7 wrecking facility license, Alberton.

8 MS. ORR: Mr. Chairman, members of the
9 Board, this is a case where the facility -- if you
10 could call it that -- was operating without a
11 license.

12 CHAIRMAN RUSSELL: Can we call it that?

13 MS. ORR: Probably not. The premises
14 were operating without a motor vehicle license,
15 and the Department filed this Notice of Violation,
16 and the owner -- The facility is in caption, so --
17 But anyway, the owner decided not to pursue his
18 defense, and is closing down the facility, the
19 premises, as a junk vehicle establishment. And so
20 there is a dismissal.

21 And this was a pro se party, and the
22 Department had filed a motion to dismiss, and I
23 had a status conference with the parties to make
24 sure that this was something that the owner of the
25 facility was not going to object to, and he said

1 he wasn't.

2 CHAIRMAN RUSSELL: And I'm guessing that
3 the Department has some sort of order on how long
4 he gets to get his facility cleaned up. John, do
5 you know anything about this one?

6 MR. MULLEN: Mr. Chairman, members of
7 the Board, my name is Norm Mullen. I'm the
8 program attorney for the Department of the
9 Environmental Quality on this case.

10 And this was an application for a
11 license which we denied, and so now the appeal
12 would be dismissed. I don't believe that there is
13 a current enforcement action pending, but the
14 Department will be working to make sure that the
15 junk vehicle facility would be brought into
16 compliance and would no longer be operating.

17 CHAIRMAN RUSSELL: Does that mean less
18 than three vehicles and --

19 MR. MULLEN: Four or more vehicles
20 constitute a facility, so you have to have three
21 or fewer, not two, plus all vehicles would have to
22 be shielded if they qualified as junk.

23 CHAIRMAN RUSSELL: So by dismissing this
24 -- I'm not trying to be a jerk about this -- but
25 I would have liked to have seen some sort of

1 Notice of Violation ongoing, because when we
2 dismiss this, I just want to know how long he gets
3 to operate, because we have one in Flathead County
4 that has been two years plus, and there is a lot
5 of extenuating circumstances in the one in
6 Flathead County. But how long do they get?
7 Because they're mosquito breeding grounds, and
8 there is all kinds of other things that go along
9 with these not being cleaned up in a rapid
10 fashion.

11 MR. MULLEN: Mr. Chairman, members of
12 the Board, the law is that somebody cannot operate
13 a facility without a license. So if they are,
14 then the Department can bring enforcement action
15 against the person, and try to enforce either
16 through Administrative Order or eventually going
17 to court. So that is normally what the Department
18 would be doing. Oftentimes we try to make sure
19 that the license is denied and the administrative
20 processes are over before we bring an enforcement
21 action, because it's a lot cleaner that way to
22 make sure that there is no dispute about whether
23 it's licensed. But I expect that there will be
24 continuing action to bring this property into
25 compliance.

1 (Phone ringing)

2 CHAIRMAN RUSSELL: Does all of the junk
3 vehicle -- Does all of the junk vehicles' rules go
4 to the Board?

5 MR. MULLEN: Junk vehicle rules
6 generally are Department rules, I believe.

7 CHAIRMAN RUSSELL: Okay. That's not
8 what I -- I just answered my question. All of the
9 contested cases of the Department go to the Board,
10 don't they?

11 MR. MULLEN: There are some don't that
12 slip through, but most contested cases do go to
13 the Board now.

14 CHAIRMAN RUSSELL: If this one comes
15 back, and he doesn't clean up, and you issue a
16 Notice of Violation, we'll see this one again,
17 right?

18 MR. MULLEN: It's a notice of violation
19 on an administrative case rather than a judicial
20 injunction and penalties case, yes.

21 CHAIRMAN RUSSELL: Hopefully we won't
22 see this one again.

23 MR. SKUNKCAP: Mr. Chairman, I have a
24 question also. Along with the monitoring and the
25 timeline on that, is there a classification on

1 like passenger vehicles as opposed to commercial,
2 like buses, or cranes? You said a limit of three
3 vehicles. Does that matter like if they have
4 three buses in there, or a bus and a crane?

5 MR. MULLEN: I didn't bring the
6 statutes.

7 MR. SKUNKCAP: Is there any
8 classifications on that?

9 MR. MULLEN: Mr. Chairman, Mr. Skunkcap,
10 the statute which is found in Title 75, Chapter
11 10, Part 5 of the Montana Code Annotated, and the
12 rules adopted there, deal with motor vehicles of a
13 type required to be licensed. And so if any
14 vehicle is required to be licensed and is not, and
15 meets the requirement of the junk vehicle laws --
16 which is that it has to be wrecked, ruined,
17 dismantled, not capable of being driven, not
18 licensed -- then it can be considered a junk
19 vehicle regardless of the size. So if it's a
20 truck, if it's a bus, if it's a type required to
21 be licensed, then it can be a junk vehicle if it
22 meets the other requirements. Does that answer
23 your question?

24 MR. SKUNKCAP: Yes. Thank you. Thank
25 you, Mr. Chairman.

1 CHAIRMAN RUSSELL: Thank you, Norm.

2 Norm has done in great work for us in Flathead
3 County. Bill.

4 MR. ROSSBACH: Are we going to do a
5 little adjournment? Because we're like 20 minutes
6 ahead of our SME hearing schedule.

7 CHAIRMAN RUSSELL: Yes.

8 MR. ROSSBACH: I would like to go back
9 to one of the -- we were flying along.

10 CHAIRMAN RUSSELL: Right. Do you want
11 to finish this one off?

12 MR. ROSSBACH: Fine.

13 CHAIRMAN RUSSELL: Then I'll come back.

14 MR. ROSSBACH: I apologize. I thought
15 we were finished with Adios.

16 CHAIRMAN RUSSELL: In front of me I have
17 an order of dismissal for Case No. BER 2007-26-JV.
18 Do I have a motion authorizing the Board Chair to
19 sign said motion?

20 MR. ROSSBACH: So moved.

21 CHAIRMAN RUSSELL: It's been moved by
22 Bill. Is there a second?

23 MR. MIRES: Second.

24 CHAIRMAN RUSSELL: It's been seconded by
25 Larry. All those in favor, signify by saying aye.

1 (Response)

2 CHAIRMAN RUSSELL: Opposed.

3 (No response)

4 CHAIRMAN RUSSELL: All right, Bill.

5 Let's go back to --

6 MR. ROSSBACH: There is this Thompson
7 River Co-Gen. I'd like just a little
8 clarification on the status of that. It's unclear
9 to me because -- I'm going to go back and find it.
10 This is Item D under the -- I guess this is still
11 a contested case, pending contested cases?

12 MS. BREWER: II(A)(1)(d).

13 MR. ROSSBACH: It says, "On September
14 7th, 2007, the permittee filed a notice of
15 supplemental authority. Proposed findings of fact
16 and conclusions of law are due." Due from you --
17 is that what we're waiting for -- or due from
18 someone else?

19 MS. ORR: Mr. Chairman, yes, that's
20 correct.

21 MR. ROSSBACH: So we're waiting for a
22 decision from you as the Hearing Examiner? Is
23 that the status of that?

24 MS. ORR: Right, and that will be mailed
25 today. And just to kind of follow up on that,

1 with a case of this magnitude, I would expect that
2 there would be exceptions filed, or maybe not.

3 But anyway, the Montana Administrative Procedure
4 Act requires that there be an opportunity for the
5 parties to file exceptions, and then to make an
6 oral argument in front of the Board on basically
7 their position regarding the proposed findings of
8 fact, conclusions of law, and proposed order. And
9 I would assume that we would schedule that for the
10 next Board meeting in May.

11 MR. ROSSBACH: Can you give us a hint as
12 to what the decision will be or is being sent out?

13 MS. ORR: Well, it is being sent out,
14 and there is an issue in that case which requires
15 a remand for a part of it. A BACT analysis is
16 required under the law, as I see it, for all
17 portions of the operation, and there was no BACT
18 analysis done, and this is undisputed by the
19 parties regarding the start up and shut down
20 periods, the non-steady state periods of
21 operation, which in the record there is indication
22 that that constitutes up to 20 percent of each
23 day. So the parties are remanded to conduct that
24 BACT analysis for that period of time of
25 operation.

1 MR. ROSSBACH: Okay. Thank you.

2 CHAIRMAN RUSSELL: Anything else?

3 MR. LIVERS: Mr. Chairman, point of
4 clarification. We did originally notice the SME
5 hearing continuation at 10:30, but we changed that
6 posting -- I think there was maybe a second email
7 sent out -- and then the official notice on the
8 Board website says 10:00. So basically if the
9 Board wants to get going earlier, there is no
10 notice requirement precluding that.

11 CHAIRMAN RUSSELL: We'll probably go a
12 little bit early, but I think we'll take a break
13 after we go through general public comment.

14 Is there anyone in the audience that
15 would like to the address the Board on any matters
16 that we really didn't address today?

17 (No response)

18 CHAIRMAN RUSSELL: Seeing none, we are
19 done with our regular meeting, and we'll take a
20 break for about ten minutes, get the parties ready
21 to go. And I think we had a little prehearing
22 discussion, at least Katherine and I did. These
23 arguments shouldn't take very long. But we do
24 want to kind of reorient ourselves to the case,
25 maybe 20, no longer than 30 minutes per side.

1 We'll get going. But we'll take a ten minute
2 break right now.

3 (The proceedings were concluded
4 at 10:10 a.m.)

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1 C E R T I F I C A T E

2 STATE OF MONTANA)

3 : SS.

4 COUNTY OF LEWIS & CLARK)

5 I, LAURIE CRUTCHER, RPR, Court Reporter,
6 Notary Public in and for the County of Lewis &
7 Clark, State of Montana, do hereby certify:

8 That the proceedings were taken before me at
9 the time and place herein named; that the
10 proceedings were reported by me in shorthand and
11 transcribed using computer-aided transcription,
12 and that the foregoing -43- pages contain a true
13 record of the proceedings to the best of my
14 ability.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and affixed my notarial seal
17 this _____ day of _____, 2008.

18

19 LAURIE CRUTCHER, RPR
20 Court Reporter - Notary Public
21 My commission expires
22 March 9, 2012.

23

24

25