

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING)
MAY 17, 2013)

TRANSCRIPT OF PROCEEDINGS

Heard at Room 111 of the Metcalf Building
1520 East Sixth Avenue
Helena, Montana
May 17, 2013
9:00 a.m.

BEFORE CHAIRMAN JOSEPH RUSSELL,
BOARD MEMBERS LARRY MIRES,
JOE WHALEN, MARVIN MILLER (by telephone);
and ROBIN SHROPSHIRE

PREPARED BY: LAURIE CRUTCHER, RPR
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1 WHEREUPON, the following proceedings were
2 had and testimony taken, to-wit:

3 * * * * *

4 CHAIRMAN RUSSELL: It is 9:06, and I'll
5 call this regular meeting of the Board of
6 Environmental Review to order. And Tom, you'll do
7 roll call.

8 MR. LIVERS: Mr. Chairman, members of
9 the Board. For the record, Tom Livers, Deputy
10 Director of the Department of Environmental
11 Quality. Ms. Kaiser.

12 (No response)

13 MR. LIVERS: Mr. Miller.

14 MR. MILLER: Here.

15 MR. LIVERS: Mr. Mires.

16 MR. MIRES: Here.

17 MR. LIVERS: Ms. Shropshire.

18 MS. SHROPSHIRE: Here.

19 MR. LIVERS: Mr. Whalen.

20 MR. WHALEN: Here.

21 MR. LIVERS: Chairman Russell.

22 CHAIRMAN RUSSELL: Here. Okay. Let's
23 get started then. The first item on the agenda is
24 administrative items, review and approval of the
25 minutes of the March 22nd, 2013 meeting.

1 MR. MIRES: Mr. Chairman, this is Larry
2 Mires. I do have a question. In the minutes
3 there was a -- I'm not sure this is an appropriate
4 place to ask this question.

5 There was a section under II(A)(3)(d)
6 that said that, "The Board had discussed a date
7 for the January meeting. Chairman Russell
8 preferred January 17th. Mr. Livers indicated
9 staff would send a list of possible dates to Board
10 members via email for their review." I'm just
11 questioning. Was this ever done?

12 MR. LIVERS: Mr. Chairman, Mr. Mires,
13 no, we have not yet done that. And we do need to
14 do that so that we can lock in some hearing dates.
15 We will follow up on that.

16 MR. MIRES: Other than that, I have no
17 questions on the minutes, and I would move to
18 approve them as written.

19 MR. MILLER: I'll second. This is
20 Miller.

21 CHAIRMAN RUSSELL: Marv seconded it. Is
22 there any further discussion?

23 (No response)

24 CHAIRMAN RUSSELL: Hearing none, all
25 those in favor, signify by saying aye.

1 (Response)

2 CHAIRMAN RUSSELL: Opposed.

3 (No response)

4 CHAIRMAN RUSSELL: Motion carries

5 unanimously. The next item on the agenda are

6 briefing items assigned to Katherine. Katherine.

7 MS. ORR: Mr. Chairman, members of the
8 Board. Good morning. You all have your agenda,
9 and what I would do this morning is just add to it
10 as developments have happened since the formation
11 of the agenda.

12 On Item II(A)(3)(a), regarding in the
13 matter of the request for hearing by William E.
14 Smith on behalf of Mike Adkins regarding Park
15 County's denial to validate Adkins' Class III
16 Waste Tire Monofill License.

17 A hearing was held before the District
18 Court Judge in Park County on April 11th. This is
19 according to a status report that was filed by
20 Counsel for Protecting Paradise. And at that
21 time, the Court asked for additional briefing
22 which was filed on April 30th, and the Department
23 filed a motion to strike Protecting Paradise's
24 post hearing brief. So I would guess that there
25 is going to be more briefing before that case is

1 finished, and before the Board can take that up
2 again.

3 The next item, regarding Western Energy,
4 that we did have oral argument on the motion to
5 intervene on May 7th, and so that motion is deemed
6 submitted, and the ruling will be forthcoming.

7 In the next two items involving Colstrip
8 and JE Corette, there was a motion for revision of
9 the scheduling order that doesn't affect the
10 hearing dates, but some of the interim dates for
11 exchange of lay and expert witnesses, and
12 deposition of lay and expert witnesses, and filing
13 of prehearing motions. So that doesn't affect the
14 date for the Board hearings, but that has
15 happened.

16 There also is a pending motion, which is
17 a joint motion with no objections from the
18 Department, regarding issuance of a protective
19 order to keep certain confidential proprietary
20 business information protected. And the parties
21 and I are having a telephonic conference on that
22 matter on Monday.

23 That's what I have for briefing on that
24 agenda item.

25 CHAIRMAN RUSSELL: All right. Thank

1 you, Katherine. Does any Board member have
2 questions or comments to Katherine?

3 MR. MILLER: This is Miller. I have one
4 quick question for Katherine. On briefing items
5 II(A)(2), you have right at the end, "Oral
6 arguments on these motions will occur on 20th May
7 2012." Shouldn't that be 2013?

8 MS. ORR: Yes, it should.

9 MR. MILLER: Okay. I was just --

10 MS. ORR: Thank you for that correction.
11 That's coming up this Monday as well, not a year
12 ago.

13 MR. MILLER: Okay.

14 MS. ORR: Thank you.

15 CHAIRMAN RUSSELL: Let's get back to the
16 future then. Any other comments, questions?

17 (No response)

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1 CHAIRMAN RUSSELL: We're going to move
2 on to the next item on the agenda, and that is a
3 hearing, and it is 9:12. And the Board will hold
4 a public hearing regarding a petition of American
5 Chemet Corporation requesting a revision to a
6 Board order dated August 4th, 1995.

7 How this will proceed from this point is
8 the Department will make comment, and then we'll
9 open it up to proponents and opponents; we'll
10 close the hearing, and then hold executive action
11 on this. So Tom, do you want to take over.

12 MR. LIVERS: Sure, Mr. Chairman. Thank
13 you. This is a little bit different than some of
14 the public hearings that the Board has typically
15 done. So what we're going to do is we'll have two
16 separate speakers from the Department, and the
17 reason for that is the first speaker, Bob Habeck,
18 is going to just give some context to the
19 procedure, the process, for this hearing today.
20 And then following that, Eric Merchant will
21 present the Department testimony.

22 So we just wanted a real clear break
23 between what was a subjective laying out the
24 procedure for the Board, so that the Board members
25 had an understanding of what was going to happen;

1 and that was separated from the Department
2 testimony.

3 So with that, I'd like to turn it over
4 to Bob Habeck now to just explain a little bit of
5 the process this morning.

6 MR. HABECK: Mr. Chairman, members of
7 the Board. For the record, my name is Bob Habeck,
8 Air Program Manager for the Department. Because
9 this situation is fairly unique, the Department
10 felt it necessary to provide some broad overview
11 and context before the details of the matter is
12 presented. So please bear with me as I identify
13 some terms, and conditions, and some authorities
14 to lay the ground work to make the next testimony
15 more understandable.

16 In broad concepts, beginning with
17 authorities, and how the State Air Quality Program
18 initiates cleaning up areas that have been
19 determined to have bad air, we start with the
20 authorities of the Board.

21 The Board authority at 75-2-111, the
22 State Clean Air Act, allows in part the Board to
23 issue orders to administer, and implement, and
24 enforce conditions of the State Clean Air Act.
25 The Department, under the State Clean Air Act

1 under 75-2-112, "Powers and Responsibilities of
2 the Department," requires in part the Department
3 to enforce orders of the Board.

4 EPA has some authorities, when the
5 ambient air quality standards are determined to be
6 violated, EPA identifies geographic areas often
7 referred to as non-attainment areas, or areas that
8 are not attaining specific air quality standards.

9 The State in turn is obliged to provide
10 EPA with two items: An air pollution control plan
11 that outlines permanent and enforceable control
12 measures that will clean the air on statutory time
13 lines; and two, the State also must provide a
14 demonstration of that control plan's
15 effectiveness.

16 These air pollution control plans are
17 often referred to as a SIP. SIP stands for State
18 Implementation Plan. You'll hear conversational
19 uses of the word SIP often referring to a specific
20 point or area air pollution control plan. Today
21 we will often refer to the East Helena lead SIP.
22 Again, that simply means the control plan to
23 reduce lead in air.

24 However, in its precise use, the Montana
25 SIP is the often over-arching collection of the

1 State's programs, policies, and rules that the
2 State uses to attain and maintain the National
3 Ambient Air Quality Standards.

4 EPA in turn must approve the State's air
5 pollution control plans, and if they determine the
6 plan is not sufficient, they can deny the State's
7 plan, and they can put one of their own in its
8 place.

9 So today's action involves the use of a
10 stipulation and a Board order as a means to
11 execute a revision to an existing air pollution
12 control plan for an industrial source, in this
13 case American Chemet and the East Helena lead SIP.

14 Really quickly as background, in June of
15 1995, a stipulation was entered into between
16 American Chemet and the Department that set forth
17 emission limits and operating conditions for the
18 purpose of minimizing ambient concentrations of
19 lead in the East Helena area. To make that
20 stipulation permanent and enforceable, in August
21 of 1995, the Board issued an order that required
22 Chemet to follow those conditions in terms in the
23 stipulation, and it also ordered the Department to
24 enforce that stipulation.

25 However, since the early 2000's,

1 conditions have changed in the East Helena area,
2 and American Chemet approached the Department to
3 make revisions to that earlier stipulation. The
4 proposed action before you today requests the
5 Board to issue a new order to ensure that the
6 State has a permanent and enforceable air
7 pollution control plan for the East Helena area.

8 We have representatives from both
9 American Chemet and the Department, and
10 representatives will stand by for more information
11 if you need it. So that concludes my introductory
12 testimony. Any questions of myself?

13 CHAIRMAN RUSSELL: Does the Board
14 members have any questions for Bob? Generally we
15 kind of like to try to run through these, but I
16 know this is a little different, and probably the
17 first time a lot of the Board members have dealt
18 with anything like this. Thanks, Bob. Questions
19 for Bob?

20 (No response)

21 CHAIRMAN RUSSELL: Hearing none, let's
22 move on to Eric.

23 MR. MERCHANT: Chairman Russell, members
24 of the Board, for the record, my name is Eric
25 Merchant, and I am the Air Quality Policy and

1 Planning Supervisor for the Air Resources
2 Management Bureau.

3 And I just want to follow up on that
4 discussion by Bob to say that American Chemet came
5 to the Department with this proposal to change the
6 East Helena lead SIP, and the Department
7 facilitated discussions with American Chemet how
8 to best proceed with this action, including
9 discussions with EPA. Because this is a State
10 Implementation Plan, it is federally enforceable,
11 is in the East Helena lead SIP.

12 So we moved through this action with
13 them. We've been hand in hand working
14 collaboratively with American Chemet. We believe
15 that the proposed action will not negatively
16 impact the East Helena lead SIP, and will not
17 negatively impact maintenance with the lead NAAQS
18 in the area, the lead National Ambient Air Quality
19 Standards in the area.

20 On those grounds, the Department is in
21 support of the proposed action today, or the
22 action as proposed by American Chemet. We believe
23 that removal of the specific lead in feed limits,
24 lead in feed material limits is appropriate in
25 this case.

1 I'm going to let -- I think American
2 Chemet is going to be speaking today much more on
3 the specifics, but as Bob alluded to, we are
4 available for any questions or comments that you
5 might have. Thank you.

6 CHAIRMAN RUSSELL: Thanks, Eric.

7 MR. LIVERS: Mr. Chairman, I think we're
8 probably ready to move into American Chemet
9 presentation.

10 CHAIRMAN RUSSELL: That's great.

11 MR. BLOSSOM: Mr. Chairman, members of
12 the Board. I am Neal Blossom, Director of Global
13 Environmental and Regulatory Affairs for American
14 Chemet Corporation. Thank you for allowing us to
15 present today.

16 And just a matter for the record, the
17 Chairman of our board is William Shropshire, and
18 our President is Bill Shropshire, and they are not
19 related to Board member Robin Shropshire.

20 The package you have before you
21 regarding American Chemet Corporation's and the
22 Montana Department of Environmental Quality's
23 request for the Board to approve elimination of
24 limits on lead allowed in raw materials used by
25 American Chemet is lengthy and thorough in its

1 description and documentation of the support for
2 this request. So I will go right to a brief
3 justification and summary.

4 American Chemet has and will continue to
5 emit very little lead. The limits on our lead
6 emissions will not change by your approval of this
7 request. As documented in the packet, our
8 emissions have been extremely low, and they will
9 remain very low. While American Chemet emission
10 limit is 123 pounds per year, we have only emitted
11 on average less than three pounds of lead per
12 year.

13 That actual emission will also not
14 change measurably with your decision here today.
15 That is just the limit of environmental controls
16 to capture material. We want to capture every
17 pound of material possible, because the vast
18 majority of what is captured in our dust
19 collectors is copper oxide, our primary product.
20 Not only will our emission limit not change, the
21 lead percent in our feed will not change
22 dramatically either. We have limits on what we
23 can provide to our customers.

24 However, we make this request to you
25 today because American Chemet is so highly

1 dependent on a readily available and large supply
2 of copper. American Chemet purchases
3 approximately 50 million pounds of copper per
4 year. While we purchase various forms of copper,
5 the vast majority is recycled copper from scrap
6 dealers across the US.

7 Changes in the value of the dollar, the
8 economic conditions of China and the US, and the
9 price of copper, all affect that source. When
10 these changes occur, the availability of scrap
11 copper and even virgin sources of copper can also
12 change, and the purity of available scrap copper
13 can fluctuate.

14 Several times since 1995 when the
15 stipulation for the limit on lead in American
16 Chemet's feed was put in place, we have had years
17 and quarters where American Chemet was very close
18 to violation of this limit of lead in our feed.
19 That is the reason for this request before you
20 today, to give American Chemet the flexibility to
21 source its raw materials as necessary.

22 I'll end by repeating that the limits on
23 emissions by American Chemet will not change by
24 your approval of this request. American Chemet's
25 emissions will remain low as documented in the

1 packet provided. The air model supported by
2 Montana Department of Environmental Quality
3 clearly demonstrates that even if we were to emit
4 at our limit of 123 pounds per year, the National
5 Ambient Air Quality Standard for lead in East
6 Helena will be maintained.

7 The US EPA indicated the criteria we
8 needed to achieve for their acceptance of this
9 proposal, and those conditions have been met.

10 The DEQ is in support of this proposal,
11 and has indicated in the facts of finding, and I
12 quote, "The lead and feed limit is not reasonably
13 related to the attainment and maintenance of the
14 lead national air quality standard in East
15 Helena."

16 Therefore, American Chemet requests your
17 approval of revising the 1995 Board order to
18 remove the limit on lead content in American
19 Chemet's feed material on a quarterly and annual
20 average basis. Thank you again, Mr. Chairman, and
21 members of the Board. I will now take any
22 questions.

23 CHAIRMAN RUSSELL: Thanks, Neal. I
24 don't hear any Board members. Board, do you have
25 any questions?

1 MS. SHROPSHIRE: This is Robin. I
2 probably will have some questions, but do you want
3 me to wait until the end or --

4 CHAIRMAN RUSSELL: We could call anyone
5 who testifies. So Robin, if you feel that you
6 want to do it now, I don't think it is going to
7 wreck the proceeding. I would like to hold off.

8 MS. SHROPSHIRE: No, I'm fine holding
9 off. I'll wait.

10 MR. BLOSSOM: Thank you.

11 CHAIRMAN RUSSELL: Thanks, Neal. Next
12 any proponents other than American Chemet?

13 MR. LIVERS: It appears not, Mr.
14 Chairman.

15 CHAIRMAN RUSSELL: Are there any
16 opponents that would like to speak to this matter?
17 And if you do, please name and address, please.

18 MR. LIVERS: No opponents, Mr. Chairman.

19 CHAIRMAN RUSSELL: Okay. So Board,
20 you've heard from three.

21 MR. LIVERS: You might ask if there are
22 just interested parties not taking either side.

23 CHAIRMAN RUSSELL: All right. Are there
24 any out there, Tom?

25 MR. LIVERS: No. I'm just coming off

1 the Legislature, Mr. Chairman. There's typically
2 three categories. Informational witnesses.

3 CHAIRMAN RUSSELL: So I guess I have a
4 question for -- just a point of clarification from
5 the Department. And you can pick whomever, Tom.

6 The 1995 limit was put in the SIP, and
7 with this changing, the SIP will have to change.
8 And is the process still the same that the EPA
9 would be petitioned by the Department or by the
10 Governor to modify the SIP?

11 MR. MERCHANT: Mr. Chairman, members of
12 the Board, this is Eric Merchant again to speak to
13 that issue. Yes, we will be in a separate and
14 distinct action moving forward with the submittal
15 to EPA for revision of the State Implementation
16 Plan.

17 CHAIRMAN RUSSELL: Just to follow up.
18 Have you discussed this matter with the EPA, and
19 they're okay with it? Did I hear that?

20 MR. MERCHANT: Mr. Chairman, members of
21 the Board. Yes, the Department has had
22 significant discussion with EPA along these lines,
23 and in fact, as part of your packet, sort of the
24 final word from EPA was a letter, the Department
25 sent a letter to EPA regarding any outstanding

1 issues that might need to be cleared up in order
2 for this to be approvable.

3 They sent back two clear issues. One
4 was that they wanted a modeling demonstration, a
5 dispersion modeling demonstration to show that the
6 action will not violate or cause any problems with
7 the National Ambient Air Quality Standards, and
8 that's the revised National Ambient Air Quality
9 Standards, which was issued in 2010. And then
10 additionally they wanted proof that the ASARCO
11 Montana air quality permit had been revoked
12 officially.

13 We sent documentation of both of those
14 to EPA, and that documentation is also in the
15 packet.

16 CHAIRMAN RUSSELL: I read somewhere in
17 here -- this may get to someone else, but I'm sure
18 you can answer it, Eric -- that we were talking
19 about raw product and not recycled product, that
20 Montana's copper sources don't have any
21 significant levels of lead in them. Is that still
22 true?

23 MR. MERCHANT: Mr. Chairman, members of
24 the Board, I'm not sure that I can answer that
25 question.

1 MR. BLOSSOM: Mr. Chairman, this is Neal
2 Blossom again. I think when you're talking about
3 Montana's copper product, you're talking about a
4 mined product that's a concentrate. There isn't a
5 significant copper source in Montana for us to
6 operate with.

7 We purchase from scrap dealers across
8 the US who aren't located in Montana. We might
9 get a few pounds, if you will, from Montana
10 sources, and then we also purchase virgin copper,
11 which would be a catho grade copper from mines and
12 generators, such as in Salt Lake City, Kennecott.
13 But there isn't a source of copper for us here in
14 Montana.

15 CHAIRMAN RUSSELL: I guess my statement
16 was valid then. Neal, while you're up here, I
17 guess this is just kind of a no brainer, but
18 sometimes I don't have actually no brainer type
19 moments.

20 Because you're using a lot of recycled,
21 is a lot of this from just copper piping that has
22 been soldered together? Is that where a lot of
23 the lead comes from?

24 MR. BLOSSOM: That would be one of the
25 sources of lead, yes. Radiators would be another

1 source. Copper parts, copper powder parts can
2 have lead in them as well. We also purchase
3 copper wire, chopped copper wire, and that's
4 usually a source that's low in lead.

5 So we get it from all types of sources,
6 but yes, solder would certainly be one of the
7 primary sources of lead in scrap copper.

8 CHAIRMAN RUSSELL: And this is a side
9 note, and I hope it is not out of line. But when
10 you get copper wire from other sources, could you
11 ask them to stop burning the insulation off of
12 them? You can all laugh, but Bob, you know it
13 happens.

14 MR. BLOSSOM: Yes.

15 CHAIRMAN RUSSELL: It is a violation of
16 the Montana Air Quality Act.

17 MR. BLOSSOM: If I could say something.
18 That's a great reason why using scrap copper,
19 that's generated here in the US, in the US,
20 because when scrap recyclers around the US, they
21 have -- when they use the scrap, and we can
22 purchase it from them, then it has to go through
23 our air quality standard regulatory process here;
24 where when it goes overseas to China, they do
25 whatever they want with it.

1 And if you've ever seen some of the
2 pictures of China. And I've been to China. It is
3 not a pleasant place to be from an air quality
4 standard point of view. Using it here is
5 definitely the environmentally sound thing to do.

6 CHAIRMAN RUSSELL: Thanks, Neal. Any
7 other questions the Board may have of Neal, or
8 Eric, or Bob?

9 MS. SHROPSHIRE: I do have some
10 questions. So bear with me just to understand the
11 background a little bit. How do you currently
12 measure your emissions of lead at this --

13 MR. BLOSSOM: Off of those particular
14 stacks, we have to do air quality monitoring, I
15 think it is every five years -- is that right,
16 Kraig -- on those particular furnaces.

17 And so we hire in consultants, they come
18 in. They have ports on the discharge stacks from
19 those baghouses, and they measure flow, and then
20 they take samples right at that point, and then
21 those samples are analyzed for whatever they catch
22 -- copper, zinc, lead.

23 MS. SHROPSHIRE: So you do a stack test
24 every five years, and come up with an emission
25 factor that then you apply --

1 MR. BLOSSOM: -- across the year.

2 MS. SHROPSHIRE: And so how do you
3 measure the lead going in? I mean in your raw
4 material now. You're required to measure the lead
5 so that you don't exceed that limit; is that how
6 it works now?

7 MR. BLOSSOM: We measure both before and
8 after those furnaces. So we'll take as
9 representative a sample as we can of the raw
10 material coming in, and then that will be analyzed
11 for lead; and then actually a more accurate
12 measurement is taken of what comes out of it,
13 because it comes out of it as a much more uniform
14 product at that point.

15 And so if you can imagine trying to
16 sample a truckload of copper scrap coming in that
17 has large pieces, and small pieces, and so forth,
18 we will take the most statistically representative
19 sample we can at that point. We digest it in our
20 lab, and we run AA on it -- atomic absorption --
21 and that's how we measure the lead coming in. We
22 do the same kind of thing with the lead going out
23 of that particular process. So that's how we do
24 it.

25 MS. SHROPSHIRE: And is that how you're

1 demonstrating compliance with your --

2 MR. BLOSSOM: That's correct.

3 MS. SHROPSHIRE: And you have an air
4 permit that has that limit?

5 MR. BLOSSOM: Of 123 pounds per year.

6 MS. SHROPSHIRE: So you're not measuring
7 it at the stack, you're measuring it in the
8 materials?

9 MR. BLOSSOM: In the product coming in
10 and going out.

11 MS. SHROPSHIRE: Will you continue to do
12 that then? That's what you'll -- I mean even if
13 there is not a limit on what goes in, will you
14 still measure the lead going in and out? So that
15 compliance determination won't change, I guess, is
16 the question.

17 MR. BLOSSOM: No. I think that we will,
18 for the vast majority of our materials, continue
19 to measure, because many of our products have
20 limits on them.

21 I'll give you just one example. We sell
22 an agricultural fungicide, and we have to meet the
23 UN's food and agricultural organization limit for
24 lead, cadmium, arsenic in that. So we have to
25 measure that and make sure we meet that limit,

1 which is actually quite low. It would be .044 on
2 those particular products. So we'll be measuring
3 that.

4 We're starting to see more and more
5 regulatory requirements across the globe, and we
6 sell about 70 percent of our product overseas,
7 where they're requiring lead, and cadmium, and
8 arsenic, and other things to be measured in those.
9 So we will continue to measure the vast majority
10 of our product.

11 MS. SHROPSHIRE: And I guess what I'm
12 still trying to understand is: If you do a stack
13 test once every five years, that's one point in
14 time. And on a daily basis, if you had a batch
15 that had high lead in it, how would you know not
16 to use that? How would you know that you're not
17 exceeding your permit limit? Does that make
18 sense?

19 MR. BLOSSOM: Yes. First off, when we
20 do those five year analyses, we have to show that
21 we are using representative lots of our copper
22 scrap. And Kraig Keltz, our environmental
23 engineer, actually goes to great lengths making
24 sure that we use different lots, and that they're
25 statistically representative of what we normally

1 get in. So that would be your first line of
2 defense right there.

3 Besides that, our Purchasing Department
4 buys against specifications. They'll buy No. 2
5 chops, or bare bright scrap, or something along
6 those lines. And in our purchasing, we have those
7 limits in there, so that -- because we want to
8 produce a relatively pure product for our
9 customers because they want it as well.

10 So when we buy against that
11 specification, then we run it through our process
12 both before and after we run the assays in the
13 lab; and if they do not meet specifications which
14 we purchased them to, we go back to that supplier,
15 tell them about that, and usually get a price
16 deduction -- we call it a concession -- for the
17 fact that we bought it to this specification, and
18 we didn't receive it at that specification.

19 So it is very common in the scrap
20 business to do this. They don't necessarily have
21 -- the scrap dealers -- the wherewithal to know
22 exactly what they're producing and when, but we
23 do, because that's our business, is to know the
24 purity.

25 MS. SHROPSHIRE: If we approve this

1 change, will your specifications change?

2 MR. BLOSSOM: No, they will not. That
3 has really nothing to do with it. We try and
4 purchase pure -- probably saying it has nothing to
5 do with it is a little strong -- but we purchase
6 to those specifications because we want that
7 purity for our customers, because they demand it
8 in many applications. That will not materially
9 change the difference in purity here.

10 This has just been -- the reason we're
11 here is we have had those times where -- well, it
12 was about five or six years ago, China's economy
13 was bustling, and they were buying scrap. They
14 were after every pound they could get. And so we
15 were getting what we could from scrap dealers, and
16 they're really out there looking for whatever they
17 can get, too.

18 So we were right up against this limit.
19 That's why we're here. It's not going to
20 materially change what we try and do in our
21 production.

22 MS. SHROPSHIRE: I think that answers my
23 questions. Thank you.

24 CHAIRMAN RUSSELL: Thanks, Robin. Any
25 other questions?

1 (No response)

2 CHAIRMAN RUSSELL: There may be more
3 questions when we have some action to take. So
4 we'll close the public hearing at this point, and
5 the Board now will consider this request in the
6 context of -- you probably found this -- findings
7 of fact, conclusions of law, and order. And just
8 to kick this thing off, I will entertain a motion
9 to authorize the Board Chair to sign the order.

10 MR. LIVERS: Mr. Chairman, this is Tom.
11 If I can interrupt. We did come across one
12 reference error that I think I can explain pretty
13 -- it's very straight forward. So I think I could
14 explain this and incorporate it into the motion.

15 If you look at Page 3 of the order under
16 Conclusions of Law No. 4. Page 3 of the order,
17 Conclusions of Law No. 4, "To effectuate purposes
18 set forth in the Conclusion of Law 10." Instead
19 of "Conclusions of Law 10," it should be "Finding
20 of Fact 10."

21 CHAIRMAN RUSSELL: Okay. So when we do
22 get a motion to authorize the Board Chair, we
23 would change -- at that point change Conclusion of
24 Law to Findings of Fact.

25 MR. LIVERS: Thank you.

1 CHAIRMAN RUSSELL: So I will entertain a
2 motion to authorize the Board Chair to sign the
3 order. And just so you can make this easy, in the
4 Conclusions of Law No. 4, change "Conclusions of
5 Law --" strike "Conclusions of Law" and add
6 "Findings of Fact." Do I have a motion?

7 MR. MILLER: I so move. This is Miller.

8 CHAIRMAN RUSSELL: Is there a second?

9 MS. SHROPSHIRE: I'll second.

10 CHAIRMAN RUSSELL: Seconded by Robin.
11 Further discussion?

12 MR. WHALEN: Mr. Chairman, this is Joe.
13 Mr. Chairman, assuming we go forward and grant the
14 request, is the only facility within that East
15 Helena SIP non-attainment zone this facility, or
16 are there other facilities that would be impacted
17 by this decision?

18 CHAIRMAN RUSSELL: Eric or Tom.

19 MR. MERCHANT: Mr. Chairman, members of
20 the Board, Joe. In East Helena, in East Helena's
21 lead non-attainment area, the only remaining
22 facility that is a source of lead is American
23 Chemet in this discussion today. The ASARCO lead
24 smelter was razed. The stacks went down. I was
25 there. I saw that happen that day. So that 60

1 tons of lead that came from the ASARCO plant is no
2 longer in that airshed.

3 There is a nearby facility in Ash Grove
4 -- I can't speak specifically to that permit --
5 but it is not within the non-attainment area
6 specifically.

7 MR. WHALEN: Thank you. Is there the
8 potential for another organization to move in
9 within that non-attainment area, and instead some
10 sort of manufacturing facility that would then be
11 within the domain of this revised East Helena SIP?

12 MR. MERCHANT: Mr. Chairman, members of
13 the Board. Yes, other facilities could come in
14 and propose operations. However, in order to do
15 so, they would need to demonstrate compliance with
16 the lead NAAQS and with any other requirements
17 that specifically would be outlined in the lead
18 SIP for that area.

19 It is also important to note that as
20 part of this process, we're talking about a
21 non-attainment area under the 1978 lead NAAQS, and
22 the demonstrations that are moving forward are
23 under a 2010 revision to that NAAQS, which is
24 orders of magnitude more stringent. And in any
25 case, were a facility were to come in and operate

1 in this area, they would need to demonstrate
2 compliance with that new revised and significantly
3 more stringent requirement.

4 MR. WHALEN: Thank you, Eric. Mr.
5 Chairman, if I may, one more question for Eric.

6 Eric, have there been other divisions
7 within DEQ that have been brought into the
8 consideration of this revision beyond yours?
9 In other words, you're addressing air quality.
10 Are there any water quality considerations? Are
11 there any other environmental considerations that
12 the Department should be weighing in on beyond
13 what we have before us in terms of these findings
14 of fact?

15 MR. MERCHANT: Mr. Chairman, Joe,
16 members of the Board. I'm not sure that I can
17 speak to that issue. I'm not sure that this
18 specific issue relates to any other media. Tom,
19 if you want to speak to that.

20 MR. LIVERS: Mr. Chairman, Mr. Whalen.
21 We've certainly had site managers on the East
22 Helena site under our Hazardous Waste Program as
23 well, as has EPA. I think Eric is correct in that
24 the medium impacted here is primarily air. I
25 don't know specifically if other programs were

1 brought into this discussion on this revision. I
2 suspect not. But we have certainly had lots of
3 specialists looking at that entire site for a long
4 time under various water quality, hazardous waste,
5 and air programs.

6 MR. WHALEN: Okay. Thank you, Tom.

7 CHAIRMAN RUSSELL: Any further
8 questions?

9 (No response)

10 CHAIRMAN RUSSELL: We have a motion
11 ready for a vote. Anything else, Tom? I guess
12 I'll give the audience another chance if they want
13 to speak to this. Is there anyone out there?

14 MR. LIVERS: I don't think so, Mr.
15 Chairman, no.

16 CHAIRMAN RUSSELL: We have an order. It
17 is moved and there has been a second to authorize
18 the Board Chair to sign.

19 MR. LIVERS: Would you like a roll call
20 vote, Mr. Chairman?

21 CHAIRMAN RUSSELL: Probably. Let's call
22 for the question, and we'll roll call this.

23 MR. LIVERS: Mr. Miller.

24 MR. MILLER: Aye.

25 MR. LIVERS: Mr. Mires.

1 MR. MIRES: Aye.

2 MR. LIVERS: Ms. Shropshire.

3 MS. SHROPSHIRE: Aye.

4 MR. LIVERS: Mr. Whalen.

5 MR. WHALEN: Nay.

6 MR. LIVERS: Chairman Russell.

7 CHAIRMAN RUSSELL: Aye.

8 MR. LIVERS: Motion passes four to one.

9 CHAIRMAN RUSSELL: Let's move along
10 then. Thanks for the Department and Neal for
11 providing testimony.

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1 CHAIRMAN RUSSELL: And the next item on
2 the agenda is agenda item III(B)(1). This has to
3 do with DEQ4. Tom.

4 MR. LIVERS: Mr. Chairman, you recall
5 that DEQ4 came before the Board in January of last
6 year, and the Board had some questions. We kind
7 of dropped back, met with several Board members,
8 worked through some additional information, some
9 additional questions that we were proceeding, and
10 we ran into another wrinkle that we didn't really
11 anticipate. And I'll turn it over to Mr. Pizzini
12 at this point to discuss that.

13 MR. PIZZINI: Chairman Russell, members
14 of the Board, for the record, my name is Eugene
15 Pizzini, and I am the Rules Manager for the Public
16 Water and Subdivision Bureau.

17 Mr. Chairman, members of the Board.
18 This proposed amendment and extension of the
19 comment period are intended to address the
20 potential notice issue.

21 In reviewing the Administrative
22 Procedures Act 2-4-307, Montana Code Annotated, we
23 determined that we may not have properly noticed
24 the adoption by reference documents as required.
25 Our original notice failed to indicate the

1 location where the actual source material is
2 located as required in 2-4-307(3)(c). The
3 proposed amendments to DEQ4 and the addition of
4 New Appendix F lists those documents adopted by
5 reference, give electronic source link
6 information, and describe where a hard copy may be
7 viewed.

8 A public hearing for MAR 17-343 was held
9 on January 11th, 2013. The Department does not
10 propose to conduct a separate public hearing for
11 this amended notice of proposed amendment and
12 extension. The referenced standards are industry
13 standards produced to maintain consistency in
14 construction standards across the country. By
15 adopting these standards, the regulated community
16 knows what minimum standard their design must
17 achieve, which thereby reduces the potential for
18 denial during the review process.

19 The Department does not believe there
20 will be interest in a public hearing, as the
21 Department is not intending to modify any of the
22 industry standards it adopts by reference.
23 Language has been added in Paragraph 3 of the
24 proposed amended notice to indicate that a hearing
25 may be held if there is enough interest to do so.

1 This addition is intended to clarify that no
2 hearing will be held unless specific interest is
3 indicated.

4 No further amendments to DEQ4 are being
5 proposed in this notice based on comments received
6 during the initial notice of public hearing or the
7 notice of extension of comment period. Comments
8 already received by the Department will be
9 addressed during the adoption process of this
10 rulemaking, and therefore resubmission of those
11 comments is not necessary.

12 The Department also proposes to correct
13 the pagination problem in DEQ4.

14 Therefore, the Department recommends
15 that the Board issue the attached amended notice
16 of proposed amendment and extension of comment
17 period, and proceed with rulemaking. I'm
18 available for questions, Mr. Chairman.

19 CHAIRMAN RUSSELL: Questions for the
20 Department?

21 (No response)

22 CHAIRMAN RUSSELL: Hearing none, I guess
23 I have one. What dates are you considering
24 putting into the MAR Notice 17-343(b)?

25 MR. PIZZINI: I will have to check.

1 CHAIRMAN RUSSELL: What I have just has
2 -- it doesn't have any dates in three or four.

3 MR. PIZZINI: Mr. Chairman, members of
4 the Board. I didn't bring my copy of the proposed
5 notice with me. I don't know if you have it in
6 your packet.

7 CHAIRMAN RUSSELL: You know, I don't, at
8 least -- and correct me if I'm wrong, rest of the
9 Board. I didn't notice -- I was just looking at
10 that new MAR notice on published and --

11 MR. LIVERS: There are blanks there on
12 the date, Mr. Chairman.

13 CHAIRMAN RUSSELL: And I don't have a
14 problem crafting a motion to put those dates as
15 amenable to the Department following notice
16 procedures either.

17 MR. LIVERS: I think it would be our
18 intention, Mr. Chairman, to notice it at the first
19 available opportunity.

20 CHAIRMAN RUSSELL: Okay. So does anyone
21 on the Board have any discussion, or questions,
22 comments regarding this matter?

23 MS. SHROPSHIRE: Mr. Chairman, this is
24 Robin. I have a quick question.

25 As I understand it, based on these

1 changes -- let's say the proposed change could
2 have a substantive impact on somebody, and they
3 didn't have an opportunity to comment on it.

4 MR. LIVERS: Mr. Chairman, Ms.
5 Shropshire.

6 CHAIRMAN RUSSELL: Are you talking about
7 the date, extending the date?

8 MR. LIVERS: Your question is on the
9 public hearing?

10 MS. SHROPSHIRE: Yes.

11 MR. LIVERS: Here is our thinking, just
12 to kind of reiterate. We did go through a
13 rulemaking process, and had a public hearing on
14 this. I think the reason we're going back again
15 is because as we proceeded through this, we
16 uncovered that there are certain specific things
17 we need to do when we incorporate by reference,
18 and they're more than just administrative. We
19 have to make sure people understand how they can
20 get a hold of the source documents that are being
21 incorporated, so they can make a meaningful
22 comment.

23 So I guess our rationale is that we have
24 had a rulemaking process, we have held a public
25 hearing. We tried to mention prominently in the

1 notice -- that's the amendment that Mr. Pizzini
2 was talking about -- that if there is sufficient
3 interest, we will hold a hearing.

4 MS. SHROPSHIRE: That's I guess what I'm
5 confirming. That's what I heard you to say.

6 MR. LIVERS: It wasn't in the original
7 notice that was sent to you, but we decided that
8 since we were opting against a hearing on the
9 assumption that we've already got whatever we're
10 going to get on the substance of this, we did want
11 to prominently notice in the material that goes
12 out, so people understand that if they really do
13 want to request a hearing, they can.

14 MS. SHROPSHIRE: Okay. Thank you. I
15 just wanted to clarify that's what I heard. Thank
16 you.

17 MR. PIZZINI: Mr. Chairman, in addition
18 to that, I would add that Norm just informed me
19 that Elois does not put a date in the notice, as
20 Mr. North has asked to leave that up to the Board.
21 So that's why they were absent from that notice.

22 Mr. Chairman, in addition, the standards
23 that we're talking about adopting by reference are
24 currently in the current version of DEQ4. The
25 only thing that we're doing is bringing them up to

1 the newer editions, where there may have been a
2 1985 or 2004 edition that's adopted, we're
3 bringing that up to 2013 or the newest.

4 That allows the regulated public to use
5 all the tools that are available as opposed to
6 being stuck with the ones that were only available
7 in 1985. So we really don't believe that anybody
8 is going to have interest in a public hearing, but
9 we did want to make it available.

10 MR. LIVERS: Mr. Chairman, one more --
11 just a little bit further on the dates. Several
12 years ago a different Board, the Board of
13 Environmental Review but a different membership,
14 expressed concerns over dates already being in
15 orders as if the Department was presuming the
16 Board would approve the order.

17 So since that time, we'll typically fill
18 in the next available dates once the Board does
19 approve the order, so that's why it is the way it
20 is. And if that's not a concern with this Board,
21 we can certainly change that practice to what we
22 would anticipate those dates being on further
23 orders.

24 CHAIRMAN RUSSELL: Well, Tom, I just
25 don't want to have some mind meltdown trying to

1 figure out a date that complies with all of the
2 nuances of noticing.

3 MR. LIVERS: Sure. And we would not
4 expect the Board to actually come up with that
5 date because it has to do with do with Secretary
6 of State schedules, and that's something we'll
7 come up with.

8 So I think the Board can just assume
9 that we'll do it at the next available
10 opportunity, unless there is some reason because
11 of the six month limit between initiation and the
12 adoption and Board schedules that a different date
13 makes sense. So it is really a mechanical process
14 from this point forward.

15 CHAIRMAN RUSSELL: Well, that sounds all
16 good to me. How about the rest of the Board?

17 MR. MILLER: Sounds good.

18 MS. SHROPSHIRE: It seems to me --

19 CHAIRMAN RUSSELL: Let's do a motion
20 here.

21 MR. LIVERS: Mr. Chairman --

22 MS. SHROPSHIRE: I was just going to
23 say. I think -- I want to make sure I understand
24 this. To me having a date in there or at least a
25 proposed date adds clarity to it. To me it makes

1 more sense to have a suggested date as opposed to
2 leaving it blank.

3 MR. LIVERS: I think from this point
4 forward we'll probably do that. I don't get the
5 sense the Board shares the concern that was raised
6 years ago.

7 MS. SHROPSHIRE: It could always be
8 changed.

9 MR. LIVERS: Sure.

10 MS. SHROPSHIRE: That's all I have.
11 Thanks.

12 CHAIRMAN RUSSELL: Well, thanks, Robin.
13 That's a great comment. It's just how I feel,
14 too.

15 So I would entertain a motion, first of
16 all, to grant the Department's request to extend,
17 repost or post the new Notice 17-343(b), and put
18 the most appropriate dates in Items 3 and 4 that
19 benefit all parties.

20 MS. SHROPSHIRE: So moved.

21 CHAIRMAN RUSSELL: It has been moved.
22 Is there a second?

23 MR. MILLER: Second.

24 CHAIRMAN RUSSELL: Any further
25 discussion?

1 (No response)

2 CHAIRMAN RUSSELL: Anyone in the
3 audience down there that wants to speak to this,
4 Tom?

5 MR. LIVERS: No, Mr. Chairman.

6 CHAIRMAN RUSSELL: I always want to
7 defer to the rule master. Did you want to add
8 anything else, Mr. Pizzini?

9 MR. PIZZINI: Mr. Chairman, go Cats.

10 MS. SHROPSHIRE: Strike that from the
11 record.

12 CHAIRMAN RUSSELL: All right. Hearing
13 nothing further, all those in favor, signify by
14 saying aye.

15 (Response)

16 CHAIRMAN RUSSELL: Opposed.

17 (No response)

18 CHAIRMAN RUSSELL: Motion carries
19 unaniously.

20 Moving along. I believe we are now down
21 to new contested cases. Katherine.

22 MS. ORR: Mr. Chairman, members of the
23 Board. The first new contested case is called In
24 the Matter of Violations of the Sanitation and
25 Subdivisions Act by Levi Britton at the 80th

1 Street Subdivision in Billings.

2 This began on an NOV administrative
3 compliance and penalty order that was issued on
4 March 1st, 2013. The Department issued a
5 certificate of subdivision plat approval, or COSA,
6 and said in it that there could be no use of
7 culverts for the movement of storm water. And
8 contrary to the COSA, the subdivision was altered
9 with the installation of 33 culverts, among other
10 problems.

11 So basically the underlying violation is
12 a failure to construct storm water drainage system
13 in accordance with the plan in the COSA, and the
14 administrative penalty that's requested is
15 \$15,120.

16 CHAIRMAN RUSSELL: This is really
17 strange. Katherine, this sounds like a very
18 severe movement away from what the Department
19 approved.

20 MS. ORR: Right. It does. Very
21 strange. But we really can't comment on it until
22 all of the evidence comes in, of course.

23 CHAIRMAN RUSSELL: That's kind of why I
24 asked it the way I did. Severe penalty, and the
25 fact that you had to throw in 33 culverts.

1 MS. ORR: And there is more to the
2 record, but --

3 CHAIRMAN RUSSELL: I'm sure there is.
4 Well, Board, you have a decision to make. This is
5 something -- We've never dealt with a Sanitation
6 and Subdivision Act violation personally. But it
7 would be up to you folks if you want -- we have
8 quite a few things that we still hold for our own
9 action. I don't want to get too many things out
10 there.

11 So what's the pleasure of the Board? Do
12 you want to assign this to Katherine, or do you
13 want to hear this matter?

14 MR. WHALEN: Mr. Chairman, this is Joe.
15 On this matter, I have full confidence in our
16 Hearings Examiner to handle the whole issue.

17 CHAIRMAN RUSSELL: That's good to hear.
18 Anyone else have a comment?

19 MS. SHROPSHIRE: I have full confidence
20 as always, but I can go either way. It sounds
21 like an interesting one, but like you said, our
22 plate is full, and so is Katherine's.

23 CHAIRMAN RUSSELL: So let's make hers
24 fuller? All right. I would entertain a motion to
25 assign this matter to Katherine.

1 MR. MIRES: Larry Mires so moves.

2 MR. MILLER: I'll second. Miller.

3 CHAIRMAN RUSSELL: It's been moved and
4 seconded. Any further discussion?

5 (No response)

6 CHAIRMAN RUSSELL: Hearing none, all
7 those in favor, signify by saying aye.

8 (Response)

9 CHAIRMAN RUSSELL: Opposed.

10 (No response)

11 CHAIRMAN RUSSELL: Motion carries
12 unanimously. Next, James Vaughn.

13 MS. ORR: Mr. Chairman, members of the
14 Board. In this next segment we'll discuss cases
15 that are at a status of final disposition.

16 This case, In the Matter of Violations
17 of the Montana Septage Disposal and Licensure Laws
18 by James Vaughn, involved an individual who was
19 disposing allegedly septage on his own land on ten
20 occasions after August 1st of 2009.

21 And upon a motion for summary judgment,
22 I issued an order recommending the entry of
23 partial summary judgment, and reserving out the
24 issue of penalties.

25 And that was an interesting set of

1 briefing and oral argument, really sort of
2 focusing on discovery responses, and whether or
3 not the discovery responses could be the basis for
4 issuance of the summary judgment as a matter of
5 law. And I determined that yes, this summary
6 judgment, the partial summary judgment could be
7 granted.

8 And then the parties got together, and
9 decided to stipulate to a dismissal with prejudice
10 in this case, so we didn't get to the penalties
11 phase. And the parties determined, according to
12 the AOC that you have in your packet, that there
13 would be a payment of \$2,500 in penalties with no
14 admission of liability. So you have a proposed
15 order of dismissal in front of you, which is a
16 41 --

17 CHAIRMAN RUSSELL: Anything the Board
18 would like to ask Katherine at this point?

19 (No response)

20 CHAIRMAN RUSSELL: Hearing none, I have
21 an order of dismissal for Case No. BER 2011-06
22 SDL, and would entertain a motion to authorize the
23 Board Chair to sign said order.

24 MR. MILLER: I so move. Miller.

25 CHAIRMAN RUSSELL: It's been moved by

1 Marv. Is there a second?

2 MS. SHROPSHIRE: Second.

3 CHAIRMAN RUSSELL: It's been seconded by
4 Robin. Any further discussion?

5 (No response)

6 CHAIRMAN RUSSELL: Hearing none, all
7 those in favor, signify by saying aye.

8 (Response)

9 CHAIRMAN RUSSELL: Opposed.

10 (No response)

11 CHAIRMAN RUSSELL: Motion carries
12 unanimously. All right. Moving on. Solid Waste
13 Management Act, Valley County Refuse.

14 MS. ORR: Mr. Chairman, members of the
15 Board. This has been an interesting case, in
16 which Valley County managed a solid waste
17 management system, a landfill, and the underlying
18 violation was failure to cover the landfill on a
19 daily basis.

20 And the County argued a couple of
21 things: One, it really wasn't harming the
22 environment, and by not covering -- they admitted
23 that they didn't cover daily -- and that they
24 operated the landfill in an exemplary fashion in
25 all other respects.

1 The Department filed a Motion for
2 Summary Judgment, and on March 6th, I issued an
3 order on the Motion for Summary Judgment granting
4 the motion because the County had admitted that it
5 wasn't applying daily cover, and there is no
6 really basis for deviation from the wording in the
7 statute and the rule.

8 Then the parties requested a telephonic
9 conference on penalties before we actually went to
10 hearing on penalties, and we had that, and the
11 parties agreed to the penalty amount of \$700. And
12 you have that in your packet, that recommended
13 order regarding imposition of the penalties.

14 And so today the Board has before it the
15 determination of whether to adopt by reference the
16 Hearing Officer's, my proposed order on the Motion
17 for Summary Judgment, and the proposed order
18 recommending imposition of penalties, and thereby
19 affirming the Notice of Violation.

20 And I haven't drafted an order to that
21 effect yet, but that's what it would say. It
22 would adopt by reference both the proposed order
23 on the Motion for Summary Judgment and the
24 Proposed Order on Penalties, and affirm the
25 Department's Notice of Violation.

1 CHAIRMAN RUSSELL: That seems odd. But
2 I will entertain a motion to affirm the Hearing
3 Examiner's summary judgment motion, and the
4 penalties, stipulation for penalties. So the
5 Board actually is not taking any action to require
6 the Board Chair to sign anything?

7 MS. ORR: Yes. I'm sorry for the
8 confusion. Mr. Chairman, members of the Board,
9 you will be taking final action today. You'll be
10 adopting the Recommended Order on Summary Judgment
11 and the Recommended Order on Penalties, and
12 affirming the remedy requested in the Notice of
13 Violation.

14 So this case has gone full circle. It
15 has gone through a summary judgment phase; it has
16 gone through the penalty phase; the penalty phase
17 was stipulated; and the merits have been disposed
18 of upon summary judgment; and I wrote an order
19 proposing that summary judgment be granted, but I
20 believe the Board has to affirm both of those
21 steps, and that's what you're doing today. And
22 you do have the summary judgment in the proposed
23 order on penalties in your packet.

24 MR. WHALEN: Mr. Chairman, is the
25 assessment of penalties in this case a deviation

1 from what the penalties would ordinarily be, and
2 if so, what is the basis for that deviation?
3 Understanding that we don't have a draft to look
4 at with those penalties assigned.

5 MS. ORR: May I respond to that?

6 CHAIRMAN RUSSELL: Yes.

7 MS. ORR: And the Department is ready to
8 respond as well. But in the NOV, the requested
9 penalty was \$750, so I think the parties really
10 determined that it wouldn't be worth while to have
11 a hearing on the penalties, so they stipulated to
12 this amount of \$700. Does that answer the
13 question?

14 MR. WHALEN: Thank you. Yes. Thank
15 you, Katherine.

16 MS. ORR: So it is a little odd, a
17 stipulation to penalties, I guess; but I think
18 given the low amount that was requested, the
19 County determined to just go ahead and stipulate
20 to that amount.

21 CHAIRMAN RUSSELL: We do have two
22 documents here that we can actually put into our
23 motion to affirm the Hearings Examiner's actions
24 on this matter. And I guess it does make sense,
25 if you think about it in there. You looked at

1 everything, and you moved on summary judgment
2 prior to what would be completion of the matter,
3 and they agreed to that, and they agreed to a
4 penalty just \$50 less than the NOV in the first
5 place.

6 MS. ORR: Right.

7 CHAIRMAN RUSSELL: So let's try this
8 again. Did I call for a motion?

9 MS. ORR: You did, but I don't think you
10 had a second.

11 CHAIRMAN RUSSELL: Did I get a first?

12 MR. MILLER: I'll move the motion.
13 Miller.

14 CHAIRMAN RUSSELL: Marv, that's a
15 friendly amendment on your part?

16 MR. MILLER: Yes.

17 CHAIRMAN RUSSELL: Is there a second to
18 that?

19 MR. WHALEN: I'll second, Mr. Chairman.

20 CHAIRMAN RUSSELL: It has been second by
21 Joe. Further discussion.

22 (No response)

23 CHAIRMAN RUSSELL: Hearing none, all
24 those in favor, signify by saying aye.

25 (Response)

1 CHAIRMAN RUSSELL: Opposed.

2 (No response)

3 CHAIRMAN RUSSELL: Motion carries
4 unanimously. All right. Katherine, last one.

5 MS. ORR: This is simpler. This is a
6 case in which there was an appeal from the Notice
7 of Violation, and the violation has to do with
8 operating a solid waste management system without
9 a license, dumping of asphalt on this property in
10 Billings.

11 And there were really two parties,
12 Asphalt Plus and Mr. and Mrs. Oedekoven, and they
13 decided to step up to the plate and undertake the
14 corrective action that the Department envisioned.
15 And you can see this in the settlement documents.
16 And therefore they're proposing a 41(a) dismissal,
17 having resolved the corrective action and clean-up
18 with the Department.

19 CHAIRMAN RUSSELL: Okay. Thanks. So I
20 do have an order of dismissal for Case No. BER
21 2012-13 SW, and would entertain a motion to
22 authorize the Board Chair to sign said order.

23 MR. MIRES: Mires. So moved.

24 CHAIRMAN RUSSELL: Is there a second?

25 MR. MILLER: I'll second it. Miller.

1 CHAIRMAN RUSSELL: Seconded by Marv. Is
2 there any further discussion?

3 (No response)

4 CHAIRMAN RUSSELL: Hearing none, all
5 those in favor, signify by saying aye.

6 (Response)

7 CHAIRMAN RUSSELL: Opposed.

8 (No response)

9 CHAIRMAN RUSSELL: Motion carries
10 unanimously. All right. Thanks, Katherine.

11 The last item on the agenda is just
12 general public comment. If there is anyone, any
13 members of the public that would like to address
14 the Board at this time on matters pertaining to
15 the Board, please do so now.

16 MR. LIVERS: I don't see that, Mr.
17 Chairman. But with your permission, I would talk
18 just about a couple upcoming dates for Board
19 meetings.

20 CHAIRMAN RUSSELL: Please. That would
21 be great.

22 MR. LIVERS: I'm not expecting any
23 commitments from Board members now. I just want
24 to toss some things out, and then give you an
25 opportunity to check calendars, and we'll follow

1 up in an email. And I do apologize on that
2 January 2014. That was me dropping the ball, and
3 not getting that done between the last Board
4 meeting and now.

5 But the first thing is the July meeting.
6 The next meeting is scheduled for July 19th, and a
7 conflict has developed. We would like to move
8 that to July 26th if that's possible. So I would
9 ask the Board members to check their calendars,
10 and get back to Joyce or me if there are problems
11 with July 26th.

12 Then the next two things I wanted to
13 talk about December and January 2014, December
14 2013. We are scheduled for Friday December 6th.
15 That will probably need to be a two day meeting
16 because of the PPL case. I think the plan is
17 Colstrip will be heard in December, and Corette in
18 January. So Board members need to make sure or
19 check to see if the 5th is also available in
20 addition to the 6th, which should already be on
21 your calendar.

22 What I would anticipate -- I think we
23 may need a good chunk of the day at least for that
24 hearing. And I don't know for sure, but it seems
25 like there are going to be issues and

1 deliberations. So I think what I might envision
2 -- I haven't talked to Katherine about this yet --
3 but maybe holding the hearing on Thursday the 5th,
4 doing the Board meeting on the morning of Friday
5 the 6th, and then if we have any spill over from
6 the hearing, possibly resume it on the 6th after
7 the Board meeting if we needed it.

8 But the main point I think for now is
9 knowing that you need the two day span in there.
10 So if you could check that, please, and let us
11 know.

12 And then as far as January 2014, we'll
13 also need a two day block. We'll plan on a
14 Thursday/Friday block. And I think we've got
15 quite a bit to choose from in there. But as early
16 as the 16th/17th, and as late as maybe the first
17 couple weeks in February. So we'll pose the
18 question in an email follow up, but it would be
19 good to know if there are any particularly good or
20 bad two day blocks of time in January as well. So
21 again, not asking for commitments at this point,
22 but did want to toss that out.

23 Then I have one other question, and I
24 might pose it for Katherine, well, it's two parts.

25 Katherine, for appropriateness, and

1 maybe the Board members to see if the question was
2 answered. There was a question on the deviation
3 on the penalty. We could offer a little more
4 context to now that the action has been taken, if
5 the Board would like that, the \$700 settlement
6 with Valley County.

7 If there's interest in hearing a little
8 more detail on that, we certainly could provide
9 that now that the action has been taken if that's
10 appropriate. So if it appears to be appropriate,
11 I guess the question is if the Board is satisfied
12 with what they've heard so far, or if they want
13 some more.

14 MR. WHALEN: I'm happy with what I've
15 heard, Tom, and I'm the one who originally asked
16 the question, so please don't go forward on my
17 account.

18 MR. LIVERS: Mr. Chairman, Mr. Whalen.
19 Thank you. I appreciate that. That's all we had
20 from the Department, Mr. Chairman, and no public
21 comment here.

22 CHAIRMAN RUSSELL: All right. Thanks,
23 Tom. Just in full disclosure, I'm the one that
24 needs to have that July date moved. I committed
25 to something without keeping my calendar current,

1 and I don't want to blemish my perfect Board -- so
2 that is why the request came. It is all my fault.

3 And if there is nothing else, I'll
4 entertain a motion to adjourn.

5 MR. MILLER: So moved. This is Miller.

6 CHAIRMAN RUSSELL: Marv, once again, the
7 same thing. Thank you and everything. We may or
8 may not hear from you in July.

9 MR. MILLER: Yes.

10 CHAIRMAN RUSSELL: Just hang in there
11 until they make decisions, right?

12 MR. MILLER: You bet.

13 CHAIRMAN RUSSELL: Is there a second?

14 MS. SHROPSHIRE: I'll second.

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

17 (Response)

18 CHAIRMAN RUSSELL: The ayes have it, and
19 we are adjourned.

20 (The proceedings were concluded

21 at 10:20 a.m.)

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C E R T I F I C A T E

STATE OF MONTANA)

: SS.

COUNTY OF LEWIS & CLARK)

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

That the proceedings were taken before me at
the time and place herein named; that the
proceedings were reported by me in shorthand and
transcribed using computer-aided transcription,
and that the foregoing - 58 - pages contain a true
record of the proceedings to the best of my
ability.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my notarial seal
this day of , 2013.

LAURIE CRUTCHER, RPR
Court Reporter - Notary Public
My commission expires
March 12, 2016.