

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

BOARD MEETING )  
MAY 30, 2014 )

TRANSCRIPT OF PROCEEDINGS

Heard at Room 111 of the Metcalf Building  
1520 East Sixth Avenue  
Helena, Montana  
May 30th, 2014  
9:00 a.m.

BEFORE CHAIRMAN ROBIN SHROPSHIRE,  
BOARD MEMBERS MARIETTA CANTY, JOAN MILES;  
LARRY MIRES; and JOSEPH RUSSELL,  
CHRIS TWEETEN; and HEIDI KAISER (by telephone)

PREPARED BY: LAURIE CRUTCHER, RPR  
COURT REPORTER, NOTARY PUBLIC

1           WHEREUPON, the following proceedings were  
2 had and testimony taken, to-wit:

3                           \* \* \* \* \*

4                           (Ms. Miles not present)

5                           (Ms. Orr present by telephone)

6           CHAIRMAN SHROPSHIRE: It is 9:02. I'll  
7 call this meeting of Board of Environmental Review  
8 to order. Tom, can you roll call, please.

9           MR. LIVERS: Ms. Canty.

10          MS. CANTY: Here.

11          MR. LIVERS: Ms. Kaiser.

12          MS. KAISER: Here.

13          MR. LIVERS: Ms. Miles.

14                           (No response)

15          MR. LIVERS: Mr. Mires?

16          MR. MIRES: Here.

17          MR. LIVERS: Mr. Russell.

18          MR. RUSSELL: Present.

19          MR. LIVERS: Mr. Tweeten.

20          MR. TWEETEN: Here.

21          MR. LIVERS: Chair Shropshire.

22          CHAIRMAN SHROPSHIRE: Here. We're going  
23 to have a change in the agenda slightly. So Tom,  
24 if you could just step us through that briefly.

25          MR. LIVERS: You bet. Madam Chair,

1 members of the Board, for the record, Tom Livers,  
2 Deputy Director of DEQ. We're going to, because  
3 of couple items -- a shift in Board Attorney  
4 duties, and also just accommodating Katherine's  
5 schedule a little bit -- we're going to change the  
6 order a little bit this morning.

7 We will do the administrative items,  
8 finish those up, then move directly into the  
9 contested case update as usual. After that, we  
10 will look at a motion to shift attorney duties,  
11 and then after that, move into the new contested  
12 cases. So we'll talk about those; basically  
13 finish up with all of the contested cases; and  
14 then move to the additional briefing item and the  
15 action items. So existing contested cases.

16 MS. ORR: If I can pitch in, Tom.  
17 Thanks, everyone, for accommodating me. I don't  
18 know if people know, but I am in California, and  
19 my husband's going to undergo surgery here in a  
20 little bit, so that's why we're doing that, and I  
21 really appreciate it.

22 CHAIRMAN SHROPSHIRE: Katherine, not a  
23 problem at all, and we're glad you could join us.  
24 I think the first item on the agenda is just to  
25 review and approve the minutes. So are there any

1 comments or discussion on the minutes of the March  
2 21st meeting?

3 MR. MIRES: This is Larry Mires. I  
4 would move we approve the minutes as written.

5 CHAIRMAN SHROPSHIRE: It has been moved  
6 by Larry. Is there a second?

7 MS. CANTY: I'll second the motion.

8 CHAIRMAN SHROPSHIRE: Any other  
9 discussion?

10 (No response)

11 CHAIRMAN SHROPSHIRE: Hearing none, all  
12 those in favor, signify by saying aye.

13 (Response)

14 CHAIRMAN SHROPSHIRE: Opposed.

15 (No response)

16 CHAIRMAN SHROPSHIRE: Motion carries  
17 unanimously. So do we want to introduce Ben now?  
18 Katherine, do you want to introduce Ben?

19 MS. ORR: Yes. Members of the Board,  
20 Madam Chairman, it is my pleasure to introduce Ben  
21 Reed, who came to our office very recently from  
22 the Department of Corrections. And I think he has  
23 a wealth of knowledge concerning MAPA, and the  
24 Rules of Civil Procedure and Evidence, and the  
25 practice of law, and he will be a pleasure to work

1 with. And he has presented a little bit of a  
2 description about his background, so Ben, why  
3 don't you go ahead, and introduce yourself.

4 MR. LIVERS: Katherine, this is Tom. I  
5 need to interject for the Board. When Katherine  
6 says he came from the Department of Corrections,  
7 he was working there.

8 MS. ORR: As an attorney.

9 (Ms. Miles present)

10 MR. REED: It is a new part of the work  
11 release program. Good morning, Madam Chair, and  
12 Board members, here and there and elsewhere.

13 I'm a third generation Montanan. I've  
14 been an attorney since 1998. I practiced here in  
15 Helena for about a year, and then went off to  
16 post-Soviet Central Asia to do water law and  
17 policy for awhile, and since have spent twelve or  
18 so years working overseas.

19 I returned here at the end of 2012 to  
20 work with the Department of Corrections. I have  
21 been there for about a year and a half, getting  
22 back in the swing of practice of Montana law. And  
23 now I'm an Assistant Attorney General looking to  
24 fill the delicate glass slippers of Katherine Orr,  
25 and I look forward to working with you all. I'll

1 answer whatever questions you have, but in any  
2 case good morning, well met.

3 CHAIRMAN SHROPSHIRE: Thanks, Ben. And  
4 just to put that in context, earlier I told Ben he  
5 had big shoes, and then I corrected, and that he  
6 had small shoes to fill kind of like Cinderella,  
7 so -- Thank you, Ben. Welcome.

8 Katherine, if you could step us through  
9 the -- The next thing on the agenda is the  
10 contested case update. If you could step us  
11 through that, that would be great.

12 MS. ORR: Okay. Actually this is an  
13 uncharacteristically short agenda of contested  
14 cases. But you see the two before you under the  
15 section entitled Enforcement Cases Assigned to  
16 Hearing Officer, those involve Trailer Terrace  
17 Mobile Park and Sunrise Motel, and really nothing  
18 has changed since what has been entered here on  
19 the agenda, so there is not much to explain.

20 And under the Contested Cases Not  
21 Assigned to a Hearing Officer, Western Energy and  
22 Bull Mountain, there also is no change from what  
23 you see on the agenda.

24 Under Bull Mountain or Signal Peak  
25 Energy there are two motions pending, and Ben and

1 I will be working on those until I leave on June  
2 30th.

3 So really there is not much to discuss  
4 there, and what we thought would be important to  
5 do is have the Board entertain a motion to change  
6 the Hearing Examiner for the ones assigned to the  
7 Hearing Examiner, me presently, so that Ben would  
8 be the Hearing Examiner. So that would be for  
9 Items II(A)(1)(a) and (b). If you want to go  
10 ahead and make that motion, then I don't think  
11 we'll need a motion for the others.

12 And then when we get to the part of the  
13 agenda involving new contested cases, the motion  
14 would be to have him hear those cases or not, as  
15 the case may be, if the Board wants to reserve the  
16 right to hear those cases themselves.

17 CHAIRMAN SHROPSHIRE: Katherine, that  
18 sounds great, but before I entertain a motion for  
19 that and let you off the hook completely, I just  
20 wanted to acknowledge you and your years of  
21 service. And Tom, do you want to say a few words,  
22 and maybe anybody else that wants to. I have a  
23 few things to say as well, but go ahead, Tom.

24 MR. LIVERS: Thanks, Madam Chair. This  
25 is Tom. I've had the privilege of working with

1 Katherine for several years, most of my time here  
2 as Deputy Director while I've been working with  
3 the Board. It really has been a pleasure, and I  
4 guess I just want to acknowledge her expertise and  
5 commitment to this Board, and to some very  
6 important issues, and just recognize what an  
7 impact she's had, and the fact that on her watch  
8 the Board has done a lot of good work, and  
9 accomplished quite a bit for Montana, for the  
10 people of Montana, and for the environment and  
11 resources. So thank you, Katherine.

12 MS. ORR: I appreciate that.

13 CHAIRMAN SHROPSHIRE: Thanks, Tom.

14 Anybody else have anything they'd -- Joe, you've  
15 spent more time with Katherine than a lot of us,  
16 and so I just wanted to give you the opportunity  
17 to say anything that you might.

18 MR. RUSSELL: It is been a pleasure,  
19 Katherine. You never left me hanging out, and to  
20 me, that's very appreciative. You always call.  
21 We did our Board Chair to Board Attorney briefings  
22 concisely. I very much appreciate that. And we  
23 have handled some pretty big stuff, so we should  
24 be very proud of the work that you've done for us.

25 MS. ORR: Thank you. I have to say I



1 have enjoyed every minute of it, and I consider  
2 all of you mentors, colleagues, friends, and it  
3 has been a true pleasure.

4 MR. TWEETEN: Madam Chair, this is  
5 Chris. Katherine jumped in before the accolades  
6 were over.

7 CHAIRMAN SHROPSHIRE: I have a few more.

8 MR. TWEETEN: Can I throw something in  
9 here from my perspective as a long time lawyer in  
10 Attorney General's Office where Katherine and I  
11 worked for, it seems like 20 or more years. A  
12 long time anyway.

13 It seemed like when I was working as the  
14 Chief Civil Deputy in the Attorney General's  
15 Office, whenever a difficult matter, complicated,  
16 politically sensitive, novel, something that  
17 required experience and discretion to handle,  
18 would fall into the Agency Legal Services Bureau  
19 office, and it always seemed to end up on  
20 Katherine's desk, and that was not an accident, I  
21 don't think.

22 I think it went there because Katherine  
23 was someone who had all those qualities in great  
24 supply, and I think it's been the Board's good  
25 fortune to have Katherine as its attorney for the

1 last several years. And I'm not surprised to hear  
2 that the Board members have felt themselves to be  
3 well represented by Katherine because I think we  
4 always did in the Attorney General's Office.

5 So Katherine, I just want to say another  
6 job well done for you; and while I hate to see you  
7 -- from my own personal selfish perspective, I  
8 hate to see you riding off in the sunset, I'm  
9 confident that Mr. Reed will do great for us.

10 It is a well deserved opportunity to  
11 take some time to smell the roses, so go out there  
12 and have a good time, and enjoy your retirement.  
13 We'll all miss you.

14 MS. ORR: Thank you very much, Chris.  
15 It is almost impossible to contemplate not doing  
16 the things I've been given the honor to handle,  
17 but we'll all be in touch, and I really appreciate  
18 your comments.

19 CHAIRMAN SHROPSHIRE: Thanks, Chris.

20 MS. KAISER: Katherine, this is Heidi.  
21 I just want to say it has been a pleasure to work  
22 with you. I appreciate your hard work, and I will  
23 certainly miss seeing you. Thank you.

24 MS. ORR: Thank you. And I'll miss  
25 seeing you. Maybe I'll just have to come to the

1 next Board meeting, and sit in the audience.

2 CHAIRMAN SHROPSHIRE: You have to see  
3 John scratch his beard one last time this week as  
4 we fumble the ball.

5 MR. TWEETEN: Let me just say I think if  
6 you do come to the next Board meeting, I think we  
7 should ask security to escort you to the door,  
8 because certainly you could be finding something  
9 better than to do than sitting in the audience  
10 watching this Board go through this business  
11 instead of retirement.

12 MS. MILES: Hi, Katherine. Bug. I've  
13 known Katherine for many, many years, most of  
14 which have been outside of the Board of  
15 Environmental Review. So I just want to say it's  
16 been great working with you the past year, but I  
17 expect to see a lot more of you out on Montana's  
18 rivers and doing other things now that you're not  
19 going to be joining us. And I guarantee you that  
20 it will only take about five minutes, once you  
21 leave, it will only take five minutes to  
22 contemplate not doing this work anymore.

23 MS. ORR: I appreciate that.

24 MS. CANTY: Hi, Katherine. This is  
25 Marietta. We've only worked together about year

1 since I'm new to the Board, but you're just a  
2 great role model. I've enjoyed working with you  
3 so much, and I will miss you very much. So thank  
4 you.

5 MS. ORR: You're welcome. Thank you.

6 MR. MIRES: Katherine, this is Larry,  
7 and I would echo the thoughts of everybody else,  
8 and there just are not enough words of praise to  
9 acknowledge the wonderful work that you have done  
10 for the State of Montana, and especially for this  
11 Board, and thank you so very, very much.

12 MS. ORR: You're welcome. I'll miss  
13 you.

14 CHAIRMAN SHROPSHIRE: Katherine, this is  
15 Robin, and I'll finish up there. There is  
16 somebody in the audience that wants to say  
17 something.

18 MR. ARRIGO: Madam Chair, members of the  
19 Board, my name is John Arrigo with the Enforcement  
20 Division, and I'm happy to belabor these accolades  
21 for Katherine. I want to let the Board know that  
22 I've worked with her since DHES days, and she's  
23 been the Hearing Officer on all of the enforcement  
24 case appeals, and she's been very fair, very good  
25 to work with, held the Department accountable but

1 also held the violators accountable, and has  
2 helped us reach settlements in a lot of these  
3 cases so they never had to go to the Board for  
4 judgment. She's been great to work with. Thank  
5 you, Katherine.

6 MS. ORR: Thank you, John.

7 CHAIRMAN SHROPSHIRE: I think I want to  
8 echo some of that, and it is hard to believe. I  
9 think it's been nine years you and I have been  
10 working together on this Board. It is amazing how  
11 time flies.

12 And I was curious how many cases you've  
13 actually handled for the Board -- we might have to  
14 sum them up at some time -- but it has been many,  
15 many cases, and I think one of the things I can  
16 say in terms of what a great job that you have  
17 done is that you've handled so many complex cases,  
18 and as John said, we never really hear much about  
19 them because you've navigated it seamlessly, and  
20 things have not become complex. And sometimes you  
21 don't see all the things that are going on behind  
22 the scenes, and how much work that you do to make  
23 that happen, but I want you to know how much we  
24 appreciate it, and you'll be missed.

25 MS. ORR: Thank you very much. It has

1       been an honor.

2                   CHAIRMAN SHROPSHIRE:   How many cases do  
3       you think that is, John?

4                   MR. NORTH:   A couple hundred, I would  
5       say.

6                   CHAIRMAN SHROPSHIRE:   So thanks.   It is  
7       amazing.

8                   MS. CANTY:   I think we need to stop.  
9       We're scaring poor Ben over there.

10                   CHAIRMAN SHROPSHIRE:   So all right.  
11       With that, I would entertain a motion to appoint  
12       Ben Reed as the Board's interim Hearing Officer  
13       for all requests for contested case hearings that  
14       the Board receives in the future, and as  
15       replacement Hearings Officer for all contested  
16       cases for which Katherine Orr is currently acting  
17       as either interim or permanent Hearing Officer.

18                   MS. MILES:   So moved.

19                   CHAIRMAN SHROPSHIRE:   It's been moved by  
20       Joan.   Is there a second?

21                   MS. KAISER:   I'll second.

22                   CHAIRMAN SHROPSHIRE:   Seconded by Heidi.

23                   MR. RUSSELL:   This is Joe.   There is a  
24       -- (inaudible) -- mention permanent or interim.  
25       There is also that whole concept of being the

1 attorney for matters not in front of the Board  
2 yet, and I'm not sure if we have to capture that,  
3 or if we have to literally just say "our newest,"  
4 "Our new Hearing Examiner assigned to the Board."  
5 Is anyone following me because --

6 CHAIRMAN SHROPSHIRE: Tom has a comment.

7 MR. LIVERS: Madam Chair, Mr. Russell.  
8 I think John and I talked about this a little bit.  
9 I think the "interim" captures those items. So  
10 while it suggests it is just initial or  
11 preliminary until there is a permanent, it also  
12 can be taken broadly to subsume all the kinds of  
13 legal work that you're talking about.

14 MR. TWEETEN: Madam Chair, this is  
15 Chris. I'd just add that MAPA requires that we  
16 make this motion formally in order to designate  
17 Ben Reed as our Hearing Examiner going forward for  
18 all of these matters. But with respect to all of  
19 the other General Counsel items that Katherine has  
20 helped the Board with, I don't know that a motion  
21 is required in order to make that substitution.  
22 So I think the most appropriate is stated.

23 CHAIRMAN SHROPSHIRE: Do you want me to  
24 reread the motion or you're comfortable with it?

25 MR. TWEETEN: I'm fine with it.

1 CHAIRMAN SHROPSHIRE: Joe, you're good?

2 MR. RUSSELL: I'm fine.

3 CHAIRMAN SHROPSHIRE: So it's been moved  
4 and seconded. Any other discussion?

5 (No response)

6 CHAIRMAN SHROPSHIRE: All those in  
7 favor, signify by saying aye.

8 (Response)

9 CHAIRMAN SHROPSHIRE: Opposed.

10 (No response)

11 CHAIRMAN SHROPSHIRE: All right. Motion  
12 carries unanimously. Ben, welcome aboard. Good  
13 luck.

14 The next item on the agenda are new  
15 contested cases, so any of these new hearings  
16 would be assigned to Ben. Katherine, are you  
17 going to cover these or is Ben going to cover  
18 these?

19 MS. ORR: I just had a few remarks about  
20 the cases, if I can go forward with that.

21 CHAIRMAN SHROPSHIRE: Please. Thank  
22 you.

23 MS. ORR: Okay. The first one involving  
24 Yellowstone Energy Limited Partnership involves  
25 the issuance of an MPDES permit, and Yellowstone



1 Energy is appealing regarding four elements:  
2 Effluent limits for copper; monitoring  
3 requirements for background; full effluent  
4 toxicity requirements; and compliance schedule.  
5 And there was a prehearing order that was issued,  
6 and then there was a motion for stay of all  
7 proceedings because the parties are attempting to  
8 reach an agreement regarding what the elements of  
9 the permit should be. So that's what I had to say  
10 about that case.

11 CHAIRMAN SHROPSHIRE: Any questions?

12 MS. ORR: You can see there will be a  
13 status report filed on August 1st regarding the  
14 progress of the negotiations.

15 MS. MILES: Do we need to make a  
16 decision on either assigning a permanent Hearing  
17 Examiner at this point, or can we wait?

18 CHAIRMAN SHROPSHIRE: I think --

19 MR. LIVERS: Madam Chair, Ms. Miles, a  
20 couple things. If the Board thinks it may have  
21 some interest in hearing this directly, you could  
22 not take action. You could not, in other words,  
23 not explicitly assign a permanent Hearing  
24 Examiner, in which case the motion would pass with  
25 have Ben serving in the interim, and basically

1 postpone that decision to keep open the option of  
2 hearing it. If the Board is pretty certain that  
3 they would like to assign it to a Hearing  
4 Examiner, then it's appropriate at this point to  
5 have a motion for permanent assignment.

6 CHAIRMAN SHROPSHIRE: Any discussion on  
7 this particular case?

8 (No response)

9 CHAIRMAN SHROPSHIRE: Ben, I'm assuming  
10 you're available to act as the permanent Hearing  
11 Examiner.

12 MR. REED: I am, yes.

13 CHAIRMAN SHROPSHIRE: I would entertain  
14 a motion to assign Ben as the permanent Hearing  
15 Examiner for this matter.

16 MR. MIRES: This is Larry. I so move.

17 CHAIRMAN SHROPSHIRE: Is there a second?

18 MS. CANTY: I'll second the motion.

19 CHAIRMAN SHROPSHIRE: Seconded by  
20 Marietta. Any further discussion?

21 (No response)

22 CHAIRMAN SHROPSHIRE: All those in  
23 favor, signify by saying aye.

24 (Response)

25 CHAIRMAN SHROPSHIRE: Opposed.

1 (No response)

2 CHAIRMAN SHROPSHIRE: The motion carries  
3 unanimately. The next item, Katherine.

4 MS. ORR: The next item regards an  
5 appeal by Missoula County regarding the issuance  
6 of an MPDES permit to M2Green Redevelopment in  
7 Frenchtown, Montana. And then the next case, Item  
8 3, is also an appeal and request for hearing by  
9 the Clark Fork Coalition.

10 And the Department moved to consolidate  
11 those two cases, and an order granting that motion  
12 for consolidation was issued on May 28th,  
13 yesterday; and a first scheduling order was issued  
14 on May 16th; and the Order on the Motion for  
15 Consolidation adopts that scheduling order for  
16 both now, that they will be under one caption with  
17 both BER numbers.

18 And it is a little unusual because a  
19 hearing hasn't been set yet. There will be  
20 substantive motions in November, and then  
21 depending on the disposition of those motions,  
22 there will then be, or may not be as the case may  
23 be, a time set for the hearing.

24 As a substantive matter, these cases  
25 involve a challenge to the issuance of this MPDES

1 permit to M2Green Redevelopment. The predecessor  
2 permit holder was Smurfitt Stone Container Corp,  
3 and there was a transfer of Smurfitt Stone  
4 Container Corp's MPDES permit on May 3rd of 2011  
5 as a minor modification of permit.

6 And both Appellants are challenging the  
7 procedure of it, and saying that there should have  
8 been a new evaluation because the permit holder  
9 and the operations of the new permit holder are so  
10 different that there should be then a reanalysis  
11 of the mixing zone, and there should also be a  
12 reanalysis of the non-degradation provisions as  
13 they apply to the new permit holder. And both  
14 Appellants have in essence requested a termination  
15 of the permit, and that's basically it, and that  
16 M2Green Redevelopment be obligated to file a more  
17 complete permit and a new one. That's the relief  
18 that the Appellants are seeking. And that's all I  
19 had to say about that.

20 CHAIRMAN SHROPSHIRE: Okay. Thanks,  
21 Katherine. Is there any discussion? Questions  
22 from the Board?

23 MS. MILES: Katherine, I have a  
24 question. This is Joan. You said something, you  
25 mentioned that part of the basis for the challenge

1 is because not only is it a different company, but  
2 that their work will be different. I didn't  
3 follow what you said there, that process. It  
4 sounded to me like you said they will not be doing  
5 exactly the same type of work that the previous  
6 permit holder had, and that was one of the bases  
7 for challenging the permit.

8 MS. ORR: Yes. The discharge for  
9 Smurfitt Stone is, as alleged in the appeals,  
10 industrial wastewater, and M2Green Redevelopment  
11 is a residential subdivision company, and the  
12 discharge under that operation would be domestic  
13 wastewater.

14 MS. MILES: Thank you.

15 CHAIRMAN SHROPSHIRE: Any other  
16 questions?

17 (No response)

18 CHAIRMAN SHROPSHIRE: So we have a  
19 choice to assign this to Ben or hear this  
20 ourselves. Any comments on that?

21 (No response)

22 CHAIRMAN SHROPSHIRE: Ben, are you  
23 available to take this on?

24 MR. REED: Yes, I am.

25 CHAIRMAN SHROPSHIRE: I'd entertain a

1 motion to assign Ben as the permanent Hearing  
2 Examiner for this case.

3 MS. MILES: So moved.

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

6 MS. KAISER: Second.

7 CHAIRMAN SHROPSHIRE: Seconded by Heidi.  
8 Any further discussion?

9 (No response)

10 CHAIRMAN SHROPSHIRE: All those in  
11 favor, signify by saying aye.

12 (Response)

13 CHAIRMAN SHROPSHIRE: Opposed.

14 (No response)

15 CHAIRMAN SHROPSHIRE: All right. The  
16 motion carries unanimously.

17 The third case, Katherine.

18 MS. ORR: Since those two were  
19 consolidated, that's all that I have to say about  
20 the new contested cases.

21 CHAIRMAN SHROPSHIRE: Okay. Great.  
22 Katherine, are you going to sign off now, or are  
23 you going to listen in?

24 MS. ORR: I'm going to sign off, if  
25 that's all right.

1           CHAIRMAN SHROPSHIRE: Thanks, and best  
2 of luck. As Joan said, we hope to see you more  
3 now on the outside.

4           MS. ORR: Okay. Great. I look forward  
5 to it. Thanks, everyone.

6           (Ms. Orr not present)

7           CHAIRMAN SHROPSHIRE: The next item on  
8 the agenda are other briefing items, and I think  
9 George Mathieus is going to talk about the numeric  
10 nutrient standards.

11          MR. LIVERS: That is, Madam Chair. Let  
12 me just say a couple things before George takes  
13 over. We've had several briefings on numeric  
14 nutrient standards, some presentations by George,  
15 Dr. Michael Suplee, Todd Teegarden, Eric Urban,  
16 George's staff. So it has been before the Board a  
17 few times, and we also had discussion at  
18 initiation.

19          This is scheduled for final action at  
20 the next meeting, at the July meeting, but our  
21 time is going to be a little bit short, in that  
22 the Monday following the July meeting is when we  
23 have to file this rulemaking, assuming the Board  
24 adopts it. We have to file it with the Secretary  
25 of State in order to make the six month deadline.

1           So we just didn't want to preclude the  
2 opportunity for Board comments or questions. If  
3 any of the Board members had questions or wanted  
4 additional information from the staff, we wanted  
5 to make sure there was going to be adequate time  
6 to do that. So we may seem like we're briefing  
7 this ad infinitum, but we really wanted you to not  
8 feel pressure, since we will be on a short time  
9 frame after the July meeting. So we'll give a  
10 status of the rulemaking, key issues, and if there  
11 are questions, this would be a good time to raise  
12 them. Thank you.

13           MR. MATTHIEUS: Thanks, Tom. Good  
14 morning, members of the Board. For the record, my  
15 name is George Mathieus. I'm the Administrator of  
16 the Planning Division. As Tom said, we just  
17 wanted to provide just a quick overview of what's  
18 happened since the last time we met, kind of give  
19 the Board a good sense of how the hearings went,  
20 and what issues are out there, and again, open it  
21 up for some opportunity for the Board to interact  
22 and ask questions. And as usual I'm backed behind  
23 me by a lot of horsepower, so I'll reserve the  
24 right to refer questions to them if necessary.

25           You've heard my spiel multiple times,



1 but just to reiterate, the Department has been  
2 working on this effort, both in data collection  
3 and analyzing, since about 2000. We've also  
4 engaged public participation in a stakeholder  
5 group as early as 2007. Subsequently, we've had  
6 two pieces of legislation and a working group that  
7 met pretty regularly. I don't even remember the  
8 number, but it is something like 24 times.

9 Both of the hearings -- so if you  
10 remember, there are two separate rule packages.  
11 There is the one before the Board, and then  
12 there's the variance. So we had separate hearings  
13 on the same day, and both of those went as  
14 expected; felt that there was a good balance of  
15 opposition, proponents, and neutral. However, I  
16 will say that the opponents only opposed very  
17 specific items or provisions in the rule package,  
18 and generally supported the package, the process,  
19 etc.

20 One in particular, and it is most  
21 important to note, I would say, is the comments  
22 received regarding nonseverability. So just a  
23 little background on that.

24 The Department's position has always  
25 been that this is a package deal, that you can't

1 have the standards without the implementation  
2 package, and vice versa. So concerns were raised  
3 early on by the Nutrient Work Group that if any  
4 piece of either the variance process or the  
5 standards at some point in the future following  
6 adoption were, let's say, negated, that that would  
7 compromise the package itself. So we worked with  
8 the group to develop three provisions in the rule  
9 dealing with nonseverability, and I'll just give  
10 you an overview of what those basically do.

11 The first one is that if EPA disapproves  
12 any part of the package, the whole package  
13 dissolves. Secondly, if a Court disapproves any  
14 part of the package, the same thing, it dissolves.  
15 And thirdly, when the variances expire in 2017, if  
16 the Department does not reinstate the general  
17 variance rule, everything dissolves.

18 So the comment that was received  
19 regarding nonseverability was a suggestion for yet  
20 a fourth provision for nonseverability. So what  
21 the Department is doing right now is we're  
22 exploring whether or not this fourth clause is  
23 even needed, and if it is needed, we're committed  
24 to finding a resolution with the stakeholders and  
25 EPA, just as we have in the past.

1           Another issue that's important to bring  
2 to your attention is Flathead Lake and the  
3 Flathead Lake numbers. After the rule notice, the  
4 Department received communications from  
5 stakeholders in the Flathead. They had concern  
6 over development of the Flathead Lake numbers.  
7 They requested more time to analyze and discuss  
8 the numbers and the data, and discuss how the lake  
9 conditions may have changed since the 1990s.

10           The Department concluded that this was a  
11 reasonable request. We also recognize that these  
12 standards deserve a well thought out  
13 implementation strategy. Therefore, the  
14 Department recommends that the Board not adopt the  
15 Flathead numeric standards at this time, but  
16 rather allow the Department to continue forward  
17 working with the stakeholders, to further these  
18 standards for future rulemaking.

19           That's all I have for today, and we're  
20 open to any questions. Thank you.

21           CHAIRMAN SHROPSHIRE: Thank you. Any  
22 questions from the Board?

23           MR. TWEETEN: Excuse me, Madam Chair.  
24 This is Chris. Can I ask a question, please?

25           CHAIRMAN SHROPSHIRE: Yes.

1 MR. TWEETEN: George, how long do you  
2 think it is going to take to get the Flathead Lake  
3 standards in shape to be adopted?

4 MR. MATHEIUS: Madam Chair, Mr. Tweeten,  
5 we're looking at about a year, is our expectation.

6 MR. TWEETEN: Just so I'm clear about  
7 this, you're not suggesting that the whole rule  
8 package stop and wait for that, you're suggesting  
9 a separate rule adoption for those standards  
10 specifically; is that right?

11 MR. MATHEIUS: Madam Chair, Mr. Tweeten,  
12 that is correct.

13 MR. TWEETEN: Okay. Thank you.

14 CHAIRMAN SHROPSHIRE: Any other  
15 questions?

16 (No response)

17 CHAIRMAN SHROPSHIRE: Okay. The next  
18 item on the agenda are action items and initiation  
19 of rulemaking, and the first one is to amend ARM  
20 17.8.501, and I think Chuck is going to brief us  
21 on this. Mr. Homer.

22 MR. HOMER: Good morning, Madam Chair,  
23 members of the Board. For those of you who  
24 haven't seen me lately, my name is Chuck Homer.  
25 I'm with the Air Resources Management Bureau, and

1 I'm here today to talk to you about our request  
2 that you initiate rulemaking, appoint a Hearing  
3 Officer, and schedule a hearing for amendments to  
4 our fee rules, ARM 17.8.501 and 504.

5 If I can give a quick history, in the  
6 early 1990s in the Clean Air Act, a provision was  
7 adopted that required fees to be paid by permit  
8 applicants and permit holders to support the Air  
9 Permitting Program. Part of that was that we were  
10 to do an annual report to the Board, because the  
11 Board takes that requirement, and establishes  
12 rules that set the fee structure and the fee  
13 level. And so for many years, we came, and the  
14 Board adjusted the fees to set the appropriate  
15 amount to collect sufficient revenue to fund the  
16 program.

17 The last adjustment was in 2009, and  
18 since that time, we haven't requested a fee  
19 change, and we have been able to support the  
20 program through being very, very careful about how  
21 we expend those fees. The statute sets two basic  
22 types of fees: Application fees that someone  
23 submits with either a new application or a  
24 modification of an existing application; and  
25 annual operating fees.

1 I spoke to the Board last year about our  
2 long term plan for looking at revenue. We had  
3 established a goal, and we're on our way to  
4 meeting that goal, so there was no need to change  
5 the operating fee which constitutes the vast  
6 majority of the revenues that are required.

7 What we did want to look at is a  
8 secondary or an almost equal goal of looking at  
9 the equity of the fee system. And since the  
10 beginning, the application fees haven't completely  
11 supported the specific amount of time that is used  
12 on a particular application, and there are several  
13 reasons for that. One is to have relatively low  
14 application fees to kind of encourage new  
15 business. The other is that we can't in the  
16 beginning very accurately estimate the amount of  
17 time any particular application would take. We  
18 can judge fairly that well on the average.

19 And so as part of this process, in  
20 addition to looking at the operating fees, we  
21 looked at the application fees, and identified  
22 some areas where we thought there was the greatest  
23 discrepancy between the fees that we were charging  
24 and the resources that were being consumed.

25 These applications, as I said, vary in

1 the amount of work they take, so we tried to look  
2 at what would be a representation of the minimum  
3 amount that it would take to process an  
4 application, and we looked at majors and we looked  
5 a minors, and we determined that the greatest  
6 discrepancy would be for major facilities, and  
7 these are facilities that hold New Source Review  
8 permits, or prevention of significant  
9 deterioration permits, or permits that are issued  
10 under the Title V operating requirements.

11 In looking at those, we believe that  
12 what really happens is if they're not able to  
13 support that activity, those activities are funded  
14 just generally by the operating fees, so you end  
15 up with a system where existing businesses are  
16 sort of subsidizing new industry coming, which  
17 isn't a completely bad thing, but in those cases  
18 where the gap is so large, and when in fact you  
19 may have people subsidizing their competitors  
20 coming in, we thought it was appropriate to adjust  
21 those fees.

22 So we looked at both our general Montana  
23 air quality permits or preconstruction permits,  
24 and also our Title V permits, so we are proposing  
25 a change in modifications to major PSD

1 applications, not to new ones. That number  
2 remains the same. We're proposing a change to new  
3 major facilities that aren't PSD, but they're  
4 still a major facility for both new and  
5 modifications. We're proposing an increase in the  
6 new Title V, significant modification to Title V  
7 permits or renewals of Title V permits.

8 In looking at that, we still believe  
9 that we are underestimating the permits that take  
10 the greatest amount of time, but we looked at the  
11 amount of time it took, we took a lot of time over  
12 the past year discussing this with the Clean Air  
13 Act Advisory Group, made up by all interested  
14 parties, but in particular by the regulated  
15 community that pay these fees. In fact after some  
16 of those discussions, we adjusted some of these  
17 fee levels to kind of a consensus view of what we  
18 think would be appropriate.

19 Given that this could affect a lot of  
20 different kinds of businesses, majors, we did take  
21 an analysis of what we believe the impact would be  
22 to small businesses, and after looking at that, we  
23 don't believe that there is a significant or  
24 direct impact to small businesses by these  
25 increase in fees. There was just a few types of



1 facilities that we identified that fall under this  
2 that would actually be impacted. The impact was  
3 very minor. So we did not do a small business  
4 impact analysis for this.

5 I think that generally describes what  
6 the rule is. I'll open myself to questions, but  
7 again, we're requesting the Board initiate  
8 rulemaking, appoint a Hearing Examiner, and set a  
9 hearing.

10 CHAIRMAN SHROPSHIRE: Any questions?

11 MR. MIRES: Yes, and I'm going to  
12 address this to Tom. As I'm looking at these  
13 fees, and looking at the massive amount of  
14 increase, some of them are a little staggering  
15 from my perspective. Is this something that would  
16 be discussed during the process by either  
17 opponents or through the hearing process?

18 I'll give you an example. I'm looking  
19 at ARM 17.8.504, where the major modification from  
20 \$500 to \$3,500, that's a rather significant  
21 increase. Are those things addressed during the  
22 hearing process as opposed to trying to figure an  
23 answer out at this point in time?

24 MR. LIVERS: Madam Chair, Mr. Mires,  
25 they will likely be areas of question during the

1 hearing process, but I think if you have questions  
2 at this point, it is legitimate to raise them, and  
3 have them answered here.

4 MR. MIRES: Madam Chair, then I would  
5 like some kind of a justification how we can jump  
6 that far so fast. The next one I understand, \$500  
7 to \$1,500, even though it is significant; but then  
8 you get down, you're running from \$500 to \$6,500  
9 for a Title V operating permit. That's a pretty  
10 significant increase. And to say that wouldn't  
11 affect small business, I'm not quite sure I  
12 understand that.

13 MR. HOMER: Madam Chair, Mr. Mires,  
14 first let me reiterate that we have discussed this  
15 as part of our CAAAC group, the facilities that  
16 have been paying fees; and they did have some  
17 comments, and we did adjust some of them.

18 The percentage, as you point out, does  
19 look significant. In terms of the impact on a  
20 facility that would pay this kind of fee, we can  
21 use as a general estimate, considering salary, and  
22 overhead, and all the support activities, about  
23 \$50 an hour for a senior permit engineer, which is  
24 engineers that would be working on those major  
25 facilities.

1           The idea that a permit modification for  
2 a refinery, or a cement plant, or a power plant  
3 would take ten hours to do is vastly under  
4 estimated. Even going up to 70 hours, that is  
5 still pretty much an under estimate. So in terms  
6 of the work we expend, we think these do recognize  
7 the lower end of what we would put into them.

8           As to the kinds of projects that these  
9 would apply to, a major modification is generally  
10 taking many hundreds of thousands of dollars, if  
11 not millions of dollars, so the additional \$3,000  
12 or \$6,000 is significant, but I don't think that  
13 it is a burden, and they certainly haven't pointed  
14 out to us that that would be a burden.

15           And so the justification is that this  
16 extra \$3,000 in the case of a major modification  
17 is now going to be paid by the facility that is  
18 requesting that work, and not just generally  
19 spread around among all fee payers. So it is not  
20 really trying to change revenue as much as it is  
21 trying to change the equity of where that comes  
22 from.

23           MR. LIVERS: Madam Chair, Mr. Mires, I  
24 would just underscore some of the points Chuck has  
25 made, and that a lot of times what will come

1 before this Board are kind of routine cost  
2 increase fees, so to they tend to look more  
3 modest. And I think the reason this is quite  
4 different is that we're looking at the fundamental  
5 underpinnings of structure, of the methodology by  
6 which fees are assessed, and there is some policy  
7 decisions that are vetted in existing structure  
8 and policy decision that is embedded in the  
9 change, as Chuck has outlined here.

10 I think in our sense that there has been  
11 inadequate emphasis thus far on the actual cost of  
12 processing some of these, and so it creates some  
13 inequities in terms of who ends up paying those  
14 costs, and we're trying to address that.

15 MR. MIRES: Thank you very much.

16 CHAIRMAN SHROPSHIRE: Any other  
17 questions?

18 MS. MILES: Madam Chair. So either  
19 Chuck or Tom, I got the impression, I think it was  
20 at some point within the last year sitting on the  
21 Board when you were in here talking, and I did get  
22 the impression that this kind of adjustment was  
23 long overdue, and that you were needing to, I  
24 think, maybe get into some of your reserves at  
25 times to cover the costs. So does this kind of

1 approach -- I mean it is a limited approach  
2 because you're not looking at some of those  
3 initial application fees. Is that going to get  
4 the Department where you need, as well as build in  
5 some equity for operators?

6 MR. HOMER: Madam Chair, Ms. Miles, in  
7 terms of our long term plan for revenue over time,  
8 we did talk last year about the possibility of  
9 raising both application fees for the equity  
10 issue, and potentially operating fees. We  
11 established a kind of path to the future with  
12 revenue goals that we wanted to meet. And this  
13 past year there was an increase in overall  
14 emissions, and that increase in emissions was  
15 sufficient to meet our revenue target for next  
16 year without having to adjust the operating fees.

17 We've got a projection at least out to  
18 fiscal year 2019. It gets increasingly less  
19 accurate as time goes on, but at this point it  
20 looks like given our estimates for emissions,  
21 given our current estimates for expenses, we look  
22 like we're going to be in sufficiently good shape  
23 as far as revenue for at least the short term.

24 Longer term again, the equity issue is  
25 kind of then our primary purpose at this time, and

1 this is our first step in just looking at this  
2 specific piece of the application fees, major  
3 facilities, and taking a significant, but maybe  
4 not the final step, in addressing how we do both  
5 numbers and potentially even structure.

6 So in terms of your question, we're  
7 doing real well on meeting our revenue goals.

8 MS. MILES: I'm not exactly sure more  
9 emissions is good news.

10 CHAIRMAN SHROPSHIRE: That caught my  
11 attention as well.

12 MR. HOMER: As I said last year, and I  
13 can remember my chart showed it from I believe it  
14 was 1996 to 2012, and it showed that emissions  
15 over that time had gone from 120,000 tons to just  
16 under 60,000 tons.

17 A lot of that had to do with control,  
18 but on an individual year, many things can impact  
19 emissions, so sometimes emissions are a result of  
20 changes in the market. If there is a recession,  
21 construction will go down, power usage may go  
22 down; if economy improves, facilities may ramp up  
23 and not change the rate of emissions, but may  
24 change the amount.

25 Individual circumstances, if you have a

1 wet year, you may get more hydro power, and that  
2 may reduce the need to use other power generation.  
3 If you have a very cold winter, you may impact  
4 construction, maybe that decreases the need for  
5 building materials.

6 So there is a lot of factors that can  
7 influence a facilities production that aren't  
8 necessarily related to an increase in emissions  
9 based on poor performance or lack of control.

10 CHAIRMAN SHROPSHIRE: So this is for  
11 2013 that you're referring to?

12 MR. HOMER: Correct.

13 CHAIRMAN SHROPSHIRE: What do you  
14 attribute that to in 2013?

15 MR. HOMER: Primarily to increased  
16 emissions at Colstrip that had to do both with the  
17 temporary shut down of Unit 4, which was  
18 complicated by increasing production at other  
19 units, and an overall increase in production from  
20 the prior year which had been a dramatic decrease,  
21 probably two years in fact, partly because of the  
22 lack of a decrease in production, and partly  
23 because during that period they put on new low NOx  
24 burners, and vastly decreased their NOx emissions.

25 CHAIRMAN SHROPSHIRE: So I have a

1 question unless anybody else -- Go ahead,  
2 Marietta.

3 MS. CANTY: I have one. My question is  
4 when you went through your comparison analysis,  
5 did you look at the fee applications in other  
6 western states, and how do we compare?

7 MR. HOMER: We did do that, and it is a  
8 very, very hard thing to compare because states  
9 make different choices. So some states made the  
10 same choice that we did to have very low  
11 application fees as an incentive for new business  
12 and subsidize that with using operating fees.  
13 Some have structures that are so completely  
14 different, it is very hard to judge.

15 Some will charge fees through a very  
16 complex matrix, if you add all of those different  
17 factors, and come to a final answer. Some charge  
18 a fee after the fact. So you submit your  
19 application, you get your permit, but here you  
20 have to pay your check at that point instead of  
21 prior to submitting the application.

22 So in general, we believe that even with  
23 the new fees, our application fees are within the  
24 range of mid to lower for application fees.  
25 Overall, our fees are about the same as most



1 places in the region. Some states have different  
2 programs and different fees, but in terms of  
3 looking at Region 8 states, we're pretty close to  
4 the middle.

5 And one way to judge that is when EPA  
6 established their fee program for the Title V  
7 permits, they set it at \$25 a ton, which was an  
8 option for states to do -- and we choose to do a  
9 lower level -- and then they've never adjusted  
10 that except by inflation. So we remain at \$38.24  
11 cents a ton for the operating, which is vastly  
12 lower than theirs.

13 They don't charge application fees, so  
14 that's something that you can't really compare to  
15 EPA. With other states and other state  
16 construction permits, we're somewhere in the  
17 middle.

18 MS. CANTY: Okay. Thank you.

19 CHAIRMAN SHROPSHIRE: That was my  
20 question. Any other discussion?

21 Well, any comments from the public?

22 (No response)

23 CHAIRMAN SHROPSHIRE: Anyone on the  
24 phone? I don't think there is anyone on the phone  
25 other than Board members and Katherine. So we

1 have somebody from the audience who would like to  
2 speak to this.

3 MR. LAMBRECHT: Good morning. My name  
4 is Mark Lambrecht. I'm the Executive Director of  
5 Treasure State Resource Industry Association in  
6 Helena. I represent many of the fee payers, and I  
7 just want to express that we've been working in  
8 good faith with Chuck Homer and the Department on  
9 this issue for quite some time.

10 Although our members are not wildly  
11 enthusiastic about paying a great deal more for  
12 these types of permits, we understand the  
13 situation with the revenue for the Department, and  
14 our expectation is that this will move us forward  
15 on making sure that the permits are worked on and  
16 received in a timely manner and a professional  
17 manner, but we also have an expectation that we're  
18 going to continue to work with the Department on  
19 other opportunities to trying to balance the  
20 permit system, looking at other revenue sources,  
21 and trying to make sure there is an equitable  
22 system between applications for new types of  
23 activity and operating fees.

24 So I just wanted to share that with you.  
25 Thank you.

1 CHAIRMAN SHROPSHIRE: Thank you. I  
2 think I heard you say that the dollar per ton now  
3 is \$38; is that correct?

4 MR. HOMER: \$28.

5 CHAIRMAN SHROPSHIRE: I'm familiar with  
6 some states where it is \$112 per ton, so it still  
7 seems low. So this seems reasonable to me to help  
8 support it on the front end as well.

9 With that, I would entertain a motion to  
10 initiate rulemaking as shown in the notice of  
11 hearing on the proposed amendment provided by the  
12 Department, and to appoint Ben as the Hearing  
13 Officer.

14 MR. MIRES: If he's available.

15 MR. REED: He is.

16 CHAIRMAN SHROPSHIRE: Do I have a  
17 motion?

18 MS. CANTY: So moved.

19 CHAIRMAN SHROPSHIRE: It's been moved by  
20 Marietta.

21 MR. MIRES: Second.

22 CHAIRMAN SHROPSHIRE: Seconded by Larry.  
23 Any further discussion?

24 (No response)

25 CHAIRMAN SHROPSHIRE: All those in

1 favor, signify by saying aye.

2 (Response)

3 CHAIRMAN SHROPSHIRE: Opposed.

4 (No response)

5 CHAIRMAN SHROPSHIRE: Motion carries  
6 unanimously. Thanks, Chuck.

7 We're going to take a 15 minute break.  
8 We'll come back at 10:20.

9 (Recess taken)

10 (Ms. Kaiser not present)

11 CHAIRMAN SHROPSHIRE: Let's go ahead and  
12 get started. The next item on the agenda is to  
13 amend ARM 17.8.818, review of major stationary  
14 sources and major modifications, and Eric Merchant  
15 is on the docket.

16 MR. MERCHANT: Thank you, Madam Chair,  
17 members of the Board. For the record, my name is  
18 Eric Merchant, and I'm with Department Air  
19 Resources Management Bureau. And I am here today  
20 to propose that the Board initiate rulemaking to  
21 remove and modify certain major air quality  
22 permitting provisions which the Board just adopted  
23 in September 2011.

24 More specifically, we're requesting that  
25 the Board remove the Significant Impact Levels or

1 SIL's for fine particulate matter or PM2.5 from  
2 Montana's major source permitting program rules;  
3 and then secondly modify existing Significant  
4 Monitoring Concentration, or SMC, for PM2.5, which  
5 is also contained in the Department's major source  
6 permitting rules.

7 So first I'll help you to understand a  
8 little bit, I'll define what our SIL's and SMC's  
9 are. First of all, SIL's are Significant Impact  
10 Levels. These are screening tools that can be  
11 used by applicants to demonstrate -- the  
12 applicants for major source permits to demonstrate  
13 that their proposed allowable emissions will not  
14 cause and contribute to a violation of national  
15 ambient air quality standard, in this case for  
16 PM2.5, small particulate matter.

17 Effectively it is an exemption. If you  
18 show that your PM2.5 emissions are less than the  
19 Significance Impact Level, then it exempts you  
20 from further ambient air quality impact analysis  
21 for that pollutant.

22 The Significant Monitoring  
23 Concentration, or SMC, again is a screening tool  
24 that can be used by applicants to exempt them from  
25 the requirement for preapplication monitoring, for

1 monitoring for PM2.5 ambient air quality  
2 monitoring for a year in advance of their  
3 application. And I'll get a little bit more  
4 into a discussion of why that is important, and  
5 what those are as we go through.

6 So I guess the next question is: Why  
7 should the Board initiate this proposed  
8 rulemaking, given that you just recently adopted  
9 these rules in 2011, and in order to do that, I'm  
10 going to give you a little bit of background and a  
11 timeline. I think that will be helpful for this  
12 purpose.

13 In October of 2010, the EPA published a  
14 final rule establishing these SIL's and SMC's as  
15 federal requirements. In December of 2010, the  
16 Sierra Club petitioned the US Court of Appeals for  
17 the D.C. Circuit Court to review the rule.  
18 Subsequently and in response to EPA's initial  
19 rulemaking adopting the SMC and SIL's, the State  
20 of Montana, the Board of Environmental Review, in  
21 September 2011 adopted these provisions.

22 This is necessary because Montana has a  
23 SIP approved -- State Implementation Plan approved  
24 program for air quality, and in order to maintain  
25 program primacy, and to be at least as stringent

1 as federal requirements, we need to adopt these  
2 types of federal regulations as they come about.  
3 So again, in September of 2011 the Board adopted  
4 these into our major source permitting rules.

5 Moving forward, in January of 2013, the  
6 D.C. Circuit Court removed the PM2.5 SIL's from  
7 federal rules, and set the PM2.5 SMC to zero  
8 micrograms per cubic meter. It was at a level of  
9 four micrograms per cubic meter.

10 So that being said, our rules now are  
11 inconsistent with the federal requirements, and so  
12 these proposed amendments are necessary to ensure  
13 that Montana's program is at least as stringent as  
14 the Federal requirements, and to maintain program  
15 primacy.

16 Finally, according to the requirements  
17 of Section 2-4-111 of the Montana Code Annotated,  
18 the Department analyzed potential impacts to small  
19 businesses, and determined that there were no  
20 significant direct impacts to small businesses  
21 associated with this rulemaking, so we did not  
22 conduct a further small business impact analysis  
23 or the SBIA.

24 With that, the Department requests that  
25 the Board initiate rulemaking, and issue a notice

1 of public hearing on proposed amendments. Do you  
2 have any questions?

3 CHAIRMAN SHROPSHIRE: Questions from the  
4 Board?

5 (No response)

6 CHAIRMAN SHROPSHIRE: I have a question.  
7 You said that the -- I'm not sure I understood  
8 this -- but SMC was changed from four to zero?  
9 How is that implemented? How do you do that in  
10 practice? Does that mean that every one -- I'll  
11 let you answer the question.

12 MR. MERCHANT: Effectively, Madam Chair,  
13 members of the Board, yes, effectively that means  
14 any increase in PM2.5, any proposed increase in  
15 PM2.5 emissions, and any resulting concentration,  
16 would result in the need to monitor for a year in  
17 front of that application.

18 CHAIRMAN SHROPSHIRE: So every applicant  
19 is required to do ambient monitoring a year prior?

20 MR. MERCHANT: Under the major source  
21 permitting program, if there is a significantly --  
22 If proposed emissions increases or allowable  
23 emissions increases are significant, then yes, for  
24 that pollutant, for that pollutant they would need  
25 to do premonitoring, preapplication monitoring to



1 demonstrate what is the background concentration  
2 for this pollutant prior to the project or the new  
3 facility going into place.

4           Again, this pertains to the major source  
5 permitting program, the major new source review  
6 prevention of significant deterioration of air  
7 quality program that we implement.

8           CHAIRMAN SHROPSHIRE: Can you give just  
9 a hypothetical example of -- with regard to the  
10 SIL changes, what it looks like now, and what it  
11 would look like with this change for it going  
12 forward, just a hypothetical applicant, what they  
13 would do now, and what they will do in the future.  
14 Does that make sense?

15           MR. MERCHANT: Yes. So Madam Chair,  
16 members of the Board, what it looks like now is  
17 they have a significant impact level that they can  
18 utilize within our rules to demonstrate that,  
19 "Well, our proposed PM2.5 emissions increases are  
20 above this level, therefore we're not going to  
21 conduct a more thorough ambient air quality impact  
22 -- or more thorough impact analysis for that  
23 pollutant. Now that significant impact level goes  
24 away, so the more full ambient impact analysis  
25 would be required.

1 CHAIRMAN SHROPSHIRE: So in both cases,  
2 these changes are more stringent for the  
3 applicants? Does that make sense?

4 MR. MERCHANT: Madam Chair, members of  
5 the Board, this would require more of the  
6 applicant to demonstrate that the application will  
7 comply with the national ambient air quality  
8 standard for PM2.5, yes.

9 CHAIRMAN SHROPSHIRE: Any other  
10 questions?

11 (No response)

12 CHAIRMAN SHROPSHIRE: Any members of the  
13 public that would like to comment on this or ask  
14 questions?

15 (No response)

16 CHAIRMAN SHROPSHIRE: Ben, are you  
17 available?

18 MR. REED: I am, yes.

19 CHAIRMAN SHROPSHIRE: Thanks, Eric. I  
20 would entertain a motion to initiate rulemaking as  
21 shown in the notice of hearing on proposed  
22 amendment provided by the Department, and to  
23 appoint Ben as the Hearing Officer.

24 MS. MILES: So moved.

25 CHAIRMAN SHROPSHIRE: It's been moved by

1 Joan. Is there a second?

2 MS. CANTY: I'll second.

3 CHAIRMAN SHROPSHIRE: Seconded by  
4 Marietta. Any further discussion?

5 (No response)

6 CHAIRMAN SHROPSHIRE: All those in  
7 favor, signify by saying aye.

8 (Response)

9 CHAIRMAN SHROPSHIRE: Opposed.

10 (No response)

11 CHAIRMAN SHROPSHIRE: The motion carries  
12 unanimously.

13 The next item on the agenda is the  
14 repeal, amendment, or adoption of final rules, and  
15 I think Eric is up again to discuss this.

16 MR. MERCHANT: Thank you, Madam Chair,  
17 members of the Board. Again, for the record, my  
18 name is Eric Merchant, and I'm with the Department  
19 Air Resources Management Bureau.

20 So with this action, the Department  
21 requests that the Board adopt the current editions  
22 of the Federal and State statutes and regulations  
23 that are incorporated by reference into the  
24 Administrative Rules of Montana. This action  
25 would adopt the 2013 edition of the Code of

1 Federal Regulations, the 2012 edition of the  
2 United States Code, and the Administrative Rules  
3 of Montana as they existed on June 30 of 2013.

4 This rulemaking was initiated before  
5 this Board on January 21 of 2014. A public  
6 hearing was conducted on March 20, 2014, at which  
7 the Department commented on the proposed rule to  
8 remove redundant language related to the  
9 availability of materials incorporated by  
10 reference.

11 So again, similar to the last  
12 discussion, the purpose of this rulemaking is to  
13 ensure that Montana's air quality rules are at  
14 least as stringent as Federal air quality rules in  
15 order to maintain program primacy, and this  
16 adoption by the Board would enable the State of  
17 Montana to gain administrative authority to  
18 implement these federal standards.

19 Thank you. With that, we would request  
20 the Board adopt this incorporation by reference  
21 rulemaking.

22 CHAIRMAN SHROPSHIRE: Any questions?

23 (No response)

24 CHAIRMAN SHROPSHIRE: Anybody in the  
25 audience or on the phone, members of the public,

1 have any comments or questions?

2 (No response)

3 CHAIRMAN SHROPSHIRE: I would entertain  
4 a motion to adopt the Presiding Officer report,  
5 the attached House Bill 311 and 521 analyses, the  
6 Department's proposed responses to comments, and  
7 amend 17.8.102 as provided in the notice of  
8 amendment that is attached to this item.

9 MR. MIRES: So moved.

10 CHAIRMAN SHROPSHIRE: It's been moved by  
11 Larry. Do I have a second?

12 MS. MILES: Second.

13 CHAIRMAN SHROPSHIRE: Seconded by Joan.  
14 Any further discussion?

15 (No response)

16 CHAIRMAN SHROPSHIRE: No one wants to  
17 correct my motion? All those in favor, signify by  
18 saying aye.

19 (Response)

20 CHAIRMAN SHROPSHIRE: Opposed.

21 (No response)

22 CHAIRMAN SHROPSHIRE: Motion carries  
23 unanimously. Thanks, Eric.

24 I think we're just about ready to wrap  
25 up. The last item on the agenda is general public

1 comment. Any members of the public may comment on  
2 any public matter within the jurisdiction of the  
3 Board. Is there anybody in the audience on the  
4 phone that would like to address the Board?

5 (No response).

6 CHAIRMAN SHROPSHIRE: I think that wraps  
7 it up. Our next meeting is July 25th. Do we know  
8 if that's going to be a short meeting or --

9 MR. LIVERS: Madam Chair, at this point  
10 we don't have a call whether it is going to be  
11 lengthy or short. Joyce says there are about six  
12 rulemakings, so I think there's a chance we may  
13 want to do that in person.

14 MS. MILES: Just initiating, actually  
15 adopting, or both?

16 MS. WITTENBERG: Both.

17 CHAIRMAN SHROPSHIRE: Do I have a motion  
18 to adjourn?

19 MS. CANTY: So moved.

20 CHAIRMAN SHROPSHIRE: It's been moved by  
21 Marietta.

22 MS. MILES: Second.

23 CHAIRMAN SHROPSHIRE: Seconded by Joan.  
24 All those in favor, signify by saying aye.

25 (Response)

1                   CHAIRMAN SHROPSHIRE: We're adjourned.  
2                   (The proceedings were concluded  
3                                   at 10:32 a.m. )

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