Montana
Board of Environmental Review
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MINUTES
FRIDAY – JUNE 4, 2004

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:07 a.m., on Friday, June 4, 2004, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joseph Russell, Ward Shanahan, Dr. Garon Smith, Russell Hudson, Susan Kirby Brooke and David Fishbaugh

Via Teleconference: Kim Lacey

Board Attorney Present: Tom Bowe, Attorney General's Office, Department of Justice

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Laurie Crutcher

Department Personnel Present: Jan Sensibaugh, Director; Tom Livers, Deputy Director; Lisa Peterson, Director's Office (DIR); John North, Legal, DIR; David Rusoff, Legal, DIR; James Madden, Legal, DIR; Keith Jones, Legal, DIR; Claudia Massman; Legal, DIR; Jolyn Eggart, Legal, DIR; Steve Welch, Permitting & Compliance Division (PCD); Bonnie Lovelace, Water Protection Bureau (WPB), PCD; Eric Regensberger, WPB, PCD; David Klemp, Air Resources Management Bureau (ARMB), PCD; Debbie Skibicki, ARMB, PCD; David Aguirre, ARMB, PCD; Charles Homer, ARMB, PCD; Debra Wolfe, ARMB, PCD; Robert Habeck, ARMB, PCD; Dan Walsh, ARMB, PCD; M. Eric Merchant, ARMB, PCD; Vickie Walsh, ARMB, PCD; Jan Brown, ARMB, PCD; Sara Williamson, ARMB, PCD; Jon Dilliard, Public Water Supply & Subdivisions Bureau (PWSSB), PCD; Ray Lazuk, PWSSB, PCD; Ed Thamke, Waste & Underground Tank Management Bureau (WUTMB), PCD; Andrea Hochhalter, WUTMB, PCD; John Arrigo, Enforcement Division (ENF); Dan Kenney, ENF; Art Compton, Planning, Prevention & Assistance Division (PPAD); Christian Levine, Water Quality Planning Bureau (WQPB), PPAD; Rosie Sada-Suplee, WQPB, PPAD; Lou Moore, Air, Energy & Pollution Prevention Bureau, PPAD; Denise Martin, Remediation Division (RD); David Bowers, Hazardous Waste Site Cleanup Bureau, RD; John Koerth, Mine Waste Site Cleanup Bureau, RD

Interested Persons Present *(Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.)*: Sara Stanton, Bull Mountain; Joe Dicky, Bull Mountain; Rich Southwick, Great Northern; Jennifer Hendricks, Montana Environmental Information Center (MEIC); Cary Hegreberg, Montana Contractor's Association (MCA); Terry Murphy, Lake County; Patrick Judge, MEIC; Dan Hoven, Bull Mountain; Don Allen, Western Environmental Trade Association; J. Chris Pfahl, ASARCO; Tina Bernd-Cohen, Blackfoot Challenge; M.S. Kakuk, MCA; Stewart Kirkpatrick, Yellowstone City-County Health Department; Beth Ihle, Helena, National Forest; May Beth Marks, USDA Forest Service; Michael Coowin, USDA Forest Service; Matt Clifford, Clark Fork Coalition; George Hays, MEIC (via telephone)

I.A.1 Review and approve minutes of March 26, 2004 meeting

Dr. Smith MOVED that the March 26, 2004, meeting minutes be approved as submitted. Ms. Lacey SECONDED the motion. The motion CARRIED with a unanimous VOTE.

I.A.2 Review and Approve Minutes of April 6, 2004 Teleconference

Mr. Fishbaugh MOVED that the April 6, 2004, teleconference meeting minutes be approved. Ms. Lacey SECONDED the motion. The motion CARRIED with a unanimous VOTE.

I.B Schedule Upper Blackfoot Mining Complex Tour

Mr. Livers explained that the tour was being planned for July 29, the day before the July 30 meeting. He said Board members would have the option of meeting in Lincoln or in Helena and that an expected 4 to 5 hours would be spent at the site, so the tour would take most of the day.

Mr. Livers said when the date got closer, the Board Secretary would be coordinating logistics and would assist with whatever travel arrangements were necessary. He said it would be a noticed meeting and the public would be welcome on the tour itself and that there would be enough vans available for the Board to ensure there would not be a quorum on any of them.

III.A.2 Update – Coal Bed Methane (CBM) Monitoring

Mr. Compton said there were about 15,000 to 20,000 producing wells in Wyoming at this time. He said around 1999 or 2000, Wyoming had issued some direct discharge permits to main stem waters like the Powder and Tongue Rivers, but that none had been issued since then, because Montana had expressed concern about water quality at the border. Since 2000, discharges of CBM wastewater in Wyoming had been to infiltration ponds or dry coulees with about 95 percent of the wastewater lost by infiltration or evaporation. Wyoming has been authorizing a couple hundred outfalls per month to infiltration ponds or dry coulees.

Mr. Compton said Montana has only one permit, which supports Fidelity's wells that are producing on the CX Ranch. He said three permit applications had been filed since the Board adopted numeric standards: one would be an expansion of Fidelity's existing operations, the second was for Powder River Gas Partners, and the third was for a water treatment plant for Fidelity.

Mr. Compton said that the previous Memorandum of Cooperation between Montana and Wyoming for limiting discharges to the Powder River had expired around the same time the Board adopted the numeric standards. He said Montana had

just begun discussions with Wyoming, proposing some border water quality targets that would roughly divide the available assimilative capacity on the Tongue River between the two states.

Mr. Compton said the Tongue/Powder Modeling Committee had invested about $500,000 on a fairly sophisticated water quality model for the Tongue and the Powder. He said the work was being performed by TetraTech and that a modeling report and results, as well as some guidance for the TMDL program, would be coming out at the end of the summer.

Ms. Sada supplied documents containing summaries of current monitoring activities in CBM areas. These included maps and tables. She said that while many agencies and groups had been involved in measuring field parameters, the USGS had been one of the most consistent ones. She said the USGS data were available on the USGS web site, and that current conditions at the sampling sites were also available on the web site.

Ms. Sada said there was a new group called the Aquatic Task Group. The group's main tasks would be to identify what is needed and what currently exists, to prepare a plan and to recommend measures to avoid or minimize impact to aquatic species and their habitats.

II.A In the matter of the Maximum Achievable Control Technology approval for the Air Quality Permit for the Roundup Power Project (Permit No. 3182-00) (BER 2003-17 AQ).

Mr. Bowe instructed the Board that it was to hear argument from the attorneys for the parties and that its role was to adopt the proposed decision as the final order, or to reject or modify the proposed decision in accordance with Montana Code Annotated 2-4-621. Mr. Bowe read from that section of the MCA.

Mr. Hays said the petitioner's brief outlined clear errors of law in the proposed decision and that the petitioners stand by their brief. He said Congress amended the Clean Air Act in 1990 and that one of the prime motivators was that the way EPA was dealing with hazardous air pollutants was not satisfactory. Mr. Hays explained that the MACT Standard requires two separate analyses in order to set a MACT limit: the "MACT floor" analysis and the "beyond the floor" analysis. He said the point of the MACT process is to help figure out what the controls for the facility should be.

Mr. Hays said he cited several decisions from the United States Court of Appeals for the DC Circuit, which reviews EPA rulemakings, on how EPA has promulgated MACT standards. He said that these cases dealt with the exact same test that the state has to apply when it's doing a case-by-case analysis, or that EPA has to apply when it is coming up with a MACT standard. He said that both Bull Mountain and the Department argued in their briefs that these cases could be ignored. He also

noted that the proposed decision did not discuss these cases. Mr. Hays recommended sending the matter back to the Department to conduct a proper analysis.

Mr. Rusoff said that Mr. Hays had cited those same court cases in his motion for summary judgment and that Mr. Bowe had determined that those cases weren't relevant. He said the Department did not start out with the premise that the criteria pollutant controls were going to constitute the MACT floor. He said the permit analysis is intended to be a summary of the Department's review.

Mr. Rusoff said there was substantial evidence in the record that the Department exercised its judgment in a professional manner in determining that the Craig facility was the best-controlled similar source. He discussed four main issues raised by the Petitioners in their exceptions: 1) that it is not appropriate to consider coal rank; 2) that the mercury control efficiency chosen by the Department as MACT does not represent the MACT floor; 3) that activated carbon injection is available to achieve additional mercury reductions beyond the MACT floor; and 4) that continuous emission monitoring is required for mercury emissions.

Mr. Rusoff said the Department was requesting that the Board adopt the Hearing Examiner's proposed decision as the final order of the Board.

Mr. Hoven said that the Board may find mistakes in the record, but that there was nothing material that would affect the outcome of the case. He said Mr. Bowe had a prehearing conference report in which he ruled that the cases cited by Mr. Hays were irrelevant. He said he did not agree with Mr. Hays' interpretation of those cases and the rules that identify how a MACT procedure is done.

Mr. Hudson engaged Mr. Hays in discussion about the mercury emissions and whether there was any value in the mercury that would be recovered.

Mr. Shanahan initiated discussion regarding the difference between coal and activated carbon, and the different control technologies used to control the different things emitted by the power plant.

Mr. Hays said a year-long test was recently completed using activated carbon, demonstrating successful operation of an activated carbon system at a pulverized coal power plant in the south. He said there are vendors already selling the equipment. He said there is no difference between coal and activated carbon, for this purpose. Mr. Hays discussed the definition of a similar source. He compared the Roundup Power plant with the Laramie River Station and the Antelope Valley plant, and discussed the differences of emissions control.

Mr. Bowe identified some areas of his proposed decision that were incorrect: on page 18, line 4, "capital cost" should be "annual cost"; on page 27, lines 4-6 should be deleted; and on page 54, lines 15-19 should be deleted. He said these changes would

not change anything else and that it would not change the proposed decision with respect to the MACT determination.

Mr. Shanahan MOVED for the Board to ADOPT the final order as modified. Mr. Fishbaugh SECONDED the motion.

Dr. Smith commented that the Department had done its best to do a comprehensive review of the issues. He said that he appreciated how the Petitioners helped the Board to do a better job in looking at new facilities and new technologies. He said it sounded like ACI was not commercially available yet.

Chairman Russell called for a VOTE and the motion CARRIED unanimously.

III.A.1 Update – Upper Blackfoot Mining Complex

Mr. Levine distributed a map of the complex and referred to a spot he said was on Mike Horse Creek, owned by ASARCO, and presently contained waste rock for the projected 2004 work. He said the Department received the draft monitoring report and the draft 2004 work plan at the end of February and in the first week of March, respectively. These were presented to the Board at the March 26 meeting, and the Department provided a brief update at that meeting. He said that at the meeting, the Department expressed concern over work plan deviations that had occurred, over the monitoring report and over the minimal data analysis, and also briefly addressed the availability of funding through the trust fund and corporate ASARCO funding.

Mr. Levine said the Department was able to finalize comments on the monitoring report and the work plan during the first week of April. He said the work plan for the Upper Mike Horse waste rock removal was received May 3, and the Department had submitted comments on it. He said the Department was presently waiting for the final monitoring report and overall work plan.

Mr. Levine said spring surface water sampling and well sampling had been occurring, and that work on planning for the removal of the waste rock was in progress. He recommended that there be more active communication between the parties and suggested ASARCO propose switching to a water year for reporting purposes. He said the Department was asking ASARCO to actively pursue negotiations with the Forest Service to get the approvals and agreements it needs, and to get the studies done, in order to proceed with work on the Lower Mike Horse Creek. Mr. Levine said the next step would be for ASARCO to get the necessary agreements and approvals to do work in the Beartrap and the Blackfoot Flood Plains.

Mr. Bowers said the Department submitted comments for the 2004 engineering work plan on June 2. He said there were three key components that would be required to gain Department approval of the 2004 engineering work plan: 1) establish cleanup levels that ensure a successful outcome; 2) comply with all environmental

requirements; and 3) arrive at a suitable cleanup strategy based on current practices that are both environmentally sound and effective. Mr. Bowers said if the three components could be successfully implemented in the months to come, work at the Upper Mike Horse would be initiated in 2004; however, before the three components can be realized, a working relationship must be developed between the parties that strives to address the key issues at critical junctures in the work plan revision process.

Mr. Hudson initiated discussion regarding the construction season.

Mr. Pfahl reiterated that the work plan was submitted in May and that ASARCO received the Department's comments this week. He said a detailed work plan would be available the first of July. He scheduled meetings with both the DEQ and the Forest Service for the week of June 20 to work out some of the issues before ASARCO submits the final work plan. He was confident that the issues could be resolved and that the work could be started in August and could be completed "before the snow flies."

Ms. Ihle said the Forest Service was under an Administrative Order on Consent, or AOC, to pursue an engineering evaluation and cost analysis, or EE/CA, for the public lands portion of the Mike Horse site. She said the EE/CA would bring them to alternatives for the cleanup, but then they would have to renegotiate the AOC to include a preferred cleanup. She said the work that was identified in the 2003 work plan was completed and that the first cleanup on public land will occur in 2005.

Mr. Hudson initiated discussion concerning the timeline for cleanup with regard to the temporary standards.

Mr. Clifford said members of the Clark Fork Coalition were present when the original temporary standard was proposed and they had expressed concerns that the schedule would move slowly and the cleanup would not take place. He said the coalition was watching the progress and hoped for the best.

Ms. Cohen said the Blackfoot Challenge was pleased to have an approved metals TMDL for the Blackfoot headwaters. She said they feel that restoration of the Blackfoot Mining Complex was absolutely critical for the long-term health of the Blackfoot watershed and that they are eager to see on-the-ground restoration occur this year.

Mr. Hudson initiated discussion regarding completed TMDLs and where someone might find a listing of those. Staff indicated they could be found on the website.

II.B.1 In the matter of the adoption of a new section of the nondegradation rules at ARM 17.30, subchapter 7, regarding subsurface wastewater treatment systems that provide advanced treatment of nitrogen.

Mr. Regensberger said the Department had made some modifications to the proposed rule language, based on public comment. The modifications included: 1) providing additional clarification on the new definitions for Level 1-A and Level 1-B wastewater treatment systems; 2) giving the Department specific authority to request monitoring data for wastewater systems when the Department suspects the systems are not operating properly; and 3) rewording two sections of the rule to remove language that could have been interpreted as requiring extensive monitoring equipment, and removing the requirement for a back flow prevention device before the septic tank.

Dr. Smith noted that on page 6 of the Notice of Amendment and Adoption, the response to comment No. 11, the sentence beginning "That data" should be changed to "Those data."

Chairman Russell called for public comment; no one responded. He called for a motion to adopt the rule modifications with the change indicated, the Presiding Officer's report, the 521 and 311 analyses, and the comments and responses. Mr. Hudson so MOVED. Mr. Fishbaugh SECONDED the motion. The motion CARRIED with a unanimous VOTE.

II.C.1 In the matter of the request for initiation of rulemaking to amend rules for proposed revisions to Circular DEQ 4.

Mr. Lazuk said the Department was proposing revisions to Circular DEQ-4 in response to concerns raised by the water softener industry regarding the current prohibition of discharge of water softener backwash into septic systems. He said the Department also took this opportunity to make some minor changes to other parts of the circular to clear up some mistakes or inconsistencies. The changes included: 1) a change to Chapter 4 regarding the use of fill in the drainfield replacement areas; 2) a change to Chapter 5 to clarify that high strength wastewater must be pretreated with an appropriate pretreatment system; 3) a change to Table 8 and Chapter 12 to give a better definition of what soil types would trigger the need for pressure-dosed and sand-lined drainfields; 4) changes to recirculating trickling filters in Chapter 17 to add the same requirement used in Chapter 16 for recirculating sand filters; and 5) changes to Chapters 20 and 22 regarding the Level 2 treatment issue.

Mr. Lazuk discussed water softeners and the effect of their backwash on septic systems. He said the Water Pollution Control Advisory Council voted to recommend that the changes be brought to the Board as they are, to initiate rulemaking. He said not everyone was in favor of repealing the water softener prohibition, but that the individual counties can set more stringent standards than the DEQ based on local conditions. Mr. Lazuk requested that the Board initiate the rulemaking.

Mr. Murphy, Lake County Sanitarian, said that when the task force met with the water softener folks, they came out with some fairly clear rules on what they felt

would be workable, but that those rules did not show up in the final document. He passed around copies of the original language. Mr. Murphy continued discussion of water softeners and the possible effects of them backwashing into septic systems. He said he would like the rule to specifically grant counties the right to impose stricter limitations on water softeners or to prohibit them.

Dr. Smith MOVED to initiate the rulemaking and to appoint Mr. Bowe as the presiding officer. Mr. Fishbaugh SECONDED the motion. The motion CARRIED with a unanimous VOTE.

II.C.2 In the matter of the request for initiation of rulemaking to amend ARM 17.8.505 and 17.8.514 for the annual adjustment of air quality operation fees and open burning fees.

Mr. Homer explained that this was the annual review of air quality fees and that based on appropriation, carryover, estimated unexpended funds and the amount of emissions, the dollar-per-ton fee would increase from $20.61 to $21.58. He said the Department was proposing that the other application and administrative fee portions remain the same. He said the application fee for major open burning permits would decrease from $16.60 per ton of particulate to $7.67, and from $4.15 for NO_x and VOCs to $1.92.

Chairman Russell asked if any member of the public wanted to comment on the matter. There was no response.

Ms. Lacey initiated discussion regarding whether the fees had ever been decreased before and how the public reacted to it.

Mr. Shanahan MOVED to initiate the rulemaking and to appoint Mr. Bowe as the presiding officer. Ms. Brooke SECONDED the motion. The motion CARRIED with a unanimous VOTE.

II.C.3 In the matter of the request for initiation of rulemaking to adopt new rules establishing a system of registration in lieu of permitting for some non-metallic mineral processing plants, to amend ARM 17.8.504 and 505 to require registered sources to submit fees, and to amend ARM 17.8.744 to exempt sources that have registered with the department from the requirement to obtain an air quality permit.

Mr. Homer said the last Legislature passed House Bill 700 giving the Board authority to adopt rules to allow registration in lieu of permitting. He said the Department prepared this proposal to address the need to direct the Department's regulatory resources to source categories of greater importance and greater environmental impact. He said they were looking for similar sources, with similar equipment, similar environmental impacts and, therefore, similar permit requirements. This would allow the Department to do the environmental analysis for the operation of those source categories up front, as part a rulemaking.

Mr. Homer said the other goal was to maintain the current level of environmental protection. He said the operational requirements would remain virtually the same; they would just exist in a rule instead of in a permit condition granted to a specific company.

Mr. Homer said the differences between registration and permitting included issues with public involvement: 1) Under the registration system, the public would no longer have the ability to comment on each individual application and each individual permit. 2) Under the registration system, there would not be an administrative appeal process.

Mr. Homer said the Department would be offering registration only to nonmetallic mineral processing plants (gravel crushers, screens and material transfers) at this time. He said the MEPA requirement must be met and the facility must meet the limits. He said the fees would remain the same, but registration sources would be exempt from submitting an application for a permit.

Mr. Homer said the new rules were a series of operational rules outside of the registration requirements: New Rule II would incorporate the new source performance standards; New Rule III would describe the applicability of the rule; New Rule IV would describe the registration process; New Rule V would discuss the registration fee; New Rule VI would contain certain required information specific to the source category; New Rule VII would contain operational requirements that duplicate all current permit requirements; New Rule VIII would have specific requirements for electrical generators; and New Rule IX would have additional requirements for sources that locate close to PM_{10} nonattainment areas.

Mr. Homer said another change resulting from having a rule instead of a permit would be the application of BACT, since BACT changes through time. He said the Department would report biennially to the Board on the changes. He said that in addition to noticing a draft rule, the Board also would be putting a draft EA out for public comment, because it was determined that the rulemaking required one.

Mr. Homer said the Department was requesting that the Board publish the notice, initiate rulemaking, take comments on the draft EA, and take comments on inclusion of this rule into the State Implementation Plan.

Dr. Smith initiated discussion regarding the specified locations of eligible sources. Mr. Homer clarified that the eligible sources must be operating within the boundaries for which a current open cut mining land reclamation permit has been issued.

Chairman Russell commenced discussion concerning enforcement of a permit versus enforcement of a rule. Discussion took place regarding where MEPA would come into play with the crushers versus another source.

Mr. Hegreberg, representing highway construction companies and ready mix concrete producers around Montana, said they feel very strongly that enactment of these rules would be very beneficial to their industries and to the Department. He said the rule would greatly streamline the processes. He said they strongly encourage the Board to move forward in authorizing the promulgation of rules pursuant to House Bill 700.

Mr. Hudson MOVED to initiate the rulemaking, take comments on the draft environmental assessment, and appoint Mr. Bowe presiding officer. Ms. Brooke SECONDED the motion. The motion CARRIED with a 5-2 VOTE.

II.D.1 In the matter of proposed changes to the Yellowstone County Air Pollution Control Program.

Chairman Russell called the public hearing in session.

Mr. Kirkpatrick said that about November of last year, the City of Billings and Yellowstone County asked the Health Department if they would be willing to assume responsibility for administering the local Air Pollution Control Program. The Health Department analyzed the situation and agreed to assume that responsibility. He said the process began in November and went through many drafts because there are a lot of issues involved. He said an inter-local agreement was entered and completed, but required an approving ordinance from each of the local governments before the matter can be adopted. As that process began, they realized that the program documents that the Board needed to approve required revision. He said the revision for which they were seeking the Board's approval was to change the administration of the local Air Pollution Control Program from a local air pollution control board to the City-County Board of Health.

Mr. Kirkpatrick informed the Board that he had not obtained all the necessary approvals yet. He said he would be in Broadview June 8 and in Billings on June 28 for approval of the program. He said they had not received any negative comments from anyone in the public and that Broadview and Billings had already approved the whole idea and the inter-local agreement that allows it.

Mr. Kirkpatrick said they were asking the Board to approve the program with the condition that all necessary approvals be obtained.

Mr. Homer said the Department was in support of approval of the Yellowstone County Program.

Mr. Hudson MOVED that the Board approve the memorandum and order and that the Chairman be authorized to sign the order. Ms. Brooke SECONDED the motion. The motion CARRIED with a unanimous VOTE.

Mr. Bowe announced that the public hearing was now concluded and closed.

II.E.1 In the matter of the request for hearing of the Helmet of Salvation Shelter, BER 2003-13 UST.

Mr. Bowe said he was recommending that the Board dismiss the matter with prejudice. He said the Board would need to accept and approve the stipulation to dismiss, and authorize the Chairman to sign the order dismissing the appeal. Mr. Shanahan so MOVED. Mr. Hudson SECONDED the motion. The motion CARRIED with a unanimous VOTE.

II.E.2 In the matter of the request for hearing of the Former Husky Station, BER 2003-12 UST.

Mr. Bowe said the parties had agreed to withdraw the request for hearing. He said the decision for the Board to make would be to approve the withdrawal of the request for hearing to dismiss the contested case and authorizing the Chairman to sign the order. Mr. Shanahan so MOVED. Mr. Hudson SECONDED the motion. The motion CARRIED with a unanimous VOTE.

II.E.3 In the matter of the request for hearing of the Browning Public School District No. 9, BER 2004-04 UST.

Mr. Bowe said this case had been settled and the Board packets included a stipulation for dismissal. He said it was simply a matter of the Board deciding that this matter will be dismissed as the parties have stipulated and authorizing the Chairman to sign the order. Ms. Brooke so MOVED. Mr. Fishbaugh SECONDED the motion. The motion CARRIED with a unanimous VOTE.

II.E.4 In the matter of the request for hearing of the Cameron Ranch, BER 2004-05 UST.

Mr. Bowe said there was an administrative order on consent in this case and that the lawyer for the owners requested that the appeal be withdrawn.

Chairman Russell called for a motion to approve the withdrawal of the appeal and to authorize the Chairman to sign the order. Mr. Shanahan so MOVED. Dr. Smith SECONDED the motion. The motion CARRIED with a unanimous VOTE.

II.E.5 In the matter of the request for hearing of Montana Golf Enterprises, BER 2004-08 WQ.

Mr. Bowe said the Board packets contained a stipulation for dismissal and that he recommended the matter be dismissed with prejudice.

Chairman Russell called for a motion to accept the order dismissing the case and to authorize the Chairman to sign the order. Mr. Shanahan so MOVED. Mr. Fishbaugh SECONDED the motion. The motion CARRIED with a unanimous VOTE.

II.F.1 In the matter of the request for hearing of Qwest Corporation, BER 2004-09 UST.

Mr. Bowe said it would be appropriate for the Board to appoint him as the permanent hearing examiner in this case and that there was a good chance this case would soon be back before the Board as a settled case.

Chairman Russell called for a motion to appoint Mr. Bowe as the permanent hearing examiner for this case. Mr. Shanahan so MOVED. Mr. Fishbaugh SECONDED the motion. The motion CARRIED with a unanimous VOTE.

II.F.2 In the matter of the request for hearing of Jim and Glenda Anderson regarding the Christianson Pit, BER 2004-10 OC.

Mr. Bowe informed the Board that proposed schedules were due to him by May 17, but he had not received one from either of the parties. He said it was appropriate for the Board to appoint him as the permanent hearing examiner in this case. Mr. Shanahan so MOVED. Ms. Brooke SECONDED the motion. The motion CARRIED with a unanimous VOTE.

II.F.3 In the matter of the request for hearing of Kernaghan's Service at Meadow Lark Country Club, BER 2004-11 UST.

Mr. Bowe said the parties had filed a joint motion to delay setting a schedule while they work on a settlement.

Chairman Russell called for a motion to appoint Mr. Bowe as permanent hearing examiner in this case. Ms. Lacey so MOVED. Dr. Smith SECONDED the motion. The motion CARRIED with a unanimous VOTE.

II.F.4 In the matter of the request for hearing of the Meadow Lark Country Club, BER 2004-12 UST.

Mr. Bowe said the Department had filed a motion to dismiss on the grounds that the appeal was not timely. He said he had issued an order setting a briefing schedule on that motion. He said it was appropriate to appoint him as permanent hearing examiner in the case. Ms. Lacey so MOVED. Mr. Shanahan SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.A.3 Update – Integrated Waste Management Plan

Ms. Moore said the Department was in the process of updating Montana's integrated solid waste management plan and that a Board hearing would be required at the end of the process, about five to six months from now. She said the Integrated Solid Waste Management Act was passed in 1991 and set a goal for the State to reduce its solid waste by 25 percent. She said the plan was written in 1994, and was to be reviewed every five years and updated as necessary. She said it was reviewed in 1999 and determined that it did not need updating at that time.

Ms. Moore said a task force was set up to help update the plan, and that the task force had collected information on the amount of solid waste generated in the state and how much of that waste was being recycled. She said the task force also was looking at updating the goals.

III.A.4 Annual review of Temporary Water Quality Standards for the New World Mining District.

Mr. Koerth said the Forest service had been doing extensive and innovative work in the district.

Ms. Marks said a summary of the results of the 2003 surface water quality monitoring was included in the Board packets and consisted of a fact sheet and two tables that compare 2003 water quality data to applicable standards and data collected in 2002.

Ms. Marks said that in October of last year, construction of the McLaren Pit capping system was completed. She said initial monitoring of the effectiveness of the capping system would commence in June with a coordinated surface water and ground water monitoring program.

Ms. Marks said the first phase of cleanup in the Glengarry Adit was realized in 2003. She said work in 2004 would complete the project. She said final reclamation of the repository would be complete in 2005 and that the Forest Service was expecting to begin restoration of the roads in the district in 2005.

Ms. Marks said other project activities that had occurred since last September included: preparation of a draft 2004/2005 work plan; continued monitoring of the repository; preparation of engineering designs, plans, and specifications for the Como Basin cleanup and dump removals; and the annual project technical meetings that were held in January. Ms. Marks directed Board members to the fact sheet, which summarized surface water quality data only, and said that these data were the most relevant to the temporary standards.

Ms. Marks said the Forest Service continues to believe that the reclamation activities completed, in progress, and planned for the future would see successive and incremental improvements in the water quality in the drainages and would lead them incrementally toward the goal of meeting B-1 standards.

Mr. Hudson said that when the Board granted the temporary standards, it requested an annual update on whether the water was any better than it was when the project began, how much money had been spent, and how much money is remaining.

Ms. Marks said that as of April 30, 2004, there was approximately $14.8 million remaining of the initial $22.5 million in the cleanup fund.

Chairman Russell asked if any member of the public would like to speak to this matter. No one responded.

III.B.1.a Update – In the matter of the request for hearing of M&W Investments, Inc., EQ #01-1457 and #00-1822.

Mr. Bowe had nothing to add to the update provided in the agenda.

III.B.1.b Update – In the matter of the request for hearing of CR Kendall Corporation, BER 2002-09 MM.

Mr. Bowe had nothing to add to the update provided in the agenda.

III.B.1.c Update – In the matter of the request for hearing of Flying J Petroleums, Inc., BER 2003-14 HW.

Mr. Bowe had nothing to add to the update provided in the agenda.

III.B.1.d Update – In the matter of the request for hearing of the Four Corners Community Foundation regarding the amendment of Permit No. SIM-001, issued to Dennis Simpson, BER 2003-15 OC.

Mr. Bowe said the attorney for Four Corners had filed a motion to dismiss the case without prejudice, but that it had been filed too late to bring before the Board at this meeting.

III.B.1.e Update – In the matter of the request for hearing of IIC, Inc., BER 2004-01 ASB.

Mr. Bowe had nothing to add to the update provided in the agenda.

III.B.1.f Update – In the matter of the request for hearing of Golden Jubilee Mining, Inc., BER 2004-02 WQ.

Mr. Bowe said the Department filed a motion for summary judgment on May 26.

III.B.1.g Update – In the matter of the request for hearing of the Big Sky Truck Stop, BER 2004-07 UST.

Mr. Bowe had nothing to add to the update provided in the agenda.

III.B.1.h Update – In the matter of the request for hearing of the Highwood Service Center, BER 2004-06 UST.

Mr. Bowe had nothing to add to the update provided in the agenda.

III.B.2.a Update – In the matter of the request for hearing of MNLC, Inc., regarding violations at the Cam-Am Convenience Store, BER 2004-03 UST.

Mr. Bowe said he had spoken with Kelly O'Sullivan and she had nothing to add to the update in the agenda.

Mr. Hudson engaged discussion regarding the number of underground storage tank appeals.

IV. General Public Comment

Chairman Russell asked if any member of the public would like to speak to the Board regarding any matter that may come before the Board. No one responded.

Ms. Brooke initiated continued discussion regarding TMDLs.

V. Adjournment

Chairman Russell called for a motion to adjourn. Mr. Shanahan so MOVED. Ms. Brooke SECONDED the motion. The meeting adjourned at 3:36 p.m.

Board of Environmental Review June 4, 2004 minutes approved:

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

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DATE