

**LEWIS AND CLARK CITY-COUNTY HEALTH DEPARTMENT  
BOARD OF HEALTH - MINUTES  
316 N. Park, Room 309, HELENA, MONTANA 59601  
September 27, 2012**

Members Present

Susan Epstein, vice-chair  
Commissioner Andy Hunthausen  
Commissioner Mike Murray  
Kelly Parsley  
Anne Weber  
Jennifer Lowell

Staff Present

Melanie Reynolds  
Jolene Helgerson  
Kathy Moore  
Gayle Shirley  
Beth Norberg

Members Absent

Ken Wallace, chair  
Mayor Jim Smith  
Mayor Anthony Strainer  
Kent Kultgen

Guests Present

Scott Schultz  
Doug Miller  
Mable Miller  
Betsy Burns, EPA  
Jim Ford, METG

Susan Epstein, vice-chair, called the meeting to order at 1:34 p.m. A quorum was established.

**REVIEW OF AGENDA**

No additions to the agenda were made.

**HEARING OF DELEGATION**

Susan Epstein gave an explanation of the procedures for a variance request before the Board of Health. Susan introduced the site map on page 6 of the board packet as exhibit "A." Beth Norberg, registered sanitarian with the Environmental Services Division, stated that Scott Schultz is requesting a variance to Section 4.3 (1) Table 4A of the 2011 Lewis and Clark Onsite Wastewater Regulations, which requires a 100-foot setback from the 100-year floodplain for all absorption systems. Mr. Schultz also is seeking a variance to Section 4.3 (1) of the 2011 Lewis and Clark Onsite Wastewater Regulations, which requires at least a 10-foot setback from an absorption system to property lines.

Mr. Schultz stated that the current septic system was installed before he moved to the property. Due to a slow septic system and regular yearly pumping, he believes that the system may be failing and would like to upgrade the system to meet current regulations before it completely fails.

Beth stated that the property is a 1.2-acre parcel located at 6818 York Road, in Helena, Montana. Trout Creek runs along the southern boundary of the property. The current septic system was permitted before 1973. The septic system is a steel septic tank of unknown size with a drainfield of unknown size and description. There is an individual well supplying drinking water on the property. The property is completely contained within the 100-year floodplain. A site evaluation was conducted on August 24, 2012, to determine a suitable location for system replacement. The proposed system would be located in the 100-year floodplain, but on the opposite end of Trout Creek in order to maximize the distance from the creek and meet all other well and surface water setbacks. The proposed drainfield would be located less than 10 feet from the northern property line. Mr. Schultz is requesting the use of a Presby Advanced Enviro-Septic system or a Level II Recirculating Trickling Filter. Both technologies allow for a 50

percent reduction in drainfield size. A traditional trench drainfield cannot fit into the proposed location without encroaching on the well and surface water setback. The new proposed 1500-gallon septic tank can meet all requirements of the regulation and will be sealed with risers installed 2 feet above the floodplain elevation. Beth noted there are no other current options that would meet all of the requirements of the 2011 Lewis and Clark Onsite Wastewater Regulations. An easement cannot be maintained because adjoining parcels also lie within the 100-year floodplain and the Forest Service land to the north has slopes that cannot accommodate a wastewater treatment system. Staff recommends granting this variance.

Susan opened the variance for public comment. Mable Miller stated that Mr. Schultz purchased his property in 1999. Mr. Schultz knew of the failing system and has not attempted to fix his system until now. Ms. Miller said the system did fail in 2008 and has leaked into the drinking water, which is the possible cause of her health conditions. Ms. Miller stated that Mr. Schultz should be responsible for future water testing.

Doug Miller of 1902 North Montana Avenue stated the Mr. Schultz's system failed in 2008. The Environmental Services Division should have notified the neighbors of this failed system. Mr. Miller questioned the proposed septic system's reliability and is also requesting that Mr. Schultz should be responsible for future water testing.

Susan closed the variance for public comment and opened the variance for board member discussion. In answer to a question from Kelly Parsley, Beth stated that the Presby Advanced Enviro-Septic system is used on the East Coast and in Wyoming. The company has completed rigorous testing and has been certified by the National Sanitation Foundation (NSF). The Presby system has not been approved yet in the State of Montana as a Level II system. The Level II Recirculating Trickling Filter has been approved as a Level II treatment system by the State of Montana. These systems are also required to have NSF testing before approval.

In answer to questions from Susan Epstein, Beth stated the reliability and maintenance of the Presby system has fewer components and allows for gravity feed directly from the septic tank to the bed. The Level II Recirculating Trickling Filter would require a maintenance contract and there are more components such as floats, pumps and alarms. Beth noted that the Environmental Services Division does not design septic systems for the public, nor do they guarantee that a septic system installation will last forever. The Division does ensure that the systems are inspected and installed to permit and regulation standards. The two proposed systems do remove more nutrients than a standard septic system. No water testing has been done in this area. Individual well owners are responsible for testing their drinking water supplies.

Mr. Schultz stated that he has not tested his drinking water well lately but would be willing to have a test done.

There being no further board member discussion, Kelly Parsley made a motion to approve the variances for Scott Schultz. Jennifer Lowell seconded the motion. The motion passed 5-0. Kelly Parsley moved to approve the Findings of Fact and Conclusions of Law for Scott Schultz. Anne Weber seconded the motion. The motion carried 5-0.

## **MINUTES**

Susan Epstein asked if there were any corrections or additions to the August 23, 2012, minutes. There being none, the Board approved the minutes as written.

## **ACTION ITEM**

Findings of Fact, Helena School District #1: Beth Norberg, registered sanitarian with the Environmental Services Division, gave a brief explanation of the Helena School District #1 Variance Hearing held on September 21, 2012, by Hearing Officer Ken Wallace. Melanie Reynolds, Health Officer, noted a spelling error in the first paragraph of Findings of Fact on page 20 of the board packet. Kelly Parsley moved to approve the Findings of Fact and Conclusions of Law for the Helena School District #1 with the spelling correction. Anne Weber seconded the motion. The motion carried 4-0 with Commissioner Murray abstaining.

Open the Public Comment Period and Set Public Hearing for the Draft Soil Regulations within the Institutional Controls Plan for the East Helena Superfund Site: Kathy Moore, Environmental Services Division Administrator, presented the draft Soil Regulations within the Institutional Control Plan (ICP) on page 22 of the board packet along with the Proposed Regulations for Soil Displacement and Disposal (see attachment "A"). Kathy stated that the purpose of the presentation is to open the public comment period on the Proposed Soil Displacement and Disposal Regulation for the East Helena Superfund area; to provide the Board of Health and members of the public with an overview of the regulations; to define the process for adoption of the regulations; to announce the date, time, and place of the public hearing; and to answer questions about the process. After reviewing attachment "A" with the Board, Kathy noted that the public comment period for the draft soil regulations, a component of the Institutional Controls Plan for the East Helena Superfund Site, starts on September 27, 2012, and closes on November 2, 2012, at 5 p.m. A public hearing will be held on October 25, 2012, from 6:30 p.m. to 8:00 p.m. at the East Valley Middle School located at 400 North Kalispell in East Helena, Montana. Kelly Parsley made a motion to approve and open the dates, times, and locations for the public comment and public hearing for the draft soil regulations within the Institutional Control Plan for the East Helena Superfund Site. Jennifer Lowell seconded the motion. The motion carried 5-0. Melanie noted that the October 25<sup>th</sup> Board of Health meeting regularly scheduled for 1:30 p.m. will instead be held at 6:30 p.m. at the East Helena Valley Middle School. There will be no Board of Health meeting for the month of November.

## **PRESENTATION**

Betsy Burns, RCRA project manager for the Environmental Protection Agency (EPA), Region 8 Montana Office, and Jim Ford, Montana Environmental Trust Group (METG) Remedial Project Manager, gave a PowerPoint presentation on the 2012 Interim Measures Work Plan (IMWP) for the Asarco Plant in East Helena. The three proposed interim measures are a South Plant Hydraulic Control (SPHC), which will eliminate the standing water on the south side of the plant and reduce surface water recharge to groundwater and reduce hydraulic gradients across the site; an Evapotranspiration Cover (ETC) system, which will reduce infiltration of contaminated soils, replacing existing temporary cover systems, eliminate potential human and wildlife contact with contaminated soil, and reduce the volume of contaminated storm water; and Source Removal, which will require removing the contaminated soils and placing them in a safer location. Ms. Burns also highlighted the draft of the 2013 Interim Measures Work Plan. Ms. Burns also noted that a public meeting on the IMWP will be held in October and a public comment period for the IMWP is scheduled for November. Ms. Burns noted the open house invitation for the redevelopment plans for the Asarco land on page 33 of the board packet.

## **BOARD MEMBER DISCUSSION**

Finance Reports: Melanie Reynolds, Health Officer, referenced the comparison to budget and cash flow for the fiscal year ending August 31, 2012, on page 37 of the board packet. Melanie noted that we are 16% of the way through the fiscal year. Total revenue to date is \$67,997, or 4% of the amount budgeted;

actual expenditures are \$245,068, or 14% of the amount budgeted. Revenues are under expenditures by \$177,071; total ending cash is \$427,373.

Wolf Creek Sewer District Update: Kathy Moore stated the Environmental Services Division staff has sent an informational letter about the septic maintenance program to residents of Wolf Creek. The Wolf Creek Water and Sewer District Board members are working on having the residents of Wolf Creek sign an agreement to connect to a proposed community sewer. The Division has also sent residents in Wolf Creek individual notices that they must have their septic systems either inspected or assessed and pumped. Instead of inspection or assessment, the residents may choose to provide the Division with a copy of their signed Water and Sewer District contract, promising that they will connect to the community system.

**HEALTH OFFICER REPORT**

Ben Brouwer has accepted the half-time Health Educator Built Environment position at the Health Department.

The applications for the division administrator for the Community Health Promotions Division have closed. Melanie hopes to have the new division administrator on board by the next Board of Health meeting.

The next legislative session begins in January 2013. Melanie noted that the Montana Environmental Health Association, the Montana Public Health Association, and the Association of Montana Public Health Officers have joined together in a memorandum of agreement to work on a legislative agenda that will include sharing of lobbying work at the next session. The first meeting will be held at the Montana Public Health Association on October 2, 2012. Melanie will include the legislative agenda in the next board packet.

Melanie will set up meetings with congressional district staff to discuss overall funding for public health services. Melanie will send out the dates of those meetings. Board members are welcome to attend.

Melanie is working on two projects as a member of the Helena Leadership Program. They are improving the health of the local community and being part of a subgroup pertaining to local government.

**BOARD MEMBER DISCUSSION**

Commissioner Hunthausen stated that he attended the Montana Association of Counties (MACo) conference in Great Falls. Fifty-six counties participated in discussions and set their legislative agenda. Commissioner Hunthausen was part of the Health and Human Services Committee, which recommended a policy statement that counties want to work together with public health organizations to promote public health. Melanie will send a copy of the policy to the Board.

There being no public comment, the meeting adjourned at 3:16 p.m.

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Susan Epstein, Vice-Chair

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Melanie Reynolds, Secretary

Action Items from September 27, 2012, BOH Meeting

- Melanie will provide the Board with a 2012 public health legislative agenda in the next board packet.
- Melanie will provide the Board with a copy of the Health and Human Services Committee policies that were recommended at the 2012 MACo conference.