MEMBERS PRESENT:
Jeff Burrows
Roger De Haan
Wayne Chilcote
Katie Scholl

Members Absent:
Mick Turner

STAFF PRESENT:
Chris Taggart, minutes
Angelia Allen, PHN
John Palacio, RCEH
Lyndsay Stover, MTUPP

STAFF Absent:
Carol Calderwood, Health Officer

Guests Present:
Deanna Marshall
Ron Marshall
Roni Keiser
Kaila Warren
Megan Winderl
Nancy Balance
Tayler Reynolds

The meeting was called to order at 3:00 PM by Chairman Jeff Burrows

I. July 11, 2018 draft minutes
Roger moved to approve the July 11, 2018 minutes as presented. Seconded by Katie. Public comment on motion: none. Discussion: none. All voted “aye” (4-0).

II. CORRESPONDENCE:
Emailed support letter from Alli Bristow (MTUPP).

III. AMENDMENTS TO THE AGENDA:
None.

IV. DEPARTMENT REPORTS:
Health Officer: Dr. Carol Calderwood
ABSENT

Public Health Nurse: Angie Allen
July was highest month for dog bites (11). Also the office staff attended the summer institute. She will get together with John and Carol on a strategic planning and bring it to BOH in the near future. Community looks healthy as there have not been any outbreaks within the last month, but she is gearing up for flu season within the schools. Immunizations will be in October 2018. A Flu webinar given by the State will occur within the next few weeks. She is still working on the dog bite ordinances and quarantine program. Discussion ensued regarding current at large dogs County Ordinances in effect.

RCEH: John Palacio
John handed out his July 2018 stats. Septic permit issuance is at about 75% of May and June’s numbers. Inspections of those permitted systems took place in July and will continue through August. Site evaluations are up. The office is down to four groundwater monitoring pipes (located within the Corvallis area due to ditches still running). Fair is coming up and Jenni has held food safety classes. The office is starting food inspections on booths. He handed out the draft Standard Operating Procedures (SOP) on CD to each BOH member. Civil counsel has a hard copy under review. Should be before BOH for review in September or October 2018.

Tobacco Coordinator Report: Lyndsay Stover
Before her report Lyndsay wanted to address the Board with regard to an issue back in June 2018 (letter read aloud at June 2018 BOH meeting by Katie Scholl). Jeff stopped her and stated this is a personnel issue. Lyndsay stated she spoke with HR and feels she should be able to defend herself. Katie explained that the letter was sent to Chris and Jeff. She never requested that the letter be read aloud. Jeff asked Lyndsay to acknowledge that she would be waiving her right to having a closed door meeting. Lyndsay said she is ok with open meeting. She read her reply letter.

She handed out her report and explained that she has finished her work plan for FY 19, which was approved by BCC. Also the BCC approved to apply for the RAPP grant, with MTUPP partnering with the DUI Task Force. Lyndsay then said she attended the Ravalli County Summit on opioids and alcohol abuse.

Katie asked if the Summit mentioned that medical research and procedures are using nicotine. Lyndsay replied not to her knowledge.

Lyndsay then spoke about MTUPP contract and asked if Lyndsay will be attending the Montana Public Health Association Convention. Lyndsay said yes per agreement with her HUB. Angie Allen will also be attending. John said two people from RCEH will also be attending. Katie explained the BOH funds received from fines could assist with employees attending said convention.

V. OLD BUSINESS:

2. General Discussion on Ravalli County Clean Indoor Air Act Enforcement Protocol
Process:
Jeff explained that today he would like for the BOH to schedule a process to move forward on this topic. He suggested the following:
* Get overview from subcommittee
* Dan Browder memo (June 2018)
* Make no official decision today
* Hold a special meeting

Katie read the minutes from the June 20, 2018 subcommittee meeting (refer to Sub Committee minutes). The conclusion was that the Sub Committee meeting ended with no compromise.

Lyndsay stated that the sub com minutes were never approved. There are several key components of conversations missing from the minutes. Exempting any vaping products with or without considering that the Matthews are using ok products is not a good move. It was a very broad spectrum meeting. Information was being relayed and not argumentative. She felt the meeting went well and figured another meeting would be scheduled to continue the subcommittee discussions. She read a few replies from subcommittee meeting attendees regarding the minutes. As an MTUPP employee she cannot endorse any sort of exemption within a policy. Roger asked regardless of how the minutes read, the gist of the matter is we are focusing on some sort of exemption for vaping businesses.

Jeff does not think the minutes are very relevant. Unfortunately it was not as productive of a meeting as the BOH hoped it would be. Wayne agreed. Wayne stated that any American Cancer Society employees cannot enter into discussion about possible exemptions as they are locked in by company policy. Katie explained the language proposed for possible exceptions and that the attendees were also informed that civil counsel opinion would be requested before any action plan was submitted for BOH review. Jeff requested that the BOH move forward.

Dan Browder, civil counsel, referred to his memo dated June 27, 2018.
1. Can BOH regulate vaping: CIAA and BOH independent authority:
Under CIAA: the statute allows BOH to enact regulations to enforce public health. So yes regulating vaping or E-cigs is within the BOH authority. No case law or guidance on BOH enforcement ability under CIAA.
Under independent: there is an argument that BOH can regulate vaping separate from CIAA. No case law or guidance on that either.

Exemptions: bounces between CIAA and BOH authority. If BOH passed regulations under independent authority, that could be appropriate. BOH could exempt vape shops within independent regulations.

Public Comment:
Nancy Ballance, HD 87: The definition of smoking says “includes” but it does not say “includes, but not limited to”. Dan replied that this may be an argument. There are a lot of definition sections within MCA. The use of the word “includes” is notable and indicates an intention to limit those things. There are arguments for both sides.
Katie mentioned FDA electronic nicotine systems are being looked at to be used for smoking cessation plans.

Jeff asked if there is case law regarding Nancy’s question. Dan said yes and is litigated frequently.

2. Is it a policy or resolution, regulation or ordinance?
Dan explained that BOH language includes regulations. In general, the tool used does not matter for the enforcement. Jeff explained the BCC ordinance procedure which is very specific and includes legal notice, etc. Dan explained the difference between a resolution and an ordinance per historic uses and law.

Roger asked if the CIAA as treating vaping products as a tobacco product, the main thing for Ravalli County is to get vaping products out of schools and common public places. He is trying to figure out what is the most logical and legal way to achieve that. Roger asked Dan if there are other rules or policies which apply to school aged kids. Jeff explained tobacco and vaping is now included within Hamilton sports rules contract. Lyndsay stated that most schools have vaping and E-Cigs built in to their policies. She is working with school districts to specifically include vaping products.

Dan said the CIAA does not exclude indoor vaping. Other regulations may exclude but the CIAA is silent on this. Lyndsay said she thinks it’s great that the FDA is working on this and she agrees vaping products could be a cessation plan. What the BOH is looking at now is the CIAA and exposure to chemicals included within vaping products. CIAA is not to ban or regulation, it is to protect public from any second hand smoke.

Short Break from 4:11 PM to 4:15 PM

Public comment continued:
Ron Marshall, Owner of Freedom Vapes: In 2015, he and others worked closely with legislators on SB 66 to get vaping separated from tobacco. The law had a problem due to that there were no teeth. An 18 year old or older can legally purchase his products and then turn around and give/sell to a minor, there is nothing in law yet. They are working on that. SB 147, within the last session regarding CIAA: we attended Helena and legislators wanted to include vaping within the CIAA. Small businesses got that shot down. There is no proof that vaping indoor harms anyone. BOH has received piles of information. Scientific evidence shows benefits, not harm or cross contaminations.

Roni Keiser said there is one vaping shop within Ravalli County. She asked why there is so much time and tax payer dollars being spent on this subject since there is only one shop. She is a reformed smoker and is now a vape user. The changeover was not easy but she made it. She is pleased to be a vape user now. She is confused by the talk that vaping should be included within CIAA. There is no evidence joining the two.

Nancy Balance, HD 87: Asked how long has this smoking crisis been going on. We spend a ton of money on smoking cessation programs. When products hit the market that are specifically helping people to stop tobacco habit, we should find ways to allow those products to work. Also,
smoke and vapor are two very different things. Vapor falls to the ground where smoke would fill a car. That needs to be recognized. Vapor does not get breathed in like second hand smoke. Any studies on that note should be a part of this discussion.

Deanna Marshal, Owner of Freedom Vapes: explained that her shop use pharmaceutical grade products and all products used are GRAS approved.

Close public comment at 4:25 PM.

Board deliberations:
Roger: the greatest health issue is the involvement with young kids. There are conflicting report pertaining to any sort of second hand smokes. Personally, he would air on side of caution, and politeness in society but people should be able to do what they want. He does not want to discourage vaping as a cessation program. He is hung up on how we get from A to B.

Katie: we know vaping is not appropriate for young kids under 18 and for pregnant women. But it is a good alternative to quit smoking. Katie asked Dan if there is some sort of teeth that the BOH can add for fining youngsters under 18 for those caught using or buying vaping products. Dan said yes but there is always the possibility of litigation.

Katie suggested delaying a decision on this until the next legislation session to see what happens.

Wayne: agreed with Katie and said if BOH were to put some teeth into the regulation and underage kids gets caught, their parents have to pay fine. He has concerns with enforcement. He agrees with Katie on waiting on legislation results on CIAA.

Dan said he agreed however, the Legislature may not weigh in on smoking or vaping in public places.

Jeff: Said he would not vape around his kids. Whether it is good or not, this is not a big issue in Ravalli County. He is unsure of where BOH/RC would land if a lawsuit were filed. Maybe pull back, let the settlements settle out, see where judges rule and where other counties and the state go with this.

Discussion ensued pertaining to the lawsuit currently happening in Yellowstone County.

Dan said if rescinding is being considered, the BOH needs to publicly notice the meeting as a different meeting.

**BOH Consensus to move forward:** rescind the vaping language portion from CIAA, along with some other minor changes and possibly replace that language with some sort of guidance language. Decision for said removal, changes and additions will be scheduled for Tuesday August 28, 2018 at 3PM.
Dan Browder left meeting at 4:58 PM.

Public hearing:
1. Replacement Guideline/Policy Statement of Policy – John P
   John explained the Replacement Guideline/Policy was legally advertised. He then provided the background on how the BOH came to conclusions of the 4 situations (below).

The following options are presented to address unpermitted wastewater treatment systems serving an existing home:

1. Unpermitted wastewater treatment systems serving an existing home constructed between January 1, 1972, and December 31, 1982, are considered as “grandfathered” systems which will be issued an Installation Permit for a replacement wastewater treatment system without the ability for increased or change of use. Siting of these systems, with regards to setback requirements, will be located in the best possible locations as conditions on the lot allow. RCEH and the Board of Health has discretion on the wastewater system type that may be required to be installed.

2. Unpermitted wastewater treatment systems serving an existing home constructed between January 1, 1982, and April 29, 1993, must meet current regulations, which include setback and construction requirements, in order to have an Installation Permit for a replacement wastewater treatment system issued, except that non-degradation requirements shall not apply for these systems. These systems shall not have the ability for increased or change of use.

3. Unpermitted wastewater treatment systems constructed after April 29, 1993, must meet current regulations, which include setback and construction requirements, as well as non-degradation requirements, in order to have an Installation Permit for a replacement wastewater treatment system issued.

4. Unpermitted wastewater treatment systems serving an existing home not meeting any of the criteria listed above shall be brought to the Ravalli County Board of Health.

Roger requested that the RCEH regulations add a section stating that when a house changes hands, proof of a permitted septic system is provided or is handled through RCEH. Katie and Jeff spoke about fines and adding the fines to regulations according to the Guideline timeline breakdown.

Public comment: none.

Public hearing was closed 5:17 PM.

BOH Consensus: Continue this agenda item September 12, 2018 BOH meeting.

3. Draft Preliminary MOU - review

Table to September 12, 2018 BOH meeting.

VI. NEW BUSINESS:

None.
VII: PUBLIC COMMENT:

None.

VIII. NEXT MEETING:
Special BOH meeting Tuesday August 28, 2018 at 3:00 PM
Regularly scheduled BOH meeting Wednesday September 12, 2018 at 3:00 PM

IX. ADJOURNMENT:
Wayne moved to adjourn the meeting at 5:20 PM. Seconded by Katie. All voted “aye” (4-0).