

MINUTES

December 4, 2015

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairperson Miles at 9:00 a.m., on Friday, December 4, 2015, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairperson Joan Miles, Chris Tweeten, Michele Reinhart Levine, Roy Sayles O'Connor, Dr. Robert Byron

Board Members Present by Phone: Robin Shropshire

Board Members Absent: Marietta Canty

Board Attorney Present: Ben Reed, Attorney General's Office, Department of Justice

Board Liaison: George Mathieus

Board Secretary Present: Hillary Houle

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers – Director; John North, Dana David, and Norm Mullen – Legal; Liz Ulrich, Rebecca Harbage, Ronda Payne, Hoby Rash, Annette Williams – Air Quality Bureau; Jon Dilliard, Tammy Filiater – Public Water and Subdivisions Bureau; Rainie DeVaney – Water Protection Bureau; Martin Van Oort – Industrial and Energy Minerals Bureau; John Arrigo – Enforcement Division; Kari Smith – Planning, Prevention and Assistance Division; Jen Lane – MEPA Coordinator, Director's Office.

Interested Persons Present: Dusty R. Weber, Joe Farinelli, Brad Hanson, Steve Wade – Signal Peak Energy; Anne Hedges, Shiloh Hernandez, Derf Johnson; David Galt – Montana Petroleum Association;

Interested Persons Present by Phone: Allen Gersten (phonetic) – Libby, Montana; Daniel Munoz (phonetic), Chris Yde (phonetic).

Chairman Miles thanked members of the audience for their attendance.

I.A. **Review and approve October 16, 2015, Board meeting minutes**

Chairperson Miles called for a motion to approve the October 16, 2015, meeting minutes. Chairperson Miles added a comment to pass with a correction, changing the date under Agenda item III.B.3 to December 4. Mr. O'connor MOVED to approve the minutes with corrections. Dr. Byron SECONDED the motion. Chairperson Miles called for a vote. The motion CARRIED with CORRECTIONS unanimously, with Mr. Tweeten absent.

I.B. Chairperson Miles called for a motion to approve the Board's 2016 meeting schedule. Dr. Byron MOVED to approve the schedule as submitted. Ms. Reinhart-Levine SECONDED the motion. The motion CARRIED unanimously, with Mr. Tweeten absent.

II.A.1.a. **Contested Case Update**

In the matter of violations of the Public Water Supply Laws by Rene Requa at Highlander Bar and Grill, PWISD MT0004764, Lewis and Clark County (FID 2299, Docket NO. PWS-14-08), BER 2014-09 PWS.

Mr. Reed said he issued an updated or amended scheduling order on November 16.

II.A.1.b. In the matter of violation of the Water Quality Act by Reflections at Copper Ridge, LLC at Reflections at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105376), BER 2015-01 WQ.

Mr. Reed said a status update was due November 30 and anticipated receiving it in the near future.

II.A.1.c. In the matter of violations of the Water Quality Act by Copper Ridge Development Corporation at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105377), BER 2015-02 WQ.

Mr. Reed said a status update was due November 30 and anticipated receiving it in the near future.

II.A.1.d. In the matter of violations of the Water Quality Act by Buscher Construction and Development, Inc., at Poly Vista Estates, Trailhead, and Falcon Ridge II Subdivisions, Billings, Yellowstone County, BER 2015-03 WQ.

Mr. Reed said he issued a scheduling order.

II.A.2.a. **Non-enforcement cases assigned to the Hearings Examiner**

In the matter of the notice of appeal and request for hearing by Yellowstone Energy Limited Partnership (YELP) regarding issuance of MPDES Permit No. MT0030180 for YELP's facility in Billings, MT, BER 2014-01 WQ.

Mr. Reed said the case is stayed until February 1.

- II.A.2.b. In the matter of Phillips 66 Company's appeal of Outfall 006 Arsenic Limits in Montana Pollution Discharge Elimination System Permit No. MT0000256 Billings, Yellowstone County, BER 2014-05 WQ.

Mr. Reed said the parties in this matter are complying with the terms of the stipulation.

- II.A.2.c. In the matter of Columbia Falls Aluminum Company's (CFAC) appeal of DEQ's modification of MPDES Permit No. MT0030066, Columbia Falls, Flathead County, BER 2014-06 WQ.

Mr. Reed reported that he issued an amended scheduling order, and had received copious motions from the parties and will be addressing them.

- II.A.2.d. In the matter of the revocation of Montana Air Quality Permit No. MAQP# 2544-05, issued to Eureka Pellet Mills (Inc.), Eureka, Lincoln County, MT, BER 2015-04a AQ; the revocation of Montana Air Quality Permit No. MAQP 3039-02, issued to Eureka Pellet Mills (Inc.), Superior, Mineral County, MT, BER 2015-04b AQ; and the revocation of Montana Air Quality Permit No. MAQP# 4057-00, issued to Montana Renewable Resources (LP), Eureka, Lincoln County, MT, BER 2015-04c AQ.

Mr. Reed said that Mr. Pozzi, who is the COO of the corporations, contacted him and the attorney for DEQ, and indicated he was planning on simply letting the permits lapse. He signed a document to this effect for one of the permits, but not the other two. Mr. Reed said he would be issuing an scheduling order for the remaining two that indicates unless Mr. Pozzi speaks up, the appeal is going to be denied.

- II.A.2.e. In the matter of Heart K Land & Cattle Co.'s appeal of its final 401 Certification with conditions, BER 2015-05 WQ, application No. MT4010948; NOW-2013-00590-MTB-Addendum, issued by DEQ for the Yellowstone River, Park County, MT.

Mr. Reed said a scheduling order and order allowing Heart K Lands attorney to practice in Montana Pro Hac Vice has been issued.

- II. A.2.f. In the matter of Westmoreland Resources, Inc.'s, BER 2015-06 WQ, appeal of final MPDES permit No. MT0021229 issued by DEQ for the Absaloka Mine in Hardin, Big Horn County, MT.

Mr. Reed said that a prehearing order would be issued.

- II.A.3. a **Contested cases not assigned to a Hearing Examiner**

In the matter of the notice of appeal and request for hearing by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ.

Mr. Reed deferred the status update to Mr. North. Mr. North said the status has not changed since the last meeting and the Department is waiting for the Judge's decision.

II.B.1 **Other Briefing Items**

The Department provided a report for the Board regarding air quality permit fees that are anticipated for the next calendar year, as required by ARM 18.8.510.

Chuck Homer provided the report to the board and answered their questions.

III.A.1 **New Contested Cases**

In the matter of the notice of appeal of final MPDES Permit No. MT0000264 issued by DEQ for the Laurel Refinery in Laurel, Yellowstone County, Montana BER 2015-07 WQ.

Mr. Tweeten MOVED to assign Ben Reed as the permanent Hearing Examiner. Mr. O'Connor SECONDED the motion. The motion CARRIED unanimously.

III.A. 2 In the matter of termination by DEQ of the application by Payne Logging, Inc. Requesting to move boundaries of the Payne Logging facility in Libby, Lincoln County, Montana, BER 2015-08 JV.

Mr. O'Connor MOVED to assign Ben Reed as the permanent Hearing Examiner. Ms. Reinhart-Levine SECONDED the motion. The motion CARRIED unanimously.

III.B.1 **Initiation of Rulemaking**

Update Circular DEQ-2. The Department has updated wastewater operator certification classes, which are referenced in DEQ-2. Therefore, the DEQ-2 circular needs to be updated to remove the outdated information and to add reference to the new information.

Tammy Filliator provided background on the update to Circular DEQ-2.

No comments from the public or the Board were heard.

Ms. Shropshire MOVED to initiate rule making. Mr. O'Connor SECONDED the motion. The motion CARRIED unanimously.

III.B.2 Repeal ARM 17.4.201, 17.30.645, 17.30.1386, 17.30.1401, 17.30.1402, 17.30.1405, 17.30.1406, 17.30.1407, 17.30.1410, 17.30.1411, 17.30.1412, 17.30.1413, 17.30.1414, 17.30.1419, 17.30.1420, 17.30.1421, 17.30.1425, 17.30.1426, 17.30.1602, 17.30.2001, 17.30.2003, 17.38.601, 17.38.602, 17.38.603, and 17.38.607.

Kari Smith and John Arrigo provided background on the Departments recommendation to repeal the rules and answered questions posed by the Board.

Ms. Reinhart-Levine MOVED to initiate rulemaking. Mr. O'Connor SECONDED

the motion. The motion CARRIED unanimously.

III.C.1 **Final Action on Contested Cases**

In the matter of the request for a hearing by Montana Environmental Information Center regarding DEQ's approval of Coal mine permit No. C1993017 issued to Signal Peak Energy, LLC, for Bull Mountain Mine No.1 in Roundup, Montana, BER 2013-07 SM.

The Board heard recommendations from all parties on the procedures for issuing the Board's final order. The Board agreed to afford the parties the opportunity to negotiate a stipulated remedy that is appropriate to the Board's October 16, 2016 decision. The Board considered each paragraph of MEIC's Findings of Facts and Conclusions of Law and provided reasoning for adopting or rejecting each one. The Board directed Mr. Reed to prepare a draft final order for consideration by the Board. The Board scheduled a special meeting on January 12, 2016, to review the draft final order prepared by Mr. Reed.

IV. **General Public Comment**

Chairman Miles called for public comment on any matters within the Board's prevue.

No public comment was offered.

VI. **Adjournment**

At 1:16 p.m., upon conclusion of the hearing, Chairman Miles called for a motion to adjourn the regularly scheduled meeting. Mr. Tweeten so MOVED. Mr. O'Connor SECONDED the motion. The motion CARRIED unanimously.

Board of Environmental Review December 4, 2015, minutes approved:

JOAN MILES
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE

MINUTES
Special Meeting
Teleconference
December 29, 2015

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Madam Chair Miles at 11:00 a.m., on Friday, December 29, 2015, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairperson Joan Miles, Chris Tweeten, Michele Reinhart Levine, Roy Sayles O'Connor, Dr. Robert Byron

Board Members Present by Phone: Chris Tweeten, Michele Reinhart Levine, Roy Sayles O'Connor, Dr. Robert Byron

Board Members Absent: Marietta Canty, Robin Shropshire

Board Attorney Present: Ben Reed, Attorney General's Office, Department of Justice

Board Liaison: George Mathieus

Board Secretary Present:

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers – Director; John North, Dana David – Legal;

Interested Persons Present: Steve Wade – Signal Peak Energy; Derf Johnson- MEIC.

Interested Persons Present by Phone: Brenda Lindlief-Hall, Ellen Pfister, Chris Jardine , Galen Munson – Signal Peak Employee, Taylor Kuykendall – SNLEnergy.

Chairman Miles thanked members of the audience for their attendance.

The Board considered the draft Findings of Fact and Conclusions of law prepared by Mr. Reed for the matter of a request for hearing by Montana Environmental Information Center regarding DEQ's approval of Coal mine permit No. C1993017 issued to Signal Peak Energy, LLC, for Bull Mountain Mine No.1 in Roundup, Montana, BER 2013-07 SM.

In a discussion led by Ms. Reinhart-Levine the Board reviewed each finding and conclusion and agreed to modify several.

Mr. Reed notified the Board that the parties were negotiating settlement of a remedy.

Ms. Reinhart-Levine MOVED that the Board to adopt the revised Findings of Fact and Conclusions of Law as amended during the meeting, and that the Board defer adoption of a final order pending negotiation of the remedy. Mr. O'Connor SECONDED the motion.

Mr. Tweeten MOVED the Board to make an addition to the draft final order. Ms. Reinhart-Levine SECONDED Mr. Tweeten's proposed amendment. The MOTION including the addition proposed by Mr. Tweeten CARRIED UNANIMOUSLY.

Chairperson Miles called for the Board to determine a meeting time and date for the next special meeting for the purpose of adopting a final order for the Signal Peak proceeding. The Board agreed to a special meeting through teleconference on January 12, 2016, at 1:00 p.m.

Chairperson Miles invited discussion about a request received from the Legislative Water Policy Interim Committee for the Board to appear at the next meeting and provide an update on the Signal Peak proceeding.

Chairperson Miles asked Mr. Reed to alter a letter he had drafted to send to the Committee in response to their request and the Board members agreed to this action. The letter will decline the invitation.

Chairperson Miles opened the floor to additional items to be addressed by the Board and for public comment. None was heard.

Chairperson Miles adjourned the meeting at 11:54 a.m.

Board of Environmental Review December 29, 2015, minutes approved:

JOAN MILES
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE

MINUTES
Special Meeting
Teleconference
January 12, 2016

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairperson Miles at 1:00 p.m., on Tuesday, January 12, 2016, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairperson Joan Miles

Board Members Present by Phone: Chris Tweeten, Michele Reinhart Levine, Roy Sayles O'Connor, Dr. Robert Byron, Robin Shropshire

Board Members Absent: Marietta Canty,

Board Attorney Present: Ben Reed, Attorney General's Office, Department of Justice

Board Liaison: George Mathieus

Board Secretary Present: Hillary Houle

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Dana David – Legal; Martin Van Oort – IEMB.

Interested Persons Present: Steve Wade – Signal Peak Energy; Shiloh Hernandez, Anne Hedges, Derf Johnson- MEIC.

Interested Persons Present by Phone: Svein Newman – Northern Plains Resources; James Lloyd – Hydrometrics; James Dehaven – Helena Independent Record

Chairperson Miles thanked council members and Board members for their work in the proceedings.

I. A. 1. **Final Action on Contested Cases**

The Board reviewed the proposed draft Findings of Fact, Conclusions of Law, and Order prepared by Mr. Reed in the matter of a request for hearing by Montana Environmental Information Center regarding DEQ's approval of Coal mine permit No. C1993017 issued to Signal Peak Energy, LLC, for Bull Mountain Mine No.1 in Roundup, Montana, BER 2013-07 SM. The Board discussed formatting and grammatical changes to the draft final order.

Ms. Reinhart led the Board in a discussion of corrections to the draft final order.

Chairperson Miles asked Mr. Reed for recommendations on how to incorporate the proposed Consent Decree that was filed by the parties with the Board on January 11, 2016, into the final order.

Chairperson Miles called for a MOTION, and Mr. Tweeten MOVED to adopt the Findings of Fact, Conclusions of Law, and Order incorporating the corrections addressed by the Board. Board Member Michele Reinhart-Levin SECONDED. The motion CARRIED unanimously.

The Board then entertained comments by the parties on the proposed Consent Decree.

Chairperson Miles called for a MOTION to adopt the Consent Decree. Board Member Michele Reinhart-Levine so MOVED. Board Member Sayles O'Connor SECONDED the motion. The motion CARRIED unanimously.

II. **Public Comment**

None was heard.

III. **Adjournment**

Chairperson Miles adjourned the meeting at 1:23 p.m.

Board of Environmental Review January 12, 2016, minutes approved:

JOAN MILES
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE