

**BOARD OF ENVIRONMENTAL REVIEW
MINUTES**

June 2, 2017

Call to Order

The Board of Environmental Review's meeting was called to order by Chairperson Miles at 10:01 a.m., on Friday, June 2, 2017, in Room 111 of the Metcalf Building, 1520 East 6th Avenue, Helena, Montana.

Attendance

Board Members Present by Phone: Chairperson Joan Miles, Chris Tweeten, Robin Shropshire, Marietta Canty

Board Members Absent: none (there are presently only four Board members)

Board Attorney Present: Andres Haladay, Attorney General's Office

Board Liaison Present: George Mathieus

Board Secretary Present: Joyce Wittenberg (interim)

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tim Davis – WQD; Rainie DeVaney – WPB; Barb Kingery – ENGB; John North, Aaron Pettis, Kurt Moser, Brad Jones – Legal; Susan Bawden – ENFD

Interested Persons Present: John Tietz – Columbia Falls Aluminum Company; Robert Erickson – Timbrshor Assn., Inc.; Bridger Mahlum – Montana Chamber of Commerce

Interested Persons Present by Phone: none

Roll was called: four Board members were present via teleconference, providing a quorum.

I.A. Administrative Items – Review and Approve Minutes

I.A.1. | March 31, 2017, Meeting Minutes

Chairperson Miles said she will provide the interim secretary with some minor edits and called for a motion to adopt the minutes with the corrections. Ms. Shropshire so MOVED and Mr. Tweeten SECONDED. The motion CARRIED 4-0.

II.A. Briefing Items – Other Updates

II.A.1. | Senate Bill 337 Update

Mr. Haladay explained that, although the Legislature passed SB 337, the governor vetoed it. He said the Governor will now need to appoint seven new Board members.

II.B.1. Briefing Items – Enforcement Contested Cases assigned to the Hearing Examiner

II.B.1.a. | In the matter of violations 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.

II.B.1.b. | 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. Haladay said a summary judgment oral argument was held in these cases and the matter is submitted for disposition. He said he expected to issue an order soon.

II.B.1.c. | In the matter of violation of the Opencut Mining Act by Goran, LLC, at the Goran gravel pit, Stillwater County, Montana (Opencut No. 2790; FID 2500), BER 2016-09 OC.

Mr. Haladay said the parties filed a request to stay the proceedings so they can attempt to work out a resolution.

II.B.1.d. | In the matter of Appeal of Oil Field Rock and Logistics, Docket No. OC-16-12 (FID 2506), Redstone, Montana, BER 2016-11 OC.

Mr. Haladay said a scheduling order is in effect and that the parties are proceeding under it.

II.B.1.e. | In the matter of violations of the Opencut Mining Act by Wagoner Family Partnership, d/b/a Wagoner's Sand and Gravel, at River Gravel Pit, Flathead County, Montana (Opencut No. 1798; FID 2512), BER 2017-02 OC.

Mr. Haladay said a scheduling order is in effect for this matter, also, and that the parties are proceeding under it.

II.B.2. Briefing Items – Non-Enforcement Contested Cases Assigned to a Hearing Examiner

- II.B.2.a. 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, MT, BER 2014-05 WQ.
- Mr. Haladay said the status of this matter remains unchanged – an order approving a stipulation to stay the appeal is in effect and the parties are complying with the terms of the stipulation.
- II.B.2.b. In the matter of LT Trucking, LLC’s appeal of Riverside Contracting Inc.’s, Reclamation Bond Release for Permit #2083, CVID#17280, BER 2016-04 OC.
- Mr. Haladay said a scheduling order is in effect for this matter and discovery is ongoing.
- II.B.2.c. In the matter of Heart K Land & Cattle Co.’s appeal of its final 401 Certification with conditions, application No. MT4010948; MWO-2013-00590-MTB-Addendum, issued by DEQ for the Yellowstone River, Park County, MT, BER 2015-05 WQ.
- Mr. Haladay said the parties have requested a stay to attempt some form of resolution in the matter.
- II.B.2.d. In the Matter of Westmoreland Resources, Inc.’s appeal of final MPDES Permit No. MT0021229 issued by DEQ for the Absaloka Mine in Hardin, Big Horn County, MT, BER 2015-06 WQ.
- Mr. Haladay said he is still waiting for notification by the parties of a final order issued by the Montana Supreme Court.
- II.B.2.e. In the matter of appeal of amendment application AM3, Signal Peak Energy, LLC’s Bull Mountain Coal Mine #1, Permit No. C1993017, BER 2016-07 SM.
- Mr. Haladay said he denied the motion to compel. The parties will be moving forward with discovery.
- II.B.2.f. 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, MT, BER 2015-08 JV.
- Mr. Haladay said the parties are briefing motions for summary judgment, so the matter is awaiting oral argument or disposition.
- II.B.2.g. In the matter of appeal of Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B, BER 2016-03 SM.
- Mr. Haladay explained that the parties are proceeding under a limited expert discovery order after the motion to exclude Petitioner’s expert witnesses was granted in part and denied in part.
- II.B.2.h. In the matter of the notice of appeal and request for hearing by Montanore Minerals Corporation regarding issuance of MPDES Permit No. MT0030279, Libby, Montana, BER 2017-03 WQ.
- Mr. Haladay corrected an error in the language on the agenda, saying the requestor did indeed have legal counsel, and always did. He said there was an extended deadline for parties to file a stipulated discovery order.

II.B.2.i. | In the matter of appeal by Glacier Ranch Subdivision for PWSID #MT0004700 Phase 4 Review of Public Water and Sewer Main Extensions, EQ#17-1391, Somers, MT, BER 2017-04 SUB.

Mr. Haladay said he received an email request from Glacier Ranch to withdraw its appeal, but he will be requesting something more formal from them.

II.B.3. Briefing Items – Contested Cases Not Assigned to a Hearing Examiner

II.B.3.a | 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. North said the status of this has not changed: they are still waiting for the Judge's order on the motion for the attorney's fees, and the matter cannot proceed until that occurs.

III.A. Action Items – New Contested Cases

III.A.1. | In the matter of Montana Northwest Company's appeal of DEQ Waiver Review Committee's decision to deny Alla and Yevgeniy Kirilovich's request for a source specific mixing zone for Block 1, Lot 3 of Sol Acreage Tracts #2, EQ#17-1160, Missoula, MT, BER 2017-05 SUB..

Mr. Haladay provided a brief overview of the matter.

Mr. Tweeten MOVED to assign the matter to the hearing examiner; Ms. Canty SECONDED. The motion CARRIED 4-0.

III.B. Action Items – Final Action on Contested Cases

III.B.1 | In the matter of Columbia Falls Aluminum Company's (CFAC) appeal of DEQ's modification of Montana Pollutant Discharge Elimination System Permit No. MT0030066, Columbia Falls, Flathead County, MT, BER 2014-06 WQ.

Mr. Haladay reported he had not heard anything further from Mr. Reed regarding this matter. Mr. Moser and Mr. Tietz stated they would prefer the Board leave the matter on the table for now and wait for Mr. Reed to produce the order.

Chairperson Miles requested Mr. Haladay contact Mr. Reed regarding the status of his order prior to the next Board meeting. She further directed that the item remain as a Final Action item on future agendas. [Ms. Canty recused herself from any action on this matter.]

III.B.2. | 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, MT, BER 2015-07 WQ.

Mr. Haladay said the parties have submitted a stipulation and a proposed final order for disposition of all issues except No. 2. He said the parties would then set a status conference with him to set a scheduling order to address that remaining issue.

After a brief discussion, Chairperson Miles called for a motion to adopt the proposed order. Ms. Shropshire so MOVED; Ms. Canty SECONDED the motion. The motion CARRIED 4-0.

III.B.3. | In the matter of appeal by Vanak Transportation, Docket No. SW-16-01, Toronto, Ontario, BER 2017-01 SW.

After a brief discussion, Chairperson Miles called for a motion to adopt the hearing examiner's decision for this matter. Mr. Tweeten so MOVED; Ms. Canty SECONDED the motion. The motion CARRIED 4-0.

III.B.4. | In the matter of appeal of conditions of the certification for Timbrshor at Finley Point Wastewater subdivision rewrite, E.Q. #15-1971, Lake County, MT, BER 2016-10 SUB.

Mr. Haladay explained that he had issued findings of fact, conclusions of law, and a proposed order on April 3 granting summary judgment. He noted that the petitioners had filed exceptions, but did not submit a reply pursuant to the order on exceptions.

Mr. Rys-Sikora said he and his wife were adversely affected by the decision on the wastewater treatment plan and the plat rewrite.

Mr. Pettis stated that 76-4-126, MCA, does not provide a basis for this appeal. He urged the Board to adopt the proposed order.

Mr. Erickson explained that this is a legal issue at this point, reiterating that the statute does not provide a basis for this appeal.

After further discussion, Chair Miles called for a motion to adopt the hearing examiner's proposed order. Mr. Tweeten so MOVED; Ms. Shropshire SECONDED the motion. The motion CARRIED 4-0.

IV. General Public Comment

| There were no comments.

V. Adjournment

| Mr. Tweeten MOVED to adjourn. Chairperson Miles adjourned the meeting at 11:09 a.m.

Board of Environmental Review June 2, 2017, minutes approved:

JOAN MILES
CHAIRPERSON
BOARD OF ENVIRONMENTAL REVIEW

DATE