

**BOARD OF ENVIRONMENTAL REVIEW
MINUTES**

September 29, 2017

Call to Order

The Board of Environmental Review's meeting was called to order by Chairperson Deveny at 9:01 a.m., on Friday, September 29, 2017, in Room 111 of the Metcalf Building, 1520 East 6th Avenue, Helena, Montana.

Attendance

Board Members Present: Chairperson Christine Deveny, Dexter Busby, Hillary Hanson, Tim Warner, John DeArment

Board Members Present by Phone: Chris Tweeten

Board Members Absent: John Felton

Board Attorney Present: Sarah Clerget, Attorney General's Office (AGO)

Board Liaison Present: John North

Board Secretary Present: Lindsay Ford

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tim Davis, Myla Kelly, Amy Steinmetz, Eric Urban – WQD; Chris Dorrington – AEM; Liz Ulrich, Julie Ackerlund, Rebecca Harbage, Doug Kuenzli, Julie Merkel, Dave Klemp – AQB; John North, Aaron Pettis, Kurt Moser, Mark Lucas, Norm Mullen, Kirsten Bowers – Legal; Brenda Thomas, John Arrigo – ENFD; Joyce Wittenberg - CSD

Interested & Other Persons Present: Rep. Jim Keane – Butte, MT; Brian Thompson – Browning Kaleczyk, Berry and Hoven; Brenda Lindlief-Hall – Tongue River Water Users; Aleisha Solem – AGO Agency Legal Services Bureau

Interested Persons Present by Phone: none

Roll was called: five Board members were present and one board member present via teleconference, providing a quorum.

I.A. Administrative Items – Review and Approve Minutes

I.A.1. June 2, 2017, Meeting Minutes

Chairperson Deveny called upon Chris Tweeten as the only returning Board Member to indicate whether or not the minutes should be approved. Mr. Tweeten had no corrections to suggest. Chairperson Deveny called for a motion to adopt the minutes. Mr. Warner so MOVED and Mr. DeArment SECONDED. The motion CARRIED 6-0.

Chairperson Deveny called upon Sarah Clerget, Board Attorney, who offered the suggestion that the Board eliminate the meeting minutes and use the verbatim transcript as the official record. Mr. Tweeten said that the minutes are useful to the Board and would like to have them prepared as they have been. Chairperson Deveny concurred and stated that minutes will continue to be prepared as in the past.

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

II.A.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.

Ms. Clerget said summary judgment was granted in part and denied in part, and there is a hearing request which is currently scheduled for January.

II.A.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.

Ms. Clerget said summary judgment was granted in part and denied in part, and there is a hearing request which is currently scheduled for January.

II.A.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.

Ms. Clerget said there is a stay in place while the parties attempt to resolve the matter.

II.A.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.

Ms. Clerget said a scheduling order was issued and is in effect.

II.A.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.

Ms. Clerget said the cross motions for summary judgement are pending and she will issue an order soon. She noted that, depending on how that comes out, it may be in front of the Board or it may continue to a hearing.

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

II.A.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.**

Ms. Clerget said the proceedings are stayed – an order approving a stipulation to stay the appeal is in effect and the parties are complying with the terms of the stipulation.

II.A.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.**

Ms. Clerget said a scheduling order is in effect for this matter and discovery is ongoing.

II.A.2.c. **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.**

Ms. Clerget said there is a stay in place and she is still waiting for notification by the parties of a final order issued by the Montana Supreme Court.

II.A.2.d. **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.**

Ms. Clerget said this matter is pending resolution of discovery disputes.

II.A.2.e. **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.**

Ms. Clerget said an order granting summary judgment was issued and exceptions have been filed. Payne Logging has to finish their exceptions and she will put it in a package to bring in front of the Board.

II.A.2.f. **In the matter of appeal of Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B, BER 2016-03 SM.**

Ms. Clerget said there is in an expert dispute and so the case still in discovery stages. There aren’t any pending motions and she is working through the discovery issues.

II.A.2.g. **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.**

Ms. Clerget said it is in the beginning stages of getting a schedule in place that everybody can agree to.

II.A.2.h. **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.**

Ms. Clerget said this case has been dismissed.

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

Ms. Clerget said there is going to be a motion to dismiss the appeal.

II.A.2.j. | **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.**

Ms. Clerget said the parties are working to resolve the matter and she will check back with them in February to see how those discussions are going.

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

II.A.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 matter is before the District Court to determine attorney’s fees and the parties are in the last stages of determining the amount of the fees owing. He anticipates this will be resolved before the next meeting.

II.B. Other Briefing Items

II.B.1. | **Water Quality Standards Briefing**

Eric Urban briefed the Board with a Power Point presentation on water quality standards.

II.B.2. | **SB325 Briefing**

Eric Urban briefed the Board on Senate Bill 325 from the 2015 Legislative Session.

Rep. Jim Keane commented that he worked very closely with the Department of Environmental Quality in developing this bill and that it’s very frustrating to him to be here two years later and still not have the rules for the Bill.

II.B.3. | **Air Quality Permit Fee Briefing**

Liz Ulrich briefed the Board on the matter. She stated the Air Quality Bureau has not raised fees since 2009, but a raise may occur in 2018. It is not yet decided by how much or which fees will be impacted.

III.A. Action Items – Initiation of Rulemaking:

III.A.1. | **Amend the following air quality rules in ARM Title 17, Chapter 8:
a) Amend ARM 17.102 to incorporate by reference appropriate federal and state statutes and update references in ARM 17.8.103 stating where the documents may be**

obtained electronically.

b) Amend ARM 17.8.202 to adopt the 2017 version of the Montana Ambient Air Quality Program Quality Assurance Project Plan (QAPP).

c) Modify air quality rules by correcting a definition in ARM 17.8.901 and an internal reference 17.8.904.

d) Centralize the location of rule reference materials.

Julie Ackerlund briefed the Board on the rulemaking and responded to questions.

She also called upon Doug Kuenzli to answer specific questions relating to Quality Assurance Project Plan.

Chairperson Deveny opened the floor for public comment. None were offered on this rulemaking.

Chairperson Deveny called for a motion on the rulemaking. Mr. DeArment MOVED to initiate. Mr. Busby SECONDED the motion. The Motion CARRIED 6-0.

III.B. New Contested Cases

III.B.1 **In the matter of Dennis and Sandra Dickenson's appeal of DEQ Subdivision Section Contract Reviewer's decision to deny the Dickenson's subdivision application, EQ#17-1398, Jefferson County, BER 2017-06 SUB.**

Ms. Clerget gave the Board Members their options, including assigning it to the Hearings Examiner.

Ms. Hanson MOVED the motion to have the Hearings Examiner assigned to the case. Mr. Warner SECONDED. The motion CARRIED 6-0.

III.C. Final Action on Contested Cases

III.C.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, Montana, BER 2014-06 WQ.**

Mr. Tweeten MOVED to have the case reassigned to the present hearings examiner, that the hearing examiner hold a status conference with counsel for the parties, and that consideration of the matter be moved to the next meeting. Mr. DeArment SECONDED. The motion passed 6-0.

III.C.2 **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.**

Ms. Clerget announced that the parties have reached a settlement and recommended the case be dismissed.

Mr. Tweeten MOVED the motion for dismissal. Mr. Warner SECONDED. The motion CARRIED 6-0.

IV. General Public Comment

Mr. Busby asked Mr. Urban of DEQ's Water Quality division how he intends to address Representative Keane's concerns regarding the time element on Senate Bill 325.

Mr. Urban responded that he anticipates the Board seeing a rule package at the next Board meeting.

V. Adjournment

Mr. Busby MOVED to adjourn. Mr. Warner SECONDED. Chairperson Deveny adjourned the meeting at 10:31 a.m.

Board of Environmental Review September 29, 2017, minutes approved:

CHRISTINE DEVENY
CHAIRPERSON
BOARD OF ENVIRONMENTAL REVIEW

DATE