

## MINUTES

January 21, 2014

### Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Madam Chair Shropshire at 9:00 a.m., on Tuesday, January 21, 2014, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

### Attendance

Board Members Present: Madam Chair Shropshire, Joan Miles, Chris Tweeten, Larry Mires, Joe Russell, Marietta Canty, Heidi Kaiser

Board Attorney Present: Katherine Orr, Attorney General's Office, Department of Justice

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tracy Stone-Manning (Director); Tom Livers (Deputy Director); Chris Saeger, Steve Kilbreath – Director's Office; John North, Norman Mullen, Carol Schmidt – Legal; John DeArment, Lisa Peterson – Permitting & Compliance Division; Jon Dilliard, Eugene Pizzini, Rachel Clark, Denver Fraser – Public Water Supply & Subdivisions Bureau; Bob Habeck, Paul Skubinna – Water Protection Bureau; David Klemp, Eric Merchant, Julie Merkel, Dave Aguirre, Annette Williams, Rebecca Harbage, Liz Ulrich, Eileen Steilman, Hoby Rash – Air Resources Management Bureau; John Arrigo – Enforcement Division; George Mathieus – Planning Division; Mark Bostrom, Mike Suplee, Eric Regensberger, Eric Urban – Water Quality Planning Bureau; Todd Teegarden, Joe Meek – Technical and Financial Assistance Bureau; Jeff Blend – Energy and Pollution Prevention Bureau; John Koerth – Remediation Division

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Anne Hedges – Montana Environmental Information Center; Mary Beth Marks, Robert Grosvenor, Shane M. – US Forest Service; Julie DalSoglio, Tina Laidlaw – Environmental Protection Agency; Mark Lambrecht – Treasure State Resource Industry Association; Barbera Hall, Kascie Herron – Clark Fork Coalition; Dave Galt – Montana Petroleum Association; Olivia Hunter (on phone)

At the request of Chairman Shropshire, Mr. Livers took roll call of Board members present. Mr. Tweeten was not present.

I.A.1 Review and approve December 6, 2013, Board meeting minutes.

Mr. Mires MOVED to approve the December 6, 2013, meeting minutes as submitted. Ms. Kaiser SECONDED the motion. The motion CARRIED with a 6-0 vote.

II.A.1.a In the matter of violations of the Public Water Supply Laws by Trailer Terrace Mobile Park, LLC, Dennis Deschamps and Dennis Rasmussen at the Trailer Terrace, PWSID No. MT0000025, Great Falls, Cascade County, BER 2012-11 PWS. *(No discussion took place regarding this matter.)*

II.A.2.a In the matter of violations of the Sanitation in Subdivision Act and Public Water Supply Laws by Roger Emery at the Sunrise Motel, Sidney, Richland County, BER 2013-06 SUB. *(No discussion took place regarding this matter.)*

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.

Ms. Orr said the parties had requested an extension and that the prehearing conference would no longer take place on April 14.

II.A.3.b In the matter of the notice of appeal 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, MT, BER 2013-07 SM.

Ms. Orr said the parties asked for a one-month extension to complete discovery.

II.A.3.c In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP2953-07 for the Colstrip Steam Electric Station, Colstrip, BER 2013-01 AQ. *(see II.A.3.d)*

II.A.3.d In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP0513-08 for the JE Corette Steam Electric Station, Billings, BER 2013-02 AQ.

Ms. Orr said the parties had determined that they would like to try to settle these cases (BER 2013-01 AQ and BER 2013-02 AQ), and asked for an order on two of the motions for summary judgment that were filed by PPL and DEQ concerning the applicability of ARM 17.8.212(4), and that she would be issuing it soon. She said the parties will file a status report at the end of February.

[Mr. Tweeten arrived.]

III.A.1 In the matter of the amendment of ARM 17.8.102 to incorporate by reference updated federal and state regulations and other non-substantive “housekeeping” revisions to the ARM.

Mr. Merchant said the department is asking the Board to initiate the rulemaking to adopt the current editions of Federal and State statutes and rules that are incorporated by reference in the Administrative Rules of Montana. He provided information regarding some of the changes to the statutes and rules.

Mr. Merchant and Mr. Klemp responded to questions from the Board.

Chairman Shropshire called for a motion to initiate the rulemaking and to appoint Ms. Orr as the presiding officer. Mr. Russell so MOVED. Ms. Canty SECONDED the motion. The motion CARRIED 7-0.

III.A.4 *(taken out of order)* In the matter of the request to initiate rulemaking to extend the expiration date for the temporary water quality standards adopted for the New World Mining District at ARM 17.30.630.

Mr. Urban, on behalf of the department, requested that the Board initiate rulemaking for the New World Mining District Area to extend the existing temporary water quality standards five years, to expire on June 14, 2019. Mr. Urban provided some background information regarding the New World Mine Project.

Ms. Marks explained that the temporary standards allow the US Forest Service to clean up the historical mining wastes and move towards water quality improvements in support of the designated uses for the streams involved. She described the work completed to date.

Ms. Marks and Mr. Urban responded to questions from Board members. Mr. Livers described the concept of temporary standards.

Chairman Shropshire called for a motion to initiate the rulemaking to extend the temporary standards for five years. Mr. Tweeten so MOVED. Ms. Miles SECONDED the motion. Chairman Shropshire called for public comment. No one responded. The motion CARRIED 7-0.

Ms. Miles made a friendly amendment to appoint Ms. Orr as the presiding officer. The amendment CARRIED with a 7-0 vote.

III.A.2 In the matter of the request to initiate rulemaking to adopt new nutrient standards for surface waters throughout Montana.

Mr. Mathieus provided some background information on the nutrient rule package. He explained that the rule package is divided into two components: 1) the numeric criteria, which the Board is considering; and 2) the implementation elements, which

will be carried out by the department. He said if the Board initiates the rulemaking, DEQ will align the department rulemaking with the Board's.

Dr. Suplee provided details of the rule package and responded to questions from the Board.

At the Board's request, Mr. Mathieus further explained the DEQ portion of the rulemaking regarding variance and responded to questions from the Board.

Chairman Shropshire called for public comment. There was none.

Further discussion took place. Chairman Shropshire again asked if anyone wanted to comment.

Mr. Lambrecht reminded the Board that the numbers are based on science and several years of work. He cautioned the Board to think carefully before making significant changes to the numbers.

Chairman Shropshire called for a motion to initiate the rulemaking and to appoint Ms. Orr as the presiding officer. Ms. Miles so MOVED. Mr. Russell SECONDED the motion. Further discussion took place. The motion CARRIED 7-0.

III.A.3 In the matter of the request to initiate rulemaking to amend Title 17, Chapter 38, Subchapter 1, Public Water and Sewer Plans, Cross Connections, and Drilling Water Wells, by updating Department Circulars DEQ-1, DEQ-3, DEQ-10, and DEQ-16.

Mr. Pizzini said DEQ is proposing a joint rulemaking of department and Board rules to update the adoption by reference of department circulars DEQ-1 and DEQ-3, and adopt new circulars DEQ-10 and DEQ-16. He explained that the adoption by reference gives the circulars the force of rule without having to publish all the information from the circulars into the rules themselves. He provided detail of the changes and responded to questions from the Board.

Chairman Shropshire called for a motion to initiate the rulemaking, appoint Ms. Orr as the permanent Hearing Examiner and hold a public hearing, to amend the public water supply rules -- to amend existing public water supply engineering rules to adopt updated Department Circular DEQ-1, 2014 edition -- to amend existing public water supply rules to adopt updated Department Circular DEQ-1, 2014 edition, which sets forth the requirements for the design and preparation of plans and specifications for public water systems; to amend the existing public water supply engineering rules to adopt updated Department Circular DEQ-3, 2014 edition, which sets forth minimum design standards for small water systems; to adopt new Department Circular DEQ-10, 2014 edition, which sets forth the standards for the development of springs to serve public water supply systems; to adopt new Department Circular DEQ-16, 2014 edition, which sets forth the standards for cisterns to serve non-community public water supply systems; to amend the existing checklist

to incorporate proposed changes in DEQ-1 and DEQ-3, and previous changes to Department Circular DEQ-4, 2013 edition; clarification of existing rules related to whether a professional engineer is required to submit plans and specifications; to amend for clarification existing rules related to submission of required documents by a professional engineer; amend existing rules for clarification related to submission of plans and specifications for systems that have never submitted plans and specifications for those systems that fail to complete construction within a three-year window; to amend subdivision rules that adopt DEQ-1 and DEQ-3 to reference the 2014 editions; to reorganize for clarity, without changing the substance, portions of these rules mentioned before; and to incorporate the new federal standard for definition for "lead-free." Mr. Mires so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED 7-0.

IV. General Public Comment

Chairman Shropshire asked if any member of the audience would like to speak to any matters before the Board. No one responded affirmative.

V. Adjournment

Chairman Shropshire called for a motion to adjourn. Mr. Tweeten so MOVED. Ms. Miles SECONDED the motion. The motion CARRIED with a unanimous vote.

The meeting adjourned at 12:01 p.m.

Board of Environmental Review January 21, 2014, minutes approved:



ROBIN SHROPSHIRE  
CHAIRMAN  
BOARD OF ENVIRONMENTAL REVIEW

APRIL 30, 2014  
DATE