

MINUTES

December 5, 2014

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Madam Chair Shropshire at 9:01 a.m., on Friday, December 5, 2014, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Madam Chair Shropshire, and Joan Miles

Board Members Present via Teleconference: Marietta Canty, Heidi Kaiser, Larry Mires, Joe Russell, and Chris Tweeten

Board Members Absent:

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

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers (Director; Kirsten Bowers, Ed Hayes, Carol Schmidt, Dana David, and Norman Mullen – Legal; Eric Merchant, Carolyn Arrington, Hoby Rash, Julie Merkel, Annette Williams, and Rebecca Harbage – Air Resources Management Bureau; Jon Dilliard and Eugene Pizzini – Public Water Supply & Subdivisions Bureau; Jon Kenning, Tom Reid, Paul Skubinna, and Kari Smith – Water Protection Bureau; John Arrigo – Enforcement Division; George Mathieus, Planning Division;

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*):
Kevin Hart – City of Helena

At the request of Chairman Shropshire, Mr. Livers took roll call of Board members present. Ms. Miles was not present at this time.

I.A. Review and approve September 26, 2014, Board meeting minutes.

Chairman Shropshire asked if anyone had comments on the draft minutes. No one did.

Mr. Mires MOVED to approve the minutes as written. Ms. Kaiser SECONDED the motion. The motion CARRIED with a 6-0 vote.

(Ms. Miles arrived.)

I.B. Set 2015 Meeting Schedule

Discussion took place regarding the proposed dates. Ms. Canty and Mr. Russell expressed conflicts with March 27. After further discussion, the March 27 meeting date was changed to March 20. The remainder of the schedule would stand.

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.1.b. In the matter of final action regarding the appeal and request for hearing by Missoula County and the Clark Fork Coalition regarding DEQ's issuance of MPDES Permit No. MT0000035 issued to M2Green Redevelopment's site in Frenchtown, BER 2014-02/03 WQ.

Mr. Reed said the Board had tabled this matter because there was a question of overlapping jurisdiction between the Board and the Fourth Judicial District. He said none of the parties anticipate a motion to dismiss and remand to the Board.

Ms. Miles MOVED to take the issue off the table. Mr. Mires SECONDED the motion. The motion CARRIED with a 7-0 vote.

Ms. Miles MOVED to dismiss the matter. Mr. Tweeten made a friendly amendment specifying that the dismissal is without prejudice. Ms. Miles MOVED to dismiss the matter without prejudice, and direct Mr. Reed to draft an order for the Chair's signature. Mr. Mires SECONDED the motion. The motion CARRIED with a 7-0 vote.

II.A.1.c. In the matter of violations of the Opencut Mining Act by Bay Materials, LLC at Normont Farms Pit, Toole County, BER 2014-07 OC.

Mr. Reed said discovery between the parties in this matter is ongoing.

II.A.1.d. 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.

Mr. Reed said Mr. Emery filed the original appeal, but has not otherwise appeared in case, and so he anticipates a recommendation for dismissal at the next meeting.

II.A.2.a. 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 parties anticipate stipulating by December 16.

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

Mr. Reed said a scheduling order has been issued and the matter is ongoing.

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 said a scheduling order has been issued in this matter, and the case is ongoing.

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. Reed was unsure of the status of the modified permit.

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.

Mr. Reed said there are two sets of motions for summary judgment in this matter, noting that one would potentially be resolved in summary judgment. He said the other matter may need to be resolved through a hearing.

II.B. Legislation Briefing

Mr. Livers said the department is requesting a bill be introduced to amend the Water Quality Act. He provided information about the bill. Mr. Mathieus and Mr. Livers responded to questions from the Board.

Mr. Livers said the department is also requesting introduction of a bill to amend the air quality fee structure. He provided information about the request. Mr. Rash and Mr. Livers responded to questions from the Board.

Mr. Livers briefed the Board on four other bills, outside the Board's purview, for which the department is seeking introduction.

III.A.1. In the matter of DEQ's request to initiate rulemaking to amend ARM 17.8.103, 202, 204, 206, and 230 to reference the latest version of the Montana Ambient Air Quality Program Quality Assurance Project Plan, incorporate applicable federal ambient air quality monitoring rules and guidance by reference, and remove references to certain outdated and/or improperly incorporated federal guidance and/or policy documents.

Mr. Merchant briefed the Board on the rulemaking and responded to questions.

Chairman Shropshire called for public comment on the proposed rules. No one responded.

Chairman Shropshire called for a motion to initiate the rulemaking and assign Mr. Reed as the permanent hearings examiner. Ms. Miles so MOVED. Ms. Canty SECONDED the motion. The motion CARRIED with a 7-0 vote.

III.B.1. In the matter of proposed final adoption of amendments to ARM 17.30.1101

Dr. Kenning briefed the Board on the rulemaking, saying a hearing was held August 27, 2014, and comments received were concerned with how the rules would affect them. He said department staff is working collaboratively with stakeholders and because of the uncertainty created by amending the rules after the stakeholder process, the DEQ is recommending adoption of only 17.30.1106. Mr. Livers and Dr. Kenning responded to questions from the Board. Mr. Livers added that the department would be back with rulemaking on the storm water portion at the successful ending of the collaborative process.

Chairman Shropshire called for public comment on the rulemaking.

Mr. Hart said the City of Helena, as well as the other MS4's are appreciative of the department's willingness to look at a collaborative process.

Chairman Shropshire called for a motion to adopt the amendments to ARM 17.30.1106, the hearing examiner's report, the House Bill 311 and 521 analyses, and the proposed responses to comments. Ms. Miles so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a 7-0 vote.

III.C.1. In the matter of violations of the Opencut Mining act by Somont Oil Company, Inc. at Somont Oil Company gravel pit, Toole County, (Permit No. 2597), BER 2014-08 OC.

Mr. Reed outlined the details of the appeal for the Board.

Chairman Shropshire called for a motion to appoint Mr. Reed as the permanent hearing examiner for this matter. Mr. Mires so MOVED. Ms. Miles SECONDED the motion. The motion CARRIED with a 7-0 vote.

III.C.2. In the matter of violations of the Public Water Supply Laws by Rene Requa at Highlander Bar and Grill, PWSID MT0004764, Lewis and Clark County, BER 2014-09 PWS.

Mr. Reed provided details of the appeal.

Chairman Shropshire called for a motion to appoint Mr. Reed as the permanent hearings examiner for this matter. Mr. Russell so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a 7-0 vote.

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.

Mr. Livers reminded the Board that the next meeting is scheduled for January 30, 2015.

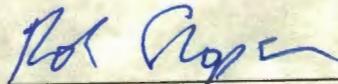
V.

Adjournment

Ms. Miles MOVED to adjourn. Mr. Tweeten SECONDED the motion. No vote was taken.

The meeting adjourned at 10:34 a.m.

Board of Environmental Review December 5, 2014, minutes approved:



ROBIN SHROPSHIRE
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

March 6, 2015

DATE