

MINUTES

March 20, 2015

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 Friday, March 20, 2015, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Shropshire, Joe Russell, Heidi Kaiser, Chris Tweeten, Marietta Canty, Larry Mires

Board Members Present via Teleconference: Joan Miles

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; John North, Dana David, Carol Schmidt, and Norm Mullen – Legal; Hoby Rash, Julie Merkel, Eric Merchant, Rebecca Harbage, and Annette Williams – Air Resources Management Bureau; Jon Dilliard – Public Water Supply & Subdivisions Bureau; John Arrigo – Enforcement Division; Jon Kenning and Paul Skubinna – Water Protection Bureau; George Mathieus, Eric Urban, Erik Makus, Michael Pipp, Amy Steinmetz; Ed Coleman, Emily Hinz, and Melissa Sjolund – Industrial & Energy Minerals Bureau

Interested Persons Present: Art Hayes – Tongue River Water Users Association; Julie DalSoglio – Environmental Protection Agency; Anne Hedges and Derf Johnson – Montana Environmental Information Center; Ella Smith and Robyn Yancey – Northern Plains Resource Council; Vicki Marquis – ARCH Coal; Shiloh Hernandez

I.A. Review and approve January 30, 2015, Board meeting minutes.

Chairman Shropshire asked if any members of the Board had comments on the draft minutes. No one commented.

Mr. Mires MOVED to adopt the minutes as submitted. Ms. Kaiser SECONDED the motion. The motion CARRIED 6-0.

<Ms. Miles joined the meeting via teleconference.>

— Mr. North informed the Board that four of the members – Ms. Miles, Chairman Shropshire, Mr. Tweeten, and Ms. Canty – were up for confirmation before the Legislature and that the hearing is set for April 8 before the Senate Natural Resources Committee.

II.A.1.a. 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 the schedule for this case will be vacated; that both parties had filed motions for summary judgment and he would be issuing an order scheduling a hearing on the motions.

II.A.1.b. In the matter of violation of the Opencut Mining Act by Somont Oil Company, Inc., at Somont Oil Company gravel pit, Toole County (Permit No. 2597, FID 2326, Docket No. OC-14-021), BER 2014-08 OC.

Mr. Reed said the deadline for the parties to resolve their proposed dates in this matter will be extended to June 2.

II.A.1.c. 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 (FID 2299, Docket No. PWS-14-08), BER 2014-09 PWS.

Mr. Reed said the parties had not yet filed a proposed schedule for this matter.

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 this matter has been stayed and monitoring continues.

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 the parties stipulated that the discharge will be stopped until the permit can be modified or renewed, and that the appeal is stayed through 2017.

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 the parties have not filed a proposed schedule yet. He later corrected himself saying the parties had submitted a stipulated scheduling order.

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 said he has not seen the modified permit yet.

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 both parties in this matter had requested the hearing be reset to the May 29 Board meeting because of the lack of adequate notice.

II.B.2. In the matter of the department's briefing to the Board regarding EPA's recent action on Montana's Numeric Nutrient Criteria and Variance Rules. (taken out of order)

Mr. Mathieus briefed the board on the letter detailing EPA's action regarding the rules the Board adopted in July 2014. He said EPA approved the water quality criteria saying it is scientifically defensible, supported by the record, and consistent with Clean Water Act requirements.

II.B.1. In the matter of the department briefing regarding a future rule initiation to adopt site-specific electrical conductivity and sodium adsorption ratio criteria for Otter Creek.

Ms. Steinmetz and Mr. Makus provided information, along with a PowerPoint presentation, about EC and SAR in regard to Otter Creek. They said Otter Creek is water quality limited and, when a mine showed interest in a surface water discharge permit, the TMDL priority was elevated. They both responded to questions from Board members.

Chairman Shropshire asked if any member of the public would like to comment on the matter.

Mr. Art Hayes provided some history of the current standards and spoke against making changes at this time.

Ms. Marquis pointed out that the EC and SAR rules were originally designed with coal bed methane discharge in mind and that Arch Coal's mine is a coal mine with zero discharge. She spoke in favor of the rulemaking effort and responded to questions from Board members.

Mr. Makus and Mr. Urban responded to further questions from the Board.

<Ms. Miles is not present.>

III.A.1. In the matter of final action regarding proposed adoption of amendments to ARM 17.8.103, 17.8.201, 17.8.202, 17.8.204, and 17.8.230, and the repeal of ARM 17.8.206.

Mr. Merchant said the department is requesting the board adopt the proposed amendments to existing air quality rules. He said the rules were initiated December 5 of last year, and comments were received. He said changes were made in response to the comments, and that both the comments and responses are included in the packet.

Chairman Shropshire called for public comment on the rule making. No one commented.

Chairman Shropshire called for a motion to amend and repeal the rules as proposed in the notice of amendment, and adopt the House Bill 521 and 311 analyses and the responses to comments. Mr. Russell so MOVED. Ms. Canty SECONDED the motion. The motion CARRIED 6-0.

III.B.1. 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.

Mr. Reed said an order of dismissal was ready for the Chair's signature.

Chairman Shropshire called for a motion to authorize her to sign the order dismissing the matter. Mr. Mires so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED 6-0.

IV. General Public Comment

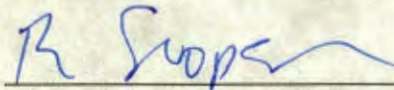
Chairman Shropshire asked if any member of the audience would like to speak to any matters before the Board. No one responded.

V. Adjournment

Chairman Shropshire adjourned.

The meeting adjourned at 11:13 a.m.

Board of Environmental Review March 20, 2015, minutes approved:



ROBIN SHROPSHIRE
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

July 31, 2015
DATE