

MINUTES

October 16, 2015

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Madam Chair Miles at 9:01 a.m., on Friday, October 16, 2015, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joan Miles, Chris Tweeten, Marietta Canty, Michele Reinhart Levine, Roy Sayles O'Connor, Dr. Robert Byron

Board Members Absent: Robin Shropshire

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

Board Secretary Present: Hillary Houle

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers – Director; George Mathieus, Deputy Director; John North, Dana David, and Norm Mullen – Legal; Amy Steinmetz, Eric Urban, Eric Makus, and Dean Yashan – Water Quality Planning Bureau; Julie Merkel, Hoby Rash, Brandon McGuire, Liz Ulrich, Rebecca Harbage, Eric Merchant, and Annette Williams – Air Quality Bureau; James Conner and Chris Cronin – Industrial and Energy Minerals Bureau; Christian Schmidt – Planning Prevention and Assistance Division; John Kenning – Water Protection Bureau.

Interested Persons Present: Peggy Trenk – Treasure State Resource Industry Association; DarAnne Dunning, Beth Kaeding, Dawson Dunning, Colin Lauderdale, and Ella Smith – Norther Plains; Steve Muggli – Muggli Bros Inc.; Christy McCann and Steve Wade – Browning Kaleczyc Berry & Hoven P.C.; Mark Fix – Self and Northern Plains Resource Council; Adam Haight – NPRC; Steve Gilbert – Self; Art Hayes and Brenda Lindlief-Hall – Tongue River Water Users Association; Jason Gildea – EPA; Shilo Hernandez – Montana Environmental Information Center, Western Environmental Law Center, and Sierra Club; Anne Hedges and James D. Jensen – Montana Environmental Information Center; Cary Hegreberg – Montana Contractors Association.

Interested Persons Present via Telephone: Heidi Kaiser (self)

Chairman Miles thanked members of the audience for their attendance.

I.A. Review and approve July 31, 2015, Board meeting minutes.

Chairman Miles called for a motion to approve the July 31, 2015, meeting minutes. Dr. Byron MOVED to approve the minutes as submitted. Ms. Canty SECONDED the motion. Chairman Miles added a comment to pass with a correction, changing the Board meeting being called to order by Madam Chair Shropshire to Madam Chair Miles. Chairman Miles called for a vote. The motion CARRIED with CORRECTIONS unanimously.

George Mathieus explained the use of the audio/video equipment in the room to record the meeting, not for publication, but with the eventual plan to live-stream future meetings.

Mr. Mathieus also proposed that the Board tentatively pick their meeting dates for 2016 and adopt them at the December 4, 2015, meeting. The proposed dates are February 5, April 8, June 3, August 5, September 30, and December 9. A brief discussion of potential schedule conflicts followed and the item was tabled until the December 4, 2015, meeting.

II.A.1.a. In the matter of violations of the Public Water Supply Laws by Rene Requa at Highlander Bar and Grill, PWISD MT0004764, Lewis and Clark County (FID 2299, Docket NO. PWS-14-08), BER 2014-09 PWS.

Mr. Reed said this matter is stayed pending resolution by the parties.

II.A.1.b. In the matter of violation 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.

Mr. Reed said in this matter the scheduling order has been stayed.

II.A.1.c. 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. Reed said in this matter the scheduling order has been stayed.

II.A.1.d. In the matter of violations of the Water Quality Act by Buscher Construction and Development, Inc., at Poly Vista Estates, Trailhead, and Falcon Ridge II Subdivisions, Billings, Yellowstone County, BER 2015-03 WQ.

Mr. Reed said a proposed schedule had been filed, and he will be issuing a scheduling order forthwith.

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 reported that the stay in this matter is continuing.

- II.A.2.b. 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, BER 2014-05 WQ.

Mr. Reed said the parties in this matter are complying with the terms of the stipulation.

- 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 reported that as far as he is aware the matter is proceeding at pace.

- 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 deferred the status report to Mr. North.

Mr. North reported that he believes the status is unchanged. The matter is currently before the Judge for a decision, but the decision hasn't been made yet.

- II.B. Department Briefing on Water Quality Standards, TMDL's and electrical conductivity (EC) and sodium adsorption ratio (SAR) standards for Otter Creek, tributary to the Tongue River.

Mr. Urban provided handouts and briefed the Board in regards to water quality standards for Otter Creek. He responded to questions from the Board.

After Mr. Urban's presentation, comments from the public were heard.

- III.A.1. In the matter of the revocation of Montana Air Quality Permit No. MAQP# 25 54-05, issued to Eureka Pellet Mills (Inc.), Eureka, Lincoln County, MT, BER 2015-04a AQ; the revocation of Montana Air Quality Permit No. MAQP 3039-02, issued to Eureka Pellet Mills (Inc.), Superior, Mineral County, MT, BER 2015-04b AQ; and the revocation of Montana Air Quality Permit No. MAQP# 4057-00, issued to Montana Renewable Resources (LP), Eureka, Lincoln County, MT, BER 2015-04c AQ.

Chairman Miles requested that the Board make motions for each permit separately and that Mr. Reed provide an overview of each permit.

Mr. Reed said the appeal was filed by the chief operating officer, Mr. Pozzi, and that Mr. Pozzi later contacted Mr. Reed stating that they would be withdrawing the appeal for all three permits. Mr. Reed noted that they have not heard anything since Mr. Pozzi indicated they would be withdrawing the appeal; therefore, he is preparing a prehearing order.

Chairman Miles confirmed with Mr. Reed that it is appropriate to assign a hearing

examiner and asked for a motion to that effect. Dr. Byron so MOVED. Mr. Tweeten SECONDED the motion. The motion CARRIED with a unanimous vote.

- III.A.2 In the matter of Heart K Land & Cattle Co.'s appeal of its final 401 Certification with conditions, BER 2015-05 WQ, application No. MT4010948; MWO-2013-00590-MTB-Addendum, issued by DEQ for the Yellowstone River, Park County, MT.

Mr. Reed reported he has issued a scheduling order and requested that the Board assign a permanent Hearing Examiner.

Chairman Miles requested a motion to assign Mr. Reed as the permanent Hearing Examiner. Mr. Tweeten so MOVED, Dr. Byron SECONDED the motion. The MOTION CARRIED with a unanimous vote.

- III.A.3 In the matter of Westmoreland Resources, Inc.'s, BER 2015-06 WQ, appeal of final MPDES permit No. MT0021229 issued by DEQ for the Absaloka Mine in Hardin, Big Horn County, MT.

Chairman Miles requested a motion to assign Mr. Reed as the permanent Hearing Examiner. Ms. Reinhart-Levine so MOVED the motion. Ms. Canty SECONDED the motion.

Mr. Tweeten interjected to inform the Board that 30 years ago he had worked for the company, and he doubts any information that developed in the course of the lawsuit has any currency with respect to issues that are going on now. He said he will inform the Board if any conflicts of interest arise.

Chairman Miles called for a vote, and the motion CARRIED with a unanimous vote.

- III.B.1. In the matter of the request to repeal ARM 17.8.334, 17.8.335, and 17.8.772 pertaining to Emission Standards for Existing Aluminum Plants and Mercury Allowance Allocations under Cap and Trade Budget, respectively.

Mr. Merchant provided information and responded to Board Member questions regarding the repeal.

Chairman Miles called for public comment. There was none.

Ms. Canty MOVED to initiate rulemaking to repeal ARM 17.8.334, 17.8.335, and 17.8.772. Mr. Sayles O'Connor SECONDED the motion. The motion CARRIED with a unanimous vote.

- III.B.2. In the matter of the request to generally revise the rules implementing the Opencut Mining Act ("the Act"), ARM Title 17, Chapter 24, Subchapter 2, in response to changes to the Act entered in the 2007, 2009, and 2013 legislative sessions; to generally clarify and simplify the rules by reorganizing the provisions to avoid treatment of single concepts in multiple rules, eliminate redundant provisions, and improve syntax; and to make substantive changes to remove unnecessary requirements and add requirements that improve reclamation and regulatory process.

Mr. Connor provided information and responded to Board Member questions on the rule revision.

Chairman Miles called for public comment. The Board heard public comment. Cary Hegreberg, Executive Director of the Montana Contractors Association, in favor of the revision.

Chairman Miles called for a motion to initiate rulemaking. Ms. Reinhart-Levine so MOVED. Mr. Tweeten SECONDED the motion. The motion CARRIED with a unanimous vote.

III.B.3 In the matter of the repeal of ARM 17.4.201, 17.30.645, 17.30.1386, 17.30.1401, 17.30.1402, 17.30.1405, 17.30.1406, 17.30.1407, 17.30.1410, 17.30.1411, 17.30.1412, 17.30.1413, 17.30.1414, 17.30.1419, 17.30.1420, 17.30.1421, 17.30.1425, 17.30.1426, 17.30.1602, 17.30.2001, 17.30.2003, 17.38.601, 17.38.602, 17.38.603, and 17.38.607.

Mr. Mathieus informed the board that the Department would like to postpone until the December 4, 2015, meeting.

Chairman Miles agreed to hear the issue on December 4, or whenever the Department is ready.

III.C. In the matter of final adoption of the proposed new rules, to meet the requirements of Section 128 of the federal Clean Air Act (CAA) regarding State boards and "conflict of interest." The Department is requesting that the Board adopt the new rules with an amendment.

Mr. Mathieus and Mr. North provided information on the rulemaking to the Board and responded to questions.

Chairman Miles called for public comment. No public comment was offered.

Chairman Miles called for a motion to adopt the proposed new rules. Dr. Byron so MOVED the motion with proper AMENDMENTS. Mr. Tweeten SECONDED the motion. The motion CARRIED with a unanimous vote.

III.D.1 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. Canty recused herself in this proceeding. The board heard from both parties on the matter. Mr. Tweeten will prepare a statement on his own behalf.

Ms. Reinhart-Levine so MOVED to adopt MEIC's Findings of Fact and Conclusions of Law. Dr. Byron SECONDED the motion. Chairman Miles noted a typo in MEIC's Findings of Fact and Conclusions of Law and asked that it be corrected. The motion CARRIED with Mr. Tweeten OPPOSING the motion.

A separate transcript is associated with the case file and is available for public access

on the Boards website.

III.D.2 In the matter of violations of the Opencut Mining Act by Bay Materials, LLC at Normont Farms Pit, Toole County, Montana, BER 2014-07 OC.

Mr. Reed informed the board that because the case was assigned to him, no further action is needed by the Board.

III.D.3 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. An order dismissing the matter was considered by the Board.

Mr. Reed informed the board that as the case was assigned to him, no further action is needed by the Board.

IV. General Public Comment

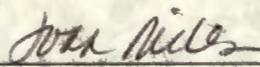
Chairman Miles called for public comment on any matters within the Board's prevue.

No public comment was offered.

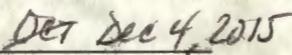
VI. Adjournment

At 1:16 p.m., upon conclusion of the hearing, Chairman Miles called for a motion to adjourn the regularly scheduled meeting. Mr. Tweeten so MOVED. Mr. O'Connor SECONDED the motion. The motion CARRIED unanimously.

Board of Environmental Review October 16, 2015, minutes approved:



JOAN MILES
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW



DATE