

MINUTES
Teleconference
June 3, 2016

Call to Order

The Board of Environmental Review's meeting was called to order by Chairperson Miles at 9:00 a.m., on Friday June 3, 2016, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Acting Chairperson Robin Shropshire, Dr. Robert Byron, Marietta Canty, and Michelle Reinhart-Levine

Board Members Present by Phone: Chris Tweeten

Board Members Absent: Roy O'Connor and Joan Miles

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

Board Liaison Present: George Mathieus

Board Secretary Present: Hillary Houle

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Rebecca Harbage, Nancy Davis – Air Quality Bureau; Eric Urban and Amy Steinmetz- Water Quality Planning Bureau; John North - Legal

Interested Persons Present: Derf Johnson – Montana Environmental Information Center; Bredna Lindlief-Hall – Tongue River Water Users Association; Mark Staples – Staples Law;

Review and Approve Minutes

- I.A.1. Chairperson Shropshire called for a motion to adopt the minutes as submitted. Dr. Byron MOVED and Ms. Canty SECONDED. The motion CARRIED unanimously.

Briefing Items Contested Case Update Enforcement Cases assigned to a Hearing Examiner

- 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 reported the a new Scheduling Order had been issued.

- II.A.1.b. 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.

Mr. Reed reported that he requested the parties propose a revised Hearing Schedule.

- 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 reported that the requested the parties propose a revised Hearing Schedule.

- 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 reported the case is proceeding with the original Hearing Schedule.

Briefing Items Contested Cases non-enforcement cases assigned to a Hearing Examiner

- II.A.2.a. In the matter of Phillips 66 Company's appeal of Outfall 06 Arsenic Limits in Montana Pollution Discharge Elimination System Permit No. MT0000256, Billings, Yellowstone County, MT, BER 2014-05 WQ.

Mr. Reed reported the Stipulation to Stay the Appeal is still ongoing.

- II.A.2.b. 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, MT, BER 2014-06 WQ.

Mr. Reed reported that orders were issued on Columbia Falls Motion to Compel Production of Documents and DEQ's Motion for Summary Judgment, another teleconference was scheduled for June 22, 2016.

II.A.2.c. 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; MWQ-2013-00590-MTB-Addendum, issued by DEQ for the Yellowstone River, Park County, MT.

Mr. Reed reported that with the addition of additional counsel, he is expecting a new Proposed Scheduling Order from the Parties or the Parties will conform to the Scheduling Order that was recently issued.

II.A.2.d. 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.

Mr. Reed reported that a Second Prehearing Order was issued providing the Parties' a little more room to negotiate or to propose a new Scheduling Order in November of 2017.

II.A.2.e. 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.

Mr. Reed reported the matter has been extended.

II.A.2.f. 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, Montana, BER 2015-08 JV.

Mr. Reed reported he is waiting for a Reply Brief from Payne Logging, Inc., and may decide on the pending motions once that is reviewed.

II.A.2.g. In the matter of Appeal Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B, case number BER 2016-03 SM.

Mr. Reed reported that case has yet to be scheduled.

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

II.A.3.a. In the matter of 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 reported that this matter is currently in front of Judge Seeley who has recently issued an order remanding to DEQ but has not yet entered judgement.

II.B. Other Briefing Items

None

III.A.1. Action Items New Contested Cases

III.A.1

In the matter of LT Trucking, LLC, appeal Riverside Contracting Inc., Reclamation Bond Release Permit #2083, CVID#17280, BER2016-04 OC.

Chairperson Shropshire called for a motion to assign Ben Reed as the permanent Hearings Examiner.

Ms. Reinhart-Levine MOVED. Dr. Byron SECONDED the Motion. The motion CARRIED unanimously.

III.A.2

In the matter of appeal the denial of non-degradation review, EQ#16-1698, Sanders County, MT, BER2016-05 PWS.

Chairperson Shropshire called for a motion to assign Ben Reed as the permanent Hearings Examiner.

Ms. Reinhart-Levine MOVED. Ms. Canty SECONDED the Motion. The motion CARRIED unanimously.

III.B.

Initiation of Rulemaking

III.B.1

Amend ARM 17.8.102 to incorporate by reference updated federal and state statutes and regulations, and ARM 17.8.103 to update references stating where the documents may be obtained electronically.

Rebecca Harbage briefed the Board on the rulemaking and responded to questions.

Chairperson Miles opened the floor for public comment. None was offered.

Chairperson Miles called for a motion on the rulemaking. Ms. Canty MOVED to initiate rulemaking. Ms. Reinhart-Levine SECONDED the motion. The Motion CARRIED unanimously.

III.C.

Repeal, Amendment, Or Adoption of Final Rules

III.C.1.

Amend ARM 17.8.610, 17.8.612, 17.8.613, 17.8.614, 17.8.615, 17.8.749, and 17.8.1210 pertaining to open burning permits, issuance or denial of a permit, and general requirements for an air quality operating permit, in response to changes to the Clean Air Act of Montana (the Act). The Department requests that the Board amend the rules as noticed in MAR Notice No. 17-382.

Rebecca Harbage briefed the Board on the rulemaking and responded to questions.

Chairperson Miles opened the floor for public comment. None was offered.

Chairperson Miles called for a motion on the rulemaking. Dr. Byron MOVED to adopt the rule amendments as proposed. Ms. Canty SECONDED the motion. The Motion CARRIED unanimously.

III.D.

Other Action – Triennial Review of Water Quality Standards Hearing

Chairperson Shropshire stated that the Board would hold this hearing after the meeting adjourned.

III.E.

Final Action on Contested Cases

None

IV.

General Public Comment

None was offered.

V.

Adjournment

Chairperson Shropshire adjourned the meeting at 9:23 a.m.

Board of Environmental Review June 3, 2016 minutes approved:

JOAN MILES
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE