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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING)
FEBRUARY 5, 2016)

TRANSCRIPT OF PROCEEDINGS

Heard at Room 111 of the Metcalf Building
1520 East Sixth Avenue
Helena, Montana
February 5, 2016
9:00 a.m.

BEFORE CHAIRMAN JOAN MILES,
BOARD MEMBERS DR. ROBERT BYRON,
MICHELE REINHART-LEVINE;
and MARIETTA CANTY,
CHRIS TWEETEN, ROY SAYLES O'CONNOR,
and ROBIN SHROPSHIRE.,

PREPARED BY: LAURIE CRUTCHER, RPR
COURT REPORTER, NOTARY PUBLIC

1 review and approve a number of minutes. We're
2 looking at our December 4th regularly scheduled
3 meeting, and then special meetings on December
4 29th and January 12th of 2016. I think we could
5 take these minutes all together unless people have
6 any changes or comments.

7 I had one minor change. Let me tell you
8 what that is, and then if others have changes,
9 we'll see if we need to take them separately.

10 Hillary, I just noted on the minutes from December
11 29th and January 12th that they're titled "Special
12 Meeting," but under the text on "call to order,"
13 it says "The Board of Environmental Review's
14 regularly scheduled meeting." So I think that on
15 those two, it should just be "the special meeting
16 was called to order."

17 Are there any other changes or comments
18 that people have on the minutes?

19 (No response)

20 CHAIRMAN MILES: Then I would accept a
21 motion, if it is okay, to adopt all three of those
22 minutes, December 4th, 2015, December 29th, 2015,
23 and January 12th, 2016.

24 DR. BYRON: Madam Chair, so moved.

25 CHAIRMAN MILES: Thank you. Dr. Byron

1 moves.

2 MS. REINHART-LEVINE: Madam Chair,
3 second.

4 CHAIRMAN MILES: Michele Reinhart-Levine
5 second. Any further discussion on this?

6 (No response)

7 CHAIRMAN MILES: All in favor, please
8 say aye.

9 (Response)

10 CHAIRMAN MILES: Anyone opposed?

11 (No response)

12 CHAIRMAN MILES: Those minutes are
13 adopted with the change that was noted. Thank
14 you.

15 The first item of business is to get a
16 contested case update from our Legal Counsel Ben
17 Reed. I'll turn it over to Ben.

18 MR. REED: Thank you, Madam Chair.
19 Under small letter (a), I should point out to the
20 Board that the scheduling order has been vacated
21 on December 23rd, 2015. The parties are going to
22 send an update scheduling order to me, I'm told,
23 in the not too distant future. So the matter has
24 been stayed for the moment.

25 Under small (b), Copper Ridge,

1 Reflections at Copper Ridge Subdivision, the
2 scheduling order has been vacated, as it has
3 indeed in Copper Ridge Development Corporation
4 small (c).

5 In the small (d), In the Matter of
6 Violations of the Water Quality Act by Buscher
7 Construction, a scheduling order has been issued
8 as of last November, and that case proceeds as far
9 as I'm aware.

10 Moving to nonenforcement cases, the
11 Yellowstone Energy Limited Partnership, the stay
12 was until February 1st. I haven't received
13 anything from the parties, but I expect to in the
14 not too distant future.

15 In the matter of small (b), Phillips 66,
16 that matter has been stayed until December 31st,
17 2017.

18 In the matter of Columbia Falls Aluminum
19 Company's appeal, the briefing schedules have been
20 extended, but the parties have fully briefed
21 matters that are currently in front of the Hearing
22 Examiner. The matter in question is a partial
23 motion for summary judgment, and a motion to
24 compel production of evidence. Those matters are
25 currently before me, and I'm fighting through some

1 fairly extensive briefing by the parties.

2 In small (d), I anticipate dismissing
3 the remainder of these cases at some point in the
4 next week and a half.

5 In small (e), the case is proceeding as
6 far as I'm aware between the parties.

7 In small (f) under Westmoreland
8 Resources, I've just issued a first prehearing
9 order, and I believe that the parties' proposed
10 schedule has landed in my inbox in the last 24
11 hours, but I regret to say to the Board that I
12 have not had time to review it, but I anticipate
13 signing that by the end of the day.

14 Moving on to small (g), a stipulated
15 scheduling order has been submitted, and I
16 anticipate signing that by the end of the day.

17 And in the Matter of Termination of the
18 Application by Payne Logging, a first prehearing
19 order has been issued. I don't believe that I
20 have received the proposed scheduling order from
21 the parties, but as soon as I do, I anticipate
22 signing that.

23 And moving on to No. 3, Contested Cases,
24 I believe that as far as this case is concerned,
25 the Plaintiffs have filed in District Court, and

1 the matter is proceeding on motions for summary
2 judgment in Helena District Court, so the parties
3 are awaiting the decision from the Judge.

4 CHAIRMAN MILES: Thank you, Ben. Are
5 there any questions for Ben? Anyone on the phone?

6 (No response)

7 CHAIRMAN MILES: Okay. Thank you for
8 that. We'll move to Item 2(b), a number of
9 briefing items. We will open this up for some
10 public comment. If there is no objection, though,
11 I think I'd like to do it after all three -- I
12 think they're all interconnected -- and have
13 public comment at the end of that would make the
14 most sense. So I'll turn over to George.

15 MR. MATHIEUS: Thank you, Madam Chair.
16 These briefing items essentially are all related
17 to EC and SAR standards. If folks recall, our
18 standards were remanded back to EPA around 2009,
19 and then recently were approved by EPA. So that
20 triggered a number of questions, so we thought it
21 would be appropriate to brief the Board on what
22 that means to the Department. So with that, I'll
23 turn it over to Eric Urban.

24 MR. URBAN: Madam Chair, members of the
25 Board, my name is Eric Urban, and I'm the Bureau

1 Chief of the Water Quality Planning Bureau.

2 I guess, to start with, I'm the one
3 representing the EC SAR in the ladder today. By
4 no means am I the one most deserving of that.
5 There are members in the room that have been part
6 of this process, a very long and arduous process,
7 for well over a decade now, and they're very
8 deserving for thanks for their efforts.

9 So a real high level background. In and
10 around 2003, CBM development in Wyoming and
11 potential development in Montana deserved a lot of
12 attention from a water quality perspective. The
13 Board was petitioned to adopt numeric standards to
14 provide additional protection for specifically
15 agriculture. The Board ultimately adopted
16 electric conductivity sodium adsorption ratio
17 criteria.

18 These numbers were challenged multiple
19 times at multiple levels, and ultimately in 2009,
20 the US District Court in Wyoming remanded EPA's
21 approval of them back to EPA to review their
22 approval. That approval took some time to review,
23 extensive literature, and then the culmination of
24 this was the letter that the Department and the
25 Board received on December of 2015.

1 So what that functionally did for
2 Montana, since 2003 and 2006 adoption, the State
3 has been obligated to implement the standards that
4 the Board approved, but what was missing was the
5 federal approval of those standards. So for
6 federal actions, the standards were not
7 implementable, but for State actions, they very
8 much so were.

9 So that's the high level. At this
10 point, we now will have State approval and
11 implementation of the standards, and they will be
12 also approved by federal actions. So there is the
13 high level, if there is any further questions.

14 CHAIRMAN MILES: Are there any
15 questions?

16 (No response)

17 CHAIRMAN MILES: At this point, no.

18 MR. URBAN: So Madam Chair, the second
19 briefing item is specific to Otter Creek and the
20 status of site specific criteria for Otter Creek.
21 I think there is really one key item here that we
22 need to address, and that is the standards that
23 the State has approved for tributaries is 500, but
24 in addition to that, there is a caveat provided.
25 It was 500 or natural. So in a sense there is a

1 numeric standard and a narrative standard.

2 And the narrative standard is really
3 required because of State statute, and that
4 statute is 75-5-306, which generally states that
5 the Department cannot require treatment to a purer
6 than natural condition.

7 CHAIRMAN MILES: Is that an existing --
8 is that before Senate Bill 325?

9 MR. URBAN: Yes, Madam Chair, members of
10 the Board. 75-5-306 is a statute that's been in
11 existence I believe since the 1960s.

12 So really the question at hand isn't is
13 500 appropriate, the question is there is 500 and
14 natural. We've looked extensively at a data set
15 for Otter Creek, and in our interpretation, we
16 need to apply a natural or a narrative criteria to
17 this stream as directed by the Board and the State
18 statute. And what our task is as we go forward is
19 to provide additional protection in the form of
20 numeric or more specific direction on how to
21 implement natural.

22 CHAIRMAN MILES: Where are you at in
23 that process?

24 MR. URBAN: Madam Chair, members of the
25 Board. From a data perspective, we're continuing

1 to collect data. We have 40 years of records,
2 somewhere in excess of 3,500 samples, and our
3 scientists are quite pleased with the information
4 they have available, but that is by no means all
5 the challenge. Now it's working with stakeholders
6 and working with the EPA on how to take that
7 scientific information, and turn them into applied
8 science in our regulations, and that is not an
9 easy task. We continue to strive for outreach
10 with all parties involved, and working towards a
11 common understanding that our goal is protection
12 of water quality.

13 CHAIRMAN MILES: Any questions?

14 MR. MATHIEUS: Madam Chair, if I may, I
15 might just add a couple of points. Specifically
16 in the first item -- and this is my nature anyway
17 -- the simple point on the EC and SAR standards
18 that were recently approved by EPA is that it will
19 not affect our State action, the way we've been
20 operating the last couple years. So say for
21 example, we would have had a permit in November,
22 we would have still applied those standards
23 because we had the State authorities to do so.

24 As everyone knows, we've been having
25 these conversations about EC, and SAR, and Otter

1 Creek, and Senate Bill 325, and I think really the
2 take home message is that we'll continued to move
3 forward as an agency and work on both these
4 issues. They're both very much related. And I
5 guess that's what we're doing. We're working with
6 our stakeholders, and we've had the opportunity to
7 successfully meet with folks as of recent.

8 And from the Department's perspective,
9 the Otter Creek question that's been in these
10 meetings, should we wait for 325, or should we
11 look at Otter Creek? I guess from our
12 perspective, it is that Senate Bill 325
13 contemplated situations where we had little to no
14 data; and in the case of Otter Creek, we feel that
15 we have very adequate data, so we're aware of the
16 concerns and the issues, and we're taking those
17 seriously, and so therefore we're just moving
18 ahead with both processes and having the
19 conversation. So that helps simplify some things.

20 CHAIRMAN MILES: So where are we on
21 Senate Bill 325?

22 MR. MATHIEUS: Which is No. 3 on Eric's
23 agenda. Sorry. I jumped ahead a bit.

24 MR. URBAN: Madam Chair, members of the
25 Board. So Senate Bill 325, as you know, was new

1 legislation brought forth in 2016, codified at
2 75-5-222. So there is two nomenclatures now. The
3 Department took an example, a very successful
4 example, of getting stakeholders together, and
5 that was our numeric work group, Numeric Nutrient
6 Work Group, which was a broad collection of
7 interests across the state.

8 So we took that model, and applied it to
9 325 Work Group, and invited representatives from
10 industries ranging from timber, to environmental
11 interests, from Montana Association of
12 Conservation Districts, to the petroleum industry.
13 It is a very wide group. Our first meeting was
14 held on January 21st of this year, and was well
15 attended, and I believe was a good start to the
16 process. We've committed to further that,
17 extending likely monthly meetings if that's
18 required. Our next gathering will be at the end
19 of February, where we'll take one step deeper into
20 drafting regulations to implement Senate Bill 325.

21 CHAIRMAN MILES: What's the estimated
22 timeline on that? I mean I'm sure this is going
23 to be looked at by the Legislature, which isn't
24 really all that far away.

25 MR. URBAN: Madam Chair, members of the

1 Board, no, it is not that far away. This is a
2 very complex rule from the perspective that it is
3 state wide, it is not narrow in field, and it has
4 potential to be very wide reaching, from industry,
5 to ag, etc., from metals to salts. So we're not
6 proposing to be in a hurry, although we're
7 optimistic. We've got a good start, and we'll be
8 as expedient as we can. So the straight answer is
9 we're hopeful we can be inside of a year with our
10 work group and drafting regulations.

11 CHAIRMAN MILES: Any further questions
12 for Mr. Urban?

13 (No response)

14 CHAIRMAN MILES: Do you have anything
15 further?

16 MR. URBAN: No.

17 CHAIRMAN MILES: I will open this up for
18 public comment on these combined issues if anyone
19 would like to comment.

20 (No response)

21 CHAIRMAN MILES: Seeing none, I think we
22 can move on.

23 UNKNOWN SPEAKER: Now joining Robin
24 Shropshire.

25 CHAIRMAN MILES: Thank you, Robin. I

1 appreciate your being on the phone. I know you
2 had a busy morning. Just to get you caught up to
3 date, we have Marietta and Roy on the phone;
4 Michele, Rob, and Joan are here in the office, and
5 we've just completed our briefing, a fairly brief
6 overview from the Department on the water quality
7 standards for EC and SAR, as well as progress on
8 Otter Creek and Senate Bill 325. So we were now
9 going to move to new contested cases. You haven't
10 been part of the conversation, but if you have any
11 questions on those briefing items, this would be a
12 good time.

13 MS. SHROPSHIRE: No, I'm good. Thank
14 you, Joan.

15 CHAIRMAN MILES: Thank you. We'll move
16 to new contested cases. Is that Ben?

17 MR. REED: It is, Madam Chair. For the
18 denial of the Silverado Heights Subdivision
19 appeal, I've issued the first prehearing order.
20 I've not received a proposed scheduling order at
21 this time, but the matter is open and ongoing.

22 CHAIRMAN MILES: Our agenda says that at
23 this point the Board may assign a permanent
24 Hearing Examiner or decide to hear the matter; is
25 that correct? Are we at that stage?

1 MR. REED: Yes, Madam Chair.

2 CHAIRMAN MILES: Does the Board wish to
3 hear this matter directly or assign it to Ben as
4 permanent Hearing Examiner?

5 MR. SAYLES O'CONNOR: Madam Chair, I
6 would recommend we assign to Ben as the permanent
7 Hearing Examiner.

8 CHAIRMAN MILES: Thank you, Roy. Is
9 there a second for that?

10 MS. REINHART-LEVINE: Second.

11 CHAIRMAN MILES: Any further discussion?

12 (No response)

13 CHAIRMAN MILES: All in favor, please
14 say aye.

15 (Response)

16 CHAIRMAN MILES: Anyone opposed?

17 (No response)

18 CHAIRMAN MILES: Okay. Motion carries.
19 Thank you, Ben.

20 MR. REED: Next, Madam Chair, in the
21 Matter of the Appeal for the Denial of the
22 Wiediger Group Family Transfer. I've issued a
23 first prehearing order, and have not received a
24 proposed scheduling order from the parties. The
25 Board may at this time either assign a permanent

1 Hearing Examiner or hear the matter itself.

2 CHAIRMAN MILES: Thank you. Is there a
3 motion from the Board to either assign the matter
4 to Ben or hear the matter directly?

5 MS. REINHART-LEVINE: Madam Chair, I
6 move to assign the matter to Mr. Reed.

7 CHAIRMAN MILES: Is there a second?

8 DR. BYRON: Second.

9 CHAIRMAN MILES: It's been moved and
10 seconded. All in favor, please say aye.

11 (Response)

12 CHAIRMAN MILES: Motion carries
13 unanimously. Thank you, Ben.

14 MR. REED: Finally, Madam Chair, in the
15 Matter of the Appeal Amendment AM4 to the WECO
16 Rosebud strip mine. I've issued the first
17 prehearing order. The parties are currently
18 getting a variety of other sort of ducks in rows,
19 but I anticipate getting a proposed scheduling
20 order as soon as the ducks are fully assembled.
21 And at this point the Board may assign a permanent
22 Hearing Examiner or decide to hear the matter
23 itself.

24 CHAIRMAN MILES: Is there any discussion
25 by the Board on this matter, or a motion to either

1 assign a permanent Hearing Examiner --

2 MR. MATHIEUS: Madam Chair, pardon the
3 interruption. It's my understanding that the
4 parties would like to update the Board at this
5 time.

6 MR. HERNANDEZ: Madam Chair, if I may.
7 The parties are anticipating submitting a
8 scheduling -- Madam Chair, members of the Board,
9 Shiloh Hernandez with the Western Environmental
10 Law Center. I'm representing the Montana
11 Environmental Information Center and the Sierra
12 Club in this matter.

13 I spoke with Counsel for DEQ and Counsel
14 for the proposed intervenors in this case this
15 morning. We are planning to submit a proposed
16 schedule this afternoon, but we wanted to ask
17 Ben'S indulgence if we might have the leeway to
18 file it on Monday if need be. We hope to file it
19 this afternoon, but we have to work out a couple
20 wrinkles. But that's the first thing.

21 The second thing. All the parties are
22 of general accord that we have a slight preference
23 that the Board hear the case rather than assigning
24 it to a Hearing Examiner. All respect to Ben, we
25 wanted to avoid having to do duplicative briefing,

1 which the statutes provide for when the cases are
2 assigned to a Hearing Examiner. But all parties
3 are of course willing to defer to any preference
4 that the Board has. And that's all that I have.
5 If you have any questions.

6 CHAIRMAN MILES: Any questions from the
7 Board?

8 (No response)

9 CHAIRMAN MILES: Thank you. Any further
10 discussion? Any further comments?

11 (No response)

12 CHAIRMAN MILES: Board members,
13 preference on this matter?

14 MS. REINHART-LEVINE: I defer to you,
15 Madam Chair.

16 CHAIRMAN MILES: I don't think I'm the
17 one that makes the motions, but I think at this
18 point to assign this matter to Ben would be my
19 preference. I think we've established a very
20 clear record on what we believe needs to be in a
21 legally sufficient CHIA, and the matter could
22 proceed from there. But I'm not making a motion
23 for that effect. At this point I'd like comment
24 from other Board members.

25 (No response)

1 CHAIRMAN MILES: All right. Is there a
2 motion from the Board as to how we proceed with
3 this matter?

4 MS. REINHART-LEVINE: Madam Chair, a
5 question for Mr. Reed. If we hear the matter as
6 opposed to you being appointed, what all is
7 involved in us hearing the matter?

8 MR. REED: Madam Chair, Ms.
9 Reinhart-Levine, I wouldn't say there is a
10 substantial burden on the parties. There is some
11 extra effort involved. If I hear the matter, and
12 then subsequently it gets referred to the Board
13 for a decision, there is some extra briefing that
14 the parties would have to do. However, that's
15 part of my job and part of the parties' job. So I
16 think it depends on the amount of --

17 The primary difference is that I think
18 that if the Board assigns the matter to a
19 permanent Hearing Examiner, then the permanent
20 Hearing Examiner can make many of the
21 determinations. It is a time saver for the Board
22 fundamentally. Many of the legal determinations
23 would be made by the Hearing Examiner prior to the
24 matter ultimately being given to the Board for its
25 consideration.

1 CHAIRMAN MILES: Is there a strong
2 likelihood that the matter would come to the Board
3 anyway before it's resolved?

4 MR. REED: Ultimately the final decision
5 would need to be made by the Board, yes, Madam
6 Chair. The primary question, and of course, there
7 are a lot of dependent variables that are
8 primarily based on the parties' behavior during
9 litigation. And it is litigation, it is an
10 adversarial process, but there are some processes
11 that are more adversarial than others. Depending
12 on the inclinations of the parties, the matter
13 will be coming before the Board, and it is just a
14 question of how many smaller arguments can be laid
15 to rest prior to that occurrence, if that makes
16 sense.

17 CHAIRMAN MILES: One further question,
18 if that makes sense. It was my understanding that
19 the case that we just finished came before the
20 Board because there was a motion for summary
21 judgment, so that it came to us automatically; is
22 that correct?

23 MR. REED: Is that Signal Peak, Madam
24 Chair?

25 CHAIRMAN MILES: Yes.

1 MR. REED: Madam Chair, it is my
2 understanding that the parties specifically
3 requested that the Board hear the matter. If I'm
4 misrepresenting the position of the parties, I'd
5 ask Mr. Hernandez to correct me.

6 MR. HERNANDEZ: No, I didn't request
7 that it be heard by the Board. I think the Board
8 of its own volition took it up without comments
9 from the parties.

10 MR. REED: So Madam Chair, I would
11 suggest that probably what happened is the Board
12 simply declined to assign a permanent Hearing
13 Examiner to the matter.

14 CHAIRMAN MILES: So non-action would
15 result in coming before the Board at this point?

16 MR. REED: Yes, Madam Chair. The Board
17 can either at this time move to select a permanent
18 Hearing Examiner to hear the matter, or can elect
19 to hear the entirety of the matter itself.

20 CHAIRMAN MILES: Any further questions
21 from the Board members?

22 MR. SAYLES O'CONNOR: Madam Chair, I'm
23 not clear -- this is Roy O'Connor -- how many
24 small items there are to be discussed in this
25 matter, although I have read over some of the

1 issues. Can Ben comment on that? Has he reviewed
2 the case enough to make comments on how effective
3 it would be for him to be appointed the Hearing
4 Examiner, knowing that it would appear in front of
5 the Board prior to any decision?

6 MR. REED: Madam Chair, Mr. O'Connor, I
7 can't. I can tell you that Signal Peak had a
8 variety of motions and cross motions for summary
9 judgment that from the outset would not
10 necessarily have been apparent, and I can say that
11 this case is much the same. You open the can, and
12 you don't know whether it's entirely full of worms
13 or only half full. And I would be somewhat
14 surprised if the parties could predict that future
15 either. So my magic eight ball is not functioning
16 properly this morning.

17 CHAIRMAN MILES: Thanks for that
18 question, Roy. Any other comments by Board
19 members? I guess if I don't hear a motion to
20 assign to a permanent Hearing Examiner, we just
21 proceed at this point, and assume that we either
22 make that decision later, or we take up the case.
23 Does that make sense? Taking no action today
24 would move it, just continue it as a contested
25 case before the Board.

1 MR. REED: Yes, Madam Chair. And the
2 Board is I believe at liberty to assign a
3 permanent Hearing Examiner at any time that it
4 likes.

5 MS. CANTY: Madam Chair, this is
6 Marietta. I'm being quiet, but I guess I want to
7 mention that because of the Colstrip mine, I would
8 probably have to recuse myself from this case.

9 CHAIRMAN MILES: Thank you, Marietta.
10 Yes, I'm aware of that. Is there any motion from
11 the Board on this matter?

12 (No response)

13 CHAIRMAN MILES: Hearing none, we will
14 proceed accordingly.

15 I guess we can proceed to initiation of
16 rulemaking. Turn this over to George.

17 MR. MATHIEUS: Thank you, Madam Chair.
18 This morning we have Rebecca Harbage from our Air
19 Quality Bureau to propose initiation of rulemaking
20 to the Board.

21 MS. HARBAGE: Madam Chair, members of
22 the Board, good morning. Rebecca Harbage. I'm a
23 planner with the Department's Air Quality Bureau.

24 CHAIRMAN MILES: Just so everyone is
25 literally on the same page, we are now into the

1 final set of attachments that were posted on the
2 website.

3 MS. HARBAGE: Madam Chair, members of
4 the Board, the Department is here today to ask
5 that the Board initiate rulemaking to amend
6 several of the air quality rules to make them
7 consistent with changes that have been made to the
8 Clean Air Act of Montana. Section 75-2-211,
9 75-2-213, and 75-2-218, Montana Code Annotated,
10 contain procedures for appeals of permits for
11 construction, installation, alteration, use and
12 operation of facilities under the Clean Air Act of
13 Montana.

14 Specifically, those statutes provide,
15 one, that a person who is directly and adversely
16 affected by issuance or denial of a permit may
17 request a hearing; two, that a request for hearing
18 does not stay the Department's decision on an
19 application unless the Board orders a stay; three,
20 that depending on the applicable statute, an
21 appellant must file an affidavit supporting the
22 request for hearing either with the request or
23 within thirty days after the issuance or denial of
24 the permit; and four, that a separate process is
25 available for challenges to energy development

1 projects under 75-2-213, Montana Code Annotated.

2 So the proposed rulemaking before you
3 today would amend ARM 17.8.610, 612, 613, 614, and
4 615, which are the Board's open burning rules;
5 17.8.749 concerning Montana air quality permits;
6 and also 17.8.1210 concerning Title V operating
7 permits. Those amendments are proposed to
8 incorporate the provisions I mentioned, and remove
9 provisions in rule that implement previous
10 statutory versions of the statute.

11 As a matter of practice, in situations
12 where the Board's rules conflict with statute, the
13 statutory language governs, and as such, where the
14 two conflict, the Department has been implementing
15 the process as described in statute by informing
16 concerned persons of relevant requirements and the
17 timing involved there. However, it's confusing to
18 the regulated sources and to the public when two
19 different processes appear in statute and in rule,
20 and therefore the Department is here today to
21 request that the Board initiate rulemaking to
22 clear up those inconsistencies.

23 In preparing the proposed amendments,
24 the Department advised our stakeholders in the
25 Clean Air Act Advisory Council, or CAAAC, on the

1 proposal, and we provided them an opportunity to
2 weigh in. To date, no input has been received
3 from CAAAC.

4 Because the proposed amendments are
5 relatively minor, they would not actually change
6 any of the requirements for appeals of Department
7 decisions on permit applications, we are today
8 requesting that the Board initiate rulemaking on
9 these amendments with no public hearing
10 contemplated as proposed in the draft notice of
11 amendment in your packet. And I am available for
12 any questions you have on these.

13 CHAIRMAN MILES: When were the changes
14 made to the Montana Clean Air Act?

15 MS. HARBAGE: The changes that are
16 addressed in this proposed rulemaking came out of
17 the 2003, 2005, and 2009 Legislatures.

18 CHAIRMAN MILES: Is there any questions
19 from the Board?

20 (No response)

21 CHAIRMAN MILES: Is there any public
22 comment on this matter?

23 (No response)

24 CHAIRMAN MILES: Seeing none, we have
25 three options, Board members. We can initiate

1 rulemaking and issue the attached notice of
2 proposed amendment of the rules with no public
3 hearing contemplated; we can modify the notice and
4 initiate rulemaking with that modification; or we
5 can determine that the amendment of the rules is
6 not appropriate, and deny the request to initiate
7 rulemaking. Is there a motion from the
8 Board?

9 MR. SAYLES O'CONNOR: Madam Chair, this
10 is Roy O'Connor. I propose we initiate
11 rulemaking.

12 CHAIRMAN MILES: Thank you. And then I
13 assume that means issue the attached notice of
14 proposed amendment, correct?

15 MR. SAYLES O'CONNOR: That is correct,
16 yes.

17 CHAIRMAN MILES: Thank you. Is there a
18 second for that motion?

19 MR. BYRON: Second.

20 CHAIRMAN MILES: Any discussion?

21 (No response)

22 CHAIRMAN MILES: All in favor, please
23 say aye.

24 (Response)

25 CHAIRMAN MILES: Opposed.

1 (No response)

2 CHAIRMAN MILES: Hearing none, the
3 motion carries unanimously. Thank you very much.
4 Butte-Silver Bow.

5 MR. MATHIEUS: Madam Chair, if I may,
6 the next item No. C, we actually have a mixture of
7 items here, and I thought I'd just offer a couple
8 of points of what we're doing. So Item No. 1
9 we're --

10 CHAIRMAN MILES: Wait. Are we at the
11 item Butte-Silver Bow No. 2?

12 MR. MATHIEUS: I'm looking at a
13 different agenda.

14 CHAIRMAN MILES: When did this agenda
15 change? I printed this from the last notice you
16 sent.

17 MS. HOULE: Madam Chair, members of the
18 Board, I apologize. Some of the confusion is
19 we've had several last minute changes and
20 additions, including up until yesterday evening,
21 and we've also had some complications with
22 updating and launching a new website. So I do
23 apologize for the confusion, Board members. Madam
24 Chair, there was a brand new agenda at your place
25 this morning. Michele, I can get you one. I was

1 not anticipating your arrival. But it should be
2 updated on the website.

3 So if we go to the agenda, we are at
4 III-C, the first order of business should be the
5 water quality standards as part of the 2016
6 triennial water quality standards.

7 CHAIRMAN MILES: What happened with
8 Butte-Silver Bow?

9 MS. HOULE: I'm just going to address
10 that. Thank you, Madam Chair. The Butte-Silver
11 Bow, Chief Legal Counsel, has been moved to III-D,
12 Other Actions.

13 CHAIRMAN MILES: I don't know what that
14 means, Other Actions? Would we hear about that
15 when we get to that stage?

16 MS. HOULE: I believe so. Thank you.

17 MS. REINHART-LEVINE: I'm having trouble
18 with the link website to these items.

19 MS. HOULE: Let me go fix that for you.

20 CHAIRMAN MILES: And Dr. Byron wasn't
21 able to even get into that until last night, so it
22 is very difficult for us to try to prepare. I
23 don't know if we need -- what we can do about that
24 for a future meeting.

25 MS. HOULE: So if you are having

1 trouble, I could have sent it over FTP. We can
2 address that later, but I will go fix the link.
3 I'm sorry about the confusion.

4 CHAIRMAN MILES: We're moving to Item
5 C(1). The Department is requesting authorization
6 to request comment on Montana's water quality
7 standards as part of the 2016 triennial water
8 quality standards review, correct?

9 MR. MATHIEUS: Correct, Madam Chair. So
10 as I was saying, there is a mixture of items under
11 "C." The first one is that we're merely asking
12 for broad comments on our water quality standards.
13 And Amy Steinmetz will represent that for the
14 agency.

15 MS. STEINMETZ: Madam Chair, members of
16 the Board, my name is Amy Steinmetz. I work with
17 the Water Quality Standards Section at DEQ. For
18 those of you on the phone, I have a power point
19 presentation. I don't know if you have that. If
20 you don't, I'll be careful not to point at
21 anything on the slides, and I will be sure to
22 mention everything that's on the slides so that
23 you have the same information as everyone in the
24 room.

25 Before I launch into some detail, this

1 is a pretty simple issue. I don't expect any
2 controversy over what we're doing at this point.
3 But I'd like to just point out why we do a
4 triennial review, why it is important.

5 First of all, it is important for us to
6 be consistent with State and Federal regulations.
7 It is important because water quality standards
8 belong to the public, belong to the people of
9 Montana. It is important that we make sure to get
10 public input on those standards. And because
11 times and technology changes as research is
12 conducted, it is important that our water quality
13 standards stay congruent with the current research
14 and technology.

15 I'm going to go into a little of bit of
16 detail on water quality standards. I do realize
17 that for some of you, this will be a repeat of
18 some information. It will be a refresher for
19 those of you who have been on the Board for
20 awhile. For new members of the Board, I think it
21 will be helpful for you as we move forward,
22 because you're going to be seeing a lot from Water
23 Quality Standards Section over the next couple of
24 years.

25 First of all, the goal of water quality

1 standards is to protect and to set goals for
2 restoration of Montana's water. That's what a
3 water quality standard, at the most basic level,
4 that's their goal. That's what they do. But what
5 are they? They're more complicated than that.

6 Water quality standards consist of three
7 pieces. The first piece is beneficial uses; the
8 second piece is numeric and narrative water
9 quality criteria developed to protect those uses;
10 and then the third piece is a nondegradation
11 policy that is intended to protect Montana's high
12 quality waters. And I'll go into a little bit
13 more detail on all of those. I'll also talk about
14 a couple of extra pieces that will be covered in
15 our triennial review.

16 But first who do water quality standards
17 apply to? They apply to everyone. It is pretty
18 intuitive that water quality standards apply in
19 permits. Permits have to protect water quality
20 standards; applied to industry, publicly owned
21 treatment works, concentrated animal feeding
22 operations, storm water discharge permits, etc.
23 They also apply to anybody else who might affect
24 or might use the water, and that includes
25 agriculture, forestry, other applications.

1 And the way that water quality standards
2 apply to those folks is through a water quality
3 beneficial use assessment, and if a water body is
4 impaired, doesn't meet water quality standards,
5 then a total maximum daily load calculation is
6 necessary to bring that water back to a condition
7 where it does support its beneficial uses, and
8 where water quality criteria are met. That's who
9 standards apply to.

10 Back tracking to the first bubble that
11 was on the top, "Beneficial Uses," they're just
12 what they sound like. They are uses of a water
13 body that the State has determined is important to
14 the people of Montana. Surface water beneficial
15 uses include drinking water, recreation, aquatic
16 life, agriculture, and industry; and groundwater
17 uses include those things with the exception, of
18 course, of aquatic life.

19 Surface water beneficial uses are
20 designated in rule, in the Administrative Rules of
21 Montana, ARM, Title 17, Chapter 30, Subchapter 6,
22 and the way that those uses were designated is if
23 a water historically supported a use, or if a
24 water body should be able to support a use if
25 pollution were not present. That is how we've

1 decided in the past, and these were designated as
2 far back as the 1960s, I believe. That's how we
3 decided which beneficial uses would be assigned to
4 a water body. And the groundwater beneficial uses
5 are included in ARM 17.30 subchapter 10.

6 Moving on to the numeric and narrative
7 water quality criteria that are developed to
8 protect those uses, I'm going to start with the
9 numeric criteria. They're a little easier to
10 explain and understand because it is a number. It
11 is a number that must be met.

12 Montana has about 300 numeric criteria.
13 Most of those are housed in our Department
14 Circular DEQ7; Department Circular DEQ12 contains
15 the aquatic life numeric water quality criteria;
16 and there are some numeric water quality criteria
17 in Subchapters 6 and 10. For example, Eric Urban
18 talked this morning about the electrical
19 conductivity and sodium adsorption ratio criteria
20 that was adopted by the Board in 2003. Those are
21 included in Subchapter 6.

22 Some examples of numeric criteria
23 include benzene, total residual chlorine, mercury.
24 Another example is arsenic. The human health
25 criteria for arsenic is ten micrograms per liter.

1 That means that any water that has a drinking
2 water designated use must meet the water quality
3 criterion of ten micrograms per liter.

4 Narrative criteria are a little bit more
5 elusive, harder to understand. They are generally
6 statements that say that a water body can't be
7 harmed by a pollutant. Those are included in
8 Subchapter 6 and 10. Some examples are pH,
9 temperature, color. And then there is a just
10 blanket narrative statement that specifically says
11 that waters can't be harmed by discharges, that
12 beneficial uses must be protected.

13 I mentioned that water quality standards
14 apply to everyone. Beneficial uses apply to every
15 water body. Everybody who uses the water or might
16 affect the water has to uphold the water quality
17 criteria.

18 But the next piece -- I lied a little
19 bit. Nondeg only applies to permits. Only
20 applies in permits. Not only that, nondeg only
21 applies in a permit for a new or increased
22 discharge. Nondegradation rules are included in
23 ARM 17.30 Subchapter 7. And just generally. I'll
24 be pretty generic. If you have questions on
25 nondeg, I'd be happy to answer them.

1 But nondegradation protects existing
2 uses of all State waters, and limits or prohibits
3 changes in water quality, high quality and
4 outstanding resource waters respectively. Just
5 protects those high quality waters.

6 I'm also just going to talk just very
7 briefly about mixing zones. I'll explain why in a
8 minute. Mixing zones are applied in permits, and
9 a mixing zone allows a small portion of a water
10 body where a water quality standard, a water
11 quality criterion may be exceeded, but at the edge
12 of that mixing zone, the water quality criteria
13 have to be met. Mixing zones rules are contained
14 in ARM 17.30 Subchapter 5, and there are very
15 specific situations where mixing zones may be
16 applied. Some pollutants can't have mixing zones.
17 Some waters can't have mixing zones. There are
18 very specific requirements.

19 Moving on to authorization, the
20 requirement for a triennial review, first of all,
21 at the federal level triennial review is required.
22 Federal code requires that states conduct a
23 triennial review of their water quality standards.

24 A couple of other new requirements at
25 the federal level: First, they're requiring --

1 EPA, the federal government -- requires that a
2 public hearing be held in association with the
3 triennial review. That is a new requirement. And
4 another new requirement is that the public comment
5 period must last for at least 45 days. Those are
6 both new.

7 You might remember, if you've been
8 through a triennial review in the past, that the
9 Department has come to you with a rulemaking and
10 initiation of rulemaking, and then in the notice
11 somewhere we've said, "We are also opening all of
12 our water quality standards for triennial review.
13 Please submit any comments on water quality
14 standards."

15 We're doing it differently this time
16 because we feel that it is really important to be
17 transparent, to make sure that people understand
18 what we're doing and why. So this isn't attached
19 yet to any rulemaking. We simply want to inform
20 the public that we want to hear what they have to
21 say about our water quality standards.

22 Now, Montana Code Annotated also has a
23 requirement for a triennial review. That's at
24 75-5-301, and that is up here on the screen. I'll
25 read it. "The Board shall review from time to

1 time at intervals of not more than three years,
2 and to the extent permitted by this chapter,
3 revise established classifications of waters and
4 adopted standards of water quality criteria."

5 Also in 75-5-301 are the requirements
6 for the Board to adopt water quality standards,
7 water quality criteria, and nondeg policy, and
8 mixing zones, and that's why mixing zones are
9 included as water quality standards.

10 Montana's last triennial review ended in
11 October of 2012, so we are due for another
12 triennial review.

13 I've already talked about all of these,
14 but just to have them in one place, these are the
15 standards that are open to comment: The mixing
16 zone rules, Subchapter 5; the surface water
17 quality standards in Subchapter 6; and
18 nondegradation rules in Subchapter 7; ground water
19 rules in Subchapter 10.

20 Also this is a federal requirement. The
21 State has to include a compliance schedule
22 authorizing provision as a part of their water
23 quality standards when we go into a triennial
24 review. EPA has to approve our compliance
25 schedule authorizing provision, and that's just a

1 provision that states that DEQ may allow a
2 discharger a little bit longer to be able to meet
3 an effluent limit. So that has to be included in
4 our triennial review. And then the last thing is
5 the Circulars DEQ7 and DEQ12. So all of those
6 things are going to be open, with your approval,
7 open to public comment as a part of this triennial
8 review.

9 Outreach. We went to the Water
10 Pollution Control Advisory Committee in January,
11 gave them pretty much the same presentation. Now
12 we're here before you to request that you initiate
13 the triennial review. If you vote to initiate the
14 triennial review, we'll publish the information in
15 newspapers across the state, and we'll also mail
16 the notice of public hearing and the public
17 comment period to interested parties. That will
18 be a large mailing.

19 And we have been having internal
20 discussion within DEQ, and we've also talked to
21 some other agencies that use our water quality
22 standards. So we've already had one meeting, and
23 met with Permitting yesterday, and talked to them
24 about our triennial review, requested their
25 comments. I'm meeting with Remediation next week,

1 a couple of other groups within DEQ. I've
2 contacted Fish, Wildlife and Parks, let them know
3 that we're doing our triennial review, or hoping
4 to, and the Department of Agriculture. So we're
5 trying to have as many conversations as we can. A
6 lot of folks use the water quality standards.

7 Also of course EPA has to approve any
8 water quality standards, so we've been talking
9 with EPA, and they've already given us a couple of
10 things that they will be requesting us to address
11 in our triennial review.

12 Moving forward, if we initiate the
13 triennial review, we would review and respond to
14 comments; where appropriate, we would revise the
15 water quality standards and respond to comments;
16 and then we would go through our typical
17 rulemaking process. We would go back to WPCAC and
18 come to you all with a request for initiation of
19 rulemaking, and do all of the associated public
20 outreach.

21 A couple of examples of things that we
22 already know, having had our water quality
23 standards on the books for three years, we do know
24 a couple of things that we are going to need to
25 address, so this is just a couple of examples of

1 those.

2 I talked about beneficial uses, and
3 those beneficial uses being designated in
4 Subchapter 6. When those uses are designated,
5 they are in stream reaches, and the descriptor for
6 some of those reaches may begin or end with a
7 drinking water intake. It has been 50 years since
8 some of these have been designated, drinking water
9 intakes have maybe moved, maybe they're just not
10 there anymore, so we're just going to clarify
11 where those points begin, where those reaches
12 begin and end, by including a lat. and long.,
13 rather than just specifying that it's a drinking
14 water intake.

15 Also we have a requirement under the
16 Montana Agricultural Chemical Groundwater
17 Protection Act to develop and adopt new pesticide
18 water quality criteria anytime a new pesticide is
19 detected in groundwater in Montana that we do not
20 have a water quality criterion for. We have five
21 pesticides that we have developed water quality
22 criteria for in conjunction with EPA, and we will
23 need to adopt those. That would be a part of this
24 triennial review, the rulemaking that comes out of
25 that.

1 And then we know we have some
2 typographical errors in DEQ7 that we would like to
3 address some of those.

4 Is there questions on any of that?

5 CHAIRMAN MILES: Thank you, Amy. Any
6 questions from Board members?

7 DR. BYRON: Amy, could we get a copy of
8 your presentation?

9 MS. HOULE: It should be on the table
10 where we have a copy out front.

11 MS. SHROPSHIRE: That would be great if
12 they could be either emailed or out, that would be
13 very helpful.

14 MS. HOULE: They should have been
15 posted. I'm sorry. Broken links. They'll be
16 posted this afternoon.

17 CHAIRMAN MILES: They will be posted
18 this afternoon. There is some issues going on
19 with this website, and it's caused some confusion
20 here, but I think we're getting there.

21 Amy, I did have a couple questions. You
22 answered most of what I was wondering about. In
23 the normal rulemaking process, I know the
24 Department has to respond to any comments. Is
25 this under that same category, or is this process

1 different in that respect?

2 MS. STEINMETZ: Madam Chair, thank you.
3 It is different in that respect. We don't have a
4 requirement to respond to all comments. That is
5 something that we would like to do. The only
6 requirement that we do have is if the EPA has
7 adopted new 304(a) criteria, those are numeric
8 water quality criteria for priority pollutants,
9 and they have adopted some new 304(a) criteria,
10 the State has to either adopt them or we have to
11 justify why we're not adopting them. That's our
12 only concrete requirement for a response.

13 CHAIRMAN MILES: In the process.

14 MS. STEINMETZ: Right.

15 CHAIRMAN MILES: Then historically, does
16 this process bring to light significant changes
17 or --

18 MS. STEINMETZ: Madam Chair, to my
19 knowledge, I'm not aware of any significant
20 changes that have come out of this process.

21 CHAIRMAN MILES: That you perhaps
22 weren't aware of already?

23 MS. STEINMETZ: Right. That's not to
24 say that there couldn't be. There could be some
25 very significant changes that come out of it. We

1 try to stay apprised of changes that are happening
2 at the federal level; of course we always try to
3 talk to stakeholders to understand what issues
4 they might be having with water quality standards;
5 but it is certainly possible that something new
6 could come to light through this process.

7 CHAIRMAN MILES: Any other questions?
8 Thank you. Any other questions? Anyone on the
9 phone?

10 (No response)

11 CHAIRMAN MILES: Thank you, Amy. I'm
12 going to open it for public comment. Are there
13 any comments? I guess at this point comments
14 would be appreciated concerning the process we're
15 about to undertake, rather than substantive water
16 quality comments.

17 (No response)

18 CHAIRMAN MILES: Does anyone wish to
19 comment? Hearing none. So go ahead.

20 MS. REINHART-LEVINE: Are you ready for
21 a motion?

22 CHAIRMAN MILES: Yes, I am.

23 MS. REINHART-LEVINE: Madam Chair, I
24 move that the Board hold a public hearing and
25 accept public comment on Montana's water quality

1 standards as part of the required triennial review
2 of those standards.

3 CHAIRMAN MILES: Is there a second?

4 DR. BYRON: Second.

5 CHAIRMAN MILES: It's been moved and
6 seconded. Any discussion?

7 (No response)

8 CHAIRMAN MILES: All in favor, please
9 say aye.

10 (Response)

11 CHAIRMAN MILES: It's carried
12 unanimately. Thank you very much. Good luck with
13 that process. Let's take a short break.

14 (Recess taken)

15 CHAIRMAN MILES: We're going to
16 reconvene the meeting. Board members, do I still
17 have you on the phone? Roy, are you there?

18 MR. SAYLES O'CONNOR: Yes, I am.

19 CHAIRMAN MILES: Robin?

20 MS. SHROPSHIRE: I'm here. Joan, I have
21 to get on another plane in about thirty minutes,
22 so if you hear me drop off, that's fine.

23 CHAIRMAN MILES: Thank you, Robin. And
24 Marietta, are you still on the line?

25 MS. CANTY: Yes, I'm still here.

1 CHAIRMAN MILES: So we still have our
2 quorum here. Thank you. We will start on Item
3 No. C(2), which is in the matter of the repeal of
4 several rules pertaining to emission standards. I
5 appreciate -- I've got myself located now on my
6 Board packet.

7 MR. MATHIEUS: Madam Chair, Rebecca is
8 here again, this time to talk about Item No. 2,
9 rule repeal.

10 MS. HARBAGE: Madam Chair, members of
11 the Board, again, Rebecca Harbage with the Air
12 Quality Bureau here at DEQ. Today I'm here to
13 request that the Board adopt the proposed repeal
14 of three air quality rules that are either no
15 longer used, for which the affected sources are no
16 longer operational, or for which corresponding
17 federal regulations have been invalidated. The
18 Board initiated rulemaking on these repeals on
19 October 16th, 2015.

20 Just as a quick refresher, so you
21 understand again why these three rules were chosen
22 for repeal. The first two rules, ARM 17.8.334 and
23 335 apply to existing aluminum reduction plants
24 operating in Montana. You likely know that the
25 only existing plant to which these rules applied

1 was Columbia Falls Aluminum Company, or CFAC,
2 which has ceased operation. Because there are no
3 other existing aluminum plants operating in the
4 state, these two rules no longer apply, and are
5 not necessary. Any future new aluminum plants
6 will be regulated by Montana's federally approved
7 permitting programs, as well as federal programs
8 such as the New Source Performance Standards.

9 Repeal of ARM 17.8.334 also serves the
10 purpose of addressing concerns that the
11 Environmental Protection Agency, EPA, has with
12 allowing exemptions from emission limits during
13 times of startup, shutdown, and/or malfunction, or
14 SSM.

15 On May 22nd of 2015, EPA deems that the
16 exemption in this rule is impermissible under the
17 Clean Air Act. Because the rule is included in
18 Montana's federally enforceable State
19 Implementation Plan, or SIP, Montana must either
20 correct the rule or remove it from the SIP. The
21 deadline for action on that is eighteen months
22 after EPA's published finding, or November 22nd of
23 this year. If the Board repeals this rule today,
24 the Department would then work with the EPA to
25 withdraw the rule from the SIP, satisfying EPA's

1 concerns.

2 The third rule proposed for repeal today
3 is 17.8.772, which applies to mercury allowance
4 allocations. The Board adopted this rule in 2006
5 in response to the Federal Clean Air Mercury Rule
6 or CAMR, which established a federal mercury
7 emissions trading budget, and allowed states to
8 adopt cap and trade rules modeled after EPA's
9 regulations.

10 The Federal DC Circuit Court of Appeals
11 vacated CAMR in 2008. Because CAMR is
12 invalidated, Montana is not required to submit
13 mercury allowance allocations, and therefore this
14 rule is unnecessary. The Department will,
15 however, continue to regulate mercury emissions
16 from electric generating units under our rule ARM
17 17.8.771 and applicable federal programs.

18 We received one comment, one supportive
19 comment, on the proposed repeal of ARM 17.8.334
20 from EPA because it was related to the SIP call,
21 and EPA's concerns about that rule. No other
22 comments were received on the repeals, so we're
23 here to today to request that the Board adopt the
24 repeal of 17.8.334, 17.8.335, and 17.8.772 as
25 noticed in Montana Administrative Register No.

1 17-375. Thank you.

2 CHAIRMAN MILES: Thank you. Any
3 questions for Rebecca?

4 Any comment from the public?

5 (No response)

6 CHAIRMAN MILES: A motion from the
7 Board?

8 MS. REINHART-LEVINE: Madam Chair, I
9 move that the Board adopt the proposed repeals of
10 ARM 17.8.334, 17.8.335, and 17.8.772 as set forth
11 in the attached notice of repeal noticed in MAR
12 17-375.

13 CHAIRMAN MILES: Thank you. Is there a
14 second?

15 MS. SHROPSHIRE: Seconded from Robin.

16 CHAIRMAN MILES: I just have a quick
17 technical question. Do we also need to include in
18 the motion that we adopt the 521 and House Bill
19 311 analyses? Is that appropriate in the motion?

20 MR. NORTH: Madam Chair, John North,
21 Chief Legal Counsel for the Department. It is
22 questionable legally whether you need to do that
23 or not, but it has been done historically by the
24 Board as part of the motion, just to make sure it
25 is all proper.

1 CHAIRMAN MILES: Will you make that
2 friendly amendment to your motion?

3 MS. REINHART-LEVINE: Madam Chair, so
4 moved.

5 CHAIRMAN MILES: Thank you. I think
6 that's all. Any further discussion?

7 (No response)

8 CHAIRMAN MILES: All in favor, please
9 say aye.

10 (Response)

11 CHAIRMAN MILES: Any opposed?

12 (No response)

13 CHAIRMAN MILES: Hearing none, the
14 motion passes and those rules are repealed. Thank
15 you.

16 Open cut mining.

17 MR. MATHIEUS: Thank you, Madam Chair.
18 Item No. 3, the Department is going to request
19 adoption. J. J. Conner is representing the
20 Department this morning.

21 CHAIRMAN MILES: Thank you. Just one
22 second. I'm not sure if people have the same
23 Board packet, but I'm on page 69 of that last
24 attachment that has all of the rule changes in it.
25 Thank you.

1 MS. HOULE: Joan, the one that was just
2 updated, I think Michele is on there, it would be
3 Page 23.

4 CHAIRMAN MILES: So it might be on Page
5 23 in the updated packet. Michele, you might be
6 looking at that.

7 MS. REINHART-LEVINE: Yes.

8 MR. CONNER: Madam Chair, members of the
9 Board, thank you for having me here today. My
10 name is J. J. Conner. I'm the unit coordinator
11 with the Open Cut Program. And today I'm
12 requesting the adoption of the revised rules
13 implementing the Open Cut Mining Act, ARM Title 17
14 Chapter 24 subchapter 2, and those rule changes
15 are resulting from act changes in the 2007, 2009,
16 and 2013 legislative sessions.

17 Originally the Board approved notice of
18 rulemaking for revisions to the rules implementing
19 the Open Cut Mining Act on October 16th, 2015. On
20 November 12th, 2015, the Board of Environmental
21 Review published MAR Notice No. 17-376, and a
22 public hearing on the proposed revision to the
23 rules was held on December 11th, 2015.

24 Eight comments were submitted during the
25 comment period which ended January 4th, 2016. All

1 of the comments were from our bentonite industry,
2 and of those eight comments, three of the comments
3 we are proposing implementation; two of them we
4 believe are already existing and covered under our
5 proposed rules for all operators; and three of
6 them are not in compliance with the actual Open
7 Cut Mining Act.

8 Throughout this process, two years going
9 on three, we have provided stakeholder outreach,
10 which can be seen by the number of comments, lack
11 of comments we received. We have a good working
12 group with the stakeholders, and I think that our
13 rules are in a pretty good state today.

14 On behalf of the Department, I
15 respectful request that the Board adopt the rules
16 as recommended by the Department, and I would be
17 happy to answer any questions you may have at this
18 time.

19 CHAIRMAN MILES: Any questions from the
20 Board?

21 (No response)

22 CHAIRMAN MILES: Any comment from the
23 public?

24 (No response)

25 CHAIRMAN MILES: Thank you. I just have

1 a quick question. Hillary, the information that
2 was put on our desk, is that different from what
3 was our packet, the Hearings Examiner report?

4 MS. HOULE: So the Hearings Examiner
5 report was added for the previous MAR Notice 1375.

6 CHAIRMAN MILES: The one that's on the
7 desk is the emissions one, so the Hearings
8 Examiner report that's in our packet is correct?

9 MS. HOULE: Yes.

10 CHAIRMAN MILES: Thank you. So I think
11 the motion here would be to amend and repeal the
12 rules as provided in the attached notice of
13 adoption, and probably if we adopt the Hearings
14 Examiner report as well, then that would include
15 the 521 and 311 analyses. Is there a motion to
16 that effect?

17 MS. REINHART-LEVINE: Madam Chair, so
18 moved.

19 CHAIRMAN MILES: Second?

20 DR. BYRON: Second.

21 CHAIRMAN MILES: Any further discussion?

22 MS. REINHART-LEVINE: Madam Chair, I
23 move that the Board adopt the proposed rules
24 implementing the Open Cut Mining Act, ARM Title 17
25 Chapter 25 Subchapter 2, and the Hearing Examiner

1 report.

2 CHAIRMAN MILES: Thank you. And your
3 second still stands?

4 DR. BYRON: Yes.

5 CHAIRMAN MILES: Thank you. Any further
6 discussion?

7 (No response)

8 CHAIRMAN MILES: All in favor, please
9 say aye.

10 (Response)

11 CHAIRMAN MILES: Thank you. Anyone
12 opposed?

13 (No response)

14 CHAIRMAN MILES: Hearing none, motion
15 passes unanimously. Thank you very much.

16 Item No. 4, water pollution,
17 radiological criteria, etc.

18 MR. MATHIEUS: Thank you, Madam Chair.
19 More rule repeals, and this morning we'll have Ms.
20 Kari Smith.

21 MR. REED: If I may, Madam Chair, this
22 is, I believe, the Hearing Examiner report that
23 was on the table this morning.

24 CHAIRMAN MILES: Okay. No, this is --

25 MS. REINHART-LEVINE: Water pollution.

1 CHAIRMAN MILES: Oh, okay. Yes. You're
2 right. Thank you.

3 MS. SMITH: Good morning, Chairman
4 Miles, members of the Board. My name is Kari
5 Smith. I'm the policy advisor in our Planning
6 Prevention and Assistance Division.

7 At the December Board meeting, you
8 supported the Department's recommendation to
9 initiate the rulemaking to repeal several rules
10 that are redundant, duplicative, outdated, or
11 simply not used any longer. In January, the
12 Department published the rule notice in seven of
13 our major newspapers; we held a public hearing on
14 January 14th; and we mailed the rule notice to all
15 interested parties and all members of the
16 regulated entities that would have been affected
17 by these rules. We did not receive any public
18 comments at the hearing, or were there any
19 submitted during the public comment period.

20 There was an HB 521 stringency finding
21 and an SB 311 takings impact assessment that
22 indicates that these rules do not have any takings
23 or damaging implications. We are requesting the
24 Board adopt the repeal of these rules as proposed
25 in the notice of hearing, and I would be happy to

1 answer any questions that you may have.

2 CHAIRMAN MILES: Are there any
3 questions?

4 (No response)

5 CHAIRMAN MILES: Is there any public
6 comment on this?

7 (No response)

8 CHAIRMAN MILES: Thank you. Is there a
9 motion to repeal the rules as provided in the
10 notice of repeal, as well as the Hearing Examiner
11 report?

12 MS. REINHART-LEVINE: Madam Chair, I
13 move that the Board repeal the rules in ARM Title
14 17 Chapter 4, Chapter 30, and Chapter 38
15 pertaining to water pollution rules, radiological
16 criteria, state and EPA coordination, pretreatment
17 definitions, enforcement actions, purpose,
18 definitions, enforcement procedures, and suspended
19 penalties as proposed in the notice of hearing,
20 Madam Chair.

21 CHAIRMAN MILES: Is there a second?

22 DR. BYRON: Second.

23 CHAIRMAN MILES: Thank you. Is there
24 any further discussion on this?

25 (No response)

1 CHAIRMAN MILES: Hearing none, all in
2 favor, please say aye.

3 (Response)

4 CHAIRMAN MILES: Opposed.

5 (No response)

6 CHAIRMAN MILES: Hearing none, the
7 motion carries unanimously. Thank you for your
8 help, Department staff, on those issues.

9 MR. MATHIEUS: Madam Chair, finally we
10 get to the item on the agenda that caused
11 confusion. I apologize again.

12 CHAIRMAN MILES: I'm glad it's still on
13 the agenda after I read through all of it.

14 MR. MATHIEUS: Madam Chair, once again
15 Rebecca Harbage is here, and she'll explain
16 basically what this means to the BER.

17 MS. HARBAGE: Madam Chair, I was here
18 earlier, as you know, so we could have continued
19 with Butte-Silver Bow when you had it on your
20 agenda.

21 Madam Chair, members of the Board, again
22 Rebecca Harbage with the Air Quality Bureau. And
23 the reason you see me here in front of you first
24 and not a local program is I just wanted to take
25 some time, and explain the placement of this

1 action under Other Action Items, and kind of the
2 role of the Department and what this process looks
3 like, because it is a little bit different than
4 the usual when the Department brings a rulemaking
5 for initiation, and then subsequently follows up
6 for adoption.

7 To begin, the Department works very
8 closely and supports the local county programs,
9 and I will be turning this over to representatives
10 from Butte-Silver Bow to further explain this
11 amendment and talk about the local process.

12 Butte-Silver Bow implements Board
13 approved local air pollution control programs
14 established under Chapter 2 of Title 75, Montana
15 Code Annotated. We do have seven of these local
16 programs in the state. We have Lewis & Clark
17 County, Flathead, Missoula, Cascade, Lincoln, and
18 Yellowstone County, in addition to Butte-Silver
19 Bow.

20 The purpose of the local programs is to
21 protect local air resources, and this is often
22 more effectively done at the local level than at
23 the state level. Just as an example of that would
24 be the issuance of air quality alerts at times
25 when inversions or other local air quality issues

1 make it essential to quickly cut back on emissions
2 from things like wood stoves or idling vehicles.

3 The Board's role in this process
4 generally is that the Board may approve a local
5 program if it is consistent with the applicable
6 statutory requirements, and the Department's role
7 is generally to work closely with those local
8 programs to ensure consistency.

9 When it comes to updating their rules in
10 response to things like changing local conditions,
11 changes to state or federal regulations, these
12 programs follow the procedures outlined in
13 75-2-301, Montana Code Annotated, for adoption and
14 amendment of air quality related regulations. In
15 other words, the rule initiation in this case and
16 all of the associated public processes took place
17 at the local level, and you have info on that in
18 your packets.

19 The Department worked very closely with
20 Butte-Silver Bow on the amendments before you
21 today, and we support local air quality programs.
22 We're here today if you have any further questions
23 on the amendments, but I would like to turn it
24 over to Dan Powers from the Butte-Silver Bow
25 Health Department, who should be on the phone, and

1 he'll talk a little bit more about the proposal
2 itself, and what the local process looked like,
3 and then make a request of the Board to adopt the
4 amendments.

5 CHAIRMAN MILES: Thank you, Ms. Harbage.
6 Any questions?

7 (No response)

8 CHAIRMAN MILES: So just to clarify,
9 this is not initiating rulemaking, this is
10 basically giving the stamp of approval to the
11 rules adopted by Butte-Silver Bow?

12 MS. HARBAGE: Madam Chair, Board,
13 correct.

14 CHAIRMAN MILES: Okay. Thank you. Dan,
15 are you on the phone?

16 MR. POWERS: I am. Good morning, Madam
17 Chair, and members of the Board. My name is Dan
18 Powers. I'm the Assistant Health Director here at
19 Butte-Silver Bow, and I've been in the
20 Environmental Division for almost 30 years now.
21 So thanks for the opportunity to visit with you.

22 As Rebecca had stated, New Source
23 Performance Standards were adopted and codified by
24 EPA, so in that, as she had mentioned, with the
25 seven approved local air pollution control

1 programs within the state, our latest ordinance in
2 2014 did not reflect those new regulations. So
3 with that being said, we had to work closely with
4 Rebecca and our County Attorney to ensure that our
5 ordinance would comply with the New Source
6 Performance Standards.

7 So with that, I'll just briefly go
8 through what we did here locally at Butte-Silver
9 Bow. We removed definitions that were no longer
10 applicable in the ordinance; we added some new
11 definitions that were applicable; and effective
12 dates; and all of these were to ensure that the
13 new language required by New Source Performance
14 Standards was being met.

15 So with that, on October 14th of 2015,
16 the amendments were introduced to the Council of
17 Commissioners, and the recommendation was to ask
18 our County Attorney to review our previous
19 ordinance, and begin the process of adopting these
20 new standards. And so on October 21st, that was
21 referred to the Butte-Silver Bow Judiciary
22 Committee within the Council of Commissioners.

23 On October 28th, 2015, that remained in
24 the Judiciary Committee. Staff attended these
25 committee meetings and answered any questions, or

1 provided information to those people that were on
2 the committee.

3 And then once those people were
4 satisfied, and felt that everything was in order,
5 it moved to the second reading at the regular
6 meeting of the Council of Commissioners on
7 November 4th. Following that, it was moved back
8 to the Judiciary Committee on November 10th of
9 2015, and they made a recommendation at that point
10 in time to move the amendments to our previous
11 ordinance to final reading.

12 And then on November 29th, I believe it
13 was -- excuse me -- on November 18th, it was
14 actually the final reading before the Council of
15 Commissioners. They passed that final reading
16 with the amendments associated with that in a ten
17 to zero vote on that.

18 Additionally, we have one incorporated
19 city and town within Butte-Silver Bow, and that's
20 the town of Walkerville. And on January the 8th
21 their town council acknowledged and authorized the
22 amendments so that they're on board as well with
23 the change made to our ordinance.

24 So with that being said, again, I
25 appreciate your time, and request approval of

1 these amendments as adopted by Butte-Silver Bow.

2 CHAIRMAN MILES: Thank you, Dan. Are
3 there any questions from the Board?

4 (No response)

5 CHAIRMAN MILES: Hearing none, Dan, I
6 appreciate all of the documentation you included.
7 It is an interesting process given your form of
8 government, and certainly has been thoroughly
9 vetted and reviewed.

10 Is there a motion from the Board to
11 approve the changes to the Butte-Silver Bow air
12 quality control rules as presented?

13 DR. BYRON: Madam Chair, I move that we
14 approved the proposed amendments as presented.

15 CHAIRMAN MILES: Thank you. Is there a
16 second?

17 MS. SHROPSHIRE: Second from Robin.

18 CHAIRMAN MILES: Thank you, Robin. Is
19 there any further discussion on this matter.

20 (No response)

21 CHAIRMAN MILES: Before we vote on that
22 motion, is there any comment from the public on
23 this?

24 (No response)

25 CHAIRMAN MILES: Hearing none, all in

1 favor, please say aye.

2 (Response)

3 CHAIRMAN MILES: Opposed.

4 (No response)

5 CHAIRMAN MILES: Hearing none, motion
6 passes unanimously. Thank you very much.

7 That takes us to Item F, Final Action on
8 Contested Cases. Nothing in that category. I'll
9 open the meeting now to general public comment.

10 (No response)

11 CHAIRMAN MILES: Seeing none, that's it.
12 We will adjourn. When is our next meeting
13 scheduled for? I don't have my calendar in front
14 of me.

15 MS. HOULE: I believe it is in April
16 8th.

17 CHAIRMAN MILES: Thank you. Meeting
18 adjourned. We'll see every one on April 8th.

19 (The proceedings were concluded
20 at 10:39 a.m.)

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STATE OF MONTANA)
: SS.
COUNTY OF LEWIS & CLARK)

I, LAURIE CRUTCHER, RPR, Court Reporter,
Notary Public in and for the County of Lewis &
Clark, State of Montana, do hereby certify:

That the proceedings were taken before me at
the time and place herein named; that the
proceedings were reported by me in shorthand and
transcribed using computer-aided transcription,
and that the foregoing - 65 - pages contain a true
record of the proceedings to the best of my
ability.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my notarial seal
this _____ day of _____, 2016.

LAURIE CRUTCHER, RPR
Court Reporter - Notary Public
My commission expires
March 12, 2016.

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| <p style="text-align: center;">1</p> <p>1 29:8 10 [4] - 35:5, 35:17, 36:8, 39:19 10:39 65:20 10th 63:8 111 1:10 11th 52:23 12 66:22 12th [4] - 3:4, 3:11, 3:23, 52:20 1375 54:5 14th [2] - 56:14, 62:15 1520 1:11 16th [2] - 47:19, 52:19 17 [4] - 34:21, 52:13, 54:24, 57:14 17-375 [2] - 50:1, 50:12 17-376 52:21 17.30 [3] - 35:5, 36:23, 37:14 17.8.1210 26:6 17.8.334 [5] - 47:22, 48:9, 49:19, 49:24, 50:10 17.8.335 [2] - 49:24, 50:10 17.8.610 26:3 17.8.749 26:5 17.8.771 49:17 17.8.772 [3] - 49:3, 49:24, 50:10 18th 63:13 1960s [2] - 10:11, 35:2 1st 5:12</p> <hr/> <p style="text-align: center;">2</p> <p>2 [5] - 29:11, 47:8, 52:14, 54:25, 59:14 2(b) 7:8 2003 [4] - 8:10, 9:2,</p> | <p>27:17, 35:20 2005 27:17 2006 [2] - 9:2, 49:4 2007 52:15 2008 49:11 2009 [4] - 7:18, 8:19, 27:17, 52:15 2012 39:11 2013 52:16 2014 62:2 2015 [12] - 3:22, 3:22, 4:21, 8:25, 47:19, 48:15, 52:19, 52:20, 52:23, 62:15, 62:23, 63:9 2016 [10] - 1:6, 1:13, 3:4, 3:23, 13:1, 30:5, 31:7, 52:25, 66:17, 66:22 2017 5:17 21st [2] - 13:14, 62:20 22nd [2] - 48:15, 48:22 23 [2] - 52:3, 52:5 23rd 4:21 24 [2] - 6:10, 52:14 25 54:25 28th 62:23 29th [4] - 3:4, 3:11, 3:22, 63:12</p> <hr/> <p style="text-align: center;">3</p> <p>3 [3] - 6:23, 12:22, 51:18 3,500 11:2 30 [3] - 34:21, 57:14, 61:20 300 35:12 304(a) [2] - 44:7, 44:9 311 [3] - 50:19, 54:15, 56:21 31st 5:16 325 [9] - 10:8, 12:1, 12:10, 12:12, 12:21, 12:25, 13:9, 13:20, 15:8</p> | <p>335 47:23 38 57:14</p> <hr/> <p style="text-align: center;">4</p> <p>4 [2] - 55:16, 57:14 40 11:1 45 38:5 4th [4] - 3:2, 3:22, 52:25, 63:7</p> <hr/> <p style="text-align: center;">5</p> <p>5 [4] - 1:6, 1:13, 37:14, 39:16 50 42:7 500 [4] - 9:23, 9:25, 10:13, 10:13 521 [3] - 50:18, 54:15, 56:20 5th 2:6</p> <hr/> <p style="text-align: center;">6</p> <p>6 [6] - 34:21, 35:17, 35:21, 36:8, 39:17, 42:4 612 26:3 613 26:3 614 26:3 615 26:4 65 66:12 66 5:15 69 51:23</p> <hr/> <p style="text-align: center;">7</p> <p>7 [2] - 36:23, 39:18 75 59:14 75-2-211 25:8 75-2-213 [2] - 25:9, 26:1 75-2-218 25:9 75-2-301 60:13 75-5-222 13:2 75-5-301 [2] - 38:24, 39:5 75-5-306 [2] - 10:4, 10:10</p> | <hr/> <p style="text-align: center;">8</p> <p>8th [3] - 63:20, 65:16, 65:18</p> <hr/> <p style="text-align: center;">9</p> <p>9:00 1:14</p> <hr/> <p style="text-align: center;">A</p> <p>a.m [2] - 1:14, 65:20 ability 66:14 able [3] - 30:21, 34:24, 40:2 accept [2] - 3:20, 45:25 accord 18:22 accordingly 24:14 acknowledged 63:21 across [2] - 13:7, 40:15 act [12] - 5:6, 25:8, 25:12, 26:25, 27:14, 42:17, 48:17, 52:13, 52:15, 52:19, 53:7, 54:24 action [6] - 11:19, 23:23, 48:21, 59:1, 59:1, 65:7 actions [6] - 9:6, 9:7, 9:12, 30:12, 30:14, 57:17 actual 53:6 add 11:15 added [2] - 54:5, 62:10 addition [2] - 9:24, 59:18 additional [2] - 8:14, 10:19 Additionally 63:18 additions 29:20 address [6] - 9:22, 30:9, 31:2, 41:10, 41:25, 43:3</p> | <p>addressed 27:16 addressing 48:10 adequate 12:15 adjourn 65:12 adjourned 65:18 Administrative [2] - 34:20, 49:25 adopt [16] - 3:21, 8:13, 39:6, 42:17, 42:23, 44:10, 47:13, 49:8, 49:23, 50:9, 50:18, 53:15, 54:13, 54:23, 56:24, 61:3 adopted [10] - 4:13, 8:15, 35:20, 39:4, 44:7, 44:9, 49:4, 61:11, 61:23, 64:1 adopting [2] - 44:11, 62:19 adoption [6] - 9:2, 51:19, 52:12, 54:13, 59:6, 60:13 adsorption [2] - 8:16, 35:19 adversarial [2] - 21:10, 21:11 adversely 25:15 advised 26:24 advisor 56:5 Advisory [2] - 26:25, 40:10 affect [3] - 11:19, 33:23, 36:16 affected [3] - 25:16, 47:15, 56:16 affidavit 25:21 affixed 66:16 afternoon [4] - 18:16, 18:19, 43:16, 43:18 ag 14:5</p> | <p>agencies 40:21 agency [3] - 12:3, 31:14, 48:11 agenda [9] - 12:23, 15:22, 29:13, 29:14, 29:24, 30:3, 58:10, 58:13, 58:20 Agricultural 42:16 agriculture [4] - 8:15, 33:25, 34:16, 41:4 ahead [3] - 12:18, 12:23, 45:19 alerts 59:24 allocations [2] - 49:4, 49:13 allow 40:1 allowance [2] - 49:3, 49:13 allowed 49:7 allowing 48:12 allows 37:9 already [6] - 39:13, 40:22, 41:9, 41:22, 44:22, 53:4 alteration 25:11 although [2] - 14:6, 22:25 aluminum [5] - 5:18, 47:23, 48:1, 48:3, 48:5 AM4 17:15 amend [3] - 25:5, 26:3, 54:11 amendment [8] - 17:15, 27:11, 28:2, 28:5, 28:14, 51:2, 59:11, 60:14 amendments [13] - 26:7, 26:23, 27:4, 27:9, 60:20, 60:23, 61:4, 62:16, 63:10,</p> |
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