

**BOARD OF ENVIRONMENTAL REVIEW
MINUTES**

December 7, 2018

Call to Order

The Board of Environmental Review's meeting was called to order by Chairperson Deveny at 9:00 a.m., on Friday, December 7, 2018, in Room 111 of the Metcalf Building, 1520 East 6th Avenue, Helena, Montana.

Attendance

Board Members Present in person: Chairperson Christine Deveny, John DeArment,

Board Members Present by Phone: Chris Tweeten, Dexter Busby, Tim Warner

Board Members Absent: John Felton, Hillary Hanson

Board Attorney Present: Sarah Clerget, Attorney General's Office (AGO)

Board Liaison Present: George Mathieus

Board Secretary Present: Lindsay Ford

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Sandy Scherer, Ed Hayes, Mark Lucas, Kirsten Bowers, Aaron Pettis, Sarah Christopherson, Kurt Moser, Nick Whitaker, Norm Mullen – LEGAL; Dan Freeland, Mindy McCarthy, Eric Sivers, Jason Garber, Jon Dilliard, Rachel Clark, Myla Kelly, Tim Davis, Eric Regensburger, Eric Urban, Jon Kenning, Mike Suplee, Darryl Barton, Joanna McLaughlin, Haley Sir, Derek Fleming, Emilie Erich Hoffman – WQD; Chad Anderson, Susan Bawden – ENF; Amy Steinmetz – WMRD; Julie Merkel, Rebecca Harbage, Liz Ulrich, Ed Warner, Shawn Juers, Carl Anderson, Ed Coleman, Dave Klemp, Chris Cronin, Chris Dorrington – AEMD

Interested & Other Persons Present: Wade Steer – Western Energy Co.; John Martin, Vicki Marquis – Holland and Hart; Greg Brice – Hydrometrics; Steve Story – DNRC Board of Water Well Contractors; John Tietz, Brian Thompson – BKBH; Landy Leep – Copper Ridge Development; Shiloh Hernandez – Western Environmental Law Center; Anne Hedges – MEIC;

Roll was called: two Board members were present in person and three Board members were present via teleconference, providing a quorum.

I.A. Administrative Items – Review and Approve Minutes

I.A.1. October 5, 2018 Meeting Minutes

Mr. DeArment MOVED to approve the meeting minutes. Chairperson Deveny SECONDED. The motion PASSED unanimously.

I.B.1. Establish the 2019 Meeting Schedule

Mr. DeArment MOVED to approve the 2019 meeting schedule. Chairperson Deveny SECONDED. The motion PASSED unanimously.

II.A.1. Briefing Items – Enforcement Cases assigned to the Hearing Examiner

II.A.1.a. In the matter of the Notice of Appeal and Request for Hearing by CMG Construction, Inc. Regarding Notice of Violations and Administrative Compliance and Penalty Order, Docket No. OC-17-12, BER 2017-08 OC.

Ms. Clerget said the parties are working out the technical details of the case and CMG will file a notice of dismissal once the parties have reached an agreement.

II.A.1.b. In the Matter of Appeal Revocation of Cosa, Fischer Land Development Subdivision [ES# 42-78-S3-173] and Fischer Homes [ES# 42-80-T1-15], Roger Emery, Sidney, Richland County, Montana. [FID# 2214], BER 2018-03 SUB.

Ms. Clerget stated the stay is still in place as the parties work on their settlement terms.

II.A.1.c. In the matter of violations of the Opencut Mining Act by Wagoner Family Partnership, d/b/a Wagoner’s Sand and Gravel, at River Gravel Pit, Flathead County, Montana (Opencut No. 1798; FID 2512), BER 2017-02 OC.

Ms. Clerget said a stipulation for dismissal will be filed soon.

II.A.1.d. In the Matter of Violation of the Metal Mine Reclamation Act by Little Bear Construction, Inc. at Bob Weaver Pit, Granite County, Montana. (SMED NO. 46-117C; FID # 2567), BER 2018-02 MM.

Ms. Clerget stated there’s a scheduling order in place and the parties are proceeding accordingly.

II.A.2. Briefing Items – Non-Enforcement Cases Assigned to a Hearing Examiner

II.A.2.b. An appeal in the matter of amendment application AM3, Signal Peak Energy LLC’s Bull Mountain Coal Mine #1 Permit No. C1993017, BER 2016-07 SM.

Ms. Clerget said she extended all pretrial motions pending an issue that’s before the District Court.

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

Ms. Clerget stated she has the proposed findings of facts and conclusions of law from the parties and will have a decision to the Board soon.

- II.A.2.d. **In the matter of the notice of appeal and request for hearing by Montanore Minerals Corporation Regarding Issuance of MPDES Permit No. MT0030279, Libby, Montana, BER 2017-03 WQ.**

Ms. Clerget held a trial earlier in the week and the parties are working their proposed findings of facts and conclusions of law.

- 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.**

Ms. Clerget stated there is a six month stay in place until February 25, 2019.

- II.A.2.f. **In the Matter of Notice of Appeal of Opencut Mining Permit #2351 Issued to Golden West Properties, LLC by Frank and Paulette Wagner Regarding Concerns and Unanswered Questions. BER 2018-04 OC, and In the Matter of Notice of Appeal of Opencut Mining Permit #2351 Issued to Golden West Properties, LLC by David Weyer on behalf of the Residents of Walden Meadows Subdivision. BER 2018-05 OC.**

Ms. Clerget has issued a scheduling order and the parties are proceeding accordingly.

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

- 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.**

Ms. Bowers stated Western Energy filed an unopposed motion for an extension of the due date to file the reply brief. The motion was granted and briefs are due January 2019. The matter is still before the Montana Supreme Court.

III.A. Action Items – APPEAL, AMEND, OR ADOPT FINAL RULES:

- III.A.1. **The Department will propose that the Board initiate rulemaking to add six human health ground water criteria into department Circular DEQ-7: diallate; dioxane, 1,4-; iron; manganese; perfluorooctane sulfonate (PFOS); and perfluorooctanoic acid (PFOA.)**

Dr. Suplee briefed the Board and answered questions.

Chairperson Deveny opened the floor for public comment.

Mr. Brice asked the Board to delay any decision on initiating the rulemaking and stated his concerns.

Dr. Suplee, Mr. Mathieus, Tim Davis, Eric Urban answered questions.

Mr. Busby MOVED to continue with rulemaking for four of the criteria: diallate, dioxane 1, 4, and perfluorooctane and have a separate rulemaking for the other two: manganese and iron. Mr. Tweeten SECONDED for purpose of discussion. The motion FAILED to pass on a 1-4 vote.

Mr. DeArment MOVED to initiate rulemaking as requested by the Department and to assign the Board attorney as the Hearings Examiner for purposes of conducting a rulemaking hearing. Chairperson Deveny SECONDED. The motions PASSED on a 4-1 vote.

III.A.2. **The Department will propose that the Board initiate rulemaking to establish an air quality registration program for portable sources of emissions by amending and adopting the following air quality rules in ARM Title 17, Chapter 8:**

- a. **Amend ARM 17.8.744 to provide a general exclusion from the requirement to obtain a Montana air quality permit for facilities that register with the department in accordance with the proposed new rules.**
- b. **Adopt New Rules I-IX to establish a registration process, applicability criteria, and rules of operation for certain portable sources of emissions.**

Ms. Harbage briefed the Board and answered questions.

Chairperson Deveny opened the floor for public comment.

Mr. Thompson thanked the Air Quality Bureau for the hard work and outreach to stakeholders urged the Board to approve the rulemaking.

Mr. DeArment MOVED to initiate rulemaking as requested by the Department and to assign the Board attorney as the Hearings Examiner for purposes of conducting a rulemaking hearing and to change the date Ms. Harbage requested in the notice. Chairperson Deveny SECONDED. The motion PASSED unanimously.

III.A.3. **The Department will propose that the Board initiate rulemaking for proposed amendments to Administrative Rules of Montana (ARM) 17.30.1001, 17.30.1334, 17.38.101 and Department Circulars DEQ-1, DEQ-2, and DEQ-3. The amendments include adding or updating a citation to New Rule I. The 2017 Legislature required the Department to initiate rulemaking to implement HB 368 - establishing the minimum setback distance between a well and a lagoon. New Rule I implements HB 368 and establishes the minimum setback through Department rulemaking. New Rule I will be initiated concurrently with the Board rulemaking.**

Mr. Regensburger briefed the Board and answered questions.

Chairperson Deveny opened the floor for public comment. None were offered.

Mr. Tweeten MOVED to initiate rulemaking as requested by the Department and to assign the Board attorney as the Hearings Examiner for purposes of conducting a rulemaking hearing. The motion PASSED unanimously.

- III.A.4. **The Department will propose that the Board adopt amendments to Administrative Rules of Montana (ARM) 17.30.103, 17.30.106, 17.30.108 and 17.30.109 regarding 401 Certification.**

Mr. Garber briefed the Board and answered questions.

Chairperson Deveny opened the floor for public comment. None were offered.

Chairperson Deveny MOVED to adopt the amendments to the Administrative Rules of Montana pertaining to the 401 certifications. Mr. DeArment SECONDED. The motion PASSED unanimously.

III.B. Action on Contested Cases

- III.B.1. **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 and 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.**

The Board heard oral arguments from parties on Copper Ridge's Motion to Strike. Chairperson Deveny MOVED to deny the motion to strike. Mr. Tweeten SECONDED, the motion PASSED unanimously. The Board began oral arguments on the issue of owner/operator, then broke for lunch. Upon returning from the lunch break there was not a quorum to continue to hear the case so oral arguments were postponed.

IV. Board Counsel Update

Ms. Clerget had no updates.

V. General Public Comment

None were offered.

VI. Adjournment

Chairperson Deveny MOVED to adjourn. Mr. DeArment SECONDED. Chairperson Deveny adjourned the meeting at 1:10 p.m.

Board of Environmental Review December 7, 2018, minutes approved:



CHRISTINE DEVENY
CHAIRPERSON
BOARD OF ENVIRONMENTAL REVIEW

2/8/19
DATE