

**BOARD OF ENVIRONMENTAL REVIEW
MINUTES**

April 12, 2019

Call to Order

The Board of Environmental Review's meeting was called to order by Chairperson Deveny at 10:30 a.m., on Friday, April 12, 2019 in Room 111 of the Metcalf Building, 1520 East 6th Avenue, Helena, Montana.

Attendance

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

Board Members Present by Phone: David Lehnherr

Board Members Absent: Hillary Hanson, Dexter Busby, Chris Tweeten

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: Ed Hayes, Kirsten Bowers, Kurt Moser, Sandy Scherer, Sarah Christofferson, Nick Whitaker, Rainie Devaney, Chris Yde, Martin VanOort, Ed Coleman, Norm Mullen, Liz Ulrich, Damon Songer, Eric Urban, Haley Sir, Johanna McLaughlin, Jon Kenning, Eric Sivers, Ed Warner, Shawn Juers, Julie Merkel, Rebecca Harbage

Interested & Other Persons Present: Alan Olson – Montana Petroleum Association; David Smith – Montana Contractors Association

Interested & Other Persons Present by Phone: Andrew Emrich – Holland and Hart; Kari Boiter – Northern Plains Resource Council

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

I.A. Administrative Items – Review and Approve Minutes

I.A.1. December 7, 2018 Meeting Minutes

Mr. DeArment moved to approve the meeting minutes. Chairperson Deveny seconded the motion, which 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 she issued an amended scheduling order and the parties are proceeding accordingly.

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 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.

Ms. Clerget stated she has set an additional factual hearing on the owner/operator issue for June 2019.

II.A.1.c. 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 this case has been dismissed.

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 this case has been dismissed.

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

II.A.2.a. In the matter of the Notice of Appeal and Request for Hearing by CHS, Inc. regarding issuance of MPDES Permit No. MT0000264, BER 2019-01 WQ.

Ms. Clerget said she issued a scheduling order and the parties are proceeding accordingly. CHS has filed a petition to stay portions of the permit in that case and an expedited schedule has been put in place. Oral arguments are set for April 23, 2019.

II.A.2.b. In the matter of Westmoreland Resources, Inc.'s, appeal of final MPDES permit No. MT0021229 issued by DEQ for the Absaloka Mine in Hardin, Big Horn County, MT, BER 2015-06 WQ.

Ms. Clerget said this case is stayed pending a decision from the Supreme Court in MEIC and Sierra Club v. DEQ/Western Energy.

II.A.2.c. 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 stated summary judgement motions and briefings are complete and she will be presenting proposed findings of fact and conclusions of law soon.

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

Ms. Clerget said a four-day hearing was held last year and the parties submitted their proposed finding of fact and conclusions of law. She has issued a decision in the case and will be before the Board and the May 31, 2019 meeting.

II.A.2.e. 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, BER2017-03 WQ.

Ms. Clerget stated the proposed findings of fact and conclusions of law have been submitted and is ready for her decision.

II.A.2.f. 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 scheduling order in place and the parties are proceeding accordingly.

II.A.2.g. 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, Montana, BER 2014-06 WQ.

Mr. Moser stated the parties have engaged in discussions. No comments were received regarding the notice to terminate the permit. The termination becomes effective April 17, 2019 at which point it will be the parties' intent to file a motion to dismiss.

II.A.h. 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 said there is a scheduling order in place that was slightly modified, and the parties are proceeding accordingly.

- 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 the case has been fully briefed before the Montana Supreme Court. Parties held oral arguments on March 13, 2019 and are awaiting the Court's order.

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

- III.A.1. **In the matter of final adoption of the proposed amendment to ARM 17.8.744 and adoption of New Rules I-IX to establish an air quality registration program for certain portable sources of emissions, as noticed in MAR Notice No. 17-402.**

Ms. Harbage briefed the Board.

Chairperson Deveny moved to adopt the New Rule I through IX as set forth in the draft notice amendment and adoption and adopt the stringency and takings analysis as included. Mr. DeArment seconded the motion which passed unanimously.

III.B. New Contested Cases

- III.B.1. **In the Matter of the Notice of Appeal and Request for Hearing by Spring Creek Coal, LLC regarding issuance of MPDES Permit No. MT0024619, BER 2019-02 WQ.**

Ms. Clerget gave the Board members their options, including assigning it to the Hearings Examiner and answered questions.

Mr. DeArment moved to assign the matter to the Hearings Examiner for the totality of the case. Chairperson Deveny seconded the motion, which passed unanimously.

IV. Board Counsel Update

Ms. Clerget briefed the Board on a coal form that needs to be filled out by the Board members annually. It will be sent to them before the next meeting at which point they will need to fill it out and send it back.

V. General Public Comment

None were offered.

VI. Adjournment

Ms. Hornbein moved to adjourn the meeting. Chairperson Deveny seconded the motion, which passed unanimously. Chairperson Deveny adjourned the meeting at 11:00 am.

Board of Environmental Review April 12, 2019 minutes approved:

Christine Deveny

CHRISTINE DEVENY
CHAIRPERSON
BOARD OF ENVIRONMENTAL REVIEW

2/17/19

DATE