WHEREUPON, the following proceedings were had and testimony taken, to-wit:

* * * * *

CHAIR DEVENY: Welcome, everybody. I'm going to go ahead and get started. I'm Chris Deveny, Chair of the Board of Environmental Review. I call this meeting to order. Lindsay, will you please take the roll call.

MS. FORD: Chris Deveny.

CHAIR DEVENY: Present.

MS. FORD: Dexter Busby.

(No response)

MS. FORD: Hillary Hanson.

(No response)

MS. FORD: John Dearment.

MR. DEARMENT: Here.

MS. FORD: Chris Tweeten.

(No response)

MS. FORD: Melissa Hornbein.

MS. HORNBEIN: Here.

MS. FORD: David Lehnherr.

MR. LEHNHERR: Here.

MS. FORD: We have four Board members present. We do have a quorum.

CHAIR DEVENY: Thank you, Lindsay. I'd
like to welcome new Board members Melissa and David. It is great to have you on board, and especially we need you today for the quorum, so this is great.

We'll go ahead and see who all is here in the room, and if anybody else is on the phone. So if we could do introductions around the room, please.

MR. HAYES: Ed Hayes, Acting Chief Legal Counsel for DEQ.

MS. BOWERS: Kirsten Bowers, DEQ attorney.

MR. MOSER: Kurt Moser, DEQ attorney.

MS. SCHERER: Sandy Scherer, DEQ.

MS. CHRISTOFFERSON: Sarah Christofferson, DEQ attorney.

MR. WHITTAKER: Nick Whittaker, DEQ attorney.

MS. DEVANEY: Rainie Devaney, DEQ.

MR. YDE: Chris Yde, DEQ.

MR. VAN OORT: Martin Van Oort, DEQ.

MR. COLEMAN: I'm Ed Coleman, DEQ.

MR. MULLAN: Norm Mullan, DEQ attorney.

MR. OLSON: Alan Olson, Montana Petroleum Association.
MS. ULRICH: Liz Ulrich, DEQ.
MR. SMITH: David Smith, Montana Contractors Association.
MR. SONGER: Damon Songer, DEQ.
MS. SIR: Haley Sir, DEQ.
MS. McLAUGHLIN: Joanna McLaughlin, DEQ.
MR. KENNING: Jon Kenning, DEQ Water Quality.
MR. SIVERS: Eric Sivers, DEQ.
MR. JUERS: Shawn Juers, DEQ Air Quality.
MS. MERKEL: Julie Merkel, DEQ Air Quality Bureau.
MS. HARBAGE: Rebecca Harbage, DEQ Air Quality.
MS. CLERGET: Sarah Clerget, Board attorney.
MR. MATHIEUS: George Mathieus, Department/Board Liaison.
CHAIR DEVENY: Thank you. Is anybody besides David on the phone today? Any members of
the public?

(Inaudible)

MR. EMRICH: Andrew Emrich with the law firm of Holland and Hart.

CHAIR DEVENY: Just a second. Would the first person say her name again. Our Court Reporter didn't quite get it.


CHAIR DEVENY: And the second person.

MR. EMRICH: My name is Andrew Emrich, E-M-R-I-C-H, with the law firm of Holland and Hart.

CHAIR DEVENY: Any other members of the public?

(No response)

CHAIR DEVENY: Welcome. And I'd like to remind everybody that's on the phone to please mute your phones, and when you speak to identify yourself so we know who is talking and our Court Reporter can get it in the record.

So let's move on to the review of the minutes from the last Board meeting. Are there any additions or corrections to the minutes by any
of the members? John?

MR. DEARMENT: No.

CHAIR DEVENY: Hearing none, would somebody like to move.

MR. DEARMENT: So moved.

CHAIR DEVENY: So moved that the minutes be adopted. I'll second it. All in favor, please signify by saying aye.

(Response)

CHAIR DEVENY: Any opposed?

(No response)

CHAIR DEVENY: None. David, did you vote?

MR. LEHNHERR: (No response)

MS. CLERGET: His phone is muted.

CHAIR DEVENY: David, could we get a vote from you.

MR. LEHNHERR: Yes. Aye.

CHAIR DEVENY: Thank you. The minutes are passed. And the next order of business will be an update on our contested cases that are before the Board.

MS. CLERGET: This is going through the agenda, Page 1, starting with enforcement cases that are assigned to the Hearing Examiner.
The first is CMG. This matter was stayed for a long time, and I just issued an amended scheduling order on April 4th, and the parties are proceeding according to that.

Reflections at Copper Ridge is Item (b), and you'll remember that at your previous meeting you sent that back for further decision consistent with your conclusions of law, and I have determined in my discretion that the facts on the record were insufficient with respect to the owner/operator issue, and I have set an additional factual hearing on that issue for June of 2019. I believe it is June 6th or somewhere around in there.

And Fischer Land has dismissed. They filed a stipulated dismissal, so that is closed.

Little Bear Construction. The parties also filed a stipulation for dismissal, so that is also closed.

Going to the non-enforcement cases, CHS, which is Item (a), I issued a scheduling order, and the parties are proceeding. There was one additional wrinkle. CHS has filed a petition to stay portions of the permit in that case, and we have an expedited schedule put in place to deal
with that petition, and I've set oral argument for
that on April 23rd.

That may or may not need to come in --
that particular issue may need to come in front of
the Board for decision depending on what happens
during that oral argument and my decision, so I'm
just flagging this for you as something that may
come in front of you. And I'll keep you posted on
that.

If it does need to come in front of you,
there's some potential that we might need to have
a special meeting, or we might be able to do it at
the May 31st meeting. So just a heads up that
there are some developments in that case that are
not on the agenda.

Going to 2(b). This is the Absaloka
Mine. This case is stayed pending a decision from
the Supreme Court in MEIC and Sierra Club v.
DEQ/Western Energy, so nothing has changed in that
case.

Signal Peak, which is Item (c), summary
judgment motions are completed, briefing is
completed, and it's in front of me for decision.
So I will be presenting proposed findings of fact
and conclusions of law for you on that case as
soon as possible.

Western Energy, which is Item (d), this was a four day hearing that happened last year, and the parties submitted their proposed findings of fact and conclusions of law. I've issued a decision in this case, and it will be in front of you. They have an exceptions briefing schedule right now on my decision. It will be in front of you at the May 31st meeting.

And just a heads up to everybody. That decision is 92 pages long, and there are three parties in that case, and I'm almost certain there will be exceptions, which will be additional briefing.

So what we're going to do is issue -- I'm going to give you the decision, my proposed findings of fact and conclusions of law early, probably within the next couple of weeks, and so you have that. And then we're going to give you the exception briefing as they come in, so you have them.

Since this case is voluminous, rather than saving it, as we usually do, and putting it in the packet at the end, you'll still get the packet at the end that has the memo with it, and
has it all together. But I wanted to give you additional time.

So I've notified the parties that this serial production to you is going to happen, and hopefully that way you will not be overwhelmed with a lot of paper at the end the week before the meeting. So just a heads up for your in-boxes that that's going to be coming for your review, and spend some time with.

And then a big heads up that we're going to have all three of those parties are going to be there to oral argue at the meeting on the 31st. So that's going to be a long one, and we'll have lunch.

Item (e) is Montanore Minerals. This case was a two day hearing that occurred before me. The proposed findings of fact and conclusions of law have been submitted, and it is ready for a decision from me.

This, in addition to the Signal Peak, are both ready for decisions. We're having oral argument on -- excuse me -- closing statements/oral argument on the Montanore Minerals in June, I believe. I just reset that. I apologize. I can't remember the date. Oral
argument, May 7th that's set for.

So once that oral argument occurs, it will be fully submitted to me for a decision, and I hope to have that to you by the meeting after next, but it might be two meetings after that, depending on what is in front of me. So one or two more meetings, and you will have that one, and then the Signal Peak as well will be coming, so you're waiting for both of those from me for decision.

The Laurel Refinery case. There is a scheduling order in place, and the parties are proceeding.

Columbia Falls, which is the CFAC case, as you guys will remember, that one came before you for argument and the parties settled it. Kurt is I know here from the Department for an update, but I don't believe that Columbia Falls is here unless I hear otherwise.

(No response)

MS. CLERGET: So I gave them -- This was noted on the agenda that this was happening. We talked about it at the last meeting that this was happening. So even though they are not here, if you're comfortable, Kurt, I would ask you to
update on the status of that, please.

MR. MOSER: Thank you. Madam Chair, members of the Board. I won't go into any specific details other than if you recall, we did discuss the potential of terminating the permit, and I think I did update at the last meeting a little bit on this, but I can provide a little bit more.

I think January 28th we did a notice of intent to terminate the MPDES permit. The comment period closed February 27th. No comments were received from the company, from EPA, or from anybody.

On March 18th we essentially issued the termination, but we post, essentially dated it ahead in the future, so the termination becomes effective April 17th, next Wednesday. So then I think at that point, it would be our intent to file a motion to dismiss for mootness.

CHAIR DEVENY: Thank you.

MS. CLERGET: So we will keep that one on the agenda until next time to hopefully give you a final update at that point.

Item (h). This is Golden West Properties. There is a scheduling order in place
that was slightly modified, but the parties are proceeding according to that schedule. Finally, there is 3(a), which is an update for DEQ.

MS. BOWERS: Good morning, Madam Chair, members of the Board. I don't really have anything in addition to the written materials in your briefing on Page 3. The Western Energy case has been fully briefed before the Montana Supreme Court, and we had oral argument March 13th, and we're just awaiting the Court's order.

CHAIR DEVENY: Thank you, Ms. Bowers.

MS. CLERGET: That completes the update. We have a new contested case that we can deal with.

CHAIR DEVENY: We'll do that later. Okay. Let's move on to the air quality rules next. George, are you going to defer to Rebecca?

MR. MATHIEUS: Yes, Madam Chair.

Rebecca Harbage is going to speak on that matter. Thank you.

MS. HARBAGE: Madam Chair, Board members, for the record, my name is Rebecca Harbage. That's H-A-R-B-A-G-E. I'm an environmental planner in the Department's Air
Quality Bureau.

I'm here this morning to request that the Board take action to adopt the proposed rule amendments and new rules to establish an air quality registration program for certain sources of emissions, which include crushers and screens, asphalt plants, and concrete batch plants.

We often refer to these types of sources as portable because they have the ability to and frequently do move around the state, so I might say portable sources, and that's what I'm referring to.

For some of you, this is the third time you'll hear from me on this topic, but for the benefit of the new members, I do want to quickly provide a little bit of context for the vote today, starting with a little of background.

In 2006, the Board adopted a similar air quality registration program for oil and gas well facilities. This registration system provided an alternative to case-by-case permitting, and really allowed the Department to effectively deal with hundreds of nearly identical new oil and gas well facilities in a way that was administratively efficient, but also did not compromise air quality
Montana's oil and gas registration program was one of the first in the country, and it was approved by the Environmental Protection Agency as part of Montana's State Implementation Plan.

In the years since 2006, many other registration type programs have been developed in other states for a variety of different source categories, including the portable sources we're talking about today. EPA has also recognized the opportunity to streamline the regulation of these types of sources on tribal lands through the implementation of EPA's general permits, the last of which were adopted in 2016.

Essentially a registration program takes the operating requirements that are currently included in permit conditions, and adopts them into rules that would apply generally across all eligible sources.

In this way, moving from a permitting program to a registration program doesn't really change the requirements themselves, but the way those requirements are applied, that is, by rule instead of by permit. This type of approach is
appropriate for source categories in which there
are a large number of similar sources subject to
identical requirements, and for which there is no
substantial benefit to individual permitting for
each source. That was the case for oil and gas
well facilities back in 2006, and that's also the
case for the portable sources we're talking about
today.

So why are we approaching portable
sources now for a registration program? Really
given the limited resources and the continued
demand on our time here in the Air Quality Bureau,
we're at a point where it's essential for us to
streamline the way we do our work, so we can
strategically shift resources to achieve the most
air quality benefit.

The Bureau has recognized that we've
been permitting portable sources the same way for
decades. These are considered very minor sources
of emissions, relatively speaking. And so we
identified this as an area where we could improve
our process, and provide for equivalent or better
protection of air quality in a more efficient
manner.

The Air Quality Bureau has been working
very closely with our stakeholders to develop an appropriate, effective new registration program. We really started discussing this concept in earnest with our Clean Air Act Advisory committee back in 2017. Over the past year and a half, we've expanded that conversation to include stakeholders of the Department's Opencut Section, as well as the Montana Contractors Association, non-governmental organizations, county air programs, as well as the EPA.

We also, out of that effort, formed a technical work group made up of representatives from industry who could really help us work out the details of how a registration program might actually work for portable sources.

So that's a little bit of background on this project. The Board initiated rulemaking on the proposed rule amendments and new rules at the December 7th meeting. Following initiation, we had a public comment period on the proposal from December 21st through January 25th, and a public hearing was held on January 23rd.

Two comments were received during the comment period, and they're summarized in your packet in the draft notice of amendment and
adoption. The first comment was supportive of the proposed new program and the process to develop that new program.

The second comment concerned a specific particulate matter limit for asphalt plants in New Rule IX. The Department had analyzed this topic during the process of developing this new program, and determined that the limit in question is reflective of both the current new source performance standard for certain asphalt plants, as well as the present day standard achievable through best available control technology, or BACT essentially.

So the Department has not issued an asphalt plant permit with a limit other than the one in question in the comment for more than fifteen years, so we're confident that that limit in the rules is the current day best achievable control technology limit.

Therefore, the Department supports the Board adopting the new rules as proposed with no changes in response to the comment. I am available, though, if you do have questions, as are several members of our project team, so if you have any specific questions on that topic.
As far as next steps, should the Board decide to adopt the rules today, we will very quickly transition into an implementation phase of the project. We're prepared to begin education and outreach. We recognize that this is a new program for these types of sources, and so we're prepared to be working closely with our stakeholders over the next several months.

This will also include close work with stakeholders to develop a fee structure to support this new program. You may remember that the Air Quality Bureau was before you several times over the last year to talk about fees, and at that time did not request a change to the portable source fee structure, and that's because this program was still under development.

Should you adopt this program today, that will kick off a collaborative process between the Department and sources, the industry, to build a new fee structure to support registration for portable sources, and that's mainly because our existing fees are based on permits, and the point is permits will be replaced by registration, so we'll need to find some answer for collecting those moving forward.
Finally, if you do adopt the rules today, we'll begin the work of submitting the new registration program into the Montana State Implementation Plan.

That's because our existing Minor Source Permitting Program is included in the State Implementation Plan or SIP, and therefore any replacement to that program would also need to be submitted with a demonstration that the replacement program provides for at least as stringent protection of air quality.

This ensures also that State regulation aligns with Federal regulation, and so our sources aren't having to look to two different type of regulation. They should be the same.

With that, Madam Chair, Board members, the Department recommends that the Board adopt the new amended rules as proposed in the draft notice of amendment and adoption. We also request that the Board include adoption of the stringency and takings analyses in any motion to adopt. I'm available for questions.

CHAIR DEVENY: Do any of the Board members have questions for Ms. Harbage?

(No response)
CHAIR DEVENY: David, any questions?

MR. LEHNHERR: No.

CHAIR DEVENY: Okay. At this point we'll have some public comment then on the proposal from the Department. Are there any members of the public that would wish to comment on the proposed air quality regulation amendments?

(No response)

CHAIR DEVENY: Anybody on the phone wish to comment?

(No response)

CHAIR DEVENY: Okay. Hearing none, I would then like to make a motion that the Board amend ARM 17.8.744, and adopt the New Rules I through IX as set forth in the draft notice amendment and adoption, and adopt the stringency and takings analysis as included.

MR. DEARMENT: I'll second that.

CHAIR DEVENY: A motion has been made and seconded. Is there any discussion by Board members?

(No response)

CHAIR DEVENY: All those in favor of the motion, please signify by saying aye.

(Response)
CHAIR DEVENY: Motion carries. Thank you. Thank you very much. I'd like to commend the Air Quality folks for doing a good job crossing all the T's and dotting the I's. It seems like this went through quite well.

Okay. So our next order of business is a new contested case. Sarah.

MS. CLERGET: For those new members, this will be a reminder of what we just talked about, and the old members the same always.

You have three options with respect to this new contested case. You can keep it for all purposes in front of you, procedural and substantive. You can assign it to a Hearing Examiner, me or anybody else for substantive rulings on motions, for example, summary judgment, but keep the hearing. You can keep it for summary judgment decision for yourself, and/or trial for yourself. So it is up to you how you want to assign it.

CHAIR DEVENY: Discussion from the Board? Any thoughts on this? John.

MR. DEARMENT: We tend to assign them to Sarah. I know we have other options. I don't know if we want to pursue another option with this
one or not.

CHAIR DEVENY: I'm thinking not at this time. We've got a lot on our plate, so let's add more to Sarah's plate.

MS. CLERGET: That needs a motion.

CHAIR DEVENY: Would you like to make a motion?

MR. DEARMENT: Yes. I'd be happy to, Madam Chair. I'll move that we assign it to Sarah as she suggested we might.

MS. CLERGET: For all substantive and procedural purposes?

MR. DEARMENT: Yes.

CHAIR DEVENY: I'll second that motion.

Any discussion by Board members?

(No response)

CHAIR DEVENY: Hearing none, all those in favor of the motion to assign the new contested case to Sarah for the totality of the case, signify by saying aye.

(Response)

CHAIR DEVENY: None opposed. Motion carries unanimously. Thank you, Sarah. Any other updates?

MS. CLERGET: Yes, one update. We have
a form that you filled out when you, old Board members filled out when they did their orientation, and new Board members have not filled out yet, but is required federally for the coal. Essentially it is to make sure that you're not receiving any money through your assets or otherwise that might influence your decisions on coal.

And we're going to send that out to everybody, and you'll need to fill that out. We have to fill it out annually, which we haven't been doing, so we now know that we have to fill it annually, so just a heads up that that's coming.

And I want you to know that it does contain some pretty personal financial information. DEQ keeps those forms. They've as far as I know never been audited. They've never had to give them up. They keep them in a secure place. And so if you have any questions about those, feel free to call, but we do need to do those and get them done so that we're certain that nobody has any conflicts.

CHAIR DEVENY: Are you going to email those?

MS. CLERGET: Yes, Lindsay is going to
email them out. We didn't want to do it for this Board since not everybody's in person, but we'll email, and then just bring them -- because they take a little bit of time to fill out, so bring them to the next meeting. And that's all for the update.

CHAIR DEVENY: So we'll have some opportunity for general public comment at this time. Anybody from the public wish to bring anything before the Board? Not any contested cases, but any other issues?

(No response)

CHAIR DEVENY: Hearing none.

MS. BOITER: This is Kari Boiter from Northern Plains. I don't have a comment, but I had a question about Item 2(b). Sarah mentioned developments in that case that are not on the agenda. I was wondering if you could elaborate on that.

MS. CLERGET: 2(b) I have is the Absaloka Mines; is that what you're discussing?

MS. BOITER: I had that as the CHS.

MS. CLERGET: Oh, CHS. Yes, that was just an update for the Board. That's a contested case matter, so we can't really accept public
comment on it, but I'll just reiterate what I said to the Board already, which was that there was a petition filed in that case that I have set oral argument on for April 23rd, and that was the additional development that was not on the agenda.

MS. BOITER: Thank you.

CHAIR DEVENY: Any other public comment?

(No response)

CHAIR DEVENY: Hearing none, I just want to mention that our next Board meeting is May 31st. Normally it would be in June, but because of scheduling issues, we moved it to May 31st. So I just want everybody to be aware of that. And unless anybody has anything else to bring, I think we might be ready to adjourn, if somebody would make a motion.

MS. HORNBEIN: I'll move to adjourn.

CHAIR DEVENY: I'll second it.

Discussion?

(No response)

CHAIR DEVENY: Hearing none, all those in favor of adjourning, please signify by saying aye.

(Response)

CHAIR DEVENY: David? We need you to
vote.

MR. LEHNHERR: Sorry for the technical difficulties here. Voting aye.

CHAIR DEVENY: Okay. Thank you. The meeting is adjourned. Thanks, everybody.

(The proceedings were concluded at 11:00 a.m.)

* * * * *
CERTIFICATE

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 - 27 - 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 ________, 2019.

__________________________
LAURIE CRUTCHER, RPR
Court Reporter - Notary Public

My commission expires
March 9, 2020.
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