

MINUTES
Teleconference
February 5, 2016

Call to Order

The Board of Environmental Review's meeting was called to order by Chairperson Miles at 9:00 a.m., on Friday, February 5, 2016, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairperson Joan Miles, Dr. Robert Byron, Michele Reinhart- Levine

Board Members Present by Phone: Chris Tweeten, Roy Sayles O'Connor, Robin Shropshire, and Marietta Canty

Board Members Absent:

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

Board Liaison Present: George Mathieus

Board Secretary Present: Hillary Houle

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: J.J. Conner, Chris Cronin – IEMB; Rebecca Harbage, Loni Patterson, Debbie Linkenbach, Liz Ulrich, Hoby Rash, Annette Williams – AQB; Amy Steinmetz, Myla Kelly – WQS; Kari Smith, Eric Urban – PPA; Jon Dilliard – PWS; Norm Mullen, John North – Legal

Interested Persons Present: Brenda Lindlief-Hall – Tongue River Water Users' Association; Peggy Trenu – TSRA; Colin Lauderdale, Ella Smith – Northern Plains Council; Shiloh Hernandez, Anne Hedges - MEIC

Interested Persons Present by Phone: Dan Powers – Assistant Health Director, Butte-Silver Bow.

I. A. 1. 2. 3.

Review and Approve Minutes

Chairperson Miles noted that there should be a correction made to the December 29th and January 12th meeting minutes.

Chairperson Miles called for a motion to review and adopt all three of the meeting minutes before the Board with the corrections described by the Chairperson. Dr. Byron MOVED and Ms. Reinhart-Levine SECONDED. The motion CARRIED unanimously.

II.A.1.a.

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

In the matter of violations of the Public Water Supply Laws by Rene Requa at Highlander Bar and Grill, PWISD MT0004764, Lewis and Clark County (FID 2299, Docket No. PWS-14-08), BER 2014-09 PWS.

Mr. Reed reported the Scheduling Order had been vacated on December 23, 2015 and the parties will be submitting an updated Scheduling Order, until this point the matter is stayed.

II.A.1.b.

In the matter of violations of the Water Quality Act by Reflections at Copper Ridge, LLC at Reflections at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105376), BER 2015-01 WQ.

Mr. Reed reported that the Scheduling Order had been Vacated.

II.A.1.c.

In the matter of violations of the Water Quality Act by Copper Ridge Development Corporation at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105377), BER 2015-02 WQ.

Mr. Reed reported that the Scheduling Order had been Vacated.

II.A.1.d.

In the matter of violations of the Water Quality Act by Buscher Construction and Development, Inc., at Poly Vista Estates, Trailhead, and Falcon Ridge II Subdivisions, Billings, Yellowstone County, BER 2015-03 WQ.

Mr. Reed reported a Scheduling Order has been issued and the case is proceeding.

II.A.2.a.

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

In the matter of the notice of appeal and request for hearing by Yellowstone Energy Limited Partnership (YELP) regarding issuance of MPDES Permit No. MT0030180 for YELP's facility in Billings, MT, BER 2014-01 WQ.

Mr. Reed reported that the stay in the case was until February 1, 2016, but had not received anything from the parties as of yet. He expected to receive something in the near future from the parties.

- II.A.2.b. In the matter of Phillips 66 Company's appeal of Outfall 06 Arsenic Limits in Montana Pollution Discharge Elimination System Permit No. MT0000256, Billings, Yellowstone County, MT, BER 2014-05 WQ.
- Mr. Reed reported the matter had been stayed until December 31, 2017.
- II.A.2.c. In the matter of Columbia Falls Aluminum Company's (CFAC) appeal of DEQ's modification of Montana Pollutant Discharge Elimination System Permit No. MT0030066, Columbia Falls, Flathead County, MT, BER 2014-06 WQ.
- Mr. Reed reported that he is reviewing the Motion for Summary Judgment and Motion to Compel Production of Evidence submitted by the respective parties.
- II.A.2.d. In the matter of the revocation of Montana Air Quality Permit No. MAQP# 2554-05, issued to Eureka Pellet Mills (Inc.), Eureka, Lincoln County, MT, BER 2015-04a AQ; the revocation of Montana Air Quality Permit No. MAQP 3039-02, issued to Eureka Pellet Mills (Inc.), Superior, Mineral County, MT, BER 2015-04b AQ; and the revocation of Montana Air Quality Permit No. MAQP# 4057-00, issued to Montana Renewable Resources (LP), Eureka Lincoln County, MT, BER 2015-04c AQ.
- Mr. Reed reported that he anticipated the Board dismissing the remainder of these cases in the near future.
- II.A.2.e. In the matter of Heart K Land & Cattle Co.'s appeal of its final 401 Certification with conditions, BER 2015-05 WQ, application NO. MT4010948; MWQ-2013-00590-MTB-Addendum, issued by DEQ for the Yellowstone River, Park County, MT.
- Mr. Reed reported that the case is proceeding between the parties.
- II.A.2.f. In the Matter of Westmoreland Resources, Inc.'s BER 2015-06 WQ, appeal of final MPDES permit No. MT0021229 issued by DEQ for the Absaloka Mine in Hardin, Big Horn County, MT.
- Mr. Reed reported that he had issued a Scheduling Order and the parties Proposed Schedule had been submitted but he had not reviewed it yet.
- II.A.2.g. In the matter of the notice of appeal of final MPDES Permit No. MT0000264 Issued by DEQ for the Laurel Refinery in Laurel, Yellowstone County, Montana, BER 2015-07 WQ.
- Mr. Reed reported a Stipulated Scheduling Order had been submitted and he anticipated signing it in the near future.
- II.A.2.h. In the matter of termination by DEQ of the application by Payne Logging, Inc. Requesting to move boundaries of the Payne Logging facility in Libby, Lincoln County, Montana, BER 2015-08 JV.

Mr. Reed reported the Scheduling Order had been submitted but he had not received a Proposed Scheduling Order from the parties, but anticipates signing the Order once it is received.

II.A.3.a.

Briefing Items Contested Cases Not Assigned to a Hearing Examiner

In the matter of notice of appeal and request for hearing by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ.

John North reported the matter is proceeding on motions for Summary Judgment in Helena District Court.

II.B.1.

Other Briefing Items

Chairperson Miles requested to hear all three briefing items together and hear public comments at the end.

The Board heard from Eric Urban in regards to the EPA approving the Board's Water Quality Standards for EC and SAR that were adopted in Montana in 2003 and 2006.

II.B.2.

The Board heard from Eric Urban in regards to site specific water quality standards for electrical conductivity (EC) and sodium adsorption ratio (SAR) for Otter Creek.

II.B.3.

The Board heard from Eric Urban in regards to the status of SB 325 rulemaking.

Chairperson Miles opened the floor for public comment on all briefing items and none was offered.

III.A.1.

Action Items New Contested Cases

In the matter of Appeal of the Denial of the Silverado Heights Subdivision Lots 1 and 10 Rewrite, EQ #16-1383, Ravalli County, Montana, case number BER 2016-01 PWS.

Mr. Reed reported that he had issued the First Prehearing Order and the matter is open and ongoing.

Chairperson Miles asked the Board if they would like to hear the matter directly or assign Mr. Reed as permanent Hearing Examiner.

Mr. Sayles O'Connor MOVED to assign Mr. Reed as the permanent Hearing Examiner. Ms. Reinhart-Levine SECONDED the motion. The motion CARRIED unanimously.

III.A.2.

In the matter of Appeal of the Denial for the Wiediger Family Transfer EQ #16-1116, Ravalli County, Montana, case number BER 2016-02 PWS.

Mr. Reed reported he had issued a First Prehearing Order and had not received a Proposed Scheduling Order for the Parties.

Ms. Reinhart-Levine MOVED to assign Mr. Reed as the permanent Hearing

Examiner. Dr. Byron SECONDED the motion. The motion CARRIED unanimously.

III.A.3.

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

Mr. Reed reported he had issued the First Prehearing Order and had not received a Proposed Scheduling Order for the Parties.

The Parties requested that they update the board themselves. Mr. Hernandez requested the Board provide an extension to file the Proposed Scheduling Order and that the Board hear the case directly instead of assigning a permanent Hearing Examiner.

The Board discussed the requests. The Board granted the extension to file the Proposed Scheduling order and decided to not pose a motion to assign a permanent Hearing Examiner and continue as a contested case before the Board.

III.B.1.

Initiation of Rulemaking

Amend ARM 17.8.610, 17.8.612, 17.8.613, 17.8.614, 17.8.615, 17.8.749, and 17.8.1210 pertaining to open burning permits, issuance or denial of a permit, and general requirements of an air quality operating permit, in response to changes to the Clean Air Act of Montana (the Act). The proposed amendments address changes to the Act affecting the process to appeal a department decision on a permit application.

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

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

Chairperson Miles asked for a motion on the rulemaking. Mr. Sayles O'Connor MOVED to initiate rulemaking. Mr. Byron SECONDED the motion. The Motion CARRIED unanimously.

III.C.1.

Repeal, Amendment, or Adoption of Final Rules

The Department requests authorization to request comment on Montana's water quality standards as part of the 2016 triennial water quality standards review. A review of water quality standards every three years is required per Montana Code Annotated 75-5-301(3).

Amy Steinmetz briefed the board on the request to comment and responded to questions.

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

Ms. Reinhart-Levine MOVED to hold a public hearing and accept public comment on Montana's water quality standards as part of the required triennial review of those standards. Dr. Byron SECONDED the motion. The motion CARRIED unanimously.

III.C.2. In the matter of the repeal of ARM 17.8.334, 17.8.335, and 17.8.772 pertaining to Emission Standards for Existing Aluminum Plants and Mercury Allowance Allocations under Cap and Trade Budget, respectively. The Department is requesting that the Board repeal the rules as noticed in MAR 17-375.

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

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

Ms. Reinhart-Levine MOVED to adopt the proposed repeals. Ms. Shropshire SECONDED the motion. The motion CARRIED unanimously.

III.C.3. Generally revise the rules implementing the Opencut Mining Act (“the Act”), ARM Title 17, Chapter 25, Subchapter 2, in response to changes to the Act enacted in the 2007, 2009, and 2013 legislative sessions; to generally clarify and simplify the rules by reorganizing the provisions to avoid treatment of single concepts in multiple rules, eliminate redundant provisions, and improve syntax; and to make substantive changes to remove unnecessary requirements and add requirements that improve reclamation and regulatory process.

J.J. Conner briefed the Board on the rulemaking and responded to questions.

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

Ms. Reinhart-Levine MOVED to adopt the proposed rules. Dr. Byron SECONDED the motion. The motion CARRIED unanimously.

III.C.4. The Department requests that the Board repeal rules in ARM Title 17, chapters 4, 30, and 38, pertaining to water pollution rules, radiological criteria, state and EPA coordination, pretreatment, definitions, enforcement actions for administrative penalties, purpose, definitions, enforcement procedures and suspended penalties. The Department recommends the Board repeal the rules as proposed in the Notice of Hearing.

Kari Smith briefed the Board on the rulemaking and responded to questions.

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

Ms. Reinhart-Levine MOVED the Board repeal the rules. Dr. Byron SECONDED the motion. The motion CARRIED unanimously.

III.D.1. **Other Action**

Approval of amendments to the Butte-Silver Bow air quality control rules to address changes made to federal regulations on new residential wood heaters under the strengthened new source performance standards published by the Environmental Protection Agency on February 3, 2015.

Rebeca Harbage and Dan Powers briefed the Board on the amendments and responded to questions.

Dr. Byron MOVED to approve the proposed amendments as presented. Ms. Shropshire SECONDED the motion. The motion CARRIED unanimously.

III.E. **Final Action on Contested Cases**

IV. **General Public Comment**

None was offered.

V. **Adjournment**

Chairperson Miles adjourned the meeting at 10:39 a.m.

Board of Environmental Review February 5, 2016, minutes approved:

JOAN MILES
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE