

**MINUTES**  
**Teleconference**  
**April 21, 2016**

Call to Order

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The Board of Environmental Review's meeting was called to order by Chairperson Miles at 12:03 p.m., on Thursday April 21, 2016, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairperson Joan Miles, Dr. Robert Byron,

Board Members Present by Phone: Chris Tweeten (joined at 12:06 p.m.), Roy O'Connor, Robin Shropshire, Michele Reinhardt-Levine 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: Tammy Filiater, Andrea Vickory, Eugene Pizzini, John Dilliard – Public Water Bureau; Tommy Griffeth – Water Protection Bureau; Annette Williams, Liz Ulrich – Air Quality Bureau; Norm Mullen, Kurt Moser, Becky Convery, John North - Legal

Interested Persons Present: Frank Crowley – Doney, Crowley, Payne Bloomequis PC

**Review and Approve Minutes**

I.A.1. Mr. O'Connor noted that Sayles is not necessary to add as part of his full name to the record.

Chairperson Miles called for a motion to adopt the minutes as submitted noting that moving forward that Sayles would be dropped from Mr. O'Connor's name in the record. Dr. Byron MOVED and Mr. O'Connor SECONDED. The motion CARRIED unanimously. Mr. Tweeten was absent for this vote.

I.A.2. **Review, Modify, and Approve Remaining 2016 Meeting Schedule**

The Board members discussed their schedules and ability to attend the remaining Board meetings during 2016.

Chairperson Miles noted with no major conflicts and ability to meet quorum the rest of the year, that the schedule would stay the same.

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

II.A.1.a. 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 matter is subject to action within the Department of Environmental Quality.

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 he issued an Order staying the case.

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 he issued an Order staying the case.

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.

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

II.A.2.a. 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 has been stayed pending responses to the stipulation.

II.A.2.b.

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 pending his ruling on Motions for Partial Summary Judgment and to Compel Discovery, the Scheduling Order is stayed.

II.A.2.c.

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 a Scheduling Order was issued and the case is proceeding.

II.A.2.d.

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 the case has been stayed.

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.

Mr. Reed reported a Scheduling Order has been issued and initial disclosures have been filed.

II.A.2.f.

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 pending a ruling on a Motion to Dismiss, the case has been stayed.

II.A.2.g.

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 that a Stipulated Schedule was submitted, but an Order has not been issued.

**III.A.3.**

**Briefing Items Contested Cases Not Assigned to a Hearing Examiner**

II.A.3.a.

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.

Mr. Reed reported that this matter is currently before District Court.

**II.B.**

**Other Briefing Items**

II.B.1

Tammy Filiater briefed the board in regards to a future initiation of rulemaking on public water supply rule package that incorporates 2015 federal rules into the Montana rules. Included in this package will be adoption of the new federal revised total coliform rule. EPA has given Montana an extension to February 2017, to adopt.

Chairperson Miles opened the floor for public comment and none was offered.

**III.A.1.**

**Action Items New Contested Cases**

**None.**

**III.B.**

**Initiation of Rulemaking**

III.B.1

Amend ARM 17.8.818 Review of Major Stationary Sources and Major Modifications – Source Applicability and Exemptions, to remove the averaging period for the particulate matter with a diameter of less than 2.5 microns (PM-2.5) significant monitoring concentration (SMC).

Liz Ulrich 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. Ms. Reinhart-Levine MOVED to initiate rulemaking. Mr. Byron SECONDED the motion. The Motion CARRIED unanimously.

**III.C.**

**Repeal, Amendment, Or Adoption of Final Rules**

III.C.1.

Update Circular DEQ-2. The department has modified wastewater operator certification classes in the wastewater operator rules. These are defined in DEQ-2. Therefore, the DEQ-2 circular needs to be updated to remove the outdated information and to add reference to the new information.

Tammy Filiater 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. Byron MOVED to approve the rules as proposed. Mr. O'connor SECONDED the motion. The Motion CARRIED unanimously.

**III.D.**

**Other Action**

**III.E.**

**Final Action on Contested Cases**

III.E.1

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 noted that there are three cases and that 2015-04a and 2015-04c should be dismissed. Mr. Reed noted that for 2015-04b the Department is currently in negotiations with a transferee over the permit in question.

Chairperson Miles asked for a motion to dismiss Items 2015-04a and 2015-04c. Dr. Byron MOVED to dismiss the cases. Ms. Canty SECONDED the motion. The Motion CARRIED unanimously.

III.E.2

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 recommended the Board dismiss the matter.

Chairperson Miles asked for a motion to issue an order of dismissal with prejudice. Mr. O'connor MOVED to dismiss the case with prejudice. Dr. Byron SECONDED the motion. The Motion CARRIED unanimously.

III.E.3

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 recommended the Board dismiss the matter.

Chairperson Miles asked for a motion to issue an order of dismissal with prejudice. Ms. Shropshire MOVED to dismiss the case with prejudice. Dr. Byron SECONDED the motion. The Motion CARRIED unanimously.

III.E.4

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 recommended the Board support the Stipulation for entry of final agency decision accompanying the modified MPDES permit.

Chairperson Miles asked for a motion to approve the entry of final agency decision. Dr. Byron MOVED to approve the entry of final agency decision. Ms. Shropshire SECONDED the Motion. The Motion carried unanimously.

IV.

#### **General Public Comment**

Mr. Reed informed the Board that several letter from citizens surrounding Roundup, Montana, commenting on the Signal Peak case.

There was discussion of how the letters should be provided to the Board members, and it was decided that electronic copies of the letters were to be e-mailed to the Board

members.

There was general discussion that was not public comment about appointing a Chairperson in Ms. Miles absence for the July and August meetings. Ms. Shropshire was appointed to act as the Chairperson at the June 3<sup>rd</sup> meeting and the August 5<sup>th</sup> meeting was left undecided.

V.

**Adjournment**

Chairperson Miles adjourned the meeting at 1:05 p.m.

Board of Environmental Review April 21, 2016, minutes approved:

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JOAN MILES  
CHAIRMAN  
BOARD OF ENVIRONMENTAL REVIEW

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DATE