Montana
Board of Environmental Review
P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544

# MINUTES

## July 25, 2014

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Madam Chair Shropshire at 9:01 a.m., on Friday, July 25, 2014, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Madam Chair Shropshire, Larry Mires, Marietta Canty, Heidi Kaiser, Chris Tweeten, and Joe Russell

Board Members Absent: Joan Miles

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

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers (Deputy Director); Chris Saeger – Director's Office; John North, Paul Nicol, Kirsten Bowers, Kurt Moser, and Norman Mullen – Legal; John DeArment – Permitting & Compliance Division; Jon Dilliard, Rachel Clark, Eugene Pizzini, Barb Kingery – Public Water Supply & Subdivisions Bureau; Jon Kenning, Tom Reid, Laura Andersen, Freddi Haab, and Paul Skubinna – Water Protection Bureau; John Arrigo – Enforcement Division; George Mathieus and Kari Smith – Planning Division; Eric Urban, Mike Suplee, Rosie Sada, and David Feldman – Water Quality Planning Bureau; Jeff Blend – Energy Pollution Prevention Bureau; Todd Teegarden – Technical & Financial Assistance Bureau

Interested Persons Present *(Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.)*: Mark Fitzwater, Ron Alles – City of Helena; Dave Galt – Montana Petroleum Association; Tina Laidlaw – Environmental Protection Agency

I.A.1 Review and approve May 30, 2014, Board meeting minutes.

Chairman Shropshire asked if anyone had comments on the draft minutes. No one had comments.

Mr. Mires MOVED to approve the minutes as written. Mr. Tweeten SECONDED the motion. The motion CARRIED with a 6-0 vote.

II.A.1.a In the matter of violations of the Public Water Supply Laws by Trailer Terrace Mobile Park, LLC, Dennis Deschamps and Dennis Rasmussen at the Trailer Terrace, PWSID No. MT0000025, Great Falls, Cascade County, BER 2012-11 PWS.

Mr. Reed said he had not heard from the parties about settlement, so he expects this will go to hearing.

II.A.1.b In the matter of violations of the Sanitation in Subdivision Act and Public Water Supply Laws by Roger Emery at the Sunrise Motel, Sidney, Richland County, BER 2013-06 SUB.

Mr. Reed said he is waiting for Sunrise Motel to respond to the department's motion for summary judgment.

II.A.2.a 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 said he anticipates receiving a status report from the parties in this matter by August 1.

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.

Mr. Reed said there has been no movement in the matter. He confirmed that a modified permit is not available yet.

II.A.3.b In the matter of the notice of appeal for hearing by Montana Environmental Information Center regarding DEQ's approval of coal mine permit No. C1993017 issued to Signal Peak Energy, LLC, for Bull Mountain Mine No. 1 in Roundup, BER 2013-07 SM.

Mr. Reed said the Board received MEIC's reply in support of their motion for summary judgment on July 7. He said all the parties believe the case can be finalized without a hearing based on the motions for summary judgment, and he concurs.

III.A.1 In the matter of DEQ's proposal to initiate rulemaking to amend ARM 17.30.1101, 17.30.1102, 17.30.1105, 17.30.1106, 17.30.1107, 17.30.1111, 17.30.1341 and 17.30.1342 pertaining to Montana pollutant discharge elimination system (MPDES) permits, purpose and scope, definitions, permit requirements, exclusions, designation procedures: small municipal separate storm sewer systems (MS4s), application procedures, permit requirements, general permits and conditions applicable to all permits and repeal of ARM 17.30.1110, 17.30.1115 and 17.30.1117 application procedures: general, notice of intent procedures, and transfer of permit coverage.

Mr. Reid described the rule changes requested and provided rationale for the changes. He pointed out some typos in the notice that need to be corrected. He said the department is asking the Board to initiate the rulemaking.

Mr. Reed and Mr. Arrigo responded to questions from Board members.

Chairman Shropshire asked if any members of the public would like to comment on the proposed rulemaking.

Mr. Alles commented on the MS4 piece of the rulemaking and said he will be commenting more in depth at the hearing.

Chairman Shropshire called for a motion to initiate the rulemaking and assign Mr. Reed as the permanent hearings examiner. Mr. Tweeten so MOVED. Ms. Canty SECONDED the motion. The motion CARRIED with a 6-0 vote.

III.B.2 *(Taken out of order because of the logistics of this topic's interaction with III.B.1.)*

In the matter of final action regarding the proposed amendments to Title 17, Chapter 38, Sub-Chapter 1, Public Water and Sewer Plans, Cross Connections, and Drilling Water Wells, updating Department Circulars DEQ-1 and DEQ-3 related to public drinking water design standards to the 2014 edition, clarification of the requirements for the submission of plans and specifications, clarification of the engineering review fee tables, updating expedited checklists, adding new Department Circular DEQ-10 describing the use of springs as a public source and new Department Circular DEQ-16 describing the use of cisterns for non-community public water systems, and amendments to Title 17, Chapter 36, Sub-chapter 3, Subdivisions/On-site Subsurface Wastewater Treatment, to adopt the 2014 editions of DEQ-1 and DEQ-3.

Mr. Pizzini said the Board initiated the rulemaking at its January 21, 2014, meeting, and that a public hearing was held on March 7. He said at the end of the comment period ten general comments had been received, nine of which the department concurred with. He said the remaining comment could be dealt with through the deviation process.

Mr. Pizzini and Ms. Clark responded to questions from Board members.

Chairman Shropshire asked if any member of the public would like to comment on the rulemaking. No one commented.

Chairman Shropshire called for a motion to adopt the Presiding Officer's Report, the House Bill 311 and 521 analyses, the department's proposed responses to comments, and rules in Circulars DEQ-1, DEQ-3, DEQ-10, and DEQ-16 with modifications indicated. Mr. Russell so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a 6-0 vote.

III.B.1 In the matter of final action regarding Title 17, Chapter 36, Sub-chapter 9, On-Site Subsurface Wastewater Treatment Systems by updating definitions and Table 1 Setback Distances to provide consistency between the subdivision rules in Title 17, Chapter 36 and DEQ Circular 4, 2013, edition; Title 17, Chapter 38, Sub-chapter 101(4)(d) to adopt by reference the proposed changes to Title 17, Chapter 36 for Subdivisions; specifically ARM 17.36.320 through 17.36.323, 17.36.325 and to remove the adoption by reference

to ARM 17.36.327; Title 17 Chapter 38, Sub-chapters 106(2) (a), (d), and (e) to provide fee structure consistency for review of public water supply and sewage systems that correspond to the proposed changes to Department Circular DEQ-1, the adopted changes to Department Circular DEQ-4, 2013 edition, and new proposed Department Circular DEQ-10; Title 17, Chapter 38, Sub-chapter 106(2) to add a provision (f) for the review of public water supply systems that corresponds to proposed Department Circular DEQ-16.

Ms. Kingery said the Board initiated the rulemaking in April and a hearing was held May 19. She said six people commented during the comment period, and that some of the comments were outside the scope of the rulemaking. She asked the Board to consider the rule package for final adoption.

Chairman Shropshire called for public comment on the rulemaking. There was no response.

Chairman Shropshire called for a motion to adopt the Presiding Officer's report, the House Bill 521, 311, and small business impact analyses, and the rules with modifications indicated in the draft notice of amendment. Mr. Mires so MOVED. Ms. Canty SECONDED the motion. The motion CARRIED with a 6-0 vote.

III.B.3 In the matter of final action regarding new Department Circular DEQ-12A "Montana base numeric nutrient standards" for surface waters, and the amendment of rules in MAR Notice No. 17-356 to incorporate the base numeric nutrient standards into the water-quality standards. The Department is requesting the new circular and the rule amendments be adopted by the Board.

Mr. Mathieus addressed the Board. He said the department had been collecting data for this since about 2000. He said public hearings were held and comments received were fairly equal in support and opposition. He said amendments were made in response to some of the comments. He said the department recommends adoption of DEQ Circular 12A, and the amendments of the rules in the notice.

Mr. Mathieus thanked everyone who participated in the process.

Mr. Mathieus and Mr. North responded to questions from the Board.

Chairman Shropshire asked if any members of the public would like to comment on the rulemaking.

Mr. Galt said the Montana Petroleum Association stands opposed to the rule due to language within it and the non-severability clause. He also offered comments on behalf of the Montana Mining Association indicating they, too, are opposed to the rules due to the non-severability issue and concerns that the nutrient package not allowing for new business.

Mr. Mathieus and Mr. Galt responded to additional questions from the Board.

Chairman Shropshire called for a motion to adopt the Presiding Officer's report, the House Bill 311 and 521 analyses, the department proposed responses to comments, and the rules in Circular DEQ-12A with the modifications indicated in the draft notice of

amendment. Mr. Russell so MOVED. Mr. Tweeten SECONDED the motion. The motion CARRIED with a 5-1 vote.

III.C.1 In the matter of final action regarding the appeal and request for hearing by Missoula County and the Clark Fork Coalition regarding DEQ's issuance of MPDES Permit No. MT0000035 issued to M2Green Redevelopment's site in Frenchtown, MT, BER 2014-02/03 WQ.

Mr. Reed said the parties stipulated to dismiss the appeal, agreeing that this is not the proper venue for the action. He said the dismissal is contingent on the District Court and Supreme Court agreeing with the parties' assessment of the law.

The Board discussed the matter further.

Chairman Shropshire called for a motion to authorize her to sign the order dismissing the case. Discussion ensued. The Board did not take action on the matter.

III.C.2 In the matter of final action regarding violations of the Clean Air Act of Montana by Myrstol Logging, Inc., Clyde Park, Park County, MT, BER 2014-04 AQ.

Mr. Reed said the appellant has withdrawn his appeal.

Chairman Shropshire called for a motion to authorize her to sign the order dismissing the appeal. Mr. Tweeten so MOVED. Ms. Canty SECONDED the motion. The motion CARRIED with a 6-0 vote.

IV. General Public Comment

Chairman Shropshire asked if any member of the audience would like to speak to any matters before the Board. There were no comments.

V. Adjournment

Chairman Shropshire called for a motion to adjourn. Ms. Kaiser so MOVED. Mr. Tweeten SECONDED the motion. The motion CARRIED 6-0.

The meeting adjourned at 11:18 a.m.

Board of Environmental Review July 25, 2014, minutes approved:

Rob Shropshire

ROBIN SHROPSHIRE
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

September 26, 2014
DATE