Montana
Board of Environmental Review
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MINUTES
September 26, 2014

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Shropshire at 9:00 a.m., on Friday, September 26, 2014, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Shropshire and Marietta Canty

Board Members Present via phone: Heidi Kaiser, Joe Russell, Larry Mires, and Chris Tweeten

Board Members Absent: Joan Miles

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

Board Secretary Present: Deb Sutliff

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: John North and Norman Mullen – Legal; John DeArment – Permitting & Compliance Division; John Arrigo - Enforcement Division; Jon Dilliard – Public Water Supply & Subdivisions Bureau; Jon Kenning, Tommy Griffeth, Rebecca DeVaney, and Laura Anderson – Water Protection Bureau; Charles Homer, David Klemp, Eric Merchant, Julie Merkel, Hoby Rash, and Rebecca Harbage – Air Resources Management Bureau.

Interested Persons Present *(Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.)*: None

Chairman Shropshire called the meeting to order and proceeded with roll call.

I.A.1 Review and approved the July 25, 2014, minutes.

Mr. Mires MOVED to approve the July 25, 2014, minutes as written. Ms. Canty SECONDED the motion. The motion CARRIED with a 6-0 vote.

II.A.1.a **In the matter of violation of 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.** *(No discussion took place regarding this matter.)*

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

Mr. Reed indicated that the Department of Environmental Quality has filed a variety of documents and Mr. Emery has filed nothing. He said the final documents filed by the Department of Environmental Quality is a Motion for Summary Judgment. Mr. Reed said he believed that the department and Mr. Emery have come to some agreement that has not yet been finalized. He also said there will be a final hearing sometime during the second week of October, depending on availability of the parties.

II.A.1.c **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 Board had tabled the matter to see how it would be handled in regard to District Court.

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 the parties in this case are still working through settlement negotiations.

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. North said the matter was remanded with the stipulation that the department and the appellant had reached agreement on an amended permit, that it was put out in June for public comment, that public comment was received, and the department issued the permit on September 8. He noted that the appeal period for the permit runs for 30 days.

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

Mr. Reed summarized the matter, noting that DEQ and Signal Peak are using one set of standards for water quality and MEIC is using a second set. He said it does look as if oral argument will be necessary, and further briefing on the matter may be necessary.

II.B.1 **In the matter of Department reporting, Air Quality Permit Fees that are anticipated for the next calendar year, as required by ARM 17.8.510(1).**

Mr. Homer explained that the Air Quality Rules require the department to report annually to the Board on the status of Air Quality fees. He provided a summary of the Air Quality fees, and responded to questions from the Board.

III.A.1 **In the matter of final adoption of the proposed amendments to ARM 17.8.501 Definitions and 17.8.504 Air Quality Permit Application Fees.**

Mr. Homer said the Board initiated rulemaking for the Air Quality fees in May, and a hearing was held in July. He said the department was the only commenter.

Chairman Shropshire asked if there were any public comments. There was no response.

Chairman Shropshire called for a motion to accept the Presiding Officer Report and the HB311 and 521 analyses, and adopt the response to comment in the proposed rule amendments with modifications as contained in the attached notice of amendment. Mr. Tweeten so MOVED. Mr. Russell SECONDED the motion. The motion CARRIED with a 6-0 vote.

III.A.2 **In the matter of final adoption of proposed amendments to ARM 17.8.818 Review of Major Stationary Sources and Major Modifications and 17.8.820 Source Impact Analysis.**

Mr. Merchant reminded the Board that this action was initiated by the Board in May and that a hearing was held on July 16. He said only one comment was received, but it was outside the scope of rulemaking.

Chairman Shropshire asked if anyone from the public wanted to comment. There was no response.

Mr. Merchant and Mr. Klemp responded to questions from the Board.

Chairman Shropshire called for a motion to accept the Presiding Officer Report and the HB311 and 521 analyses, and adopt the response to comment with the modifications as contained in the notice of amendment. Ms. Canty so MOVED. Mr. Russell SECONDED the motion. The motion CARRIED with a 6-0 vote.

III.B.1 **In the matter of Phillips 66 Company's appeal of Outfall 006 Arsenic Limits in Montana Pollution Discharge Elimination System Permit No. MT0000256, Billings, Yellowstone County, MT, BER 2014-05 WQ.**

Chairman Shropshire called for a motion to appoint Mr. Reed permanent hearing examiner. Mr. Mires so MOVED. Ms. Canty SECONDED the motion. The motion CARRIED with a 6-0 vote.

Ms. Canty later recused herself from this matter.

Chairman Shropshire called for a motion to reconsider the vote to appoint Mr. Reed permanent hearing examiner for the New Contested Case, Item III.B.1. Mr. Tweeten so MOVED. Mr. Mires SECONDED. The motion CARRIED with a 5-0 vote.

III.B.2 **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. Arrigo said the department and Columbia Falls Aluminum Company are working on negotiating an Administrative Order on Consent to address State Superfund issues. He also said the department is talking to Columbia Falls Aluminum Company about disposal of the pot liners that are at the facility.

Ms. Canty and Ms. Kaiser recused themselves from this matter (Ms. Canty also recused herself from item III.B.1 at this time.)

Chairman Shropshire requested a motion to appoint Mr. Reed as the permanent hearing examiner for the New Contested Case III.B.2. Mr. Tweeten so MOVED. Mr. Mires SECONDED. The motion CARRIED with a 4-0 vote.

III.B.3 **In the matter if violations of the Opencut Mining Act by Bay Materials, LLC at Normont Farms Pit, Toole County, Montana, BER 2014-07 OC.**

Chairman Shropshire called for a motion to appoint Mr. Reed as the permanent hearing examiner in this matter. Ms. Kaiser so MOVED. Ms. Canty SECONDED the motion. The motion CARRIED with a 6-0 vote.

IV. **General Public Comment**

Chairman Shropshire asked if anyone would like to address the Board. There were no comments.

A brief discussion took place regarding the proposed greenhouse gas rule 111(d).

V. **Adjournment**

Chairman Shropshire called for a motion to adjourn. Mr. Tweeten so MOVED. Ms. Canty SECONDED the motion. The motion CARRIED with a unanimous VOTE.

The meeting adjourned at 9:42 a.m.

Board of Environmental Review September 26, 2014, minutes approved:

ROBIN SHROPSHIRE
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

December 5, 2014
DATE