



Montana
Board of Environmental Review

P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544

MINUTES

July 31, 2015

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Madam Chair Miles at 9:01 a.m., on Friday, July 31, 2015, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joan Miles, Robin Shropshire, Chris Tweeten, Marietta Canty, Michele Reinhart Levine, Roy Sayles O'Connor, Dr. Robert Byron

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 – Director; George Mathieus, Deputy Director; John North, Dana David, and Norm Mullen – Legal; Kristi Ponzoso – Director's Office; John DeArment – Permitting & Compliance Division; Dave Klemp, Hoby Rash, Julie Merkel, Eric Merchant, Liz Ulrich, Rebecca Harbage, Charles Homer, and Annette Williams – Air Quality Bureau; Eugene Pizzini – Public Water Supply & Subdivisions Bureau; John Arrigo – Enforcement Division; Kari Smith – Planning Division; Jon Kenning and Christian Schmidt – Water Protection Bureau; Eric Urban, Erik Makus, Michael Pipp, Amy Steinmetz – Water Quality Planning Bureau; Ed Coleman and Chris Yde – Industrial & Energy Minerals Bureau

Interested Persons Present: Brenda Lindlief Hall and Art Hayes, Jr. – Tongue River Water Users Association (TRWUA); Vicky Walsh – Bison Engineering; Dave Simpson and Vicki Marquis – Otter Creek Coal; Mark Fix (self); Adam Haight, DarAnne Dunning, Beth Kaeding, Ella Smith, and Janet McMillan – Northern Plains Resource Council (NPRC); Jason Gildea – Environmental Protection Agency (EPA); Kate French (self); Derf Johnson and Jim Jensen – Montana Environmental Information Center (MEIC); Peggy Trenk – Treasure State Resource Industry Association (TSRIA); Sara Berg and Christy McCann – Society of Petroleum Engineers (SPE)

Interested Persons Present via Telephone: Heidi Kaiser (self)

Chairman Miles introduced herself and had the other Board members follow suit.

I.A. Review and approve May 29, 2015, Board meeting minutes.

Chairman Miles called for a motion to approve the May 29, 2015, meeting minutes. Ms. Shropshire so MOVED. Ms. Canty SECONDED the motion. The motion CARRIED with a unanimous vote.

I.B. October Meeting Date Discussion

Chairman Miles explained that the October was moved to October 16. She also noted that the Board will set the 2016 schedule at the December 4 meeting.

II.A.1.a. In the matter of violations of the Opencut Mining Act by Bay Materials, LLC at Normont Farms Pit, Toole County, BER 2014-07 OC.

Mr. Reed said this matter is going through discovery among the parties and the hearing is scheduled for October.

II.A.1.b. In the matter of violation of the Opencut Mining Act by Somont Oil Company, Inc., at Somont Oil Company gravel pit, Toole County (Permit No. 2597, FID 2326, Docket No. OC-14-021), BER 2014-08 OC.

Mr. Reed said this matter is going through discovery among the parties and the hearing is scheduled for October.

II.A.1.c. In the matter of violations of the Public Water Supply Laws by Rene Requa at Highlander Bar and Grill, PWSID MT0004764, Lewis and Clark County (FID 2299, Docket No. PWS-14-08), BER 2014-09 PWS.

Mr. Reed said the parties negotiating settlement in this matter.

II.A.1.d. 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 said this matter is going through discovery among the parties.

II.A.1.e. 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 said this matter is going through discovery among the parties.

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 reported that he had signed an order extending the stay and reporting

- deadlines in this matter.
- II.A.2.b. In the matter of Phillips 66 Company's appeal of Outfall 006 Arsenic Limits in MPDES Permit No. MT0000256 Billings, Yellowstone County, BER 2014-05 WQ.
- Mr. Reed said the parties in this matter have stipulated and are complying with the stipulation.
- II.A.2.c. In the matter of Columbia Falls Aluminum Company's (CFAC) appeal of DEQ's modification of MPDES Permit No. MT0030066, Columbia Falls, Flathead County, BER 2014-06 WQ.
- Mr. Reed reported that he had issued a scheduling order in this matter.
- 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 explained that plaintiffs had filed in District Court and is proceeding on motions for summary judgment in Helena District Court. He noted that oral argument had and the parties are awaiting a decision from the Judge.
- II.B. Legislative Briefing
- Mr. Mathieus provided a briefing on the Department's recent Legislative activity that impacts the Board. There was some discussion among the Board and Mr. Mathieus responded to questions.
- III.A.1. 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.
- Chairman Miles called for motion to either hear the matter directly or assign it to Mr. Reed. Ms. Shropshire MOVED to assign the matter to Mr. Reed. Mr. O'Connor SECONDED the motion. The motion CARRIED with a unanimous vote.
- III.B.1. In the matter of the Department's request to initiate rulemaking to adopt site-specific electrical conductivity (EC) and sodium adsorption ratio (SAR) criteria for Otter Creek, tributary to the Tongue River.
- Mr. Mathieus introduced the proposal and provided some background about the rule package.
- Ms. Steinmetz addressed the Board with a PowerPoint presentation. Ms. Steinmetz, Mr. Mathieus, and Mr. Makus responded to questions from the Board.
- Ms. Dunning gave a PowerPoint presentation on behalf of Northern Plains Resource Council, providing information they said shows why the rule would not be protective of Otter Creek users. She responded to questions from the Board.

Mr. Hayes also gave a PowerPoint presentation and provided documents to support his stance to not conduct this rulemaking as is, that it may be better to reevaluate the current rules.

Mr. Fix, Ms. French, Mr. Jensen, Ms. Lindlief-Hall, and Ms. Kaeding also testified against the rulemaking and answered questions from the Board.

Ms. Marquis and Mr. Simpson spoke in favor of moving the process forward through the rulemaking, stating that twelve stakeholder meetings have already taken place. They responded to questions from the Board.

The Board engaged in discussions regarding the proposal. The Board took no action on the agenda item. Board members were instructed to send any specific questions they have to Mr. Mathieus.

III.B.2. In the matter of the Department's request to initiate rulemaking to meet the requirements of Section 128 of the federal Clean Air Act (CAA) regarding state boards and "conflict of interest."

Mr. North provided information on the rulemaking. He said the department recommends the Board initiate the rulemaking without a public hearing contemplated.

Chairman Miles called for public comment. There was none. Mr. Tweeten MOVED to initiate the rulemaking as requested by the department. Dr. Byron SECONDED the motion. The motion CARRIED with a unanimous vote.

V. Contested Case Hearing

The Board held oral argument 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, MT, BER 2013-07 SM.

VI. Adjournment

At 4:18 p.m., upon conclusion of the hearing, Chairman Miles called for a motion to adjourn the regularly scheduled meeting. Mr. Tweeten so MOVED. Ms. Reinhart-Levine SECONDED the motion. The motion CARRIED unanimously.

Board of Environmental Review July 31, 2015, minutes approved:

Joan Miles

JOAN MILES
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

Oct 16, 2015

DATE