

## MINUTES

**December 4, 2015**

### Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairperson Miles at 9:00 a.m., on Friday, December 4, 2015, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

### Attendance

Board Members Present: Chairperson Joan Miles, Chris Tweeten, Michele Reinhart Levine, Roy Sayles O'Connor, Dr. Robert Byron

Board Members Present by Phone: Robin Shropshire

Board Members Absent: Marietta Canty

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

Board Liaison: George Mathieus

Board Secretary Present: Hillary Houle

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers – Director; John North, Dana David, and Norm Mullen – Legal; Liz Ulrich, Rebecca Harbage, Ronda Payne, Hoby Rash, Annette Williams – Air Quality Bureau; Jon Dilliard, Tammy Filiater – Public Water and Subdivisions Bureau; Rainie DeVaney – Water Protection Bureau; Martin Van Oort – Industrial and Energy Minerals Bureau; John Arrigo – Enforcement Division; Kari Smith – Planning, Prevention and Assistance Division; Jen Lane – MEPA Coordinator, Director's Office.

Interested Persons Present: Dusty R. Weber, Joe Farinelli, Brad Hanson, Steve Wade – Signal Peak Energy; Anne Hedges, Shiloh Hernandez, Derf Johnson; David Galt – Montana Petroleum Association;

Interested Persons Present by Phone: Allen Gersten (phonetic) – Libby, Montana; Daniel Munoz (phonetic), Chris Yde (phonetic).

Chairman Miles thanked members of the audience for their attendance.

I.A. **Review and approve October 16, 2015, Board meeting minutes**

Chairperson Miles called for a motion to approve the October 16, 2015, meeting minutes. Chairperson Miles added a comment to pass with a correction, changing the date under Agenda item III.B.3 to December 4. Mr. O'connor MOVED to approve the minutes with corrections. Dr. Byron SECONDED the motion. Chairperson Miles called for a vote. The motion CARRIED with CORRECTIONS unanimously, with Mr. Tweeten absent.

I.B. Chairperson Miles called for a motion to approve the Board's 2016 meeting schedule. Dr. Byron MOVED to approve the schedule as submitted. Ms. Reinhart-Levine SECONDED the motion. The motion CARRIED unanimously, with Mr. Tweeten absent.

II.A.1.a. **Contested Case Update**

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 said he issued an updated or amended scheduling order on November 16.

II.A.1.b. In the matter of violation 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 a status update was due November 30 and anticipated receiving it in the near future.

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 said a status update was due November 30 and anticipated receiving it in the near future.

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 said he issued a scheduling order.

II.A.2.a. **Non-enforcement cases assigned to the Hearings 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 said the case is stayed until February 1.

- II.A.2.b. 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, BER 2014-05 WQ.

Mr. Reed said the parties in this matter are complying with the terms of 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 issued an amended scheduling order, and had received copious motions from the parties and will be addressing them.

- II.A.2.d. In the matter of the revocation of Montana Air Quality Permit No. MAQP# 2544-05, 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 said that Mr. Pozzi, who is the COO of the corporations, contacted him and the attorney for DEQ, and indicated he was planning on simply letting the permits lapse. He signed a document to this effect for one of the permits, but not the other two. Mr. Reed said he would be issuing an scheduling order for the remaining two that indicates unless Mr. Pozzi speaks up, the appeal is going to be denied.

- 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; NOW-2013-00590-MTB-Addendum, issued by DEQ for the Yellowstone River, Park County, MT.

Mr. Reed said a scheduling order and order allowing Heart K Lands attorney to practice in Montana Pro Hac Vice has been issued.

- 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 said that a prehearing order would be issued.

- II.A.3. a **Contested cases not assigned to a Hearing Examiner**

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 deferred the status update to Mr. North. Mr. North said the status has not changed since the last meeting and the Department is waiting for the Judge's decision.

II.B.1 **Other Briefing Items**

The Department provided a report for the Board regarding air quality permit fees that are anticipated for the next calendar year, as required by ARM 18.8.510.

Chuck Homer provided the report to the board and answered their questions.

III.A.1 **New Contested Cases**

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. Tweeten MOVED to assign Ben Reed as the permanent Hearing Examiner. Mr. O'Connor SECONDED the motion. The motion CARRIED unanimously.

III.A. 2 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. O'Connor MOVED to assign Ben Reed as the permanent Hearing Examiner. Ms. Reinhart-Levine SECONDED the motion. The motion CARRIED unanimously.

III.B.1 **Initiation of Rulemaking**

Update Circular DEQ-2. The Department has updated wastewater operator certification classes, which are referenced 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 Filliator provided background on the update to Circular DEQ-2.

No comments from the public or the Board were heard.

Ms. Shropshire MOVED to initiate rule making. Mr. O'Connor SECONDED the motion. The motion CARRIED unanimously.

III.B.2 Repeal ARM 17.4.201, 17.30.645, 17.30.1386, 17.30.1401, 17.30.1402, 17.30.1405, 17.30.1406, 17.30.1407, 17.30.1410, 17.30.1411, 17.30.1412, 17.30.1413, 17.30.1414, 17.30.1419, 17.30.1420, 17.30.1421, 17.30.1425, 17.30.1426, 17.30.1602, 17.30.2001, 17.30.2003, 17.38.601, 17.38.602, 17.38.603, and 17.38.607.

Kari Smith and John Arrigo provided background on the Departments recommendation to repeal the rules and answered questions posed by the Board.

Ms. Reinhart-Levine MOVED to initiate rulemaking. Mr. O'Connor SECONDED

the motion. The motion CARRIED unanimously.

III.C.1 **Final Action on Contested Cases**

In the matter of the request for a 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, Montana, BER 2013-07 SM.

The Board heard recommendations from all parties on the procedures for issuing the Board's final order. The Board agreed to afford the parties the opportunity to negotiate a stipulated remedy that is appropriate to the Board's October 16, 2016 decision. The Board considered each paragraph of MEIC's Findings of Facts and Conclusions of Law and provided reasoning for adopting or rejecting each one. The Board directed Mr. Reed to prepare a draft final order for consideration by the Board. The Board scheduled a special meeting on January 12, 2016, to review the draft final order prepared by Mr. Reed.

IV. **General Public Comment**

Chairman Miles called for public comment on any matters within the Board's prevue.

No public comment was offered.

VI. **Adjournment**

At 1:16 p.m., upon conclusion of the hearing, Chairman Miles called for a motion to adjourn the regularly scheduled meeting. Mr. Tweeten so MOVED. Mr. O'Connor SECONDED the motion. The motion CARRIED unanimously.

Board of Environmental Review December 4, 2015, minutes approved:

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JOAN MILES  
CHAIRMAN  
BOARD OF ENVIRONMENTAL REVIEW

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DATE