

MINUTES
Teleconference
August 5, 2016

Call to Order

The Board of Environmental Review's meeting was called to order by Chairperson Miles at 9:10 a.m., on Friday August 5, 2016 in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present:

Board Members Present by Phone: Acting Chairperson Michelle Reinhart-Levine, Marietta Canty, Roy O'Conner, Chris Tweeten

Board Members Absent: Joan Miles, Dr. Robert Byron, and Robin Shropshire

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: Chris Yde – Coal & Opencut Mining Bureau; Liz Ulrich, Rebecca Harbage – Air Quality Bureau; Emily Ewart – Waste & Underground Tank Management Bureau; Eric Urban and Myla Kelly – Water Quality Planning Bureau; Jon Dilliard – Public Water Supply & Subdivisions Bureau; John North - Legal

Interested Persons Present: Adam Haight, DarAnne Dunning – Northern Plains Resource Council; Jim Jensen – Montana Environmental Information Center

Review and Approve Minutes

- I.A.1. Chairperson Shropshire called for a motion to adopt the minutes as submitted. Mr. O'Connor and Ms. Reinhart-Levine SECONDED. The motion CARRIED unanimously.

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 case is proceeding at pace.

- 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 the case resolution was unsuccessful, and the parties are on track to have a contested case hearing sometime next year.

- 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 case resolution was unsuccessful, and the parties are on track to have a contested case hearing sometime next year.

- 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 Partial Motions and Supporting Briefs for the case are to be filed by the parties no later than October 12, 2016, and a hearing in the matter will occur on or about October 12, 2016.

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 Stipulation to Stay the Appeal is still ongoing.

- 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 the proposed stipulated statements of fact and motions in limine and a prehearing conference and November, 2016, hearing are on track.

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 t a motion for summary judgment filed by Petitioner is before him and fully briefed.

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 an Amended Scheduling Order has been filed.

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 the case is proceeding at pace.

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 the parties filed cross motions for Summary Judgment, and he issued a proposed order granting the Department's motion for Summary Judgment. Mr. Reed noted that the matter may be extended pending the Petitioner's decision to request for a hearing before the Board on the matter.

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 the case had been briefed for Summary Judgment but was still awaiting a reply brief.

II.A.2.h. In the matter of LT Trucking, LLC, Appeal Riverside Contracting, Inc. Reclamation Bond Release Permit #2083, CVID #17280.

Mr. Reed Reported that he believes the Petitioner originally filed the appeal, in his personal capacity as director of LT Trucking. However, LT Trucking is a limited liability company and a director or president cannot represent LT Trucking. Mr. Reed issued a Prehearing Order indicating that requires the Petitioner to find counsel or the matter will be dismissed.

III.A.2.i In the matter of appeal denial of Nondegradation Review, Lakes at Heron, EQ# 16-1698, Sanders County, Montana.

Mr. Reed reported that he issued a scheduling order and the case is proceeding at pace.

II.A.3. Briefing Items Contested Cases Not Assigned to a Hearing Examiner

III.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 in front of Judge Seeley in District Court who has issued an order on Summary Judgment, but has not entered a formal final judgment. He noted that the Board has no action in the matter until the case returns from District Court. Mr. Reed then noted that Mr. North wanted to add some information for the board on the matter.

Mr. North reported that before the judgment can become final, the issue of whether or not attorney's fees will be granted needs to be determined.

II.B. Other Briefing Items

II.B.1 Briefing on site specific criteria for electrical conductivity and sodium adsorption ratio for Otter Creek, tributary to the Tongue River in southeastern Montana.

Mr. Urban briefed the Board on the topic. He indicated that, given current circumstances, pursuing site-specific standards for Otter Creek is not a Department priority, and little work has been done on it since the last Board briefing.

Mr. Mathieus indicated that it is no longer a priority because the pending permit process for Otter Creek is no longer awaiting decision.

II.B.2 Briefing on progress on the stakeholders to develop rules for MCA 75-5-222 (SB 325).

Ms. Kelly briefed the Board on the topic and answered questions. She indicated that the Department has convened a working group that has been meeting monthly, reviewing draft rules for implementation of 75.5-222(2). The Department is reviewing work group comments on this draft, and rules and guidance need to be finalized.

In response to a question from Ms. Canty, Mr. Mathieus stated that we cannot determine when the 75-5-222(2) rules will be submitted to the Board, because we don't know how much time it will take to achieve a unanimous support of the working group, which is the Department's goal.

II.B.3 Briefing on the extension of the 45 day review period of 82-4-231(8), MCA, for the written findings in regards to BER2013-07 SM Signal Peak Energy.

Mr. North briefed the Board on the matter. He stated that this 4-day extension of the 45-day review provided on The Signal Peak mine permit amendment was done with the consent of Signal Peak. It synchronized the review period with the deadline in the Board's January order requiring the Department to redo the cumulative hydrologic impact assessment and issue revised findings on the amended application.

III.A. Action Items New Contested Cases

III.A.1 In the matter of Violations of the Opencut Mining Act by Big Rock LLC, at Wheeler Gravel Pit, Missoula County, Montana (Opencut No. 719, FID 2471), was filed with the Board on June 15, 2016.

Chairperson Reinhart-Levine asked Mr. Reed if he was able to take the case on with his current workload. Mr. Reed said he would be able to take the case.

Chairperson Reinhart-Levine called for a motion to assign Mr. Reed as the permanent Hearings Examiner. Ms. Canty MOVED to assign the case to Mr. Reed. Mr. O'Connor SECONDED the MOTION. The Motion CARRIED unanimously.

III.B. Initiation of Rulemaking

None

III.C. Repeal, Amendment, Or Adoption of Final Rules

III.C.1 Amend ARM 17.8.818, pertaining to the averaging period for the PM-2.5 significant monitoring concentration. The Department Requests that the Board amend the rules as noticed in MAR Notice No. 17.838.

Ms. Ulrich briefed the Board on the proposed amendment and answered questions.

Chairperson Reinhart-Levine opened the floor for public comment and none was heard.

Chairperson Reinhart-Levine called for a motion to amend the Administrative Rules as proposed. Mr. Tweeten MOVED. Ms. Canty SECONDED the Motion. The Motion CARRIED unanimously.

III.D. Other Action

None

III.E. Final Action on Contested Cases

None

IV. General Public Comment

V.

None was offered.

Adjournment

Chairperson Shropshire adjourned the meeting at 9:39 a.m.

Board of Environmental Review August 5, 2016 minutes approved:

JOAN MILES
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE