

**MINUTES**  
**Teleconference**  
**September 30, 2016**

Call to Order

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The Board of Environmental Review's meeting was called to order by Chairperson Miles at 9:00 a.m., on Friday September 30, 2016 in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

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

Board Members Present by Phone: Michele Reinhart Levine, Robin Shropshire, Marietta Canty

Board Members Absent:

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

Board Liaison Present: Acting Board Liaison John North

Board Secretary Present: Hillary Houle

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Eugene Pizzini, Jon Dilliard, Tammy Filiater, Andrea Vickory, Mary Simmons – Public Water Supply & Subdivisions Bureau; Liz Ulrich, Grant Rodway, Rebecca Harbage, Julie Ackerlund – Air Quality Bureau; Martin Van Oort, Pete Schade, Chris Yde – Coal & Open-cut Mining Bureau; Mike Rieger, Susan Bawden – Enforcement Division; Becky Convery, John North – Legal

Interested Persons Present: Steve Wade – Browning Kaleczyc Berry Hoven; Wade Steere - Western Energy; John Martin – Crowell & Moring; Shiloh Hernandez, Derf Johnson – Montana Environmental Information Center

**Review and Approve Minutes**

- I.A.1. Chairperson Miles noted corrections to the minutes and called for a motion to adopt the minutes with corrections. Mr. O'Connor so MOVED and Dr. Byron 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 Stipulation has been entered, and the Highlander Bar and Grill is complying with the stipulation.

- 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 the Second Hearing Schedule has been filed and an order has been issued and the case will continue at pace.

- 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 the Second Hearing Schedule has been filed and an order has been issued and the case will continue at pace.

- 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 the parties anticipate resolution through mediation by November 30, 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 until December 17, 2016.

- 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 both parties had filed prehearing statements and anticipate going to a hearing.

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 the parties presented arguments in support of their Motions for Summary Judgment, and is working on a decision.

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 a Second Prehearing Order has been issued.

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 that a Second Prehearing Order has been issued.

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 are working on exceptions and presentation of briefs and Oral Arguments.

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

Mr. Reed reported that an Order extending the deadline to file a Joint Prehearing Schedule was granted.

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

Mr. Reed reported that he prepared an Order to Dismiss without Prejudice for Madam Chair's signature.

III.A.2.i. In the matter of appeal of Violations of the Opencut Mining Act by Big Rock, LLC at Wheeler Gravel Pit, Missoula County, Montana (Opencut No. 719; FID2471).

Mr. Reed reported that he has issued a Prehearing Order requesting the Parties set a

schedule.

### **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 deferred to Mr. North to brief the Board.

Mr. North reported that briefing on the attorney fees issue between the Plaintiffs and the Department is ongoing and should be completed by early October. Once this is completed the matter will be ready for decision by the Judge on the issue of attorney fees are due and owing. Mr. North also noted that Western Energy has filed an appeal of the substantive provisions of the case in the Montana Supreme Court, and it appears the case will be in the Supreme Court for decision.

### **II.B. Other Briefing Items**

II.B.1 Briefing on air quality permit fees that are anticipated for the next calendar year, as required by ARM 17.8.510.

Ms. Ulrich Briefed the Board on the matter. She stated that the Department does not anticipate requesting a fee change in 2017. The Board had no questions.

II.B.2 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 briefed the board on the status of the case and the options for a hearing date. Mr. Reed noted that the case had not been referred to a permanent Hearing Examiner and therefore the Board needs to hear the case. Mr. Reed stated that the matter could be heard at the December meeting, but the parties preferred to hold a special meeting in light of the fact that there is a potential for a new Board composition with some of their appointments being up at the end of the year.

There was discussion amongst the Board members to the merits of assigning a Hearing Examiner or hearing the matter directly. The Board members agreed to proceed with a hearing before the Board and offered the Parties present to address the Board with their concerns on the matter. The Parties addressed the Board with their suggestions for the timing of the pending hearing. The Board members agreed a special meeting set for November and Mr. Reed offered to facilitate the logistics of setting a date.

Madam Chair and Mr. Tweeten requested that the parties present an equal statement of facts for the Board before the hearing.

Madam Chair called for a general motion that the Board work with the Department and Mr. Reed to set up a special meeting to hear the matter. Mr. Tweeten so MOVED. Dr. Byron SECONDED. The motion CARRIED unanimously.

### **III.A. Action Items New Contested Cases**

III.A.1 An appeal in the matter of amendment application AM3, Signal Peak Energy LLC's Bull Mountain Coal Mine #1 Permit No. C1993017, case number BER2016-07 SM.

Mr. Reed briefed the Board on the difference between the 2016 case and the BER2012-08 SM case. The Board discussed the merits of assigning a Hearing Examiner and decided since they had heard the matter directly in BER2012-08 SM, that it was prudent to continue to directly hear the matter.

III.A.2 An appeal in the matter of section 401 Water Quality Certification issued for DEQ Application Number MT4011012, the Clark Hydroelectric Project, Beaverhead County, Montana, case number BER2016-08 WQ.

The Board asked why there was language in the agenda that they must assign a Hearing Examiner, Mr. North clarified that it was pursuant to the language in ARM 17.30.109, which requires assignment of a Hearing Examiner. The Board then designated the case to Mr. Reed.

III.A.3 An appeal in the matter of violation of the Opencut Mining Act by Goran, LLC at the Goran unpermitted gravel pit, Stillwater County, Montana (Opencut No. 2790; FID 2500), case number BER2016-09 OC.

Madam Chair asked Mr. Reed if he was available to add the case to his schedule. Mr. Reed agreed to take the case. Mr. O'Connor MOVED to appoint Mr. Reed as the permanent Hearing Examiner. Mr. Tweeten SECONDED. The motion CARRIED unanimously.

### **III.B. Initiation of Rulemaking**

III.B.1 DEQ propose that the Board initiate rule making on the public water supply rule package that incorporates the 2015 federal rules into the Montana rules. Included in this package will be adoption of the new Federal Revised Total Coliform Rule.

Ms. Filiator and Mr. Dilliard presented the rulemaking proposal to the Board and answered questions.

Madam Chair opened the floor for public comment. None was heard.

Madam Chair called for a motion to initiate rulemaking to adopt the new Federal Revised Total Coliform, with technical changes presented by the Board and assign a Hearing Examiner. Dr. Byron so MOVED. Mr. O'Connor SECONDED the motion. The motion CARRIED unanimously.

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

III.C.1.

Amend ARM 17.8.102 to incorporate by reference updated federal and state statutes, and rules, and ARM 17.8.103 to update references stating where the documents may be obtained electronically.

Ms. Harbage briefed the Board and answered questions.

Madam Chair opened the floor for public comment. None was heard.

Madam Chair called for a motion for the Board to amend ARM 17.8.102 to incorporate by reference updated federal and state statutes and regulations, and to amend ARM 17.103 to update references stating where the documents may be obtained electronically. Mr. O'Connor so MOVED. Dr. Byron SECONDED the motion. The motion CARRIED unanimously.

III.D.

**Other Action**

None

III.E.

**Final Action on Contested Cases**

None

IV.

**General Public Comment**

None was offered.

V.

**Adjournment**

Just before the Board, adjourned Madam Chair emphasized the request for stipulations of the facts in the pending hearing for case number BER2016-03 SM.

Mr. Tweeten MOVED to adjourn. Madam Chair called the Board to vote in favor. The motion CARRIED unanimously.

Chairperson Miles adjourned the meeting at 10:22 a.m.

Board of Environmental Review September 30, 2016 minutes approved:

*Joan Miles*

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JOAN MILES  
CHAIRMAN  
BOARD OF ENVIRONMENTAL REVIEW

*Dec 9, 2016*  
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DATE