

MINUTES
Teleconference
January 31, 2017

Call to Order

The Board of Environmental Review's meeting was called to order by Chairperson Miles at 10:00 a.m., on Tuesday January 31, 2017 in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairperson Joan Miles, Dr. Robert Byron, Marietta Canty

Board Members Present by Phone: Michele Reinhart Levine, Robin Shropshire, Chris Tweeten

Board Members Absent: Roy O'Connor

Board Attorney Present: Andres Haladay, 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: Eric Urban; Elizabeth Hezel – WQP; Emily Ewart – WUTMB;
Eugene Pizzini, Tammy Filiater, Jon Dilliard, Mary Simmons, Lisa
Kaufman – PWS; Colleen Owen, Christopher Dorrington – COMB;
Aaron Pettis, John North - Legal

Interested Persons Present:

Interested Persons Present by Phone:

Review and Approve Minutes

I.A.1. December 9, 2016 Meeting Minutes

Chairperson Miles called for a motion to adopt the minutes with corrections. Dr. Byron so MOVED and Ms. Canty SECONDED. The motion CARRIED unanimously.

Briefing Items Enforcement Contested Cases assigned to the Hearing Examiner

II.A.1.a. 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. Haladay reported Copper Ridge filed a Summary Judgment and the case is on a briefing schedule for parties to respond.

II.A.1.b. 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. Haladay reported Copper Ridge filed a Summary Judgment and the case is on a briefing schedule for parties to respond.

II.A.1.c. 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. Haladay reported that the Parties had until January 27, 2017, to either reach a settlement or a revised hearing schedule. Mr. Haladay noted that nothing had been submitted as of the meeting, but expected to receive something in the near future.

II.A.1.d. In the matter of appeal of Violations of the Opencut Mining Act by Big Rock, LLC at Wheeler Gravel Pit, Missoula County, Montana BER2016-06 OC (Opencut No. 719; FID 2471).

Mr. Haladay reported that a Show Cause Order was issued, giving Big Rock LLC until January 18th to show why the matter shouldn't be terminated or dismissed, but he had not received a response.

II.A.1.e. An appeal in the matter of violation of the Opencut Mining Act by Goran, LLC and the Goran unpermitted gravel pit, Stillwater County, Montana (Opencut No. 2790; FID 2500), case number BER2016-09 OC.

Mr. Haladay reported the parties recently stipulated to amend the Scheduling Order, and the matter is proceeding with the Stipulated Scheduling Order.

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. Haladay reported the Stipulation to Stay the Appeal is still in effect.

II.A.2.b. In the matter of LT Trucking, LLC, appeal Riverside Contracting Inc., Reclamation Bond Release Permit #2083, CVID#17280, BER2016-04 OC.

Mr. Haladay reported an Order to Show Cause had been issued and LT Trucking LLC did respond. Following LT Trucking LLC's response, the parties entered into a Stipulated Scheduling Order and the matter is proceeding.

II.A.2.c. 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. Haladay reported the matter is still assigned to the previous Hearing Examiner, Ben Reed.

II.A.2.d. 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. Haladay reported an Order Denying Summary Judgment was issued and the parties have been ordered to develop a joint proposed schedule going forward.

II.A.2.e. 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. Haladay reported the matter is stayed pending a decision by the Montana Supreme Court, and the parties are instructed to notify the Hearing Examiner of the developments within 30 days of the Court's decision.

II.A.2.f. 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. Haladay reported that the parties entered a Joint Stipulation regarding contested issues and anticipates the matter being before the Board at the June meeting.

Mr. Haladay answered clarifying questions from Chairperson Miles in regards to procedure once the matter is before the Board.

II.A.2.g

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. Haladay reported the Motion to Amend to Join Sierra Club was denied, and the parties are proceeding under a Scheduling Order.

II.A.2.h.

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

Mr. Haladay clarified Chairperson Miles comments about the clarity of the minutes from the previous Board meeting in regard to summary judgment briefings, and reported the parties are following a briefing schedule at this point.

II.A.2.i.

In the matter of Appeal the Conditions of the Certification for Timershor at Finley Point Wastewater subdivision rewrite Lake County E.Q. #15-1971, Lake County, Montana, case number BER2016-10 SUB.

Mr. Haladay reported that both Parties have moved to dismiss, the motions were converted to Summary Judgment, and the matter is under a Briefing Schedule.

II.A.2.j.

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. Haladay reported that a Scheduling Order is in effect and the case is proceeding under the Order.

II.A.2.k.

In the matter of appeal Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B, BER 2016-03 SM.

Mr. Haladay reported that the Parties will be providing witness and exhibit lists, as well as propose hearing dates.

Mr. Haladay responded to clarifying questions from Chairperson Miles in regard to when the Board assigned the matter to the Hearing Examiner.

II.A.3.

Briefing Items Contested Cases Not Assigned to a Hearing Examiner

II.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. North reported that the case is currently in litigation regarding attorney fees.

- II.B. **Other Briefing Items**
- II.B.1. Development of Rules to Implement SB 325 (2015 Session).
- Mr. Urban briefed the Board on the working group's progress and the next steps for legislation.
- III. **Action Items**
- III.A. New Contested Cases
- III.A.1 In the matter of Appeal of Oil Field Rock and Logistics Docket No. OC-16-12 (FID2506), Redstone, Montana, case number BER2016-11 OC.
- Chairperson Miles called for a motion to assign the case to Andres Haladay as the Hearing Examiner. Mrs. Levine SO MOVED. Dr. Byron SECONDED. The motion CARRIED unanimously.
- III.A.2 In the matter of Appeal of Vanak Transportation Docket No. SW-16-01, Toronto, Ontario case number BER2017-01 SW
- Mr. Tweeten MOVED to assign the case to Andres Haladay as the Hearing Examiner. Ms. Canty SECONDED. The motion CARRIED unanimously.
- III.B. **Final Action on Contested Cases**
- III.B.1 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. Haladay reported that the Department prepared an Order for the Board to dismiss the case, as the conditions of the stipulation have been fulfilled.
- Chairperson Miles read the Order to the Board and the audience.
- Mr. Tweeten discussed with Mr. Haladay clarifying if the case were to be dismissed with or without prejudice.
- Chairperson Miles discussed with Mr. Haladay the best procedural approach to sign the Order identifying the case is dismissed with prejudice.
- Chairperson Miles called for a motion to authorize the chair to alter the Department's Order, specifying the case is Dismissed with Prejudice. Mr. Tweeten SO MOVED. Ms. Canty SECONDED. The motion CARRIED unanimously.
- III.C. Repeal, Amendment, or Adoption of Final Rules
- III.C.1 Adoption of the 2015 federal public water supply rules, including the new federal Revised

Total Coliform Rule, as proposed at the September 30, 2016 meeting.

Ms. Filiater briefed the Board on the proposed adoption and answered questions from the Board.

Ms. Canty MOVED to adopt the amendment with supporting documentation as proposed by the Department. Dr. Byron SECONDED. The motion CARRIED unanimously.

IV. General Public Comment

None was offered.

V. Adjournment

Chairperson Miles adjourned the meeting at 10:41 a.m.

Board of Environmental Review January 31, 2017 minutes approved:



JOAN MILES
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW



DATE