

**BOARD OF ENVIRONMENTAL REVIEW  
MINUTES**

**February 9, 2018**

Call to Order

The Board of Environmental Review's meeting was called to order by Chairperson Deveny at 9:02 a.m., on Friday, February 9, 2018, in Room 111 of the Metcalf Building, 1520 East 6<sup>th</sup> Avenue, Helena, Montana.

Attendance

**Board Members Present in person:** Chairperson Christine Deveny, Dexter Busby, Hillary Hanson, John DeArment

**Board Members Present by Phone:** Tim Warner, Chris Tweeten

**Board Members Absent:** John Felton

**Board Attorney Present:** Sarah Clerget, Attorney General's Office (AGO)

**Board Liaison Present:** George Mathieus

**Board Secretary Present:** Lindsay Ford

**Court Reporter Present:** Laurie Crutcher, Crutcher Court Reporting

**Department Personnel Present:** Jon Kenning, Jason Garber, Jon Dilliard, Eric Sivers – WQD; Sandy Moisey-Scherer, Mark Lucas, Aaron Pettis, Ed Hayes, John North, Kurt Moser, Brad Jones, Norm Mullen – Legal; Susan Bawden, Dan Kenney, Chad Anderson, Leea Anderson – ENF; Liz Ulrich, Julie Ackerlund, Chris Cronin, Ed Coleman, Julie Merkel – AEMD

**Interested & Other Persons Present:** Jim Brown; Aleisha Solem – AGO Agency Legal Services Bureau

**Interested Persons Present by Phone:** none

Roll was called: four Board members were present in person and two Board members were present via teleconference, providing a quorum.

**I.A. Administrative Items – Review and Approve Minutes**

**I.A.1. December 8, 2017, Meeting Minutes**

Ms. Hanson MOVED to approve the meeting minutes. Mr. Busby SECONDED. The motion PASSED unanimously.

**I.A.2. January 5, 2018, Meeting Minutes**

Mr. Busby MOVED to approve the meeting minutes. Mr. DeArment SECONDED. The motion PASSED unanimously.

**I.B. Potential 2018 Board Rulemaking Schedule**

Mr. Mathieus noted a few small date changes to the 2018 schedule.

Several DEQ staffed briefed the Board on the individual proposed rulemakings.

**II.A.1. Briefing Items – Enforcement Cases assigned to the Hearing Examiner**

**II.A.1.a. 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, Montana, BER 2014-06 WQ.**

Ms. Clerget is reviewing the hearing and will then do an order and exceptions. She said it will be a few meetings before that's done and brought before the Board.

**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.**

Ms. Clerget said the case is scheduled for hearing at the end of this month.

**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.**

Ms. Clerget said the case is scheduled for hearing at the end of this month.

**II.A.1.d. In the matter of violation of the Opencut Mining Act by Goran, LLC, at the Goran gravel pit, Stillwater County, Montana (Opencut No. 2790; FID 2500), BER 2016-09 OC.**

Ms. Clerget said the case has been dismissed.

**II.A.1.e. In the matter of Appeal of Oil Field Rock and Logistics, Docket No. OC-16-12 (FID2506), Redstone, Montana, BER 2016-11 OC.**

Ms. Clerget said she will be issuing a scheduling order followed by exceptions. She is hopeful this will be before the Board at the next meeting.

- II.A.1.f. **In the matter of Dennis and Sandra Dickenson's appeal of DEQ Subdivision Section Contract Reviewer's decision to deny the Dickenson's subdivision application, EQ#17-1398, Jefferson County, BER 2017-06 SUB.**

Ms. Clerget said the case has been dismissed.

## **II.A.2. Briefing Items – Non-Enforcement Cases Assigned to a Hearing Examiner**

- II.A.2.a. **In the matter of Westmoreland Resources, Inc.'s, appeal of final MPDES permit No. MT0021229 issued by DEQ for the Absaloka Mine in Hardin, Big Horn County, MT, BER 2015-06 WQ.**

Ms. Clerget is awaiting status update from the parties as there is a question about whether to put in a scheduling order or continue with a stay. She is monitoring the case.

- II.A.2.b. **An appeal in the matter of amendment application AM3, Signal Peak Energy LLC's Bull Mountain Coal Mine #1 Permit No. C1993017, BER 2016-07 SM.**

Ms. Clerget asked for a status update, or a proposed prehearing order. It is in a stay, but she is monitoring the case closely.

- II.A.2.c. **In the matter of Appeal Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B, BER 2016-03 SM.**

The case is scheduled for a five-day hearing in March.

- II.A.2.d. **In the matter of the notice of appeal and request for hearing by Montanore Minerals Corporation Regarding Issuance of MPDES Permit No. MT0030279, Libby, Montana, BER2017-03 WQ.**

Ms. Clerget said the scheduling order is in place and the parties are proceeding based on that order. They are currently in the beginning stages of discovery.

- 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.**

Ms. Clerget and the case is stayed until February 16 at which time the parties are to file a status report. She is monitoring the case carefully.

- II.A.2.f. **In the matter of violation of the water quality act by JR Civil, LLC, Bozeman, Gallatin County, Montana (FID 2552, Permit MTG070826) BER 2017-07 WQ.**

Ms. Clerget issued a scheduling order. She granted a two-week extension while the parties work on some settlement discussions which should not interfere with the overall schedule.

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

- 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 said the parties reached settlement on the attorney's fees and the court has entered judgement in accordance with the settlement.

**III.A. Action Items – Rule Adoption; DEQ propose that the Board adopt rules to:**

**III.A.1. Amend ARM 17.8.102, 17.8.103, 17.8.202, 17.8.302, 17.8.602, 17.8.767, 17.8.802, 17.8.901, 17.8.902, 17.8.904, 17.8.1002, 17.8.1102, 17.8.1202, 17.8.1302, 17.8.1402, and 17.8.1502 to:**

- a. incorporate by reference updated federal and state statutes and regulations,
- b. update the rules to reference the 2017 Montana Ambient Air Monitoring Program Quality Assurance Project Plan (QAPP),
- c. update and consolidate reference citations into ARM 17.8.102, and update air quality rules.

Ms. Ackerlund briefed the Board on the proposed air quality rules.

Mr. DeArment MOVED on the rule adoption. Chairperson Deveny SECONDED. The Motion PASSED unanimously.

**III.B. New Contested Cases**

**III.B.1. In the matter of the Notice of Appeal and Request for Hearing by CMG Construction, Inc. Regarding Notice of Violation and Administrative Compliance and Penalty Order, Docket No. OC-17-12, BER 2017-8 OC.**

Ms. Clerget gave the Board Members their options, including assigning it to the Hearings Examiner.

Chairperson Deveny MOVED to assign the matter to the Hearings Examiner for both procedural and substantive purposes. Ms. Hanson SECONDED. The motion PASSED unanimously.

**III.C. ACTION ON CONTESTED CASES**

**III.C.1. 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.**

The Board heard oral arguments from the parties.

Mr. Tweeten MOVED to accept the Hearing Examiner's findings of fact and conclusions of law with respect to the jurisdiction question over the County's proceeding on Resolution 947 as the Board's decision in this case, and to have the Hearing Examiner draft an order. Mr. DeArment SECONDED. The motion PASSED unanimously.

**III.C.2. In the matter of violations of the Opencut Mining Act by Wagoner Family Partnership, d/b/a Wagoner's Sand and Gravel, at River Gravel Pit, Flathead County, Montana (Opencut No. 1798; FID 2512), BER 2017-02 OC.**

The Board heard oral arguments from DEQ, Wagoner opted to file written comments in this matter.

Mr. Tweeten MOVED to adopt the Hearing Examiner's proposed order in its entirety and adopt it as the Board's final order. Chairperson Deveny SECONDED. The motion PASSED unanimously.

Mr. Tweeten MOVED to assign this case to the Hearing Examiner for purposes of conducting the penalty phase of the proceeding. Ms. Hanson SECONDED. The motion PASSED unanimously.

#### **IV. Board Counsel Update**

Ms. Clerget briefed the Board on the new draft policy. There was Board discussion.

Chairperson Deveny MOVED to adopt the draft as a policy until the October Board meeting where the Board would then decide to make it a formal rule. Mr. Busby SECONDED. Mr. Tweeten proposed an amendment that would remove the suggestion the Board adopt it as a policy today, as the policy would expire in October which would leave nothing in place during the rulemaking process. Chairperson Deveny accepted the amendment to her motion. Mr. Busby SECONDED the amended motion. The motion PASSED unanimously.

Ms. Clerget also updated the Board that a petition for rulemaking will be on the next agenda. Mr. Mathieus explained that it's for an outstanding resource water for the Gallatin River.


#### **V. General Public Comment**

None were offered.

#### **VI. Adjournment**

Ms. Hanson MOVED to adjourn. Mr. DeArment SECONDED. Chairperson Deveny adjourned the meeting at 11:32 a.m.

Board of Environmental Review February 9, 2018, minutes approved:

  
CHRISTINE DEVENY  
CHAIRPERSON  
BOARD OF ENVIRONMENTAL REVIEW  
4/6/18  
DATE