These are the questions the BER acted on and the results.

1. **Is the 0.8 standard more stringent than the federal guideline of 1.5?**

Motion:  Yes, the 0.8 standard is more stringent than the federal guideline.

Discussion:  The bulk of the discussion was about whether Appendix K of the 2016 guideline was the guideline or if the 1.5 guideline from the table was the guideline.

Result:  The motion passed with four votes in favor and three opposed (Smith, Lehnherr, and Reiten).

1. **If not, then what does the Board do next?**

The Board did not discuss this question as it did not apply after its answer to question 1.

1. **If yes, what is the appropriate remedy?**

Motion:  The appropriate remedy is for DEQ to comply with 75-5-203, MCA (the stringency statute).

Discussion:  There were some earlier motions that failed for lack of a second or were rescinded.  There was a lot of discussion on this issue.

Result:  The motion passed unanimously.

1. **Does Teck have standing?**

Motion:  Yes, Teck is a person affected by the new rule and does have standing to pursue the petition.

Discussion:  The one dissenting voice came from Board Member Lehnherr.  He argued that Teck was not a “person” because Teck is a corporation and that because Teck is a Canadian company, it has no standing in Montana.  Teck pointed to the statutory definition of “person” which includes corporations.  DEQ agreed that Teck is a “person” under the statute but that Teck is not affected by the Rule.  Teck noted it is affected as evidenced by the Board’s responses to comments in the record which stated that Teck was the only entity affected, which former Director McGrath also noted in a letter to the IJC.

Result:  Motion passed 5-2 with Lehnherr and Reiten opposed.

1. **Did the initial notice of rulemaking fail to comply with 75-5-203, MCA (the stringency statute)?**

Motion: Yes, the initial notice of rulemaking failed to comply with the stringency statute.

Discussion:  There was little discussion on this.  Board Member Aguirre noted that since the rule failed to comply  with the stringency statute, it was obvious that the initial notice of rulemaking also failed to comply with the stringency statute.

Result:  Motion passed 5-2 with Lehnherr and Reiten opposed.

1. **Does the rulemaking record contain necessary evidence to support the written finding required by the stringency statute?**

Motion:  No, the rulemaking record for the 0.8 standard does not contain the evidence that would support all written findings required by the stringency statute.

Discussion:  The first motion was broader and proposed that the record does not contain “any evidence.”  Board Member Simpson provided an exhaustive list of issues he saw with the record.  He noted that he had not been through the entire record, but he noted the glaring issues, including that a model is only as good as its development and use and if not used correctly, it yields invalid results.  He also noted that he did not see evidence of harm occurring or any harm that would prompt the rulemaking.  However, he noted that there was some evidence that could support some of the required written findings.  As a result, the motion was modified as provided above.  Chairman Ruffatto stated that he had not reviewed the entire record  but he had looked at all of DEQ’s citations and all of Teck’s and found no evidence that would support the required finding.

Result:  The motion passed 5-2 with Lehnherr and Reiten opposed.

1. **Are peer-reviewed studies necessary as part of the written finding?**

Motion:  Yes, peer-reviewed studies are necessary to support the written finding and comply with the stringency statute.

Discussion:  The Chair and other Board members noted that the statute was clear on its face that a peer-reviewed study was required.  Lehnherr noted that the record was extensive and included international scientists and peer reviewed studies.

Result:  The motion passed 5-2 with Lehnherr and Reiten opposed.