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**AGENDA
BOARD OF ENVIRONMENTAL REVIEW
FRIDAY, JUNE 1, 2007
METCALF BUILDING, CONFERENCE ROOM 111
1520 EAST SIXTH AVENUE, HELENA, MONTANA**

NOTE: Individual agenda items are not assigned specific times. For public notice purposes, the Board will begin the meeting no earlier than the time specified. However, the Board might not address the specific agenda items in the order they are scheduled. Persons with disabilities, who need an accommodation in order to participate in this meeting, should contact the Board Secretary at (406) 444-2544.

9:00 A.M.

I. ADMINISTRATIVE AGENDA ITEMS

A. REVIEW AND APPROVE MINUTES

1. March 29, 2007, regularly scheduled Board meeting.
[Draft Minutes](#)

II. BRIEFING AGENDA ITEMS

A. CONTESTED CASE UPDATE

1. Cases assigned to Hearing Officer Katherine Orr
 - a. In the matter of CR Kendall Corporation's request for a hearing to appeal DEQ's decision to deny a minor permit amendment under the Metal Mine Reclamation Act, BER 2002-09 MM. On April 27, 2007, Hearing Examiner Katherine Orr issued an *Order Requesting Status Report*.
 - b. **In the matter of the issuance of the Air Quality Permit for the Roundup Power Project, Permit No. 3182-00, BER 2003-04 AQ.** On June 6, 2005, the Montana Supreme Court remanded an appeal to the District Court. On June 15, 2005, the district Court remanded the case to the Board. The Board was to decide whether to make a new decision based on the record or to receive additional evidence. On July 29, 2005, the Board issued an *Order Staying Contested Case Proceedings* indefinitely. On August 24, 2005, Hearing Examiner Katherine Orr issued an *Assumption of Jurisdiction* referencing the *Order Staying Contested Case Proceedings*.
 - c. **In the matter of the Montana Environmental Information Center's appeal of Air Quality Permit No. 3182-01, issued for the Roundup Power Project, BER 2005-21 AQ.** On March 13, Bull Mountain filed a *Motion to Dismiss* on the basis of mootness. MEIC filed a *Brief in Opposition* to the motion on March 23, to which Bull Mountain filed a *Brief in Reply* on April 6.
 - d. **In the matter of Violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.** A Stay of Proceedings was issued by the Hearing Examiner on January 19, 2006, upon notification by the Department of the bankruptcy proceeding.
 - e. **In the matter of the request for hearing of Kountry Korner Enterprises, d/b/a Kountry Korner Café, regarding violations of the Montana Public Water Supply Laws, BER 2006-09 PWS.** By order dated January 3, 2007, the case is stayed until March 18, 2007. On March 30, 2007, the parties filed a *Stipulation for Continuing Stay of Board Proceedings*.

- f. **In the matter of the appeal by Willow Creek Sewer District regarding violations of the Water Quality Act, BER 2006-13 WQ.** Upon a request for an extension, the parties have until April 13, 2007, to submit a hearing schedule or reach settlement. On May 9, DEQ filed a *Request for Extension*, which Ms. Orr granted on May 11.
- g. **In the matter of the Notice of Appeal and Request for Hearing of the Citizens Awareness Network, Women's Voices for the Earth, and the Clark Fork Coalition regarding DEQ's approval of the Thompson River CO-Gen, LLC, Air Quality Permit No. 3175-04, BER 2006-18 AQ.** The Hearing Examiner has ruled on *Motions in Limine* filed by the Department and Thompson River Co-Gen, a *Motion for Partial Dismissal For Failure to State a Claim or Alternatively a Motion in Limine* filed by Thompson River Co-Gen, a *Motion for Partial Summary Judgment* filed by the Department of Environmental Quality and notices concerning the absence of opposition to pending motions and requests for extension filed by the Petitioners. The matter proceeded to hearing on May 3, 4, and 17, 2007.
- h. **In the matter of violations of the Metal Mine Reclamation Act by Marty J. and Sinda M. Puryer, as individuals and d/b/a Paul Kurth Mining, for the failure to post reclamation bond, BER 2006-21 MM.** A hearing is set for July 30, 2007.
- i. **In the matter of the appeal by the City of Bozeman regarding the DEQ's final decision for MPDES Permit No. MT0022608, BER 2006-23 WQ.** The parties were granted an extension until April 6, 2007, to file a proposed schedule for the conduct of prehearing matters. On May 3, the parties filed another *Request for Extension*.
- j. **In the matter of the appeal by the Butte-Silver Bow Public Works Department, regarding Final MPDES Permit No. MT0022012, BER 2006-27 WQ.** On May 3, 2007, DEQ filed a third *Request for Extension* on behalf of the parties. An extension was granted until July 3, 2007, to submit a hearing schedule or settlement documents.
- k. **In the matter of violations of the Water Quality Act and the Public Water Supply Laws by Brady County Water and Sewer District, BER 2006-29 WQ.** By order dated January 3, 2007, the parties were given until March 10, 2007, to attempt to reach settlement or file a proposed pre-hearing and hearing schedule. On May 14, DEQ filed a second *Request for Extension*.
- l. **In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Westmoreland Mining, LLC, d/b/a Western Energy Co., BER 2006-30 SM.** Hearing Examiner Katherine Orr issued an *Amended Scheduling Order* on April 30, 2007, setting a new hearing date of July 27, 2007, before the full Board.
- m. **In the matter of violations of the Clean Air Act of Montana by Flathead County, BER 2007-01 AQ.** On March 22, 2007, the County filed a *Motion for Stay*. Hearing Examiner Katherine Orr issued an *Order for Stay* on May 11, 2007, giving the parties until May 25, 2007, to attempt to settle the case.
- n. **In the matter of the appeal by the Missoula County Public Works Department regarding MPDES Permit No. MT0020168 and DEQ's response to public comments and submitted documents regarding the permit, BER 2007-02 WQ.** On March 23, 2007, DEQ filed a *Request for Extension* to file a proposed scheduling order. Hearing Examiner Katherine Orr granted the extension May 11, 2007, giving the parties until May 23, 2007.
- o. **In the matter of the appeal by Jill and Joseph Slevin regarding Gallatin County's denial of a request for waiver**

to build a home, **BER 2007-03 SUB**. The Board received the appeal on March 21, 2007. Hearing Examiner Katherine Orr issued a *First Prehearing Order* on May 14, 2007, giving the parties until May 24, 2007, to file a proposed schedule.

B. CASES IN LITIGATION

1. **In the matter of the Petition for Review of Hazardous Waste Final Permit No. MTHWP-03-01 issued to Flying J Petroleum, Inc. (BER 2003-14 HW)**. Flying J requested a hearing under the Montana Hazardous Waste Act to review the final decision of DEQ to issue a Hazardous Waste Final Permit to Flying J for its former refinery located near Cut Bank. A *Petition for Judicial Review* was filed by Flying J on August 18, 2006. On September 13, 2006, the Board Secretary mailed a certified copy of the record to the Ninth Judicial District Court. The certified record was received by the court September 14, 2006. On October 3, 2006, the Board Secretary found that the exhibits to the Petition for Review had been omitted from the original submission and sent a certified copy of the exhibits to the court. On September 27, 2006, the Board filed a *Motion to Dismiss the Board*. Flying J filed a response opposing the Motion to Dismiss on October 12, 2006. On November 9, 2006, the Board filed a *Reply in Support of Motion to Dismiss*.

C. OTHER BRIEFING ITEMS

1. Legislation Briefing
2. Temporary Water Quality Standards for the New World Mining District Update

III. ACTION ITEMS

A. INITIATION OF RULEMAKING AND APPOINTMENT OF HEARING OFFICER:

The Department will propose that the Board concur in its recommendation to initiate rulemaking to:

1. Amend ARM 17.8.501, 17.8.505, and 17.8.514 for the annual adjustment of air quality operation and open burning fees.
Executive Summary
Notice of Public Hearing on Proposed Amendment
2. Update the Air Quality Incorporation by Reference Rules at ARM 17.8.102, ARM 17.8.103, ARM 17.8.201, ARM 17.8.202, ARM 17.8.302, ARM 17.8.602, ARM 17.8.767, ARM 17.8.801, ARM 17.8.802, ARM 17.8.818, ARM 17.8.901, ARM 17.8.902, ARM 17.8.1002, ARM 17.8.1007, ARM 17.8.1102, ARM 17.8.1201, ARM 17.8.1202, ARM 17.8.1206, ARM 17.8.1212, ARM 17.8.1232, ARM 17.8.1234, ARM 17.8.1302, ARM 17.8.1402, ARM 17.8.1502, ARM 17.8.1509 (annual update and housekeeping changes).
Executive Summary
Notice of Public Hearing on Proposed Amendment

B. FINAL ACTION ON APPEALS

1. **In the matter of violations of the Water Quality Act at Cenex Harvest States fueling facility on Highway 83, Condon, BER 2006-28 WQ**. The Appellant, Cenex, Harvest States, filed a *Withdrawal of Appeal* on February 19, 2007. An *Order of Dismissal* is prepared for the Board.
2. **In the matter of the appeal by Dan Fuchs, Broken 7 Subdivision, regarding Gallatin City-County Health Department's denial of a request to change a provision of the original certificate of subdivision approval, BER 2006-22 SUB**. On April 5, 2007, Larry Jent, attorney for Dan Fuchs, filed a *Motion to Dismiss Appeal*. The parties filed a joint *Stipulation for Dismissal* on April 27, 2007. An order to dismiss the appeal will be presented for the Board's approval.
3. **In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by BMP Investments, Inc., at the Bull Mountains Mine #1, BER 2006-24 SM**. The parties filed a *Stipulation to Dismiss* on March 21, 2007. An order dismissing the case

will be presented for the Board's approval.

C. NEW CONTESTED CASE APPEALS

1. **In the matter of the request for hearing by John Pendleton regarding alleged violations of the Montana Public Water Supply Laws at the Ponderosa Mobile Home Court in Corvallis, BER 2007-04 PWS.** The Board received the request for hearing on April 2, 2007. Hearing Examiner Katherine Orr issued a First Prehearing Order on May 2, 2007, giving the parties until May 21, 2007, to file a scheduling order.
2. **In the matter of the appeal by the Town of Superior, BER 2007-05 WQ, regarding final MPDES Permit No. MT0020664, issued to the Town of Superior.** The Board received the appeal on May 2, 2007. Hearing Examiner Katherine Orr issued a First Prehearing Order on May 14, 2007, giving the parties until May 26, 2007, to file a scheduling order.

D. OTHER ACTION ITEMS

1. Acquisition of Repository Site for the McLaren Tailings — The Department is proposing that the Board purchase property to provide a repository for tailings from the McLaren Mine at the New World Mining District near Cooke City.

IV. GENERAL PUBLIC COMMENT

Under this item, members of the public may comment on any public matter within the jurisdiction of the Board that is not otherwise on the agenda of the meeting. Individual contested case proceedings are not public matters on which the public may comment.

V. ADJOURNMENT