



AGENDA
BOARD OF ENVIRONMENTAL REVIEW
FRIDAY, NOVEMBER 30, 2007
METCALF BUILDING, 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 ITEMS

A. REVIEW AND APPROVE MINUTES

1. September 28, 2007, regularly scheduled Board meeting.

Draft Minutes

B. SET 2008 MEETING SCHEDULE

II. BRIEFING 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*. On May 16, 2007, DEQ filed a *Status Report*. An EIS and closure plan should be completed and evaluated in 2008.
 - 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 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 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.
 - d. **In the matter of the appeal by Willow Creek Sewer District regarding violations of the Water Quality Act, BER 2006-13 WQ.** On November 8, 2007, Hearing Examiner Katherine Orr issued a *Last Order Granting Extension* giving the parties until December 4, 2007 to file a proposed pre-hearing and hearing schedule or to reach a settlement.
 - e. **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.** A hearing was held in May, 2007. On September 7, 2007, the Permittee filed a *Notice of Supplemental Authority*. Proposed Findings of Fact and Conclusions of Law are due.
 - f. **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.** Hearing Examiner Katherine Orr issued a *Third Order Setting Date for Prehearing Conference and Hearing* on November 15, 2007. A hearing is set for December 6, 2007.
 - g. **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.** On October 29, 2007, Hearing Examiner Katherine Orr

granted a fifth extension, giving the parties until December 7, 2007, to file a proposed pre-hearing and hearing schedule.

- h. **In the matter of the appeal by the Butte-Silver Bow Public Works Department, regarding Final MPDES Permit No. MT0022012, BER 2006-27 WQ.** Hearing Examiner Katherine Orr issued a *Fourth Order Granting Extension* on November 8, 2007 the parties had until November 19 to file a proposed pre-hearing and hearing schedule.
- i. **In the matter of violations of the Clean Air Act of Montana by Flathead County, BER 2007-01 AQ.** On November 8, 2007, Hearing Examiner Katherine Orr issued an *Order Extending Stay of Pre-Hearing Schedule* until December 3, 2007.
- j. **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.** Hearing Examiner Katherine Orr issued a *Third Order Granting Extension* on November 15, 2007, giving the parties until December 14, 2007 to file a proposed pre-hearing and hearing schedule.
- k. **In the matter of the appeals by Southern Montana Electric (SME), Citizens for Clean Energy (CCE) and Montana Environmental Information Center (MEIC) regarding Air Quality Permit No. 3423-00 issued to SME for its Highwood Generation Station, BER 2007-06 & 07 AQ.** Hearing Examiner Katherine Orr issued a Scheduling Order on July 31, 2007. The two appeals under BER 2007-06 and BER 2007-07 are consolidated for pre-hearing matters. All parties filed a “Stipulation to Modify Briefing Schedule and Extend Filing Deadline For Initial Briefs of Permittee and State of Montana” giving the State of Montana and Permittee until November 16, 2007 to file their pre-trial motions as well as MEIC and Citizens for Clean Energy. Response briefs are due on December 4, 2007, and reply briefs are due on December 11, 2007. The Board will decide when to hear oral argument on the motions, (December 21, 2007 is proposed), rule on the motions, and whether to set the case for hearing around the same time as the regularly scheduled meeting on January 22, 2008.
- l. **In the matter of violations of the Water Quality Act by North Valley Hospital, Flathead County, BER 2007-08 WQ.** Hearing Examiner Katherine Orr issued a *Third Order Granting Extension* on November 8, 2007; the parties have until January 10, 2008, to file a proposed pre-hearing and hearing schedule.
- m. **In the matter of violations of the Montana Public Water Supply laws by Malsam Water Conditioning, Inc., d/b/a Culligan of Great Falls, Inc., at Culligan Water Conditioning Great Falls, BER 2007-10 PWS.** A hearing is scheduled for December 18, 2007. A *Motion to Amend Schedule* was filed on October 29, 2007 requesting that the hearing schedule be changed.
- n. **In the matter of violations of the Opencut Mining Act by Big Rock, LLC, at the Wheeler Gravel Pit, Missoula County, BER 2007-11 OC.** A hearing is scheduled for March 14, 2008.
- o. **In the matter of the appeal by ExxonMobil regarding its final MPDES Permit No. MT-0028321 for its Billings Refinery, BER 2007-12 WQ.** Hearing Examiner Katherine Orr issued a *Second Order Granting Extension* on November 8, 2007; giving the parties until April 1, 2008, to file a proposed hearing schedule.
- p. **In the matter of violations of the Open Cut Mining Act by John Schlecht, d/b/a John Schlecht Excavating, at the Schlecht Sand and Gravel Pit, Ravalli County, BER 2007-13 OC.** Hearing Examiner Katherine Orr issued a *First Scheduling Order* on November 8, 2007. A telephonic prehearing conference is scheduled for January 30, 2008, and a hearing is scheduled for February 8, 2008.
- q. **In the matter of violation of the Water Quality Act by Jack Mountain Estates Subdivision, Jefferson County, BER 2007-15 WQ.** Hearing Examiner Katherine Orr issued a *First Scheduling Order* on November 8, 2007 a telephonic prehearing conference is scheduled for March 21, 2008 and a hearing is scheduled for April 3, 2008.
- r. **In the matter of Violations of the Water Quality Act by the Montana Department of Transportation and Ascorp, Inc., D/B/A Decco Construction, at Sportsman’s Campground – East, Silver Bow County, Montana, BER-2007-17 WQ.** On October 29, Hearing Examiner Katherine Orr issued an *Order Granting Extension* giving the parties until December 17, 2007, to file a proposed pre-hearing and hearing schedule.

- s. **In the matter of violations of the Opencut Mining Act by Prairie Sand and Gravel, Inc., at the state site in Roosevelt County, Montana, BER 2007-18 OC.** On October 2, 2007, Hearing Examiner Katherine Orr issued a *First Prehearing Order* giving the parties until October 12, 2007, to file a proposed pre-hearing and hearing schedule.
- t. **In the matter of violations of the Opencut Mining Act by Kenneth Mikesell at the Kenneth Mikesell site, White Sulphur Springs, Montana, BER 2007-19 OC.** On October 2, Hearing Examiner Katherine Orr issued a *First Scheduling Order*. A telephonic pre-hearing conference is scheduled for March 17, 2008, and a hearing is scheduled for April 1, 2008.

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).** On July 6, 2007, the Court entered an *Order Setting Briefing Schedule and Hearing Date*. Oral argument on the Petition for Judicial Review occurred October 17, 2007. The parties are awaiting a ruling from the Court.

C. OTHER BRIEFING ITEMS

- 1. Zortman-Landusky Update – The Department’s Permitting Division will present an update on reclamation activities at Zortman-Landusky, including discussion of Swift Gulch and operating funds for the existing water treatment systems.
- 2. Enforcement and penalty calculation process – The Department’s Enforcement Division will present an overview of its processes for taking enforcement actions and calculating penalties.
- 3. Montana-Wyoming settlement discussions - The Department will provide an update on the settlement discussions with Wyoming regarding the litigation over Montana’s water quality standards and numeric non-degradation threshold on the Tongue and Powder rivers and their tributaries.

III. ACTION ITEMS

A. REPEAL, AMENDMENT OR ADOPTION OF FINAL RULES

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

- 1. Amend certain water quality standards in Circular DEQ-7 and update rules in ARM 17.30.502, 17.30.619, 17.30.702, 17.30.1001, 17.36.345, 17.55.102, 17.55.102, 17.55.111, 17.55.507, and 17.56.608 pertaining to Department Circular DEQ-7., and to update reference in ARM 17.30.641, to recently updated EPA methods. The changes to the DEQ-7 include new water quality standards for several pesticides and metabolites; the addition of 304 (a) criteria for aquatic life for Diazinon and Nonylphenol, and amendment of the reference for toxic equivalency factors for dioxins.

[Executive Summary](#)

[Notice of Public Hearing on Proposed Amendment](#)

[Draft DEQ Circular 7](#)

- 2. Amend ARM 17.30.610 to change the water-use classification for two water body segments in the Dry Fork of the Marias River drainage.

[Executive Summary](#)

[Notice of Public Hearing on Proposed Amendment](#)

[Draft Conrad UAABB](#)

B. NEW CONTESTED CASE APPEALS

- 1. **In the matter of violations of the Montana Water Quality Act by 48 North, Pc. at Spring Creek Estates Subdivision, Kalispell, Montana, BER 2007-21 WQ.** The Board received the appeal on October 5, 2007. The Board may appoint a permanent hearing examiner or decide to hear the matter.
- 2. **In the matter of violations of the Opencut Mining Act by Stephen M. Swan, d/b/a Swan Creek Concrete Company at the South Boulder Grazing Site, Jefferson County, Montana, BER 2007-22 OC.** The Board

received the appeal on October 5, 2007. The Board may appoint a permanent hearing examiner or decide to hear the matter.

3. **In the matter of the appeal by CHS Inc. regarding its Title V operating permit No. OP1821-01 for the Laurel Refinery, Laurel, Montana, BER 2007-23 AQ.** The Board received the appeal on October 3, 2007. The Board may appoint a permanent hearing examiner or decide to hear the matter.
4. **In the matter of the appeal by the City of Whitefish regarding its MPDES permit No. MT0020184 for the Wastewater Facility, Whitefish, Montana, BER 2007-24 WQ.** The Board received the appeal on October 25, 2007. A *Prehearing Order* requesting a prehearing and hearing schedule from the parties was issued on November 13, 2007, by Interim Hearing Examiner Katherine Orr. The Board may appoint a permanent hearing examiner or decide to hear the matter.
5. **In the matter of violations of the Opencut Mining Act by Joe Beasley at the Silverstone Site, Flathead County, Montana, BER 2007-25 OC.** The Board received the appeal on November 2, 2007. A *Prehearing Order* requesting a prehearing and hearing schedule from the parties was issued on November 14, 2007, by Interim Hearing Examiner Katherine Orr. The Board may appoint a permanent hearing examiner or decide to hear the matter.
6. **In the matter of the appeal by Adios Recycling regarding DEQ's denial of its Motor Vehicle Wrecking Facility License, Alberton, Montana, BER 2007-26 JV.** The Board received the appeal on November 2, 2007. A *Prehearing Order* requesting a prehearing and hearing schedule from the parties was issued on November 13, 2007, by Interim Hearing Examiner Katherine Orr. The Board may appoint a permanent hearing examiner or decide to hear the matter.

C. FINAL ACTION ON CONTESTED CASES

1. **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.** On November 6, 2007, the parties filed a *Stipulation for Dismissal* and an *Administrative Order on Consent*. An order to dismiss the case will be presented for the Board's approval.
2. **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.** On November 16, 2007, the parties filed a *Dismissal of Contested Case*. An order to dismiss the case will be presented for the Board's approval.
3. **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.** On November 14, 2007, the parties filed a *Stipulation for Dismissal*. An order to dismiss the case will be presented for the Board's approval.
4. **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.** On November 9, 2007 the parties filed a *Stipulation to Dismiss*. An order to dismiss the case will be presented for the Board's approval.
5. **In the matter of violations of the Montana Public Water Supply laws by Gallatin National Forest at Soda Butte Campground, BER 2007-09 WQ.** On November 9, 2007 the parties filed a *Stipulation for Dismissal*. An order to dismiss the case will be presented for the Board's approval.
6. **In the matter of the violation of the Metal Mine Reclamation Act by Big Sky Masonry Stone, Inc., Wheatland County, Montana, BER 2007-16 MM.** On November 16, 2007, the parties filed a *Stipulation for Dismissal* and an *Administrative Order on Consent*. An order to dismiss the case will be presented for the Board's approval.
7. **In the matter of violations of the Montana Public Water Supply Laws by Oasis Water Fill, LLC. at Oasis Water Fill, BER 2007-20 PWS.** The Board received the appeal on September 19, 2007. On October 10 the parties filed a *Stipulation for Dismissal*. An order to dismiss the case will be presented for the Board's approval.

IV. GENERAL PUBLIC COMMENT

- A. 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