



AGENDA
BOARD OF ENVIRONMENTAL REVIEW
FRIDAY, SEPTEMBER 28, 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. July 27, 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 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 August 22, 2007, Hearing Examiner Katherine Orr issued a *Hearing Schedule*. The hearing is set for January 7, 2008.
- e. **In the matter of the appeal by Willow Creek Sewer District regarding violations of the Water Quality Act, BER 2006-13 WQ.** A seventh extension was granted giving the parties until September 21, 2007, to file a proposed hearing schedule or proposed settlement documents. Only one more extension will be granted.
- f. **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 parties filed their *Proposed Findings of Fact and Conclusions of Law* on August 3, 2007.
- g. **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 *Second Order Setting Date for Prehearing Conference and Hearing* on August 30, 2007. A prehearing telephonic conference was held on September 5, 2007. Another pre-hearing conference is set for September 21, 2007. There is a pending motion to clarify jurisdiction.

- h. **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 July 1, Hearing Examiner Katherine Orr granted an extension, giving the parties until September 21, 2007, to file a proposed schedule.
- i. **In the matter of the appeal by the Butte-Silver Bow Public Works Department, regarding Final MPDES Permit No. MT0022012, BER 2006-27 WQ.** A third extension was granted giving the parties until August 29, 2007, to submit a proposed hearing schedule or proposed settlement documents. The parties want a fourth extension to complete settlement discussions.
- j. **In the matter of violations of the Clean Air Act of Montana by Flathead County, BER 2007-01 AQ.** August 23, Hearing Examiner Katherine Orr issued an *Order for Stay* until November 1, 2007.
- k. **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 August 23, Hearing Examiner Katherine Orr granted an extension giving the parties until August 31, 2007, to file a proposed schedule or proposed settlement documents. The parties have requested a third extension to October 12, 2007 to discuss settlement.
- l. **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.** A hearing is scheduled for November 20, 2007.
- m. **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.** On August 24, the parties filed a *Request for Extension*.
- n. **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. The completion of discovery must occur by October 5, 2007. Oral argument on pre-trial motions is November 30, 2007. (A regularly scheduled Board meeting.) A telephonic prehearing conference is scheduled for January 11, 2008, at which time a hearing date will be discussed.
- o. **In the matter of violations of the Water Quality Act by North Valley Hospital, Flathead County, BER 2007-08 WQ.** A second extension was granted giving the parties until October 29, 2007, to file a proposed hearing schedule or proposed settlement documents.
- p. **In the matter of violations of the Montana Public Water Supply laws by Gallatin National Forest at Soda Butte Campground, BER 2007-09 WQ.** Hearing Examiner Katherine Orr issued a *First Pre-Hearing Order* on July 16, giving the parties until July 31, 2007, to file a proposed schedule or proposed settlement documents. Ms. Orr has extended the deadline to September 14, 2007.
- q. **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.
- r. **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.
- s. **In the matter of the appeal by ExxonMobil regarding its final MPDES Permit No. MT-0028321 for its Billings Refinery, BER 2007-12 WQ.** On August 30, Hearing Examiner Katherine Orr issued an *Order Granting Extension* giving the parties until October 1, 2007, to file a proposed schedule or proposed settlement documents.

- t. **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.** On August 30, the parties filed a *Proposed Prehearing Schedule*.
- u. **In the matter of violation of the Water Quality Act by Jack Mountain Estates Subdivision, Jefferson County, BER 2007-15 WQ.** On August 29, 2007, the parties filed 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).** On July 6, 2007, the Court entered an *Order Setting Briefing Schedule and Hearing Date*. Under this Order, the Petitioner is required to file a final reply brief on or before October 5, 2007. The Board's and Department's response brief is due on September 21, 2007. Oral argument is set for October 17, 2007.

III. ACTION ITEMS

A. REPEAL, AMENDMENT OR ADOPTION OF FINAL RULES

- 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.

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- 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).

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- 3. Amend ARM 17.38.101 and 106 of the public water supply rules, in accordance with MCA, 75-6-104 and 75-6-108, to allow the department to collect fees commensurate with the costs of engineering plan and specification review and to clarify existing rules.

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B. NEW CONTESTED CASE APPEALS

- 1. **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.** The Board received the appeal on July 26, 2007. The Board may appoint a permanent hearing examiner or decide to hear the matter.
- 2. **In the matter of Violations of the Water Quality Act by the Montana Department of Transportation and Ascorp, Inc., D/B/A Debco Construction, at Sportsman's Campground – East, Silver Bow County, Montana, BER-2007-17 WQ.** The Board received the appeal on August 7, 2007. The Board may appoint a permanent hearing examiner or decide to hear the matter.
- 3. **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.** The Board received the appeal on August 24, 2007. The Board may appoint a permanent hearing examiner or decide to hear the matter.

4. **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.** The Board received the appeal on September 10, 2007. 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 Montana Environmental Information Center's appeal of Air Quality Permit No. 3182-01, issued for the Roundup Power Project, BER 2005-21 AQ.** On July 31, 2007, Hearing Examiner Katherine Orr issued an *Order Setting Date for Filing Response to Exceptions*. The parties had until September 12, 2007, to file exceptions and until September 18, 2007, to file responses to exceptions. On September 12, 2007, Permittee Bull Mountain (Roundup Power) filed a *Notice of Relinquishment of Permit and Unopposed Motion to Dismiss or in the Alternative Motion for Reconsideration and Brief in Support*. The Board will be presented with a proposed Order Dismissing the Case.
2. **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.** On August 22, the parties filed a *Stipulation for Dismissal*. An order to dismiss the case will be presented for the Board's approval.
3. **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 July 25, 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 violations of the Montana Public Water Supply Laws by Broadway Flying J, Belgrade, BER 2007-14 PWS.** On August 25, the parties filed a *Stipulation to Dismiss*. 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