



**AGENDA**  
**BOARD OF ENVIRONMENTAL REVIEW**  
**FRIDAY, MAY 30, 2008**  
**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) 444-5270.

**9:00 A.M.**

**I. ADMINISTRATIVE ITEMS**

A. REVIEW AND APPROVE MINUTES

1. **April 21, 2008**, regularly scheduled Board meeting.

**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 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.
  - c. **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 status conference was held on March 11, 2008. The parties filed a status report on March 25, 2008, and will be preparing settlement documents.
  - d. **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 January 11, 2008, the parties filed a *Request for Extension*. Hearing Examiner Katherine Orr issued an *Order Granting Extension* on January 15, 2008, giving the parties until November 1, 2008, to file proposed settlement documents or a proposed prehearing schedule.
  - e. **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.** On May 1, 2008, the parties filed an *Unopposed Motion to Continue Telephonic Prehearing Conference*. Hearing Examiner Katherine Orr issued an *Order Resetting Telephonic Prehearing Conference and Hearing Date*. A telephonic prehearing conference is scheduled for June 4, 2008, and a hearing is scheduled for June 11, 2008.
  - f. **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.** On January 4, 2008, Hearing Examiner Katherine Orr issued a *First Scheduling Order*. A telephonic pre-hearing conference is scheduled for July 7, 2008, and a hearing is scheduled for July 14, 2008.

- g. **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.** Hearing Examiner Katherine Orr issued an *Order Vacating Scheduling Order* on April 24, 2008. The parties have until June 1, 2008, to submit status reports regarding settlement discussions.
- h. **In the matter of the appeal by ExxonMobil regarding its Air Quality Operating Permit No. OP1564-02 for the Billings Refinery, Yellowstone County, Montana, BER 2007-27 AQ.** Hearing Examiner Katherine Orr issued a *Second Scheduling Order* on March 31, 2008. A telephonic prehearing conference is scheduled for September 11, 2008, and a hearing is scheduled for September 25, 2008.
- i. **In the matter of violations of the Water Quality Act by Park County, Gardiner, MT, BER 2008-01 WQ.** On April 8, 2008, the parties filed a *Request for Extension*. Hearing Examiner Katherine Orr issued an *Order Granting Second Extension* on April 22, 2008, giving the parties until June 9, 2008, to file a hearing schedule or a proposal for settlement.
- j. **In the matter of violations of the Opencut Mining Act by James Timis at the Timis Excavation Site Flathead County, MT, BER 2008-02 OC.** Hearing Examiner Katherine Orr issued a *First Scheduling Order* on March 28, 2008. A telephonic prehearing conference is scheduled for September 22, 2008, and a hearing is scheduled for October 7, 2008.
- k. **In the matter of violations of the Montana Underground Storage Tank Act by CStore, Inc. at S and S Foods, Superior, Montana, BER 2008-03 UST.** The parties filed an *Agreed Motion for and Extension of Time to File Proposed Prehearing Schedule* on March 17, 2008. Hearing Examiner Katherine Orr issued an *Order Granting Extension* on March 31, 2008.

### III. ACTION ITEMS

#### A. INITIATION OF RULEMAKING AND APPOINTMENT OF HEARING OFFICER:

- 1. Amend ARM 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](#)
- 2. Update the Air Quality Incorporation by Reference Rules at ARM 17.8.102, 17.8.301, 17.8.901, 17.8.1007, 17.8.1206, 17.8.1212, 17.8.1232, 17.8.1234, 17.8.1234, 17.8.1302, 17.8.1402, 17.8.1502, and 17.8.1509 (annual update and housekeeping changes).  
[Executive Summary](#) [Notice of Public Hearing](#)

#### B. THREE YEAR REVIEW OF TEMPORARY WATER QUALITY STANDARDS

The Board is conducting, as required by 75-5-312 MCA, the three-year review of temporary water quality standards adopted for the **New World Mining District**. The Board adopted the TWQ Standards in June 1999 and conducted a triennial review in July 2002 and 2005. The implementation plan to restore Daisy Creek, Fisher Creek, and portions of the Stillwater Rivers is being administered by the U.S. Forest Service. The Board will conduct a public hearing on whether the temporary standards should be modified, terminated, or left in place.

#### C. NEW CONTESTED CASE APPEALS

- 1. **In the matter of appeal of March 11, 2008, letter by Schellenger Construction Co., Inc. and Tutvedt Family Partnership at the Tutvedt 2 Mine Site , Flathead County, Montana, BER 2008-04 OC.** The Board received the **appeal** on April 8, 2008. On April 11 the Department filed a *Motion to Dismiss with Supporting Brief*. On May 12 Hearing Examiner Katherine Orr issued a *First Prehearing Order* giving the parties until June 2, 2008, to file a hearing schedule or a proposal for settlement. The Board may appoint a permanent hearing examiner or decide to hear the matter.

#### D. FINAL ACTION ON CONTESTED CASES

- 1. **In the matter of the Petition for Review of Hazardous Waste Final Permit No. MTHWP-03-01 issued to Flying J Petroleums, Inc., BER 2003-14 HW.** The parties filed a *Stipulation for Dismissal*

*with Prejudice* on April 28, 2008. An *order* to dismiss the case will be presented for the Board's approval.

2. **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.** Hearing Examiner Katherine Orr issued a *Findings of Fact Conclusions of Law and Proposed Order* on April 22, 2008. Petitioners filed exceptions to certain pre-hearing rulings and requested oral argument. The Department and TRC filed response briefs and requested clarification of the proposed remand order. The Department filed a motion for clarification. The Board will hear oral argument and deliberate on the exceptions and the clarification request and may take action on them.
  - *Petitioners Exceptions to Findings of Fact, Conclusions of Law and Proposed Order*
  - *Notice of Intent Not to File Exceptions to Hearing Examiner's Finding of Fact, Conclusions of Law and Proposed Order and Request for Clarification of Remand Order*
  - *TRC & DEQ's Joint Response to Petitioner's Exceptions*
  - *Notice of Petitioner's Request for Oral Argument*
  - *TRC and MDEQ's Joint Request for Oral Argument*
3. **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.** An oral argument was held on April 21, 2008, on reply briefs and other briefing concerning the BACT analysis for PM 2.5. The Board reached a decision to remand the case to the Department. Hearing Examiner Katherine Orr will present *proposed findings of fact, conclusions of law*, and an *order*. The Board will adopt findings of fact, conclusions of law, and an order either in the draft presented to the Board or in a modified form.
  - *DEQ's Brief Concerning Effect of Permit Remand on SME's Ability to Construct its CFB Boiler*
  - *SME's Brief Concerning Effect of Permit Remand on Its Ability to Construct HGS Pending pm2.5-Specific BACT Analysis*
  - *MEIC's Brief in Support of Proposed Order*
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.** On April 24, 2008, the parties filed a *Stipulation and Request for Dismissal*. 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 the City of Helena at the City of Helena Public Water Supply System, Helena, Montana, BER 2008-05 PWS.** The Board received the *appeal* on May 13, 2008. The parties filed a *Stipulation for Dismissal* on May 15, 2008. 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