



**AGENDA**  
**BOARD OF ENVIRONMENTAL REVIEW**  
**FRIDAY, AUGUST 8, 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. **May 30, 2008**, regularly scheduled Board meeting.

**II. BRIEFING ITEMS**

**A. EQC LETTER REGARDING PM<sub>2.5</sub> RULEMAKING**

The department will present information on the recent meetings of the Environmental Quality Council and the Council's Agency Oversight Committee, which culminated in a **letter** from the Council to the Board recommending the Board adopt rules consistent with the Board's recent action disallowing use of a PM<sub>10</sub> surrogate in BACT analysis.

**B. 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 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.
  - d. **In the matter of the appeal by Southern Montana Electric (SME) regarding its Air Quality Permit No. 3423-00 for the Highwood Generation Station, BER 2007-06 AQ.** The parties are considering dismissal, settlement or continuation of the contested case proceeding.
  - e. **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 had until June 1, 2008, to submit status reports regarding settlement discussions. The parties are undergoing settlement discussions as of July 22, 2008.

- f. **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.** The parties filed a *Status Report* on July 9, 2008. Settlement discussions are ongoing.
- g. **In the matter of violations of the Water Quality Act by Park County, Gardiner, MT, BER 2008-01 WQ.** On June 19, 2008, the parties filed a *Request for Extension*. Hearing Examiner Katherine Orr issued an *Order Granting Third Extension* on July 1, 2008, giving the parties until September 1, 2008, to file a hearing schedule or a proposal for settlement.
- h. **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.

### III. ACTION ITEMS

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

- 1. The Department is proposing **amendments** to Administrative Rules of Montana (ARM) Title 17, Chapter 38, subchapters 1 and 2 to update existing rules regarding public water supplies by clarifying existing rules and by incorporating by reference the most recent applicable sections of the Code of Federal Regulations. Rule changes include clarifications and updates to rules and definitions for existing rules, new rules for clarification and to accommodate new federal requirements, and clarification of federal requirements. The list of affected rules are: ARM 17.38.101, 201A, 202, 203, 204, 208, 209, New 210, 216, 225, 234, and 239.

#### B. REPEAL, AMENDMENT OR ADOPTION OF FINAL RULES

- 1. In the matter of the **amendment** of ARM 17.30.617 to designate the mainstem Gallatin River from the Yellowstone National Park boundary to the confluence of Spanish Creek as an Outstanding Resource Water (ORW) and to amend ARM 17.30.638 to add a new sub-section clarifying that discharges to ground water with a direct hydrologic connection to an ORW are within the statutory mandate prohibiting any permanent change in the water quality of an ORW resulting from point source discharges. The Department will request that the Board issue a notice of supplemental rulemaking to extend the comment period.

#### C. NEW CONTESTED CASE APPEALS

- 1. **In the matter of violations of the appeal by Plum Creek Manufacturing, Inc. of its Montana Groundwater Pollution Control System Permit No. MTX00092, BER 2008-06 WQ.** The Board received the **appeal** on June 23, 2008. The Board may appoint a permanent hearing examiner or decide to hear the matter.
- 2. **In the matter of violations of the Hazardous Waste Act by the Three W's, Inc., and Montana Waste Systems, Inc., BER 2008-07 HW (MT Waste Systems).** The Board received the **appeal** on July 2, 2008. The Board may appoint a permanent hearing examiner or decide to hear the matter.
- 3. **In the matter of the appeal by Eastgate Water and Sewer Association of Helena Sand and Gravel, Inc.'s Opencut Permit No. HSG-017, BER 2008-08 OC.** The Board received the **appeal** on July 9, 2008. The Board may appoint a permanent hearing examiner or decide to hear the matter.
- 4. **In the matter of violations of the Hazardous Waste Act by the Three W's, Inc., and Montana Waste Systems, Inc., BER 2008-09 HW (Three W's).** The Board received the **appeal** on July 15, 2008. 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 TMC, Inc. at the Nuss Pit, Gallatin County, Montana, BER 2008-10 OC.** The Board received the **appeal** on July 28, 2008. 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 appeal by the Butte-Silver Bow Public Works Department, regarding Final MPDES Permit No. MT0022012, BER 2006-27 WQ.** The parties filed a *Stipulation for Dismissal* on May 21, 2008. An **order** to dismiss the case will be presented for the Board's approval.
2. **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.** The parties filed a *Stipulation to Dismiss and Dismissal Order* on June 13, 2008. An **order** to dismiss the case will be presented for the Board's approval.
3. **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 parties filed a *Stipulation to Dismiss* on May 28, 2008. An **order** to dismiss the case will be presented for the Board's approval.
4. **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 a *Stipulation to Dismiss and Dismissal Order* on June 23, 2008. An **order** to dismiss the case will be presented for the Board's approval.
5. **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.** On July 25, 2008, Hearing Examiner Katherine Orr issued an *Order Dismissing Appeal*. 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