



AGENDA

BOARD OF ENVIRONMENTAL REVIEW

MONDAY, APRIL 21, 2008

CITY-COUNTY BUILDING

316 N PARK AVE, ROOM 330, HELENA, MONTANA

(Parking is available kitty corner from the City-County Building in the parking garage)

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. **January 22, 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 the Petition for Review of Hazardous Waste Final Permit No. MTHWP-03-01 issued to Flying J Petroleums, Inc., BER 2003-14 HW.** On January 7, 2008, the district court issued an order affirming the decision of the Board to grant partial summary judgment for the Department on Flying J's claim that the Department erred in deciding to use a permit rather than an administrative order for post-closure care and corrective action at the closed Flying J refinery. The court agreed with the Board's conclusion that the Board did not have authority to review such a decision. The court also found that Flying J failed to support its claim to the court that the Board's hearing examiner had advocated for the Department during the Board's hearing regarding the Department's motion for partial summary judgment. On March 18, 2008, Hearing Examiner Katherine Orr issued an order requesting a status conference to discuss the remaining issues and a hearing schedule. The telephonic status conference is scheduled for April 24, 2008.
 - 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 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.
 - e. **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 **status report** on March 24, 2008, and will be preparing settlement documents.

- f. **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.
- g. **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.** A contested case hearing on the issue of whether the proper BACT analysis for PM 2.5 occurred was held on January 22 and 23, 2008, and oral argument will be held on April 21 and 22, 2008, on reply briefs and other briefing concerning the BACT analysis for PM 2.5 emissions limits.
- h. **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 March 11, 2008, Hearing Examiner Katherine Orr issued an *Order Rescheduling Hearing Date*. A telephonic prehearing conference is scheduled for May 6, 2008, and a hearing is scheduled for May 13, 2008, if the parties do not reach a settlement. The parties have indicated that they are finalizing a settlement agreement.
- i. **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.
- j. **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 a *First Scheduling Order* on January 4, 2008. ExxonMobil Refining and Supply Company and Conoco Phillips Company were granted intervenor status on January 25, 2008. A *Second Scheduling Order* was issued on February 3, 2008. A telephonic pre-hearing conference is scheduled for June 19, 2008, and a hearing is scheduled for July 1 and 2, 2008.
- k. **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 March 6, 2008, the parties filed a *Unopposed Request for an Extension of Time to Respond to First Prehearing Order*. Hearing Examiner Katherine Orr issued a *Third Order Granting Extension* on March 14, 2008, giving the parties until April 15, 2008, to file a proposed pre-hearing and hearing schedule.
- l. **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.
- m. **In the matter of violations of the Water Quality Act by Park County, Gardiner, MT, BER 2008-01 WQ.** On February 5, 2008, the parties filed a *Request for Extension*. Hearing Examiner Katherine Orr issued an *Order Granting Extension* on February 28, 2008, giving the parties until April 8, 2008, to file a hearing schedule or a proposal for settlement. On April 8, 2008, the parties filed a second *Request for Extension*.

III. ACTION ITEMS

A. REPEAL, AMENDMENT OR ADOPTION OF FINAL RULES

- 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.

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.

B. NEW CONTESTED CASE APPEALS

1. **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.** The Board received the **appeal** on February 5, 2008. A *First Scheduling Order* was issued on March 28, 2008. A telephonic prehearing conference is scheduled for September 22, 2008, and a hearing is scheduled for October 7, 2008. The Board may appoint a permanent hearing examiner or decide to hear the matter.
2. **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 Board received the **appeal** on February 13, 2008. A *First Prehearing Order* was issued on March 4, 2008. 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 issuance of the Air Quality Permit for the Roundup Power Project, Permit No. 3182-00, BER 2003-04 AQ.** On November 28, 2007, Bull Mountain filed a *Motion to Dismiss*. The Hearing Examiner issued an order dismissing the case on April 3, 2008. An **order** to dismiss the case will be presented for the Board's approval.
2. **In the matter of the appeal by Willow Creek Sewer District regarding violations of the Water Quality Act, BER 2006-13 WQ.** On March 18, 2008, 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.
3. **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 April 1, 2008, 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 Clean Air Act of Montana by Flathead County, BER 2007-01 AQ.** On February 7, 2008, the parties filed a *Motion to Dismiss Appeal*. An **order** to dismiss the case will be presented for the Board's approval.
5. **In the matter of violations of the Water Quality Act by North Valley Hospital, Flathead County, BER 2007-08 WQ.** On March 28, 2008, 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.
6. **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 April 4, 2008, the parties filed a *Stipulation to Dismiss / Request for Dismissal*. An **order** to dismiss the case will be presented for the Board's approval.
7. **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 March 7, 2008, the parties filed a *Stipulation to Dismiss* and an *Administrative Order on Consent*. An **order** to dismiss the case will be presented for the Board's approval.
8. **In the matter of violation of the Water Quality Act by Jack Mountain Estates Subdivision, Jefferson County, BER 2007-15 WQ.** On March 20, 2008, 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.

9. **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.** On February 5, 2008, 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.
10. **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 February 15, 2008, the parties filed a *Stipulation to Dismiss* and an *Administrative Order on Consent*. An **order** to dismiss the case will be presented for the Board’s approval.
11. **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.** On March 26, 2008, the parties filed a *Motion to Dismiss*. An **order** to dismiss the case will be presented for the Board’s approval.
12. **In the matter of violations of the Opencut Mining Act by Joe Beasley at the Silverstone Site, Flathead County, Montana, BER 2007-25 OC.** On March 6, 2008, the parties filed a *Stipulation to Dismiss* and an *Administrative Order on Consent*. An **order** to dismiss the case will be presented for the Board’s approval.
13. **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.** Hearing Examiner issued an *Order of Dismissal* on February 6, 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.

APRIL 21, 2008, 10:00 A.M. continuing APRIL 22, 2008, 8:00 A.M.

V. SME HEARING

- A. **In the matter of the appeals by 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 AQ.**

Oral argument will be held on reply briefs and other briefing concerning the BACT analysis for PM 2.5 emissions limits.

MEIC Response to Request for Briefing

DEQ/SME Response to Request for Briefing

MEIC/CCE Reply in Support of Closing

DEQ’s Closing Reply

SME’s Closing Reply

VI. ADJOURNMENT