



P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • Website: www.deq.state.mt.us

AGENDA

BOARD OF ENVIRONMENTAL REVIEW

FRIDAY, OCTOBER 2, 2009

STATE CAPITOL BUILDING, ROOM 152

1301 EAST SIXTH AVENUE, HELENA, MONTANA

*****Please Note*****

Board members will participate via teleconference.

Board attorney and DEQ staff will be present at above location (**note change**)

Members of the public are welcome to participate at the above location.

If a teleconference line is needed, the Board Secretary must be notified by 1:00 p.m. Thursday, October 1.

NOTE: Individual agenda items are not assigned specific times. For public notice purposes, the meeting will begin 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) 444-6701.

9:00 A.M.

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. July 24, 2009, Board meeting. [ATTACHMENT](#)

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.** An EIS on the mine closure plan is on hold until collection of water quality data is completed. Once the data has been collected, the EIS will be completed and the case may become moot. The case is stayed pending completion of the EIS. The parties anticipate completion of the EIS in 2009.
 - 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 and request for hearing by Montana Environmental Information Center, Citizens for Clean Energy, Sierra Club, and National Parks Conservation Association of the Southern Montana Electric Generation and Transmission Cooperative (SME) Highwood Generating Station Air Quality Permit No. 3423-01, BER 2008-23 AQ.** (The Board has retained jurisdiction on this case to hear contested case matters.) On August 19, 2009, the Board received *Respondent-Intervenor Southern Montana Electric's Motion to Dismiss Appeal with Prejudice and Memorandum in Support*. On September 2, 2009, the Board received *Appellant's Response to SME's Motion to Dismiss with Prejudice*. No reply brief has been filed.
 - d. **In the matter of violations of the Metal Mine Reclamation Act by Saturday Sunday, LLC. Deer Lodge County, BER 2009-02 MM.** The Department of Environmental Quality filed a *Motion for Summary Judgment* on May 26, 2009. The Appellant filed an *Opposition to the Department's Motion for Summary Judgment and Cross-Motion for Summary Judgment* on June 11, 2009. The Department filed a *Reply Brief* on June 29, 2009. In view of the motions, the hearing examiner issued an *Order Vacating Dates in First Prehearing Order* on June 17, 2009,

postponing the hearing until further notice. The Hearing Examiner issued a *Proposed Order on Cross Motions for Summary Judgment* on September 22, 2009.

- e. **In the matter of violations of the Montana Public Water Supply Laws by Hugh Black-ST. Mary Enterprises, Inc. at the ST. Mary Lodge and Resort Public Water Supply System, PWSID #MT0002754, ST. Mary, Glacier County, BER 2009-04 PWS.** A hearing is scheduled for December 11, 2009.
 - f. **In the matter of the Notice of Violations of the Montana Water Quality Act by North Star Aviation, Inc. at Ravalli County Airport, Ravalli County, BER 2009-10 WQ.** On July 15, 2009, the DEQ submitted a *Proposed Schedule* with a January 25, 2010, hearing date.
 - g. **In the matter of violations of the Clean Air Act of Montana by Sheep Mountain Properties, LLC, Jefferson County, BER 2009-11 AQ.** A *Scheduling Order* was issued on July 8, 2009. A hearing is scheduled for November 19, 2009. On August 25, 2009, the Department filed *The Department's Motion to Compel and for Sanctions*. No response was filed by Sheep Mountain.
 - h. **In the matter of violations of Montana Public Water Supply Laws by Anaconda Country Club, Anaconda, Deer Lodge County, BER 2009-12 PWS.** On July 23, 2009, the Department filed a second *Request for Extension*. Hearing Examiner Katherine Orr issued the *Second Order Granting Extension* on August 14, 2009. The parties have until September 30, 2009, to reach settlement or file a proposed hearing schedule.
2. Cases in litigation
- a. **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.** Petitioners filed a Notice of Appeal to the Montana Supreme Court on January 30, 2009. The Petitioners filed their Supreme Court brief on May 21, 2009. The Department and Thompson River Power, Inc., filed answer briefs, as Intervenor-Respondents in the case, on June 18 and 22, 2009, respectively. The Board is named as the respondent, but has not appeared in the case. Any reply brief by the Petitioners is due within 14 days after service of the answer briefs.
 - b. **In the matter of the appeal by Citizens for Clean Energy (CCE) and Montana Environmental Information Center (MEIC) regarding Air Quality Permit No. 3423-00 issued to Southern Montana Electric (SME) for its Highwood Generating Station, BER 2007-07 AQ.** On March 20, 2009, the district court granted SME's motion to stay scheduling of oral argument until at least June 17, 2009. On June 15, 2009, SME filed a motion to continue the stay through November 2, 2009, noting that the Department does not object to continuing the stay but that the Petitioners do object. On June 19, 2009, the Petitioners filed a response to the motion, stating that they do not object to the stay if SME intends to abandon the coal plant project and requesting that the court convene a status conference with the parties to determine the status of the project.

III. ACTION ITEMS

A. REPEAL, AMENDMENT OR ADOPTION OF FINAL RULES

- 1. In the matter of proposed adoption of the amendments of ARM 17.8.501, 17.8.504, 17.8.505, and 17.8.514 for the annual adjustment of air quality operation and open burning fees. [ATTACHMENT](#)
- 2. In the matter of proposed adoption of the amendments of the Air Quality Incorporation by Reference Rules at ARM 17.8.102, 17.8.302, 17.8.767, 17.8.802, 17.8.822, 17.8.902, and 17.8.1002 (annual update and housekeeping changes). [ATTACHMENT](#)

3. In the matter of proposed adoption of the amendments of Administrative Rules of Montana (ARM) Title 17, Chapter 38, Subchapters 1 and 2. The proposed amendments are intended to update existing rules regarding public water supplies by; adopting new rules, clarifying existing rules, and incorporating by reference the most recent applicable sections of the Code of Federal Regulations. New rules include adoption of new federal requirements including the Ground Water Rule (GWR), Stage-2 Disinfection Byproducts Requirements rule (Stage-2), and the Enhanced Treatment for Cryptosporidium rule (LT-2). Amendments include updates to Engineering Plan Review for regional water systems and clarifications to existing rules to accommodate new federal requirements. [ATTACHMENT](#)
4. In the matter of the proposed amendments to the Administrative Rules of Montana (ARM) 17.30.702, 17.36.101, 17.36.102, 17.36.103, 17.36.104, 17.36.323, 17.36.345, 17.36.911, 17.36.912, 17.36.914, 17.36.916, 17.36.918, 17.36.922, 17.38.101, 17.55.102, Department Circular DEQ-4, and the adoption of New Rules I and II pertaining to gray water reuse, as modified in response to public comment, that were proposed in May 2009. [ATTACHMENT](#)

B. NEW CONTESTED CASE APPEALS

1. **In the matter of violation of the Montana Underground Storage Tank Act by Stockton Oil Company at Soco Express #10, Yellowstone County, BER 2009-14 UST.** The Board received the request for hearing on July 13, 2009. Hearing Examiner Katherine Orr issued a First Prehearing Order on August 14, 2009. The Department submitted a Proposed Prehearing Schedule on August 25, 2009. The Board may appoint a permanent hearing examiner or decide to hear the matter. [ATTACHMENT](#)
2. **In the matter of violations of the Montana Septage Disposal and Licensure Laws by Craig Sundberg, d/b/a Sunny's Septic Service and Excavating, Anaconda, Deer Lodge County, BER 2009-15 SDL.** The Board received the appeal on August 20, 2009. The Board may appoint a permanent hearing examiner or decide to hear the matter. On September 14, 2009, DEQ filed a *Notice of Intent to Dismiss*, informing the Board that the parties have agreed to dismiss the case and expect to file a stipulation in the near future. [ATTACHMENT](#)
3. **In the matter of violations of the Metal Mine Reclamation Act by Paradine Mining, Inc., Broadwater County, BER 2009-16 MM.** The Board received the appeal on August 31, 2009. The Board may appoint a permanent hearing examiner or decide to hear the matter. [ATTACHMENT](#)
4. **In the matter of violations of the Montana Septage Disposal and Licensure Laws by Steven Kunkel, d/b/a Montana Septic Service, at Great Falls Wastewater Treatment Plant, Great Falls, Cascade County, BER 2009-17 SDL.** The Board received the appeal on September 1, 2009. The Board may appoint a permanent hearing examiner or decide to hear the matter. [ATTACHMENT](#)
5. **In the matter of violations of the Montana Underground Storage Tank Act by Juniper Hill Farm, LLC, at Lakeside General Store, Lewis and Clark County, BER 2009-18 UST.** The Board received the appeal on September 9, 2009. The Board may appoint a permanent hearing examiner or decide to hear the matter. [ATTACHMENT](#)

C. FINAL ACTION ON CONTESTED CASES

1. **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 has retained jurisdiction on this case to hear contested case matters.) On July 17, 2009, the Board received a *Stipulation to Dismiss* signed by the attorneys for the parties. An order for dismissal will be presented for signature by the Chairman. [ATTACHMENT](#)
2. **In the matter of violations of the Montana Underground Storage Tank Act by Flying J Inc. at Flying J Travel Plaza, 112000 Browns Gulch Road, Butte, Silver Bow County, BER 2009-06**

UST. On August 24, 2009, the DEQ filed a *Stipulation to Dismiss*, signed by both parties. An *Order of Dismissal* will be presented for signature by the Chair. [ATTACHMENT](#)

3. **In the matter of the request for hearing by Sandy Rose regarding the Notice of violation of the Montana Public Water Supply Laws by Canyon Ferry Mansion, Inc., at Canyon Ferry Mansion, PWSID #MT0004387, Helena, Lewis and Clark County, BER 2009-08 PWS.** On August 13, 2009, the parties filed a *Stipulation for Dismissal*. An *Order of Dismissal* will be presented for signature by the Chair. [ATTACHMENT](#)
4. **In the matter of the appeal by the River Rock County Water and Sewer District regarding its MDEQ Permit No. MTX000147 for its wastewater treatment facility, BER 2009-05 WQ.** On September 4, 2009, the parties filed a *Stipulation to Dismiss*. An *Order of Dismissal* will be presented for signature by the Chair. [ATTACHMENT](#)
5. **In the matter of Montana Public Water Supply Laws by Headwaters Livestock Auction, LLC at Headwaters Livestock Auction, Three Forks, Broadwater County, BER 2009-13 PWS.** On September 16, 2009, the parties filed a *Stipulation for Dismissal*. An *Order of Dismissal* will be presented for signature by the Chair. [ATTACHMENT](#)
6. **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.** On September 23, 2009, SME filed a *Petitioner Southern Montana Electric's Notice of Voluntary Dismissal*. An *Order of Dismissal* will be presented for signature by the Chair. [ATTACHMENT](#)

D. OTHER ACTION ON CONTESTED CASES

1. **In the matter of violations of the Montana Water Quality Act by Wilderness Club, LLC., at the Wilderness Club Eureka, Lincoln County, Montana, BER 2008-13 WQ.** (The Board has retained jurisdiction on this case to hear contested case matters.) On May 14, 2009, the Wilderness Club filed a *Motion for Summary Judgment*. On June 11, 2009, the Board received a *DEQ Brief in Response to Appellant's Motion for Summary Judgment*. A *Reply to the Motion for Summary Judgment* was filed by the Wilderness Club on July 6, 2009. On September 22, 2009, the Hearing Examiner issued a *Proposed Order Denying Motion for Summary Judgment*. [ATTACHMENT](#)

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