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## AGENDA

BOARD OF ENVIRONMENTAL REVIEW

FRIDAY, JULY 23, 2010

**METCALF BUILDING, ROOM 111**

**1520 EAST SIXTH AVENUE, HELENA, MONTANA**

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**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. May 14, 2010, Board teleconference meeting. **ATTACHMENT**
2. May 28, 2010, Board teleconference 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.** On January 12, 2010, the department filed a status report in the case stating that the parties agree that the case should continue to be stayed.
  - b. **In the matter of violations of the Metal Mine Reclamation Act by Saturday Sunday, LLC. Deer Lodge County, BER 2009-02 MM.** On May 11, 2010, Hearing Examiner Katherine Orr issued an *Order Setting Telephonic Status Conference*. Ms. Orr also issued an *Order Setting Hearing* on May 27, 2010. A hearing is set for July 19, 2010.
  - c. **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 April 22, 2010 the Department filed a *Proposed Schedule* and Ms. Orr issued a *Second Scheduling Order* on April 30, 2010. A hearing is set for September 16, 2010.
  - d. **In the matter of violations of the Clean Air Act of Montana by Sheep Mountain Properties, LLC, Jefferson County, BER 2009-11 AQ.** The Board received a *Second Proposed Prehearing Schedule* from the Department on May 19, 2010. Hearing Examiner Katherine Orr issued a *Second Scheduling Order* on May 25, 2010. A hearing is set for October 19, 2010. On July 8, 2010, the Department filed a *Request to Consolidate* this case with the case, In the Matter of Violations of the Clean Air Act of Montana by Todd Michael Milhalko, Jefferson County, Montana, BER 2010-10 AQ.
  - e. **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.** On May 17, 2010, the Board received the *Department's Verified Status Report* and on May 25, 2010, the Department filed its *Motion and Brief for Discovery and Disclosure Sanctions*. The Board received *Supplement to Department's Motion for Discovery Sanctions* on June 7, 2010, and a letter

from the Appellant on June 14, 2010. On June 15, 2010, Hearing Examiner Katherine Orr issued an *Order on Stipulation Establishing Partial Settlement* and on June 24, 2010, Ms. Orr issued an *Order Imposing Discovery Sanctions and Order to Produce Response*, which are due by July 15, 2010.

- f. **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 Department's Reply in Support of its Motion for Summary Judgment* on March 19, 2010. Hearing Examiner Katherine Orr issued an *Order Granting Motion for Summary Judgment on Liability* on May 27, 2010. A hearing on the determination of administrative penalties was held on June 4, 2010.
  - g. **In the matter of the request for hearing regarding the revocation of certificate of approval ES#34-93-C1-4 for the Fort Yellowstone Subdivision, Park County, BER 2009-20/22 SUB.** On April 30, 2010, Hearing Examiner Katherine Orr issued an *Order Granting Extension and Setting Telephonic Status Conference* giving the parties until July 23, 2010, to reach settlement or propose a hearing schedule. On June 15, 2010, Ms. Orr issued an *Order on Motion to Intervene*.
  - h. **In the matter of the request for hearing by the City of Great Falls regarding the DEQ's notice of final decision for MPDES Permit No. MT0021920, BER 2009-21 WQ.** On May 3, 2010, the Board received a *Request for Extension to File a Proposed Schedule* and on May 7, 2010, Hearing Examiner Katherine Orr issued a *Third Order Granting Extension* giving the parties until June 11, 2010, to settle or file a proposed hearing schedule.
  - i. **In the matter of violations of the Public Water Supply Laws by Aces Wild, LLC at Aces and Eights Casino, PWSID #MT0003321, Glasgow, Valley County, BER 2010-07 PWS.** The Board received the appeal on April 13, 2010. On April 30, 2010, a *First Prehearing Order* was issued. The Department filed a *Request for Extension* on May 11, 2010. Hearing Examiner Katherine Orr issued an *Order Granting Extension* on May 14, 2010, and a *First Scheduling Order* on June 15, 2010. A hearing is set for November 17, 2010.
  - j. **In the matter of violations of the Montana Underground Storage Tank Act by Jeanny Hlavka, individually and d/b/a J.R. Enterprise, LLC, at the Fort Peck Station, 301 Missouri Avenue, Fort Peck, Valley County, BER 2010-08 UST.** The appellant filed an *Acknowledgement of Prehearing Order* on May 10, 2010. On May 24, 2010, the Board received a *Motion for Extension of Time to Submit Agreed Proposed Prehearing Schedule*. Hearing Examiner Katherine Orr issued an *Order Granting Extension of Time* on June 2, 2010. The Department filed a *Motion for Extension of Time to Submit Agreed Proposed Prehearing Schedule* on June 4, 2010, and the attorney for the appellant filed a *Notice of Appearance* and *Motion for Stay of Proceedings* on June 22, 2010.
2. Cases the Board has retained unto itself or has not assigned to a hearings examiner
    - a. **In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Signal Peak Energy, LLC at Bull Mountain Mine #1, Roundup, Musselshell County, BER 2009-23 SM.** (At its December 11, 2009, meeting, the Board chose to not appoint a hearing examiner.) The Board received the appeal on November 4, 2009. Hearing Examiner Katherine Orr issued the *First Prehearing Order* on November 12, 2009. On December 7, 2010, attorney for the appellant filed a *Request for Extension*

*to Submit Proposed Schedule.* Ms. Orr issued an *Order Granting Extension to Submit Proposed Schedule* on March 11, 2010.

- b. **In the matter of the appeal and request for hearing by the City of Belgrade of DEQ's Notice of Final Decision regarding Montana Ground Water Pollution Control System Permit No. MTX000116, Belgrade, Gallatin County, BER 2010-06 WQ.** (At its May 14, 2010, meeting, the Board chose to not appoint a hearing examiner.) The Board received the appeal on March 23, 2010. On March 31, 2010, Interim Hearing Examiner Katherine Orr issued a *First Prehearing Order* giving the parties until April 14, 2010, to file a proposed schedule. The Department filed a *Request for Extension* on April 14, 2010. On April 23, 2010, Ms. Orr issued an *Order Granting Extension of Time to File First Prehearing Order* until May 31, 2010. The Board received a *Second Unopposed Request for Extension of Time* on July 9, 2010.

#### B. OTHER BRIEFING ITEMS

1. The Department will provide the Board with an overview of public comments received during the Triennial review of Montana water quality standards.
2. The Department will provide information to the Board on individual wastewater discharge permit appeal activity. The information presented will summarize permits issued in relation to permit appeals. **ATTACHMENT**
3. The Department will provide a briefing on discussions with interested parties working on alternatives to the Gallatin River Outstanding Resource Water Designation. This is a follow-up to direction given by the Board to the Department at the May 14 Board meeting.
4. The Department will provide a briefing on its proposed legislation for the 2011 Legislative session. **ATTACHMENT**

### III. ACTION ITEMS

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

1. Amend ARM 17.50.403 and 410. The Department completed a major amendment to the Department's solid waste rules when an adoption notice was published on February 11, 2010. At the March 19, 2010, Board meeting, the Department requested that the Board initiate rulemaking to revise ARM 17.50.403 and 410, which are Board rules, to correct cross references to the amended Department rules, to correct outdated citations to hazardous waste rules, to clarify language concerning suspension of quarterly solid waste management fees after a facility is in interim closure, and to make minor editorial changes that are not intended to change the meaning of the rules. The Board initiated rulemaking, a notice was published in the Montana Administrative Register on April 15, 2010, and no comments were received. The Department is now requesting that the Board adopt the amendments as proposed. **ATTACHMENT**
2. The Department is requesting that the Board adopt the amendments, as proposed in March 2010, to the Administrative Rules of Montana (ARM) Title 17, Chapter 38, subchapter 2, as no comments were received. Amend ARM 17.38.201A(1) to update the adoption by reference to the 2009 edition of the Code of Federal Regulations; amend language in ARM 17.38.203(1)(d), 17.38.216(3)(k) through (o), 17.38.234(6)(f), and 17.38.239(3) to clarify regulatory language; amend ARM 17.38.206(1) to remove adoption by reference citation to federal citations that no longer exist; and delete ARM 17.38.234(6)(d)(ii) to conform this rule with the federal standard by removing a numeric value associated to the term "not detected" for purposes of reporting. **ATTACHMENT**

3. The Department requests that the Board adopt the proposed amendments to Department Circular DEQ-7 and incorporate the updated water quality standards in Circular DEQ-7 by amending ARM Title 17, Chapter 30, subchapters 5, 6, 7, and 10, pertaining to mixing zones, surface water quality standards, nondegradation requirements, and ground water rules; ARM Title 17, Chapter 36, subchapter 3, pertaining to subdivisions; ARM Title 17, Chapter 55, subchapter 1, pertaining to CECRA; and ARM Title 17, Chapter 56, subchapter 5, pertaining to underground storage tanks. The changes are primarily intended to update certain water quality standards in DEQ-7 and incorporate DEQ-7 into the above rules. The changes include amending existing rules and clarifying existing language. **ATTACHMENT**

#### B. NEW CONTESTED CASE APPEALS

1. **In the matter of the appeal and request for hearing by Roseburg Forest Products Co. of DEQ's Notice of Final Decision regarding Montana Ground Water Pollution Control System Permit No, MTX000099, BER 2010-09 WQ.** The Board received the appeal on June 14, 2010. On June 22, 2010, a *First Prehearing Order* was issued. On July 6, 2010, the Appellant filed an unopposed *Motion for Extension of Time*. The Board may appoint a permanent hearing examiner or decide to hear the matter. **ATTACHMENT**
2. **In the matter of violations of the Clean Air Act of Montana by Todd Michael Mihalko, Jefferson County, Montana, BER 2010-10 AQ.** The Board received the appeal on July 6, 2010. 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 Violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.** The parties have reached a settlement in this case. An order to dismiss the case will be presented for signature by the Chair **ATTACHMENT**.
2. **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.** The parties have reached a settlement in this case. An order to dismiss the case will be presented for signature by the Chair. **ATTACHMENT**
3. **In the matter of the appeal and request for hearing by Fidelity Exploration & Production Co. of the DEQ's denial of the request for modification of Fidelity's MPDES Permit No. MT0030457, BER 2009-24 WQ** (At its January 22 meeting, the Board voted to retain this matter unto itself.) The parties have reached a settlement in this case. An order to dismiss the case will be presented for signature by the Chair. **ATTACHMENT**
4. **In the matter of the request for hearing by AquaFlo, LLC, of DEQ's Notice of Final Decision regarding Montana Ground Water Pollution Control System Permit No. MTX000121 and the Permit Fact Sheet, Helena, Lewis and Clark County, BER 2010-03 WQ.** The parties have reached a settlement in this case. An order to dismiss the case will be presented for signature by the Chair. **ATTACHMENT**
5. **In the matter of violations of the Montana Public Water Supply Laws by the Red Cliff Estates Homeowners Association, Inc. at Red Cliff Estates HOA PWSID #MT0004268, Clancy, Jefferson County, Montana, BER 2010-05 PWS.** The Board received the appeal on March 22, 2010. The parties have reached a settlement in this case. An order to dismiss the case will be presented for signature by the Chair. **ATTACHMENT**
6. **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 have reached a settlement in this case. An order to dismiss the case will be resented for signature by the Chair. **ATTACHMENT**

7. **In the matter of violations of the Montana Public Water Supply Laws by Jason Ellsworth at SFE Unapproved, Hamilton, Ravalli County, BER 2010-01 PWS.** On June 4, 2010, the parties signed a *Stipulation for Dismissal* agreeing to dismiss the case under Rule 41(a). An *Oder of Dismissal* will be presented for signature by the Board Chair. **ATTACHMENT**

#### D. OTHER ACTION ITEMS

1. The Gallatin Local Water Quality District boundary expansion to the north, west, and south requires Board approval of an amendment to their program. As required by 7-5-311(7) MCA, the Gallatin Local Water Quality District Board will submit a program amendment to the Board for their approval before implementing the local water quality program in areas that have been added to the District.

#### 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