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TELECONFERENCE AGENDA
BOARD OF ENVIRONMENTAL REVIEW
FRIDAY, OCTOBER 8, 2010
METCALF BUILDING, ROOM 111
1520 EAST SIXTH AVENUE, HELENA, MONTANA

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. It is expected that most or all available Board members will be participating via teleconference. The Board's attorney and secretary will be present at the location stated above. Interested persons, members of the public, and the media are welcome to attend at the location stated above. Members of the public and press also may join Board members with prior arrangement. Contact information for the Board members is available from the Board secretary at (406) 444-2544 or at <http://www.deq.mt.gov/ber/default.mcp.x>. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this meeting. Please contact the Board secretary by telephone or by e-mail at mgable@mt.gov no later than 24 hours prior to the meeting to advise her of the nature of the accommodation you need.

9:00 A.M.

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. July 23, 2010, 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.** 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.** Hearing Examiner Katherine Orr issued an *Order Setting Telephonic Status Conference*. On May 27, 2010, Ms. Orr issued an *Order Setting Hearing* and on July 21, 2010, Ms. Orr issued an *Order on Default*.
 - 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 December 4, 2009, the Department submitted a *Request for Stay of Scheduling Order* to allow the parties time to pursue settlement discussions. An *Order Granting Stay of Scheduling Order* was issued on January 6, 2010, giving the parties until April 5, 2010, to file settlement documents or a proposed hearing schedule. The Department filed a *Proposed Schedule* on April 22, 2010. Ms. Orr issued a *Second Scheduling Order* on April 30, 2010. On September 13, 2010, a prehearing conference was held in which the parties asked for change in the hearing date to October 21, 2010. Ms. Orr granted this request.
 - d. **In the matter of violations of the Clean Air Act of Montana by Sheep Mountain Properties, LLC, Jefferson County, BER 2009-11 AQ.** 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. On August 20, 2010, the Board received the *Department's Motion for Summary Judgment with Supporting Brief*, and on August 23, 2010, the Department filed a *Motion to Substitute Affidavits*. On September 16, 2010, the Board received the *Department's Reply in Support of Motion for Summary Judgment*.

- e. **In the matter of violations of the Clean Air Act of Montana by Todd Michael Mihalko, Jefferson County, Montana, BER 2010-10 AQ.** Hearing Examiner Katherine Orr issued a *First Prehearing Order* on July 20, 2010. The Board received an *Agreed Proposed Prehearing Schedule* from the Department on August 2, 2010, and on August 6, 2010, Ms. Orr issued a *First Scheduling Order*. A hearing is set for December 20, 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.** Hearing Examiner Katherine Orr issued an *Order Granting Motion for Summary Judgment on Liability* on May 27, 2010. A contested case hearing on the issue of the proper assessment of a penalty was held on June 4, 2010. On September 20, 2010, a *Proposed Order on Penalty* was issued by Ms. Orr in which the Petitioner was given until October 15, 2010, to file exceptions.
- 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.** The Department filed a *Request for Extension* on July 28, 2010, and Hearing Examiner Katherine Orr issued a *Second Order Granting Extension* on August 2, 2010, giving the parties until September 30, 2010, to reach a settlement or file a proposed hearing schedule.
- 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.** The Board received a *Request for Extension of Time to Respond to First Prehearing Order* from the Department on July 22, 2010. A *Fourth Order Granting Extension* was issued on August 2, 2010, giving the parties until August 27, 2010, to reach a settlement or file a proposed hearing schedule.
- i. **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 attorney for the appellant filed a *Notice of Appearance and Motion for Stay of Proceedings* on June 22, 2010. Hearing Examiner Katherine Orr issued an *Order Denying Motion for Stay of Proceedings* on July 20, 2010. On September 7, 2010, a *Motion and Consent to Withdrawal of Counsel* was filed by the appellant and the attorney for the appellant. A *Notice of Appearance* was filed with the Board on September 14, 2010, by the attorney for the appellant.
- j. **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.** Hearing Examiner Katherine Orr issued an *Order Granting Extension of Time* on July 15, 2010. The Department filed a *Proposed Schedule* on July 29, 2010, and Ms. Orr issued the *First Scheduling Order* on August 5, 2010. A hearing is set for February 28, 2011.

B. OTHER BRIEFING ITEMS

1. The Department will give the Board a report regarding the air quality permit fees anticipated for the next calendar year pursuant to ARM 17.8.510.

III. ACTION ITEMS

A. INITIATION OF RULEMAKING AND APPOINTMENT OF HEARING OFFICER

1. Amend ARM 17.38.204 to correct the adoption by reference of 40 Code of Federal Regulations (CFR), Part 141.64(a)(1) which inadvertently excluded the adoption of 40 CFR, Part 141.64(a). Montana must adopt language that is at least as stringent as this federal requirement in order to maintain primacy for the Safe Drinking Water Act within the state of Montana. [ATTACHMENT](#)
2. Update the Air Quality Incorporation by Reference Rules at ARM 17.8.102. [ATTACHMENT](#)

B. NEW CONTESTED CASE APPEALS

1. **In the matter of violations of the Montana Underground Storage Tank Act by Hi-Noon Petroleum, Inc., at Noon 456, Missoula County, Montana, BER 2010-11 UST** The Board received the appeal on July 13, 2010. On July 26, 2010, Interim Hearing Examiner Katherine Orr issued a *First Prehearing Order* giving the parties until August 6, 2010, to file a proposed schedule. On August 6, 2010, the Board received an *Agreed Proposed Prehearing Schedule*. On August 26, 2010, a *First Scheduling Order* was issued setting a hearing for January 11, 2010. *The Department's Motion for Summary Judgment on the Issue of Liability* was filed on September 15, 2010. The Board may appoint a permanent hearing examiner or decide to hear the matter. [ATTACHMENT](#)
2. **In the matter of the appeal and request for hearing by Holcim Incorporated regarding the DEQ's Notice of Final Decision for MPDES Permit No. MT 0000485, BER 2010-13 WQ.** The Board received the appeal on July 22, 2010. Interim Hearing Examiner Katherine Orr issued a *First Prehearing Order* on August 6, 2010, giving the parties until August 20, 2010, to reach a settlement or file a proposed hearing schedule. On August 20, 2010, the Department filed a *Request for Extension of Time to Respond to First Prehearing Order*. Ms. Orr issued an *Order Granting Extension of Time* on September 14, 2010, giving the parties until September 20, 2010, to reach a settlement or file a proposed hearing schedule. The Board received a *Request for Second Extension of Time to Respond to First Prehearing Order* on September 21, 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 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.** An order to dismiss the case will be presented for signature by the Chair. [ATTACHMENT](#)
2. **In the matter of revocation of Septage Disposal License No. S-870 held by Steven Kunkel, d/b/a Montana Septic Service, BER 2010-12 SDL.** An order to dismiss the case will be presented for signature by the Chair. [ATTACHMENT](#)
3. **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.** 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 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.** The parties have reached a settlement in this case pursuant to Rule 41(a). 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 Aces Wild, LLC at Aces and Eights Casino, PWSID# MT0003321, Glasgow, Valley County, Montana, BER 2010-07 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](#)

D. OTHER ACTION

1. **GENERAL PUBLIC COMMENT**

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.

IV. ADJOURNMENT