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TELECONFERENCE AGENDA

BOARD OF ENVIRONMENTAL REVIEW

FRIDAY, JANUARY 28, 2011

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/index.asp>. 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 jwittenberg@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. December 3, 2010, 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 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 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 21, 2010, a status conference was held via telephone. The Department moved for entry of an order requiring Appellant to retain legal counsel. An *Order Requiring Appellant to Obtain Legal Counsel* was issued on January 10, 2011.
 - c. **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 January 6, 2011, the Board received a *Proposed Schedule* from DEQ, proposing a hearing the week of June 20, 2011. Hearing Examiner Katherine Orr issued the *First Scheduling Order* on January 11, 2011.
 - d. **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.** On November 17, 2010, the Board received a *Motion for Additional Time on Joinder and Brief in Support* from the Petitioner's attorney, requesting until December 3, 2010, the close of discovery, to determine whether to join the city of Fort Peck to this action. A hearing is scheduled for March 8, 2011. On January 4, 2011, the Department filed *The Department's Motion for Summary Judgment*.

- e. **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.** A hearing is set for February 28, 2011.
- f. **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.** On December 10, 2010, Ms. Orr issued a *Third Order Granting Extension* giving the parties until January 24, 2011, to reach settlement or file a proposed hearing schedule.
- g. **In the matter of violations of the Public Water Supply Laws by Gregory C. MacDonald at Highwood Mobile Home Park, PWSID #MT0004681, Cascade County, Montana, BER 2010-14 PWS.** Ms. Orr issued a *First Scheduling Order* on December 10, 2010, setting the hearing for May 18, 2011.
- h. **In the matter of the appeal and request for hearing by Ronald and Debbie Laubach regarding the DEQ's final decision to amend the MATL's certificate of compliance, BER 2010-15 MFS.** Ms. Orr, issued a *First Prehearing Order* on November 18, 2010. On November 24, 2010, the Board received *MATL's Motion to Intervene and MATL's Combined Motion, in BER 2010-15 and 2010-16, to Dismiss, and Brief in Support*. On December 6, 2010, the Board received a *Proposed Scheduling Order* from MATL. The petitioners submitted a letter on December 9, 2010, agreeing to join and to have Ms. Orr be the hearing examiner, and agreeing to the dates set forth in the December 7, 2010, First Scheduling Order. On December 22, 2010, the Board received *MATL's Reply Brief in Support of its Motion to Dismiss the Laubach Appeal* and on December 29, 2010, the Board received *Intervenor MATL's List of Potential Witnesses and Exhibits*. On January 3, 2011, the Board received *Appellant Laubach's List of Potential Witnesses and Exhibits*. On January 6, 2011, a hearing on MATL's Motion to Dismiss was held. On January 7, 2011, an *Order for Additional Briefing* was issued. On January 11, 2011, the Board received *Notice of Deposition of Ronald Laubach* from MATL.
- i. **In the matter of the appeal and request for hearing by Maurer Farms, Inc.; Somerfeld & Sons Land & Livestock, LLC; Larry Salois, POA; Jerry McRae; and Katrina Martin regarding the DEQ's final decision to amend the MATL's certificate of compliance, BER 2010-16 MFS.** Ms. Orr, issued a *First Prehearing Order* on November 18, 2010. On November 24, 2010, the Board received *MATL's Motion to Intervene and MATL's Combined Motion, in BER 2010-15 and 2010-16, to Dismiss, and Brief in Support*. On December 6, 2010, the Board received a *Proposed Scheduling Order* from MATL. Ms. Orr issued an *Order Granting Motion to Intervene and First Scheduling Order* on December 10, 2010. On December 22, 2010, the Board received an *Unopposed Motion to Amend Scheduling Order* from MATL. An *Amended Scheduling Order* was issued on January 11, 2011. Oral argument on MATL's Motion to Dismiss is set for February 3, 2011.
- j. **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, Montana, BER 2010-17 SM.** Ms. Orr, issued a *First prehearing Order* on October 25, 2010. On November 8, 2010, the Board received a *Notice of Appearance* and an *Unopposed Motion for Extension of Time* from the appellant's attorney. On January 11, 2011, the Unopposed Motion for Extension was granted.
- k. **In the matter of the appeal and request for hearing by Meat Production Inc., a.k.a. Stampede Packing Co., regarding the DEQ's notice of final decision for Montana**

Ground Water Pollution Control System (MGWPCS) Permit No. MTX000100, BER 2010-18 WQ. Ms. Orr issued a *First Prehearing Order* on November 18, 2010.

2. Other Contested Case Briefings
 - a. **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.** At its December 3, 2010, meeting, the Board reviewed the exceptions, response to exceptions, and supplemental response to exceptions on the *Proposed Order on Penalty*, and approved the proposed order. On January 13, 2011, the Board received *Request for Rehearing* from Juniper Hill, requesting a hearing date after February.

III. ACTION ITEMS

A. REPEAL, AMENDMENT, OR ADOPTION OF FINAL RULES

1. In the matter of the amendment of 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.
2. In the matter of the update of the Air Quality Incorporation by Reference Rules at ARM 17.8.102.

B. NEW CONTESTED CASE APPEALS

1. **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 2010-19 SM.** The Board received the appeal on December 3, 2010. Interim Hearings Examiner Ms. Orr issued the *First Prehearing Order* on December 23, 2010. The Board may appoint a permanent hearings examiner or decide to hear the matter.
2. **In the matter of violations of the Montana Public Water Supply Laws by Bellecreeke, LLC, at Belle Creeke Dental, PWSID #MT0004553, Butte, Silver Bow County, BER 2010-20 PWS.** The Board received the appeal on December 21, 2010. The Board may appoint a permanent hearings examiner or decide to hear the matter. A *First Prehearing Order* was issued on January 10, 2011.
3. **In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Carbon County Holdings, LLC, at Carbon County Holdings, Carbon County, BER 2011-01 SM.** The Board received the appeal on January 13, 2011. The Board may appoint a permanent hearings examiner or decide to hear the matter.

C. FINAL ACTION ON CONTESTED CASES

1. **In the matter of violations of the Clean Air Act of Montana by Todd Michael Mihalko, Jefferson County, Montana, BER 2010-10 AQ.** On November 30, 2010, the Board received a *Stipulation to Dismiss*, signed by the parties. An order to dismiss the case will be presented for signature.

IV. 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.

V. ADJOURNMENT