

AGENDA

THURSDAY, SEPTEMBER 27, 2012

FRIDAY, SEPTEMBER 28, 2012

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. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this meeting. Please contact the Board Secretary by telephone at (406) 444-6701 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.

THURSDAY, SEPTEMBER 27

2:30 P.M.

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. July 27, 2012, Board meeting minutes.

II. BRIEFING ITEMS

A. CONTESTED CASE UPDATE

1. Enforcement cases assigned to the Hearing Examiner
 - a. **In the matter of violations of the Montana Septage Disposal and Licensure Laws by James Vaughn, d/b/a Any Time Septic & Porta-Potty, Lake County, BER 2011-06 SDL.** A *Stay of Proceedings* was in effect until July 18, 2012. A telephonic status conference was held on July 24, 2012, and on July 25, the hearing examiner issued *Second Scheduling Order*. A hearing is scheduled for November 14, 2012.
 - b. **In the matter of violations of the Public Water Supply laws by the city of Ronan Public Water Supply System, PWSID #MT0000318, Ronan, Lake County, BER 2012-04 PWS.** The hearing examiner issued *First Scheduling Order* on July 17, 2012. A hearing is scheduled for January 31, 2013.
 - c. **In the matter of violations of the Montana Solid Waste Management Act by Valley County Refuse District #1 at the Valley County Landfill, Glasgow, BER 2012-06 SW.** The hearing examiner issued *First Scheduling Order* on July 17, 2012. A hearing is scheduled for January 23, 2013.
2. Contested Cases not assigned to a Hearing Examiner
 - a. **In the matter of violations of the Opencut Mining Act by Brad Blakeman at the Camas Prairie Gravel Pit, Sanders County, BER 2012-01 OC.** On July 26, 2012, DEQ filed *The Department's Motion for Summary Judgment on the Issue of Liability* and *The Department's Brief in Support of Motion for Summary Judgment on the Issue of Liability*. A telephonic hearing on the motion was held August 30; the appellant did not appear. On September 6, DEQ filed *The Department's Supplemental Brief in*

Support of Motion for Summary Judgment on the issue of Liability requesting the Board enter an order granting motion for the summary judgment on the issue of liability. This matter will proceed to a contested case proceeding.

- b. **In the matter of the request for hearing by William E. Smith, on behalf of Mike Adkins, regarding Park County's denial to validate Adkins Class III Waste Tire Monofill License No. 517, BER 2012-05 SW.** On July 11, 2012, the Board received *Amended Appeal Brief and Petition for Declaratory Ruling* from the attorney for appellants. At its July 27, 2012, meeting, the Board voted to hear all matters in this case. On September 11, 2012, the Board heard oral argument on pending motions; the Board granted the pending motion to intervene of Protecting Paradise, and granted a motion to stay proceedings until disposition of the Petition for Judicial Review filed in the Sixth Judicial District.
3. Other Contested Case Briefings
 - a. **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, Valley County, BER 2010-08 UST.** On March 9, 2012, the District Court remanded the case back to the Board. On July 9, 2012, attorney for DEQ filed *The Department's Second Motion for Summary Judgment*. The appellants filed *Response to Second Summary Judgment Motion* on July 19, and on July 25, DEQ filed *Reply Brief in Support of the Department's Second Motion for Summary Judgment*. On August 30, DEQ filed *Motion to Vacate the Schedule pending a Decision on the Department's Second Motion for Summary Judgment*. A hearing is set for October 25, 2012.

III. ACTION ITEMS

A. INITIATION OF RULEMAKING

DEQ will propose that the Board initiate rulemaking to:

1. Amend ARM Title 17, Chapter 38, Subchapter 1, Public Water and Sewer Plans, Cross Connections, and Drilling Water Wells, by adding a new rule to address the repair of significant deficiencies and add a new line item and fee to the plan review fee tables. The proposed new rule would clarify the definition of a significant deficiency and would require its repair, with department approval. The proposed amendments to 17.38.106 would create a new line item and associated fee related to water and wastewater sliplining projects. The new fees would reduce the costs of those reviews by approximately 40 percent.

B. REPEAL, AMENDMENT, OR ADOPTION OF FINAL RULES

1. In the matter of final adoption of the revision of Circular DEQ-2, Design Standards for Municipal Wastewater Collection and Treatment. Included in the revisions to DEQ-2 are treatment standards, classifications, and allowable uses for reclaimed wastewater. Associated with these reuse standards are proposed rule changes under the Water Quality Act and the Public Water Supply Act.
2. In the matter of the amendment of water quality standards rules. The department proposes to adopt amendments to rules in ARM 17, Chapter 30, subchapters 5, 6, 7, and 10, pertaining to mixing zones, surface water quality standards, nondegradation requirements, and ground water rules. The department also proposes to adopt amendments to ARM 17, Chapter 24, subchapter 6, pertaining to reclamation; ARM 17, Chapter 36, subchapter 3,

pertaining to subdivisions; ARM 17, Chapter 55, subchapter 1, pertaining to CECRA; and ARM 17, Chapter 56, subchapters 5 and 6, pertaining to underground storage tanks. The proposed rulemaking is primarily intended to incorporate new and revised water quality standards and required reporting values in Circular DEQ-7 into the rules listed above. Proposed changes to ARM 17, Chapter 30, subchapter 6 also includes amendments to update definitions, amendments to avoid duplication and inconsistencies with other rules, and removal of a water-use classification that is no longer relevant.

3. In the matter of the amendment of ARM 17.8.801 and 17.8.818 related to ozone implementation, pertaining to definitions and review of major stationary sources and major modifications as set forth in MAR Notice No. 17-334.

C. FINAL ACTION ON CONTESTED CASES

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.** A telephonic conference was held on June 19, 2012, in which the parties indicated they were discussing settlement. On July 31, 2012, the parties filed *Stipulation for Dismissal*. An order dismissing the case will be presented for signature.
2. **In the matter of violations of the Public Water Supply Laws by Olson's Lolo Hot Springs, Inc. at Lolo Hot Springs, PWSID #MT0000805, Missoula County, BER 2011-09 PWS.** On August 15, the Board received the parties' *Stipulation for Dismissal*. An order dismissing the case will be presented for signature.
3. **In the matter of violations of the Opencut Mining Act by Ell Dirt Works, LLC, at the Gene Foss Pit 1, Richland County, BER 2011-11 OC.** On August 30, 2012, the Board received *Stipulation to Dismiss*, signed by the parties. An order dismissing the case will be presented for signature.
4. **In the matter of violations of the Water Quality Act by SK Construction, Inc. on US Highway 2 near Bainville, Roosevelt County, BER 2011-20 WQ.** On September 12, 2012, the Board received *Stipulation for Dismissal* signed by the parties. An order dismissing the case will be presented for signature.
5. **In the matter of violations of the Opencut Mining Act by the City of Ronan at Ronan, Lake County, BER 2011-23 OC.** On July 27, the Board received *Stipulation to Dismiss*, signed by the parties. An order dismissing the case will be presented for signature.
6. **In the matter of violations of the Opencut Mining Act by Russell Olsen at PaveCo Pit, Flathead County, BER 2012-07 OC.** The Board received the request for hearing on July 11, 2012. DEQ filed *Motion to Dismiss* on July 13, 2012. On August 30, the hearing examiner issued *Order on Motion to Dismiss*, granting DEQ's motion to dismiss with prejudice and providing the petitioner until September 11, 2012, to file written exceptions. No exceptions were filed. An order dismissing the case will be presented for signature.

D. NEW CONTESTED CASES

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 2012-08 SM.** The Board received the appeal on July 19, 2012. On August 6, the interim hearing examiner issued *First Prehearing Order*, and the parties

filed *Joint Proposed Hearing Schedule* on August 16, 2012. A *First Scheduling Order* was issued on September 13, 2012. The Board may appoint a permanent hearing examiner or decide to hear the matter.

2. **In the matter of the request for hearing by Hawthorne Springs Property Owners Association; H Lazy Heart, LLC; Patchy, Inc.; and other residents regarding Opencut Mining Permit No. 2258, issued to Farwest Rock Products, Missoula County, BER 2012-09 OC.** The Board received the request on August 20, 2012. The interim hearing examiner issued *First Prehearing Order* on August 31, giving the parties until September 17, to file a proposed schedule. On September 7, the Board received a notice of appearance Pro Se from Farwest Rock Products. The Board may appoint a permanent hearing examiner or decide to hear the matter.
3. **In the matter of the request for hearing by Earth Justice, Montana Environmental Information Center, Sierra Club, and National Wildlife Federation regarding the Administrative Order on Consent issued to PPL Montana, LLC, BER 2012-10 MFS.** The Board received the request for hearing on September 4, 2012. A *First Prehearing Order* was issued on September 13, 2012. The Board may appoint a permanent hearing examiner or decide to hear the matter.

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

**FRIDAY, SEPTEMBER 28
9:00 A.M.**

I. HEARING

In the matter of violations of the Opencut Mining Act by Brad Blakeman at the Camas Prairie Gravel Pit, Sanders County, BER 2012-01 OC. The Board will hold a contested case hearing in this matter.

II. 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.

III. ADJOURN