

AGENDA

FRIDAY, MARCH 22, 2013

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.

9:00 A.M.

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. January 25, 2013, 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.** On November 26, 2012, the hearing examiner, having determined that the pending motion for summary judgment be resolved in the department's favor, issued *Order Vacating Hearing and Prehearing Conference Dates*, and *Recommended Order for Partial Summary Judgment* in January 2013. A hearing on penalties is set for April 9.
 - b. **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.** On November 1, 2012, the Board received *DEQ Motion for Summary Judgment and Brief in Support of Motion*, and on December 17, 2012, it received *Valley County Refuse District #1's Brief in Opposition to DEQ's Motion for Summary Judgment*. On January 11, 2013, the hearing examiner issued *Order Vacating and Resetting Hearing Date* [for March 27] and *Setting Date for Telephonic Oral Argument* [for January 23]. On January 23, 2013, oral argument on the pending motion for summary judgment was presented. On March 6, the hearing examiner issued *Order on Motion for Summary Judgment*. The case will move into the penalty phase.
 - c. **In the matter of violations of the Public Water Supply Laws by Trailer Terrace Mobile Park, LLC, Dennis Deschamps and Dennis Rasmussen at the Trailer Terrace, PWSID No. MT0000025, Great Falls, Cascade County, BER 2012-11 PWS.** On December 11, 2012, the hearing examiner issued *Order Granting Extension* giving the parties through March 8, 2013, to settle the matter or file a proposed schedule.

- d. **In the matter of violations of the Montana Solid Waste Management Act by Asphalt Plus, LLC, a corporation, and Michael C. and Melinda M. Oedekoven, as individuals, at 425 Johnson lane, Billings, Yellowstone County, BER 2012-13 SW.** On February 19, 2013, attorney for DEQ filed *Second Unopposed Motion for Extension of Time*. This motion was granted in a *Second Order Granting Extension of Time*, dated February 28, 2013.
2. Other Cases Assigned to a Hearing Examiner
 - a. **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.** A contested case hearing is scheduled for May 20, 2013.
3. Contested Cases not assigned to a Hearing Examiner
 - a. **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.** At its July 27, 2012, meeting, the Board voted to hear all matters in this case. On September 11, 2012, the Board granted a motion to stay proceedings until disposition of the Petition for Judicial Review filed in the Sixth Judicial District. A written status report concerning the progress of the case in District Court is due March 27, 2013.
 - b. **In the matter of the notice of appeal and request for hearing by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ.** On December 19, the Board received *Motion to Intervene* from counsel for Montana Environmental Information Center and Sierra Club. On December 24, attorney for the Appellant filed *Agreed Motion for Extension to File Response Briefs and Reply Briefs Regarding Intervention and Agreed Motion to Vacate First Scheduling Order*. On January 2, 2013, the hearing examiner issued *Order Granting Extension to File Briefs on Motion to Intervene and Order Vacating First Scheduling Order*. On January 23, 2013, the Board received *Opposition Brief to Motion to Intervene* from the attorney for the Appellant, and on February 8 it received *Reply in Support of Motion to Intervene* from the proposed intervener.
 - c. **In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP0513-08 for the Colstrip Steam Electric Station, Colstrip, BER 2013-01 AQ.** At its January 25 meeting, the Board chose to not appoint a hearings examiner for this matter. On February 7 the Board received *Joint Response to Hearing Examiner's Order Dated January 10, 2013*. A *First Scheduling Order* was issued on February 26, 2013.
 - d. **In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP2953-07 for the JE Corette Steam Electric Station, Billings, BER 2013-02 AQ.** At its January 25, 2013, meeting, the Board chose to not appoint a hearings examiner for this matter. On February 7 the Board received *Joint Response to Hearing Examiner's Order Dated January 10, 2013*. A *First Scheduling Order* was issued on February 26, 2013.

B. OTHER BRIEFING ITEMS

1. Briefing on Eastern Montana Issues Related to Oil and Gas

DEQ will brief the Board on history of the current oil boom, drilling techniques, hydraulic fracturing, production numbers and rig counts, and rig locations, as well as the impacts to DEQ programs, mainly Permitting and Compliance, and Enforcement.

III. ACTION ITEMS

A. HEARINGS

1. Butte-Silver Bow County Outdoor Air Quality Regulations

The Board will hold a public hearing on Butte-Silver Bow County's request for the Board to approve regulations primarily focused on the control of fine particulate emissions from residential woodstove burning as well as amendments to include the town of Walkerville in the county air program. On April 18, 2012, the Butte-Silver Bow Council of Commissioners approved the regulations following public notice and comment that fulfilled local processes and the requirements of Mont. Code Ann. 75-2-301. The Board will take action to approve or disapprove the proposed program revisions.

B. REPEAL, AMENDMENT, OR ADOPTION OF FINAL RULES

1. In the matter of the amendment of rules pertaining to concentrated animal feeding operations (CAFOs) and adoption of a new rule governing the application of manure, litter, and process wastewater at these facilities. These rules pertain to facilities issued discharge permits under the Montana Pollutant Discharge Elimination System (MPDES) program. The Department is requesting these amendments in order to maintain compliance with federal regulation governing states with delegated authority to implement the federal Clean Water Act's permitting program.

C. FINAL ACTION ON CONTESTED CASES

1. **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 make a final decision regarding penalty.
2. **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.** On January 10, 2013, the hearing examiner issued *Order Granting Motion to Stay Hearing*, pending decision on the department's summary judgment motion. On March 7, the hearing examiner issued *Recommended Order on Motion for Summary Judgment*. The parties may present oral argument before the Board prior to the Board acting on the recommended order.

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