

**AGENDA**

FRIDAY, MAY 17, 2013

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. 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](mailto: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. March 22, 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 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. A *Second Order Granting Extension* was signed on March 28, 2013. The parties have until August 1, 2013, to settle the matter or file a joint proposed prehearing schedule.
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. *Motions to Dismiss* and a *Motion for Summary Judgment* have been filed and briefed and are pending. Oral argument on these motions will occur on May 20, 2012.
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 was filed March 11, 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. A hearing on the *Motion to Intervene* is set for May 7, 2013.

- 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. An *Order Setting Contested Case Hearing Date* was issued on March 26, 2013. The contested case hearing is set for December 6, 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. An *Order Setting Contested Case Hearing Date* was issued March 26, 2013. The contested case hearing date is set for the regularly scheduled meeting in January or February of 2014.

### III. ACTION ITEMS

#### A. HEARINGS

1. American Chemet Corporation Lead (Pb) SIP Raw Materials Limits

American Chemet Corporation and the Montana Department of Environmental Quality are requesting the Board approve the elimination of limits on the amount of lead (Pb) allowed in raw materials used by American Chemet Corporation. The subject Pb limit is contained within and was established under a Board Order dated August 4, 1995. American Chemet's existing and enforceable Pb emission limits will remain in place and air modeling and air sampling have demonstrated continued compliance with the applicable ambient air quality standards for Pb. The Board will hold a public hearing and take action to approve or disapprove the proposed program revisions.

#### B. INITIATION OF RULEMAKING

DEQ will propose that the Board initiate rulemaking to:

1. Re-notice the proposed revisions to Circular DEQ-4, Montana Standards for Subsurface Wastewater Treatment Systems, to provide electronic links to standards that are adopted by reference. The proposed revisions to Circular DEQ-4 reorganize the format, add illustrations, and correct grammar and numbering errors. In response to emerging technology, new chapters and new design requirements have been added, including an appendix with design examples.

#### C. NEW CONTESTED CASES

1. **In the matter of violations of the sanitation in subdivisions act by Levi Britton at the 80<sup>th</sup> Street Estates Subdivision, Billings, Yellowstone County, BER 2013-03 SUB.** The Board received the request for hearing on March 15, 2013. A *First Prehearing Order* was issued on March 26, 2013. The Board may appoint a permanent hearings examiner or decide to hear the matter.

#### D. FINAL ACTION ON CONTESTED CASES

1. **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 was set for April 9. A *Stipulation to Dismiss* was filed on April 2, 2013, with an Administrative Order on Consent. A proposed *Order of Dismissal* will be provided to the Board.
2. **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 was moved into the penalty phase. A telephonic hearing on penalties was held on March 25, 2013. The hearing examiner entered an order recommending imposition of penalties. A proposed order for the Board adopting the hearing examiner's *Order on Summary Judgment* and the Hearing Examiner's recommended penalties will be provided.
3. **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. A *Stipulation to Dismiss* with an *Order on Consent* was filed May 1, 2013. An *Order of Dismissal* will be provided to the Board 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