

TELECONFERENCE AGENDA

FRIDAY, DECEMBER 6, 2013

METCALF BUILDING, ROOM 111

1520 EAST SIXTH AVENUE, HELENA, MONTANA

NOTE: It is expected that most available Board members will be participating telephonically. The Board attorney and secretary, along with any Board members who so choose, 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 Board members is available on the Board's Website (<http://www.deq.mt.gov/ber/index.asp>) or from the Board Secretary (406-444-2544). 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 needed.

9:00 A.M.

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. The Board will vote on adopting the October 4, 2013, teleconference meeting minutes.
2. The Board will vote on adopting the October 29, 2013, teleconference meeting minutes.

B. OTHER ADMINISTRATIVE ITEMS

1. Set 2014 Meeting Schedule

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. A Third Order Granting Extension** was issued on August 8 giving the parties through December 1, 2013, to settle the matter or file a joint proposed prehearing schedule.
2. Contested Cases not assigned to a Hearing Examiner
 - a. **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 October 4, 2013, the hearing examiner issued a Second Scheduling Order setting a January 31, 2014, final deadline for completion of discovery, and an April 14, 2014, telephonic prehearing conference.

- b. **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 permanent hearings examiner for this matter. Oral argument on pending motions took place October 22, 2013. Appellants' Motion for Leave to Amend was granted on November 14, and the Motion for Leave to Supplement Briefs with Appellants' Discovery Requests of PPLM was granted on November 18. The contested case hearing is set for January 21, 2014.
- 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. 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 permanent hearings examiner for this matter. Oral argument on pending motions took place October 22, 2013. The contested case hearing date is set for January 2014.

III. ACTION ITEMS

A. NEW CONTESTED CASES

1. **In the matter of violations of the Sanitation in Subdivisions Act and Public Water Supply Laws by Roger Emery at the Sunrise Motel, Sidney, Richland County, BER 2013-06 SUB.** The Board received the appeal on October 25, 2013. Interim hearing examiner issued a First Prehearing Order on November 4, 2013. The Board may appoint a permanent hearings examiner or decide to hear the matter.
2. **In the matter of the notice of appeal for hearing by Montana Environmental Information Center regarding DEQ's approval of coal mine permit No. C1993017 issued to Signal Peak Energy, LLC, for Bull Mountain Mine No. 1 in Roundup, MT, BER 2013-07 OC.** The Board received the appeal and request for hearing on November 18, 2013. The Board may appoint a permanent hearings examiner or decide to hear the matter.

B. FINAL ACTION ON CONTESTED CASES

1. **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.** On October 17, the hearing examiner issued *Recommended Order on Motion to Dismiss of Farwest Rock Products and on Motion*

to Dismiss or For Summary Judgment of the Department of Environmental Quality recommending that:

- The Farwest Motion to Dismiss be denied as to H Lazy Heart and granted as to the remaining requesting parties.
- The department's Motion to Dismiss be denied as to H Lazy Heart and granted as to the remaining requesting parties.
- All constitutional due process claims be dismissed for lack of subject matter jurisdiction.
- The department's Summary Judgment be granted as to H Lazy Heart.

Since the case is at a point of final disposition, the Board will consider whether to issue and order adopting the Recommended Order of the hearing examiner dismissing the claims of requesting parties and awarding the Department summary judgment. The requesting parties were invited to file exceptions to the Recommended Order of the hearing examiner, which they did. Respondents' Farwest and the Department filed responses to the requesting parties' exceptions, which may be considered by the Board in its deliberation of the Recommended Order. The Board will have before it a proposed order adopting the Recommended Order.

2. **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 16, 2013, the Court entered a decision in favor of Protecting Paradise and remanded the matter to DEQ with a directive that the Environmental Assessment be corrected and that an Environmental Impact Statement be performed. Counsel for DEQ submitted a written status report on September 4, 2013, stating that DEQ would not appeal the judgment issued by the Sixth Judicial District. Attorney for Appellants filed *Proposed Order Dismissing with Prejudice* on September 23, 2013, and *Unopposed Motion to Dismiss with Prejudice* on September 27, 2013. The Board has before it for approval an Order Dismissing Case with Prejudice.

C. INITIATION OF RULEMAKING

DEQ will propose that the Board initiate rulemaking to:

1. Amend the insitu coal operations rule as requested by the Office of Surface Mining (OSM). The change will only be removing the language stating that ARM 17.24.320 (Plans for Disposal of Excess Spoil) is not applicable to insitu coal operations. This was requested by OSM as it made the States rule less stringent then the Federal rule.
2. Adopt new rule I pertaining to the administrative requirements for limited opencut operations. The Department is proposing New Rule I in order to implement the provisions for limited opencut operations in Section 5 of Senate Bill 332 (2013).

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