



P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • Website: www.deq.state.mt.us

AGENDA

FRIDAY, MARCH 21, 2014

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 4 days 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. The Board will vote on adopting the January 21, 2014, 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.** A *Fourth Order Granting Extension* was issued on December 1, 2013, giving the parties through April 1, 2014, to settle the matter or file a joint proposed prehearing schedule.
 - b. **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.** On February 3, 2014, the parties filed a *Proposed Schedule*, proposing the contested case hearing for September 10, 2014.
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 January 21, 2014, the parties filed *Stipulation to Modification of Pre-trial Schedule*, extending the telephonic prehearing conference to May 14, 2014, along with a *Motion for Approval*

of Stipulation. On February 4, 2014, a *Third Scheduling Order* was issued implementing the stipulated schedule. The date of the hearing before the Board will be set at the prehearing conference. On March 3, 2014, parties DEQ and Western Energy Company filed a *Joint Unopposed Motion for Partial Remand of Permit to Department of Environmental Quality and for Suspension of Proceedings.*

- b. **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 SM.** On January 6, 2014, an *Order Adopting Joint Stipulated Procedural Schedule for Administrative Review* was issued. A *Notice of Entry of Appearance* was filed by Derf Johnson, as counsel for MEIC, on January 29, 2014.

III. ACTION ITEMS

A. OTHER ACTION ITEMS

1. Amend the Missoula City-County air quality regulations to clarify the wildfire smoke emergency episode avoidance plan; add a temporary permitting process for portable industrial sources; clarify general outdoor burning procedures and the definition of bonfire; modify existing paving rules; provide general rule clarification and the addition of solid fuel burning devices for licensed mobile food vendors; and removal of the administrative review process for certain permitting actions.

B. INITIATION OF RULEMAKING

DEQ will propose that the Board initiate rulemaking to:

1. Amend Title 17, Chapter 36, Subchapter 9, On-Site Subsurface Wastewater Treatment Systems by updating definitions and Table 1 Setback Distances to provide consistency between the subdivision rules in Title 17, Chapter 36 and Circular DEQ-4, 2013 edition; amend Title 17, Chapter 38, Subchapter 101(4)(d) to adopt by reference the proposed changes to Title 17, Chapter 36 for Subdivisions, specifically ARM 17.36.320 through 17.36.323 and 17.36.325, and to remove the adoption by reference in ARM 17.36.327; amend Title 17, Chapter 38, Subchapter 106(2)(a), (d), and (e) to provide fee structure consistency for review of public water supply and sewage systems that correspond to the proposed changes to Department Circular DEQ-1, the adopted changes to Department Circular DEQ-4, 2013 edition, and new proposed Department Circular DEQ-10; and to amend Title 17, Chapter 38, Subchapter 106(2) to add a provision (f) for the review of public water supply systems that correspond to proposed Department Circular DEQ-16.

C. REPEAL, AMENDMENT, OR ADOPTION OF FINAL RULES

1. In the matter of the amendment of 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 than the Federal rule.

2. In the matter of the adoption of 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).
3. In the matter of final adoption of proposed amendments to Title 17, Chapter 30, Subchapter 6, temporary water quality standards for the New World Mining District, as noticed in MAR 17-352.

D. FINAL ACTION ON CONTESTED CASES

1. **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.** Oral arguments on pending motions occurred on October 22, 2013. Multiple prehearing motions were filed. The motions are listed with their respective disposition:

- Motion for Partial Summary Judgment (Appellants-Montana Environmental Information Center and Sierra Club) (denied)
- Motion in Limine to Preclude Appellant's Expert Witnesses from, testifying about Certain issues (PPL) (denied in part and granted in part)
- Motion to Dismiss Appellant's Third Claim (PPL) or in the Alternative for Summary Judgment on Appellant's Third Claim; Cross-Motion for Summary Judgment (PPL) (denied)
- Motion and Brief for Summary Judgment (DEQ) (denied; written order to follow)
- Motion and Brief in Limine (DEQ) (granted in part and denied in part)
- Stipulation for Partial Dismissal (all parties)
- Motion for Leave to Amend Affidavit together with Amended Affidavit (Appellants) (granted)
- Motion for Leave to Supplement Briefs with Appellants' Discovery Responses with supporting Brief (granted)

On March 7, 2014, the parties submitted a *Stipulation for Dismissal with Prejudice*. A *General Release and Settlement Agreement* was provided.

2. **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.** Oral arguments on pending motions occurred on October 22, 2013. The following prehearing motions were filed:

- Motion for Partial Summary Judgment (Appellants- Montana Environmental Information Center and Sierra Club) (denied)
- Motion for Summary Judgment (PPL) (denied)

- Motion to Dismiss Appellant's Third claim or in the Alternative for summary Judgment on Appellant's Third Claim (PPL) (disposition suspended pending settlement)
- Cross Motion for Summary Judgment (PPL) (denied)
- Motion and Brief for Summary Judgment (DEQ) (denied)
- Stipulation for Partial Dismissal (all parties)
- Appellants' Motion for Leave to Amend Affidavit with an Amended Affidavit (Appellants) (granted)
- Motion to Dismiss Appellants' Fourth Claim or in the Alternative, for Summary Judgment on Appellants' Fourth Claim and Its Motion for Summary Judgment for Appellants' Failure to Designate an Expert Witness. (denied)
- Motion for Leave to Supplement Briefs with Appellants' Discovery Responses (granted)

On March 7, 2014, the parties submitted a *Stipulation for Dismissal with Prejudice. A General Release and Settlement Agreement* was provided.

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