



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

TELECONFERENCE AGENDA

FRIDAY, JANUARY 30, 2015

METCALF BUILDING, ROOM 111

1520 EAST 6TH 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

The Board will vote on adopting the December 5, 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.** On August 1, 2014, the parties submitted a Proposed Schedule with a hearing proposed for the week of April 27, 2015.
- b. **In the matter of violations of the Opencut Mining Act by Bay Materials, LLC at Normont Farms Pit, Toole County, Montana, BER 2014-07 OC.** The Board received the appeal on August 29, 2014. The schedule for this matter has been set, and discovery by the parties is ongoing.
- c. **In the matter of violation of the Opencut Mining Act by Somont Oil Company, Inc., at Somont Oil Company gravel pit, Toole County (Permit No. 2597, FID 2326, Docket No. OC-14-021), BER 2014-08 OC.** The Board received the appeal on September 16, 2014. On December 23, the parties filed Joint Proposed Prehearing Schedule and Form of Order, with a proposed hearing the week of September 28, 2015.
- d. **In the matter of violations of the Public Water Supply Laws by Rene Requa at Highlander Bar and Grill, PWISD MT0004764, Lewis and Clark County (FID 2299, Docket No. PWS-14-08), BER 2014-09 PWS.** The Board received

the appeal on October 2, 2014. At its December 5 meeting, the Board appointed Mr. Reed as the permanent hearing examiner for this matter.

2. Non-enforcement cases assigned to the Hearings Examiner
 - a. **In the matter of the notice of appeal and request for hearing by Yellowstone Energy Limited Partnership (YELP) regarding issuance of MPDES Permit NO. MT0030180 for YELP's facility in Billings, MT, BER 2014-01 WQ.** This matter continues to be stayed. On December 16, 2014, the Board received a Joint Status Report from the attorneys for the parties. The parties have requested additional time to present the stipulation, motion, and proposed order to the Board.
 - b. **In the matter of Phillips 66 Company's appeal of Outfall 006 Arsenic Limits in Montana Pollution Discharge Elimination System Permit No. MT0000256, Billings, Yellowstone County, MT, BER 2014-05 WQ.** The Board received the appeal on August 6, 2014.
 - c. **In the matter of Columbia Falls Aluminum Company's (CFAC) appeal of DEQ's modification of Montana Pollutant Discharge Elimination System Permit No. MT0030066, Columbia Falls, Flathead County, MT, BER 2014-06 WQ.** The Board received the appeal on August 22, 2014.
3. 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 April 9, 2014, the hearings examiner issued an Order Granting the Joint Unopposed Motion for Partial Remand of Permit to Department of Environmental Quality and for Suspension of Proceedings. On May 14, 2014, DEQ filed a Status Report regarding the matter stating that a modified permit would be made available for public comment on or before June 9, 2014.
 - 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.** There are currently two motions for summary judgment pending in this case that require resolution before hearing.

III. ACTION ITEMS

A. INITIATION OF RULEMAKING

DEQ will propose that the Board initiate rulemaking to:

1. Amend ARM 17.8.102 to incorporate by reference updated federal and state statutes and regulations.

B. FINAL ACTION ON 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.** On June 4, 2014, the attorney for DEQ filed Department of Environmental Quality's Motion for Summary Judgment and Brief in Support, and on August 29, 2014, he filed Department's Motion to Continue Hearing and Request for Prehearing Conference. On January 1, 2015, the hearing examiner issued Recommended Order on Motion for Summary Judgment recommending the Board issue an order granting the department's motion for summary judgment and provided the Petitioner until January 14 to file written exceptions. No exceptions were received.

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

MINUTES

December 5, 2014

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Madam Chair Shropshire at 9:01 a.m., on Friday, December 5, 2014, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Madam Chair Shropshire, Marietta Canty, and Joan Miles

Board Members Present via Teleconference: Heidi Kaiser, Larry Mires, Joe Russell, and Chris Tweeten

Board Members Absent:

Board Attorney Present: Ben Reed, Attorney General's Office, Department of Justice

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers (Director; Kirsten Bowers, Ed Hayes, Carol Schmidt, Dana David, and Norman Mullen – Legal; Eric Merchant, Carolyn Arrington, Hoby Rash, Julie Merkel, Annette Williams, and Rebecca Harbage – Air Resources Management Bureau; Jon Dilliard and Eugene Pizzini – Public Water Supply & Subdivisions Bureau; Jon Kenning, Tom Reid, Paul Skubinna, and Kari Smith – Water Protection Bureau; John Arrigo – Enforcement Division; George Mathieus, Planning Division;

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*):
Kevin Hart – City of Helena

At the request of Chairman Shropshire, Mr. Livers took roll call of Board members present. Ms. Miles was not present at this time.

I.A. | Review and approve September 26, 2014, Board meeting minutes.

Chairman Shropshire asked if anyone had comments on the draft minutes. No one did.

Mr. Mires MOVED to approve the minutes as written. Ms. Kaiser SECONDED the motion. The motion CARRIED with a 6-0 vote.

(Ms. Miles arrived.)

I.B. | Set 2015 Meeting Schedule

Discussion took place regarding the proposed dates. Ms. Canty and Mr. Russell expressed conflicts with March 27. After further discussion, the March 27 meeting date was changed to March 20. The remainder of the schedule would stand.

II.A.1.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. *(No discussion took place regarding this matter.)*

II.A.1.b. | In the matter of final action regarding the appeal and request for hearing by Missoula County and the Clark Fork Coalition regarding DEQ's issuance of MPDES Permit No. MT0000035 issued to M2Green Redevelopment's site in Frenchtown, BER 2014-02/03 WQ.

Mr. Reed said the Board had tabled this matter because there was a question of overlapping jurisdiction between the Board and the Fourth Judicial District. He said none of the parties anticipate a motion to dismiss and remand to the Board.

Ms. Miles MOVED to take the issue off the table. Mr. Mires SECONDED the motion. The motion CARRIED with a 7-0 vote.

Ms. Miles MOVED to dismiss the matter. Mr. Tweeten made a friendly amendment specifying that the dismissal is without prejudice. Ms. Miles MOVED to dismiss the matter without prejudice, and direct Mr. Reed to draft an order for the Chair's signature. Mr. Mires SECONDED the motion. The motion CARRIED with a 7-0 vote.

II.A.1.c. | In the matter of violations of the Opencut Mining Act by Bay Materials, LLC at Normont Farms Pit, Toole County, BER 2014-07 OC.

Mr. Reed said discovery between the parties in this matter is ongoing.

II.A.1.d. | In the matter of violations of the Sanitation in Subdivision Act and Public Water Supply Laws by Roger Emery at the Sunrise Motel, Sidney, Richland County, BER 2013-06 SUB. *(No discussion took place regarding this matter.)*

Mr. Reed said Mr. Emery filed the original appeal, but has not otherwise appeared in case, and so he anticipates a recommendation for dismissal at the next meeting.

- II.A.2.a. In the matter of the notice of appeal and request for hearing by Yellowstone Energy Limited Partnership (YELP) regarding issuance of MPDES Permit No. MT0030180 for YELP's facility in Billings, MT, BER 2014-01 WQ.
- Mr. Reed said the parties anticipate stipulating by December 16.
- II.A.2.b. In the matter of Phillips 66 Company's appeal of Outfall 006 Arsenic Limits in MPDES Permit No. MT0000256 Billings, Yellowstone County, BER 2014-05 WQ.
- Mr. Reed said a scheduling order has been issued and the matter is ongoing.
- II.A.2.c. In the matter of Columbia Falls Aluminum Company's (CFAC) appeal of DEQ's modification of MPDES Permit No. MT0030066, Columbia Falls, Flathead County, BER 2014-06 WQ.
- Mr. Reed said a scheduling order has been issued in this matter, and the case is ongoing.
- II.A.3.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.
- Mr. Reed was unsure of the status of the modified permit.
- II.A.3.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.
- Mr. Reed said there are two sets of motions for summary judgment in this matter, noting that one would potentially be resolved in summary judgment. He said the other matter may need to be resolved through a hearing.
- II.B. Legislation Briefing
- Mr. Livers said the department is requesting a bill be introduced to amend the Water Quality Act. He provided information about the bill. Mr. Mathieus and Mr. Livers responded to questions from the Board.
- Mr. Livers said the department is also requesting introduction of a bill to amend the air quality fee structure. He provided information about the request. Mr. Rash and Mr. Livers responded to questions from the Board.
- Mr. Livers briefed the Board on four other bills, outside the Board's purview, for which the department is seeking introduction.
- III.A.1. In the matter of DEQ's request to initiate rulemaking to amend ARM 17.8.103, 202, 204, 206, and 230 to reference the latest version of the Montana Ambient Air Quality Program Quality Assurance Project Plan, incorporate applicable federal ambient air quality monitoring rules and guidance by reference, and remove references to certain outdated and/or improperly incorporated federal guidance and/or policy documents.

Mr. Merchant briefed the Board on the rulemaking and responded to questions.

Chairman Shropshire called for public comment on the proposed rules. No one responded.

Chairman Shropshire called for a motion to initiate the rulemaking and assign Mr. Reed as the permanent hearings examiner. Ms. Miles so MOVED. Ms. Canty SECONDED the motion. The motion CARRIED with a 7-0 vote.

III.B.1. In the matter of proposed final adoption of amendments to ARM 17.30.1101

Dr. Kenning briefed the Board on the rulemaking, saying a hearing was held August 27, 2014, and comments received were concerned with how the rules would affect them. He said department staff is working collaboratively with stakeholders and because of the uncertainty created by amending the rules after the stakeholder process, the DEQ is recommending adoption of only 17.30.1106. Mr. Livers and Dr. Kenning responded to questions from the Board. Mr. Livers added that the department would be back with rulemaking on the storm water portion at the successful ending of the collaborative process.

Chairman Shropshire called for public comment on the rulemaking.

Mr. Hart said the City of Helena, as well as the other MS4's are appreciative of the department's willingness to look at a collaborative process.

Chairman Shropshire called for a motion to adopt the amendments to ARM 17.30.1106, the hearing examiner's report, the House Bill 311 and 521 analyses, and the proposed responses to comments. Ms. Miles so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a 7-0 vote.

III.C.1. In the matter of violations of the Opencut Mining act by Somont Oil Company, Inc. at Somont Oil Company gravel pit, Toole County, (Permit No. 2597), BER 2014-08 OC.

Mr. Reed outlined the details of the appeal for the Board.

Chairman Shropshire called for a motion to appoint Mr. Reed as the permanent hearing examiner for this matter. Mr. Mires so MOVED. Ms. Miles SECONDED the motion. The motion CARRIED with a 7-0 vote.

III.C.2. In the matter of violations of the Public Water Supply Laws by Rene Requa at Highlander Bar and Grill, PWSID MT0004764, Lewis and Clark County, BER 2014-09 PWS.

Mr. Reed provided details of the appeal.

Chairman Shropshire called for a motion to appoint Mr. Reed as the permanent hearings examiner for this matter. Mr. Russell so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a 7-0 vote.

IV. General Public Comment

Chairman Shropshire asked if any member of the audience would like to speak to any matters before the Board. No one responded.

Mr. Livers reminded the Board that the next meeting is scheduled for January 30, 2015.

V. Adjournment

Ms. Miles MOVED to adjourn. Mr. Tweeten SECONDED the motion. No vote was taken.

The meeting adjourned at 10:34 a.m.

Board of Environmental Review December 5, 2014, minutes approved:

ROBIN SHROPSHIRE
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR ACTION ON RULE INITIATION

Agenda No. III.A.1.

Agenda Item Summary: The Department requests that the Board initiate rulemaking to amend the air quality incorporation by reference (IBR) rules to adopt updated editions of Montana rules and federal statutes and regulations.

List of Affected Rules: This rulemaking would amend ARM 17.8.102 and 17.8.103.

Affected Parties Summary: The proposed rule amendments would affect sources of air pollution subject to regulation under the air quality rules in ARM Title 17, Chapter 8.

Scope of Proposed Proceeding: The Department requests that the Board initiate rulemaking and conduct a public hearing to consider the proposed amendments to the above-stated rules.

Background: Annually, the Board updates the rules incorporating by reference federal statutes and regulations and state administrative rules. The IBR update is accomplished by amending the dates of the editions and the website addresses of the CFR, U.S. Code, and ARM set forth in ARM 17.8.102(1), and by providing the website address to the updated versions of the CFR and the U.S. Code sources in ARM 17.8.103. A summary of the updates to the federal regulations is provided in the spreadsheet attached as Enclosure 2. Failure to adopt the most recent edition of the CFR may result in the loss of state primacy for administering the air program.

Hearing Information: The Department recommends the Board appoint a hearing examiner and conduct a public hearing to take comment on the proposed amendments.

Board Options: The Board may:

1. Initiate rulemaking and issue the attached draft Notice of Public Hearing on Proposed Amendment;
2. Modify the Notice and initiate rulemaking; or
3. Determine that the amendment of the rules is not appropriate and deny the Department's request to initiate rulemaking.

DEQ Recommendation: The Department recommends that the Board initiate rulemaking and appoint a hearing examiner to conduct a public hearing, as described in the attached Draft Notice of Public Hearing on Proposed Amendment.

Enclosures:

1. Draft Notice of Public Hearing on Proposed Amendment
2. Summary of updates to the federal regulations

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.102 and 17.8.103 pertaining to)
incorporation by reference--publication)
dates and incorporation by reference)
and availability of referenced documents)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

(AIR QUALITY)

TO: All Concerned Persons

1. On _____, 2015, at __:__.m., the Board of Environmental Review will hold a public hearing [in/at address], Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., _____, 2015, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES

(1) In this chapter where the board has:

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~2013~~ 2014, edition of the Code of Federal Regulations (CFR), as it published on the website of the U.S. Government Printing Office at
<http://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2014&go=Go>;

(b) adopted a section of the United States Code (USC) by reference, the reference is to the ~~2012~~ 2013 edition of the USC as it ~~exists on December 31, 2013~~ is published on the website of the U.S. Government Printing Office at
<http://www.gpo.gov/fdsys/browse/collectionUScode.action?selectedYearFrom=2013&go=Go>;

(c) adopted a rule of the state of Montana from another chapter of the Administrative Rules of Montana (ARM), the reference is to the rule in effect on ~~June 30, 2013~~ September 30, 2014.

(2) through (2)(b) remain the same.

AUTH: 75-2-111, MCA
IMP: Title 75, chapter 2, MCA

17.8.103 INCORPORATION BY REFERENCE AND AVAILABILITY OF

MAR Notice No. 17-____

REFERENCED DOCUMENTS (1) through (3) remain the same.

(4) Copies of the CFR may be obtained from the U.S. Government Printing Office, at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2014&go=Go>. When printed versions are available, they may be obtained as described in (3)(c).

(5) Copies of the U.S. Code may be obtained from the U.S. Government Printing Office at <http://www.gpo.gov/fdsys/browse/collectionUScode.action?selectedYearFrom=2013&go=Go>. When printed versions are available, they may be obtained as described in (3)(c).

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

REASON: The board is proposing to amend the air quality rules to update editions of federal and state statutes, rules, and regulations that are incorporated by reference. The board is proposing to amend ARM 17.8.102(1) and 17.8.103(4) and (5) to adopt revisions to federal regulations published in the July 1, 2014, edition of the Code of Federal Regulations (CFR), as it is published on the website of the U.S. Government Printing Office, the 2013 edition of the U.S. Code, as it is published on the website of the U.S. Government Printing Office, and the September 30, 2014, edition of the ARM. The reason for the reference to a specific webpage of the CFR is that the CFR is published in a new codified version every year. For Title 40, which contains most of the federal regulations adopted by reference by the board for air quality regulation, the official version is dated July 1 of each year. However, the online version is not available by that date and the printed version is not available for more than four months after that date. The board adopts the July 1 edition after the online version has been made available. The reason for the reference to a specific webpage for the U.S. Code is that the U.S. Code is published in a new codified printed version every six years. The most recent printed version is 2012. It is updated online by the U.S. Law Revision Counsel, which is associated with the U.S. House of Representatives, as new laws are enacted. It then takes about eight months before all titles of the U.S. Code are updated on the website of the U.S. Government Printing Office (U.S. GPO) with the changes enacted into law by the previous session of Congress. It takes about another ten months for a printed annual supplement to be distributed. The U.S. GPO publishes the printed versions and its website is the most authoritative site for the official online version of the U.S. Code. It is the version on this website that the board is proposing to use as the version of the updated U.S. Code referred to in its rules in ARM Title 17, chapter 8. The board adopts and incorporates by reference updates to federal regulations to ensure that Montana's air quality rules are at least as stringent as federal air quality regulations, to maintain primacy and federal delegation of Montana's air quality program, and to implement federal emissions standards according to a federal program of emissions control.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., _____, 2015. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Ben Reed, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

JOHN F. NORTH
Rule Reviewer

BY: _____
ROBIN SHROPSHIRE
Chairman

Certified to the Secretary of State, _____, 2015.

List of CFR Sections Affected (July 1, 2013 - June 30, 2014)

Year / FR Volume	Section	Specific Change	Federal Register Reference	Summary	ARM Reference	Topic
2013/78	50	Appendix G Revised	40004	New Reference Method for the Determination of Lead in Total Suspended Particulate Matter.	17.8.202	Lead NAAQS
2013/78	51	Subpart I amended and removed	73702	Replaced SMC from "4 ug/m3, 24-hour average" to "0 ug/m3". Removed SIL.	17.8.767	Implementation Plans - Review of New Sources and Modifications - PSD
2014/79	51	Appendix M Amend	11235, 18453	Revisions to Test Methods and Testing Regulations. Methods 3A and 19 are added to the list of methods not requiring the use of audit samples. Corrected Method 201A and 202.	17.8.103, 767	Implementation Plans - Recommended Test Methods for SIPs.
2013/78	60 & 62	Correction	54766	62.14470, change date final control plan needed to be submitted from "May 13, 2016" to "August 13, 2013"	17.8.767, 802, 902, 1002	HMIWI - NSPS & Federal Plan Requirements
2014/79	60.8 - 60.17	Subpart A Revised, Added	11241, 18965	This final rule consists of technical and editorial corrections for source testing of emissions and operations. Some current testing provisions contain inaccuracies and outdated procedures, and new alternatives that have been approved are being added. These revisions will improve the quality of data and will give testers additional flexibility to use the newly approved alternative procedures. 60.8(g)(1) - Methods 3A and 19 are added to the list of methods not requiring the use of audit samples. 60.8(h) - Each test location must be verified to be free of cyclonic flow and evaluated for the existence of emission gas stratification and the required number of sampling traverse points. 60.8(i) - Allow the use of Method 205 of 40 CFR part 51, Appendix M, "Verification of Gas Dilution System for Field Instrument Calibrations," as an alternative provision whenever multiple calibration gases are required under part 60. 60.13(d)(1) - removes the phrase "automatically, intrinsic to the opacity monitor". 60.17 - Revised to arrange the consensus standards that are incorporated by reference in alpha-numeric order.	17.8.767, 802, 902, 1002, 1502(60.13)	NSPS - Performance Tests
2014/79	60.46 - 47	Subpart Db Revised	11249	Method 320 is allowed as an alternative for determining NOx and SO2 concentrations.	17.8.767, 802, 902, 1002	NSPS - Industrial - Commercial Institutional Steam Generating Units
2014/79	60.51c	Subpart Ec Amend	11249	Definition of medical/infectious wastes is revised to correct the misspelling of "cremation"	17.8.767, 802, 902, 1002	NSPS - Hospital / Medical / Infectious / Waste Incinerators
2014/79	60.75a	Subpart Ga corrected	25681	77 FR 48447 - Equation 1 corrected	17.8.767, 802, 902, 1002	NSPS - Nitric Acid Plants
2014/79	60.84(d)	Subpart H Amended	11250	An equation for calculating the SO2 emission rate is corrected.	17.8.767, 802, 902, 1002	NSPS - Sulfuric Acid Plants
2013/78	6C.101.a	Subpart Ja Amended	76756	This final rule removes a redundant definition of "delayed coking unit" from the rule text and revises the definition.	17.8.767, 802, 902, 1002	NSPS - Petroleum Refineries

Year / FR Volume	Section	Specific Change	Federal Register Reference	Summary	ARM Reference	Topic
2014/79	60.154(b)(5)	Subpart O revised	11250	A reference to Method 209F is revised to reflect a newer available version of the method.	17.8.767, 802, 902, 1002	NSPS - Sewage Treatment Plants
2014/79	60.280(b)	Subpart BB Revised	18965	Final rule adds "and on or before May 23, 2013" to who is subject to requirements in subpart BB.	17.8.767, 802, 902, 1002	NSPS - Kraft Pulp Mills
2014/79	60.280a - 60.288a	Subpart Bba Added	18966	Requirements for new, modified or reconstructed sources under the NSPS (sources constructed, modified or reconstructed after May 23, 2013)	17.8.767, 802, 902, 1002	NSPS - Kraft Pulp Mills
2014/79	60.284(c)(3)	Subpart Bba Amended	11250	Typographical error is corrected in the equation for correcting the total reduced sulfur concentration to 10% oxygen	17.8.767, 802, 902, 1002	NSPS - Kraft Pulp Mills
2014/79	60.335(b)(1)	Subpart GG Amended	11250	Revised the terms Pr and Po for the equation in paragraph (b)(1)	17.8.767, 802, 902, 1002	NSPS - Stationary Gas Turbines
2014/79	60.374	Subpart KK Revised	11250	Method 29 is allowed as an alternative to Method 12 for determining the load concentration and flow rate of the effluent gas. And an error in the equation for calculating the lead emission concentration is corrected.	17.8.767, 802, 902, 1002	NSPS - Lead-Acid Battery Manufacturing Plants
2014/79	60.382 and 386	Subpart LL Revised	11250	An error in the value of the particulate matter standard is corrected from 0.02 g/dscm to 0.05 g/dscm. And a single visible emission observer can conduct visible emission observations for up to three fugitive, stack, or vent emission points within a 15-second interval, is allowed.	17.8.767, 802, 902, 1002	NSPS - Metallic Mineral Processing Plants
2014/79	60.472(a)(1)(ii)	Subpart UU Revised	11250	An error in the value of the particulate matter standard for saturated felt or smooth-surfaced roll roofing is corrected from 0.04kg/Mg to 0.4kg/Mg.	17.8.767, 802, 902, 1002	NSPS - Asphalt Processing and Asphalt Roofing Manufacture
2014/79	60.660 and 665	Subpart NNN Revised	11251	[60.664 (d), (e), and (f)] changed to [60.664 (e), (f), and (g)]. [60.664 (f)] changed to [60.664 (g)]. [60.664 (d)] changed to [60.664 (e)]	17.8.767, 802, 902, 1002	NSPS - VOC Emissions from Synthetic Organic Chemical Manufacturing Industry Distillation Operations
2014/79	60.4200 - 60.4219	Subpart IIII Revised	11251	Table 7 revised. The method requirement to use Method 1 or 1A for sampling point selection in testing gaseous emission from engines with smaller ducts is dropped, and single- or three-point sampling, depending on duct size, is added.	17.8.767, 802, 902, 1002	NSPS - Stationary Compression Ignition Internal Combustion Engines
2014/79	60.4230 - 60.4248	Subpart IIIJ Revised	11253	Table 2 revised. The method requirement to use Method 1 or 1A for sampling point selection in testing gaseous emission from engines with smaller ducts is dropped, and single- or three-point sampling, depending on duct size, is added.	17.8.767, 802, 902, 1002	NSPS - Stationary Spark Internal Combustion Engines
2013/78	60.5365 - 60.5430	Subpart OOOO Revised	58416-58447	Addresses stakeholder concerns from 2012 NSPS, specifically implementation of the storage vessel provisions: clarity of notification and compliance dates, ensure control of all storage vessel affected facilities, update key definitions, and corrects technical errors that were inadvertently included in the final standards	17.8.767, 802, 902, 1002	NSPS - Crude Oil and Natural Gas Production, Transmission and Distribution

Year / FR Volume	Section	Specific Change	Federal Register Reference	Summary	ARM Reference	Topic
2014/79	60	Appendix A-1 amended	11230	Methods 1 (distances from the sampling point to flow disturbances is clarified), 2 (a pressure stability specification for the pitot tube leakcheck is added & errors corrected), 2A & 2D (calibrating a barometer against a NIST-traceable barometer is allowed), 2B (nomenclature errors are corrected & the assumed ambient carbon dioxide concentration used is changed from 300 to 380ppm).	17.8.103, 767, 802, 902, 1002	NSPS - Stationary Source
2014/79	60	Appendix A-2 amended	11230	Methods 3A (a redundant sentence deleted) and 3C (equation is added) are amended	17.8.103, 767, 802, 902, 1002	NSPS - Stationary Source
2014/79	60	Appendix A-3 amended	11230	Methods 4 (leak rate exceedance value is corrected), 5, 5A, 5E, and 5H are amended	17.8.103, 767, 802, 902, 1002	NSPS - Stationary Source
2014/79	60	Appendix A-4 amended	11231	Methods 6, 6C, 7, 7A, 7E, 8, 10, 10A, and 10B are amended	17.8.103, 767, 802, 902, 1002	NSPS - Stationary Source
2014/79	60	Appendix A-5 amended	11231	Methods 11, 12, and 14A are amended	17.8.103, 767, 802, 902, 1002	NSPS - Stationary Source
2014/79	60	Appendix A-6 amended	11231	Methods 16A, 16C, and 18 are amended	17.8.103, 767, 802, 902, 1002	NSPS - Stationary Source
2014/79	60	Appendix A-7 amended	11231	Methods 23, 24, 25, 25C, and 25D are amended	17.8.103, 767, 802, 902, 1002	NSPS - Stationary Source
2014/79	60	Appendix A-8 amended	11231	Methods 26, 26A, 29, and 30B are amended	17.8.103, 767, 802, 902, 1002	NSPS - Stationary Source
2014/79	60	Appendix B amended	11231	Performance specification 3, 4, 4B, 7, 11, 12B, 15, and 16 are amended	17.8.103, 767, 802, 902, 1002, 1502	NSPS - Stationary Source
2014/79	61.13(e)(1)(i)	Subpart A revised	11275	Added Methods 3A and 19 to the list that do not require audit samples.	17.8.302, 767, 802, 902, 1002	NESHAP - Emission tests and waiver of emission tests
2014/79	61.33	Subpart C revised	11275	Added Method 29 of Appendix A as an acceptable alternative to Method 104	17.8.302, 767, 802, 902, 1002	NESHAP - Beryllium Stack Sampling
2014/79	61.42	Subpart D revised	11275	4.68 pound minutes per cubic foot corrected to 4.68×10^{-3} pounds minutes per cubic foot	17.8.302, 767, 802, 902, 1002	NESHAP - Beryllium Rocket Motor Firing
2014/79	61.53	Subpart E revised	11275	Added method 29 of Appendix A as an acceptable alternative to Method 101A	17.8.302, 767, 802, 902, 1002	NESHAP - Mercury Stack Sampling
2014/79	61.164	Subpart N revised	11275	Method 29 in appendix A to part 60 was added as an alternative to Method 108.	17.8.302, 767, 802, 902, 1002	NESHAP - Inorganic Arsenic emissions From Glass Manufacturing Plants
2014/79	61	Appendix B amended	11276	Method 101 and 101A - Added alternative procedures. Method 102 - alternative mercury-free thermometers may be used. Method 104 - changed reference to Section 17.0. Section 16 is now the Alternative Procedures section. Method 108 - Section 16 is now the Alternative Procedures section. Method 108A - Section 16 is now the Alternative Procedures section.	17.8.103, 302, 767, 802, 902, 1002	NESHAP - Test Methods

Year / FR Volume	Section	Specific Change	Federal Register Reference	Summary	ARM Reference	Topic
2014/79	63.7	Subpart A Revised	11277	Added methods 3A and 19 to the list that do not require audit samples.	17.8.302, 1502	NESHAP - Performance testing requirements
2014/79	63.8	Subpart A Revised	11277	An incorrect reference to a section of Performance Specification 2 is corrected.	17.8.302, 1502	NESHAP - Monitoring Requirements
2014/79	63.14	Subpart A Revised	11277 / 17363	Arranged the materials that are incorporated by reference in alpha-numeric order.	17.8.302, 1502	NESHAP - Incorporations by Reference
2014/79	63.144	Subpart G amended	11283	Method 316 or Method 8260B are allowed to determine hazardous air pollutant concentrations in wastewater streams.	17.8.302, 1502	NESHAP - Synthetic Organic Chemical Manufacturing Industry
2014/79	63.344	Subpart N added	11283	South coast Air Quality Management District Method 205.1 is added as a testing option for measuring total chromium.	17.8.302, 1502	NESHAP - Chromium emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
2014/79	63.364 - 365	Subpart O revised	11283	Allows California Air Resources Board (CARB) Method 431 as an alternative to the procedures in Section 63.365(b) for determining the efficiency at the sterilization chamber vent. An error in a reference to a section in Performance Specification 8 is also corrected.	17.8.302, 1502	NESHAP - Ethylene Oxide Emissions Standards for Sterilization Facilities
2014/79	63.541 - 63.550	Subpart X Amended	371 - 372	1.)EPA inadvertently removed from subpart X the requirement for facilities constructed or reconstructed on or before May 19, 2011 to comply with the previous version of the NESHAP between promulgation of the January 5, 2012, amendments and the subsequent compliance date for existing sources, which is January 6, 2014, language was restored. 2.)Corrected Table 3 - Toxic Equivalency Factors. 3.)Corrected total hydrocarbon standard for furnace charging process fugitive emissions. 4.)Clarified definitions.	17.8.302, 1502	NESHAP - Secondary Lead Smelting
2014/79	63.565	Subpart Y Revised	11283	Allows Method 25B as an alternative to Methods 25 and 25A. Requires Method 25B be validated according to Method 301.	17.8.302, 1502	NESHAP - Marine Tank Vessel Loading Operations
2014/79	63.750	Subpart GG Revised	11284	Removes an incorrect reference to the location of Method 319	17.8.302, 1502	NESHAP - Aerospace Manufacturing and Rework Facilities
2014/79	63.1251	Subpart GGG Revised	11284	Allows method 320 as an alternative to Method 18 for demonstrating that a vent is not a process vent.	17.8.302, 1502	NESHAP - Pharmaceuticals Production
2014/79	63.1310 - 63.1336	Subpart JJJ Revised	17363 - 17371	Revisions to address certain emission sources not previously regulated under the standards; Revisions to clarify requirements for Precompliance Reports; Revisions to requirements related to emissions during periods of SSM; Revisions to requirements related to performance test electronic reporting; Revisions to allow for alternative compliance determination methods during periods of startup and shutdown; Revisions to the requirements related to pressure relief devices (PRDs).	17.8.302, 1502	NESHAP - Group IV Polymers and Resins

Year / FR Volume	Section	Specific Change	Federal Register Reference	Summary	ARM Reference	Topic
2014/79	63.1360 - 63.1369	Subpart MMM Revised	17371 - 17375	Revisions to the definition of "pesticide active ingredient"; Revisions to clarify requirements for Precompliance Plans; Revisions to requirements related to emissions during periods of SSM; Revisions to requirements related to performance test electronic reporting; Clarifications to the provisions for packed-bed scrubbers; Revisions to the requirements related to PRDs.	17.8.302, 1502	NESHAP - Pesticide Active ingredient Production
2014/79	63.1420 - 63.1439	Subpart PPP Revised	17376 - 17382	Revisions to clarify requirements for Precompliance Reports; Revisions to requirements related to emissions during periods of SSM; Revisions to requirements related to performance test electronic reporting; Revisions to the requirements related to PRDs.	17.8.302, 1502	NESHAP - Polyether Polyols Production
2014/79	63.1511	Subpart RRR Revised	11284	Method 26 may be used in place of Method 26A with demonstration	17.8.302, 1502	NESHAP - Secondary Aluminum Production
2014/79	63.2130 - 63.2192	Subpart CCCC Revised	11284	Table 2 in the manufacturing of nutritional yeast emissions standard is revised to deleted the requirement to use Methods 1, 2, 3, and 4 when measuring VOC by Method 25A.	17.8.302, 1502	NESHAP - Manufacturing of Nutritional Yeast
2014/79	63.5480 - 63.5610	Subpart UUUU Revised	11284	Allows Method 320 as an alternative to Method 18 for determining control device efficiency for organic compounds.	17.8.302, 1502	NESHAP - Cellulose Products Manufacturing
2014/79	63.6580 - 63.6675	Subpart ZZZZ Revised	11290	Table 4 is revised to clarify that a heated probe is not necessary when using ASTM D6522 to measure oxygen or carbon dioxide concentrations. The requirement to use Method 1 or 1A for sampling site and sampling point selection in testing gaseous emissions from engines with smaller ducts is deleted, and single- or three-point sampling, depending on duct size, is added.	17.8.302, 1502	NESHAP - Stationary Reciprocating Internal Combustion Engines
2014/79	63	Appendix A Amended	11293	Method 306 - Remove references to two figures that do not exist and to clarify the conditions under which ICP is appropriate for sample analysis. Alternative mercury-free thermometers are allowed as alternatives to mercury-in-glass thermometers. Method 306A - clarify the conditions under which sample filtering is required. Methods 308, 315, and 316 - calibrating a temperature sensor against a thermometer equivalent to a mercury-in-glass thermometer is added as an alternative to mercury-in-glass thermometers. Alternative mercury-free thermometers are allowed as alternatives to mercury-in-glass thermometers. Method 321 - the term for dilution factor in the calculations is clarified.	17.8.302, 1502	Test Methods Pollutant Measurement Methods From Various Waste Media

Year / FR Volume	Section	Specific Change	Federal Register Reference	Summary	ARM Reference	Topic
2013/78 & 2014/79	81.327	Subpart C Amended	47201 & 31676 - 313679	Revised table heading to read "Montana - 1971 Sulfur Dioxide NAAQS (Primary and Secondary)". Added new table "Montana - 2010 Sulfur Dioxide NAAQS (Primary)". Removing the tables "Montana - PM2.5 (Annual NAAQS)" and "Montana - PM2.5 (24-hour NAAQS)". Added 3 tables: "Montana - 1997 Annual PM2.5 NAAQS (Primary and Secondary)", "Montana - 1997 24-hour PM2.5 NAAQS (Primary and Secondary)" and "Montana - 2006 24-hour PM2.5 NAAQS (Primary and Secondary)"	17.8.302, 802, 902, 1002, 1102	Designation of Areas for Air Quality Planning Purposes - 107 Attainment Status Designations

1 **BEFORE THE BOARD OF ENVIRONMENTAL REVIEW**
2 **OF THE STATE OF MONTANA**

3 **IN THE MATTER OF:**
4 **VIOLATIONS OF THE SANITATION IN**
5 **WATER SUPPLY ACT AND PUBLIC**
6 **EMERY AT THE SUNRISE MOTEL,**
7 **SIDNEY, RICHLAND COUNTY,**
8 **MONTANA. [FID 2214, DOCKET NO.**
9 **SUB-13-04]**

CASE NO. BER 2013-06 SUB

10 **RECOMMENDED ORDER ON MOTION FOR SUMMARY JUDGMENT**

11 On June 4, 2014, the Department of Environmental Quality (Department)
12 filed its Motion for Summary Judgment and Brief in Support thereof. For the
13 reasons stated below, it is recommended that the Motion for Summary Judgment be
14 granted and the relief requested in the Notice of Violation and Administrative
15 Compliance Order of September 26, 2013, be granted.

16 **BACKGROUND**

17 1. On September 26, 2013 the Department issued Roger Emery (Emery)
18 a Notice of Violation and Administrative Compliance and Penalty Order, which
19 informed Emery that he was in violation of the Sanitation in Subdivisions Act, the
20 Public Water Supply Laws and the administrative rules adopted in accordance with
21 these provisions. On October 24, 2013 Emery responded by formally requesting a
22 hearing in front of the Board.

23 2. The Board issued its first scheduling order on March 25, 2014. The
24 order provided the following deadlines: April 5, 2014 for service of written
25 discovery; May 5, 2014 for completion of discovery; and June 4, 2014 for filing and
26 service of motions for summary judgment.

1 supplied by one well, and an aerated lagoon as a public wastewater system. The
2 Department also issued a certificate of trailer court approval that authorizes 20
3 trailer spaces.

4 17. Emery owns and is responsible for the operation of the public water
5 supply system and public wastewater systems that serve the customers and residents
6 on his Property.

7 18. On February 9, 2011, the Department received information from the
8 Richland County Health Department that two new water supply wells had been
9 installed and were operating on the Property as part of Emery's public water supply
10 system, for which Emery did not have the Department's approval. On May 25, 2011,
11 the Department notified Emery in writing that the new wells needed the
12 Department's approval.

13 19. On October 20, 2011, the Department received a complaint
14 concerning a deviation from the COSA for the Property and performed a field
15 investigation. The investigators observed a 48-unit motel, 28 mobile homes, and 35
16 recreational vehicles (Units) on the Property. The investigators also observed that
17 each Unit was connected to Emery's water and wastewater systems. The
18 investigators confirmed the use of two unapproved wells as part of Emery's public
19 water supply system.

20 20. The Department requested that Emery return the Property to
21 compliance with the COSA or submit an application to the Department for an
22 amendment to the COSA. On August 14, 2012, the Department performed a second
23 field investigation and again observed the 48-unit motel, 28 mobile homes, and 35
24 recreational vehicles that still appeared to be connected to Emery's water and
25 wastewater systems.

26 21. To date, Emery has neither returned the Property to compliance with
27 the original COSA, nor has he sought an amendment to the COSA.

1 22. Emery's COSA authorizes the operation of a public water supply
2 system and a community sewage disposal system for 100 individuals using a single
3 well and an aerated lagoon.

4 23. The actual population of the property as of the Department's most
5 recent site visit is over 200.

6 24. Montana Code Ann. §75-6-112 states that a person may not
7 commence or continue construction, alteration, extension or operation of a system of
8 supply of water or water distribution that is intended to be used as a public water
9 supply system or a system that is intended to be used as a public sewage system
10 before the person submits to the Department necessary maps, plans, and
11 specifications for its review and the Department approves those maps, plans, and
12 specifications.

13 25. The addition of two wells, without the Department's approval,
14 amounts to the construction and operation of an unapproved public water supply
15 system.

16 26. The Department has established that no genuine issue exists as to any
17 material fact and is entitled to judgment as a matter of law. Mont. R. Civ. P. 56(c).
18 Emery has presented no evidence or a sworn affidavit that raises a genuine issue of
19 material fact. In fact, Emery has presented no evidence or sworn affidavit at all.
20 The Department is awarded judgment on the violation of the failure to install
21 filtration and is entitled to the relief it seeks.

22 **PROCEDURE FOR FILING EXCEPTIONS**

23 Because the Board of Environmental Review (Board) will be issuing a final
24 decision on this recommended disposition, the parties, pursuant to Mont. Code Ann.
25 § 2-4-621, may file written exceptions and present briefs and oral argument to the
26 Board on their exceptions prior to the time the Board makes its final decision. The
27 Petitioner is given until January 14, 2015, to file exceptions. The Department may

1 file a written response to the exceptions by January 21, 2015. Any party seeking to
2 file exceptions and present oral argument before the Board on January 30, 2015,
3 must by January 21, 2015, file a notice that they will be filing exceptions.

4 **RECOMMENDED ORDER**

5 It is recommended that the Board issue an order granting the Department's
6 Motion for Summary Judgment.

7 DATED this 1st day of January, 2015.

8 

9
10 **BENJAMIN REED**
11 Hearing Examiner
12 Agency Legal Services Bureau
13 1712 Ninth Avenue
14 P.O. Box 201440
15 Helena, MT 59620-1440

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that I caused a true and accurate copy of the foregoing First
18 Scheduling Order to be mailed to:

19 Ms. Joyce Wittenberg
20 Secretary, Board of Environmental
21 Review
22 Department of Environmental Quality
23 1520 East Sixth Avenue
24 P.O. Box 200901
25 Helena, MT 59620-0901

26 **(original)**

27 Mr. Paul Nicol
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Mr. John Arrigo, Administrator
Enforcement Division
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Mr. Roger Emery
2144 S. Central Ave.
Sidney, MT 59270-5525

DATED: 1 Jan 2015 