



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

**AGENDA**

FRIDAY, OCTOBER 16, 2015  
METCALF BUILDING, ROOM 111  
1520 EAST 6<sup>th</sup> AVENUE, HELENA, MONTANA

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**NOTE:** The Board will make reasonable accommodations for persons with disabilities who wish to participate in this meeting. Please contact the Board Secretary by telephone (406-444-2544) or by e-mail ([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 needed.

**9:00 A.M.**

**I. ADMINISTRATIVE ITEMS**

**A. REVIEW AND APPROVE MINUTES**

The Board will vote on adopting the July 31, 2015, 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 Rene Requa at Highlander Bar and Grill, PWISD MT0004764, Lewis and Clark County (FID 2299, Docket No. PWS-14-08), BER 2014-09 PWS.**
  - b. **In the matter of violations of the Water Quality Act by Reflections at Copper Ridge, LLC at Reflections at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105376), BER 2015-01 WQ.** On August 25, the parties filed a Stipulation to Stay Scheduling Order.
  - c. **In the matter of violations of the Water Quality Act by Copper Ridge Development Corporation at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105377), BER 2015-02 WQ.** On August 25, the parties filed a Stipulation to Stay Scheduling Order.
  - d. **In the matter of violations of the Water Quality Act by Buscher Construction and Development, Inc., at Poly Vista Estates, Trailhead, and Falcon Ridge II Subdivisions, Billings, Yellowstone County, BER 2015-03 WQ.** The Board received the appeal on June 8, 2015. On September 25, the hearing issued a First Prehearing Order requesting the parties file a proposed schedule by October 6, 2015.
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.** On June 11, attorney for appellant filed Unopposed Motion to Extend Stay and Reporting Deadlines, requesting continuance of the Stay until February 1, 2016. On June 16, 2015, the hearing examiner issued Order Extending Stay / Reporting Deadlines, continuing the Stay until February 1, 2016.

- 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.** On March 11, 2015, the parties filed a Stipulation to Stay Appeal until December 31, 2017. On March 25, the hearing examiner issued Order approving the stipulation and ordered the parties to comply with the terms or the stipulation.
- 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.** On March 25, 2015, the hearing examiner issued Scheduling Order setting a hearing for April 18, 2016.

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. OTHER BRIEFING ITEMS

1. The department will brief the board on water quality standards, TMDL's and electrical conductivity (EC) and sodium adsorption ratio (SAR) standards Otter Creek, tributary to the Tongue River.

III. ACTION ITEMS

A. NEW CONTESTED CASES

1. **In the matter of the revocation of Montana Air Quality Permit No. MAQP# 2554-05, issued to Eureka Pellet Mills (Inc.), Eureka, Lincoln County, MT, BER 2015-04a AQ; the revocation of Montana Air Quality Permit No. MAQP 3039-02, issued to Eureka Pellet Mills (Inc.), Superior, Mineral County, MT, BER 2015-04b AQ; and the revocation of Montana Air Quality Permit No. MAQP# 4057-00, issued to Montana Renewable Resources (LP), Eureka, Lincoln County, MT, BER 2015-04c AQ.** The Board received the appeals from Patrick Pozzi on August 10, 2015. On September 25, Mr. Pozzi notified the Board's attorney that they had shut the mills down, so the cases should expire. The Board may assign a permanent hearing examiner or decide to hear the matter.
2. **In the matter of Heart K Land & Cattle Co.'s appeal of its final 401 Certification with conditions, BER 2015-05 WQ, application No. MT4010948; MWO-2013-00590-MTB-**

**Addendum, issued by DEQ for the Yellowstone River, Park County, MT.** The Board received the appeal on July 17, 2015. On September 25, Interim Hearing Examiner Ben Reed issued a First Prehearing Order requesting the parties file a proposed scheduling order by October 6, 2015. The Board may assign a permanent hearing examiner or decide to hear the matter.

3. **In the matter of Westmoreland Resources, Inc.'s, BER 2015-06 WQ, appeal of final MPDES permit No. MT0021229 issued by DEQ for the Absaloka Mine in Hardin, Big Horn County, MT.** The Board received the appeal on September 29, 2015. The Board may assign a permanent hearing examiner or decide to hear the matter.

#### B. INITIATION OF RULEMAKING

DEQ will propose that the Board initiate rulemaking to:

1. Repeal ARM 17.8.334, 17.8.335, and 17.8.772 pertaining to Emission Standards for Existing Aluminum Plants and Mercury Allowance Allocations under Cap and Trade Budget, respectively. The Department is proposing the repeal of rules which are no longer used, or for which affected sources no longer are operational or for which corresponding federal requirements have been invalidated.
2. Generally revise the rules implementing the Opencut Mining Act ("the Act"), ARM Title 17, Chapter 24, Subchapter 2, in response to changes to the Act enacted in the 2007, 2009, and 2013 legislative sessions; to generally to clarify and simplify the rules by reorganizing the provisions to avoid treatment of single concepts in multiple rules, eliminate redundant provisions, and improve syntax; and to make substantive changes to remove unnecessary requirements and add requirements that improve reclamation and regulatory process.
3. In the matter of the repeal of ARM 17.4.201, 17.30.645, 17.30.1386, 17.30.1401, 17.30.1402, 17.30.1405, 17.30.1406, 17.30.1407, 17.30.1410, 17.30.1411, 17.30.1412, 17.30.1413, 17.30.1414, 17.30.1419, 17.30.1420, 17.30.1421, 17.30.1425, 17.30.1426, 17.30.1602, 17.30.2001, 17.30.2003, 17.38.601, 17.38.602, 17.38.603, and 17.38.607. The Department has determined that these rules duplicate statute or rule or are otherwise unnecessary, and the Department will recommend that the Board initiate rulemaking to repeal these rules.

#### C. REPEAL, AMENDMENT, OR ADOPTION OF FINAL RULES

1. In the matter of final adoption of the proposed new rules, to meet the requirements of Section 128 of the federal Clean Air Act (CAA) regarding State boards and "conflict of interest." The Department is requesting that the Board adopt the new rules with an amendment.

#### D. FINAL ACTION ON CONTESTED CASES

1. **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.** The Board will consider and may take action on the Parties' Motions and Oppositions for Summary Judgment and the Proposed Findings of Facts and Conclusion of Law filed by the Parties.

2. **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.** On August 27, 2015, the parties filed a Stipulation to Dismiss Contested Case Proceeding. An order dismissing the matter will be presented for signature by the Chair.
3. **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.** On August 31, the parties filed a Stipulation to Dismiss Contested Case Proceeding. An order dismissing the matter will be presented for signature by the Chair.

#### **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**