

FRIDAY SEPTEMBER 30, 2016
METCALF BUILDING, ROOM 111
1520 EAST 6th AVENUE, HELENA, MONTANA

NOTE: It is expected that most available Board members will be participating telephonically. The 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://deq.mt.gov/DEQAdmin/ber>) 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 hhoule@mt.gov no later than 24 hours prior to the meeting to advise her of the nature of the accommodation needed.

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9:00 AM

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. The Board will vote on adopting the August 5, 2016 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.** A Stipulation was filed on July 11, 2016.
 - 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.** A Second Proposed Briefing and Contested Case Hearing Schedule was filed by the Parties on June 25, 2016.
 - 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.** A Second Proposed Briefing and Contested Case Hearing Schedule was filed by the Parties on June 25, 2016.
 - 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.** A Brief in Support of Motion for Partial Summary Judgment was filed by DEQ on August 12, 2016.

2. Non-enforcement cases assigned to the Hearings Examiner
 - a. **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 25, 2015, the hearing examiner issued an Order Approving the Stipulation to Stay Appeal and ordered the parties to comply with the terms or the stipulation.
 - b. **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.** A Joint Motion to Extend Deadline for Filing Prehearing Memorandums was filed by parties on August 31, 2016.
 - c. **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.** A Hearing was held on September 1, 2016.
 - d. **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.** A Second Prehearing Order was issued on May 17, 2016.
 - e. **In the matter of the notice of appeal of final MPDES Permit No. MT0000264 Issued by DEQ for the Laurel Refinery in Laurel, Yellowstone County, Montana, BER 2015-07 WQ.** An Order Modifying the Schedule was issued on July 22, 2016.
 - f. **In the matter of termination by DEQ of the application by Payne Logging, Inc. Requesting to move boundaries of the Payne Logging facility in Libby, Lincoln County, Montana, BER 2015-08 JV.** A Scheduling Order setting dates for filing exceptions and presentation of briefs and oral argument was issued on July 28, 2016.
 - g. **In the matter of LT Trucking, LLC, appeal Riverside Contracting Inc., Reclamation Bond Release Permit #2083, CVID#17280, BER2016-04 OC.** A Request for Extension to File Joint Scheduling Order and Response to Issue of Legal Representation was filed by Bosh, Kuhr, Dugdale, Martin & Kaze, PLLP, on August 11, 2016.
 - h. **In the matter of appeal the denial of non-degradation review, Lakes at Heron Subdivision EQ#16-1698, Sanders County, MT, BER2016-05 PWS.** A Joint Stipulation to Dismiss without Prejudice was filed by the Parties on August 24, 2016.
 - i. **In the matter of appeal of Violations of the Opencut Mining Act by Big Rock, LLC at Wheeler Gravel Pit, Missoula County, Montana (Opencut No. 719; FID 2471).** A First Prehearing Order was issued on 6/20/2016.

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. This matter has been stayed while an informal judicial review action proceeded. On March 14, 2016, Judge Seeley issued an Order on Summary Judgment invalidating the permit modification and remanding the matter for consideration consistent with the opinion.

B. OTHER BRIEFING ITEMS

1. The Department will provide the Board with a report regarding the air quality permit fees that are anticipated for the next calendar year, as required by ARM 17.8.510.
2. In the matter of Appeal Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B, case number BER 2016-03 SM. Mr. Reed will brief the Board on the status of the pending hearing following the parties submissions of briefs in support and opposition of summary judgment.

III. ACTION ITEMS

A. NEW CONTESTED CASES

1. An appeal in the matter of amendment application AM3, Signal Peak Energy LLC's Bull Mountain Coal Mine #1 Permit No. C1993017, case number BER2016-07 SM. The Board may decide to hear the matter or assign a permanent Hearing Examiner.
2. An appeal in the matter of section 401 Water Quality Certification issued for DEQ Application Number MT4011012, the Clark Hydroelectric Project, Beaverhead County, Montana, case number BER2016-08 WQ. The Board must assign a Hearing Examiner pursuant to ARM 17.30.109.
3. An appeal in the matter of violation of the Opencut Mining Act by Goran, LLC at the Groan unpermitted gravel pit, Stillwater County, Montana (Opencut No. 2790; FID 2500), case number BER2016-09 OC. The Board may decide to hear the matter or assign a permanent Hearing Examiner.

B. INITIATION OF RULEMAKING

DEQ will propose that the Board initiate rulemaking to:

1. DEQ will propose that the Board initiate rulemaking on the public water supply rule package that adopts the 2015 federal rules into the Montana rules. Included in this package will be adoption of the new federal Revised Total Coliform Rule.

C. REPEAL, AMENDMENT, OR ADOPTION OF FINAL RULES

1. Amend ARM 17.8.102 to incorporate by reference updated federal and state statutes and regulations, and ARM 17.8.103 to update references stating where the documents may be obtained electronically.

D. OTHER ACTION

E. FINAL ACTION ON CONTESTED CASES

F. HEARING

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