

FRIDAY MARCH 31, 2017
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 jwittenberg@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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10:00 AM

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. The Board will vote on adopting the January 31, 2017 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 Water Quality Act by Reflections at Copper Ridge, LLC at Reflections at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105376), BER 2015-01 WQ.** The Parties have submitted their Motions and Replies for and against Summary Judgment Motions. The matter is being briefed.
 - b. **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.** The Parties have submitted their Motions and Replies for and against Summary Judgment Motions. The matter is being briefed.
 - c. **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.** On March 6, 2017 a Joint Status Report was filed.
 - d. **An appeal in the matter of violation of the Opencut Mining Act by Goran, LLC at the Goran unpermitted gravel pit, Stillwater County, Montana (Opencut No. 2790; FID 2500), case number BER2016-09 OC.** Scheduling Order is in effect and Discovery is ongoing.

- e. **In the matter of Appeal of Oil Field Rock and Logistics Docket No. OC-16-12 (FID2506), Redstone, Montana, case number BER2016-11 OC.** Motions and Replies to Motions to Intervene have been submitted and briefed.
 - f. **In the matter of Appeal of Vanak Transportation Docket No. SW-16-01, Toronto, Ontario, case number BER2017-01 SW.** A Motion to Dismiss Appeal and Brief in Support was filed by DEQ on March 9, 2017.
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 of the stipulation.
 - b) **In the matter of LT Trucking, LLC, appeal Riverside Contracting Inc., Reclamation Bond Release Permit #2083, CVID#17280, BER2016-04 OC.** Scheduling Order is in effect and Discovery is ongoing.
 - 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.** The Hearing Examiner issued an Order on Summary Judgment, denying the appellant, Heart K Land & Cattle's, Motion for Summary Judgment, and ordering the parties to resolve factual disputes of the case stipulated in the Order. A Proposed Scheduling Order was submitted by DEQ on February 9, 2017.
 - 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.** An Order on Joint Motion to Stay Proceedings was issued on December 14, 2016. The parties are instructed to provide the Board with a Status Report and proposed schedule within 30 days of a final order issued by the Montana Supreme Court.
 - 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.** A Scheduling Order is in effect and discovery is ongoing.
 - f) **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.** Motion to Amend was denied and the parties are proceeding under the existing scheduling order.

- g) **In the matter of Appeal the Conditions of the Certification for Timbershor at Finley Point Wastewater subdivision rewrite Lake County E.Q. #15-1971, Lake County, Montana, case number BER2016-10 SUB.** The Hearing Examiner converted the proceedings to Summary Judgment. The appellant filed their Response to the Converted Motion for Summary Judgment on February 28, 2017.
- h) **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 is in effect and Discovery is ongoing.
- i) **In the matter of Appeal Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B, BER 2016-03 SM.** The Parties are briefing issues related to witness and exhibits.

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, the Judge issued an Order on Summary Judgment invalidating the permit modification and remanding the matter for consideration consistent with the opinion. A motion for an order requiring payment of attorney fees has been briefed and submitted for decision.

B. OTHER BRIEFING ITEMS

- 1. **In the matter of the revocation of Montana Air Quality Permit No. MAQP #3039-02, Issued to Eureka Pellet Mills (INC.), Superior, Mineral County.** The parties entered into a Stipulation to Dismiss on January 30, 2017.

III. ACTION ITEMS

A. NEW CONTESTED CASES

- 1. **In the matter of appeal violations of the Opencut Mining Act by Wagoner Family Partnership, D/B/A Wagoner's Sand and Gravel, at River Gravel Pit, Flathead County, Montana (Opencut No. 1798; FID 2512), Case Number BER2017-02 OC.** The Board may decide to hear the matter or assign a permanent Hearing Examiner.
- 2. **In the matter of the notice of appeal and request for hearing by Montanore Minerals Corporation Regarding Issuance of MPDES Permit No. MT0030279, Libby, Montana, Case Number BER2017-03 WQ.** The Board may decide to hear the matter or assign a permanent Hearing Examiner.

3. **In the matter of appeal Glacier Ranch Subdivision PWSID #MT0004700 Phase 4 Review of Public Water and Sewer Main extensions EQ#17-1391, Somers, Montana, Case Number BER2017-04 SUB.** The Board may decide to hear the matter or assign a permanent Hearing Examiner.

B. FINAL ACTION ON CONTESTED CASES

1. **In the matter of appeal of Violations of the Opencut Mining Act by Big Rock, LLC at Wheeler Gravel Pit, Missoula County, Montana BER2016-06 OC (Opencut No. 719; FID 2471).** Proposed order is ready for disposition by the Board.
2. **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 current Hearing Examiner, Andres Haladay, proposes the Board appoint a new Hearing Examiner to the case.
3. **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 Parties entered into a Joint Stipulation to Dismiss with Prejudice. The matter was dismissed with prejudice on March 3, 2017.

C. REPEAL, AMENDMENT, OR ADOPTION OF FINAL RULES

1. In the matter of the amendment of water quality standards rules included in ARM 17.30 subchapters 5, 6, 7, and 10 pertaining to mixing zones, surface water quality standards, nondegradation, and groundwater standards as set forth in MAR Notice No. 17-389.

D. INITIATION OF RULEMAKING

1. The Department is proposing a new rule to implement MCA 75-5-222(2). This statute states that if pollution upstream of a discharger is due to anthropogenic sources, a variance from water quality standards may be appropriate under certain conditions.

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