

BOARD OF ENVIRONMENTAL REVIEW  
FRIDAY, JUNE 2, 2017  
METCALF BUILDING, ROOM 111  
1520 EAST 6<sup>th</sup> AVENUE, HELENA, MONTANA

**NOTE:** It is expected that several, if not all 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://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](mailto:jwittenberg@mt.gov) no later than 24 hours prior to the meeting to advise her of the nature of the accommodation needed.

**10:00 AM**

**I. ADMINISTRATIVE ITEMS**

**A. REVIEW AND APPROVE MINUTES**

1. The Board will vote on adopting the March 31, 2017, meeting minutes.

**II. BRIEFING ITEMS**

**A. OTHER UPDATES**

1. Senate Bill 337 Update

**B. 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.** Oral argument on summary judgment was held May 10, 2017. The matter is now submitted for disposition.
  - 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.** Oral argument on summary judgment was held May 10, 2017. The matter is now submitted for disposition.
  - c. **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 BER 2016-09 OC.** A Scheduling Order is in effect and discovery is ongoing.
  - d. **In the matter of Appeal of Oil Field Rock and Logistics Docket No. OC-16-12 (FID2506), Redstone, Montana, case number BER 2016-11 OC.** Limited intervention was granted to Kevin and Kim Opsahl. A Scheduling Order has been entered and the matter is proceeding forward.
  - e. **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 BER 2017-02 OC.** A Scheduling Order has been entered and the parties are proceeding pursuant to the order.

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, BER 2016-04 OC.** A 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.** A new Scheduling Order has been entered and the parties are proceeding under it.
  - 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 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. **An appeal in the matter of amendment application AM3, Signal Peak Energy LLC's Bull Mountain Coal Mine #1 Permit No. C1993017, case number BER 2016-07 SM.** A Motion to Compel is being briefed. A stay has been entered, staying deposition deadlines until the Motion to Compel is resolved.
  - 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.** Summary Judgment is being briefed by the parties.
  - g. **In the matter of Appeal Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B, BER 2016-03 SM.** DEQ and Intervenors' Motion to Vacate the January 17, 2017, Scheduling Order was denied. Intervenors' Motion to Exclude Petitioners' expert witnesses was granted in part and denied in part. A Third Scheduling Order has been issued for the purpose of limited expert discovery.
  - h. **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.** DEQ requested, and was granted, an extension to file a joint proposed scheduling order until May 26, 2017. Petitioner, a corporation, was ordered to obtain legal counsel by May 26, 2017.
  - i. **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 parties jointly moved to extend the date to provide a proposed scheduling order. The new deadline is June 23, 2017.

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 hearing 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.

### III. ACTION ITEMS

#### A. NEW CONTESTED CASES

1. **In The Matter Of: Montana Northwest Company's Appeal of DEQ Waiver Review Committee's Decision to Deny Alla and Yevegeniy Kirilovich's request for a Source Specific Mixing Zone For Block 1, Lot 3 of Sol Acreage Tracts #2, EQ# 17-1160, Missoula, County, Missoula, Montana, Case Number BER 2017-05 SUB.** A hearing was requested pursuant to § 76-4-126, MCA. The Applicants requested a source specific mixing zone. DEQ reviewed three unique analyses provided by the Applicant, determined the request did not meet the requirements for issuance of a source specific mixing zone, and denied the request. The applicants' appeal asserts the denial was based on lack of facts and consensus at the DEQ and further asserts their system solution has been granted in the past in Montana and several other states.

#### B. FINAL ACTION ON CONTESTED CASES

1. **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.** At the March 2017 Board Meeting, the Board passed a motion that (1) left the substantive resolution of this matter in the hands of the previous Hearing Examiner, and (2) reassigned this contested case to the current Board Attorney, for procedural purposes, upon receipt of a proposed final decision. The Board tabled a proposed motion to reassign all proceedings, substantive and procedural, to the current Board Attorney. The Board may take this motion off the table, or take no action.
2. **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.** The Parties have submitted a Stipulation for Final Agency Decision, disposing of all issues on appeal, other than Appeal Issue No. 2. The parties have submitted a proposed Order for Final Agency Decision. The Board can adopt, reject, or amend the proposed Order.
3. **In the matter of Appeal of Vanak Transportation Docket No. SW-16-01, Toronto, Ontario, case number BER 2017-01 SW.** On April 21, 2017, the Hearing Examiner issued Findings of Fact, Conclusions of Law, and Proposed Order. No party filed exceptions and the proposed order is submitted for final decision. The Board can adopt, reject, or amend the proposed Order.

4. **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 BER 2016-10 SUB.** On April 3, 2017, the Hearing Examiner issued a Findings of Fact, Conclusions of Law, and Proposed Order on Summary Judgment. The Rys-Sikoras (Petitioners) filed exceptions. The DEQ has responded. The Rys-Sikoras have submitted a Reply. The proposed order is submitted for final decision. The Board can adopt, reject, or amend the proposed Order.

#### **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**