

BOARD OF ENVIRONMENTAL REVIEW
FRIDAY, DECEMBER 8, 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 Board attorney and secretary 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/board>) 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 lindsay.ford@mt.gov no later than 24 hours prior to the meeting to advise her of the nature of the accommodation needed.

9:00 AM

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. The Board will vote on adopting the September 29, 2017, meeting minutes.

B. REVIEW AND APPROVE 2018 SCHEDULE

1. The Board will establish the 2018 meeting schedule.

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.** Summary judgment was granted in part and denied in part. The parties have requested a hearing to be held from January 9 through January 11, 2018.
 - 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.** Summary judgment was granted in part and denied in part. The parties have requested a hearing to be held from January 9 through January 11, 2018.
 - c. **In the matter of violation of the Opencut Mining Act by Goran, LLC, at the Goran gravel pit, Stillwater County, Montana (Opencut No. 2790; FID 2500), BER 2016-09 OC.** On August 31, 2017 parties filed a third stipulated motion to stay scheduling order indicating they are close to resolution of case. On November 6, 2017, Hearing Examiner Clerget issued an order requesting a status update within 30 days.
 - d. **In the matter of Appeal of Oil Field Rock and Logistics, Docket No. OC-16-12 (FID2506), Redstone, Montana, BER 2016-11 OC.** A scheduling order was issued

on April 21, 2017 and is in effect, the parties are briefing motions for summary judgment.

- e. **In the matter of Dennis and Sandra Dickenson's appeal of DEQ Subdivision Section Contract Reviewer's decision to deny the Dickenson's subdivision application, EQ#17-1398, Jefferson County, BER 2017-06 SUB.** The Board received the appeal on August 1, 2017. The Board appointed a permanent hearing examiner on September 29, 2017. The hearing examiner issued a first hearing order and the parties filed a motion requesting a stay. On November 2, 2017, the hearing examiner issued an order granting a stay and ordered the parties to file a status update within 60 days.
 - f. **In the matter of 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), BER 2017-02 OC.** On September 15, 2017, the parties submitted a stipulated order staying the scheduling order pending the disposition of summary judgment. The hearing examiner issued an Order staying the Scheduling Order on September 19, 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 November 2, 2017, Hearing Examiner Clerget issued an Order dismissing the appeal per the parties' request.
 - b. **In the matter of LT Trucking, LLC's appeal of Riverside Contracting Inc.'s Reclamation Bond Release for Permit #2083, CVID#17280, BER 2016-04 OC.** On October 30, 2017, Hearing Examiner Clerget issued an Order dismissing the appeal per the parties' request.
 - c. **In the matter of Westmoreland Resources, Inc.'s, appeal of final MPDES Permit No. MT0021229 issued by DEQ for the Absaloka Mine in Hardin, Big Horn County, MT, BER 2015-06 WQ.** On December 14, 2016, an Order on Joint Motion to Stay Proceeding was issued and the parties were directed to file a proposed schedule within 30 days of the final order issued by the Montana Supreme Court.
 - d. **An appeal in the matter of amendment application AM3, Signal Peak Energy LLC's Bull Mountain Coal Mine #1 Permit No. C1993017, BER 2016-07 SM.** Scheduling Order is stayed pending resolution of discovery disputes. On November 6, 2017, Hearing Examiner Clerget issued an order requesting a status update within 30 days from the parties.
 - e. **In the matter of Appeal Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B, BER 2016-03 SM.** On September 8, 2017, the former hearing examiner issued an order granting the intervenor's motion to amend their expert notice. Parties were encouraged to complete the remaining discovery and work cooperatively to bring the case to hearing.

- f. **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, BER2017-03 WQ.** On October 18, 2017, a scheduling order was issued and the parties are proceeding with the contested case.
 - g. **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, BER2017-04 SUB.** The parties filed a stipulation to dismiss with prejudice pursuant to Rule 41(a)(1)(A)(ii) of the Montana Rules of Civil Procedure on July 19, 2017 and the matter is considered dismissed.
 - h. **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, Montana, BER 2017-05 SUB.** On November 3, 2017, DEQ filed a Stipulation to Dismiss with Prejudice. On November 6, 2017, an Order dismissing the case with prejudice was issued and this matter is closed.
 - i. **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.** On August 22, 2017, an Order was issued staying the hearing schedule until February 16, 2018.
 - j. **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.** On September 8, 2017, an Order granting Summary Judgment to DEQ was issued. On October 2, 2017, Payne Logging filed its list of exceptions to the Hearing Examiner's Proposed Order. DEQ filed a response brief on October 16, 2017. On October 24, 2017, Payne Logging filed its reply brief. The matter is fully briefed and ready for oral argument before BER. On November 22, 2017, Payne filed an unopposed motion to move this item to BER's next agenda. On November 27, 2017 the hearing examiner granted the motion. Oral argument on this matter will be presented at the next BER meeting.
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 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 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 was granted and proceedings to determine the amount of attorney fees are ongoing.

III. ACTION ITEMS

A. INITIATION OF RULEMAKING

DEQ will propose that the Board initiate rulemaking to:

1. 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.

B. NEW CONTESTED CASES

1. **In the matter of violations of the water quality act by JR Civil, LLC, Bozeman, Gallatin County, Montana (FID 2552, Permit MTG070826) BER 2017-07 WQ.** On October 4, 2017, JR Civil, LLC filed a Notice of Appeal and Request for Hearing. The Board can decide to assign a hearings examiner for procedural issues in the case, hearing the case itself, or assign a hearing examiner for the totality of the case.

C. 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, Montana, BER 2014-06 WQ.** At the September 2017 Board Meeting, the Board passed a motion that reassigned the contested case to the current Board Attorney Sarah Clerget for procedural purposes. The Board directed Ms. Clerget to conduct a status conference with the parties to discuss Hearing Examiner Reed being declared unavailable. On November 6, 2017, the hearing examiner issued an Order setting status conference and found CFAC's March 13, 2017 Response to March 1, 2017 Notice to Parties moot. Status conferences were held on October 18, November 20, and November 21, 2017, to discuss the parties' options.

IV. BOARD COUNSEL UPDATE

Counsel for the Board will report on general Board business, procedural matters, and questions from Board Members.

V. 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.

VI. ADJOURNMENT