

BOARD OF ENVIRONMENTAL REVIEW
FRIDAY, FEBRUARY 9, 2018
METCALF BUILDING, ROOM 111
1520 EAST 6th AVENUE, HELENA, MONTANA

NOTE: Interested persons, members of the public, and the media are welcome to attend at the location stated above. 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 December 8, 2017, meeting minutes.
2. The Board will vote on adopting the January 5, 2018 meeting minutes.

B. The Board will review the Potential 2018 Board Rulemaking schedule.

II. BRIEFING ITEMS

A. CONTESTED CASE UPDATE

1. Enforcement cases assigned to the Hearing Examiner
 - a. **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 January 5, 2018, special meeting, the parties waived the demeanor of witnesses and the BER appointed Sarah Clerget as hearing examiner to review the record and render a proposed decision. Ms. Clerget is in the process of reviewing the record.
 - 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.** Summary judgment was granted in part and denied in part by the previous hearing examiner. After assuming jurisdiction, Ms. Clerget held a status conference on December 15, 2017 and a three-day hearing in this matter has been set for February 26, 2018.
 - 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.** This case is being handled in conjunction with the above-listed case, BER 2015-01 WQ, and its status is the same.
 - d. **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, Ms. Clerget issued an order requesting a status update every 30

days. The parties have now filed two identical status reports stating that they are finalizing settlement language. Ms. Clerget issued an order on January 11, 2018, requiring the parties to submit a more detailed status report by February 12, 2018, or a scheduling order will be issued, and the matter will be set for hearing.

- e. **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 have fully briefed a motion for summary judgment and it is before Ms. Clerget for review. Once Ms. Clerget issues the proposed decision, the parties will have the opportunity to file exceptions to that decision.
 - f. **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.** On October 10, 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. The parties have requested a second stay due to settlement discussions and have until March 4, 2018 in which to file a status update.
2. Non-enforcement cases assigned to the Hearings Examiner
- a. **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 January 22, 2018, hearing examiner Clerget issued an order directing the parties to file a status update and show cause within 30 days, why a scheduling order should not be issued in this case.
 - b. **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.** The Scheduling Order was stayed pending resolution of discovery disputes. The parties have recently resolved their discovery disputes and will be submitting a proposed schedule and case management order. A prehearing order will be issued shortly.
 - c. **In the matter of Appeal Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B, BER 2016-03 SM.** On January 3, 2018, the parties filed a joint proposed scheduling order. Ms. Clerget issued a pretrial scheduling order on January 12, 2018. This matter is set for a five-day hearing beginning on March 19, 2018.
 - d. **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, Ms. Clerget issued a scheduling order and the parties are proceeding according to that order. They are currently in the beginning stages of discovery.
 - 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.** On August 22, 2017, an Order was issued staying

the hearing schedule until February 16, 2018, at which time the parties are required to file a status report.

- f. **In the matter of violation of the water quality act by JR Civil, LLC , Bozeman, Gallatin County, Montana (FID 2552, Permit MTG070826) BER 2017-07 WQ.** Ms. Clerget issued a scheduling order on January 12, 2018, and the parties are proceeding according to that order. They are currently in the beginning stages of discovery.

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. RULE ADOPTION

DEQ will propose that the Board adopt rules to:

1. Amend ARM 17.8.102, 17.8.103, 17.8.202, 17.8.302, 17.8.602, 17.8.767, 17.8.802, 17.8.901, 17.8.902, 17.8.904, 17.8.1002, 17.8.1102, 17.8.1202, 17.8.1302, 17.8.1402, and 17.8.1502 to:
 - a. incorporate by reference updated federal and state statutes and regulations,
 - b. update the rules to reference the 2017 Montana Ambient Air Monitoring Program Quality Assurance Project Plan (QAPP),
 - c. update and consolidate reference citations into ARM 17.8.102, and
 - d. update air quality rules.

B. NEW CONTESTED CASES

1. **In the matter of the Notice of Appeal and Request for Hearing by CMG Construction, Inc. Regarding Notice of Violation and Administrative Compliance and Penalty Order, Docket No. OC-17-12, BER 2017-8 OC.** On December 26, 2017, the Board received a request for hearing. The Board can decide to assign a hearings examiner for procedural issues in the case, hear the case itself, or assign a hearing examiner for the totality of the case.

C. ACTION ON CONTESTED CASES

1. **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, Mr. Haladay issued an Order granting Summary Judgment to DEQ. 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 and then a final decision by BER.
2. **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 November 30, 2017, Ms. Clerget issued an Order on Cross Motions for Summary Judgment, granting in part and denying in part DEQ and Wagoner's Motions for Summary Judgment. The parties requested clarification on the order and a status conference was held on January 4, 2018. On January 11, 2018, Ms. Clerget issued an Order on the motion to clarify. On January 22, 2018, Wagoner submitted exceptions to the order and on January 29, 2018, DEQ submitted a reply. The matter is fully briefed and ready for oral argument and then a final decision by BER.

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