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BOARD OF ENVIRONMENTAL REVIEW
FRIDAY, OCTOBER 4, 2019
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 August 9, 2019 meeting minutes.

Public Comment.

II. BRIEFING ITEMS

A. CONTESTED CASE UPDATE

1. Enforcement cases assigned to the Hearing Examiner
 - a. **In the matter of the Notice of Appeal and Request for Hearing by CMG Construction, Inc. Regarding Notice of Violations and Administrative Compliance and Penalty Order, Docket No. OC-17-12, BER 2017-08 OC.** On June 12, 2019, the parties filed a Joint Motion to Stay Schedule citing a potential settlement of this matter. Ms. Clerget issued an Order Granting Stay on June 17, 2019 and the parties filed a status report on July 17, 2019, indicating technical discussions regarding settlement are still underway. In August the parties submitted differing status reports. On September 3, 2019, Ms. Clerget held a scheduling conference to discuss setting this matter for hearing. At the conference, the parties requested additional time to discuss settlement. The parties are to file a status report by October 1st. If substantive progress toward settlement has not occurred by that time, this matter will be set for hearing.
 - 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 and 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.** At its August 9, 2019 meeting the Board remanded this case back to Ms. Clerget for additional findings concerning the four photographs excluded at the June 13, 2019, owner/operator hearing. On September 9, 2019, Ms. Clerget held a status conference with the parties and discussed the schedule. The parties requested staggered initial disclosures ending October 25, 2019. After those disclosures, by November 8, 2019, the parties will provide a stipulated schedule for additional deadlines, including time for additional discovery and depositions, pretrial exchanges, and an additional

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hearing date. The parties have indicated they expect the additional hearing to take at least a day.

2. Non-enforcement cases assigned to the Hearings Examiner
 - a. **In the matter of the Notice of Appeal and Request for Hearing by Alpine Pacific Utilities Regarding Issuance of MPDES Permit No. MTX000164, BER 2019-06 WQ.** On August 9, 2019, the BER appointed Sarah Clerget as hearing examiner to preside over this contested case. On September 9, 2019, Ms. Clerget issued a scheduling order and the parties are proceeding through discovery, which closes in June of 2020.
 - b. **In the matter of the Notice of Appeal and Request for Hearing by CHS, Inc. regarding issuance of MPDES Permit No. MT0000264, BER 2019-01 WQ.** On February 8, 2019, the BER appointed Sarah Clerget as hearing examiner to preside over this contested case. The Board directed Ms. Clerget to consolidate this case with BER 2015-07 WQ for scheduling purposes. On July 8, 2019, the parties filed a Motion to Stay the Amended Scheduling Order citing settlement discussions. On July 15, 2019, Ms. Clerget granted the stay. The parties are to file either a stipulated settlement agreement or a joint motion with revised procedural dates for the remaining of the schedule by November 29, 2019.
 - c. **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 February 8, 2019, the BER appointed Sarah Clerget as hearing examiner to preside over this contested case. The Board directed Ms. Clerget to consolidate this case with BER 2019-01 WQ (CHS) for scheduling purposes, and therefore update on this case is the same as above.
 - d. **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.** This matter has been stayed since March 28, 2018, pending the Montana Supreme Court decision in *MEIC and Sierra Club v. DEQ and Western Energy*. The Supreme Court issued its decision on September 10, 2019 and the parties will file a status report by October 10, 2019.
 - e. **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.**
 - i. **District Court Case:** The parties took a subpoena dispute to the District Court on June 1, 2018 with Cause No. DV 18-0869. The BER was named as a Defendant in that District Court case, and Ms. Clerget filed a "Notice of Non-Participation" before the District Court on behalf of the BER. The District Court issued a ruling on the subpoena issue on November 14, 2018 and attorney's fees on March 25, 2019. On May 22, 2019 Signal Peak appealed to the Montana Supreme Court in Cause

No. DA 19-0299. Opening briefs were filed September 20, 2019. The BER has retained Amy Christensen to represent it before the Supreme Court.

- ii. **Contested Case:** Ms. Clerget assumed jurisdiction from the prior hearing examiner on September 8, 2017, for procedural purposes only. On April 5, 2019 cross motions for summary judgment were fully briefed (DEQ's Motion is for partial summary judgment). On May 31, 2019 the Board assigned the case to Ms. Clerget for all purposes, including a decision on the pending summary judgment motions. Based on counsels' schedules, Ms. Clerget held oral Argument on the motions for summary judgment on August 22, 2019. The matter is now fully submitted to Ms. Clerget for a decision, which may be before the Board at the December 13, 2019 meeting (depending on the outcome and the parties' preferences).

- 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.** A two-day hearing on this matter on held on December 3-4, 2018. An oral argument on the parties' proposed FOFCOLs was held on May 7, 2019, but the parties agreed that this matter would not be before the Board until the October 2019 meeting, based on availability of counsel. On August 19, 2019, Montanore filed a Notice of Supplemental Authority. The Notice stated that on July 24, 2019, the First Judicial District Court had issued its Order on cross motions for summary judgment in Cause No. CDV 2017-641, a declaratory relief action brought in District Court by MEIC, Save Our Cabinets, and Earthworks challenging DEQ's issuance of MPDES Permit No. MT0030279. While the District Court action was limited to conditions of the MPDES Permit that were not at issued before the Board, the District Court Order vacated the entire Permit, thus affecting the status of this case. Through status reports filed on September 13, 2019, the DEQ and Montanore requested a stay of this case pending the outcome of any Supreme Court appeal of the District Court Order. On September 17, 2019, Ms. Clerget issued an Order staying this matter.

- g. **In the Matter of Notice of Appeal of Opencut Mining Permit #2351 Issued to Golden West Properties, LLC by Frank and Paulette Wagner Regarding Concerns and Unanswered Questions. BER 2018-04 OC, and In the Matter of Notice of Appeal of Opencut Mining Permit #2351 Issued to Golden West Properties, LLC by David Weyer on behalf of the Residents of Walden Meadows Subdivision. BER 2018-05 OC.** On August 30, 2019, Ms. Clerget issued her Order on the parties' motions including (1) leave to file second amended complaint; (2) motion in limine; and (3) cross-motions for summary judgment. On September 25, 2019 Ms. Clerget issued a scheduling order setting this matter for hearing.

- h. **In the Matter of the Application for an Amendment of a Major Facility Siting Act Certificate by Talen Montana LLC.** On July 12, 2019, Talen filed a Motion to Dismiss Westmoreland's Appeal, which was fully briefed on August 8, 2019. On August 14, 2019, Ms. Clerget held oral argument on

Talen's Motion to Dismiss, at which all parties appeared and argued. On August 20, 2019, Ms. Clerget issued an Order granting in part and denying in part Talen's Motion to Dismiss. The Order also reset some of the procedural deadlines. The dispositive motions are due to be fully briefed by October 28, 2019 and a four-day hearing is set to begin on November 12, 2019. The parties are proceeding according to the extremely expedited schedule, which will put the case before the BER at the December 13, 2019 meeting.

- i. **In the Matter of the Notice of Appeal and Request for Hearing by Spring Creek Coal, LLC Regarding Issuance of MPDES Permit No. MT0024619.** On April 12, 2019, the BER appointed Sarah Clerget as hearing examiner to preside over this contested case. Ms. Clerget issued a Scheduling Order on June 21, 2019 and the parties are proceeding accordingly. By October 31, 2019 the parties will either file a stipulated settlement agreement or a joint proposed scheduling order.
- j. **In the Matter of Notice of Appeal and Request for Hearing by Western Energy Company Regarding Approval of Surface Mining Permit No. C2011003F, BER 2019-03 OC.** On May 31, 2019, the BER appointed Sarah Clerget as hearing examiner to preside over the contested case. Ms. Clerget issued a Scheduling Order on July 2, 2019. On September 3, 2019, Westmoreland Rosebud Mining LLC, Western Energy Company and the International Union of Operating Engineers, Local 400 have sought to intervene in this matter. No parties filed an objection to this intervention, on September 25, 2019 Ms. Clerget issued an Order Granting Westmoreland's intervention.

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 September 10, 2019, the Montana Supreme Court issued its opinion reversing the First Judicial District Court in Montana Environmental Information Center and Sierra Club v. Montana DEQ and Western Energy Company. The Montana Supreme Court determined that DEQ properly interpreted rules implementing the Montana Water Quality Act (specifically ARM 17.30.637(4)). In so doing, the Court recognized that DEQ has the flexibility to exempt ephemeral waters from the water quality standards applicable to Class C-3 waters without the Board of Environmental Review reclassifying the waters. The Court also determined that DEQ lawfully permitted representative sampling of outfalls under Western Energy Company's MPDES permit. The Montana Supreme Court remanded the case back to District Court for further proceedings to determine whether DEQ acted properly in regard to a stretch of East Fork Arnells Creek that is potentially impaired and intermittent, whether it is necessary for DEQ to adopt a TMDL for impaired segments of East Fork Arnells Creek, and whether the representative monitoring selected by DEQ is factually supported.
- b. **Montana Environmental Information Center, and Sierra Club v. Montana Department of Environmental Quality, Montana Board of Environmental Review, and Western Energy Co. (DV-2019-34, Rosebud County)(District**

Court). On June 6, 2019 the BER issued its final agency action in BER 2016-03 SW (“Western Energy”). On July 3, 2019 Conservation Groups filed a Petition for Review of Final Agency Action. The BER is named as a Defendant in the Petition. The BER has retained Amy Christensen to represent it in this matter at the District Court.

B. OTHER BRIEFING ITEMS

1. **The Department would like to brief the Board on our outreach, actions and timeline for requesting adoption of a human health based manganese groundwater standard.**

III. ACTION ITEMS

A. APPEAL, AMEND, OR ADOPT FINAL RULES

1. **In 2012, to meet the requirements of the federal Regional Haze program, the U.S. Environmental Protection Agency adopted a Federal Implementation Plan establishing emission limits for several power plants and industrial facilities in Montana. Recently, the Department’s Air Quality Bureau has been working with stakeholders to develop a State Implementation Plan to replace the federal requirements and put the state of Montana back in the lead for Regional Haze. The Air Quality Bureau is asking the Board, on behalf of the parties, to issue Orders adopting the federal requirements. Effective on adoption in and issuance of a Board Order, the requirements will be enforceable by the Department.**

Public Comment.

B. NEW CONTESTED CASE

1. **In the Matter of the Notice of Appeal and Request for Hearing by City of Great Falls Regarding Issuance of MPDES Permit No. MT0021920.** On August 9, 2019, the Board received a request for hearing. The Board can decide to assign a hearings examiner for procedural issues in this case, hear the case itself, or assign a hearing examiner for the totality of the case.

Public Comment.

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

**BOARD OF ENVIRONMENTAL REVIEW
MINUTES**

August 9, 2019

Call to Order

The Board of Environmental Review's meeting was called to order by Chairperson Deveny at 9:00 a.m., on Friday, August 9, 2019 in Room 111 of the Metcalf Building, 1520 East 6th Avenue, Helena, Montana.

Attendance

Board Members Present in person: Chairperson Christine Deveny, John DeArment, Melissa Hornbein, Dexter Busby, David Lehnerr

Board Members Present by Phone: Hillary Hanson, Chris Tweeten

Board Members Absent: None

Board Attorney Present: Sarah Clerget, Attorney General's Office (AGO)

Board Liaison Present: George Mathieus

Board Secretary Present: Lindsay Ford

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Ed Hayes, Rachel Clark, Aaron Pettis, Mark Lucas, Sarah Christopherson, Eric Sivers, Dave Klemp, Julie Merkel, Rhonda Payne, Darryl Barton, Haley Sir, Johanna McLaughlin, Maya Rao, Matt Dorrington, Ed Coleman, Myla Kelly

Interested & Other Persons Present: Aleisha Solem – Agency Legal Services; Landy Leep, Vicki Marquis, – Copper Ridge;

Roll was called: five Board members were present in person and two Board members were present via teleconference, providing a quorum.

I.A. Administrative Items – Review and Approve Minutes

I.A.1. May 22, 2019 Meeting Minutes

Ms. Hornbein moved to approve the meeting minutes. Mr. Lehnherr seconded the motion, which passed unanimously.

I.A.2. May 31, 2019 Meeting Minutes

Mr. Busby stated a spelling error on III.3.2 of the agenda. Mr. Busy should be Mr. Busby.

Mr. Lehnherr questioned the time of adjournment. The time states 11:00 a.m. and the meeting adjourned at 4:07 p.m.

Ms. Hornbein proposed to add that on agenda item III.A.1. she requested the Department provide an update at the next meeting on the manganese rules.

Mr. Busby moved to approve the minutes with the proposed changes. Chairperson Deveny seconded the motion, which passed unanimously.

II.A.1. Briefing Items – Enforcement Cases assigned to the Hearing Examiner

II.A.1.a. In the matter of the Notice of Appeal and Request for Hearing by CMG Construction, Inc. Regarding Notice of Violations and Administrative Compliance and Penalty Order, Docket No. OC-17-12, BER 2017-08 OC.

Ms. Clerget stated the case was stayed on June 17, 2019. The parties filed a status report in July indicating technical settlement discussions are still underway. The case will continue to be stayed.

II.A.2. Briefing Items – Non-Enforcement Cases Assigned to a Hearing Examiner

II.A.2.a. In the matter of the Notice of Appeal and Request for Hearing by CHS, Inc. regarding issuance of MPDES Permit No. MT0000264, BER 2019-01 WQ.

Ms. Clerget stated the parties are to file either a stipulated settlement agreement or a motion for new scheduling deadlines by November 29, 2019. The case is stayed in the intervening time.

II.A.2.b. 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.

Ms. Clerget said the case is stayed pending a decision from the Supreme Court.

II.A.2.c. 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.

Ms. Clerget said the subpoena issue was decided at the District Court level and was appealed to the Supreme Court. The Board hired outside counsel to represent it at the Supreme Court.

Ms. Christensen stated the record has yet to be transmitted to the Supreme Court and after it is transmitted briefing will begin. Ms. Christensen stated that the Board filed a notice of non-participation at the District Court level and anticipates the same at the Supreme Court level.

Ms. Clerget stated the remainder of the contested case is still before her and is proceeding accordingly.

II.A.2.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.**

Ms. Clerget stated the case is fully briefed and will be before the Board at the October meeting.

II.A.2.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.**

Ms. Clerget said the parties have the option to file either a settlement agreement or a motion for a new schedule by November 29, 2019. The case is stayed in the intervening time.

II.A.2.f. **In the Matter of Notice of Appeal of Opencut Mining Permit #2351 Issued to Golden West Properties, LLC by Frank and Paulette Wagner Regarding Concerns and Unanswered Questions. BER 2018-04 OC, and In the Matter of Notice of Appeal of Opencut Mining Permit #2351 Issued to Golden West Properties, LLC by David Weyer on behalf of the Residents of Walden Meadows Subdivision. BER 2018-05 OC.**

Ms. Clerget said the case has several pending motions before her. Once she issues a decision on those motions and the parties make a decision regarding her order, the matter may or may not be before the Board in October.

II.A.2.g. **In the Matter of the Application for an Amendment of a Major Facility Siting Act Certificate by Talen Montana LLC.**

Ms. Clerget stated the parties have agreed to a mostly expedited schedule and will be before the Board at the December meeting for a final decision.

II.A.2.h. **In the Matter of the Notice of Appeal and Request for Hearing by Spring Creek Coal, LLC Regarding Issuance of MPDES Permit No. MT0024619.**

Ms. Clerget stated there is a scheduling order in place and the parties are proceeding accordingly.

II.A.2.i. **In the Matter of Notice of Appeal and Request for Hearing by Western Energy Company Regarding Approval of Surface Mining Permit No. C2011003F.**

Ms. Clerget said there is a scheduling order in place and the parties are proceeding through the scheduling order.

II.A.3. Contested Cases not assigned to a Hearing Examiner

II.A.3.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.**

Ms. Bowers stated the Supreme Court requested additional briefing by the parties. The parties submitted the additional briefs June 17, 2019 and are still awaiting the court's decision.

II.A.3.b. **Montana Environmental Information Center, and Sierra Club v. Montana Department of Environmental Quality, Montana Board of Environmental Review, and Western Energy Co. (DV-2019-34, Rosebud County) (District Court).**

Ms. Christensen, the Board's outside counsel, stated the petition for judicial review was served and the Board's answer or motion to dismiss will be due at the end of August. She said her intent is to file a motion to dismiss to get the Board out of the case.

III.A. Action Items – APPEAL, AMEND, OR ADOPT FINAL RULES:

III.A.1. **The department requests the Board to initiate rulemaking to increase engineering review fees for public water and wastewater systems under ARM 17.38.106.**

Ms. Clark briefed the Board and answered questions.

Ms. Hanson was recused from taking action.

Mr. DeArment moved to initiate the proposed rulemaking as presented. Chairperson Deveny proposed to modify the motion by assigning Sarah Clerget as the hearing officer for the rulemaking. Mr. Busby seconded the motion which passed unanimously.

III.B. New Contested Cases

III.B.1. **In the Matter of the Notice of Appeal and Request for Hearing by Alpine Pacific Utilities regarding issuance of MPDES permit no. MTX000164, BER 2019-06 WQ.**

Ms. Clerget gave the Board members their options, including assigning it to the Hearings Examiner. Chairperson Deveny moved to assign Sarah Clerget as the hearing examiner for the totality of the case. Mr. Lehnherr seconded the motion which passed unanimously.

III.C. Action on Contested Cases

III.C.1. **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 and 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 Board heard oral arguments from the parties.

Chairperson Deveny moved to approve Findings of Fact 1-10. Member Hansen seconded. The motion passed unanimously.

Chairperson Deveny moved to approve Findings of Fact 11-13. Member Tweeten seconded. The motion passed unanimously.

Chairperson moved to approve Finding of Fact 14. Member Lehnherr seconded the motion. The motion passed unanimously.

Chairperson Deveny moved to approve Finding of Fact 15. Member Hornbein seconded the motion. The motion passed unanimously.

Chairperson Deveny moved to approve FOF 16. Member Busby seconded the motion. The motion passed unanimously.

Chairperson moved to approve FOF 17. Member Lehnherr seconded the motion. The motion passed unanimously.

Member Hornbein moved to approve FOF 18. Member Busby seconded the motion. The motion passed 5 to 1. Member Lehnherr opposed.

Member Tweeten moved to approve FOF 19-21. Member Busby seconded the motion. The motion passed 5 to 1. Member Lehnherr opposed.

Member Tweeten moved to approve FOF 22-28. Member Busby seconded the motion. The motion passed 4 to 2. Members Lehnherr and Hornbein opposed.

Member Busby moved to approve FOF 29-33. Chairperson Deveny seconded the motion. The motion passed 4 to 2. Members Lehnherr and Hornbein opposed.

Member Tweeten moved to approve FOF 34-39. Member Busby seconded the motion. The motion passed 5 to 1. Member Lehnherr opposed.

Chairperson Deveny moved to approve FOF 40-42. Member Hansen seconded the motion. The motion passed unanimously.

Chairperson Deveny moved to approve FOF 43-53. Member Busby seconded the motion. The motion fails 3 to 3. Members Hornbein, Lehnherr and Hansen opposed.

Member Tweeten moved to find that the hearing examiner abused her discretion with regard to the four photographs excluded by the Motion in *Limine* and the matter be

remanded back to the hearing examiner to take additional evidence regarding the photographs from DEQ and CR/REF to include maps created from the photographs, and maps of the areas covered by the permits-and determine: (1) if the additional evidence changes the FOF or COL; (2) if so, submit modified FOFCOL; and (3) if not, then submit a memo to that effect. Member Lehnher seconded the motion which passed unanimously.

IV. Board Counsel Update

Ms. Clerget told the Board she was invited to speak at the Natural Resource Section of the Bar on the procedure of the BER. Chairperson Deveny and Board members gave their consent.

V. General Public Comment

None were offered.

VI. Adjournment

Mr. Busby moved to adjourn the meeting. Chairperson Deveny seconded the motion, which passed unanimously. Chairperson Deveny adjourned the meeting at 4:39 pm.

Board of Environmental Review August 9, 2019 minutes approved:

CHRISTINE DEVENY
CHAIRPERSON
BOARD OF ENVIRONMENTAL REVIEW

DATE

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR
PETITION TO INCORPORATE AIR POLLUTANT EMISSION LIMITS INTO BOARD
OF ENVIRONMENTAL REVIEW ORDERS FOR INCLUSION INTO THE STATE
IMPLEMENTATION PLAN**

Agenda #III.A.1.

Agenda Item Summary: The Department and affected parties are seeking Orders from the Board of Environmental Review (Board) to adopt the emission control strategy outlined in the Federal Implementation Plan (FIP) and included in Exhibit A. If these Board Orders are adopted, the air pollutant emission limits would be submitted to the United States Environmental Protection Agency (EPA) for incorporation into the Montana Regional Haze State Implementation Plan (SIP).

Affected Parties Summary:

- Talen Montana, LLC's Colstrip Steam Electric Station, Units 1 and 2
- Talen Montana, LLC's JE Corette Steam Electric Station,
- Ash Grove Cement Company's Montana City Plant, and
- GCC Three Forks, LLC's Trident Plant.

Scope of Proposed Proceeding: The Department and affected parties are seeking Orders from the Board to adopt the emission control strategy outlined in the FIP and included in Exhibit A. If these Board Orders are adopted, the air pollutant emission limits would be submitted to EPA for incorporation into the Montana Regional Haze SIP, replacing any existing FIP requirements.

Background: In 2016, Governor Bullock published "Montana Energy Future: The Future of Montana Electricity" also referred to as the "Energy Blueprint". One action item identified is: *Take over from the EPA the Regional Haze Program for the upcoming planning cycle.* Adopting these Board Orders is one step of many required to take over the Regional Haze Program from EPA for the upcoming planning cycle.

The action item identified in the Energy Blueprint is in response to EPA's publication of a FIP for Montana for the first implementation period of the Regional Haze Rule. The FIP included control requirements for several Montana facilities. These Board Orders fulfill the requirement that a state submit "evidence that the State has adopted the plan in the State code or body of regulations; or issued the permit, order, consent agreement ... in final form" as identified in 40 C.F.R. Part 51, Appendix V.

The parties intend that, if Exhibit A is adopted by Board Order, the State of Montana will submit them to EPA for review and approval as part of the Regional Haze SIP, replacing any existing FIP requirements, thereby placing the State of Montana in the lead for implementing these existing Regional Haze requirements.

Additional background information on the Montana Regional Haze program can be found in the Findings of Fact, Conclusions of Law, and Order.

Additional Information: On April 12, 2018, the President of the United States issued a Presidential Memorandum directing the EPA to “review all full or partial FIPs issued under the 2007 planning period of the Regional Haze Program and to develop options, at the request of affected States, consistent with law, to replace FIPs with approvable SIPs”. The Department’s Air Quality Bureau has been coordinating with the regional EPA staff to develop approvable SIP revisions.

Hearing Information: Although this action does not require a public comment period prior to bringing this item to the Board for its consideration, per the requirements of the Montana Administrative Procedures Act, Section 2, Chapter 4, Montana Code Annotated, the Department held an additional 21-day public comment period.

During the comment period, the Department received 3 comments in favor of the action before the Board. A comment provided by EPA Region 8 Planning Staff identified a reference to a rule that is already included in the Montana SIP and should be removed from Exhibit A. We appreciate their comment and incorporated the changes.

The Department and affected parties request that the Board approve and adopt the emission control strategies included in Exhibit A.

Board Options: The Board may:

1. Grant the request for the Board Orders as set forth above; or
2. Determine that it is not appropriate to approve the Department and affected parties’ request and deny the request for Board Orders.

DEQ Recommendation: The Department recommends the Board adopt the proposed Orders.

Enclosures:

1. Findings of Fact, Conclusions of Law, and Order including Exhibit A for Ash Grove Cement Company’s Montana City Plant and GCC Three Forks, LLC’s Trident Plant
2. Findings of Fact, Conclusions of Law, and Order including Exhibit A for Talen Montana, LLC’s Colstrip Steam Election Station, Units 1 and 2, and JE Corette Steam Election Station

1 BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
2 OF THE STATE OF MONTANA

3 In the Matter of an Order Setting Air
4 Pollutant Emission Limits that the State
5 of Montana may Submit to the Federal
6 Environmental Protection Agency for
7 Revision of the State Implementation Plan
8 Concerning Protection of Visibility,
9 Affecting the Following Facilities:
10 Ash Grove Cement Company’s Montana
11 City Plant, and GCC Three Forks, LLC’s
12 Trident Plant

**FINDINGS OF FACT,
CONCLUSIONS OF
LAW, AND ORDER**

10 The Montana Department of Environmental Quality, Ash Grove Cement
11 Company, and GCC Three Forks, LLC (the Parties) hereby agree to the following
12 Findings of Fact and Conclusions of Law:

13
14 **FINDINGS OF FACT**

15 1. In the 1977 Amendments to the Federal Clean Air Act (Act),
16 Congress set as a national goal the prevention of any future, and the remedying of
17 any existing, impairment of visibility resulting from manmade air pollution in
18 mandatory Federal Class I Areas. § 169A of the Act; 42 U.S.C. § 7491.

1 2. On July 1, 1999, the United States Environmental Protection Agency
2 (EPA) promulgated the Regional Haze Rule (Rule) for the protection of visibility.

3 3. The purpose of the Rule is to reduce or eliminate manmade
4 impairment of visibility at 156 Class I Areas, working toward a goal of natural
5 visibility conditions by the year 2064. EPA promulgated the Rule under Section
6 169A of the Act, 42 U.S.C. § 7491.

7 4. The Rule requires each state to submit a State Implementation Plan
8 (SIP) to EPA for the control of air pollutants that contribute to haze. 40 C.F.R. §
9 51.308. The State of Montana was required to submit a SIP by December 17,
10 2007.

11 5. In 2006, the Montana Department of Environmental Quality
12 (Department) notified EPA that Montana would not submit a SIP by the prescribed
13 due date. On January 15, 2009, EPA finalized a finding that 37 states, including
14 Montana, had failed to submit SIPs required by the Rule. 74 Fed. Reg. 2,392,
15 2,393.

16 6. Section 110(c)(1) of the Act, 42 U.S.C. § 7410(c)(1), requires EPA to
17 promulgate a Federal Implementation Plan (FIP) when it finds that a state has
18 failed to make a required submission.

19 7. On September 18, 2012, EPA finalized a FIP (77 Fed. Reg. 57,863) to
20 address regional haze in Montana. The FIP, codified at 40 C.F.R. § 52.1396,

1 described visibility conditions at each Class I Area in Montana for the baseline
2 years of 2000-2004 and established a set of visibility goals to be achieved by the
3 year 2018. The FIP contains emission limitations and other requirements intended
4 to improve visibility.

5 8. As part of the program to reduce existing contributions to visibility
6 impairment, the FIP required certain industrial sources, including the cement kiln
7 in Montana City, then owned by Ash Grove Cement Company (Ash Grove), and
8 the Trident cement kiln in Three Forks, then owned by Holcim (US), Inc., to meet
9 specific emission limitations for particulate matter (PM), sulfur dioxide (SO₂), and
10 nitrogen oxides (NO_x). The FIP also required the installation and operation of a
11 continuous emission monitoring system (CEMS) at each facility to determine
12 compliance with the emission limitations.

13 9. On September 12, 2017, EPA finalized revisions to the FIP regarding
14 the NO_x emission limit at Oldcastle. 82 Fed. Reg. 42,738. The final revision
15 resulted from conversations between EPA, Oldcastle, and the Department about
16 Oldcastle's concerns that the original FIP limit on NO_x may not be able to be
17 achieved consistently, particularly without a visible detached plume at the site.
18 Oldcastle also expressed concerns about EPA's method of calculation of the FIP
19 limit.

1 10. On November 7, 2017, the Department submitted a report to EPA
2 detailing the progress made toward reducing emissions and improving visibility
3 since the FIP was promulgated. The report noted that as of October 18, 2017, the
4 final compliance date in the FIP, Ash Grove was complying with all emission
5 limitations and other requirements. At the time, Oldcastle was complying with
6 both PM and SO2 emission limitations and other requirements.

7 11. In compliance reports received by the Department on February 1,
8 2018, Oldcastle reported compliance with the 2017 revised FIP limitations for
9 NOx, based on continuous monitoring from November 20 through December 31,
10 2017.

11 12. On February 27, 2018, Oldcastle applied to renew the Title V
12 operating permit for the Trident facility. The application included a request that
13 the Department incorporate the revised NOx limit into the permit.

14 13. On September 4, 2018, the Department received a Notice of Intent to
15 Transfer Ownership of the Trident plant from GCC Three Forks, Inc. (GCC),
16 which had acquired it from Oldcastle on June 23, 2018. The Department issued a
17 final permit to GCC on October 11, 2018.

18 14. GCC has expressed continued concern that the emission control
19 technology and the NOx limit in the revised FIP, which have been incorporated
20 into the Title V permit, were not properly established. Nevertheless, for purposes

1 of this Memorandum and Order, GCC has agreed that the revised NOx limit will
2 remain in the Title V permit. GCC asserts the right to seek to revise the Title V
3 permit and contest the NOx limit at a future date.

4 15. The emission control strategy outlined in the FIP and included in
5 Exhibit A would continue to assure protection of visibility should the State of
6 Montana gain authority for its implementation and enforcement. Additionally,
7 more stringent requirements may exist now or be put in place in the future as a
8 result of rules, regulations, orders, or analyses that are not directly related to the
9 Rule but that may supersede the emission control strategy in Exhibit A.

10 16. 40 C.F.R. Part 51, Appendix V, prescribes the criteria for determining
11 completeness of a SIP submission. Appendix V, ¶ 2.1(b) requires that the state
12 submit “[e]vidence that the State has adopted the plan in the State code or body of
13 regulations; or issued the permit, order, consent agreement [...] in final form.”

14 17. In this proceeding, the parties are seeking a Board Order approving
15 and adopting the emission control strategy incorporated here as Exhibit A, which
16 would fulfill the state adoption requirements of a SIP submission.

17 18. The parties intend that, if Exhibit A is adopted and incorporated by
18 Board Order, the State of Montana will submit it to EPA for review and approval
19 as part of the Regional Haze SIP, replacing any existing FIP requirements.

CONCLUSIONS OF LAW

1
2 1. The Board has authority under § 75-2-203, Montana Code Annotated
3 (MCA), to set air pollutant emission levels.

4 2. The Department is responsible for preparing and developing a
5 comprehensive plan for the prevention, abatement, and control of air pollution in
6 the State of Montana. § 75-2-112(2)(c), MCA.

7 3. The Board is authorized to issue orders necessary to effectuate the
8 purposes of the Montana Clean Air Act. § 75-2-111(3), MCA.

9 4. A Board Order adopting and incorporating the requirements of
10 Exhibit A is necessary to create an enforceable mechanism that may be submitted
11 by the State of Montana to EPA for inclusion into the SIP.

12 5. All Findings of Fact in this Memorandum and Order are incorporated
13 into these Conclusions of Law.

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1 6. The undersigned parties request the Board to issue an order adopting
2 the requirements of Exhibit A. Effective on adoption in and issuance of a Board
3 Order, such requirements will be enforceable by the Department.

4
5 ASH GROVE CEMENT COMPANY

GCC THREE FORKS, LLC

6
7 By: _____

By: Adam DeVoe

8 By: _____
Attorney

By: 
_____ Attorney

9
10 Date: _____

Date: 8/8/19

11 DEPARTMENT OF ENVIRONMENTAL
12 QUALITY

13 By: _____

14
15 By: _____
Attorney

16 Date: _____

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1 6. The undersigned parties request the Board to issue an order adopting
2 the requirements of Exhibit A. Effective on adoption in and issuance of a Board
3 Order, such requirements will be enforceable by the Department.
4

5 ASH GROVE CEMENT COMPANY

GCC THREE FORKS, LLC

6 By: 
7 Curtis Lesstie, VP Env. Affairs

By: _____

8 By: 
9 Attorney Allen Jones, Ass. Gen. Counsel

By: _____
Attorney

10 Date: 8/13/19

Date: _____

11 DEPARTMENT OF ENVIRONMENTAL
12 QUALITY

13 By: 

14 By: 
15 Attorney N.J. Mullen

16 Date: Aug. 29, 2019

17 //
18 //
19 //
20 //

ORDER

The Board adopts the Findings of Fact and Conclusions of Law and Orders that the emission control strategy in Exhibit A is adopted.

BOARD OF ENVIRONMENTAL REVIEW

Date

By: _____
CHRISTINE DEVENY
Chair

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EXHIBIT A

EMISSION LIMITATIONS AND CONDITIONS FOR THE PROTECTION OF VISIBILITY

Section 1 Applicability

(1) This document applies to the owner/operator of cement kilns at the following cement production plants:

- a. Ash Grove Cement, Montana City Plant.

Plant Location:

The plant's legal location is Sections 12 and 13, Township 9 North, Range 3 West in Jefferson County. The old quarry and silos are located in Sections 7 and 18 of Township 9 North, Range 2 West in Jefferson County. The quarry is located in Sections 9, 10, 15, and 16 of Township 9 North, Range 3 West, in Jefferson County.

- b. GCC Three Forks, LLC, Trident Plant.

Plant Location:

The facility is located in the Northeast ¼ of Section 9, Southeast ¼ of Section 4, Southwest ¼ of Section 3, and Northwest ¼ of Section 10, Township 2 North, Range 2 East, approximately 5 miles northeast of Three Forks in Gallatin County, Montana.

Section 2 Definitions

(1) Terms not defined below shall have the meaning given them in the Federal Clean Air Act or EPA's regulations implementing the Clean Air Act. For purposes of this section:

- a. *Continuous emission monitoring system or CEMS* means the equipment required by this section to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a

permanent record of SO₂ and NO_x emissions, other pollutant emissions, diluent, or stack gas volumetric flow rate.

- b. *Kiln operating day* means a 24-hour period between 12 midnight and the following midnight during which the kiln operates.
- c. *NO_x* means nitrogen oxides.
- d. *Owner/operator* means any person who owns or who operates, controls, or supervises a unit identified in Section 1 of this document.
- e. *PM* means filterable total particulate matter.
- f. *SO₂* means sulfur dioxide.
- g. *Unit* means the cement kiln identified in Section 1 of this document.

Section 3 Emissions Limitations

(1) The owner/operator shall not emit or cause to be emitted PM, SO₂ or NO_x in excess of the following limitations, in pounds per ton of clinker produced, averaged over a rolling 30-day period for SO₂ and NO_x:

Source Name	PM Emission Limit	SO₂ Emission Limit (lb/ton clinker)	NO_x Emission Limit (lb/ton clinker)
Ash Grove, Montana City	If the process weight rate of the kiln is less than or equal to 30 tons per hour, then the emission limit shall be calculated using $E = 4.10p^{0.67}$ where E = rate of emission in pounds per hour and p = process weight rate in tons per hour; however if the process weight rate of the kiln is greater than 30 tons per hour, then the emission limit shall be calculated using $E = 55.0p^{0.11}-40$, where E = rate of emission in pounds per hour and p = process weight rate in tons per hour	11.5	8.0
GCC, Trident	0.77 lb/ton clinker	1.3	7.6

- (2) These emission limitations shall apply at all times, including startups, shutdowns, emergencies, and malfunctions.

Section 4 Compliance Date

- (1) The owner or operator shall comply with the emission limitations and other requirements of this section as follows, unless otherwise indicated in specific paragraphs: Compliance with PM emission limits is required by November 17, 2012. Compliance with SO₂ and NO_x emission limits is required by April 16, 2013, unless installation of additional emission controls is necessary to comply with emission limitations under this rule, in which case compliance is required by October 18, 2017.

Section 5 Compliance Determinations

- (1) Compliance determinations for SO₂ and NO_x
- a. At all times after the compliance date specified in Section 4 of this document, the owner/operator of each unit shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR 60.63(f) and (g), to accurately measure concentration by volume of SO₂ and NO_x emissions into the atmosphere from each unit. The CEMS shall be used by the owner/operator to determine compliance with the emission limitations in Section 3 of this document for each unit, in combination with data on actual clinker production. The owner/operator must operate the monitoring system and collect data at all required intervals at all times the affected unit is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments).

b. Method

- A. The owner/operator of each unit shall record the daily clinker production rates.
- B. The owner/operator of each unit shall calculate and record the 30-operating day rolling emission rates of SO₂ and NO_x, in lb/ton of clinker produced, as the total of all hourly emissions data for the cement kiln in the preceding 30 days, divided by the total tons of clinker produced in that kiln during the same 30-day operating period, using the following equation:

$$E_D = k \frac{1}{(n)} \sum_{i=1}^n C_i Q_i / P_i$$

Where:

ED = 30 kiln operating day average emission rate of NO_x or SO₂, lb/ton of clinker;

C_i = Concentration of SO₂ or NO_x for hour i, ppm;

Q_i = volumetric flow rate of effluent gas for hour i, where

C_i and Q_i are on the same basis (either wet or dry), scf/hr;

P_i = total kiln clinker produced during production hour i, ton/hr;

k = conversion factor, 1.194 × 10⁻⁷ for NO_x and 1.660 × 10⁻⁷ for SO₂; and

n = number of kiln operating hours over 30 kiln operating days, n = 1 to 720.

For each kiln operating hour for which the owner/operator does not have at least one valid 15-minute CEMS data value, the owner/operator must use the average emissions rate (lb/hr) from the most recent previous hour for which valid data are available. Hourly clinker production shall be determined by the owner/operator in accordance with the requirements found at 40 CFR 60.63(b).

- C. At the end of each kiln operating day, the owner/operator of each unit shall calculate and record a new 30-day rolling average emission rate in lb/ton clinker from the arithmetic average of all valid hourly emission rates for the current kiln operating day and the previous 29 successive kiln operating days.

(2) Compliance determinations for particulate matter

Compliance with the particulate matter BART emission limits for each cement kiln shall be determined by the owner/operator from annual performance stack tests. Within 60 days of the compliance deadline specified in Section 4 of this document, and on at least an annual basis thereafter, the owner/operator of each unit shall conduct a stack test on each unit to measure particulate matter emissions using EPA Method 5, 5B, 5D, or 17, as appropriate, in 40 CFR part 60, Appendix A.

- a. For Ash Grove Cement, the emission rate of particulate matter shall be computed by the owner/operator for each run-in lb/hr.
- b. For Trident, the emission rate (E) of particulate matter shall be computed by the owner/operator for each run in lb/ton clinker, using the following equation:

$$E = (CsQs)/PK$$

Where:

E = emission rate of PM, lb/ton of clinker produced;

Cs = concentration of PM in grains per standard cubic foot (gr/scf);

Qs = volumetric flow rate of effluent gas, where Cs and Qs are on the same basis (either wet or dry), scf/hr;

P = total kiln clinker production, tons/hr; and

K = conversion factor, 7,000 gr/lb.

Section 6 Recordkeeping

(1) The owner/operator shall maintain the following records for at least five years:

- a. All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.
- b. All particulate matter stack test results.
- c. All records of clinker production.
- d. Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 C.F.R. part 60, Appendix F, Procedure 1.

- e. Records of all major maintenance activities conducted on emission units, air pollution control equipment, CEMS and clinker production measurement devices.
- f. Any other records required by 40 C.F.R. part 60, subpart F, or 40 CFR part 60, Appendix F, Procedure 1.

Section 7 Reporting

- (1) All reports under this section, shall be submitted by the owner/operator to the Air Quality Bureau, Montana Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901.
- (2) The owner/operator of each unit shall submit excess emissions reports for SO₂ and NO_x BART limits. Reports shall be submitted semiannually, no later than the 30th day following the end of each semiannual period. Excess emissions means emissions that exceed the emissions limits specified in Section 3 of this document. The reports shall include the magnitude, date(s), and duration of each period of excess emissions, specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.
- (3) The owner/operator of each unit shall submit CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, and any CEMS repairs or adjustments. The owner/operator shall submit reports semiannually.
 - a. The owner/operator of each unit shall also submit results of any CEMS performance tests required by 40 C.F.R. part 60, appendix F, Procedure 1 (Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits).
- (4) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, the owner/operator shall state such information in the quarterly reports required by Section 6 of this document.

- (5) The owner/operator of each unit shall submit results of any particulate matter stack tests conducted for demonstrating compliance with the particulate matter BART limits in Section 3 of this document within 60 days after the completion of the test.
- (6) The owner/operator of each unit shall submit semi-annual reports of any excursions under the approved CAM plan in accordance with the schedule specified in the source's title V permit.

Section 8 Notifications

- (1) The owner/operator shall submit notification of commencement of construction of any equipment which is being constructed to comply with the SO₂ or NO_x emission limits in Section 3 of this document.
- (2) The owner/operator shall submit semi-annual progress reports on construction of any such equipment.
- (3) The owner/operator shall submit notification of initial startup of any such equipment.

Section 9 Equipment Operation

- (1) At all times, the owner/operator shall maintain each unit, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.

1 BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
2 OF THE STATE OF MONTANA

3 In the Matter of an Order Setting Air
4 Pollutant Emission Limits that the State
5 of Montana may Submit to the Federal
6 Environmental Protection Agency for
7 Revision of the State Implementation Plan
8 Concerning Protection of Visibility,
9 Affecting the Following Facilities:
10 Talen Montana, LLC's Colstrip Steam
11 Electric Station, Units 1 and 2, and
12 JE Corette Steam Electric Station

**FINDINGS OF FACT,
CONCLUSIONS OF
LAW, AND ORDER**

9 The Montana Department of Environmental Quality and Talen Montana,
10 LLC, hereby agree to the following Findings of Fact and Conclusions of Law:

11
12 FINDINGS OF FACT

13 1. In the 1977 Amendments to the Federal Clean Air Act (Act),
14 Congress set as a national goal the prevention of any future, and the remedying of
15 any existing, impairment of visibility resulting from manmade air pollution in
16 mandatory Federal Class I Areas. § 169A of the Act; 42 U.S.C. § 7491.

17 2. On July 1, 1999, the United States Environmental Protection Agency
18 (EPA) promulgated the Regional Haze Rule (Rule) for the protection of visibility.
19 The purpose of the Rule is to reduce or eliminate manmade impairment of
20 visibility at 156 Class I Areas, working toward a goal of natural visibility

1 conditions by the year 2064. EPA promulgated the Rule under Section 169A of
2 the Act, 42 U.S.C. § 7491.

3 3. The Rule requires each state to submit a State Implementation Plan
4 (SIP) to EPA for the control of air pollutants that contribute to haze. 40 C.F.R. §
5 51.308. The State of Montana was required to submit a SIP by December 17,
6 2007.

7 4. In 2006, the Montana Department of Environmental Quality
8 (Department) notified EPA that Montana would not submit a SIP by the prescribed
9 due date. On January 15, 2009, EPA finalized a finding that 37 states, including
10 Montana, had failed to submit SIPs required by the Rule. 74 Fed. Reg. 2,392.

11 5. Section 110(c)(1) of the Act, 42 U.S.C. § 7410(c)(1), requires EPA to
12 promulgate a Federal Implementation Plan (FIP) when it finds that a state has
13 failed to make a required submission.

14 6. On September 18, 2012, EPA finalized a FIP (77 Fed. Reg. 57,863) to
15 address regional haze in Montana. The FIP, codified at 40 C.F.R. § 52.1396,
16 described visibility conditions at each Class I Area in Montana for the baseline
17 years of 2000-2004 and established a set of visibility goals to be achieved by the
18 year 2018. The FIP contains emission limitations and other requirements intended
19 to improve visibility.

1 7. As part of the program to reduce existing contributions to visibility
2 impairment, the FIP required certain industrial sources, including the coal-fired
3 electric generating units at Colstrip Steam Electric Station, Units 1 and 2, in
4 Colstrip (Colstrip), and JE Corette Steam Electric Station in Billings (Corette),
5 both then operated by PPL Montana, LLC, to meet specific emission limitations
6 for particulate matter (PM), sulfur dioxide (SO₂), and nitrogen oxides (NO_x). The
7 FIP also required the installation and operation of a continuous emission
8 monitoring system (CEMS) to determine compliance with the emission limitations.

9 8. On March 18, 2015, the Corette facility was officially retired. As a
10 result, on May 13, 2015, PPL Montana requested that the Department revoke the
11 facility's Montana air quality permit #2953-00 and Title V Operating Permit
12 #OP2953-08. The Department revoked the permits in a letter dated May 21, 2015.
13 The Corette facility was subsequently dismantled.

14 9. On May 7, 2015, the Department received a letter requesting a change
15 in company name for the Colstrip facility, reflecting action by PPL Corp., the
16 parent company of PPL Montana, LLC, to change the name of PPL Montana, LLC
17 to Talen Montana, LLC (Talen).

18 10. On June 9, 2015, the U.S. Court of Appeals for the Ninth Circuit
19 vacated the limits in the regional haze FIP for SO₂ and NO_x emissions from
20 Colstrip Units 1 and 2 and Corette, after finding the limits to be arbitrary and

1 capricious. The court remanded the limit determinations back to EPA for further
2 analysis. *Nat'l Parks Conservation Ass'n v. U.S. EPA*, 788 F.3d 1134, 1149 (9th
3 Cir. 2015). The PM emission limits and other requirements in the FIP for both
4 facilities remain in place and are contained in Exhibit A.

5 11. On December 14, 2015, the Department submitted to EPA a request
6 for redesignation and a SIP revision containing a maintenance plan for the Billings
7 2010 SO₂ nonattainment area, which cited the shutdown of the Corette facility in
8 its determination that the air quality improvement in the area was due to permanent
9 and enforceable emission reductions.

10 12. On May 10, 2016, EPA finalized its approval of the Department's
11 redesignation request and maintenance plan for the Billings 2010 SO₂
12 nonattainment area, determining that the shutdown of the Corette facility was
13 permanent and enforceable. 81 Fed. Reg. 28,718.

14 13. On September 6, 2016, Sierra Club and the owners of Units 1 and 2 at
15 the Colstrip facility entered Consent Decree, in which the owners agreed to retire
16 those two units by no later than July 1, 2022. In addition, in the Consent Decree,
17 the owners agreed that the units would comply with specific SO₂ and NO_x
18 emission limits until such time as the units cease operation. *Sierra Club v. Talen*
19 *Mont., LLC*, CV 13-32- BLG-DLC-JCL (D. Mont. 2016). The terms of the
20 Consent Decree required the owners to request that the Department amend Talen's

1 Title V Operating Permit #OP0513-13 to include the Decree's emission limits and
2 shut down date. On January 4, 2017, Talen submitted a Title V Operating Permit
3 renewal application, which included a request to include the terms of the Consent
4 Decree in the permit. The Department issued a final Operating Permit on July 17,
5 2018. Therefore, the Consent Decree's emission limits and shut down date are
6 now contained in Talen's Title V Operating Permit.

7 14. On November 7, 2017, the Department submitted a report to EPA
8 detailing the progress made toward reducing emissions and improving visibility
9 since the FIP was promulgated, including documented reductions in PM, SO₂, and
10 NO_x at Colstrip and Corette.

11 15. The remaining emission control strategy outlined in the FIP, and
12 included in Exhibit A, combined with the above-mentioned enforceable 2015
13 shutdown of the Corette facility and required emission limits and shutdown of
14 Colstrip Units 1 and 2 by July 2022, make greater overall progress than the 2012
15 FIP, and would continue to assure protection of visibility should the State of
16 Montana gain authority for implementation and enforcement of remaining FIP
17 requirements through a SIP.

18 16. 40 C.F.R. Part 51, Appendix V, prescribes the criteria for determining
19 completeness of a SIP submission. Appendix V ¶ 2.1(b) requires that the state
20

1 submit “[e]vidence that the State has adopted the plan in the State code or body of
2 regulations; or issued the permit, order, consent agreement ... in final form.”

3 17. In this proceeding, the parties are seeking a Board Order approving
4 and adopting the emission control strategy incorporated here as Exhibit A, which
5 would fulfill the state adoption requirements of a SIP submission.

6 18. The parties intend that, if Exhibit A is adopted and incorporated by
7 Board Order, the State of Montana will submit it to EPA for review and approval
8 as part of the Regional Haze SIP, replacing any existing FIP requirements.

9
10 CONCLUSIONS OF LAW

11 1. The Board has authority under § 75-2-203, Montana Code Annotated
12 (MCA) to set air pollutant emission levels.

13 2. The Department is responsible for preparing and developing a
14 comprehensive plan for the prevention, abatement, and control of air pollution in
15 the State of Montana. § 75-2-112(2)(c), MCA.

16 3. The Board is authorized to issue orders necessary to effectuate the
17 purposes of the Montana Clean Air Act. § 75-2-111(3), MCA.

18 4. A Board Order adopting and incorporating the requirements of
19 Exhibit A is necessary to create an enforceable mechanism that may be submitted
20 by the State of Montana to EPA for inclusion into the SIP.

1 5. All Findings of Fact in this Memorandum and Order are incorporated
2 into these Conclusions of Law.

3 6. The undersigned parties request the Board to issue an order adopting
4 the requirements of Exhibit A. Effective on adoption in and issuance of a Board
5 Order, such requirements will be enforceable by the Department.

7 TALEN MONTANA, LLC

DEPARTMENT OF ENVIRONMENTAL QUALITY

8 By: _____

By: [Signature]

9 [Signature]
10 By: _____
General Counsel

By: [Signature]
Attorney WJ mullen

11 Date: _____

Date: Aug. 29, 2019

14 ORDER

15 The Board adopts the Findings of Fact and Conclusions of Law, and orders
16 that the emission control strategy in Exhibit A is adopted.

17 BOARD OF ENVIRONMENTAL REVIEW

18 _____
19 Date

By: _____
CHRISTINE DEVENY
Chair

EXHIBIT A

EMISSION LIMITATIONS AND CONDITIONS FOR THE PROTECTION OF VISIBILITY

Section 1 Applicability

- (1) This document applies to the owner/operator of the following coal-fired electric generating units (EGUs):
- a. Talen Montana, LLC – Colstrip Steam Electric Station, Units 1 and 2.
Plant Location: The legal description of the plant’s location is Section 34, Township 2 North, Range 41 East, in Rosebud County, Montana.
 - b. Talen Montana, LLC – JE Corette Steam Electric Station.
Plant Location: The facility no longer exists.

Section 2 Definitions

- (1) Terms not defined below shall have the meaning given them in the Federal Clean Air Act or EPA’s regulations implementing the Clean Air Act. For purposes of this section:
- a. *Continuous emission monitoring system or CEMS* means the equipment required by this section to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of SO₂ or NO_x emissions, other pollutant emissions, diluent, or stack gas volumetric flow rate.
 - b. *NO_x* means nitrogen oxides.
 - c. *Owner/operator* means any person who owns or who operates, controls, or supervises a unit identified in Section 1 of this document.
 - d. *PM* means filterable particulate matter.
 - e. *SO₂* means sulfur dioxide.
 - f. *Unit* means any of the EGUs identified in Section 1 of this document.

Section 3 Emissions Limitations

(1) For Colstrip Steam Electric Station, Units 1 and 2:

- a. The owner/operator shall not emit or cause to be emitted PM in excess of the following limitations, in pounds per million British thermal units (lb/MMBtu):

Source Name	PM Emission Limit (lb/MMBtu)
Colstrip Steam Electric Station, Units 1 and 2	0.10

- i. These emission limitations shall apply at all times, including startups, shutdowns, emergencies, and malfunctions.
- b. The owner/operator shall permanently cease operation no later than July 1, 2022, as required by the Consent Decree in Case 1:13-cv-00032-DLC-JCL filed 09/06/2016. The owner/operator requested that these terms be included in the facility's Title V Operating Permit and the Department issued a final permit containing the terms on July 17, 2018.
- i. The requirement that the units cease operation no later than July 1, 2022, is equivalent to the most stringent level of control. No further analysis of best available retrofit technology (BART) is necessary.

(2) For JE Corette Steam Electric Station:

- a. The permanent and enforceable shutdown, approved into the Montana SIP at 81 Fed. Reg. 28,718, is equivalent to the most stringent level of control. No further analysis of BART is necessary.

Section 4 Compliance Date

(1) The owner/operator shall comply with the emission limitations and other requirements of this section as follows, unless otherwise indicated in specific

paragraphs: Compliance with PM emission limits was required by November 17, 2012.

Section 5 Compliance Determinations

(1) Compliance determinations for particulate matter

- a. Compliance with the particulate matter BART emission limits for each EGU BART unit shall be determined by the owner/operator from annual performance stack tests. On at least an annual basis following the initial compliance test, the owner/operator of each unit shall conduct a stack test on each unit to measure the particulate emissions using EPA Method 5, 5B, 5D, or 17, as appropriate, in 40 C.F.R. part 60, Appendix A.

Section 6 Recordkeeping

(1) The owner/operator shall maintain the following for at least five years:

- a. All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.
- b. Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 C.F.R. part 75.
- c. Records of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS.
- d. Any other records required by 40 C.F.R. part 75.
- e. All particulate matter stack test results.

Section 7 Reporting

(1) All reports under this section, shall be submitted by the owner/operator to the Air Quality Bureau, Montana Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901.

(2) The owner/operator of each unit shall submit CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks),


reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, and any CEMS repairs or adjustments. The owner/operator shall submit reports quarterly.

- a. The owner/operator of each unit shall also submit results of any CEMS performance tests required by 40 C.F.R. part 75 (Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits).
- (3) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, the owner/operator shall state such information in the quarterly reports required by Section 6 of this document.
 - (4) The owner/operator of each unit shall submit results of any particulate matter stack tests conducted for demonstrating compliance with the particulate matter BART limits in Section 3 of this document within 60 days after the completion of the test.
 - (5) The owner/operator of each unit shall submit semi-annual reports of any excursions under the approved CAM plan in accordance with the schedule specified in the source's title V permit.

Section 8 Equipment Operation

- (1) At all times, the owner/operator shall maintain each unit, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.

TO: Sarah Clerget, Hearing Examiner
Board of Environmental Review

FROM: Lindsay Ford, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901 

DATE: August 12, 2019

SUBJECT: Board of Environmental Review Case No. BER 2019-07 WQ

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF APPEAL
AND REQUEST FOR HEARING BY CITY OF
GREAT FALLS REGARDING ISSUANCE OF
MPDES PERMIT NO. MT0021920

Case No. BER 2019-07 WQ

On August 9, 2019 the BER has received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Kirsten Bowers
Legal Counsel
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Jon Kenning, Bureau Chief
Water Protection Bureau
Department of Environmental Quality
P.O. Box 200901
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 ATTORNEYS FOR CITY OF GREAT
 FALLS

Electronically Filed with the Montana Board of
 Environmental Review

This 8 day of August, 2019
 at 8:54 o'clock am

By: Lindsay Ford

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
 OF THE STATE OF MONTANA**

<p>IN THE MATTER OF:</p> <p>THE NOTICE OF APPEAL AND REQUEST FOR HEARING BY CITY OF GREAT FALLS REGARDING ISSUANCE OF MPDES PERMIT NO. MT0021920</p>	<p>CAUSE NO. _____</p> <p>NOTICE OF APPEAL</p>
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Pursuant to Mont. Code Ann. § 75-5-403(2) and Admin R. Mont.
 17.30.1370(4), the City of Great Falls (“City”) appeals the issuance of and requests
 a hearing before the Board of Environmental Review (“Board”) on the Montana
 Pollutant Discharge Elimination System (“MPDES”) Permit No. MT0021920
 (“Permit”) issued by the Montana Department of Environmental Quality (“DEQ”).
 The Board has authority to hear contested case appeals of DEQ’s MPDES
 permitting decisions, such that the Board may affirm, modify, or reverse DEQ’s

permitting action. The City has raised issues with DEQ regarding the Permit on multiple occasions, submitted written comments to the draft Permit, and now timely appeals the Permit.

The City objects to and appeals the Permit on multiple grounds:

1. The Permit includes an improper limit and associated compliance schedule and monitoring requirements for cyanide.
2. The Permit includes an improper limit and associated compliance schedule and monitoring requirements, and fails to consider a mixing zone, for Di(2-ethylhexyl)phthalate (“DEHP”).
3. The upstream monitoring section of the Permit includes an inappropriate limitation on the sampling location in the winter months when the river is frozen and the normal sampling location (Central Avenue West Bridge) cannot be used. The Permit requires such sampling to be within 500 feet upstream of the wastewater treatment plant. The City appreciates DEQ’s effort to provide flexibility, but the 500-foot limitation seems unworkable. The Central Avenue West Bridge has long been considered an adequate and representative upstream monitoring location and it is considerably farther than 500-feet upstream from the wastewater treatment plant. Therefore, an alternate sampling location should be closer to the Central Avenue West Bridge to ensure consistency.

Additionally, the 500-foot limitation confines the City to sampling in an unsafe location and/or within a side channel of the river that will not be representative of ambient water quality. The 500-foot limitation is likely to result in several “Non Detects” during winter months when the river is frozen over, leaving the City and DEQ without a complete upstream data set for use in future permitting decisions. To ensure collection of a more complete data set, the Permit should allow sample collection at an alternate location that is more likely to provide open water throughout the winter.

4. The upstream monitoring section of the Permit improperly requires nutrient monitoring in July and August of 2019, prior to the Permit’s effective date.

5. The Permit includes inappropriate effluent limitations and monitoring requirements for arsenic. The arsenic effluent limitations in the Permit (18.8 µg/L average monthly limit and maximum daily limit) differ from the limitations provided in the previous permit (13.7 µg/L average monthly limit and 16.0 µg/L maximum daily limit) because they were derived from a more robust data set. That change addresses one of the City’s concerns and results in a higher effluent limitation that is closer to a correct limitation. However, the Permit’s arsenic effluent limitations still do not accurately reflect the natural or nonanthropogenic level of arsenic in the receiving water. Therefore, although the change from the previous permit to this Permit is moving in the right direction, it has not

completely addressed all of the City's concerns and objections about the arsenic effluent limitations.

The City now finds itself in the untenable position of being forced to choose between accepting partially corrected effluent limitations or insisting on totally corrected effluent limitations, at the risk of having the partially corrected limitations stayed during the pendency of this appeal, which would subject the City to lower effluent limitations and therefore greater risk of limitation exceedances. The City requests that, in acknowledgement of the partial correction of the Permit's arsenic effluent limitations, the limitations in this Permit (18.8 µg/L) be allowed to take effect during the pendency of this appeal. Should the City lose this appeal, the Permit's effluent limitations (18.8 µg/L) would take effect anyway, so there is no negative effect of letting the Permit's effluent limitations become effective during the pendency of this appeal.

DATED this 9th day of August, 2019.

for: John Allman
Victoria A. Marquis
Holland & Hart LLP
401 North 31st Street
Suite 1500
P.O. Box 639
Billings, Montana 59103-0639

ATTORNEY FOR CITY OF GREAT FALLS

CERTIFICATE OF MAILING

I hereby certify that on this 9th day of August, 2019, I caused to be served a true and correct copy of the foregoing document to all parties or their counsel of record as set forth below:

<p>Lindsay Ford [ORIGINAL] Secretary, Board of Environmental Review Montana Department of Environmental Review P.O. Box 200901 Helena, MT 59620-0901 Lindsay.Ford@mt.gov</p>	<p><input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail</p>
<p>Sarah Clerget, Hearing Examiner Agency Legal Services Bureau 1712 Ninth Avenue P.O. Box 201440 Helena, MT 59620-1440 sclerget@mt.gov asolem@mt.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail</p>
<p>Kirsten Bowers Montana Department of Environmental Quality 1520 East Sixth Avenue P.O. Box 200901 Helena, MT 59620-0901 kbowers@mt.gov sscherer@mt.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail</p>
<p>Jon Kenning, Bureau Chief Montana Department of Environmental Quality Water Protection Bureau P.O. Box 200901 Helena, MT 59620-0901 jkenning@mt.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail</p>

