

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

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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 February 9, 2018, meeting minutes.

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 February 26, 2018, hearing examiner Clerget issued a First Prehearing Order directing the parties to file a stipulated scheduling order. On March 8, 2018, CMG file an Unopposed Motion to Extend Time requesting that the parties be given until April 6, 2018, to propose a schedule. CMG cited ongoing settlement discussions. On March 9, 2018, hearing examiner Clerget granted the motion.
 - b. **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.
 - c. **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.** A three-day hearing was held on February 26-28, 2018. The parties have until April 12, 2018, to file post-hearing briefs and proposed Findings of Facts and Conclusions of Law. Ms. Clerget will then render her proposed decision to the Board.
 - d. **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.

- e. **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 February 23, 2018, the Board issued its final agency action finding Wagoner Family in violation of its permit for 42 days. The Board at its February meeting appointed Sarah Clerget as hearing examiner to conduct the penalty portion of this case. Ms. Clerget issued a Scheduling Order on March 28, 2018. The parties were directed to file a stipulated schedule by April 16, 2018.
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 February 21, 2018, the parties filed a Joint Status Report indicating the District Court case MEIC and Sierra Club v. DEQ and Western Energy has been appealed to the Montana Supreme Court. The parties requested a stay pending the issuance of a decision in that case. On March 28, 2018, hearing examiner Clerget issued an order granting the stay, and directed parties to file a status report within 30 days of the Supreme Court's decision.
 - 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.** On March 1, 2018, a Scheduling Order was issued and the parties are proceeding under that Order.
 - c. **In the matter of Appeal Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B, BER 2016-03 SM.** This matter was heard during a four-day hearing that concluded on March 22, 2018. The parties will have 60 days from the date the hearing transcript is completed to submit post-hearing briefing and proposed findings of fact and conclusions of law to Ms. Clerget, who will then render a proposed decision to the Board.
 - 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. Pretrial motions are due April 20, 2018.
 - 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 February 15, 2018, the parties filed a Joint Status Report and Motion for Continued Stay. The parties indicated settlement is a possibility in this matter. On March 14, 2018, Ms. Clerget issued an Order granting the stay until August 24, 2018.
 - f. **In the matter of Violations of the Water Quality Act by JR Civil, LLC , Bozeman, Gallatin County, Montana (FID 2552, PERMIT MTG70826).** On January 12, 2018, hearing examiner Clerget issued a Scheduling Order in this matter. On February 16, 2018, the parties filed a Joint Motion to Vacate the Remaining Scheduling Order Dates and to Stay Proceedings. The parties have

agreed in principle and are working on a proposed resolution to this case. Hearing examiner Clerget issued an Order vacating the pending deadlines and stayed the proceeding on March 14, 2018. The parties will be filling status updates every 30 days until resolution of this case.

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. On January 25, 2018, the Department of Environmental Quality entered a Stipulated Judgement resolving the issue of attorney's fee. The Department of Environmental Quality and Western Energy have appealed to the Montana Supreme Court.

B. OTHER BRIEFING ITEMS

1. The Department's Air Quality Bureau has two substantial rulemakings that will be before the Board in 2018; a fee increase and a new registration program. The Department would like to brief the Board about the process, content, and timelines for each of these proposed rulemakings.

III. ACTION ITEMS

A. APPEAL, AMEND, OR ADOPT FINAL RULES

1. DEQ will propose that the Board adopt New Rule 1 which implements MCA 75-5-222 Part 2, describing conditions under which variances from water quality standards may be issued.

B. OTHER ACTION ITEMS

1. Amend Rule 4.112 Wildfire Smoke Episodes of the Missoula County Air Stagnation and Emergency Episode Avoidance Plan. The rule change includes a new title for Rule 4.112 ("Wildfire Smoke Episodes"). The proposed rule change does not change the substance of the rule. It does, however, define "wildfire smoke episodes" and codify Health Department actions during wildfire smoke episodes. The rule change also clarifies that while the added control activities in Rules 4.104-4.111 (Air Alerts, Warnings, Emergencies and Crises) may not be put into effect during a wildfire, all other rules in the Missoula City-County Air Pollution Control Program remain in effect.

C. NEW CONTESTED CASES

1. **In the Matter of Violation of the Metal Mine Reclamation Act by Little Bear Construction, Inc. at Bob Weaver Pit, Granite County, Montana. (SMED NO. 46-117C; FID # 2567), BER 2018-02 MM.** On February 9, 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.

2. **In the Matter of the Denial of Motor Vehicle Wrecking Facility License MVWF-0376, BER 2018-01 SW.** On January 30, 2018, the Board received a request for a 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.
3. **In the Matter of Appeal Revocation of Cosa, Fischer Land Development Subdivision [ES# 42-78-S3-173] and Fischer Homes [ES# 42-80-T1-15], Roger Emery, Sidney, Richland County, Montana. [FID# 2214], BER 2018-03 SUB.** On March 9, 2018, 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.

D. ACTION ON CONTESTED CASES

1. **In the matter of Appeal of Oil Field Rock and Logistics, Docket No. OC-16-12 (FID2506), Redstone, Montana, BER 2016-11 OC.** On February 20, 2018, a Proposed Findings of Fact and Conclusions of Law Granting DEQ's Motion for Summary Judgment was issued. A separate Order on Exceptions was issued on February 22, 2018. No party filed exceptions to the Order.

E. PETITION FOR RULEMAKING

1. On January 31, 2018 the Board received a petition from Cottonwood Environmental Law Center and The Gallatin Wildlife Association. Pursuant to MCA 75-5-316(3)(1), the petition requests that the Board classify the section of the Gallatin River from the boundary of Yellowstone National Park to the confluence with Spanish Creek in Gallatin Canyon as an Outstanding Resource Water.

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