

BOARD OF ENVIRONMENTAL REVIEW
FRIDAY, AUGUST 10, 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 June 8, 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 April 12, 2018 hearing examiner Clerget issued a Scheduling Order in this case. On July 20, 2018 the parties requested a stay in the proceeding due to settlement negotiations. On July 23, 2018, Ms. Clerget issued an Order granting the stay and requiring the parties to file joint status reports every 30 days until the case is settled.
 - 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 and will be issuing a proposed order shortly.
 - 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 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.** On July 16, 2018, Ms. Clerget issued her Proposed Findings of Fact Conclusions of Law and a separate order on exceptions. The parties requested an extension of time until September 17, 2018 in which to submit their exceptions to the Proposed Order. This matter will be fully briefed and before the Board at its December meeting.

- d. **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 April 6, 2018, hearing examiner Clerget assumed jurisdiction of this case. A scheduling order was issued on May 31, 2018. On July 20, 2018 the parties filed a Joint Stipulation to Stay the Scheduling Order requesting until September 14th in which to file a joint status report. On July 24, 2018, an Order granting the stay was issued.
 - 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 April 24, 2018 hearing examiner Clerget issued a Scheduling Order and the parties are proceeding accordingly.
 - f. **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 April 6, 2018, hearing examiner Clerget assumed jurisdiction of this matter. A scheduling order implementing additional scheduling deadlines was issued on May 31, 2018, and the parties are proceeding accordingly. An additional party was added to the proceedings on July 3, 2018 as requested by Little Bear.
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. On April 18, 2018, a Motion to Quash subpoena was filed by MEIC regarding two deposition notices and subpoenas. The motion was fully briefed by May 9, 2018. Oral Argument on this issue was held on May 23, 2018. On June 4, 2018, the Board was served as a named Defendant in Case No. DV-18-0869 in Montana Thirteenth Judicial District Court as the parties are seeking resolution from the District Court on the subpoena issue. Hearing Examiner Clerget issued an Order on June 5, 2018 extending all pretrial motion deadlines pending resolution of the District Court case.
 - 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 submitted their post-hearing filings on July 19, 2018. The

Hearing Examiner will review the filings and issue a Proposed Order to the Board by (date).

- 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 April 20, 2018, DEQ filed a Motion for partial Summary Judgment. The motion is fully briefed and an oral argument was held on July 9, 2018. The remaining deadlines in the scheduling order have been vacated and a scheduling conference will be held once an order on summary judgment has been issued.
 - 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 July 12, 2018, the parties submitted a stipulation for dismissal pursuant to Rule 41(a)(1)(A)(ii) of the Montana Rules of Civil Procedure. On July 16, 2018 this matter was dismissed with prejudice.
 - g. **In the Matter of the Denial of Motor Vehicle Wrecking Facility License MVWF-0376, BER 2018-01 SW.** On April 6, hearing examiner Clerget assumed jurisdiction of this matter. On April 12, 2018 a Prescheduling Order was issued. On April 13, 2018, Payne Logging's counsel filed a motion to withdraw as counsel. Hearing examiner Clerget issued an Order on April 19, 2018, staying the deadlines in the Prescheduling Order until June 1, 2018, ordered Payne Logging to obtain counsel by June 1, 2018, or show cause why it will need an extension to do so. Payne never filed a notice of appearance nor requested an extension, so an Order Dismissing Appeal was issued on June 19, 2018. The Order dismissed the appeal without prejudice.
3. Contested Cases not assigned to a Hearing Examiner
- a. **In the matter of the notice of appeal and request for hearing by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ.** On April 9, 2014, the hearing examiner issued Order Granting the Joint Unopposed Motion for Partial Remand of Permit to Department of Environmental Quality and for Suspension of Proceedings. This matter was stayed while action in the District Court 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 fees. The Department of Environmental Quality and Western Energy have appealed the District Court's Order on Summary Judgment to the Montana Supreme Court, opening briefs have been filed and appellees' response briefs are due September 11, 2018.

III. ACTION ITEMS

A. APPEAL, AMEND, OR ADOPT FINAL RULES

1. DEQ will propose that the Board initiate rulemaking to amend Administrative Rules of Montana (ARM) Title 17, chapter 30, subchapter 1, adopted under authority of Section 75-5-401, Montana Code Annotated (MCA), pertaining to state certification of activities requiring federal permits issued under Section 401 of the federal Clean Water Act, 33 USC Section 1341. The proposed amendments will clarify, and update policies and procedures related to the state Section 401 certification process.

B. NEW CONTESTED CASES

1. **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.** On July 2, 2018, 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.
2. **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 Subdivisions. BER 2018-05 OC.** On July 5, 2018, 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.

C. 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