

BOARD OF ENVIRONMENTAL REVIEW
FRIDAY, JUNE 8, 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 April 6, 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. The parties are proceeding through the schedule.
 - 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.** On May 1, 2018, the parties submitted their post-hearing filings. The parties indicated that they did not want an expedited schedule to get a decision before the Board at the June meeting. Ms. Clerget will render proposed decision to the Board shortly and anticipates this matter will be on the Board's agenda for decision at the next meeting in August.
 - 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 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. The parties on May 29, 2018 submitted a proposed scheduling order. A scheduling order was issued on May 31, 2018, and the parties are proceeding according to that schedule.
 - f. **In the matter of violations of the Opencut Mining Act by Wagoner Family Partnership, d/b/a Wagoner's Sand and Gravel, at River Gravel Pit, Flathead County, Montana (Opencut No. 1798; FID 2512), BER 2017-02 OC.** On April 24, 2018 hearing examiner Clerget issued a Scheduling Order and the parties are proceeding accordingly.
 - g. **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. On May 9, 2018 she issued a partial scheduling order and the parties held a scheduling conference on May 30, 2018 to discuss the scheduling of the remaining deadlines. A scheduling order implementing additional scheduling deadlines was issued on May 31, 2018, and the parties are proceeding accordingly.
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 are in the process of submitting their post-hearing filings.
 - 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. A motion for summary judgment is fully briefed and oral argument is being scheduled. A two-day hearing is set for August 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 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. On May 14, 2018, the parties filed a joint status report indicating they are in the process of reviewing settlement documents. Another status report is due in this matter on June 13, 2018.
 - 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.
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 was stayed while 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 fees. The Department of Environmental Quality and Western Energy have appealed the District Court's Order on Summary Judgment to the Montana Supreme Court and opening briefs are due June 13, 2018.
4. Other Case Updates
- a. **Oilfield Rock and Logistics BDV 2018-451:** On May 10, 2018, Oilfield filed a Petition for Judicial Review with the First Judicial District Court, Lewis and Clark County. The BER secretary must file an administrative record in this matter by June 11, 2018. Periodic updates will be given to the Board as the litigation proceeds.

B. OTHER BRIEFING ITEMS

1. The Department would like to brief the Board on revising water quality standards for naturally high arsenic in surface waters, as well as other potential water quality rule changes for the fall of 2018.

III. ACTION ITEMS

A. APPEAL, AMEND, OR ADOPT FINAL RULES

1. DEQ will propose that the Board initiate rulemaking to Amend ARM 17.8.505 Air Quality Operation Fees, to increase air quality operating fees to allow the department to collect sufficient revenue to support the appropriate implementation of the air quality program.

B. 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