



AGENDA

BOARD OF ENVIRONMENTAL REVIEW
FRIDAY, OCTOBER 3, 2008
STATE CAPITOL BUILDING, ROOM 152
1301 EAST SIXTH AVENUE, HELENA, MONTANA

*** Please note location change above***

NOTE: Individual agenda items are not assigned specific times. For public notice purposes, the Board will begin the meeting no earlier than the time specified. However, the Board might not address the specific agenda items in the order they are scheduled. Persons with disabilities, who need an accommodation in order to participate in this meeting, should contact the Board Secretary at (406) 444-5270.

9:00 A.M.

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. **August 8, 2008**, regularly scheduled Board meeting.

II. BRIEFING ITEMS

A. CONTESTED CASE UPDATE

1. Cases assigned to Hearing Officer Katherine Orr
 - a. **In the matter of CR Kendall Corporation's request for a hearing to appeal DEQ's decision to deny a minor permit amendment under the Metal Mine Reclamation Act, BER 2002-09 MM.** On April 27, 2007, Hearing Examiner Katherine Orr issued an *Order Requesting Status Report*. On May 16, 2007, DEQ filed a *Status Report*. An EIS and closure plan should be completed and evaluated in 2008.
 - b. **In the matter of Violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.** A *Stay of Proceedings* was issued by the Hearing Examiner on January 19, 2006, upon notification by the Department of the bankruptcy proceeding.
 - c. **In the matter of the appeal by the Town of Superior, BER 2007-05 WQ, regarding final MPDES Permit No. MT0020664, issued to the Town of Superior.** On January 11, 2008, the parties filed a *Request for Extension*. Hearing Examiner Katherine Orr issued an *Order Granting Extension* on January 15, 2008, giving the parties until November 1, 2008, to file proposed settlement documents or a proposed prehearing schedule.
 - d. **In the matter of the appeal by Southern Montana Electric (SME) regarding its Air Quality Permit No. 3423-00 for the Highwood Generation Station, BER 2007-06 AQ.** The parties are considering dismissal, settlement or continuation of the contested case proceeding.
 - e. **In the matter of the appeal by ExxonMobil regarding its Air Quality Operating Permit No. OP1564-02 for the Billings Refinery, Yellowstone County, Montana, BER 2007-27 AQ.** The parties filed a *Status Report* on September 9, 2008. Settlement discussions are ongoing.
 - f. **In the matter of violations of the Water Quality Act by Park County, Gardiner, MT, BER 2008-01 WQ.** On August 20, 2008, the parties filed a fourth *Request for Extension*. The parties have until December 5, 2008 to present a Settlement Agreement.
 - g. **In the matter of violations of the Opencut Mining Act by James Timis at the Timis Excavation Site Flathead County, MT, BER 2008-02 OC.** Hearing Examiner Katherine Orr issued a *First Scheduling Order* on March 28, 2008. A telephonic prehearing conference is scheduled for September 22, 2008, and a hearing is scheduled for October 7, 2008.

- h. **In the matter of violations of the appeal by Plum Creek Manufacturing, Inc. of its Montana Groundwater Pollution Control System Permit No. MTX00092, BER 2008-06 WQ.** The parties are considering dismissal of this case and may present dismissal documents at the December 5, 2008, meeting.
- i. **In the matter of violations of the Hazardous Waste Act by the Three W's, Inc., and Montana Waste Systems, Inc., BER 2008-07 HW (MT Waste Systems).** On August 13, 2008, the parties filed a *Request for Extension*. Hearing Examiner Katherine Orr issued a *First Order Granting Extension* giving the parties until November 21, 2008, to file a prehearing and hearing schedule or to present settlement documents.
- j. **In the matter of the appeal by Eastgate Water and Sewer Association of Helena Sand and Gravel, Inc.'s Opencut Permit No. HSG-017, BER 2008-08 OC.** On August 1, 2008, the department filed a *Motion to Dismiss* the portion of the case pertaining to MEPA. Hearing Examiner Katherine Orr issued an *Order Dismissing Petitioner's Challenges to the Violations of the MEPA* on August 22, 2008. An *Order Requiring Petitioners to File a More Definite Statement* and an *Order Staying Proposed Hearing Schedule* was issued on August 22, 2008. Petitioners filed "Petitioner's Response to Board's Order Requiring a More Definite Statement" was filed on September 5, 2008. A hearing date will be determined on December 6, 2008, by telephone conference.
- k. **In the matter of violations of the Hazardous Waste Act by the Three W's, Inc., and Montana Waste Systems, Inc., BER 2008-09 HW (Three W's).** The parties filed a *Request for Extension* on August 13, 2008. On August 22, Hearing Examiner Katherine Orr issued a *First Order Granting Extension* giving the parties until November 21, to file a prehearing and hearing schedule or to present settlement documents.
- l. **In the matter of violations of the opencut mining act by TMC, Inc. at the Nuss Pit, Gallatin County, Montana, BER 2008-10 OC.** Hearing Examiner Katherine Orr issued a *First Prehearing Order* on August 22, 2008. The parties have until September 22, 2008, to consult and propose a hearing schedule.

2. CASES IN LITIGATION

- a. **In the matter of the Notice of Appeal and Request for Hearing of the Citizens Awareness Network, Women's Voices for the Earth, and the Clark Fork Coalition regarding DEQ's approval of the Thompson River CO-Gen, LLC, Air Quality Permit No. 3175-04, BER 2006-18 AQ.** A notice of appeal of the denial of the request to amend the affidavit was filed in District Court on July 8, 2008.
- b. **In the matter of the appeal by Citizens for Clean Energy (CCE) and Montana Environmental Information Center (MEIC) regarding Air Quality Permit No. 3423-00 issued to Southern Montana Electric (SME) for its Highwood Generation Station, BER 2007-07 AQ.** The Department of Environmental has indicated its intent to file a motion to intervene. The Board filed a *Transmittal of Record* on August 28, 2008.

III. ACTION ITEMS

A. INITIATION OF RULEMAKING AND APPOINTMENT OF HEARING OFFICER

- 1. **Amend ARM 17.8.308, 17.8.504, 7.8.744, and 17.8.1205** regarding agricultural exemptions from air quality rules and changes regarding operating permit application and Montana Air Quality Application processes and the associated fee rule.

B. REPEAL, AMENDMENT OR ADOPTION OF FINAL RULES

- 1. In the matter of the **amendment of ARM 17.8.505 and 17.8.514** for the annual adjustment of air quality operation and open burning fees. The Department will recommend the adoption of the rule amendments as proposed.

2. In the matter of the **update the Air Quality Incorporation by Reference Rules** at ARM 17.8.102, 17.8.301, 17.8.901, 17.8.1007, 17.8.1206, 17.8.1212, 17.8.1232, 17.8.1234, 17.8.1234, 17.8.1302, 17.8.1402, 17.8.1502, and 17.8.1509 (annual update and housekeeping changes). The Department will recommend the adoption of the rule amendments as proposed.

C. NEW CONTESTED CASE APPEALS

1. **In the matter of the violations of the Opencut Mining Act by Helena Sand and Gravel, Inc. at the Lake Helena Drive Pit, Lewis and Clark County, Montana, BER 2008-12 OC.** The Board received the **appeal** on August 4, 2008. The Board may appoint a permanent hearing examiner or decide to hear the matter. A *Prehearing Order* was issued on August 22, 2008. A *First Scheduling Order* was issued on September 5, 2008. A hearing date will be determined on January 20, 2009.
2. **In the matter of violations of the Montana Water Quality Act by Wilderness Club, LLC., at the Wilderness Club Eureka, Lincoln County, Montana, BER 2008-13 WQ.** The Board received the **appeal** on August 12, 2008. The Board may appoint a permanent hearing examiner or decide to hear the matter. A *First Prehearing Order* was issued on August 22, 2008. The parties have until September 22, 2008 to submit a proposed hearing and prehearing schedule.

D. FINAL ACTION ON CONTESTED CASES

1. **In the matter of the appeal by CHS Inc. regarding its Title V operating permit No. OP1821-01 for the Laurel Refinery, Laurel, Montana, BER 2007-23 AQ.** The parties filed a *Stipulation by DEQ and CHS, Inc. for Dismissal of Contested Case* on July 31, 2008. An **order** to dismiss the case will be presented for the Board's approval.
2. **In the matter of violations of the Montana Public Water Supply laws by Dale's Dairy at Dale's Dairy Convenience Store, Missoula, Montana, BER 2008-11-PWS.** The Board received the **appeal** on August 4, 2008. The parties filed a *Stipulation for Dismissal* on September 11, 2008. An **order** to dismiss the case will be presented for the Board's approval.

IV. GENERAL PUBLIC COMMENT

- A. 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.

V. ADJOURNMENT