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**AGENDA**

FRIDAY, MAY 18, 2012

METCALF BUILDING, ROOM 111

1520 EAST SIXTH AVENUE, HELENA, MONTANA

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**NOTE:** Individual agenda items are not assigned specific times. For public notice purposes, the meeting will begin no earlier than the time specified; however, the Board might not address the specific agenda items in the order they are scheduled. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this meeting. Please contact the Board Secretary by telephone at (406) 444-6701 or by e-mail at [jwittenberg@mt.gov](mailto:jwittenberg@mt.gov) no later than 24 hours prior to the meeting to advise her of the nature of the accommodation you need.

**9:00 A.M.**

**I. ADMINISTRATIVE ITEMS**

**A. REVIEW AND APPROVE MINUTES**

1. March 23, 2012, Board meeting minutes.

**II. BRIEFING ITEMS**

**A. CONTESTED CASE UPDATE**

1. Enforcement cases assigned to the Hearing Examiner

- a. **In the matter of violations of the Montana Septage Disposal and Licensure Laws by James Vaughn, d/b/a Any Time Septic & Porta-Potty, Lake County, BER 2011-06 SDL.** On February 9, 2012, the Board received *Department's Motion to Vacate Contested Case Hearing and to Set Status Conference*. The Board received *Answer to Motion to Vacate and Set Hearing Status* from the attorney for the appellant, on February 15, 2012. A *Second Order Vacating Hearings and Imposing Stay of Proceedings* was issued on April 17, 2012.
- b. **In the matter of violations of the Public Water Supply Laws by Olson's Lolo Hot Springs, Inc. at Lolo Hot Springs, PWSID #MT0000805, Missoula County, BER 2011-09 PWS.** On December 14, 2011, attorney for DEQ filed *Request to Stay Proceedings*, and the hearing examiner issued *Order Granting Request to Stay Proceedings* on December 15, 2011. A *Status Report* was filed on March 19, 2012.
- c. **In the matter of violations of the Opencut Mining Act by Ell Dirt Works, LLC, at the Gene Foss Pit 1, Richland County, BER 2011-11 OC.** The hearing examiner issued *Order Joining Additional Parties* on March 13, 2012, in response to the appellant's *Motion to Join Additional Parties*, filed on January 30, 2012. A hearing is scheduled for July 11, 2012.
- d. **In the matter of violations of the Water Quality Act by SK Construction, Inc. on US Highway 2 near Bainville, Roosevelt County, BER 2011-20 WQ.** On April 11, 2012, the hearing examiner issued *Order Granting Extension of Stay*, giving the parties through May 4, 2012, to reach settlement or submit a joint agreed revised hearing schedule.
- e. **In the matter of violations of the Opencut Mining Act by the City of Ronan at Ronan, Lake County, BER 2011-23 OC.** A hearing is scheduled for August 17, 2012.

- f. **In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Westmoreland Resources, Inc., at the Absaloka Mine, Big Horn County, BER 2012-02 SM.** The parties filed *Agreed Proposed Schedule* on March 23, 2012, and the hearing examiner issued *First Scheduling Order* on April 12, 2012.
2. Other cases assigned to the Hearing Examiner
    - 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.** An *Order Requesting Status Report* was issued on January 13, 2012. DEQ counsel filed *Status Report* on January 26, 2012.
    - b. **In the matter of the appeal and request for hearing by Roseburg Forest Products Co. of DEQ's Notice of Final Decision regarding Montana Ground Water Pollution Control System Permit No. MTX000099, BER 2010-09 WQ.** On April 12, 2012, the Board received *Joint Motion to Stay Appeal*. On April 20, 2012, an *Order Vacating Hearing Dates and Setting Telephonic Status Conference Date* was issued.
    - c. **In the matter of the appeal and request for hearing by the City of Helena regarding the DEQ's Notice of Final Decision for Montana Pollutant Discharge Elimination System (MPDES) Permit No. MT0022641, BER 2011-08 WQ.** On March 9, 2012, the hearing examiner issued *Seconded Amended Scheduling Order*, setting a hearing date of July 10, 2012.
  3. Contested Cases not assigned to a Hearing Examiner
    - a. **In the matter of violations of the Opencut Mining Act by Brad Blakeman at the Camas Prairie Gravel Pit, Sanders County, BER 2012-01 OC.** Interim Hearing Examiner Katherine Orr issued *First Scheduling Order* setting a hearing before the Board on September 28, 2012.
  4. Other Contested Case Briefings
    - a. **In the matter of violations of the Montana Underground Storage Tank Act by Jeanny Hlavka, individually and d/b/a J.R. Enterprise, LLC, at the Fort Peck Station, Valley County, BER 2010-08 UST.** The Board signed an order granting the DEQ's *Motion for Summary Judgment* on September 28, 2011. On October 26, 2011, Hlavka filed a petition in state district court in Valley County for judicial review of the Board's decision. On November 30, 2011, the Board transmitted a certified copy of the record to the district court. On March 9, 2012, the District Court remanded the case back to the Board.

### III. ACTION ITEMS

#### A. INITIATION OF RULEMAKING

DEQ will propose that the Board initiate rulemaking to:

1. Amend ARM 17.30.617 to designate the mainstem Gallatin River from the Yellowstone National Park boundary to the confluence of Spanish Creek as an Outstanding Resource Water (ORW) and to amend ARM 17.30.638 to add a new subsection clarifying that discharges to ground water with a direct hydrologic connection to an ORW are within the statutory mandate prohibiting any permanent change in the water quality of an ORW resulting from point source discharges. DEQ will request that the Board issue a notice of supplemental rulemaking to extend the comment period.

2. Amend ARM 17.8.801 and 17.8.818 for major source permitting regarding the emissions of NO<sub>x</sub> as a precursor to Ozone and other minor amendments.
3. Revise Circular DEQ-2, design standards for municipal wastewater collection and treatment. Included in the revisions to DEQ-2 are treatment standards, classifications, and allowable uses for reclaimed wastewater. Associated with these reuse standards are proposed rule changes under the Water Quality Act and the Public Water Supply Act.
4. Establish new and revised water quality standards in Circular DEQ-7. The revisions to Circular DEQ-7 will be incorporated by reference by amending rules in ARM Title 17, Chapter 30, Subchapters 5, 6, 7, and 10, pertaining to mixing zones, surface water quality standards, nondegradation requirements, and ground water rules. DEQ also proposes incorporating the new and revised water quality standards in Circular DEQ-7 by amending ARM Title 17, Chapter 24, Subchapter 6, pertaining to reclamation; ARM Title 17, Chapter 36, Subchapter 3, pertaining to subdivisions; ARM Title 17, Chapter 55, Subchapter 1, pertaining to CECRA; and ARM Title 17, Chapter 56, Subchapters 5 and 6, pertaining to underground storage tanks. The proposed rulemaking is primarily intended to update certain water quality standards and required reporting values in DEQ-7 and to incorporate DEQ-7 into the above rules. DEQ recommends initiating rulemaking for the proposed changes.

#### B. REPEAL, AMENDMENT, OR ADOPTION OF FINAL RULES

1. DEQ proposes to adopt the amendments to Title 17, Chapter 38, Sub-Chapter 3, Cross Connections in Drinking Water Supplies, to update the adoption by reference to the newest addition, to update the current language to use industry standard language, and for clarification. In addition, DEQ proposes to adopt the amendments to 17.38.208 to remove duplicative language, to 17.38.225 to clarify the disinfectant residual monitoring requirements, and to 17.38.234 to clarify Water Hauler record keeping requirements.

#### C. FINAL ACTION ON CONTESTED CASES

1. **In the matter of violations of the Public Water Supply Laws by Jore Corporation at Jore Corporation, Lake County, BER 2011-05 PWS.** On March 12, 2012, the parties filed *Stipulation for Dismissal*. An order to dismiss the case will be presented for signature.
2. **In the matter of the request for hearing by Nancy Scott, Dale Whitton, Kimberly Mole, Jess Hodge, Katherine G. Potter, Sharon B. Johnson, Clinton C. Johnson, James, D. Ward, and Korrie L. Ward, Marshall Warrington, Jr., Patricia Warrington, John Hutton, regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for the Dorr Skeels site in Lincoln County, BER 2011-15 OC, BER 2011-12 OC, BER 2011-13 OC, and BER 2011-17 OC.** On March 31, 2012, the hearing examiner issued *Proposed Order Granting Motion for Summary Judgment*. An *Order Supplementing Proposed Order Granting Motion for Summary Judgment* was issued on April 17, 2012. An *Order of the Board* will be provided.
3. **In the matter of the request for hearing by Steven K. Endicott, Ruth Ann Endicott, and Robert W. Gambill regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for the Dorr Skeels site in Lincoln County, BER 2011-14 OC and BER 2011-18 OC.** On April 2, 2012, the hearing examiner issued *Proposed Order Granting Motion for Summary Judgment*. An *Order of the Board* will be provided.
4. **In the matter of the request for hearing by Glenn Miller, Rick Sant, Ralph & Edna Neils, Berneice A. Zucker, Patricia Anderson, Tina K. Moore, Marc Zahner, Donald E. White, Jacki Bruemmer, Betty Longo, Tracy Nicely, Michael Dunn, Dennis Thayer, James Hopkins, Debbie Zahner, James P. Tomlin, Howard C.A. Hunter, George**

Stachecki, Marie Mabee, Harold Mabee, Patricia Warrington, Lily S. Parker, Linda S. Fisher, Steven E. Fisher, Connie Karns, John Ritchie, Grant Denton, Karen & Ben Pelzel, Richard L. Johnson, N.E.W. Boss, Jane O. Drayton, Leonard H. Drayton, Warren Robbe, Katherine G. Potter, Robert B. Potter, Bonnie Gannon, Kim F. Taylor, Linda Cochran, Helen R. Lockard, Marshall Warrington, Jr., Bruce Kinney, Devan Kinney, Jon Kinney, Joel Kinney, Karen Legue, Angeline R. Allen, Gary Allen, Bonnie Sonnenberg, Bud Biddle, Eunice Boeve, Ron Boeve, Kathleen Burbridge, Harold Lewis, Ken Mole, and Lois M. Mole, regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for the Dorr Skeels site in Lincoln County, BER 2011-16 OC. On April 2, 2012, the hearing examiner issued *Proposed Order Granting Motion for Summary Judgment*. An *Order of the Board* will be provided.

5. **In the matter of violation of the Metal Mine Reclamation Act by Noble Excavating, Inc. at Nickleback Rock Quarry, Lincoln County, BER 2011-24 MM.** On March 6, 2012, the hearing examiner issued *Order Granting Extension of Time* giving the parties through April 3, 2012, to reach settlement or file a proposed hearing schedule. On May 1, 2012, the parties filed a *Stipulation to Dismiss and Request for Dismissal*. An order to dismiss the matter will be presented for the Board's signature.

#### D. NEW CONTESTED CASES

1. **In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Westmoreland Resources, Inc., at the Absaloka Mine, Big Horn County, BER 2012-03 SM.** The Board received the appeal on March 14, 2012. Interim Hearings Examiner Katherine Orr issued *First Prehearing Order* on April 11, 2012. The Board may appoint a permanent hearings examiner or decide to hear the matter.

#### IV. 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.

#### V. ADJOURNMENT