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AGENDA

FRIDAY, DECEMBER 7, 2012
METCALF BUILDING, ROOM 111

1520 EAST SIXTH AVENUE, HELENA, MONTANA

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 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. September 27, 2012, Board meeting minutes.

B. SET 2013 MEETING SCHEDULE

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 November 8, 2012, the Hearing Examiner issued *Second Order Vacating and Resetting Hearing and Prehearing Conference Dates* scheduling a prehearing conference for November 14 and the hearing for November 27. On November 14, the hearing examiner issued *Second Order Vacating and Resetting Telephonic Prehearing Conference Date* resetting the prehearing conference for November 26. On November 21, the hearing examiner determined to grant the pending motion for summary judgment on the issue of liability, and has vacated the hearing date.
 - b. **In the matter of violations of the Public Water Supply laws by the city of Ronan Public Water Supply System, PWSID #MT0000318, Ronan, Lake County, BER 2012-04 PWS.** A hearing is scheduled for January 31, 2013.
 - c. **In the matter of violations of the Montana Solid Waste Management Act by Valley County Refuse District #1 at the Valley County Landfill, Glasgow, BER 2012-06 SW.** On November 1, 2012, the Board received *DEQ Motion for Summary Judgment and Brief in Support of Motion*. A contested case hearing is currently set for January 23, 2013.
2. Other Cases Assigned to a Hearing Examiner
 - a. **In the matter of the request for hearing by Hawthorne Springs Property Owners Association; H Lazy Heart, LLC; Patchy, Inc.; and other residents regarding**

Opencut Mining Permit No. 2258, issued to Farwest Rock Products, Missoula County, BER 2012-09 OC. A *First Scheduling Order* was issued on September 27, 2012, setting a contested case hearing for April 16, 2013.

3. Contested Cases not assigned to a Hearing Examiner
 - a. **In the matter of the request for hearing by William E. Smith, on behalf of Mike Adkins, regarding Park County's denial to validate Adkins Class III Waste Tire Monofill License No. 517, BER 2012-05 SW.** At its July 27, 2012, meeting, the Board voted to hear all matters in this case. On September 11, 2012, the Board heard oral argument on pending motions; the Board granted the pending motion to intervene of Protecting Paradise, and granted a motion to stay proceedings until disposition of the Petition for Judicial Review filed in the Sixth Judicial District.
 - b. **In the matter of the request for hearing by Earth Justice, Montana Environmental Information Center, Sierra Club, and National Wildlife Federation regarding the Administrative Order on Consent issued to PPL Montana, LLC, BER 2012-10 MFS.** On September 18, 2012, the Board received Election of PPL Montana, LLC for Proceeding to Occur in District Court Pursuant to Mont. Code Ann. §75-20-223(1).

B. OTHER BRIEFING ITEMS

1. The department will report to the Board regarding the air quality permit fees anticipated for the next year, pursuant to ARM 17.8.510.

III. ACTION ITEMS

A. INITIATION OF RULEMAKING

DEQ will propose that the Board initiate rulemaking to:

1. Amend ARM 17.30.1330, 17.30.1341, 17.30.1343, 17.30.1361 and 17.30.1362, and adopt New Rule I pertaining to the Montana Pollutant Discharge Elimination System (MPDES) permit program in ARM Title 17, Chapter 30, Subchapter 13. The department is requesting these amendments in order to maintain compliance with federal regulations governing concentrated animal feeding operations (CAFOs) including technical standards governing the application of manure, litter and other process wastewater applied to land under the control of the CAFO.
2. Revise Circular DEQ-4, Montana Standards for Subsurface Wastewater Treatment Systems, to reorganize the format, add illustrations, and correct grammar and numbering errors. In response to emerging technology, new chapters and new design requirements have been added, including an appendix with design examples.

B. REPEAL, AMENDMENT, OR ADOPTION OF FINAL RULES

1. In the matter of proposed final adoption of amended ARM 17.8.102 incorporating the air quality rules adopted in the 2010 edition of the Code of Federal Regulations and current updates to state statutes and regulations that are incorporated by reference in the rules.
2. In the matter of proposed final adoption of New Rule, which incorporates by reference department Circular DEQ-13 entitled Montana's Policy for Nutrient Trading. DEQ is in the final stages of developing numeric standards for nitrogen and phosphorus in surface waters. Nutrient trading is a voluntary, market based approach to improve water quality and is supported by EPA as a tool to meet TMDL load allocations.

3. In the matter of proposed final adoption of amendments to ARM 17.30.1304, 17.30.1310, 17.30.1322, and 17.30.1303, regarding permit exclusions and application requirements for discharge permits issued under the Montana Pollutant Discharge Elimination System Permit (MPDES) program and the repeal of a rule pertaining to general incorporations by reference of federal rules. The department is requesting these amendments in order to maintain compliance with federal regulations governing states with delegated authority to implement the federal Clean Water Act's permitting program.
4. 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 is proposing the Board take no further action in this matter.

C. FINAL ACTION ON CONTESTED CASES

1. **In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Signal Peak Energy, LLC at Bull Mountain Mine #1, Roundup, Musselshell County, BER 2012-08 SM.** On October 24, the Board received *Unopposed Motion for Extension of Time* from the Appellant, stating that the parties are involved in settlement discussions. On November 9 the hearing examiner issued *Order Granting Extension of Time and Implementing Second Scheduling Order*. A *Stipulation for Dismissal and Order to Dismiss* was filed on November 19, 2012. The Board will be requested to sign the order dismissing the case.
2. **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.** On March 9, 2012, the District Court remanded the case back to the Board. On October 12, 2012, the hearing examiner issued a *Recommended Order on Second Motion for Summary Judgment*. On October 22, 2012, the Board received *Exceptions for Recommended Order on Second Motion for Summary Judgment* from the petitioner. The department filed its *Response to Hlavka's Exceptions* on October 26, 2012. The Board will consider the exceptions and determine whether to accept, reject, or modify the recommended order.

D. NEW CONTESTED CASES

1. **In the matter of violations of the Public Water Supply Laws by Trailer Terrace Mobile Park, LLC, Dennis Deschamps and Dennis Rasmussen at the Trailer Terrace, PWSID No. MT0000025, Great Falls, Cascade County, BER 2012-11 PWS.** The Board received the appeal on October 15, 2012. Interim Hearing Examiner Katherine Orr issued *First Prehearing Order* on October 24, giving the parties until November 13 to propose a schedule. The Board may appoint a permanent hearing examiner or decide to hear the matter.
2. **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.** The Board received the request for hearing on October 31, 2012. On November 8, Interim Hearings Examiner Katherine Orr issued a *First Prehearing Order*, giving the parties until November 28 to

file a proposed schedule. The Board may appoint a permanent hearing examiner or decide to hear the matter.

3. **In the matter of violations of the Montana Solid Waste Management Act by Asphalt Plus, LLC, a corporation, and Michael C. and Melinda M. Oedekoven, as individuals, at 425 Johnson lane, Billings, Yellowstone County, BER 2012-13 SW.** The Board received the appeal on November 13, 2012. The Board may appoint a permanent hearing examiner or decide to hear the matter.

E. OTHER ACTION ON CONTESTED CASES

1. **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.** A contested case proceeding took place before the full Board on September 28, 2012. The Board found in favor of the department and will take up the question of penalties to assess.

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