

TELECONFERENCE AGENDA
FRIDAY FEBRUARY 5, 2016
METCALF BUILDING, ROOM 111
1520 EAST 6th AVENUE, HELENA, MONTANA

NOTE: It is expected that most available Board members will be participating telephonically. The Board attorney and secretary, along with any Board members who so choose, will be present at the location stated above. Interested persons, members of the public, and the media are welcome to attend at the location stated above. Members of the public and press also may join Board members with prior arrangement. Contact information for Board members is available on the Board's Website (<http://www.deq.mt.gov/ber/index.asp>) or from the Board Secretary (406-444-2544). 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 hhoule@mt.gov no later than 24 hours prior to the meeting to advise her of the nature of the accommodation needed.

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9:00 A.M.

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. The Board will vote on adopting the December 4, 2015, meeting minutes
2. The Board will vote on adopting the December 29, 2015 meeting minutes.
3. The Board will vote on adopting the January 12, 2016 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 Public Water Supply Laws by Rene Requa at Highlander Bar and Grill, PWISD MT0004764, Lewis and Clark County (FID 2299, Docket No. PWS-14-08), BER 2014-09 PWS. Scheduling Order** was issued on December 23, 2015.
 - b. **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 November 16, 2015 an Order was issued Granting Request for Stay and Vacating the Scheduling Order. The parties have until March 4, 2016 to reach a settlement of this appeal or to submit a joint proposed revised hearing schedule in the matter. .
 - c. **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 November 16, 2015 an Order was issued Granting Request for Stay and Vacating the Scheduling Order. The parties have until March 4, 2016 to reach a

settlement of this appeal or to submit a joint proposed revised hearing schedule in the matter.

- d. **In the matter of violations of the Water Quality Act by Buscher Construction and Development, Inc., at Poly Vista Estates, Trailhead, and Falcon Ridge II Subdivisions, Billings, Yellowstone County, BER 2015-03 WQ.** A Scheduling Order was issued on November 16, 2015.
2. Non-enforcement cases assigned to the Hearings Examiner
 - a. **In the matter of the notice of appeal and request for hearing by Yellowstone Energy Limited Partnership (YELP) regarding issuance of MPDES Permit NO. MT0030180 for YELP's facility in Billings, MT, BER 2014-01 WQ.** Continuing the Stay until February 1, 2016.
 - b. **In the matter of Phillips 66 Company's appeal of Outfall 006 Arsenic Limits in Montana Pollution Discharge Elimination System Permit No. MT0000256, Billings, Yellowstone County, MT, BER 2014-05 WQ.** On March 11, 2015, the parties filed a Stipulation to Stay Appeal until December 31, 2017. On March 25, 2015, the hearing examiner issued Order approving the stipulation and ordered the parties to comply with the terms or the stipulation.
 - c. **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, MT, BER 2014-06 WQ.** On January 20, 2016, an Order on Motion to Extend Briefing Schedule was issued.
 - d. **In the matter of the revocation of Montana Air Quality Permit No. MAQP# 2554-05, issued to Eureka Pellet Mills (Inc.), Eureka, Lincoln County, MT, BER 2015-04a AQ; the revocation of Montana Air Quality Permit No. MAQP 3039-02, issued to Eureka Pellet Mills (Inc.), Superior, Mineral County, MT, BER 2015-04b AQ; and the revocation of Montana Air Quality Permit No. MAQP# 4057-00, issued to Montana Renewable Resources (LP), Eureka, Lincoln County, MT, BER 2015-04c AQ.** On October 13, 2015, a Stipulation to Dismiss the Case was filed and signed by both parties in Case No. BER 2015-04c AQ. On October 16, 2015 a Notice of Filing of Exhibit 1 to Department's Motion to Dismiss was filed in Case No. BER 2015-04a and b.
 - e. **In the matter of Heart K Land & Cattle Co.'s appeal of its final 401 Certification with conditions, BER 2015-05 WQ, application No. MT4010948; MWO-2013-00590-MTB-Addendum, issued by DEQ for the Yellowstone River, Park County, MT.** The Board received the appeal on July 17, 2015. On December 4, 2015, an Order Granting Motion for Pro Hac Vice Admission was issued.
 - f. **In the matter of Westmoreland Resources, Inc.'s, BER 2015-06 WQ, appeal of final MPDES permit No. MT0021229 issued by DEQ for the Absaloka Mine in Hardin, Big Horn County, MT.** On January 11, 2016, a First Prehearing Order was issued.

- g. **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 January 7, 2016 a Stipulated Scheduling Order was submitted by both parties.
 - h. **In the matter of termination by DEQ of the application by Payne Logging, Inc. Requesting to move boundaries of the Payne Logging facility in Libby, Lincoln County, Montana, BER 2015-08 JV.** The First Prehearing Order was issued on January 11, 2016.
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 an Order Granting the Joint Unopposed Motion for Partial Remand of Permit to Department of Environmental Quality and for Suspension of Proceedings. On May 14, 2014, DEQ filed a Status Report regarding the matter stating that a modified permit would be made available for public comment on or before June 9, 2014.

B. OTHER BRIEFING ITEMS

- 1. On December 8, 2015, the EPA approved the Board's Water Quality Standards for EC and SAR that were adopted in Montana in 2003 and 2006. The Department will brief the Board on how this approval letter affects water programs within the Department.
- 2. The Department will brief the Board on site specific water quality standards for electrical conductivity (EC) and sodium adsorption ratio (SAR) for Otter Creek, tributary to the Tongue River.
- 3. The Department will brief the Board on the status of Senate Bill 325 rulemaking. Senate Bill 325, now Montana Code Annotated 75-5-222, sets forth requirements for water quality standards to be no more stringent than the nonanthropogenic condition of a water body, and requires rule development for variances from standards in certain situations.

III. ACTION ITEMS

A. NEW CONTESTED CASES

- 1. **In the matter of Appeal of the Denial for the Silverado Heights Subdivision Lots 1 and 10 Rewrite, EQ # 16-1383, Ravalli County, Montana, case number BER 2016-01 PWS. The Board received the appeal on January 5, 2016.** On January 11, 2016, the Interim Hearing Examiner Ben Reed issued a First Prehearing Order requesting the parties file a Proposed Scheduling Order by January 29, 2016. The Board may assign a permanent Hearing Examiner or decide to hear the matter.
- 2. **In the matter of Appeal of the Denial for the Wiediger Family Transfer EQ # 16-1116, Ravalli County, Montana, case number BER 2016-02 PWS.** The Board received the appeal on January 5, 2016. On January 11, 2016, the Interim Hearing Examiner Ben Reed issued a

First Prehearing Order requesting the parties file a Proposed Scheduling Order by January 29, 2016. The Board may assign a permanent hearing examiner or decide to hear the matter.

3. **In the matter of Appeal Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B, case number BER 2016-03 SM. The Board received the appeal on January 4, 2016.** On January 11, 2016, the Interim Hearing Examiner Ben Reed issued a First Prehearing Order requesting the parties file a Proposed Scheduling Order by January 29, 2016. The Board may assign a permanent Hearing Examiner or decide to hear the matter.

B. INITIATION OF RULEMAKING

DEQ will propose that the Board initiate rulemaking to:

1. Amend ARM 17.8.610, 17.8.612, 17.8.613, 17.8.614, 17.8.615, 17.8.749, and 17.8.1210 pertaining to open burning permits, issuance or denial of a permit, and general requirements for an air quality operating permit, in response to changes to the Clean Air Act of Montana (the Act). The proposed amendments address changes to the Act affecting the process to appeal a department decision on a permit application.

C. REPEAL, AMENDMENT, OR ADOPTION OF FINAL RULES

1. The Department requests authorization to request comment on Montana's water quality standards as part of the 2016 triennial water quality standards review. A review of water quality standards at least every three years is required per Montana Code Annotated 75-5-301(3).
2. In the matter of the repeal of ARM 17.8.334, 17.8.335, and 17.8.772 pertaining to Emission Standards for Existing Aluminum Plants and Mercury Allowance Allocations under Cap and Trade Budget, respectively. The Department is requesting that the Board repeal the rules as noticed in MAR 17-375.
3. Generally revise the rules implementing the Opencut Mining Act ("the Act"), ARM Title 17, Chapter 25, Subchapter 2, in response to changes to the Act enacted in the 2007, 2009, and 2013 legislative sessions; to generally clarify and simplify the rules by reorganizing the provisions to avoid treatment of single concepts in multiple rules, eliminate redundant provisions, and improve syntax; and to make substantive changes to remove unnecessary requirements and add requirements that improve reclamation and regulatory process.
4. The Department requests that the Board repeal rules in ARM Title 17, chapters 4, 30, and 38, pertaining to water pollution rules, radiological criteria, state and EPA coordination, pretreatment, definitions, enforcement actions for administrative penalties, purpose, definitions, enforcement procedures and suspended penalties. The Department recommends the Board repeal the rules as proposed in the Notice of Hearing.

D. OTHER ACTION

1. Approval of amendments to the Butte-Silver Bow air quality control rules to address changes made to federal regulations on new residential wood heaters under the strengthened new source performance standards published by the Environmental Protection Agency on February 3, 2015

E. FINAL ACTION ON CONTESTED CASES

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