

TUESDAY JANUARY 31, 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://deq.mt.gov/DEQAdmin/ber>) 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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10:00 AM

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. The Board will vote on adopting the December 9, 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 Water Quality Act by Reflections at Copper Ridge, LLC at Reflections at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105376), BER 2015-01 WQ.** Scheduling Order is in effect and Discovery is ongoing.
 - b. **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.** Scheduling Order is in effect and Discovery is ongoing.
 - c. **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.** On December 24, 2016 the Hearing Examiner issued an order regarding the parties to settle the case on or submit a proposed revised scheduling order by January 27, 2017.
 - d. **In the matter of appeal of Violations of the Opencut Mining Act by Big Rock, LLC at Wheeler Gravel Pit, Missoula County, Montana BER2016-06 OC (Opencut No. 719; FID 2471).** A Show Cause Order was issued on January 9, 2016.
 - e. **An appeal in the matter of violation of the Opencut Mining Act by Goran, LLC at the Goran unpermitted gravel pit, Stillwater County, Montana (Opencut No. 2790; FID 2500), case number BER2016-09 OC.** Scheduling Order is in effect and Discovery is ongoing.

2. Non-enforcement cases assigned to the Hearings Examiner

- a) **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 25, 2015, the hearing examiner issued an Order Approving the Stipulation to Stay Appeal and ordered the parties to comply with the terms of the stipulation.
- b) **In the matter of LT Trucking, LLC, appeal Riverside Contracting Inc., Reclamation Bond Release Permit #2083, CVID#17280, BER2016-04 OC.** An Order to Show Cause was issued on January 6, 2017.
- 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.** The previous Hearing Examiner, Been Reed, is retaining the case and will handle all proceedings and post hearing briefings.
- d) **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.** Oral Arguments were heard on Summary Judgment on September 1, 2016.
- e) **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.** An Order on Joint Motion to Stay Proceedings was issued on December 14, 2016.
- f) **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.** A Scheduling Order is in effect and discovery is ongoing.
- g) **An appeal in the matter of amendment application AM3, Signal Peak Energy LLC's Bull Mountain Coal Mine #1 Permit No. C1993017, case number BER2016-07 SM.** A Scheduling Order was issued on December 12, 2016. A Motion to Amend and Join Sierra Club as Co-Petitioner and Brief in Support was filed by MEIC on November 18, 2016. The Parties have filed their responses and the matter has been fully briefed.
- h) **An appeal in the matter of section 401 Water Quality Certification issued for DEQ Application Number MT4011012, the Clark Hydroelectric Project, Beaverhead County, Montana, case number BER2016-08 WQ.** An Order on Pending Motions was issued on January 9, 2016.

- i) **In the matter of Appeal the Conditions of the Certification for Timbershor at Finley Point Wastewater subdivision rewrite Lake County E.Q. #15-1971, Lake County, Montana, case number BER2016-10 SUB.** A First Prehearing Order was issued on January 9, 2016.
- j) **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.** Per the Board's instructions following the December 9, 2016 Hearing, the matter has been remanded to the Hearings Examiner and the matter is awaiting a Scheduling Order.
- k) **In the matter of Appeal Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B, BER 2016-03 SM.** Per the Board's instructions following the December 9, 2016 meeting, the matter is pending a hearing track and waiting a Scheduling Order.

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. This matter has been stayed while an informal judicial review action proceeded. On March 14, 2016, the Judge issued an Order on Summary Judgment invalidating the permit modification and remanding the matter for consideration consistent with the opinion. A motion for an order requiring payment of attorney fees has been briefed and submitted for decision.

B. OTHER BRIEFING ITEMS

- 1. Development of Rules to Implement SB 325 (2015 Session). The Department will brief the Board on the progress of efforts to develop proposed rules for the Board's consideration.

III. ACTION ITEMS

A. NEW CONTESTED CASES

- 1. **In the matter of Appeal of Oil Field Rock and Logistics Docket No. OC-16-12 (FID2506), Redstone, Montana, case number BER2016-11 OC.** This is an appeal of an order to reclaim and pay an administrative penalty. The Board may decide to hear the matter or assign a permanent Hearing Examiner.
- 2. **In the matter of Appeal of Vanak Transportation Docket No. SW-16-01, Toronto, Ontario, case number BER2017-01 SW.** This is an appeal of a remedial action order. The Board may decide to hear the matter or assign a permanent Hearing Examiner.

B. FINAL ACTION ON CONTESTED CASES

1. **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.** The appellants have complied with the Stipulation and the matter is ready to be dismissed.

C. REPEAL, AMENDMENT, OR ADOPTION OF FINAL RULES

1. Adoption of the 2015 federal public water supply rules, including the new federal Revised Total Coliform Rule, as proposed at the September 30, 2016 meeting.

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