

BOARD OF ENVIRONMENTAL REVIEW
FRIDAY, SEPTEMBER 29, 2017
METCALF BUILDING, ROOM 111
1520 EAST 6th AVENUE, HELENA, MONTANA

NOTE: Interested persons, members of the public, and the media are welcome to attend at the location stated above. 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 Lindsay.Ford@mt.gov no later than 24 hours prior to the meeting to advise her of the nature of the accommodation needed.

9:00 AM

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. The Board will vote on adopting the June 2, 2017, 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.** Summary judgment was granted in part and denied in part. The parties have requested a hearing to be held from January 9 through January 11, 2018.
 - 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.** Summary judgment was granted in part and denied in part. The parties have requested a hearing to be held from January 9 through January 11, 2018.
 - c. **In the matter of violation of the Opencut Mining Act by Goran, LLC, at the Goran gravel pit, Stillwater County, Montana (Opencut No. 2790; FID 2500), BER 2016-09 OC.** On August 31, 2017 parties filed a third stipulated motion to stay scheduling order indicating they are close to resolution of case.
 - d. **In the matter of Appeal of Oil Field Rock and Logistics, Docket No. OC-16-12 (FID2506), Redstone, Montana, BER 2016-11 OC.** A scheduling order was issued on April 21, 2017 and is in effect.
 - e. **In the matter of violations of the Opencut Mining Act by Wagoner Family Partnership, d/b/a Wagoner's Sand and Gravel, at River Gravel Pit, Flathead County, Montana (Opencut No. 1798; FID 2512), BER 2017-02 OC.** Parties have pending cross-motions for summary judgment.
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 an

Order was issued directing parties to comply with terms of stipulation, the proceedings are currently stayed.

- b. **In the matter of LT Trucking, LLC's appeal of Riverside Contracting Inc.'s Reclamation Bond Release for Permit #2083, CVID#17280, BER 2016-04 OC.** On September 8, 2017 an Order denying DEQ's motion to dismiss was issued. The parties are to continue following the scheduling order. Discovery closes at the end of the month.
- c. **In the matter of Westmoreland Resources, Inc.'s, appeal of final MPDES permit No. MT0021229 issued by DEQ for the Absaloka Mine in Hardin, Big Horn County, MT, BER 2015-06 WQ.** On December 14, 2016, an Order on Joint Motion to Stay Proceeding was issued and the parties were directed to file a proposed schedule within 30 days of the final order issued by the Montana Supreme Court.
- d. **An appeal in the matter of amendment application AM3, Signal Peak Energy LLC's Bull Mountain Coal Mine #1 Permit No. C1993017, BER 2016-07 SM.** Scheduling Order is stayed pending resolution of discovery disputes. Once disputes are resolved parties need to propose a schedule for completing depositions and filing prehearing motions.
- e. **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.** On September 8, 2017, an Order granting Summary Judgment to DEQ was issued. An order on exceptions was also issued and the matter will be before the Board once briefing deadlines have passed.
- f. **In the matter of Appeal Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B, BER 2016-03 SM.** On September 8, 2017, the former hearing examiner issued an order granting the intervenor's motion to amend their expert notice. Parties were encouraged to complete the remaining discovery and work cooperatively to bring the case to hearing.
- g. **In the matter of the notice of appeal and request for hearing by Montanore Minerals Corporation Regarding Issuance of MPDES Permit No. MT0030279, Libby, Montana, BER2017-03 WQ.** On July 10, 2017, an order extending till September 22, 2017 the deadline for filing a proposed schedule was issued.
- h. **In the matter of appeal Glacier Ranch Subdivision PWSID #MT0004700 Phase 4 Review of Public Water and Sewer Main extensions EQ#17-1391, Somers, Montana, BER2017-04 SUB.** The parties filed a stipulation to dismiss with prejudice pursuant to Rule 41(a)(1)(A)(ii) of the Montana Rules of Civil Procedure on July 19, 2017 and the matter is considered dismissed.
- i. **In the matter of Montana Northwest Company's Appeal of DEQ Waiver Review Committee's decision to deny Alla and Yevegeniy Kirilovich's request for a source specific mixing zone for Block 1, Lot 3 of Sol Acreage Tracts #2, EQ# 17-1160, Missoula, Montana, BER 2017-05 SUB.** DEQ filed a notice in June

indicating petitioner no longer wishes to proceed; DEQ will file a stipulation to dismiss.

- j. **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 August 22, 2017, an Order was issued staying the hearing schedule until February 16, 2018.

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 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 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 was granted and proceedings to determine the amount of attorney fees are ongoing.

B. OTHER BRIEFING ITEMS

1. The Department will brief the Board on some of the basic components of the water quality program, including a description of water quality standards and their implementation in other water programs.
2. The Department has been working with a diverse group of stakeholders to develop rules for MCA 75-5-222 (2015 Senate Bill 325), "State regulation for natural conditions." The Department will brief the Board on the two pieces of the statute and the status of rulemaking. A copy of the statute is attached.
3. The Department will provide the Board with a report regarding the air quality permit fees that are anticipated for the next calendar year, as required by ARM 17.8.510.

III. ACTION ITEMS

A. INITIATION OF RULEMAKING

DEQ will propose that the Board initiate rulemaking to:

1. Amend the following air quality rules in ARM Title 17, Chapter 8:
 - a. Amend ARM 17.102 to incorporate by reference appropriate federal and state statutes and update references in ARM 17.8.103 stating where the documents may be obtained electronically.
 - b. Amend ARM 17.8.202 to adopt the 2017 version of the Montana Ambient Air Quality Program Quality Assurance Project Plan (QAPP).
 - c. Modify air quality rules by correcting a definition in ARM 17.8.901 and an internal reference 17.8.904.
 - d. Centralize the location of rule reference materials.

B. NEW CONTESTED CASES

1. **In the matter of Dennis and Sandra Dickenson's appeal of DEQ Subdivision Section Contract Reviewer's decision to deny the Dickenson's subdivision application, EQ#17-1398, Jefferson County, BER 2017-06 SUB.** The Board received the appeal on August 1, 2017. The Board may appoint a permanent hearing examiner or decide to hear the matter.

C. FINAL ACTION ON CONTESTED CASES

1. **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, Montana, BER 2014-06 WQ.** At the March 2017 Board Meeting, the Board passed a motion that left the substantive resolution of this matter in the hands of the previous Hearing Examiner and reassigned the contested case to the current Board Attorney for procedural purposes.
2. **In the matter of Heart K Land & Cattle Co.'s appeal of its final 401 Certification with conditions, application No. MT4010948; MWO-2013-00590-MTB-Addendum, issued by DEQ for the Yellowstone River, Park County, MT, BER 2015-05 WQ.** Heart K and DEQ reached a settlement memorialized by a Stipulation for Final Decision filed September 15, 2017.

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