

BOARD OF ENVIRONMENTAL REVIEW
FRIDAY, APRIL 12, 2019
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.

10:30 AM

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. The Board will vote on adopting the February 8, 2019 meeting minutes.

Public Comment.

II. BRIEFING ITEMS

A. CONTESTED CASE UPDATE

1. Enforcement cases assigned to the Hearing Examiner
 - a. **In the matter of the Notice of Appeal and Request for Hearing by CMG Construction, Inc. Regarding Notice of Violations and Administrative Compliance and Penalty Order, Docket No. OC-17-12, BER 2017-08 OC.** This matter has been stayed at the request of the parties since July 23, 2018. In December 2018, Ms. Clerget held a scheduling conference to place this matter back on a litigation schedule. Ms. Clerget issued an Amended Scheduling Order on January 8, 2019 and on March 4, 2019, the parties requested an additional stay. Ms. Clerget held a scheduling conference on April 2, 2019, and issued a Second Amended Scheduling Order on April 4, 2019.
 - 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 and 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 July 16, 2018, Ms. Clerget issued her Proposed Findings of Fact Conclusions of Law and a separate order on exceptions. Copper Ridge, Reflections at Copper Ridge, and DEQ submitted their exceptions to the Proposed Order and the matter was fully briefed and before the Board for oral argument at the December meeting. The Board however, lacked a quorum at its December meeting. The Board requested additional briefing from the parties on the owner/operator issue, which the parties submitted. At the February meeting, the board vacated the Proposed Findings of Fact and Conclusions of Law and Order on Summary Judgment and remanded the matter for further proceedings, consistent with the Board's interpretation of the statute. Ms. Clerget determined that the facts in the record were insufficient

with respect to the owner/operator issue and set a factual hearing, limited to the owner/operator issue, for June of 2019.

- c. **In the Matter of Appeal Revocation of Cosa, Fischer Land Development Subdivision [ES# 42-78-S3-173] and Fischer Homes [ES# 42-80-T1-15], Roger Emery, Sidney, Richland County, Montana. [FID# 2214], BER 2018-03 SUB.** On March 8, 2019, the parties Stipulated to dismissal with prejudice. This matter is now closed.
 - d. **In the Matter of Violation of the Metal Mine Reclamation Act by Little Bear Construction, Inc. at Bob Weaver Pit, Granite County, Montana. (SMED NO. 46-117C; FID # 2567), BER 2018-02 MM.** On February 22, 2019, the parties stipulated to Dismissal with prejudice. This matter is now closed.
2. Non-enforcement cases assigned to the Hearings Examiner
- a. **In the matter of the Notice of Appeal and Request for Hearing by CHS, Inc. regarding issuance of MPDES Permit No. MT0000264, BER 2019-01 WQ.** On February 8, 2019, the BER appointed Sarah Clerget as hearing examiner to preside over this contested case. The Board directed Ms. Clerget to consolidate this case with BER 2015-07 WQ for scheduling purposes. Ms. Clerget issued a Scheduling Order on March 13, 2019 and the parties are proceeding accordingly.
 - b. **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.** This matter has been stayed since March 28, 2018, pending the Montana Supreme Court decision in *MEIC and Sierra Club v. DEQ and Western Energy*. The parties will file a status report within 30 days of the Supreme Court's decision, which has not yet occurred.
 - c. **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.** The parties have filed cross-motions for summary judgment. Replies to those motions are due April 5, 2019. A decision on the parties motions will be issued thereafter.
 - d. **In the matter of Appeal Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B, BER 2016-03 SM.** Ms. Clerget conducted a four-day hearing in this matter that concluded on March 22, 2018. After several extensions, the parties submitted their post-hearing filings on September 27, 2018. On October 23, 2018, Western Energy filed a notice of bankruptcy. On November 16, 2018, the parties held a status conference and agreed that the bankruptcy filing does not stay this proceeding. Ms. Clerget has issued her proposed findings of fact and conclusions of law and set deadlines by which the parties must file exceptions to the order and responses to the exceptions. This matter will be before the Board at its May meeting.
 - e. **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.** A two-day hearing on this

matter on held on December 3-4, 2018. Ms. Clerget issued a Scheduling Order setting the deadlines for post-hearing submissions on January 9, 2019. The parties have submitted their proposed FOFCOLs and responses, and oral argument on those proposed FOFCOLs is set for May 7, 2019.

- 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.** On February 8, 2019, the BER appointed Sarah Clerget as hearing examiner to preside over this contested case. The Board directed Ms. Clerget to consolidate this case with BER 2019-01 WQ for scheduling purposes. Ms. Clerget issued a Scheduling Order on March 13, 2019 and the parties are proceeding accordingly.
- g. **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.** The parties appeared before the Board at its October 2018 meeting for oral argument on the proposed Findings of Fact and Conclusions of law. At the meeting, the parties reached a settlement and the Board stayed the case until February 2019.
- h. **In the Matter of Notice of Appeal of Opencut Mining Permit #2351 Issued to Golden West Properties, LLC by Frank and Paulette Wagner Regarding Concerns and Unanswered Questions. BER 2018-04 OC, and In the Matter of Notice of Appeal of Opencut Mining Permit #2351 Issued to Golden West Properties, LLC by David Weyer on behalf of the Residents of Walden Meadows Subdivision. BER 2018-05 OC.** On January 3, 2019, counsel for Golden West Properties filed an unopposed motion to modify the scheduling order in this matter. The motion was granted on January 8, 2019, and the parties are proceeding according to that schedule.

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 was stayed while action in the First Judicial District Court proceeded. On March 14, 2016, the Judge issued Order on Summary Judgment invalidating the permit renewal and modification and remanding the matter for consideration consistent with the opinion. On January 25, 2018, the Department of Environmental Quality entered a Stipulated Judgement resolving the issue of attorney's fees. The Department of Environmental Quality and Western Energy appealed the District Court's Order on Summary Judgment to the Montana Supreme Court. The matter has been briefed and oral argument was held before the Montana Supreme Court on March 13, 2019. The Parties are awaiting the final Order of the Montana Supreme Court.

III. ACTION ITEMS

A. APPEAL, AMEND, OR ADOPT FINAL RULES

- 1. In the matter of final adoption of the proposed amendment to ARM 17.8.744 and adoption of New Rules I-IX to establish an air quality registration program for certain portable sources of emissions, as noticed in MAR Notice No. 17-402.**

Public Comment.

B. NEW CONTESTED CASE

- 1. In the Matter of the Notice of Appeal and Request for Hearing by Spring Creek Coal, LLC regarding issuance of MPDES Permit No. MT0024619.** On February 12, 2019, the Board received a request for hearing. The Board can decide to assign a hearings examiner for procedural issues in this case, hear the case itself, or assign a hearing examiner for the totality of the case.

Public Comment.

IV. BOARD COUNSEL UPDATE

Counsel for the Board will report on general Board business, procedural matters, and questions from Board Members.

V. 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.

VI. ADJOURNMENT