



P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • Website: www.deq.state.mt.us

AGENDA
BOARD OF ENVIRONMENTAL REVIEW
THURSDAY, MARCH 23
Note the change in Location:
STATE CAPITOL, ROOM 317
1301 EAST SIXTH AVENUE, HELENA, MONTANA

NOTE: Individual agenda items are not assigned specific times. For public notice purposes, the Board will begin the meeting at the time specified. However, the Board might not address the specific agenda items in the order they are scheduled. Persons with disabilities who need an accommodation in order to participate in this meeting, should contact the Board Secretary at (406) 444-2544.

9:00 A.M.

I. ADMINISTRATIVE AGENDA ITEMS

- A. Review and approve minutes of February 3, 2006, regularly scheduled Board meeting.
[Meeting Minutes](#)
- B. Review and approve minute November 9 & 10, 2005, hearings summary pertaining to coalbed methane rules.
[Hearing Summary](#)
- C. Review and approve December 1, 2005, hearing summary pertaining to coalbed methane rules.
[Hearing Summary](#)

II. BRIEFING AGENDA ITEMS

A. CONTESTED CASE UPDATE

- 1. Cases assigned to Hearing Officer Katherine Orr:
 - a. **In the matter of CR Kendall Corporation's request for a hearing to appeal DEQ's decision to deny a minor permit amendment under the Metal Mine Reclamation Act (BER 2002-09 MM).** The Hearing Examiner, upon request of the parties, has vacated the hearing schedule and placed the case on hold until further notice of one or more of the parties or upon initiative of the Hearing Examiner.
 - b. **In the matter of the Petition for Review of Hazardous Waste Final Permit No. MTHWP-03-01 issued to Flying J Petroleum, Inc. (BER 2003-14 HW).** Flying J has requested a hearing under the Montana Hazardous Waste Act to review the final decision of DEQ to issue a Hazardous Waste Final Permit to Flying J for its former refinery located near Cut Bank. Counsel for the parties stipulated to a stay of contested case proceedings while they discussed the terms of an order that could resolve this case. However, the case was not settled and the parties proposed a schedule for contested case proceedings. On April 5, 2005, the Hearing Examiner issued a scheduling order. The final prehearing conference was set for January 10, 2006. On August 23, 2005, the Hearing Examiner, Katherine Orr, issued a notice of Assumption of Jurisdiction retaining all deadlines except the discovery deadline, which was extended until October 25, 2005. The Department filed a Motion for Partial Summary Judgment on December 21, 2005. This motion was fully briefed as of January 25, 2006. Oral argument will occur on March 14, 2006. A two-day hearing is set for May 17, 2006.
 - c. **In the matter of Violations of the Montana Water Quality**

Act by the City of Lewistown Wastewater Treatment Plant (BER 2004-15 WQ). On October 20, 2004, the Board received a letter from the City Manager of Lewistown appealing assessment of \$11,608 in administrative penalties for violations of the Water Quality Act. On September 21, 2004, DEQ had issued an Administrative Penalty Order for six alleged discharges of sewage into Big Spring Creek. The parties proposed a schedule for contested case proceedings on March 1, 2005, and the Hearing Examiner issued a scheduling order. The final Prehearing Conference was set for October 12, 2005. The parties have requested a stay of proceedings pending settlement discussions. The parties were given until March 3, 2006, to submit a proposed hearing schedule or settlement document.

- d. **In the matter of Violations of the Water Quality Act by ASARCO, Inc., (BER 2005-09 WQ).** The Board received a request for hearing regarding an Administrative Penalty Order issued by DEQ for the alleged failure to pay annual permit fees on the MGWPCS permit for discharges from the Paymaster Mine Adit located in Lewis and Clark County. DEQ claims ASARCO should have paid permit fees for a permit that ASARCO argues should have been terminated in 2002. The parties requested until July 19, 2005, to submit a schedule or settlement papers and Hearing Examiner Tom Bowe granted the request. On August 24, 2005, Hearing Examiner Katherine Orr issued a notice of Assumption of Jurisdiction and upon review of the Department's proposed hearing schedule, set a date for a Prehearing Conference of December 14, 2005, at which time a date for the hearing will be determined. The hearing examiner issued a Stay of Proceedings on January 19, 2006, upon the notification of the Department of the bankruptcy proceeding.
- e. **In the matter of the issuance of the Air Quality Permit for the Roundup Power Project, Permit No. 3182-00 (BER 2003-04 AQ).** On June 6, 2005, the Montana Supreme Court remanded an appeal to the District Court. On June 15, 2005, the district Court remanded the case to the Board. The Board was to decide whether to make a new decision based on the record or to receive additional evidence. On July 29, 2005, the Board issued an Order Staying Contested Case Proceedings indefinitely. On August 24, 2005, Hearing Examiner Katherine Orr issued an Assumption of Jurisdiction referencing the Order Staying Contested Case Proceedings.
- f. **In the matter of the request for hearing of Jay Gasvoda, d/b/a Gasvoda Construction, BER 2005-17 OC, regarding the Notice of Violation and Statement of Proposed Penalty issued by DEQ on September 14, 2005.** On October 6, 2005, the Board received the appeal letter from Mr. Gasvoda appealing the issuance of a Notice of Violation and Statement of Proposed Penalty concerning an opencut mining operation. A First Prehearing Order was issued on November 7, 2005. The parties have until November 18, 2005, to propose a hearing schedule. A hearing schedule was issued by the hearing examiner on December 2, 2005. A hearing is set for May 9, 2006, in Hamilton, Montana. The Department filed a Motion to Strike Discovery, to Compel Discovery or for Sanctions on January 23, 2006. This is unopposed.
- g. **In the matter of the appeal by Westmorland Resources Inc., BER 2005-19 SM (strip mining), appealing the issuance of a Notice of Violation and Statement of Proposed Penalty.** A scheduling order was issued on January 13, 2006. A prehearing conference is set for May 29, 2006 at which time, a hearing date will be set.
- h. **In the matter of the Montana Environmental Information Center's appeal of Air Quality Permit No. 3182-01, issued for the Roundup Power Project, BER 2005-21 AQ.** The parties were given until January 10, 2006, to submit a proposed schedule for prehearing matters and the hearing. The permittee, Bull Mountain filed a Motion to Intervene on January 9, 2006.

The Hearing Officer issued a Scheduling Order on January 30, 2006. The final prehearing conference is set for May 26, 2006. The Department submitted a Motion to Dismiss on January 26, 2006. The MEIC filed an Answer Brief on February 24, 2006. Bull Mountain filed a Brief in Support of the DEQ's Motion to Dismiss on February 24, 2006. The parties filed a Joint Stipulation to Stay Prehearing Schedule on March 6, 2006.

- i. **In the matter of the request for hearing by Oro Management, LLC, BER 2006-01 MM, regarding a challenge to the alleged violations and an assessed penalty.** The parties have been given until February 2, 2006, to submit a proposed schedule for pre-hearing matters and the hearing date. The Hearing Examiner issued an Order on February 3, 2006, requesting the parties submit a proposed hearing schedule by March 22, 2006.
- j. **In the matter of the request for hearing by Bear Cub, LLC, BER 2006-02 SUB, regarding Sunrise Lots subdivision waiver denial in Missoula County.** The parties have been given until February 2, 2006, to submit a proposed schedule for pre-hearing matters and the hearing. A first Scheduling Order was issued on February 8, 2006. A hearing is set for May 9, 2006.

III. ACTION AGENDA ITEMS

A. REPEAL, AMENDMENT OR ADOPTION OF FINAL RULES:

1. **In the matter of Public Hearing on Proposed Adoption of New Rule I, State Solid Waste Management Resource Recovery Plan.** Presiding Officer Katherine Orr conducted the public hearing on November 18, 2005. This is an update of the State Solid Waste Management Plan. The Solid Waste Management Plan was adopted in 1994 and has not been updated since that time. Last year, the Department initiated a review of the plan. In conjunction with a task force of affected persons, and after taking public comment and holding public hearings, the Department is proposing an updated plan.

Executive Summary

Notice of Public Hearing on Proposed Adoption

Notice of Adoption

2. **Enforcement Rules** – The Board will consider amending ARM 17.24.132, 17.24.133, 17.25.134, 17.24.136, 17.24.1206, 17.24.1211, 17.24.1218, 17.24.1219, 17.24.1220, 17.56.1014, 17.30.2001 and 17.24.2003; repealing ARM 17.24.1212, 17.30.2005, 17.30.2006 and 17.38.606; and adopting new rules to implement HB 428 and 429 enacted by the 2005 Montana Legislature. HB 428 streamlines and makes uniform the enforcement procedures applicable to state mining laws, including the Metal Mine Reclamation Act and the Strip and Underground Mine Reclamation Act. HB 429 amended sixteen environmental laws, including the Metal Mine Reclamation Act and the Strip and Underground Mine Reclamation Act, to provide standardized penalty factors that must be considered in determining a penalty in an enforcement action. Presiding Officer Katherine Orr conducted a public hearing on January 31, 2006, in Helena. Written and oral comments were received. The Department recommends adoption of the rule with changes in response to comments.

Presiding Officer Report

Executive Summary

Notice of Public Hearing on Proposed Amendment, Repeal and Adoption

Notice of Amendment, Repeal, and Adoption

3. **Coalbed Methane Rules** -- The Board will consider adoption, amendment or rejection of the Rules noticed at MAR 17-231, p. 1844 published 10/6/05 and the amended notice MAR 17-236, p. 2288 published 11/23/05 pertaining principally to Coal Bed Methane minimum treatment effluent limit guidelines and amendment of the nondegradation rule at ARM 17.30.670.

Executive Summary
Notice of Public Hearing on Proposed Amendment and Adoption
Notice of Amendment and Adoption
Department Recommendations for Board Actions
Comments on Economic Impact Statements and Responses

4. **In the matter of the amendment of ARM 17.8.504, 17.8.505, and 17.8.744 and the adoption of New Rules I through IX to establish a registration system for certain facilities that presently require an air quality permit.** The proposed new rules would establish a general registration system and would establish rules that apply the system to oil and gas well facilities. Presiding Officer Katherine Orr conducted the public hearing on January 23, 2006. Several interested parties submitted written public comments. The Department has prepared a draft final notice modifying the proposed amendments by incorporating some of the public comments, and recommends adoption of the proposed amendments with the modifications.

Presiding Officer Report
Executive Summary
Notice of Public Hearing on Proposed Amendment and Adoption
Notice of Amendment and Adoption

B. INITIATION OF RULEMAKING AND APPOINTMENT OF HEARING OFFICER:

The Department will propose that the Board concur in its recommendation to initiate rulemaking to:

1. Amend ARM 17.8.740 and 17.8.767 and adopt New Rules I and II pertaining to control of mercury emissions from facilities that combust coal to generate electricity for sale and adopt a modified version of the cap and trade provisions of the federal Clean Air Mercury Rule.

Executive Summary
Notice of Public Hearing on Proposed Amendment and Adoption

2. Update the Air Quality Incorporation by Reference Rules at ARM 17.8.102 (annual update).

Executive Summary
Notice of Public Hearing on Proposed Amendment

C. HEARINGS WITH ACTION

In the matter of consideration of proposed revisions to the Lincoln County Air Pollution Control Program. EPA designated Lincoln County as a nonattainment area for fine particulate matter (PM-2.5) based on measured concentrations exceeding the National Ambient Air Quality Standards (NAAQS) for PM-2.5 set forth in the Clean Air Act. Based on monitoring and speciation studies to determine the sources of PM-2.5, the Lincoln County Environmental Health Department determined the sources of PM-2.5 emissions are residential woodstove operation, road maintenance and sanding activity, and outdoor burning. As a result, local program rules are revised to control emissions of PM-2.5 from these sources to levels sufficient to protect the NAAQS. The proposed revisions are not effective unless and until approved by the Board. The Board will hold a public hearing and will take action to approve or disapprove the proposed program revisions.

Memorandum and Order

D. FINAL ACTION ON APPEALS:

1. **In the matter of the appeal by the Town of Ennis, BER 2005-18 WQ, regarding MPDES Permit No. MT0030732.** On October 6, 2005, the Board received notice from Ralph Hernandez, Mayor, that the Town of Ennis appeals its MPDES permit for its wastewater discharge system, which was recently issued by DEQ. A First Prehearing Order was issued on November 7, 2005. The parties have been given until January 23, 2006, to submit a proposed settlement or a proposed hearing schedule. The parties submitted a Joint Stipulation for Dismissal on February 7, 2006. A proposed order for dismissal has been prepared for the Board's review.

2. **In the matter of the request for hearing of Gallatin County, BER 2005-20 WQ, regarding fees for wastewater permit No. MTR101290.** The parties were given until January 10, 2006, to submit a proposed schedule for prehearing matters and the hearing. The parties submitted a Stipulation for Dismissal and a Proposed Order of Dismissal, which has been prepared for the Board's review.

E. NEW CONTESTED CASE APPEALS:

1. **In the matter of the request for hearing of Blue Bear Minor Subdivision, Glacier County, under Mont. Code Ann. § 76-4-126, BER 2006-03 SUB (EQ #06-1988).** The Board received the request for hearing on February 16, 2006. A First Prehearing Order was issued March 7, 2006.
2. **In the matter of the request for hearing of Michael and Kimberly Thomas, regarding DEQ's approval of the Blahnik Construction, Inc.'s JCSL North Gravel Pit.** The Board received the request for hearing on February 17, 2006. A First Prehearing Order was issued March 8, 2006.

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